Vol. 815
No. 57

Tuesday
19 October 2021

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

0RDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2021-10-19

The abbreviation [V] after a Member's name indicates that they contributed by video call.

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind 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

Tuesday 19 October 2021

2.30 pm

Prayers—read by the Lord Bishop of Durham.

GPs: In-person Appointments

Question

2.36 pm

Asked by ***Lord Balfe***

To ask Her Majesty's Government what steps they are taking to ensure all patients can choose to have a telephone or in-person appointment with their GP; and what assessment they have made of the impact of appointments not being in person on the late diagnosis of conditions.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): We have published a comprehensive new plan to support GPs and make it easier for patients to see or speak to GPs and their teams, based on their choice. The plan is backed up by a new £250 million winter access fund, which will help patients with urgent care needs. As part of this, practices should ensure that they are providing the right proportion of appointments for their registered population that is clinically warranted and takes account of patient preferences.

Lord Balfe (Con): I thank the Minister for his reply but point out that one of the fundamentals of the NHS has been that the patient has decided when they wish to see the doctor. Under Covid, that has been breached many times, with doctors having far more power not to see patients. Can he assure me that the aim of the department will be to get back to a system where the patient decides whether they need to see the doctor?

Lord Kamall (Con): My Lords, I am happy to agree with the sentiment in the question from my noble friend, but it is important to make sure that we are not overly prescriptive. Patients sometimes want face-to-face consultation, but they may also be happy with a telephone call or an online consultation. At the heart of this should be patient choice.

Baroness Pitkeathley (Lab): My Lords, has the Minister heard GPs say, as I have, that the most important question a patient asks is the one as they are leaving—the one as they are walking out of the door? Will the training of GPs be amended to cover the different listening techniques that may be required for online consultations, so that these important questions are not missed?

Lord Kamall (Con): I thank the noble Baroness for sharing her expertise in this area, and absolutely agree with the question she asked. I do not have the details of the training of GPs to make sure that they are best prepared for online consultations, but I will write to her.

Baroness Fraser of Craigmaddie (Con): My Lords, does the Minister agree that we are in danger of looking at this issue the wrong way around? Given that there is much ongoing research into clinician and patient experience of virtual appointments, that primary care consists of many more people than just GPs, and that complex diagnoses are usually given by specialist consultants, there are multiple reasons from both the clinical and patient viewpoint for what medium to choose. Can the Minister reassure the House that there will be no blanket targets imposed on professionals for the percentage of appointments that need to be face to face, virtual or by telephone, and that GPs, patients and other clinicians are able to assess between themselves what is the most efficient medium to ensure the best possible outcome for the patient?

Lord Kamall (Con): What is important here is that we leave it to the relationship between the GP and the patient to decide the best form of consultation. Sometimes that will be face to face and, if the patient wants a face-to-face consultation but the GP is unable to provide one, they have to give a good medical reason why not. However, we can balance that with online and telephone appointments.

Baroness Brinton (LD) [V]: Many GPs are feeling as if they have been completely thrown to the wolves by Ministers, and even Jeremy Hunt has said that the proposed plan and the £250 million winter access fund to support GPs and reduce the pressures they face is little more than a sticking plaster and will not help, given that the real problem is the shortage of qualified GPs. There are not even locums in many places and no longer applicants for many GP jobs. Has the Minister talked to GPs about their current extensive workload, and will he reconsider the assistance needed to support our exhausted GPs?

Lord Kamall (Con): It is important that we listen to GPs and understand their needs and how we can support them. We have committed to growing and diversifying the workforce and boosting GP recruitment. We have also committed to recruiting an additional 26,000 primary care staff to be embedded in multidisciplinary teams. The details of the training will be left to the trainers themselves.

Lord Flight (Con): My Lords, it was appropriate for GPs to avoid physical contact with their patients when the Covid risk was significant. As this abates, it is surely equally correct for GPs to agree to returning to seeing patients when they so request and where their symptoms invite further investigation. Also, rewarding GPs at a lower rate for telephone appointments and for working three rather than five days a week might serve as an effective incentive to restoring physical appointments.

Lord Kamall (Con): At the centre of what the department requires and expects is that GPs work with their patients to decide the most appropriate form of consultation. In some cases that will be telephone, in some cases that will be online, and in some cases it will be face to face. When the patient requests face to face and the GP refuses, they have to give a good medical reason why.

Baroness Stuart of Edgbaston (CB): My Lords, healthcare depends crucially on the relationship between patient and professional. A recent study of Norwegian records found that the longer the relationship between an individual GP and a patient, the more you reduce the need for out-of-hours care and the likelihood of being admitted to hospital. Face-to-face consultation is important but even more important is the case manager function of the general practitioner. Can the Government make a similar study in England in terms of individual GP and patient relationships and medical outcomes, and encourage the devolved Administrations to do similar work so we can compare data?

Lord Kamall (Con): The relationship between the patient and the GP is important, so we have made sure that choice is at its centre. As they develop the relationship, they can decide on the most appropriate way to be consulted and to give advice.

Baroness Thornton (Lab): The Government have consistently promised and failed to increase the number of GPs. Instead of the 5,000 additional ones promised in 2015, this year we have 1,300 fewer GPs. When the Health Secretary announced the £250 million winter access fund to enable GP practices to improve the availability of services to patients, where did he think those GPs would come from? Where is the magic locum tree? It is a seven-year pipeline to produce a GP. Does the Minister agree that rubbishing and attacking GPs is not going to attract medics to take up this profession?

Lord Kamall (Con): I think we all agree that we should appreciate the work that GPs did during Covid; they were often the front line. It is important that we continue to make sure that we recruit more GPs. Some 3,793 doctors—the highest ever number—accepted a place on GP training in 2020, so I do not recognise the criticism.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, I take this opportunity to welcome the noble Lord to his new position; it is the first chance I have had to do that. Does he agree that virtual appointments increase the number of patients dealt with but not the quality of the consultation? Now that we are coming out of extreme measures, what are the Government doing to level up the worst GP practices to the standards of those undeniably excellent ones in some areas? Will he now encourage GPs to have more face-to-face appointments?

Lord Kamall (Con): I thank the noble Lord for his warm welcome to me in my new role. As other noble Lords have expressed, it is really important to make sure that the relationship between patient and doctor or GP is respected. That will not always mean being seen face to face, but when a patient asks for this there has to be a good medical reason if the appointment is not. Speaking from personal experience, I have found online consultations as good as, if not sometimes better than, face-to-face appointments.

Baroness Smith of Newnham (LD): My Lords, I declare an interest. Last November, my father turned yellow. He rang to get a doctor's appointment and was given a telephone consultation. He does not have a smartphone. The GP said, "It's jaundice, but it might be pancreatic cancer." No other suggestion was made and there was no suggestion that he could go in to see the GP. He did not know that he had a choice. He is still with us 11 months later; it clearly was not pancreatic cancer. The idea that people have choice does not work if they are not strong and vocal enough to be able to tell the GP practice, "I need a face-to-face appointment." What will the Minister do to make patients aware that this is possible?

Lord Kamall (Con): I sympathise with the case that the noble Baroness communicated. It is important that GPs and patients work that relationship out between themselves. If a patient asks for a face-to-face appointment and the GP refuses to give one, the GP has to have a good medical reason.

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

Drugs: Black Review

Question

2.46 pm

Asked by ***Lord Moylan***

To ask Her Majesty's Government what assessment they have made of Dame Carol Black's *Review of drugs part two: prevention, treatment and recovery,* published on 8 July.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): On 27 July, the Government published an initial response to Dame Carol Black's review, welcoming all 32 recommendations and setting out a clear cross-government commitment to the agenda. The Government have also committed to respond to the review in full by the end of the year and to set out a long-term drug strategy which will present our whole-government response to drive down drug supply and demand.

Lord Moylan (Con): My Lords, I also welcome my noble friend to his place on the Front Bench. With entrenched drug use driving half of the nation's crime and people with serious drug addiction occupying one in three prison places, does he accept Dame Carol Black's finding that the current public provision for drug misuse, prevention, treatment and recovery is not fit for purpose and that Her Majesty's Government face an unavoidable choice: invest in tackling the problem or keep paying for the consequences?

Lord Kamall (Con): I thank my noble friend for the question and the point he made so forcefully. In January, the Government announced a £148 million crime package for 2021-22, which has been allocated to local authorities for drug treatment and recovery services, with a focus on improving services for offenders and reducing deaths. This is the largest increase in drug treatment funding for 15 years.

Lord McConnell of Glenscorrodale (Lab): My Lords, we have a very good example inside the UK of the short-term impact of cutbacks in rehabilitation and treatment. In Scotland, we now have the highest level of drug-related deaths in Europe, partly as a result of cutbacks in treatment and rehabilitation made over the past decade by the Scottish Government. The UK Government share some responsibilities on drug policy with the Scottish Government under the devolution settlement, so will they guarantee to work with the Scottish Government to try to turn around this devastating situation?

Lord Kamall (Con): In September 2020, Kit Malthouse and Jo Churchill, the then Minister for Prevention, Public Health and Primary Care, co-chaired a UK ministerial meeting focusing on UK-wide approaches to drugs misuse. The second UK drugs ministerial took place at Hillsborough Castle in Belfast on 11 October. The Government maintain a commitment to consulting the devolved Administrations—or devolved Governments in many cases—as well as a number of expert speakers.

Baroness Brinton (LD) [V]: My Lords, the Government's initial response welcoming Dame Carol Black's recommendation to create a cross-departmental approach to tackling drugs misuse and related harm is welcome. However, they have not responded to many of the key recommendations, of which the most important is the introduction of multi-year ring-fenced funding for treatment services, distributed by local need, with at least £552 million invested in the treatment system annually by the end of year 5. When will the Government's full response be published? Will Dame Carol's recommendations be fully funded?

Lord Kamall (Con): The Government have committed to giving a full response to Dame Carol Black's review by the end of the year and have already taken action. Since part 1 of her review, the Government have announced £148 million of investment to tackle drugs misuse, supply and county-lines activity. That also includes £80 million for drug treatment and recovery services.

Lord Hannan of Kingsclere (Con): My Lords, will my noble friend the Minister consider the third option, not mentioned by my noble friend Lord Moylan; namely, a partial decriminalisation? The evidence from those European countries and US states that have pursued this course is that not only does it relieve pressure on the police, the criminal justice system and the taxpayer but it leads to a decline in the number of drugs-related deaths. I appreciate that this is a complex issue and that there are strong views on all sides, so perhaps my noble friend the Minister will consider a temporary experimental change in the laws, as Parliament did over changing our time zone, where we lift the restrictions for a year, and then at the end of that we have a vote.

Lord Kamall (Con): I thank my noble friend for reminding us of the third option—or the third way, as some might say. It is really important that we consider all views, and I have read, over the years, many arguments in favour of liberalisation. At the same time, however, I have also read many criticisms from drug treatment charities, saying that it is not as simple as that. At this point, the Government are not committed to any trials on the basis suggested.

Baroness Hoey (Non-Afl): My Lords, I refer the Minister to Dame Carol Black's assertion that

"we can no longer, as a society, turn a blind eye to recreational drug use."

Will the Minister make it very clear that the downgrading of cannabis—the making of cannabis legal—would send out a message that it is fine? But it is not fine for those millions of young people all over the country who get caught up with cannabis. It is a gateway drug, and the Government should not be thinking of doing anything like what the noble Lord, Lord Hannan, has suggested.

Lord Kamall (Con): I thank the noble Baroness for her question and for her point that it is important to continue to invest in drug treatment services, but also to make sure that we stop drug users from engaging with drugs in the first place.

Baroness Merron (Lab): My Lords, among some 32 recommendations, Dame Carol stressed the importance of getting more people into treatment who require it, diverting people away from the criminal justice system, and ensuring that service users are given a wider package of support for housing, employment and mental health. With drug-related deaths in England and Wales rising for the eighth year in a row in 2020, what conclusions might be drawn about the effectiveness or otherwise of the current cross-government approach to tackling addiction? Can the Minister assure the House that wisdom will prevail such that funding for substantive health support services to tackle addiction will be announced in the comprehensive spending review?

Lord Kamall (Con): The Government have committed to answering in full the recommendations of Dame Carol Black's review. In terms of joined-up thinking across government, the Government established the new Joint Combating Drugs Unit—the JCDU—in July 2021 to co-ordinate, and drive a genuinely cross-government approach to, drugs policy. The JCDU brings together different government departments, including those that the noble Baroness mentioned—the Department for Health and Social Care, the Home Office, the Department for Levelling Up, Housing and Communities, the Department for Work and Pensions, the Department for Education and the Ministry of Justice—to help tackle drugs misuse across society by adopting a cross-government approach.

Baroness Walmsley (LD): My Lords, the drug treatment and recovery workforce has deteriorated in quantity, quality and morale in recent years, with excessive case loads, decreased training and lack of clinical supervision. How do the Government plan to increase the number of professionally qualified drug treatment staff and improve occupational standards and training requirements?

Lord Kamall (Con): The Government will answer all the recommendations in Dame Carol Black's review by the end of the year. In response to the noble Baroness's specific question, I shall write to her.

Baroness Jones of Moulsecoomb (GP): It is hard to legislate to prevent drug use when it is such big business for organised crime globally. Many equatorial countries destroy their rainforests so that they can grow drugs, because that is part of their economy. Are the Government looking at those two things: global organised crime syndicates and environmental devastation from drug growth?

Lord Kamall (Con): The noble Baroness raises a very important point: we should look at this more globally, not just look at our country's drug strategy in isolation. Various departments across government are looking at that and working with partners across the world, but I shall write to the noble Baroness in more detail.

Baroness Wilcox of Newport (Lab): The recurring theme in the report of the importance of holistic care—supporting individuals who use drugs with their health and well-being, housing needs and opportunities for education, training and employment—is very pleasing. It is also good that there is testimony in the report from people with lived experience, who can help to shape the support needed. Building on the question from my noble friend Lord McConnell, can the Minister explain how there will be a commitment to essential funding to put many of these excellent recommendations into practice, both in the UK and in the devolved Governments?

Lord Kamall (Con): The Government will respond to the Dame Carol Black review by the end of the year, and that includes how much funding will be committed. The Government are committed to looking at the review's distinct proposals to see what resources will be needed and to make that bid.

Baroness Uddin (Non-Afl): My Lords, we as a family have experienced the state of mental health services in the past six weeks, and I had the privilege of meeting numerous in-patients and the anguished, distraught parents of young people with drug-induced psychosis being looked after by the least-trained or well-equipped staff, often in the absence of adequate numbers of doctors and nurses in the ward, as well as in the community. In welcoming the noble Lord to his role, I ask him whether he will respond to Dame Carol Black's call for £500 million for drug services. Will he argue for that and do his best to ensure that it is available to all those who need it, and will he agree to meet some of us to discuss this?

Lord Kamall (Con): I thank the noble Baroness for her question; we have known each other for a number of years, and I have always admired the work she has done in local communities in Tower Hamlets. In response to her specific question, I will commit to meet her and others who want to discuss this issue in more detail, but we have to wait until the end of the year for the Government's response to Dame Carol Black's review.

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

Child Poverty: Nuffield Foundation Review

Question

2.57 pm

Asked by ***The Lord Bishop of Durham***

To ask Her Majesty's Government what assessment they have made of the Nuffield Foundation's review *Changing patterns of poverty in early childhood*, published on 14 September; and what steps they intend to take as a result, including in relation to the two-child limit for welfare benefits.

The Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office and Department for Work and Pensions (Baroness Stedman-Scott) (Con): I am pleased to say we have read and analysed the report and note its recommendations. The Government are committed to supporting low-income families and having parents in work, particularly full-time, because we believe that this is the best way to tackle child poverty. In 2019-20, 14% of children under five in working households were in absolute poverty before housing costs, compared with 52% in workless households. That is why our focus is on the Plan for Jobs, and we have no current plans to change the policy of providing support for a maximum of two children.

The Lord Bishop of Durham: I thank the Minister for her response, and for how she engages with us regularly on this, but ever since the two-child limit was introduced, successive DWP Secretaries of State have said to us and many others, "Give us the evidence that the two-child limit is increasing poverty." The Nuffield report is the latest in what is now a long list of reports stating such evidence, so when will Her Majesty's Government admit that this is now the biggest cause of the growth in child poverty in this country, that it is a failed policy and that it needs to be reformed?

Baroness Stedman-Scott (Con): No admissions or confessions today, my Lords. When I read the report, I did not get from it the specific point that the right reverend Prelate made, and I think the best way, as we had such a great engagement meeting last week, is for us to sit down and go through it again so that he can make absolutely sure that I understand that point.

Baroness Greengross (CB): Sir Michael Marmot's 2020 report, produced by the Institute of Health Equity, found that the health gap between wealthy and deprived areas of the UK has grown in the past decade and that people can expect to spend more of their lives in poor health. Does the Minister agree that intervention to prevent child poverty would help reduce this health inequality in later life and, if so, what steps will the Government take to ensure that that happens?

Baroness Stedman-Scott (Con): The noble Baroness is right to point out the issues related to low income and health, and we accept that low income is associated with poorer long-term health outcomes. That is why we are continuing to support parents to get into work. Our other support includes increasing the national living wage, £6 billion a year to help parents with childcare costs, Healthy Start vouchers and a £221 million holiday and activities fund.

Baroness Sherlock (Lab): My Lords, the Nuffield report said that last year over 54% of families with young children in poverty had three or more kids, and that the recent rise in early childhood poverty is largely the result of changes to benefits policy, including the recent two-child limit. The right reverend Prelate the Bishop of Durham could not have done more—he comes back at least once a year with new evidence. The government response is always "just a little bit more". The evidence is clear: this policy is having one effect—pushing large families into poverty. So I ask the Minister: how bad would that poverty have to get for the Government to change their mind?

Baroness Stedman-Scott (Con): The noble Baroness is right to mention the great tenacity of the right reverend Prelate in this area. The Government, however, have had to take difficult decisions—

Noble Lords: Oh!

Baroness Stedman-Scott (Con): Yes, they have: they have had to take difficult decisions to stabilise the economy and build a welfare system that works for those who use it as well as those who pay for it. I can say only that I will meet the right reverend Prelate, and I am happy for the noble Baroness to join us. We will see what comes from that conversation.

Baroness Janke (LD): My Lords, the children's commissioners of Wales, Scotland and Northern Ireland state that the two-child limit is a clear breach of children's human rights. Will the Government act on this, or continue to sweep aside widespread evidence that this vicious policy is increasing poverty and damaging children?

Baroness Stedman-Scott (Con): I can add nothing to the answers I have already given. The Government have no plans to change the policy.

Baroness Fookes (Con): My Lords, the problems of some low-income families are made worse by trouble between the parents. Will my noble friend give any encouragement on measures to help resolve that situation?

Baroness Stedman-Scott (Con): I am happy to say that one of the areas of responsibility in my portfolio is the programme for reducing parental conflict. I have met numerous local authorities that are delivering it and we are seeing great progress in the reduction of parental conflict. We are putting £34 million into championing family hubs, which is another great and exciting measure that we are taking during these difficult days. We want to make sure that we reduce conflict so that children get the best start in life.

Lord Bird (CB): We know that many children get it in the neck from poverty. Let us hope that we can address that problem. The biggest problem that I would like the Minister to talk about is the children who are about to slip into poverty. More than 500,000 people who have not been able to pay their rent or mortgage because of Covid-19 are going to be evicted. It will be an enormous increase: what are we doing about that?

Baroness Stedman-Scott (Con): The noble Lord makes a very valid point. Without trying to sideline the issue, I will go to my colleagues in the department for housing—forgive me for not knowing what it is called now; the levelling-up bastion, perhaps—and make sure that the noble Lord gets an accurate answer to that question.

Lord Farmer (Con): The Nuffield review outlined six elements for tackling early childhood poverty. Notably, these include, first, a multidimensional approach to multiple socioeconomic risks and the needs of families with young children, and, secondly, support for parental mental health and parenting from day one of a child's life. What progress are the Government making in ensuring that all families have access to a welcome family hub as part of their cross-departmental best start for life policy?

Baroness Stedman-Scott (Con): Nothing would make my heart sing more than everybody having access to a family hub. At the moment, there is £34 million for those hubs. We are doing great work with them. I have decided, because I thought that family hubs would come up today, to do an all-Peers briefing on them so that noble Lords can hear exactly what we are doing and ask all the questions they wish.

Lord Krebs (CB): My Lords, a five year-old boy in Blackpool can expect to live for 53.3 years in good health, compared with 71.9 years for a boy born in Richmond—a truly shocking gap of 18.6 years. Last year's report of the Select Committee on Food, Poverty, Health and the Environment made recommendations for reducing that gap. As part of their levelling-up agenda, how many of those recommendations have the Government implemented?

Baroness Stedman-Scott (Con): The statistic shared by the noble Lord is sobering. Again, not wishing to sidestep the issue, I will need to go to the relevant department to make sure that he gets an answer. I will make sure that it is shared with noble Lords.

Baroness Wheatcroft (CB): My Lords, the Minister is a kind and compassionate person. Can she tell the House how this Government felt comfortable taking away the £20 uplift in universal credit just as food and fuel prices are on the way up? How will that affect the children already living in poverty?

Baroness Stedman-Scott (Con): That is the subject of the month so we should expect noble Lords to raise it. I must say that I have answered this question a number of times. The Government's position is clear: the uplift was a temporary solution that we extended for six months, and it is to stop. We have the household support fund, of another £500 million, and we are doing everything we can in terms of energy to make sure that people have the support they need. I would be happy to write to the noble Baroness laying all that out, rather than taking time now, to make sure that people understand.

France: AUKUS

Question

3.07 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government what discussions they have had with the government of France since the announcement of the AUKUS agreement.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, as neighbours, allies and partners, we have continued to engage with the French Government across a wide range of business since the AUKUS announcement.

Lord West of Spithead (Lab): My Lords, I thank the Minister for her Answer—what there was of it. This AUKUS treaty makes a lot of sense for the Australians. We often forget the huge sea ranges in that area. For example, it is 9,000 miles from the submarine building yards in south Australia to the Chinese yards; that is the same as the distance from London to Singapore. Nuclear submarines, not conventional ones, are needed to cover those ranges, so the Australians have made the right decision. Indeed, the fact that our three countries are working together confronts the Chinese on the grey-zone work they are doing against our agreed global values; that is a good thing.

However, it rather seems that we have left the French out on the side. They are very angry. At the NATO discussions this week, they were throwing their toys out of their cot. I would like to think that we have been talking closely with them. What I really want to ask the Minister is: are we still as close as we were in terms of Royal Navy-French navy liaison and the work that both navies do together, both in NATO and outside it?

Baroness Goldie (Con): I seek to assure the noble Lord that we recognise the significance of the French Government's reaction to AUKUS and the strength of the feeling it has generated. We have a long-standing relationship with France in global security and defence; that is founded on firm lines, not least the Lancaster House agreements. We are both committed to the same things, whether that is NATO, Euro-Atlantic security or broader global security in the Indo-Pacific and south-east Asia. A lot binds us together. We value France's presence as a defence partner and look forward to continuing to work with it closely.

Baroness Fall (Con): I congratulate the Government on what is a very innovative new alliance, even if it was executed with maybe slightly less diplomacy for our near neighbours than it might have been. This new alliance is supportive of Australia. It reinforces the idea that China does not have free rein in the Indo-Pacific, and it reinforces the work of the Quad. With the Quad in mind, does the Minister think there will be new members of AUKUS, such as Japan?

Baroness Goldie (Con): I thank my noble friend for affirming the strategic importance of AUKUS, echoing what the noble Lord, Lord West, said. The tripartite collaboration has been formed for a specific purpose and change in that respect is not envisaged. But my noble friend is absolutely right to recognise that AUKUS complements and enhances other relationships in the region, such as the Quad, Five Eyes or the FPDA, and that reflects both NATO's approach and the EU Indo-Pacific strategy.

Lord Liddle (Lab): My Lords, do the Government recognise that France is not only a close neighbour but also one of the few countries in the world that shares our fundamental values and interests? I support AUKUS, but was it not a great shame that no effort was made to bring France into the AUKUS conversation? Should not the Prime Minister have immediately reacted to the hurt feelings of the French by having a conversation with President Macron to see how the relationship can be put on a sound footing again?

Baroness Goldie (Con): I simply respond to the noble Lord by observing that the instigator of this new arrangement was actually Australia: it was Australia that decided that it wished to change its model of submarine. That is why it approached both the United Kingdom and the United States. As the noble Lord will understand, there are clearly issues of profound commercial sensitivity inherent within that, and that inhibited our ability to be more public or widespread in our consultations.

Baroness Smith of Newnham (LD): My Lords, when the Minister repeated the Prime Minister's Statement on AUKUS in September, I asked what conversations the Prime Minister had had with President Macron before the announcement; answer came there none. Can the Minister please tell the House whether the Prime Minister and the Government understand the importance of the UK's relations with France, that it remains our closest neighbour and that we should be working much more effectively to ensure that our bilateral relations and our relations within NATO are secure, because that is where our security lies?

Baroness Goldie (Con): The noble Baroness is correct about our relationship with NATO and the significance of NATO to Euro-Atlantic security; I entirely agree with that assessment. She is also correct that France is a very important partner and ally, as I indicated to the noble Lord, Lord Liddle; nobody disputes that. We continue to engage and consult at macro level. We have shared common interests, and they are best prosecuted when we work together on them. That is our agenda and our endeavour, and I am absolutely certain that it is also the French objective.

Lord Coaker (Lab): My Lords, we all support the AUKUS deal, but does the Minister realise that the French are absolutely furious with us, to the extent that, only a few weeks ago, they cancelled a meeting with our Defence Secretary to look at the future of the Lancaster House agreement? We depend on France to work with us in common interests across the world, so how will the Government prevent AUKUS opening up a rift in NATO, which is central to our security in Europe and beyond, just as the alliance is working on a new strategic concept?

Baroness Goldie (Con): This is not opening up a rift in NATO. In fact, AUKUS has reinforced a NATO leaders' summit decision to place greater emphasis on

regional partnerships; and, interestingly, AUKUS reflects the new EU strategy for the Indo-Pacific for south-east Asia. There is a shared commonality of interests when we address threat, and I think I have observed before to the noble Lord that threat does not respect boundaries. So we address threats, France addresses threats and the EU addresses threats. We do it best together, and NATO is pivotal to that. That is acknowledged by all member states.

Viscount Waverley (CB): My Lords, the purpose of the AUKUS pact is to ensure stability in Asia-Pacific. What is the strategy in the intervening years, given that the nuclear submarine programme will not be in play until 2040, before which time much can happen? Additionally, has China indicated any conventional or additional proliferation retaliatory measures? Was Five Eyes cited or consulted, as this has national, regional and potentially global security consequences?

Baroness Goldie (Con): As for the future, the UK will continue to engage with allies and partners regarding the stability of the Indo-Pacific region, whether that is through the FPDA, bilateral relationships or Five Eyes, to mention but a few. With regard to Five Eyes in particular, we are discussing the arrangement with Canada and New Zealand, because Five Eyes is a unique and highly valued partnership.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, if this is a genuine defence and security treaty and not just a subterfuge to take the contract for submarines away from France, why are Canada and New Zealand not involved from the start, as the other two of the Five Eyes?

Baroness Goldie (Con): Because this new arrangement is predicated on the desire of another state—Australia—to make changes to its submarine fleet. That was not instigated by the United Kingdom; we were approached by Australia.

Lord Collins of Highbury (Lab): My Lords, this has had an impact on our relationship, as recognised by the US State Department. The Secretary of State has spent two days in France; President Biden has spoken to President Macron. At every level there has been a connection between the US and France to improve and restore relationships. What have this Government done? Has the Minister spoken to her colleagues in the FCDO? Are they working on a common strategy to improve our relationship with our closest ally?

Baroness Goldie (Con): Yes, I want to dispel the illusion that there is some conspiracy of silence on the part of the UK; there is not. Certainly, from a defence perspective, business continues, as it has to, because of the essential nature of our activity. I was at the EI2 conference in Sweden just a few weeks ago and I spoke to Madame Parly, the French Defence Minister. We have a lot of important matters to engage upon and that is what we are doing.

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

Arrangement of Business

Announcement

3.17 pm

Lord Ashton of Hyde (Con): My Lords, before we move to the Motion, with the leave of the House I thought it would be helpful if I highlight some of the arrangements currently under way in relation to a new system of pass-reader voting. This afternoon, the Procedure and Privileges Committee agreed to move to a system of voting in the Lobbies and Prince's Chamber using parliamentary passes from 1 November. The House authorities and digital teams are working hard to ensure that all necessary systems are ready by that point.

The House will be asked by the Senior Deputy Speaker to approve the new procedures for our Divisions using passes and pass readers on 25 October. One key part of getting ready for pass-reader voting is for Members of the House to register their security pass on the new system. If noble Lords do not do so, they will be unable to use the system to vote in Divisions after 1 November—if that is the decision of the House.

Registration is quick and easy: I can confirm that it took very little time this morning; it takes no more than a minute or two. There are staff waiting in the Royal Gallery this afternoon to register, until 5 pm. Members will be able to register in Millbank House Library tomorrow morning, and in the Royal Gallery tomorrow afternoon, and registration will then continue in the Royal Gallery on Thursday morning. So I urge all noble Lords to take a few minutes this week to register their pass.

Business of the House

Motion on Standing Orders

3.19 pm

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

That, for the purposes of Standing Order 38 (*Arrangement of the order paper*), on Thursday 21 October the balloted topical question for short debate in the name of Lord Tyler be treated as if it were a question for short debate so that it may be taken as lunch break business.

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

Motion agreed.

Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill

Second Reading (and remaining stages)

3.19 pm

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

That the Bill be now read a second time.

Viscount Younger of Leckie (Con): My Lords, in the UK there is a wide range of opportunities for people to invest and help make a better future for themselves and their families. The Government's role is to ensure that the system of regulation is suitably robust, so that

[Viscount Younger of Leckie]
individuals are treated fairly and have confidence in the financial system that they entrust with their hard-earned savings. While our regulators are working hard to minimise harm to consumers and pensioners, unfortunately, no system of regulation can completely eradicate the risk that firms fail, or that some bad actors, intent on committing fraud, slip through the net.

This Bill relates to two areas where it is necessary for the Government to step in to ensure a fair outcome for London Capital & Finance investors and victims of pension liberation fraud. This two-measure and two-clause Bill will provide the necessary powers for these two separate groups to receive the compensation they deserve. The first clause relates to a new government scheme to compensate London Capital & Finance bondholders who lost money after the firm entered administration in 2019. The second clause seeks to provide the Secretary of State for Work and Pensions the power to make a loan to the board of the Pension Protection Fund. The purpose of that loan is so the existing fraud compensation fund, which the Pension Protection Fund administers, has the necessary funds to continue to provide compensation to eligible pension schemes.

This Bill, which garnered widespread support in the other place, demonstrates that the Government will take action and step in when necessary. There are some important issues at stake. One, on which I am sure there will be considerable debate this afternoon, is the competence of the regulator. There is also the question of when and how the Government should step in to provide compensation. I would like to touch briefly on each of these issues and to provide some context for each of the measures and how they are intended to operate.

The House will be aware that the Government have committed to establishing a compensation scheme for investors in the failed mini-bond firm, so-called London Capital & Finance, or LCF. LCF was an FCA-authorised firm that sold unregulated non-transferable debt securities, commonly known as mini-bonds, to investors. Some 11,600 bondholders, many of whom had invested a significant portion of their savings, lost around £237 million when LCF went into administration in early 2019.

Following the unprecedented scale of this collapse, the Economic Secretary directed the FCA to launch an independent investigation into the FCA's regulation and supervision of LCF. Dame Elizabeth Gloster led the investigation, which concluded that the FCA did not effectively supervise and regulate LCF during the relevant period. Dame Elizabeth's conclusions raise serious questions about the regulator's approach to supervision and I would like to use my remarks later in this debate to provide some further detail on the plans they have in place to address her recommendations.

LCF's business model was highly unusual both in its scale and structure. In particular, the firm was authorised by the FCA, despite generating no income from regulated activities. This allowed LCF's unregulated activity of selling non-transferable debt securities, commonly known as mini-bonds, to benefit from the so-called halo effect of being issued by an authorised firm, helping LCF gain respectability among bondholders, many of whom were elderly.

In response to regulatory failings detailed in Dame Elizabeth's report, and the range of interconnected factors that led to losses for bondholders, the Government announced that they would establish a compensation scheme. The scheme will be available to all LCF bondholders who have not already received compensation from the Financial Services Compensation Scheme. It will provide 80% of bondholders' principal investment up to a limit of £68,000, which represents 80% of the compensation they would have received had they been eligible for FSCS protection. Where bondholders have received interest payments from LCF or distributions from the administrators, Smith & Williamson, these will be deducted from the amount of compensation payable.

The Government expect to pay out around £120 million in compensation to around 8,800 bondholders in total, and have committed to ensuring that the scheme has made all payments within six months of the Bill securing Royal Assent. However, it is important to emphasise that the circumstances surrounding LCF are unique and exceptional, and the Government cannot and should not be expected to stand behind every failed investment firm. This would create the wrong incentives for individuals and an unacceptable burden on the taxpayer. Ultimately, investors must choose investments that are suitable for their risk tolerance and invest in high-risk, high-reward schemes only if they are prepared to lose the sum that they invested.

Government stepping in to provide compensation in response to regulatory failure or maladministration is unusual, but not entirely without precedent. Noble Lords will recall that the Government provided compensation to investors in Barlow Clowes, an investment scheme that failed in the 1980s, and in respect of Equitable Life. Like the LCF scheme, compensation was based on a percentage of investors' losses.

Turning to the specifics of the Bill, the LCF measure is contained in Clause 1 and includes two key elements. First, it provides parliamentary authority for the Treasury to incur expenditure in relation to the scheme. Secondly, it makes a minor technical change which disapplies the FCA's rule-making processes for the purposes of the LCF compensation scheme. The Treasury intends to use Part 15A of the Financial Services and Markets Act to require the Financial Services Compensation Scheme to administer the scheme on the Treasury's behalf.

By disapplying FCA rule-making requirements, existing rules pertaining to the FSCS can be applied to the scheme without the need for the FCA to undertake a lengthy public consultation and impact assessment. This reflects the fact that the Government are fully funding the scheme and so there is no need to directly consult with FCA levy payers. It also avoids any unnecessary delays to compensation payments that such consultation would inevitably entail.

As I set out, this is a two-measure Bill, the second clause of which concerns loans to the board of the Pension Protection Fund. Clause 2 will amend the Pensions Act 2004, inserting a new section, which will give the Secretary of State for Work and Pensions the power to lend money to the board of the Pension Protection

Fund, which manages the Fraud Compensation Fund. Pension savings are the largest financial asset for many people across the United Kingdom, for which they will save over the course of their working lives to provide for themselves in their retirement. That is why the Fraud Compensation Fund was established: to provide a safety net and pay compensation to occupational pension schemes which have lost out financially due to dishonesty.

When the Pension Protection Fund was set up in 2004, pension liberation fraud did not exist. This fraud involves members being persuaded to transfer their pension savings from legitimate to fraudulent schemes, with promises of high investment returns or access to a lump sum or loan from their pension scheme before the age of 55 without incurring a tax charge. It was not and could not have been envisaged for such schemes to be in scope for the Fraud Compensation Fund when it was established. Therefore, clarity was needed as to whether these schemes were eligible to receive compensation through the fund.

On 6 November 2020, the High Court found these pension liberation schemes to be in scope for compensation through the Fraud Compensation Fund, subject to meeting eligibility criteria. Since then, the Government and the Pension Protection Fund have worked rapidly to ensure that all those who have been victims of pension liberation schemes—an expected 8,806 people—are able to be compensated through the Fraud Compensation Fund.

One victim of this fraud is one victim too many. I reassure your Lordships that the Government are fully committed to working with regulators, the industry and enforcement agencies to protect people from pension scams perpetuated through transfers from one pension scheme to another, and to making it as hard as possible for criminals to carry out their malevolent intentions. It is estimated that the pension liberation fraud claims will exceed £350 million, far greater than the approximately £43 million currently held in the Fraud Compensation Fund. Therefore, there is a need for the Fraud Compensation Fund to have access to additional funding, and this Bill provides exactly that.

This Bill is necessary and important. It will ensure financial protection and fair outcomes for victims of pension liberation fraud. It will also provide some relief and closure for London Capital & Finance bondholders. I commend this Bill to the House and beg to move.

3.31 pm

Lord Davies of Brixton (Lab): My Lords, I want to address the second part of the Bill, Clause 2, which allows the Secretary of State to

"lend money to the Board"

of the Pension Protection Fund. The background to this is that, in effect, the fund's remit was extended to cover pension liberation schemes. I am not totally convinced by the argument that these were not known about in 2004be. Be that as it may, it is clear that, like Clause 1, this provision is necessary only because of a lamentable series of failures of Government, of legislation and of regulators.

It is of course right that members of occupational pension schemes should be compensated where they are victims of dishonesty and have a reasonable expectation that they should be protected. But we need to ask: why is this happening, and what can be done about it? This Bill is just a sticking plaster and we need to address what lies beneath. For example, we have to consider what the role of online advertising and spam has been. I have no doubt that there should be specific provisions in the draft online harms Bill, and we will certainly seek to add these when it comes before us. The Bill needs to tackle financial crime and advertising.

We have the stark warning from the House of Commons—both the Treasury Committee and the Work and Pensions Committee—that there is a risk of large financial losses to the public. This is all in the future, not something that has happened and will not happen again. The problem we face is that financial crime is ever evolving. We were told that pension scams were not recognised as a threat back in 2004. Of course, the arrangement goes back to 1995, following the Maxwell scandal. The reason pension funds are sitting ducks for this sort of fraud is that, in Willie Sutton's apocryphal phrase, "That's where the money is". He was supposed to be talking about robbing banks. Here, we are talking about pension funds. Regrettably, in my view, the front door has been left open following the move to so-called pension freedoms. As well as claiming credit for the additional liberties introduced, responsibility has to be taken for the unintended consequences, which are indeed dire.

Can the Minister tell us what the Government are doing to get ahead of the game—to take a lead and not just react to the latest scandal in this area? We also need to ask: what more can pension funds themselves do to protect members? I recognise the difficulties, but it is the funds with members who are not subject to fraud which will have to meet the cost of this measure. There is every incentive for the industry itself to take a lead, so what steps will the Government and the Minister be taking to encourage the development of this work?

Finally, it is worth noting the amount of money involved in dealing with pension fraud: up to £350 million in compensation, we are told. That is no mean sum, particularly when set against the existing scale of the fund when it held only £26 million. The £350 million figure was estimated a year ago, at the time of the trial. Can the Minister provide an updated estimate of what the ongoing growth in the figure will be?

3.35 pm

Lord Moylan (Con): My Lords, my remarks relate to Clause 1. I preface them by saying that I have benefited from briefings by certain firms of city stockbrokers. This is obviously a regrettable but necessary Bill, which, of course, one supports. At times like this, one casts around looking for people to blame for getting us into this situation. It could be the avarice of the promoters, the weakness of the regulators or the cupidity of the private investors. It is on the last that I wish to focus my remarks, because it would be a great mistake if we were to conclude from this that private investors

[Lord Moylan]
cannot be trusted to know where to put their money and that they should be further protected and restricted in the opportunities available to them. To take one example, over the last 12 months, literally billions of pounds have gone into Premium Bonds and National Savings products—sums totally dwarfing what was invested in London Capital & Finance—showing that private and retail investors can and do make very sensible choices.

However, it is not surprising that some private investors end up investing in dodgy minibonds, given that we have removed from them the opportunity to make respectable investments. When I refer to private investors, I am not talking about just comfortable rentiers but perfectly ordinary people, some of them called Sid. What has happened in the last 10 or 20 years to the opportunities available to them for investment in respectable securities? In the case of equities, it is true that they can invest in the secondary market, but the new issues of equity securities which it was possible for them to invest in have almost completely dried up. The IPOs no longer reach the public markets; they are all now private placements because it suits finance directors to cut the private investor out and the regulators are compliant in that: no more Sids.

What then about government bonds or gilts? These used to be available for purchase at the Post Office. If you wanted to invest in a new issue of gilts, you could literally cut a coupon out of a newspaper and send it in, making a non-competitive bid. This hardly happens anymore. Let us take, for example, the Government's recent green gilt. It was not marketed at private investors at all. Instead, private investors will in due course be offered an opportunity to invest in the "green bond", but, if you look at it, this is not a bond at all; it is another national savings fixed-term deposit product. The Debt Management Office says, "Why should we reach out to private investors beyond what we do? We get all the money we want from them through the existing national savings products." But that is the attitude of the bean counter, not the nation builder.

I come finally to corporate bonds—highly rated bonds issued by large companies. The effect of European Union regulation and, particularly, the prospectus directive, which is still in force, is that a bond with a denomination of less than €100,000 requires much more elaborate regulation. When I worked in bonds 30 or 40 years ago, the private investor was the backbone of the market. The denomination of most bonds was closer to a thousand dollars or pounds than 100,000, so they were available—you could invest in them. Now, you need €100,000 just to buy one, so, of course, private investors are effectively cut out of that market, and there are other reasons why these securities are no longer available.

This is not just about where people put their money. In my view, it is about the democratisation of financial markets, or rather about their de-democratisation over the past 10 to 15 years. It is also to some extent about levelling up, and it should be on the Government's agenda that ordinary people have access to reputable financial investment in the way that large institutional investors do, and they no longer have it. It is also about winning and maintaining popular support for the financial services markets, which are important to us and our economy. They are more fragile if they are totally disconnected from ordinary investors. This is about giving investors an opportunity to avoid having to invest in alternative, dodgy mini-bonds that in some cases need to be rescued at the expense of the Treasury.

This is a big subject and I do not expect a comprehensive answer from my noble friend this afternoon, but I hope that he will be willing to meet me and one or two City experts, and will possibly even rope in the Economic Secretary to the Treasury, because this is too important a subject for changes to be made through a whittling of regulation and other administrative changes, as we have seen over the past 15 years, without occasionally, as today perhaps, stopping to take stock of the cumulative effects.

3.41 pm

Baroness Bennett of Manor Castle (GP): My Lords, I rise to make two fairly brief points in this short debate with a limited number of participants, which is disappointing given the importance of the issues behind the Bill. I go back to a much larger Bill that had a little more participation, the then Financial Services Bill, and to the Second Reading speech of the noble Lord, Lord Agnew of Oulton, who said:

"we remain committed to ensuring that the UK maintains the highest regulatory standards and remains an open and dynamic global financial centre. This is even more important now that we have left the European Union … the UK must assume full responsibility for its financial services regulation ... this will be underpinned by an unwavering commitment to high-quality, agile and responsive regulation, with a focus on safe and stable markets".—[*Official Report*, 28/1/21; col. 1810.]

Does the Minister acknowledge that the need for this Bill points out that our regulatory standards are not the highest they could be, that in fact they are disastrously poor, and that this is a threat to the security of us all? Further, will he acknowledge that words such as "competitive", "dynamic", "agile" and "responsive" are not compatible with the desire expressed for a safe and stable financial market?

As we heard very often from the Government during the passage of the Financial Services Bill, the financial sector is regarded as a source of great profits, but we see the cost of those profits in not just the financial suffering of the people being compensated under this Bill but in the human impact. We are talking about people who have seen large chunks of their pensions savings and their entire future life disappear, with years of uncertainty ahead of them. We think about the mental and physical health impact that has on people and the threat that the financial sector is presenting.

I will move very briefly to the specifics of the Bill, and say that I look forward to the speech of the noble Lord, Lord Sikka, who I have no doubt will address regulatory failure in much greater detail. A couple of questions need to be asked. The Government have acknowledged that the LCF investors were innocent, duped and failed by the regulator, yet there is a cap on compensation of £68,000. This is a government failure; should we not be saying, as we have heard in other debates in your Lordships' House, as with the building safety scandal, that government failure should be met by full government compensation, not people forced

to lose out through no fault of their own? What about investors in Blackmore Bond, in Basset & Gold, in secured energy bonds and, indeed, in Connaught, where it was acknowledged that regulatory supervision was "not appropriate or effective"? The Government have said that this particular scheme—this Bill—has come about as a result of unique and exceptional circumstances, but does the Minister acknowledge that there is nothing unique or exceptional about this: this is business as usual in our financial sector far too often?

I turn, very briefly, to the pension liberation fraud. We have seen pensions treated as a market. It is clearly not a safe or stable market, as the noble Lord, Lord Agnew, was saying in debates on the Financial Services Bill. Should it really be a market at all?

3.46 pm

Lord Sikka (Lab): My Lords, it is a pleasure to follow the noble Baroness, Lady Bennett of Manor Castle. The London Capital & Finance scandal tells the familiar story of privatising profits, socialising losses, frauds, fiddles, mis-selling, negligent regulators and ineffective auditors, while innocent people have to pick up the tab. The much-maligned state has to come and somehow clear up the mess made by the City of London once again. I welcome the compensation for the London Capital & Finance investors, but I have a number of questions for the Minister.

There are mini-bond scandals, as the noble Baroness, Lady Bennett, said, at Blackmore Bond, Basset & Gold, the Mexican food chain Chilango and many others, but no compensation has been offered, even though the FCA failed to regulate them properly. The collapse of LCF was investigated by Dame Elizabeth Gloster, but why is there no independent investigation of other mini-bond scandals? The other scandals may be smaller, but that does not mean that the pain is any less for people who have been defrauded, cheated or misled. The Government claim to have looked at 30 mini-bond firms that have failed over the last six to seven years, but have failed to elaborate whether there was any mis-selling or fraud and have certainly offered no compensation to other investors. When will the others be compensated? If the FCA's negligence is a defining factor, as the Minister indicated, then many others also need to be compensated. For example, Neil Woodford's Equity Income Fund collapse in the summer of 2019 left a lot of investors out of pocket. The FCA was negligent, but there has been no compensation. The independent report on the collapse of Connaught stated that the FCA supervision was "not appropriate or effective". It could have done more to protect consumers, the report said. The investors lost over £100 million but have so far recovered only £18.5 million through litigation. Why was there no compensation for them? Again, the FCA failed.

The FCA and its predecessor bodies also failed to properly regulate RBS and HBOS, and those frauds are part of a long-running saga of pass the parcel—nobody wants to deal with it and, again, no compensation was offered. Surely, in the interests of equity and consistency, all those negatively affected by the FCA should be offered compensation. The Minister referred to the earlier precedents of Equitable Life and Barlow Clowes. In both cases, the regulators were negligent, and that is common to all the cases to which I have referred. So once again I ask, why is the LCF, which was founded by a former Conservative donor, being privileged but the others are not?

In spite of the compensation scheme, many LCF investors face huge losses because the compensation is capped at £68,000. This is not equitable. The burden of the cap is uneven and those who have less wealth stand to lose a greater proportion of it. Women are also hit particularly hard because they generally tend to have lower wealth. Some people have also invested more than the benchmark of £85,000 and they stand to lose an even bigger amount. They may well be relying on these savings for their retirement income. Again, can the Minister explain why investors are not being fully compensated? Does justice not really demand that?

Mini-bonds are just the latest instalment of the fraud and mis-selling that has been rife in the City. The FCA is always playing catch-up. After a long list of mini-bond scandals, in January 2020 it introduced a temporary ban on the sale of mini-bonds, which then became permanent in June 2020. The FCA rationale was that

> "speculative mini-bonds were being promoted to retail investors who neither understood the risks involved, nor could afford the potential financial losses."

That occurred to the FCA in only 2020—where on earth had it been while mini-bonds were openly being marketed and sold? Why the delay in recognising the danger? Even now, the FCA does not road-test any of the financial products to see under which circumstances they wreak havoc and what damage they do. The alarm bells should have been ringing long before. For example, as early as October 2015 investors on the MoneySavingExpert site were saying that LCF's investment "sounds dodgy". People were being warned as early as that but the FCA took no notice of those warning signs.

In April 2021, the Government issued a consultation paper on the possibility of bringing the issuance of non-transferable debt securities—that is, mini-bonds—within the scope of financial services regulation. That consultation ended on 21 July 2021. Can the Minister update us on the current position?

In the middle of 2020, the outstanding amount in the UK invested in so-called speculative illiquid securities, which includes mini-bonds, was £1.4 billion. More than 63,500 bondholders may well be holding mini-bonds so the scandal could be much bigger than the amounts currently being assigned to LCF. Can the Minister please enlighten us as to what the ultimate cost of the mini-bond scandal will be? What retribution may be levied on the FCA for its continuing failures? The LCF compensation is being paid and indeed the word "fraud" was used earlier but when was there actually a fraud conviction in connection with LCF? A number of individuals have been arrested and released but I think nobody has been convicted so far. Can the Minister update us on the progress being made by the Serious Fraud Office on this?

Regarding compensation, paragraph 35 of the Explanatory Notes says:

> "The Bill confers a new power on the Secretary of State, specifically to provide a loan to the Board of the PPF … expenditure in relation to this Bill will be repaid by the income received from the FCF levy on eligible occupational pension schemes."

[Lord Sikka]

In other words, those who have behaved and are honourable will be hit by the fraudulent activities of some businesses in the City.

Eventually, a loan of some £200 million to £250 million may be given, but how will it be repaid? I looked at the Pension Protection Fund's accounts. The FCF levy for the year to 31 March 2019 was £4.8 million and for the year to 2020 it was £6.9 million. We are talking about repaying loans of up to £250 million. Will the levy double or triple? How many years will it be before these loans can be repaid? What interest rates will be charged by the Treasury or will these be interest-free loans? I look forward to some clarification from the Minister.

The FCA has been negligent, but what is the penalty? The chief executive who presided over the FCA's negligence has subsequently been promoted and become the Governor of the Bank of England. There is no retribution against the executives who collected vast salaries and bonuses. No action has been taken against the lawyers who advised the company on particular matters. LCF collapsed some time ago. Have any of its directors been disqualified so far? What is the Insolvency Service up to? Again, I seek an update from the Minister.

I would like to raise some questions about auditors. I sought to table a probing amendment to explore this, but the Table Office told me that that cannot be done, because this is a money Bill. That was a lesson for a newcomer such as me who is learning about the various protocols and procedures of this House, so I hope the Minister will not mind if I provide some details on the issue I have in mind.

LCF was audited by three separate accounting firms. The accounts for the year to April 2015 were audited by a small company called Oliver Clive + Co Ltd. At that point, LCF had a turnover of only £14,072, profit of only £782 and share capital of just £1,000. That is hardly enough for a company entering financial services, but that is how it was doing.

The financial statements for the year to April 2016 show a turnover of £948,201, profits of £166,916 and share capital of £50,000. The company had net assets of only £25,592. That meant that the business had little capacity to absorb any financial shocks, which you will certainly experience if you dabble in the financial markets. These accounts were audited by PricewaterhouseCoopers, which raised absolutely no concerns about the business model or the company's legal status. These accounts probably persuaded the FCA to give authorisation to London Capital & Finance.

The 2017 accounts were audited by Ernst & Young—the auditors seemed to change every year—which raised no concerns about the business model of the company, its legal status or its ability to recover loans of £48 million or redeem bonds of £44.5 million. The equity, or share capital, of £50,000 provided no buffer against any losses. LCF was extremely highly leveraged, with a leverage ratio of 160:1. I remind noble Lords that when Lehman Brothers collapsed, it had a leverage of 30:1. Bear Stearns had a ratio of 33:1.

This was a business with a leverage of 160:1, yet the auditors said it was a going concern and raised no red flags. The FCA did not ask any questions either. What the hell was it doing? Dame Gloster told us that the FCA had no accounting expertise. You do not need accounting expertise to realise that a leverage ratio of 160:1 will lead to disaster. However, the FCA asked absolutely no questions.

LCF had a low equity base, high leverage and low cash; that was basically its business model. It relied on the inflow of new money to redeem loans from investors, a bit like a Ponzi scheme. The LCF directors' report claimed that

"the structure, interest profile and maturity of the company's loan portfolio is expected to provide adequate liquidity to meet the company's commitments to borrowers as well as providing a high degree of certainty that the company will generate revenues that will exceed the company's expenditure base".

The auditors showed absolutely no scepticism and simply gave it a clean bill of health.

As the Minister may recall, and if my understanding is correct, businesses authorised by the FCA must engage in a tripartite meeting between the auditor, the management and the regulator. What on earth was discussed at those meetings if high leverage was not?

The audits are currently under investigation by the Financial Reporting Council. It is extremely likely that the auditors will be fined. Noble Lords may wonder where those fines go. For the audit failure investigations before 2016, the fines went to the professional body that authorised the incompetent auditor. It is a bit like a mugger being found guilty and the judgment being that they should make the cheque payable to the muggers' association. That is what happened.

Since that was exposed by some of us, it all changed in 2016. Now, the fines go to the Treasury. Why should the Treasury benefit from the collapse of London Capital & Finance? Will the Minister give an undertaking that, as and when the fines are levied, they will be given to investors—that they will go in the pot out of which investors will be compensated and not be kept by the Treasury?

I have one other point. The London Capital & Finance administrators are in a feeding frenzy. They have already charged fees of more than £25 million, and those fees are expected to double. Can the Minister tell us what the Government are doing to curb the rapacious appetite of insolvency practitioners and other advisers, because they are removing money from investors who have already suffered?

4.02 pm

Baroness Kramer (LD): My Lords, as the noble Lord, Lord Sikka, found out the hard way, this is a money Bill. That means that we cannot amend it, but it raises a series of questions, especially about the regulator's responsibilities. I intend to focus my time on those issues.

First, as I have done before, I congratulate Dame Elizabeth Gloster on her report on LCF and the regulator, the FCA. It pulled no punches. She and her team did a service not just to the victims of LCF but to all those working to eliminate abusive behaviour from our financial services industry. Not only should her recommendations be enforced—I await a detailed update from the Minister on that process; he promised it so I assume that it will come in his summation—but, frankly, they have pushed to the length of her remit.

They recommend that LCF and the FCA are not adequate to deal with the situation that has been exposed not just by this scandal but by the many other scandals about which other noble Lords have spoken today. This needs to be a launch pad for deeper change than what Dame Elizabeth was, within her remit, able to examine. I regret that, in what was actually a very useful report, the Commons Treasury Committee did not in the end require the Government to tackle many of the fundamentals.

I will focus on only two of the fundamentals, or we will be here all day. The first absolutely fundamental issue that I want to pursue is the failure of the FCA to act on information provided to it early in the day, when much of the abuse could have been halted in its tracks. Dame Elizabeth notes in detail the anonymous letter that the FCA received and ignored at the time of the first VOP application. That letter

"raised allegations of fraud and other irregularities in respect of LCF"—

I am quoting from the Gloster report.

Dame Elizabeth's report also detailed further calls to the contact centre at the FCA—that is the main route for passing on information on misbehaviour—in July of 2016 and of 2017. All those calls and contacts were ignored. Action was taken only when, in October 2018, the intelligence team in the FCA, which appears to be completely divorced from the various contact mechanisms through which individuals report concerns to the FCA, "stumbled across"—that is a quote from the intelligence team—a report on another firm that happened to mention LCF. If it had not been in that report, even at that late date the LCF fraud problem would not have been identified.

As your Lordships may know, I am quite involved with the issue of whistleblowing. This pattern of ignoring information is not an exception; it is the norm at the FCA. I fear that even better training, which is one of the primary recommendations, will do little to help. The FCA treats information it receives from individuals slightly differently if it believes that they are whistleblowers under the definition of PIDA—in other words, if they are employees making a protected disclosure—or from other sources, but that difference is only to the extent of taking care to protect the identity of a whistleblower; otherwise, the information follows an almost identical parallel route.

In both cases, the contacts are handled by staff trained, in effect, to manage a complaints line, where the goal is to pacify the caller, who is typically regarded—I have had many discussions with the relevant people at the FCA—as a troubled individual with emotional and mental health problems. They are very kind to those people, but none of the staff has the financial expertise to recognise when they are tripping across a serious financial issue and piece of misbehaviour. Frankly, a few weeks' training will not change that.

If I were to bring before this House the equivalent US regulator, your Lordships would find that information from contacts is triaged by expert and senior financial investigators. I am told that a minimum of five years' investigative experience is required to take up that role, because in the US such information is treasured as vital to keep clean an industry in which the abuse of customers is a constant temptation. To get that same approach in the UK would mean turning the culture in our regulators on its head and changing the staffing profile. Frankly, it would require a whole new way of defining and handling whistleblowers, regarding them as a much broader source of information. As your Lordships know, actual whistleblowers under the PIDA definition not only find that their information is often ignored but typically are left to career-destroying retaliation by powerful employers.

I have a Private Member's Bill before the House to create an office of the whistleblower, which could lead to many of the needed changes, but it needs the Government to make the decision that they need to step in and change that whole culture and the structure, and to put in place an appropriate framework to make sure that we look at those who pass on information and those who blow the whistle as key players in keeping clean a system such as financial services, which has so much power and money. It is, as they say in the States, the civil army that enables the regulator to keep the industry clean.

My second fundamental issue is the regulatory perimeter. The LCF case illuminates how few financial transactions engaged in by small businesses, and often by ordinary people, are actually regulated activities. The Minister said that nothing LCF did was actually a regulated activity. Indeed, this case demonstrates how a company that acquires an authorisation, and therefore is presumed by the public, businesses and ordinary people to be regulated, uses that FCA imprimatur as a false cover for the mis-selling of services.

To illustrate how limited the regulatory perimeter was in the LCF case, if you apply that perimeter, the Financial Services Compensation Scheme covered only £57.6 million of the £237 million in losses that arose from the collapse of LCF.

In recent years we have endured one scandal after another that has fallen outside the regulatory perimeter, including asset stripping by the global restructuring group of RBS, the mis-selling of interest rate caps to SMEs—I could go on for the next half hour. All of these have left victims, because the FCA took the position that it could not act to stop abuse because it was beyond the perimeter. In the end, in these high-profile events the FCA typically gets forced by public pressure and Parliament to do something and some compensation occurs, but that is not a satisfactory system.

The FCA also constantly falls back on the new senior management regime, which it cites as a strength. If ever a scheme proved to be a busted flush, it is the senior management regime. As others have pointed out, it has not been effective; it has not even been used, as far as I can tell, in the LCF case. It has been used with such a light touch—so mildly and with such deference—that frankly, it no longer has any credibility within the financial services industry. No one fears it and no one respects it. We really need to move to a global standard whereby one regulates organisations, not just activities. Without that, the UK will continue to be seen as a natural home for financial rogues who can exploit that perimeter.

[Baroness Kramer]

I will finish by raising a couple of quick questions about the Bill itself. I join others in saying to the Minister, why does he believe that, in a case where the regulator was so much at fault—Dame Elizabeth Gloster's report does not say, "On the balance of this or on the balance of that"; it is totally damning—people should receive only 80% compensation capped at £68,000? The investors did not do wrong; indeed, they were not even greedy. They were not being offered extraordinary and exceptional returns; they all looked quite moderate. That was part of the inherent effectiveness of the mis-selling.

If I have read the Bill and the explanatory notes correctly—the Minister will correct me if I am wrong—members of defined benefit pension plans who invested in LCF will be compensated pretty much in full through the pension protection fund. However, the cost of that compensation will be picked up not by the Government but by levies, as the noble Lord, Lord Sikka, said, on the whole body of defined benefit pensioners. Why should the entire pension system be picking up the cost of maladministration by the regulator? I am completely confused.

I am even more confused when I look at pensioners who are in defined contribution arrangements who invested in LCF. They are not going to get all their money back; their compensation will be capped at the 80% limit and the £68,000 maximum. So, depending on whether you in a defined benefit scheme or defined contribution scheme, the outcome is completely different. People who had ISAs will get their compensation, but how can they reinvest it in ISAs when there is an annual ISA limit? These were ISAs they committed to five or more years previously. How on earth is that issue going to be handled? There may be a solution, but I could not work it out, and I apologise if it is my failure to read the detail sufficiently.

Lastly, why are LCF's victims unable to challenge this Government's compensation scheme through a full public consultation by the FCA? The Minister said that public consultations take time, but if people are going to get back only 80%, capped at £68,000, they may well have a case that they want to put to the FCA. I do not understand why people have been put in that position. Why do we have no impact assessment? These are always missing at critical points, and they are again with this Bill.

I have some sympathy for our financial regulators, which, frankly, are under resourced and understaffed, but I am alarmed that the Government seem intent on leaving essentially untouched a flawed system, rather than taking on the challenge of fundamental change to create a regulator that the rogues in the industry will genuinely fear. As many have said, LCF is not a one-off. Every time we turn around, it seems, we have a one-off exception. We need the Minister and the Government to take heed and to act.

4.15 pm

Lord Tunnicliffe (Lab): My Lords, with just two substantive clauses this legislation is uncharacteristically straightforward by Treasury standards. It is also uncontentious in what it seeks to achieve. However, as we have heard, the circumstances surrounding the Bill raise important questions such as those asked by my noble friends Lord Davies of Brixton and Lord Sikka. I particularly thank the noble Baroness, Lady Kramer, for her contribution and for setting out how the senior management regime, in respect of which so much was promised, has failed succeed.

I will not provide another account of the events leading up to the drafting of Clause 1, but it is right that bondholders be compensated for the numerous regulatory failings in respect of London Capital & Finance. We all want to see this compensation paid out, and the sooner Royal Assent is granted, the quicker that process can get under way. I am glad that the Parliamentary Under-Secretary of State at the Department for Work and Pensions confirmed in the Commons that the Government intend to complete payments within six months of the Bill being passed. Is the Minister confident that the preparatory work has been completed to the requisite standard to allow this to happen? Are any claims likely to be settled before Christmas?

The behaviour of LCF, which, among other things, ran multiple promotions wrongly implying that its minibond products were fully regulated, was wrong. There is no doubt about it and we must not forget it. As colleagues have noted, the Financial Conduct Authority's response, whether to early warnings or later in the process, was unacceptable, as was recognised in Dame Elizabeth Gloster's review. The compensation burden now faced by taxpayers is arguably higher than it needed to be. Both the Government and parliamentarians should, of course, hold the FCA to account and challenge it to do better.

A variety of concerns, some specific and others more general, have rightly been raised during today's debate, building on others voiced during the Bill's Commons stages. For once we have little doubt that the Government agree with our discomfort. The Minister, Guy Opperman, did not mince his words when, at the beginning of the Second Reading debate in the other place, he urged the FCA to

"take a good long, hard look at itself".—[*Official Report*, Commons 8/6/21; col. 905.]

The body has accepted the findings of Dame Elizabeth's report in full and is under new leadership.

Concerns about the FCA's willingness to hold bad actors to account are not new, nor will they go away overnight. However, during lengthy discussions on parliamentary scrutiny of the regulator during the passage of the Financial Services Bill, all sides agreed that it was for those independent bodies to determine how they ran their affairs. None of us should be happy about the events of the past, but we must allow the FCA to implement its reform programme and demonstrate an ability to do better in the future. It might be easier for concerned colleagues to trust the FCA if the Minister could confirm that, in the words of Mr Opperman, there has been "suitable input from Government". Has the Treasury, as part of this legislative process, reiterated its views on the matter to the FCA? Does the Minister believe that the message has been heard loud and clear?

As the Minister outlined at the start of the debate, Clause 2 amends the Pensions Act 2004 and grants the Secretary of State a new power to lend money to the

board of the Pension Protection Fund. It is a response to the November 2020 ruling of the High Court, which determined that claims arising from so-called pension liberation fraud fall within the remit of the Fraud Compensation Fund. We welcome the speed at which the Government are legislating on this matter, although there are questions about how the levy on pension schemes will function and what Ministers are doing to crack down on frauds and scams. My colleague Pat McFadden MP asked a series of questions that did not receive satisfactory responses. I will ask the Minister some of those questions and, if he is unable to answer them today, I hope he will commit to writing.

The levy on pension schemes, which funds compensation arising from such cases, is a flat rate. This means that schemes with a large number of members but where individual pension pots are relatively modest could end up paying a significant proportion of the overall sum. Why have the Government not formulated a more proportionate means of collecting the funds? Is that one of the trade-offs of legislating on this matter as quickly as we are?

Pat McFadden also asked whether Ministers believed that there was a causal link between the greater pension freedoms introduced in recent years and the increased incidence of scams and financial fraud. Does the Treasury believe that there is such a link and, if so, what steps are being taken to crack down on such behaviour? In so far as some scams are carried out online, will the Treasury commit to work with DCMS to ensure that the upcoming online safety Bill contains relevant safeguards?

It is unfortunate that so many people have been caught up in these cases. This Bill, however, provides a means of closing the door on some unsavoury events within the financial sector. Once compensation has been delivered, in the coming months, the key objective will be to ensure that the risk of such incidents occurring again is significantly reduced. I hope that the Minister's response will reassure the House in this regard.

4.21 pm

Viscount Younger of Leckie (Con): My Lords, I thank all those who have contributed to this afternoon's short but important debate, and I will address as many of the issues raised as possible. A considerable number of questions were put, not least by the noble Lord, Lord Sikka. I doubt that all will be answered, but I promise that I will do my best and will write to him and others who have participated as necessary. I particularly appreciate, however, the depth of his speech.

At the core of this Bill lies the need to ensure adequate protection for ordinary people who are saving and investing for their future: individuals who, in seeking a better return for their nest egg, have suffered a financial loss which in some cases amounts to almost all their savings. As was mentioned earlier, these are not in general wealthy individuals: the average loss, for example, for a London Capital & Finance bondholder is between £15,000 and £20,000. The impacts serve to highlight the need for a regulatory system that includes the proper protections for consumers, as has been made clear in this afternoon's debate.

I start with the issues about the failures and regulation of the Financial Conduct Authority raised by many noble Lords, including my noble friend Lord Moylan, the noble Lord, Lord Davies, and the noble Baronesses, Lady Bennett and Lady Kramer. Quite understandably there is concern over the egregious failures in relation to LCF that have been identified and described in great detail in Dame Elizabeth Gloster's comprehensive report. I echo the favourable comments made by the noble Baroness, Lady Kramer, at the beginning of her speech, about the thoroughness of the report—that much, I think, we can agree on. In particular, the FCA failed to properly enforce the financial promotions regime, which seeks to ensure, among other things, that communications with customers are clear, fair and not misleading—a key theme emerging from this debate. The report also raised issues about the FCA's ability to join the dots between different pieces of supervisory intelligence to build an accurate and comprehensive picture of what was happening at LCF. In what follows I will give what I hope will be some reassurance, particularly to the noble Lord, Lord Sikka.

The FCA has now put in place a comprehensive plan to address all Dame Elizabeth's recommendations, including through its transformation programme. I will give a bit of detail about this. It includes strengthening the senior leadership team, recruiting more staff, providing better training, and, crucially, introducing new systems to build better intelligence on firms. The FCA's process for authorising firms has also been strengthened considerably and, following the improvements, the percentage of applications that are withdrawn has doubled. This reflects the FCA's desire to ensure that firms start with high standards and maintain them, with the aim of reducing the time, cost and burden of dealing with firms that fail to meet its standards.

Furthermore, the FCA has committed to reporting every six months on the progress of its transformation programme. In response to the point raised by the noble Lord, Lord Tunnicliffe, I say that my colleague in the other place the Economic Secretary continues his close dialogue with the chief executive, so that the Government are fully apprised of the progress and can hold the regulator properly to account.

I would like to touch on an interesting debate on competitiveness initiated by the noble Baroness, Lady Bennett, but there is not much time to expand on it. I understand her views but I do not agree with them. There is a balance to be struck between consumer protection and competitiveness. The UK has a world-leading financial services sector, employing more than a million people nationwide. These jobs are spread across all regions of the country, with two-thirds of those working outside London. The sector also supports British businesses to expand, manage cash flow, invest in themselves and ultimately create more jobs. In 2019 alone, the UK exported £60-billion worth of financial and insurance services, with a trade surplus of £41 billion.

There has been a great deal of debate about the need to improve the competitive standing of our financial services sector. However, episodes such as the collapse of LCF serve to illustrate that our world-leading sector can succeed only if it is supported by a regulator that consumers and businesses can trust, underlying

[Viscount Younger of Leckie]
the importance of the reforms already under way at the FCA. I hope this provides a more expansive answer to the noble Baroness, Lady Bennett.

My noble friend Lord Moylan also raises some important points about regulation and about incentives in the retail investment market. I am of course happy to meet to discuss these matters further, and I will pass on this request for a meeting to my honourable friend the Economic Secretary. I would like to say a bit more to my noble friend, because more than a decade of rock-bottom interest rates has led some investors to seek alternative investments to generate returns. The high interest rates on offer from LCF should have prompted questions from potential bondholders about the risks. While some may have understood those risks and invested anyway, it appears that LCF's disclosure materials and marketing strategy—back to communication—led others to believe that they were investing in a product far safer than it was.

In September, the FCA published the latest on its strategy for dealing with the problems and harms in the consumer investments market. The FCA's goal is to see more people investing in mainstream investment products, and it has committed to explore regulatory changes to enable firms to provide more sales and support services to mass-market consumers investing in straightforward products, such as stocks and shares ISA wrappers.

The FCA has set up a dedicated team to help firms to develop mass-market automated advice models—or so-called robo advice—in its continued efforts to ensure that consumers can access high-quality, affordable and suitable financial advice, as well as free-to-access financial guidance, when they need it. The FCA is also taking action to address issues relating to inappropriate high-risk investments such as those mentioned by my noble friend Lord Moylan. For example, it is using data and technology to spot harms faster, continuing its campaign to help consumers to make better-informed investment decisions, and removing out-of-date permissions to reduce the risk of firms misleading consumers about the level of protection offered or giving credibility to unregulated activities.

We must also ensure that regulation targets the correct activities. On the specific issue of mini-bonds, the FCA introduced a ban on the sale of the most speculative and opaque instruments to retail investors in January 2020. The Treasury is also considering proposals to introduce further regulation of so-called non-transferable debt securities, following a consultation earlier this year. I think the noble Lord, Lord Sikka, asked for an update on the consultation. As he may know, the consultation closed on 21 July. The Treasury is considering responses and should be in a position to decide how to proceed in the autumn—later on in the autumn, it is fair to say.

I turn to the compensation matters for LCF. A number of noble Lords, including the noble Lord, Lord Sikka, and the noble Baronesses, Lady Kramer and Lady Bennett, asked: why LCF and not other firms? LCF is not the only firm to have failed and, within any healthy regulatory environment, it is inevitable that firms fail from time to time. However, this implies no complacency whatever. I have made it clear already, I hope, that we must never drop our guard on regulation but it is an important point of principle that the Government do not step in to pay compensation in respect of failed financial services firms that fall outside the Financial Services Compensation Scheme. As I have explained, this would create a moral hazard for investors and potentially lead to individuals choosing unsuitable investments, believing the Government will step in if things go wrong.

Inevitably, there will be some individuals seeking compensation in relation to other failed companies and investments. But it is important to emphasise that the situation regarding LCF is exceptional. It is the only failed firm issuing this type of opaque instrument that was authorised by the FCA. To answer the points raised, this is why LCF alone is covered by this compensation, and not the other unregulated minibonds. Let me be clear also that the fact that LCF was authorised was central to many of Dame Elizabeth's findings. In comparison, other minibond firms such as Blackmore Bond and Basset & Gold were not authorised by the FCA. Indeed, the FCA cannot be said to have the same set of responsibilities towards failed minibond issuers that were not authorised, since the issuance of minibonds is not a regulated activity.

I turn further to the London Capital & Finance clause. The first part of the Bill will provide parliamentary authority for the Government to pay compensation to LCF bondholders. I recognise that this has been an exceptionally difficult time for bondholders, and I hope the compensation via the government scheme will offer some relief of the distress and hardship they have suffered and provide some closure on this difficult matter. The noble Baroness, Lady Kramer, asked about consultation. A consultation and impact assessment would slow down this process and create unnecessary delays to compensation payments, hence the reason for bringing into the Bill the matter of not needing that.

The noble Lord, Lord Tunnicliffe, asked about preparations to launch the scheme. The Treasury has been working closely with the Financial Services Compensation Scheme, which will administer the scheme on the Government's behalf to ensure it can launch and begin making payments swiftly after Royal Assent. This will ensure all payments can be made within six months, and I have confidence that they will succeed in that aim.

I hope this helps with the question raised by the noble Lord, Lord Sikka: the Government expect to pay out around £120 million in compensation to approximately 8,800 bondholders in total. My maths is not too good, but I make that around £12,000 to £13,000 each. As noble Lords are aware, the purpose of the second clause of this Bill is simple: to ensure the Fraud Compensation Fund has the funds necessary to continue to pay compensation to eligible schemes that make a claim.

I turn to future pensions scams and how the Government can be sure that scams of this nature do not happen again. This was a key point raised by the noble Lords, Lord Tunnicliffe and Lord Davies. I would like to give some reassurance to noble Lords

about the several measures being taken to look at this. To answer a point raised by the noble Lord, Lord Davies, about how the pensions regulator, TPR, should be strengthened: when scam cases started to emerge over a decade ago, the Pensions Regulator was faced with a very high volume of potential investigations. To target finite resources most effectively, The Pensions Regulator prioritised resources to the highest-risk cases and took steps to liaise with other agencies to disrupt this activity. There were several reasons why the Pensions Regulator may not have taken direct action on a particular case: often, another agency was already acting or best placed to act; or, the scam was no longer actively operating, and the Pensions Regulator had to consider whether the risks to savers would be mitigated by appointing a trustee. That was then; we need to look to now.

Crucially, HMRC has tightened its schemes registration process. It now carries out a detailed risk assessment of a scheme administrator before deciding whether to register the scheme and has power to deregister a scheme where it has reason to believe the pension scheme administrator is not fit and proper. Those who have defrauded through pension liberation fraud have been deregistered and the schemes transferred to independent trustees. Companies and their directors have been referred to the Pensions Regulator for enforcement action. Some cases are also being actively considered by the Pensions Ombudsman through its pensions dishonesty unit. The Pensions Ombudsman currently has 32 pensions dishonesty complaints relating to 19 different schemes. These cases are in varying stages of the pensions dishonesty unit process. The House will know that the Pensions Regulator and the Pensions Ombudsman are independent bodies, and the Government cannot comment otherwise on individual cases.

Furthermore, the Pension Schemes Act 2021 gives the Pensions Regulator stronger powers so that savers can be confident that their pensions are protected, and the regulator can act if pensions are put at risk. DWP is now planning the secondary legislation relating to Section 125 of the Act. These measures make it significantly harder for fraudsters to successfully set up pension liberation schemes with the intention of committing fraud.

We have heard about the loan in contributions today from noble Lords including the noble Lord, Lord Sikka, who raised the point about the expectation of cost recovery. The expectation is that costs will be recovered over a 10 to 15-year period to spread the costs for the schemes through the proposed levy. The reason a loan is required is that the Fraud Compensation Fund is currently funded by a levy on eligible occupational pension schemes which, as I said earlier, will not be sufficient to fund these additional pension liberation claims in the short term. It is a widely accepted principle that the pensions industry should meet the cost of protecting the pensions sector, rather than the taxpayer, which perhaps addresses some points raised by the noble Baroness. However, I understand that the costs must also be tolerable and manageable for the industry. The Government will therefore consult by the end of the autumn about the fraud compensation levy ceiling for all eligible occupational pension schemes.

Focusing on the levy, in particular the flat rate of the compensation levy, which was raised by the noble Lord, Lord Tunnicliffe, it is important to note that it is for the Pension Protection Fund to set the levy within the ceiling set in legislation, not the Government. I am told that for the 2021-22 financial year master trust schemes, to reflect their particular characteristics, are being charged an annual levy rate of 30p per member, with other eligible pension schemes being charged 75p per member.

The noble Lord, Lord Davies, raised some points about the Pension Protection Fund. Briefly, both the PPF and the Fraud Compensation Fund were established by the Pensions Act 2004. Since coming into operation in 2005, the Pension Protection Fund has taken responsibility for more than 1,000 defined benefit pension schemes, comprising more than 260,000 members. It paid out £860 million in benefits in 2019-20, the last year for which statistics are available.

I would also like to address pension freedoms, as raised by a number of noble Lords, including the noble Lords, Lord Davies and Lord Tunnicliffe, and the noble Baroness, Lady Bennett. As the House will know, pension freedoms are different from pension liberation fraud, which involves members being persuaded to transfer their pension savings from legitimate to fraudulent schemes, with promises of high investment returns or access to a loan from the pension scheme before age 55. Pension liberation fraud and pension freedoms are entirely separate issues. Pension freedoms were introduced in 2015, after these pension fraud cases. The purpose of pension freedoms is to give individuals the choice as to how to access their own hard-earned savings, as the Government believe it is right that individuals are trusted to choose how to access their pension income.

In response to the criticisms made of pensions freedoms today, I highlight that Financial Conduct Authority research has found no significant evidence of consumers drawing down their savings too quickly. The extensive retirement outcome review in June 2018 found that those withdrawing defined contribution savings had other forms of retirement income or wealth.

I turn now to points raised about the online safety matters. We heard reference to this from the noble Lords, Lord Tunnicliffe and Lord Davies. I remind noble Lords that this measure is specifically to provide a loan to the Fraud Compensation Fund, to ensure that it can compensate those who have suffered pension fraud. So, online fraud is out of scope, but I understand that the online safety Bill will not tackle fraud facilitated through paid-for advertising—a point raised, I think, by the noble Lord, Lord Davies—such as advertisements on search engines. I am aware that DCMS is considering how online advertising is regulated through its online advertising programme. I have my noble friend Lord Parkinson here, who I am sure will nod his head.

In the brief time available, I will try to answer a few final questions before concluding. One point raised by the noble Lord, Lord Sikka, was on Woodford. There are important differences that distinguish LCF from the Woodford Equity Income Fund, because Woodford operated an authorised fund, which, unlike many bonds, was regulated by the FCA and was within the remit of

[Viscount Younger of Leckie]
the Financial Services Compensation Scheme. This means that where individuals have a legitimate claim to compensation—for example, because products have been mis-sold—they are able to make a claim to the FSCS. As the noble Lord will know, the FCA is investigating what went wrong at the Woodford Equity Income Fund and considering what rule changes may be necessary to help prevent such issues arising in the future. It would be improper for me or the Government to intervene or comment before this investigation is complete.

Another point was raised by the noble Lord, Lord Sikka, on the SFO investigation. Very briefly, as he will know, the SFO launched its investigation in March 2019 and he will understand that I am not able to comment on the ongoing investigation, except to say that it is a highly complex case which the SFO is working hard to unravel. I hope that provides some reassurance.

There are some other questions but I want to address the one raised by the noble Baroness, Lady Kramer, on why compensation is set at 80% and the cap at £68,000. I answer that by saying that the government scheme appropriately balances the interests of bondholders and the taxpayer and will ensure that all LCF bondholders receive a fair level of compensation in respect of the financial loss they have suffered. With any investment, there is a risk that sometimes investors will lose money but, to answer the question, to avoid creating any misconception of moral hazard for investors and leading investors down the line that choosing unsuitable investments will lead them to receive compensation in full, a wide range of factors needs to be taken into account. These losses would not ordinarily be compensated for at 100%, and 80% is a level that has been set in terms of the LCF bondholders' initial investment, taking it up to a maximum of £68,000.

Bearing in mind the time, I will certainly read *Hansard* and write a letter to answer any questions that I have not managed to address, if I feel that that is the case. I thank all noble Lords who have engaged in this debate and I commend the Bill to the House.

Bill read a second time. Committee negatived. Standing Order 46 having been dispensed with, the Bill was read a third time and passed.

Telecommunications (Security) Bill

Report

4.45 pm

Clause 1: Duty to take security measures

Amendment 1

Moved by ***Lord Fox***

1: Clause 1, page 3, line 22, at end insert—

"(1A) Regulations under subsection (1) may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament."

Member's explanatory statement

This amendment would require Parliamentary approval before regulations regarding the duty to take specified security measures are made.

Lord Fox (LD): My Lords, Amendment 1 applies the affirmative procedure to the regulations made under new Section 105B in Clause 1. It requires secondary legislation to be laid in Parliament in draft and to be subject to a debate and a vote in both Houses. Clause 1 allows the Secretary of State to introduce regulations that have wide-ranging consequences for providers, and there is no provision for any independent or specialist formal oversight of these regulations. This continues a worrying trend whereby the Government make key regulations with no meaningful parliamentary scrutiny. New Section 105A introduced by Clause 1 is wide-ranging. In fact, it covers

"anything that compromises the availability, performance or functionality of the network or service"

—I repeat: "anything".

This means that the Secretary of State has the means to make regulations that have highly onerous provisions, laying down that any provider must take "specified measures" of any kind. This is currently under the negative procedure, which, as we have noted from these Benches on many occasions, gives a near-certain guarantee of their coming into force with a minimum of scrutiny—none, it is safe to say. In Committee, the Minister's predecessor was adamant that additional scrutiny was not desirable. She said that this was meant for technical people and had to be explained in technical language, which it was not appropriate for Parliament to discuss. However, there is the rub: the Bill covers a huge range of potential issues and, as I said, there is no formal independent or specialist oversight of these regulations, yet the Government said that they were too technical for Parliament to have its say on them. My noble friend Lord Clement-Jones spoke about the Secretary of State having unfettered power and, as usual, he was right.

Since then, the Government have slightly changed their mind, and this is seen in Amendment 3. We welcome Amendment 3 as far as it goes, which, given that it is effectively a negative process, is not very far. It does demonstrate that the Government now believe that your Lordships' House can review technical issues and that we are capable of this onerous task, which the Minister's predecessor deemed us incapable of doing. Clause 1 covers virtually anything the Minister decides, and we are in danger of signing a blank cheque. Amendment 1 addresses this issue and gives Parliament particular scrutiny of how these regulations affect the communications networks that are so vital to the UK's economy and our public life. I beg to move.

Lord Alton of Liverpool (CB): My Lords, the amendment just moved by the noble Lord, Lord Fox, is about transparency, accountability and parliamentary scrutiny. It puts Parliament into the driving seat. It deserves the support of the whole House, and I hope we will give it.

Baroness Merron (Lab): My Lords, as we start Report, I welcome the noble Lord, Lord Parkinson, to his new ministerial role. I am sure we all look forward to working with him.

I remind the House that national security must be the first duty of any Government, which is why we welcome the intention behind the Bill. As we have said

repeatedly throughout the passage of the Bill, we believe that there are a number of issues with the Bill that need to be addressed, including parliamentary oversight of the new powers, which this group focuses on. As Comms Council UK said, the Bill represents an

"unprecedented shift of power from Parliament to the Minister in relation to how telecoms networks operate"

and that

"the Minister will be able to unilaterally make decisions that impact the technical operation and direction of technology companies, with little or no oversight or accountability."

With reference to Amendment 1, I shall not repeat the arguments made by the noble Lord, Lord Fox. Suffice it to say that we on these Benches appreciate and wish to stress the importance of parliamentary scrutiny, which we have stressed throughout the passage of the Bill.

I thank the Minister for tabling Amendments 3, 4 and 5. They are very similar to our Front-Bench amendments in Committee and reflect a key recommendation from the Delegated Powers Committee. I thank the former Minister, the noble Baroness, Lady Barran, for her work on these amendments. As noble Lords will remember, the Delegated Powers Committee called the powers in Clause 3 unacceptable and called for the negative procedure for the new telecoms security codes of practice. This important change from the Government ensures adequate parliamentary scrutiny, which is a welcome step forward.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I thank the noble Lords, Lord Clement-Jones and Lord Fox, for the amendment standing in their names, and I thank the noble Baroness for welcoming me to the Dispatch Box in my new role.

The question underlying this group is whether the new telecoms security framework will have proper scrutiny. Noble Lords have proposed ways to strengthen that scrutiny throughout the passage of the Bill and your Lordships' Constitution Committee and Delegated Powers and Regulatory Reform Committee have made their own recommendations, and I thank those committees for their work.

In Committee, the noble Lord, Lord Clement-Jones, invited the Government to make a trade-off, a choice, in his words, between

"a loose definition of 'security compromise'"

and

"a very tight way of agreeing the codes of practice."—[*Official Report*, 13/7/21; col. GC 487.]

With that in mind, I turn first to Amendments 3, 4 and 5 in my name—although I should stress, as the noble Baroness, Lady Merron, kindly did, that they also represent the work of my predecessor, my noble friend Lady Barran. We both listened to the arguments put forward in Committee and these amendments represent her views as well as mine.

We have carefully considered the concerns raised and, as the noble Lord, Lord Clement-Jones, invited us to do, we have proposed how to make that trade-off. The government amendments we have brought forward today affect Clause 3. It provides the Secretary of State with the power to issue and revise codes of practice. The code of practice is a fundamental building block of the new telecoms security framework as it will contain specific information on how telecoms providers can meet their legal duties under any regulations made by the Secretary of State.

In its report on the Bill, the DPRRC noted the centrality of codes of practice to the new telecoms security framework. The committee drew attention to the statutory effects of codes of practice and their role in Ofcom's regulatory oversight, and because of those factors, the committee recommended that the negative procedure should be applied to the issuing of codes of practice. The noble Baroness, Lady Merron, tabled amendments in Committee to implement that recommendation. We are happy to do that. Our amendments today require the Government to lay a draft of any code of practice before Parliament for 40 days. Your Lordships' House and the other place will then have that period of time to scrutinise a code of practice before it is issued.

We think that these changes strike the balance that noble Lords have called for today and in previous stages. I hope these government amendments demonstrate that we have listened and are committed to appropriate parliamentary scrutiny across all aspects of the framework.

Amendment 1, tabled by the noble Lords, Lord Fox and Lord Clement-Jones, would apply the affirmative procedure to regulations made under new Section 105B in Clause 1. It would require the regulations to be laid in Parliament in draft and subject to a debate and vote in both Houses.

I share the noble Lords' desire, echoed by the noble Lord, Lord Alton of Liverpool, to ensure that Parliament has a full and effective scrutiny role in this Bill, but I fear we disagree on the best way to achieve it. The only powers in the Bill that are subject to the affirmative procedure are delegated, or Henry VIII, powers that enable the amendment of penalty amounts set out in primary legislation. The Bill currently provides for the negative procedure to be used when laying the statutory instrument containing the regulations.

In the context of these new powers, the use of the negative procedure is appropriate for three reasons. First, Parliament will have had to approve the clauses in the Bill that determine the scope of regulations—Clauses 1 and 2—and the regulations will not amend primary legislation. Secondly, evolving technology and threat landscapes mean that the technical detail in regulations will need to be updated in a timely fashion to protect our networks. Thirdly and finally, as I noted in Committee, the negative procedure is the standard procedure for instruments under Section 402 of the Communications Act. The negative procedure delivers the right balance between a nimble parliamentary procedure and putting appropriate and proportionate measures in place effectively and efficiently to secure our networks.

The two noble Lords will also be aware that the changes they propose in their amendment are not ones that the Delegated Powers and Regulatory Reform Committee made. I accept that they are keen to explore avenues for scrutiny of this framework, but that committee made its recommendation for increasing the scrutiny

[Lord Parkinson of Whitley Bay]
of this regime, and the Government have brought forward our amendments to accept it. For these reasons, we are not able to accept the noble Lords' Amendment 1. I hope that they will be content with what we have proposed in our amendment, and may be minded to withdraw theirs.

In conclusion, the Government were asked to make a trade-off. Through the passage of this Bill, we have been invited to provide greater opportunities for Parliament to scrutinise this regime. We have listened to those concerns and we have brought forward an answer. We feel that our amendments maintain our flexibility to adapt to an ever-changing technology environment and give your Lordships' House and the other place a greater say in its operation, so I invite the noble Lord to withdraw the amendment.

Lord Fox (LD): My Lords, it was remiss of me not to welcome the Minister formally; I have welcomed him personally, but not formally. Also, it was helpful that he was the Whip during the process thus far, and I should also welcome the new Whip to his seat. I thank the noble Lord, Lord Alton, and the noble Baroness, Lady Merron, for their contributions. The fact that this has been a short debate does not mean to say that it is not an important one. The reason it is short is because we have had the same debate so many times on so many different Bills, with not just this department but others. That is why it is an important issue and why, when the Minister says that we should strike a balance, we agree, but we think the balance is in the wrong place. That is why I am unable to withdraw this amendment and I should like to test the will of the House.

4.58 pm

Division on Amendment 1

Contents 185; Not-Contents 187.

Amendment 1 disagreed.

Division No. 1

CONTENTS

Addington, L.
Adonis, L.
Alderdice, L.
Allan of Hallam, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Bennett of Manor Castle, B.
Berkeley, L.
Blake of Leeds, B.
Blower, B.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bradley, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brown of Eaton-under-Heywood, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chidgey, L.
Clancarty, E.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Corston, B.
Coussins, B.
Craig of Radley, L.
Crawley, B.
Cunningham of Felling, L.
Davies of Brixton, L.
Davies of Oldham, L.
Davies of Stamford, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
Dubs, L.
Elder, L.
Falconer of Thoroton, L.
Faulkner of Worcester, L.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Freyberg, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasgow, E.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Grender, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Henig, B.
Hollick, L.
Howarth of Newport, L.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hutton of Furness, L.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerslake, L.
Khan of Burnley, L.
Kilclooney, L.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Lee of Trafford, L.
Lennie, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Loomba, L.
Ludford, B.
Lytton, E.
Mackenzie of Framwellgate, L.
Mann, L.
McAvoy, L.
McDonagh, B.
McIntosh of Hudnall, B.
McNally, L.
Meacher, B.
Merron, B.
Monks, L.
Morgan of Huyton, B.
Newby, L.
Oates, L.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prosser, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Randerson, B.
Rebuck, B.
Redesdale, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Rowe-Beddoe, L.
Sawyer, L.
Scriven, L.
Sentamu, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Stansgate, V.
Stern, B.
Stevenson of Balmacara, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taverne, L.
Taylor of Bolton, B.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Triesman, L.
Truscott, L.
Tunnicliffe, L.
Tyler of Enfield, B.
Tyler, L.
Wallace of Saltaire, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watts, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Wrigglesworth, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Barran, B.
Bellingham, L.

Benyon, L.
Berridge, B.
Blackwell, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Brownlow of Shurlock Row, L.
Buscombe, B.
Butler-Sloss, B.
Caine, L.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Cathcart, E.
Chadlington, L.
Chartres, L.
Chisholm of Owlpen, B.
Clarke of Nottingham, L.
Colgrain, L.
Colville of Culross, V.
Cormack, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Cruddas, L.
Cumberlege, B.
Dannatt, L.
Davidson of Glen Clova, L.
Davies of Gower, L.
De Mauley, L.
Dobbs, L.
D'Souza, B.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eccles of Moulton, B.
Eccles, V.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Fall, B.
Farmer, L.
Faulks, L.
Finkelstein, L.
Flight, L.
Fookes, B.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Fullbrook, B.
Gadhia, L.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Greenhalgh, L.
Greenway, L.
Griffiths of Fforestfach, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Houghton of Richmond, L.
Howard of Lympne, L.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Keen of Elie, L.
Kinnoull, E.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Lucas, L.
Mancroft, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Masham of Ilton, B.
Mawson, L.
McColl of Dulwich, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Montrose, D.
Morris of Bolton, B.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay, L.
Patel, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Randall of Uxbridge, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Ridley, V.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stirrup, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Verma, B.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Young of Cookham, L.
Younger of Leckie, V.

5.21 pm

Clause 2: Duty to take measures in response to security compromises

Amendment 2

Moved by ***Lord Clement-Jones***

2: Clause 2, page 4, line 30, at end insert—

"(7) In making regulations under this section and any code of practice made under section 105E the Secretary of State must take full account of the advice of the Technical Advisory Board established under section 105ZZ1 and of a Judicial Commissioner appointed under section 227 of the Investigatory Powers Act 2016 concerning the proportionality and appropriateness of any measures therein."

Member's explanatory statement

This amendment would require the Secretary of State to take into account the advice of the Technical Advisory Board, as established in the amendment in the name of Lord Clement-Jones to insert a new Clause after Clause 14, and a Judicial Commissioner.

Lord Clement-Jones (LD): My Lords, in moving Amendment 2 I will speak to Amendment 7. I add my welcome to both the Minister and the noble Lord, Lord Sharpe, in their new roles.

The Minister has now accepted in his Amendment 3 that there needs to be greater parliamentary scrutiny of codes of practice. I welcome that; I am just sad that Amendment 1 did not squeak through. However, he has not accepted the need for greater technical scrutiny of these codes. As the Minister's predecessor, the noble Baroness, Lady Barran, said in Committee,

"the whole purpose of the regulations was to specify in greater detail what the duties of providers would be."

Likewise, she said:

"The codes of practice will provide technical guidance to assist public telecoms providers in meeting their legal obligations."—[*Official Report*, 13/7/21; cols. GC 488-93.]

However, as the industry has pointed out, there are no clear mechanisms for technical feedback or expertise to be fed into the drafting of the regulations and codes of practice.

The Minister dealt with these amendments himself in Committee. On the Clause 2 regulations, he assured us:

"Advice to the Secretary of State could"—

I emphasise "could"—

"also include relevant representations by public telecoms providers … DCMS continues routinely to engage with telecoms providers about this Bill and telecoms security more widely."

He also said that

"Clause 3 requires that any codes of practice are finalised only after consultation with affected providers."—[*Official Report*, 13/7/21; col. GC 499.]

[Lord Clement-Jones]
Again, he gave no assurance of exactly with whom and how the consultation will take place, and he did not explain why he thought that a specific technical advisory board set up under this Bill was not appropriate. For that reason I have no hesitation in retabling these amendments for further consideration on Report.

As the noble Baroness, Lady Merron, pointed out in Committee, there is good precedent in the Investigatory Powers Act 2016, which

"established a Technical Advisory Board to advise the Home Secretary on the reasonableness of obligations imposed on communications providers."—[*Official Report*, 13/7/21; col. GC 462.]

The judicial commissioners set up under that Act could be deployed under this Bill.

This is an opportunity for the Minister to demonstrate a much firmer and more inclusive approach to technical consultation. I hope that he will accept this amendment. I beg to move.

Baroness Merron (Lab): My Lords, I thank the noble Lord, Lord Clement-Jones, for tabling Amendments 2 and 7 again on Report. I will not take up much time discussing them, not least because the Labour Front Bench tabled similar amendments in Committee better to understand what advice the Secretary of State will receive and where it will come from when making regulations under Clause 2. As the noble Lord said, we must ensure that the Secretary of State receives advice from the best experts, not just those who support the Government.

As the former Minister, the noble Baroness, Lady Barran, focused only on the incompatibility of a similar board set up by the Investigatory Powers Act, can the Minister today simply answer this question: without such a board, where will the Secretary of State receive advice, and from whom?

Lord Parkinson of Whitley Bay (Con): I thank the noble Lord, Lord Clement-Jones, for his welcome, and both him and the noble Lord, Lord Fox, for retabling these amendments. We share the noble Lords' ambition in this area. We also want to ensure that the telecoms security framework is informed by world-leading expertise, and that all those affected by the framework have appropriate mechanisms to shape it. The noble Lords' amendments seek to establish a technical advisory board to advise the Secretary of State on matters of telecoms security. They also state that the Secretary of State should give due consideration to this new board's advice, and that of a judicial commissioner, before making regulations or codes of practice.

I agree with the noble Lords on the importance of the Secretary of State having access to expert advice in the exercising of these new powers. I hope I can reassure them that she can already call upon sufficient advice through existing structures, and that I can demonstrate why, as we have explained previously, these amendments are not necessary, while giving the greater detail that the noble Lord asked for.

It is worth emphasising the level of expertise that DCMS itself retains, both on the telecoms sector and on security policy. DCMS is the lead Government department for the telecoms sector and has telecoms experts embedded in it. The department has established security and resilience teams with suitably cleared individuals, including people with substantial experience in national security. More widely, the department has established procedures through which it can draw upon further expertise across government and industry. Inside government, for example, the National Cyber Security Centre undertakes regular risk assessments of current and emerging threats, and those assessments are used to inform government policy. Regulations and the code of practice made through this Bill will be informed by the NCSC's assessments. The Government also have fora in which they discuss emerging threats and new technological developments with the industry. The NCSC's information exchange is one example. This is a trusted community of security professionals from across the telecoms sector who come together on a quarterly basis to discuss and share information on security issues and concerns.

The noble Lord's amendment also calls for the new board and the judicial commissioner to be consulted before the establishment of new regulations and codes of practice. We share the noble Lord's view on the importance of consultation. That is why the Bill is clear that any code of practice must be consulted on before it is introduced. However, we still differ in our opinions on who should be consulted. The consultation requirement in the Bill will enable those directly affected by the code of practice, as well as those with an interest in it, to comment and raise concerns without the need for a technical advisory board to be established. Of course, if your Lordships' House supports the government amendments today, the code of practice itself will be subject to scrutiny both in your Lordships' House and in another place. Furthermore, we published an illustrative draft of the regulations in January for the purpose of early engagement with the industry, and the feedback it has provided has been invaluable in our development of the policy. We continue to engage regularly and closely with public telecoms providers and trade bodies, ensuring that any concerns are effectively communicated to us. I remind noble Lords that the Secretary of State can make these regulations and measures in a code of practice only where she actively considers that the measures are appropriate and proportionate under the wording of new subsections 105D(2) and 105D(4).

To conclude, I thank the noble Lords for bringing their amendment back. As I have said, I share their ambition to create a robust, well-informed and evidence-led framework for telecoms security. We believe that we already undertake extensive engagement with the affected groups and bodies. The Bill sets out consultation requirements but even if it did not, the Government have strong relationships with those in the sector and would continue to seek their input. That is where the advice referred to by the noble Baroness, Lady Merron, would come from, as well as from across government, the NCSC and others I have mentioned. For the reasons I have set out, we are not able to accept this amendment and I hope the noble Lord will therefore withdraw it.

5.30 pm

Lord Clement-Jones (LD): My Lords, I thank the Minister for that very helpful reply. I think he has gone as far as he can, without accepting my amendment, to

try to give assurance to the industry about the nature of the consultation. I still believe that something more formal is required but I am not going to quibble about the sharing of ambition. I am sure that is right. The question is whether in practice we are going to get the result we need. The proof of the pudding will be in the eating and we will see how the regulations and the codes of practice turn out in the end. In the meantime, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 3: Codes of practice about security measures etc

Amendments 3 to 5

Moved by ***Lord Parkinson of Whitley Bay***

3: Clause 3, page 5, leave out lines 13 to 16 and insert—

"(2) Before issuing a code of practice under section 105E the Secretary of State must also lay a draft of the code before Parliament.

(2A) If, within the 40-day period, either House of Parliament resolves not to approve the draft of the code, the code may not be issued.

(2B) If no such resolution is made within that period, the code may be issued.

(2C) If the code is issued, the Secretary of State must publish it."

Member's explanatory statement

This amendment applies a negative resolution procedure to the power to issue a code of practice under section 105E.

4: Clause 3, page 5, line 18, leave out "(2)" and insert "(2C)"

Member's explanatory statement

This amendment is consequential on the first Government amendment to Clause 3.

5: Clause 3, page 5, line 21, at end insert—

"(5) In this section, the "40-day period", in relation to a draft of a code, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).

(6) For the purposes of calculating the 40-day period, no account is to be taken of any period during which—

(a) Parliament is dissolved or prorogued, or

(b) both Houses are adjourned for more than 4 days."

Member's explanatory statement

This amendment inserts a definition of the "40-day period" into Clause 3.

Amendments 3 to 5 agreed.

Clause 13: Appeals against security decisions of OFCOM

Amendment 6

Moved by ***Lord Clement-Jones***

6: Clause 13, leave out Clause 13

Member's explanatory statement

This would remove Clause 13 (Appeals against security decisions of OFCOM) from the bill.

Lord Clement-Jones (LD): My Lords, a lack of oversight has been a persistent theme through the passage of this Bill. Included within that is judicial oversight and the fact that under Clause 13 any appeal to the Competition Appeal Tribunal cannot take account of the merits of a case against the Secretary of State. The rationale for this, as the Constitution Committee said in its report,

"is unclear and is not justified in the Explanatory Notes."

It further said:

"The House may wish to ask the Government to justify reducing the powers of the Competition Appeal Tribunal in respect of appeals under clause 13."

The clause reverses the Competition Appeal Tribunal's TalkTalk Telecom Group plc and Vodafone Limited v Office of Communications decision, which addresses, inter alia, the standard of review on an appeal to the Competition Appeal Tribunal under Section 192 of the Communications Act.

The Minister's predecessor, the noble Baroness, Lady Barran, said in Committee in response to the Clause 13 stand part debate:

"It merely changes the standard to which they will be reviewed. Having these cases reviewed on ordinary judicial review principles, rather than taking account of the merits of the case, aims to ensure a smooth regulatory process that focuses on fair decision-making … this should reduce any incentives for providers to litigate solely for the purpose of delaying the regulatory process."

Note the word "merely". This is very much for the Government's convenience. She continued:

"It is particularly important, given that these decisions relate to the security of a provider's network, that decisions can be addressed swiftly, and providers can get back to the important work of ensuring that their networks are secure."

This nevertheless tries to give the impression that this is for the benefit of the providers. The noble Baroness then said that:

"Clause 13 applies to appeals only against relevant security decisions … The Government consider this approach to be appropriate to ensure that Ofcom's regulatory decisions can only be successfully challenged when they are, broadly speaking, unlawful, irrational or procedurally unfair. By reducing providers' incentives to litigate to delay regulatory action, the provisions in the clause contribute to Ofcom's effectiveness as a regulator."—[*Official Report,* 13/7/21; cols. GC 516-17.]

Surely in these circumstances, particularly on security, the merits of security decisions are particularly important and this is the legislative equivalent of the Government marking their own homework—or perhaps I should say making it much more difficult for it to be marked. I beg to move.

Baroness Merron (Lab): My Lords, I thank the noble Lords, Lord Clement-Jones and Lord Fox, for tabling this amendment and the noble Lord, Lord Clement-Jones, for his remarks. It certainly is key that Ofcom is able to do the job that it has been entrusted to do. On the matter of providers, I would say that their primary duty has to be to ensure that the networks are secure. We should expect no less from them. I will be very interested to hear how the Minister responds to the points that have been made in respect of this amendment.

Lord Parkinson of Whitley Bay (Con): I thank the noble Lords, Lord Clement-Jones and Lord Fox, for tabling this amendment to Clause 13. I know the noble Lord, Lord Clement-Jones, in particular, has taken a keen interest in this area, not just in this Bill but in previous ones as well. I am grateful for the way that he set out the debate again today.

[Lord Parkinson of Whitley Bay]

Clause 13 makes provision to ensure that the Competition Appeal Tribunal applies ordinary judicial review principles to appeals against certain security decisions made by Ofcom. Under such principles, those decisions can be successfully challenged only where they are unlawful, irrational or procedurally unfair. In setting the standard of appeal in this legislation, we must find a balance between giving telecoms providers a way to challenge Ofcom's decisions should they be unfair and ensuring that the regulatory regime is effective and efficient.

Ofcom, as an experienced telecoms regulator, believes that changing the standard of appeal to judicial review principles for certain security decisions has the potential to make the regulatory process quicker and more efficient. The Government agree. We want to avoid either Ofcom or telecoms providers spending months in court.

It was never the intention of Parliament to set the standard of appeal, as it is now, to

"duly take into account the merits of the case",

as this was dictated by EU law. In 2017 the Government changed the standard of appeal for reviewing decisions by Ofcom from a full merits approach to ordinary judicial review principles via Section 87 of the Digital Economy Act, as the noble Lord, Lord Clement-Jones, will well remember.

However, as EU law continued to apply, the Competition Appeal Tribunal subsequently decided that it had to apply a modified approach to

"duly take into account the merits of the case".

In essence, this has prevented the provision in the Digital Economy Act, which had been approved by Parliament, taking effect. That rather unhappy outcome would continue to be the case for certain security decisions under the Bill should this clause not stand.

To be clear, Clause 13 applies the judicial review standard only to decisions such as those relating to the issuing of an assessment notice, which should be routine and quickly handled rather than being continuously delayed. It is not being applied to decisions about penalties such as those under Section 105T. Public telecoms providers will still be able to appeal those decisions as they do now, and the tribunal will

"duly take into account the merits of the case".

Ultimately, we want public telecoms providers to spend their time addressing the security of the network. We do not want them to attempt indefinitely to delay an Ofcom decision by bringing cases against the regulator that do not stack up. We are not breaking new ground by changing to this standard of appeal. Judicial review principles are the normal standard by which most decisions of government and public bodies are legally reviewed.

Parliament has already decided that the standard of appeal for similar decisions under the Network and Information Systems Regulations 2018 should be ordinary judicial review principles. That is consistent with our policy approach in this Bill. Therefore, the Government feel that Clause 13 should stand part of this Bill as it will contribute to the efficiency of the regime and ensure that regulatory decisions are not unduly delayed. It will also ensure legislative consistency. I hope that reassures the noble Lord and that he will be content to withdraw his objection to this clause.

Lord Clement-Jones (LD): My Lords, I thank the Minister for his response. I am afraid it does not particularly reassure but there will be many other occasions on which we can raise the nature of judicial review, its continual erosion, the Government's approach to judicial review and their dislike of being challenged. This is fairly thin territory on which to be debating a very large issue in terms of the future of judicial review. I am sure that my other legal colleagues will be more than able to dispute some of those issues. There are many other fish to fry of even greater importance on this Bill so I will withdraw my amendment.

Amendment 6 withdrawn.

Amendment 7 not moved.

Amendment 8

Moved by ***Baroness Merron***

8: After Clause 23, insert the following new Clause—

"Network diversification

(1) The Secretary of State must publish an annual report on the impact of progress of the diversification of the telecommunications supply chain on the security of public electronic communication networks and services.

(2) The report required by subsection (1) must include an assessment of the effect on the security of those networks and services of—

(a) progress in network diversification set against the most recent telecommunications diversification strategy presented to Parliament by the Secretary of State;

(b) likely changes in ownership or trading position of existing market players;

(c) changes to the diversity of the supply chain for network equipment;

(d) new areas of market consolidation and diversification risk including the cloud computing sector;

(e) progress made in any aspects of the implementation of the diversification strategy not covered by paragraph (a);

(f) the public funding which is available for diversification.

(3) The Secretary of State must lay the report before Parliament.

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

Member's explanatory statement

This new Clause requires the Secretary of State to report on the impact of the Government's diversification strategy on the security of telecommunication networks and services, and allows for a debate in the House of Commons on the report.

Baroness Merron (Lab): My Lords, Amendment 8 is in my name. I am grateful to the noble Lords, Lord Fox and Lord Alton, for their support. It is, of course, the same as Amendment 24 that we saw in Committee, which requires that network diversification is reported on annually.

As we heard in Committee, there is wide cross-party support for the principle that our networks will not be secure if the supply chain is not diversified. For me, this is at the very heart of the Bill and what it should

seek to address. Unfortunately, we still have a Bill that seeks to secure telecoms security yet seems to think it is possible to be silent on diversification. Even though the former Minister said in Committee that

"diversification is designed to enhance security and resilience",—[*Official Report*, 15/7/21; col. GC 551.]

the Government have said that this amendment is not appropriate. The importance of the amendment could not be clearer. I remind noble Lords that, once Huawei is removed, the UK will be left with effectively only two service providers. This is a matter of the highest concern. We need and must have a diversified supply chain. That means diversity of supply at different points in the supply chain and that different networks do not all share the same vulnerabilities of a particular supplier. This is absolutely crucial for network resilience. It will also support British companies and grow British jobs.

If the Government fail to amend the Bill on this point by accepting this amendment, they are putting our national security at risk. Therefore, I will listen closely to the reply from the Minister, but I must stress that I am minded to test the opinion of this House on this matter. I beg to move.

Lord Alton of Liverpool (CB): My Lords, it is a great pleasure to follow the noble Baroness, Lady Merron. Like other noble Lords, I was remiss in not welcoming the noble Lord, Lord Parkinson of Whitley Bay, to his new role earlier on. I think that is because we have all been so familiar with seeing his face throughout the proceedings on this Bill and many others. It is a great pleasure to see him in his new role.

The Government should be convinced by the arguments that the noble Baroness, Lady Merron, just advanced, simply because of what their own advisers have told them: the lack of diversification constitutes

"an intolerable security and resilience risk."

There was widespread agreement in Committee and elsewhere about that.

I draw the Minister's attention to the as-yet undebated report of the International Relations and Defence Committee, on which I have the privilege to serve. The report, titled *The UK and China's Security and Trade Relationship: A Strategic Void*, was published on 10 September. It refers specifically to the supply chain vulnerability measures in this Bill, but says that

"such vulnerabilities are widespread in the economy."

It continues:

"In order to retain its freedom of action towards China, the Government should conduct scenario planning on supply chain vulnerabilities and identify where action is needed to mitigate the risks."

This amendment would give the opportunity for such discussion to take place in the House of Commons. We have to think about only the case of Newport Wafer Fab to see its importance. This was a deal of £63 million regarding the UK's largest producer of silicon chips, which are vital in products from TVs and mobile phones to cars and games consoles. As we learned in Committee, a group of UK companies has now stepped up to the plate and hopes to acquire Newport Wafer Fab. When the Minister replies, I would be most appreciative if he would say what progress has been made on that.

Lord Fox (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Merron, and the noble Lord, Lord Alton, in supporting Amendment 8. The Government have talked a good game on diversification but are guilty of much compartmentalisation. They have put diversification on one side and security on the other. As the noble Baroness and the noble Lord suggested, you cannot separate the two. Without a diverse supply chain, there is no security.

The issue of having only two key suppliers, which the noble Baroness, Lady Merron, referred to, is down to the fact that there has been a market failure in this area. If the Government do not intervene proactively to right that market failure, we will not get out of the situation we are in now. The Bill is the only game in town to do that. This amendment is therefore really important. During debates on the Bill, a number of Peers highlighted the words of the Government's integrated review of security, defence, development and foreign policy. It was clear that a

"diverse and competitive supply base for telecoms networks"

is vital to a secure future. We think these are wise words from the integrated review. As such, we are pleased to support this amendment and will be happy to vote on it in the event that the noble Baroness, Lady Merron, chooses to test the will of the House.

5.45 pm

Lord Parkinson of Whitley Bay (Con): I thank the noble Baroness and the noble Lords, Lord Alton of Liverpool and Lord Fox, for tabling and signing this amendment relating to telecoms diversification. I hope that, during my remarks, I can convince them and other noble Lords that the Bill is not the right place for this amendment for two reasons: first, diversification extends well beyond the security focus of the Bill; and, secondly, legislating for a reporting requirement would be limiting and inflexible as our diversification work evolves. I will also outline the progress made against the diversification strategy, in both government policy and industry outcomes, to seek to reassure noble Lords that progress is being made in this important area.

The Bill will create one of the toughest telecoms security regimes in the world. It will protect our networks even as technologies evolve, future-proofing our critical national infrastructure. Throughout the passage of the Bill, there has been a great deal of debate about how diversification can help to support more secure and resilient telecoms infrastructure. While our work on diversification is intended to support our security and resilience ambitions, not all diversification is necessarily relevant to security and resilience.

The telecoms diversification work that the Government are undertaking moves the market forward by broadening the supplier base in many ways which fall beyond pure security measures; these include boosting quality, innovation, competition and choice within our critical networks. It is for this reason that we have consistently argued that it would be limiting for our 5G diversification strategy to appear on the face of this Bill. Legislating for a reporting element within the Bill, by the same token, would also be restrictive.

Furthermore, as the market and technology evolve, our desired outcomes and areas of focus will evolve too. For example, in the short term, a successful

[Lord Parkinson of Whitley Bay]
outcome could be a third major vendor in the mobile market. However, once open radio access networks are ready for deployment at scale in urban areas, our measure of success might be the level of interoperability within our networks.

At the moment, we are focusing efforts on diversifying the radio access network, which is where the most critical security and resilience risks are found. In future, a focus on other elements of telecoms infrastructure, including fixed networks, will be necessary to ensure all risks to the ways in which we communicate are tackled. Committing to reporting on specific criteria would limit us to reporting against the risks as we find them today; it would not afford us the flexibility that diversification requires.

While the Government cannot accept this amendment, I hope to reassure noble Lords that our work on diversification progresses—and at pace. The Government's plans to diversify the market were set out in the *5G Supply Chain Diversification Strategy*, which was published in November last year. We also established a diversification taskforce, chaired by my noble friend Lord Livingston of Parkhead, who of course has a wealth of experience in this field having served as the chief executive for BT Group. The taskforce's role is to provide expert advice to the Government on this important agenda.

The taskforce set out its recommendations in the spring and many of its members have agreed to continue providing expertise as part of the Telecoms Supply Chain Diversification Advisory Council, which had its first meeting last month. Work is already underway to implement many of the taskforce's recommendations and good progress has been made on the priorities set out in the strategy. For example, research and development was highlighted as a key area of focus, in order to promote open interface technologies that will establish flexibility in the market and allow a range of new, smaller suppliers to compete in a diverse marketplace.

That is why DCMS was delighted to announce the launch of the future radio access network competition on 2 July. Through this competition, up to £30 million will be invested in open RAN R&D projects across the UK to address barriers to high-performance open deployments. This competition is part of a wider programme of government initiatives to foster an open, disaggregated network ecosystem in the UK. This includes the Smart Radio Access Network Open Network Interoperability Centre—or SONIC Labs—a facility for testing interoperability and integration of open networking solutions, which opened in June. A number of leading telecoms suppliers are already working together through this facility.

The Government also continue to work with mobile operators, suppliers and users on a number of other important enablers for diversification, for example by developing a road map for the long-term use and provision of legacy network services, expected to be announced later this year. Alongside this, the Government have led efforts to engage with some of our closest international partners, through both multilateral and bilateral mechanisms, to build international consensus on this important issue. Through the UK's G7 presidency, the Government made the first step in discussing the importance of secure and diverse supply chains among like-minded partners, and the foundational role that telecommunications infrastructure such as 5G plays in underpinning wider digital and technology infrastructure.

We have also seen movement in the market towards diversification objectives. The industry has taken steps to adopt open radio access networks, such as the European memorandum of understanding, co-signed by Telefónica and Vodafone. Furthermore, organisations such as Airspan, Mavenir, NEC and Vodafone have now announced UK-based open radio access network facilities. This demonstrates that the industry is working alongside the Government here in the UK to drive forward the change needed in the sector. That was further evidenced in Vodafone's commitment to deploy 2,500 open radio access network sites using equipment provided by leading suppliers, including Samsung and NEC. This is the largest deployment of its kind anywhere in Europe and an important first step in delivering the goal of more open networks.

These commitments show a genuine and significant change in the diversification of our mobile networks. I hope they also demonstrate why placing strict legislative reporting requirements on this area of work would be premature. We are at a point of rapid exploration and experimentation in this work, and I hope that noble Lords would not want to inhibit that work before it has had time to mature.

The noble Lord, Lord Alton of Liverpool, asked about the committee report. It will not fall to me to respond to that report, as I perhaps would have done in my previous role as a Whip covering the Foreign Office, among other departments. We will, of course, reply to it in full in due course. He also asked about Newport Wafer Fab. As I am sure noble Lords will appreciate, I am not able to comment on the detail of commercial transactions or of any national security assessments on a particular case. We will continue to monitor the situation closely and, as part of this, the Prime Minister has asked the National Security Adviser to review this case. Separately, work is under way to review the wider semiconductor landscape in the United Kingdom. The National Security Adviser's review is ongoing, drawing on expertise from across government as necessary. We will continue to monitor the situation closely and will not hesitate to take further action if needed. The Government are, of course, committed to the semiconductor sector and the vital role it plays in the UK's economy.

For the reasons that I have set out, therefore, I am not able to accept this amendment. I hope noble Lords have been reassured by what I said, and that the noble Baroness will withdraw her amendment.

Baroness Merron (Lab): My Lords, I thank the Minister for his reply. I am, of course, disappointed that the Minister cannot see that this amendment seeks to strengthen the Bill. It gives the Government an opportunity to showcase all the things of which the Minister has apprised the House. It is important to look at this proposed new clause. It would require the Secretary of State to report on the impact of the diversification strategy, something of which the

Government are proud, and it allows for a parliamentary debate, something I would have hoped the Government would welcome, but this is clearly not the case.

As the noble Lords, Lord Fox and Lord Alton, have indicated, the absence so far of an effective plan to diversify the supply chain is what makes us concerned about security in this country. The Bill is the opportunity to put that right. Therefore, I feel it is only right and proper, in the interests of the security of the country, that we press this matter to a vote and test the opinion of the House.

5.55 pm

Division on Amendment 8

Contents 180; Not-Contents 176.

Amendment 8 agreed.

Division No. 2

CONTENTS

Adams of Craigielea, B.
Adonis, L.
Alderdice, L.
Allan of Hallam, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bradley, L.
Brinton, B.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chidgey, L.
Clancarty, E.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Coussins, B.
Craig of Radley, L.
Crawley, B.
Cunningham of Felling, L.
Curry of Kirkharle, L.
Davies of Brixton, L.
Davies of Oldham, L.
Dholakia, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Dubs, L.
Elder, L.
Falconer of Thoroton, L.
Faulkner of Worcester, L.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Greenway, L.
Grender, B.
Grocott, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haworth, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollick, L.
Howarth of Newport, L.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Khan of Burnley, L.
Kilclooney, L.
Kramer, B.
Layard, L.
Lee of Trafford, L.
Lennie, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Loomba, L.
Ludford, B.
Lytton, E.
Mann, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
McAvoy, L.
McDonagh, B.
McIntosh of Hudnall, B.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Monks, L.
Morgan of Huyton, B.
Newby, L.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patel, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prosser, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rebuck, B.
Redesdale, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Sawyer, L.
Scriven, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
St John of Bletso, L.
Stansgate, V.
Stern of Brentford, L.
Stevenson of Balmacara, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stuart of Edgbaston, B.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurso, V.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Tyler of Enfield, B.
Tyler, L.
Wallace of Saltaire, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watts, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Willis of Knaresborough, L.
Wood of Anfield, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Barran, B.
Bellingham, L.
Benyon, L.
Berridge, B.
Blackwell, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Brownlow of Shurlock Row, L.
Caine, L.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Chadlington, L.
Chisholm of Owlpen, B.
Clarke of Nottingham, L.
Colgrain, L.
Cormack, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Cruddas, L.
Cumberlege, B.
Davidson of Glen Clova, L.
Davies of Gower, L.
De Mauley, L.
Dobbs, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eccles of Moulton, B.
Eccles, V.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Fall, B.
Farmer, L.
Faulks, L.
Finkelstein, L.
Flight, L.
Fookes, B.
Foster of Oxton, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Fullbrook, B.
Gadhia, L.
Garnier, L.
Geddes, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Grade of Yarmouth, L.

Greenhalgh, L.
Griffiths of Fforestfach, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Keen of Elie, L.
Kinnoull, E.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Lucas, L.
Mancroft, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Mawson, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Montrose, D.
Morris of Bolton, B.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Randall of Uxbridge, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Ridley, V.
Risby, L.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Stroud, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Vere of Norbiton, B.
Verma, B.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Young of Cookham, L.
Younger of Leckie, V.

Amendment 9

Moved by ***Lord Coaker***

9: After Clause 23, insert the following new Clause—

"Provision of information to the Intelligence and Security Committee

The Secretary of State must provide the Intelligence and Security Committee of Parliament as soon as is reasonably practicable with a copy of—

(a) any direction or notice (or part thereof) that is withheld from publication by the Secretary of State in the interests of national security in accordance with section 105Z11(2) or (3) of the Communications Act 2003;

(b) any notification of contravention given by the Secretary of State in accordance with section 105Z18(1) of the Communications Act 2003;

(c) any confirmation decision given by the Secretary of State in accordance with section 105Z20(2)(a) of the Communications Act 2003;

(d) any reasons for making an urgent enforcement direction that are withheld by the Secretary of State in the interests of national security in accordance with section 105Z22(5) of the Communications Act 2003; and

(e) any reasons for confirming or modifying an urgent enforcement direction that are withheld by the Secretary of State in the interests of national security in accordance with section 105Z23(6) of the Communications Act 2003."

Member's explanatory statement

This new Clause would ensure that the Intelligence and Security Committee of Parliament is provided with any information relating to a designated vendor direction, notification of contravention, urgent enforcement action or modifications to an enforcement direction made on grounds of national security.

Lord Coaker (Lab): My Lords, I welcome the noble Lord, Lord Parkinson, to his position. I am sure we will end up speaking to each other across the Dispatch Box. I wish him all the best and good luck with the important work he will be doing as a Minister of the Crown. We all wish you well in that role.

Turning to my amendment, we appreciate that, obviously, it is sometimes difficult to strike a balance between the public availability of information, even for debate by Parliament, and national security. This amendment seeks to probe the Government's thinking. So far, their reassurances have been somewhat lacking.

I often use, and want to use, evidence—not just what I think and others may wish to say—regarding how the Government should use the Intelligence and Security Committee. It was set up by a unanimous decision of both Houses of this Parliament because they recognised that some information is so sensitive that it cannot be put in the public domain, as that would undermine national security. No Member of this Chamber or the other place would argue with that or say that that is wrong in principle. But so far, in respect of the security aspect of telecommunications, the Government have said that the existing processes and way of doing things works. Many of us would disagree with that and feel that more reassurance needs to be offered and that the Government need to rethink this.

In moving this amendment, I will use evidence from the chair of the Intelligence and Security Committee himself. I do not need to go on about this, because he summed it up in one sentence. Speaking about the Telecommunications (Security) Bill in the other place, he said:

"It is both puzzling and exasperating that the Government are yet again refusing to use the Intelligence and Security Committee for the purpose for which it was created."—[*Official Report*, Commons, 25/5/21; col 286.]

That is quite a stunning sentence. I could quote the whole speech, but for me that encapsulates it. It is for the Minister say why he is wrong. Why is the chair of the Intelligence and Security Committee wrong to say that about the powers in this Bill and the security issues that will arise in respect of telecommunications now and in future? Why is it wrong for the Intelligence and Security Committee to be the body that looks at that information for us?

6.15 pm

Indeed, the Prime Minister himself agreed. Look at the Memorandum of Understanding of 2013, which was an appendix to the ISC's annual report and governs the remit of the committee. That remit is agreed by the Prime Minister to be the purpose of the Intelligence and Security Committee. The memorandum states:

"The ISC is the only committee of Parliament that has regular access to protectively marked information that is sensitive for national security reasons: this means that only the ISC is in a position to scrutinise effectively the work of the Agencies and"—

listen to this—

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

The Prime Minister of the day, in the Memorandum of Understanding, is saying that departments whose work impacts on this should be within the remit of the Intelligence and Security Committee. The Minister therefore needs to explain to us why this amendment is not right.

I do not want to add much to that. I have presented evidence from the chair of the Intelligence and Security Committee and from the Memorandum of Understanding, agreed by the then Prime Minister, setting out the remit of that committee. For all of us who want to be sure that this Parliament has oversight of intelligence and security matters, this is an incredibly important issue. All of us value the security of our country, but we also understand that, at times, it is necessary for Parliament to scrutinise that. What is a sensible way to do that, one that does not compromise national security? Surely, is that through the Intelligence and Security Committee. That is what this amendment seeks to do, and it is for the Minister to explain why it is not necessary and why we should not put it to a vote.

Lord Fox (LD): My Lords, veterans of the National Security and Investment Bill—I am not sure there are any—will recognise this amendment: it is exactly the same argument that was put forward then. The response from BEIS was to set up a unit, within BEIS, that the relevant Minister said would have the necessary clearance to review potential national security information. It was quite clear to those in your Lordships' Chamber at that time that that group of people would not get to see the sort of information that the ISC is cleared to see. We are in the same situation now. The Minister will say that there are people in his department who, if necessary, will be able to see the relevant information. That will not be the case and to some extent, those in the Minister's department making decisions that refer to national security issues will be flying a little bit blind. If this is not recognised, that is regrettable. This is a really important area of security, and decisions should be made on the best available information, with the best available people reviewing that information. The clue is in the name: this is the Telecommunications (Security) Bill, and it is the Intelligence and Security Committee that is best able to review that information. That is why I support the noble Lord's Amendment 9.

Lord Parkinson of Whitley Bay (Con): My Lords, I thank the noble Lord, Lord Coaker, for his kind words of welcome and for tabling this amendment. The important matter of parliamentary oversight has been raised a number of times in both your Lordships' House and another place. I welcome the opportunity to clarify further how appropriate oversight of the Bill's national security powers will be provided for both in this Bill and through existing mechanisms. The noble Lord's amendment would require the Secretary of State to provide the Intelligence and Security Committee with copies of a directional notice when such documents, or parts of them, are withheld under Section 105Z11(2) or (3) in the interests of national security.

As regards enforcement, this amendment would also require the Secretary of State to provide the committee with copies of notifications of contraventions and confirmation decisions. Further, it would require the provision of reasons for giving urgent enforcement directions when withheld under Section 105Z22(5), as well as the reasons for confirming or modifying such directions when withheld under Section 105Z23(6).

We thoroughly agree with the need for effective scrutiny of the use of the Bill's national security powers—that is why we have included measures to facilitate parliamentary oversight of the use of those powers. The Bill requires the Secretary of State to lay before Parliament copies of designation notices, designated vendor directions, and variations or revocations of either, unless doing so would be contrary to the interests of national security. We would expect in the vast majority of cases to lay copies of the directions and notices before Parliament. However, on very rare occasions there may be instances where the Secretary of State chooses not to do so because laying the documents would be contrary to the interests of national security. This would only be done in extremis.

We have already demonstrated our commitment to transparency with the publication of the illustrative draft designated vendor direction and designation notice last November. Indeed, it is in the Government's interest to publish such documents as it sends a clear message to industry of our intent to use the powers in the Bill where necessary. However, while the presumption is to publish the directions and notices, it is right that we have the option to protect the UK if our national security could be put at risk through their publication.

It is worth noting that, under Section 390 of the Communications Act 2003, the Secretary of State is required to prepare and lay before Parliament annual reports on their functions under that Act. Those reports will show when the Bill's national security powers have been exercised, whether or not copies of directions or notices are laid before Parliament. This will ensure that Parliament will always be made aware of the Secretary of State's use of the national security powers to issue designated vendor directions and designation notices.

Having thus been made aware, the Intelligence and Security Committee will be able to request relevant information from the vital organisations it already oversees, such as the National Cyber Security Centre. Moreover, the ISC will be able to request such information at any time from the NCSC in relation to its assessment of high-risk vendors. The noble Lord is right to point to the importance of the committee. Given the cross-party support he enjoys, he knows better than most, as a former Security Minister, the important work it undertakes.

[Lord Parkinson of Whitley Bay]
The ISC will be able to do the work I have just outlined in line with its remit, as set out in the provisions of the Justice and Security Act 2013 and accompanying memorandum of understanding.

At Second Reading, the Noble Lord, Lord West, noted that the ISC had made a request for its memorandum to be formally reviewed. I understand that the chairman of the ISC has written to the Cabinet Office on these matters and that they are under consideration. Discussions and decisions regarding any changes to the ISC's remit are of course for the Cabinet Office and the ISC to agree. That is the appropriate route for the ISC's remit to be considered, not this Bill.

As I am sure noble Lords will appreciate, however, the advice of the security services will not be the only factor that the Secretary of State will take into account when deciding what is proportionate to include in a designated vendor direction. As well as the NCSC's advice, the Secretary of State will consider, among other things, the economic impact, the cost to industry and the impact on connectivity of the requirements in any designated vendor direction. Those go beyond security matters and indeed fall under the work of DCMS; therefore, the Digital, Culture, Media and Sport Committee is best placed to consider those wider impacts. Hence, that is the appropriate body to oversee the Government's use of the powers to issue designation notices and designated vendor directions, including where those directions and notices are not laid before Parliament. The Government will work with the committee to ensure that it has access to all the information it needs to carry out that oversight.

Those are the reasons why the Government cannot accept the amendment. I hope that the noble Lord will be content to withdraw it on that basis.

Lord Coaker (Lab): I thank the Minister for a generally helpful reply and for his engagement with the amendment itself, my remarks and those of the noble Lord, Lord Fox. It is helpful when a Minister engages with a debate, rather than just reading the words in front of him. The Minister did that, and that is to be welcomed.

The Minister offered reassurance on many of the issues that I raised—and they are issues. The debate has in some ways gone beyond the Bill itself and will help the debate within government about how to resolve the issue of national security and parliamentary scrutiny. Of particular importance was the Minister saying that the memorandum of understanding between the Government and the ISC is being reviewed. That MoU is crucial, and the debate we have had on this Bill and, indeed, this amendment, should inform the Government of the view of many in this House and beyond that the memorandum of understanding needs to be clarified and perhaps reviewed and changed. I ask the Minister to ensure that that review happens in the discussions that take place within government.

With those remarks, I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10

Moved by ***Lord Coaker***

10: After Clause 23, insert the following new Clause—

"Long-term strategy

(1) Within six months of this Act being passed, the Secretary of State must publish a long-term strategy on telecommunications security and resilience.

(2) The strategy must include but is not limited to—

(a) the objectives of the United Kingdom in working with NATO, Five Eyes partners, and other allies, on research and development, adoption and deployment, standards, and overall strategy;

(b) how the strategy will provide security and resilience in the long term;

(c) how this Act supports strategic objectives in the Integrated Review of Security, Defence, Development and Foreign Policy;

(d) how this Act will complement the powers in the National Security and Investment Act 2021 in the long term and whether a review is needed;

(e) whether, for the purposes of telecommunications security, an international advisory body should be set up to help coordinate, influence and develop guidance and standards;

(f) how the United Kingdom, in collaboration with its allies, will monitor, horizon-scan for, and respond to, current and emerging threats;

(g) whether the United Kingdom security infrastructure is adequately resourced to respond to threats against its telecommunications network;

(h) how to secure the adequacy of OFCOM's resourcing in fulfilling its functions provided in this Act.

(3) The strategy must be laid before Parliament."

Lord Coaker (Lab): In moving Amendment 10 I will also speak to Amendment 11 in the names of the noble Lords, Lord Alton, Lord Blencathra and Lord Fox, to which I have also put my name.

Amendment 10 seeks to future-proof the Bill. It strengthens the bonds with our international partners, ensures horizon-scanning and provides security and resilience in the long term. It again pushes the Government on a long-term strategy for the security and resilience of our telecoms network. What plans do the Government have for that?

I think all of us in this House understand that this is a fast-changing world, and many of us would not have predicted just a few years ago some of the challenges and threats we face now. Flexibility and adaptability are crucial, and a strategy needs to be put together alongside that. Indeed, the Government themselves have accepted that in their response to the House of Commons Science and Technology Committee document, *5G Market Diversification and Wider Lessons for Critical and Emerging Technologies*. Indeed, the Government's response says that there is a need for strategies and for the Government to look to future threats. Amendment 10 is an attempt to understand how all the Government's various strategies—I did not count them, but they are putting forward many—will be put together to ensure that we have one overarching strategy dealing with the threats this country faces with respect to security and telecommunications, and in a way that is understandable

and meets the challenges we may face in the future. As I say, the purpose of this amendment is to push the Government again on what their strategy is.

Amendment 11 is an incredibly important amendment. Leaving aside the various intellectual arguments, the policy documents that can be quoted, the evidence that can be cited and so on, the ordinary member of the public, who often gets left out of debates such as this, would say something like the following. The Five Eyes, which includes Australia and New Zealand, is one of our most important intelligence communities. Indeed, we have just signed the AUKUS deal, which does not involve all of the Five Eyes but is nevertheless important. Therefore, it is really important that within the Five Eyes there is a commonality of purpose, of understanding and of action.

6.30 pm

If we in this country, for example, decided that X technology company was a danger to our national security, I think the ordinary person on the street, man or woman, even a child, would say, "Perhaps it might be a danger to our intelligence network, our telecommunications network, our security system". It absolutely beggars belief that the Government are resisting an amendment which says that if one of the Five Eyes thinks that there is a problem, we should do something about it. The amendment does not even compel the Government; it merely asks them to review the situation I may have got this wrong, since I have not been in government for a while, but I am positive that if something came across the Minister's desk, although he might not have it as an amendment in the Bill, he would review it. I fail to understand why the Government would resist an amendment that seeks to say exactly what I have said.

As I said in my previous remarks about evidence, the Government's own document, their own recently published *Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy*, agrees with me. It will be interesting to see how the Minister—and I am sure other noble Lords will come forward with their own views—will ensure the future security of the UK telecoms network. If noble Lords want to check that I am not making it up, page 75 says:

"To ensure the future security of the UK telecoms network as the basis for secure and safe CNI. Under the provisions of the Telecommunications (Security) Bill"—

it quotes the Bill—

"supported by the 5G supply chain diversification strategy, we will: manage and mitigate risks from high-risk vendors; introduce a new, robust security framework for telecoms to ensure our networks are secure and resilient to future challenges;"—

long-term strategy—

"and work with partners, including the Five Eyes, to create a more diverse and competitive supply base for telecoms networks."

I could not put it better than the Government. As spokesperson for Her Majesty's Opposition, I fundamentally agree with the Government in that paragraph. As the noble Lord, Lord Blencathra, may also point out, the amendment says exactly the same, apart from adding a review, which should happen anyway.

I will be supporting Amendment 11, and I am interested in why the Government would seek to resist something that is included within their own document.

Lord Alton of Liverpool (CB): My Lords, it is a great pleasure to follow the noble Lord, Lord Coaker, and to endorse everything he has just said about Amendments 10 and 11.

In speaking to Amendment 11, about which I hope to seek the opinion of the House if there is not a satisfactory reply to the debate, although I hope there will be, I should say that I moved a similar amendment in Committee on 13 July. As in Committee, the amendment enjoys all-party support from across the House; I am particularly grateful to the noble Lord, Lord Blencathra, but also to the noble Lords, Lord Coaker and Lord Fox, for their support. The noble Lord, Lord Coaker, has spelled out that it would insert a new clause requiring the Government to review any telecommunications company based in foreign countries which have been banned in a Five Eyes country. It is quite straightforward. This amendment would strengthen international action and bolster UK resilience and security.

If such a provision had previously existed in statute, it might have saved this country a great deal of money over the expensive 5G Huawei debacle, which we have known was a security risk since 2013. If the House approves this amendment today, it will send a clear signal that the Bill must be further strengthened to deal with companies that have been banned in other jurisdictions, the need to dig deeper into ownership and investment of companies and the desirability of acting in concert with our Five Eyes allies. Significantly—I suppose this is another development, as the noble Lord just referred to, since Committee—there has been the, in my view, very welcome decision to create AUKUS, the security pact in the Asia-Pacific which, in addition to giving Australia greater defence capacity, also covers AI and other technologies.

At Second Reading, the noble Baroness, Lady Stroud, urged us to work

"in close partnership with our Five Eyes allies".—[*Official Report,* 29/6/21; col. 727.]

She was right. The noble Baroness, Lady Merron, asked us to guard against "another costly security debacle". She was right. My noble and gallant friend Lord Stirrup told us that we

"need to develop an approach … that constantly monitors and rebalances this equation in the context of our complex and dynamic world."—[*Official Report*, 29/6/21; col. 715.]

He was right, and the amendments seek to do just that.

In Committee, I detailed many of the companies that have now been proscribed and banned in the United States of America. I would be grateful to hear from the noble Lord, Lord Parkinson—I asked this question in Committee, he will recall—if we have looked at those companies, and what action we are now taking against those that are on the list that President Biden has published. Specifically, I refer to one example, Hikvision. This is what the Foreign Affairs Select Committee of the House of Commons said in its unanimous report. The committee recommended

"that the Government prohibits organisations and individuals in the UK from doing business with any companies known to be associated with the Xinjiang atrocities through the sanctions regime. The Government should prohibit UK firms and public sector bodies from conducting business with, investing in, or entering into partnerships with such Chinese firms".

[Lord Alton of Liverpool]
I raised that in Committee. Have we acted in concert with principal Five Eyes allies in prohibiting Hikvision or not?

The failure to co-ordinate with allies leads to costs and uncertainty for business and endangers our national interest. The Government's own estimate, based on the Huawei decision, is that it cost the Exchequer some £2 billion, excluding the broader economic cost of a delayed rollout of the 5G network caused by having to change horses. Earlier collective action could have prevented the later expensive U-turns.

Amendment 11 seeks to better protect our national interest in concert with our allies in the free world. I commend the amendment to the House.

Lord Blencathra (Con): My Lords, I am used to hearing powerful speeches from my noble friend Lord Alton of Liverpool, but what a delight it was to hear also the speech of the noble Lord, Lord Coaker. He spelled it out exactly: it beggars belief. I cannot believe that my noble friend, a wise and intelligent Minister, will reject this amendment.

I support Amendment 11, which does not detract from the Bill in any way; it does not sabotage the Bill or pull the guts out of it, it merely adds to our arsenal. All it asks the Government to do, as the noble Lord, Lord Coaker, pointed out, is to review the security arrangements with a telecoms provider if one of our vital, strategic Five Eyes partners bans its equipment. We are not calling for a similar immediate ban, or an eventual ban, we are just saying let us review it and come to a conclusion.

Why do I want this added? My motivation is quite simple: I believe this will be another small warning shot to China that we will start to stand up to its aggression. I share the view of the new head of MI5, Mr Ken McCallum, that Russia is an irritation but China is a threat to world peace and our whole western way of life. Yes, Russia—or Putin, more accurately—is nasty and will happily kill opponents, as we saw in Salisbury, and attempt to interfere in elections, but Russia is not capable and is afraid of the consequences of waging a world war.

China, I believe, does not share that view. It is building that massive economic and military capacity to dominate the whole world. It will overtake the USA in military capability in the next few years and has already overtaken all western powers in its attitude to using force. It is not that China wants war: it believes that war will not be necessary, since it will win when we surrender without firing a shot. If it attacks Taiwan, will the USA and the UK rush to support it? I hope so, but I do not hold my breath. China believes we do not have the moral guts to do as we did with plucky little Belgium before the First World War or Poland before the second, and guarantee their security.

To return to this amendment, it is a small symbol of our intention to begin our moral fightback—to say that we will not be bullied by China, either in our universities and supply chains or in the freedom of the seas. China has been achieving world domination by small incremental steps: making the WHO its puppet; infiltrating universities; subtly taking over international organisations; robbing African countries of all their minerals as payback for loans; and stealing every bit of technology that it can. It is, therefore, by incremental steps, such as this little amendment, that we will show that we will not be cowed—that we will resist and not become China's slaves.

Lord Fox (LD): My Lords, there are many merits to the plans, set out by the noble Lord, Lord Coaker, in Amendment 10, for the Secretary of State to publish a long-term strategy on telecommunications security and resilience. However, in the interests of time, I will quickly shift my focus to Amendment 11 and disappoint the House by saying that my words will be brief. The House has heard very strong speeches, not just from the noble Lord, Lord Coaker, but from the noble Lords, Lord Alton and Lord Blencathra, and it is a pleasure to see my name alongside theirs on this amendment.

The point has been made three times: this is a very small ask of the Government. Referring back to the point made by the noble Lord, Lord Coaker, working closely with our Five Eyes partners was identified as the whole point—certainly a key objective—in the integrated review. It is one of the central pillars of our security planning. So we are not asking for something outrageous. There is a strong theme of working with our Five Eyes allies across the field of security. The UK has to work with other countries to be effective—and if not with these countries then which?

The UK's telecoms networks face the same challenges as those of our key allies, and this amendment simply ensures that when it comes to this most crucial component of security—increasingly, communications are at the heart of all our security decisions, whether we are finding things out, transmitting information or looking at what others are doing—we take into consideration what those allies are doing. If we were not doing this, there would be a strong danger of putting a wedge between us and them. Indeed, we began to see that happening with the United States, before this Government decided to change their mind over the Huawei decision—for which some noble Lords present should take a lot of credit.

The question we have to ask ourselves, therefore—it is very difficult to understand the answers, so I look forward to the Minister's reply—is why the Government are not adopting this amendment. The Minister may take the stance that it is not necessary. If so, it is not a problem and could be included. More worryingly, does the Minister know that this is perhaps the thin end of a wedge, and that there is a lot more technology already installed in our infrastructure across the country that the Government would have to start to remove? If there is, it would be expensive but important to do. Or perhaps the reason is the worst of all excuses: that the Government did not think of it and so are resisting suggestions from others, which is the worst sort of institutional resistance, of a kind that we see all the time.

We on these Benches, therefore, support this amendment from the noble Lord, Lord Alton, and if he sees fit to lead us through that virtual Lobby, we will be virtually beside him.

Baroness Altmann (Con): My Lords, I add a brief word of support for all the sentiments expressed so far in this debate, and for the excellent way in which they have been presented. I very much look forward to hearing my noble friend's reply as to the problem that the Government have in accepting what seems to be their own wording into this Bill, thereby reinforcing this country's stance against some of the most egregious regimes in the world and staying as close as we can to our Five Eyes allies.

6.45 pm

Lord Parkinson of Whitley Bay (Con): My Lords, I thank the noble Lords, Lord Coaker, Lord Alton of Liverpool and Lord Fox, and my noble friend Lord Blencathra, for tabling these amendments, which relate to our national security strategy and engagement with our Five Eyes partners.

The Government's first and overriding priority is to protect and promote the interests of the British people through our actions at home and overseas. That is a message central to our integrated review of security, defence, development and foreign policy, and one that Ministers in the other place have repeated during the passage of this Bill. What I have heard very clearly in this short but powerful debate is that, regardless of party or affiliation, noble Lords across the House agree that we must do what we can to protect our national security interests.

That is precisely why we have introduced this Bill. It is why we have published the integrated review and why we have such close working relationships with our allies—not only in the Five Eyes but also among our European neighbours and beyond. So I welcome the spirit in which Amendments 10 and 11 have been put forward. I say that so that noble Lords will know that we share their instincts and ambitions in this crucial area, even though we cannot support these amendments today, as I will explain.

I start by addressing Amendment 10, tabled by the noble Lord, Lord Coaker. This amendment would require the Government to publish a long-term telecoms security and resilience strategy, covering various topics, within six months of the Bill's Royal Assent. It would require this strategy to be laid before Parliament. This amendment is similar to the one tabled by the noble Lord in Committee, except that here he has made additional reference to reporting on Ofcom resources.

As I have said, the Government take their responsibility to protect the British public very seriously. We welcome and share the noble Lord's desire to ensure that this country is prepared to overcome future challenges to the security of our telecommunications. However, we have—as the noble Lord noted—already published and are implementing a number of strategies that will ensure that our national security in general, and the security of our telecoms networks and services in particular, are safeguarded.

I mentioned the integrated review. That overarching review sets out our commitment to security and resilience, so that that the British people are protected against threats. This starts at home, by defending our people, territory, critical national infrastructure, democratic institutions and way of life, and by reducing our vulnerability to the threat from other states, terrorism and serious and organised crime.

The noble Lord asked where the hierarchy lies. While the integrated review sets out our overall approach across government, the UK telecoms supply chain review guides our work on security and resilience in the telecoms sector specifically. The Government continue to implement the recommendations of the *UK Telecoms Supply Chain Review Report*, published in 2019. Alongside that, we continue our crucial work on supply chain resilience via implementation of the *5G Supply Chain Diversification Strategy*, published last year, which we have debated during the passage of this Bill.

More broadly, the Government's approach to telecoms security is informed by other cross-government priorities. In March we announced our intention to develop a comprehensive national cyber strategy as part of the integrated review. The cyber strategy will set out the UK's approach to deterring our adversaries and ensuring that the technologies of the future are safe and secure. Furthermore, the Government intend to engage more widely with partners on the details of that strategy and publish it later this year, ensuring that our plans are aligned with funding decisions in the forthcoming spending review.

As set out in Committee, the Government are also in the process of developing a national resilience strategy that will provide a single, coherent approach to the way the UK approaches national resilience. That will be published in early 2022 and will provide a foundation on which to build a clear and co-ordinated approach to the whole range of resilience challenges.

Through his proposed Amendment 10 I think the noble Lord is seeking reassurance that the UK is working with our international partners to achieve shared objectives, and I am very happy to set out how we are doing that. The Government engage regularly with partner countries, including those mentioned in the noble Lord's amendment: NATO and the Five Eyes allies. We are committed to a strong and deep relationship with our allies. We have held detailed and productive talks with partner Governments throughout the development of the Bill and will continue to do so as and when it is passed.

Similarly, the Government recognise that co-operation on international standards is vital to our joint efforts as we look to the future. We are working closely with the industry, the National Cyber Security Centre, Ofcom and a wide range of international partners to increase the UK's influence and presence at major standards development organisations, such as ETSI and 3GPP.

Through his amendment the noble Lord is also, I think, seeking reassurance about the adequacy of Ofcom's funding for its security arrangements. As the telecoms regulator, Ofcom will have a vital role to play in the compliance and enforcement arrangements for the new security framework. We are working with Ofcom to ensure that it has the required resources to meet its new responsibilities. Ofcom's budget for telecoms security this financial year has been increased by £4.6 million to reflect that enhanced security role.

As I have explained, we will continue to ensure that our approach to telecoms security is kept up to date in response to the changes in threats and technology. For those reasons, I do not believe that Amendment 10 is necessary, and I hope that, when we come to it, the

[Lord Parkinson of Whitley Bay]
noble Lord will be content to withdraw it and to see that we are indeed working with our allies on this important area, as he rightly asked.

Amendment 11, tabled by the noble Lords, Lord Alton, Lord Fox and Lord Coaker, and my noble friend Lord Blencathra, seeks to ensure that we take account of the actions of our Five Eyes partners. It would require the Secretary of State to review decisions taken by Five Eyes partners to ban telecoms vendors on security grounds. In particular, it would require the Secretary of State to review the UK's security arrangements with that vendor and to consider whether to issue a designated vendor direction or to take similar action in the UK.

We certainly agree that the UK Government should engage with international partners, including our important allies in the Five Eyes alliance. That is what we have been doing throughout the drafting of the Bill and what we will continue to do once it has passed. Our Five Eyes relationship is robust, and the UK is committed to a close and enduring partnership. The Five Eyes intelligence and security agencies maintain very close co-operation, including regular and routine dialogue between the NCSC and its international partners. This dialogue includes the sharing of our respective technical expertise on the security of telecoms networks and the question of managing the risks from high-risk vendors. There are mechanisms already in place for the NCSC to share this and wider information with DCMS.

We also agree with noble Lords that the Government should consider the policies of our Five Eyes partners when developing our own security policies, and we do that. However, although we take the position of our Five Eyes partners into consideration, our international interests are not limited to the Five Eyes. That is why the approach we have taken in the Bill provides the flexibility for the Secretary of State to take into consideration a variety of relevant information, which includes but is not limited to assessments of our international partners' policies. I reassure noble Lords that the Bill enables the Secretary of State to consider a decision by a Five Eyes partner—or, indeed, by any other international partner—to ban a vendor on security grounds.

Clause 16 of the Bill sets out a non-exhaustive list of factors the Secretary of State might take into account when she is considering issuing a designation notice. This illustrates the kinds of factors that the Government will proactively be considering on an ongoing basis as part of our work. The Government's approach to national security needs to remain flexible and adaptable to future challenges. Every country's approach to national security will be different; security measures taken in one particular country might not always be appropriate in another, for example due to differences in the composition of their telecoms networks or services.

The Government's consideration of specific countries' policies when developing their own national security policy should not therefore be mandated or set out in such a restrictive way in primary legislation.

Lord Fox (LD): I thank the Minister, and perhaps I am pre-empting what he is about to say, but it seems that, although he has clearly said the answer that I predicted—"not necessary"—the fact that this amendment was brought shows that it is not clear from this legislation that that is what the Minister will be doing. At the very least, whether this gets voted through or not, there is a conversation to be had when this comes back on Report that takes into consideration whether it just limits itself to Five Eyes or goes broader. Will the Minister undertake to think about those things as well, and perhaps comment on that?

A noble Lord: The noble Lord means Third Reading.

Lord Parkinson of Whitley Bay (Con): Yes, we are of course on Report; it has been a while since we were in Committee. Yes, the noble Lord is right: we do not feel that this amendment is necessary. I hope that I am setting out how the Bill provides for the Secretary of State to do what I think noble Lords want to do, not least, as I was just explaining, in Clause 16 and the non-exhaustive list of factors referred to there. Our objection is to setting out the Five Eyes partnership specifically and restrictively when there may be other countries and allies we speak to where she will also rightly want to take that into account. It is important that the Government have the freedom to determine their own national security policies so that they remain flexible and can respond rapidly to changing threats and challenges to our telecoms networks. The Government also need to be able to determine exactly how and when they engage with their Five Eyes partners and consider their actions when developing our policies.

Noble Lords are absolutely right to speak of the importance of the Five Eyes alliance; for more than 60 years it has been doing extremely valuable work for the people of this country and, indeed, for the other partner nations in it. But the Five Eyes alliance was not created through legislation and its importance has not relied on it being set out in statute either. In fact, it would be highly unusual to refer to such an alliance in legislation and we feel that this Bill is not the right place to create such an important national security precedent. That is why we are resisting it.

The noble Lord, Lord Alton, suggested that if we had had such a provision it might have saved some time and effort in the past, in particular with reference to Huawei. The Government have always considered Huawei to pose a relatively high risk to the UK's telecoms networks compared with other vendors. There has been a risk mitigation strategy in place since Huawei first began to supply equipment to the UK's public telecoms providers. As he knows, in July last year, following advice from the NCSC, the National Security Council considered the impact of US sanctions in relation to Huawei and considered that further action was needed in relation to Huawei as the new US restrictions made oversight of Huawei products significantly more challenging and potentially impossible. That is an illustration of how the UK already regularly reviews security advice and requirements in response to international considerations and what other Governments are doing.

The noble Lord, Lord Alton, also asked about Hikvision. The UK is aware of reporting that has suggested links between Hikvision and human rights violations in Xinjiang. As he knows, the Government have spoken up at international organisations to condemn the ongoing situation in Xinjiang. In January, my right honourable friend the former Foreign Secretary announced a number of measures to help ensure that UK businesses and the public sector are not complicit in human rights violations or abuses there. Decisions on excluding suppliers would be made on a case-by-case basis by central government contracting authorities when undertaking procurements in line with the relevant regulations.

My noble friend Lord Blencathra raised China more broadly, and indeed the UK wants a mature, positive relationship with China based on mutual respect and trust. There is considerable scope for constructive engagement and co-operation but, as we strive for that positive relationship, we will not sacrifice either our values or our security. China is now a leading member of the world community; its size, economic power and global influence make it a vital partner in tackling the biggest global challenges, but it has always been the case that where we have concerns, we raise them, and where we need to intervene, we will.

In conclusion, I want to return to where I started these remarks. The Government view national security as their number one priority, as any responsible Government would. This debate has highlighted that there is broad agreement on the need for robust, strategic consideration of those issues. So, although I am afraid that we cannot accept the amendments in this group, I warmly welcome the intent behind them. I hope that I have reassured noble Lords sufficiently that we understand their concerns, and that they will be content not to press these amendments.

7 pm

Lord Coaker (Lab): My Lords, I thank the Minister for his reply. Speaking first to Amendment 10, the Minister gave some reassurance to the House in respect of a strategy. He and I mentioned numerous strategies and I think all of us hope that somewhere along the line they are co-ordinated; otherwise, we will end up with a strategy to deal with a strategy, which is not a good place for anyone to be. I shall leave the noble Lord, Lord Alton, to deal with Amendment 11. I beg leave to withdraw Amendment 10.

Amendment 10 withdrawn.

Amendment 11

Moved by ***Lord Alton of Liverpool***

11: After Clause 23, insert the following new Clause—

"Review of telecommunications companies based in foreign countries

(1) The Communications Act 2003 is amended as follows.

(2) After section 105Z29 insert—

"105Z30 Review of telecommunications companies based in foreign countries

Where a Five Eyes partner bans the operation of a vendor of goods or services to public telecommunications providers in its country on security grounds, the Secretary of State must—

(a) review the United Kingdom's security arrangements with that company, and

(b) decide whether to issue a designated vendor direction or take similar action with regard to the United Kingdom's arrangements with that company.""

Lord Alton of Liverpool (CB): My Lords, the Minister was characteristically courteous. I am grateful to him, but I wish to test the opinion of the House.

7.01 pm

Division on Amendment 11

Contents 172; Not-Contents 156.

Amendment 11 agreed.

Division No. 3

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Alderdice, L.
Allan of Hallam, L.
Alliance, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Bennett of Manor Castle, B.
Blackstone, B.
Blake of Leeds, B.
Blencathra, L.
Blower, B.
Boateng, L.
Bowles of Berkhamsted, B.
Bradley, L.
Brinton, B.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chidgey, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Coussins, B.
Cunningham of Felling, L.
Curry of Kirkharle, L.
Davies of Brixton, L.
Davies of Oldham, L.
Dholakia, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Dubs, L.
Elder, L.
Falconer of Thoroton, L.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Greenway, L.
Grender, B.
Grocott, L.
Hain, L.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haworth, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollick, L.
Howarth of Newport, L.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Khan of Burnley, L.
Kilclooney, L.
Kramer, B.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Loomba, L.
Lytton, E.
Mann, L.
Mawson, L.
Maxton, L.
McAvoy, L.
McDonagh, B.
McIntosh of Hudnall, B.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Monks, L.
Morgan of Huyton, B.

Newby, L.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Prosser, B.
Purvis of Tweed, L.
Quin, B.
Ramsay of Cartvale, B.
Randerson, B.
Rebuck, B.
Redesdale, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Sawyer, L.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Stansgate, V.
Stevenson of Balmacara, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurso, V.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Tyler of Enfield, B.
Tyler, L.
Wallace of Saltaire, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watts, L.
Waverley, V.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Willis of Knaresborough, L.
Wood of Anfield, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Barran, B.
Benyon, L.
Berridge, B.
Blackwell, L.
Bloomfield of Hinton Waldrist, B.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Brownlow of Shurlock Row, L.
Caine, L.
Caithness, E.
Chisholm of Owlpen, B.
Clarke of Nottingham, L.
Colgrain, L.
Cormack, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Cruddas, L.
Cumberlege, B.
Davies of Gower, L.
De Mauley, L.
Dobbs, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Dunlop, L.
Eccles of Moulton, B.
Eccles, V.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Fall, B.
Faulks, L.
Finkelstein, L.
Fleet, B.
Flight, L.
Fookes, B.
Foster of Oxton, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Fullbrook, B.
Gadhia, L.
Garnier, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Harding of Winscombe, B.
Harlech, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Leicester, E.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Mancroft, L.
Manzoor, B.
Marlesford, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McLoughlin, L.
Meyer, B.
Montrose, D.
Morgan of Cotes, B.
Morris of Bolton, B.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
O'Shaughnessy, L.
Parkinson of Whitley Bay, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Randall of Uxbridge, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
St John of Bletso, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Vere of Norbiton, B.
Verma, B.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Young of Cookham, L.
Younger of Leckie, V.

Iran

Question for Short Debate

7.18 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what is their policy towards Iran; and what engagement they have had with the government of that country on (1) the Joint Comprehensive Plan of Action, and (2) the detention of dual nationals.

Baroness Scott of Bybrook (Con): My Lords, as our proceedings on the Bill have already concluded, this Question for Short Debate becomes our last business. As a result, Back-Bench and Opposition speakers may take a little longer than as set out in today's list and speak for up to six minutes, should they wish.

Lord Dubs (Lab): My Lords, I want to take this opportunity to discuss the British national hostages in Iran and refer briefly to the JCPOA. I had the privilege of meeting Richard, Nazanin Zaghari-Ratcliffe's husband, and Gabriella, their daughter. The length of her imprisonment is a shocking and heartbreaking story, made even worse by the fact that her appeal was turned down just two or three days ago. But of course, it is not just Nazanin but other British nationals who are in arbitrary detention in Iran. As far as I know, four British nationals remain in this detention: Nazanin-Zaghari Ratcliffe, Anoosheh Ashoori, Morad Tahbaz

and Mehran Raoof. There may be others. My first question is: why do the Government insist on keeping the names and numbers confidential? After all, the Iranians know perfectly well who they are holding in detention or some form of custody. So, what is the benefit of our not knowing how many there are altogether? The four I have mentioned may not be the total.

My second criticism of the Government is that there seems to be no strategy for the British prisoners there. They are being held as hostages. Do we have a certainty of getting them out or is the Foreign Office simply sitting there, saying, "Well, let us hope something turns up?" I do not think that would be good enough. These are heartbreaking stories of people innocent of the crimes of which they have been accused, held in detention or, in Nazanin's case, long detention—she is now under house arrest. It is simply unacceptable that British citizens should be held in this position.

Surely, we should consider punishing the perpetrators. We talk about the Magnitsky sanctions; why do we not threaten to use them on those people in Iran who are holding our people in detention in that way? In addition, we need an independent investigation of the torture allegations. It is fairly clear that prisoners have been held in a situation where they have suffered torture. An independent investigation of that would surely help.

There is the vexed question of the £400 million we owe the Iranians. Having looked at the previous comments made by Ministers, the Government's answer has been that they will investigate the full range of options, but the Government say they do not link the two—the prisoners and the £400 million. Surely, if we have said to the Iranians that we accept that we owe them the £400 million, I cannot see what is to be gained by then saying we will investigate the full range of options. It seems to me that if we owe them money, the least we should do is negotiate that money against the release of those prisoners. That seems clear, and I think the Iranians—I do not want to speak for them—will feel that they were promised the money and they have not got it. We should keep the promise and do it.

My next question is: are these people hostages in the eyes of the Government? The Minister talked in June about an early release of all hostages in Iran. Do we therefore recognise that they are hostages? Sometimes, Ministers tend to say something else and not to refer to them as hostages.

I understand other countries have got their prisoners out: Australia, Germany, Canada and the United States. I wonder if the Minister could throw some light on how that happened. How was it that other countries managed to get their prisoners out while we failed? Did we try hard enough? Is there something the other countries did that we did not do? The Minister should tell us.

Then, there is the issue of diplomatic protection, which was offered to Nazanin a year or two ago. What happens with this diplomatic protection? Is it in fact still there? Are we using it with full force? Have we extended that protection to the other British nationals I mentioned and, if not, why not? Are the Government saying it was just a token gesture and there is no benefit to it? If there is a benefit to it, we should make full use of the fact that we have given Nazanin diplomatic status, and act accordingly.

My next and related point is this. At Nazanin's court hearing—not the recent one—there was no United Kingdom presence. The Government will argue they were not allowed in. The Germans sent their consular official to a trial of a German national. The official was not allowed in but he or she did manage to have a conversation with the judge, so there was something to be gained by doing that. I cannot understand why we are so reluctant to use our diplomatic presence in Iran to aid and bring comfort to the people we are talking about. I know that at one point Nazanin was not even visited by British consular officials and when her daughter sent a gift, it was brought over by a driver. The consular officials did not even take it over to give it personally. It seems that we are not doing very much; we could be doing a great deal more than we seem to have done.

Furthermore, negotiations on the JCPOA are now taking place or, at least, I think that, with the change of regime in Tehran, there is a pause. Perhaps the Minister can tell us whether that pause will soon be over. We should certainly press to ensure that Iran's policy of taking hostages should be on the table as part of negotiations on the JCPOA. We are losing an opportunity, and we should use it, and the £400 million, as a way to put some pressure on the Iranians.

If we are talking about restoring the JCPOA—I understand that the Government are fully committed to doing that and to undoing the damage done under the Trump regime—but we cannot get the full JCPOA, can we at least argue for an interim arrangement where some of the benefits of the JCPOA will be on the table, in return for which there could be certain concessions from the Iranians? Rather than leave it as all or nothing on the JCPOA, it would be good if we could have a backstop position and seek an interim arrangement.

The Minister may not want to talk about that, because he may not wish to admit that the JCPOA may not work. Of course, we all fervently hope that it will and we can resume the position we had before President Trump got involved so mistakenly, but it would be nice to feel that we had a back-up position. In any case, it should surely be our policy to encourage some form of regional dialogue. Could we use our influence along with EU countries to try to achieve that?

Furthermore, would it not be possible for us to start engaging with Iran on both refugees from Afghanistan and the problem of drugs? We might well find some sympathy and the chance to have a proper, big conversation with the Iranian authorities, despite there being a new regime there, given that it is estimated—the Minister may correct this—that 700,000 refugees from Afghanistan have gone to Iran. More than a million have gone to Pakistan. That is quite a responsibility for the Iranians, and surely it would be worth our while talking to them about that. We are talking about nearly 2 million people who have gone to Pakistan and Iran altogether, so there is a real issue there on which we should engage with the Iranians. Then there is the question of drugs—the perennial problem of dangerous drugs being cultivated and produced in Afghanistan and then exported. The Iranian authorities might well have a joint interest with us in stemming that trade.

[Lord Dubs]

Then there is the question of international co-ordination. How much are we working with other countries to try to deal with the hostages? I think we joined the Canadian initiative against arbitrary detention in February, and James Cleverly said:

"We continue to work with G7 partners to enhance mechanisms to uphold international law, tackle human rights abuses and stand up for our shared values."—[*Official Report*, Commons, 27/4/21; col. 234.]

My question is: how much effort are we putting into that international co-ordination? We would surely have a stronger hand to play if we worked closely with other countries, some of which also have hostages in Iran.

The danger for Nazanin, who is one of the four I mentioned who, I understand, are in house detention but not in prison, is that she might now be returned to prison. That will be a terrible thing to happen after all the years she has spent there but, given that her appeal has been refused, the prospects are not wonderful. How will the Government respond to the possibility that she might have to return to prison? The Government have been a bit coy on this issue in previous debates. "Coy" is rather a bland word; the Government have not been very forthcoming. Can they be more forthcoming? We need a far more robust approach—robust enough to put pressure on the Iranians—and we need to work with other countries to see whether we can bring out these unfortunate victims of Iranian injustice and give them the right to return to their homes.

7.30 pm

Lord Lamont of Lerwick (Con): My Lords, I draw the House's attention to my entry in the register of Members' interests. I am the unpaid chairman of the British Iranian Chamber of Commerce. I join the noble Lord, Lord Dubs, in condemning the cruel treatment of Nazanin Zaghari-Ratcliffe; the extension of her sentence without even a court hearing was an absolute disgrace. I have seen through my work as a trade envoy that the Government are making huge efforts to get Nazanin released. I have been in many meetings where the subject has been put very forcefully to Iranian Ministers.

It is also shameful that Iran should attempt—or appears to be attempting—to link the fate of a young, innocent woman to the tank money owed to Iran by the UK. The two should never be linked, although I have to agree with the noble Lord, Lord Dubs, that many of us are puzzled by the Government's failure to pay the debt and meet Iran's claim, which, after all, has been upheld by the UK courts. If it is US sanctions that are preventing the UK Government resolving this issue, that would in itself be bizarre. I would be grateful if the Minister could give us a specific reason why this money cannot be paid.

I will concentrate mainly on the JCPOA and the arguments put by the noble Lord, Lord Dubs. It would be a mistake to think of the JCPOA only as something helpful to Iran. It is immensely important to the rest of the world. That is why it would be a mistake to link the efforts to get Nazanin and others home to their families with any negotiations over the JCPOA. That agreement would have prevented Iran getting a nuclear weapon for 15 years. It was a good agreement and, I believe, extremely important.

The best way of ensuring that Iran does not acquire a nuclear weapon is for the United States to return to the agreement that it broke. Despite the confirmation from the International Atomic Energy Agency on 10 or 11 occasions that Iran was complying with the agreement, it was Donald Trump who, unilaterally and for no good reason, tore up the agreement and imposed punitive sanctions on Iran. This hit ordinary people extremely heavily and had the effect of undermining the political standing of the moderate President Rouhani, who favours engagement with the West. It confirmed the suspicions and accusations of hardliners in Tehran that the US and the West could not be trusted.

Those, like Mr Netanyahu, who claimed that President Rouhani was just some cynical PR front figure for hardliners ought to contemplate what is now happening in Tehran, where steps are being taken in the Iranian Parliament to put the former President on trial for having negotiated an agreement that has had such bad effects on Iran and Iran's economy. The only way forward is for the US to rejoin the JCPOA and for Iran to return to the enrichment and centrifuge limits set in the agreement. Iran has indicated that all the recent steps it has taken to boost its enrichment and number of centrifuges are reversible—in other words, that it is establishing a negotiating position. To attempt new, additional demands on Iran, such as to agree a follow-up agreement on regional issues, would be totally counterproductive. Iran has not returned to the negotiating table. We need to get Iran back to that table but it will not return until the additional sanctions imposed by Trump have been removed.

I also strongly agree with what the noble Lord, Lord Dubs, said about trying to find common ground with Iran—on areas where we have a mutual interest. Indeed, Afghanistan is one such area; the Taliban are very strong enemies of Iran. Before this situation, Iran had already taken 4 million refugees and, as the noble Lord, Lord Dubs, said, has probably had another 700,000 in the last few weeks. Fighting ISIS was another area of common ground where there was initially some co-operation, but it eventually broke down. Although there had been a certain amount of mutual understanding, it was at a distance.

Narcotics are another common interest. We used to have a Metropolitan Police presence in Afghanistan. I agree that the more we find common ground, the more we might find that we make progress on other issues, such as the dual citizens who are being held so wrongly.

As I said, I have been involved in some talks with Iranian Ministers. I have worked with the families of some of the other people—not of Nazanin herself—who have been in similar situations. I know that the Government are trying extremely hard on this. Let us keep that going, but we ought also to make it a major objective to get Iran back to the negotiating table on the JCPOA. Without the JCPOA, the Middle East is an even more dangerous place.

7.35 pm

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Lamont, with his considerable experience on this issue. I agree with his central argument on the benefit of returning to the

discussions. It was depressing to read that the latest effort by the European Union envoy in meeting Iranian officials had a negative response on the return to discussions in Vienna. We hope very much that this stalling will not continue.

I shall return to that in a moment but, first, I pay tribute to the noble Lord, Lord Dubs, for his tireless work on this issue. I reread the Questions that he has asked and his contributions to debates in the House on this topic. The questions that he posed to the Minister are very valid, especially regarding the definitions of hostages and of torture. It is now incumbent on the Government to be clear as to whether they consider that international obligations on these key areas are now being breached by the Iranian officials.

After a number of years on the Front Bench, my noble friend Lady Northover has stood back as the Liberal Democrats spokesperson. I put on record my admiration for how she carried out her role. It is very relevant to refer to her work in this debate; I checked the *Official Report* and she has raised the case of Nazanin Zaghari-Ratcliffe in this House on 20 occasions through debates and Questions. Most recently, on 7 June, following a Question from the noble Lord, Lord Dubs, her supplementary question was very prescient as she asked about UK officials attending court cases and hearings. The Minister replied that

"we continue making the case to attend any hearings that we can".—[*Official Report*, 07/6/21; col. 1190.]

However, the most depressing news about this, of course, was that the so-called appeal would not meet the international norms of good legal practice in fair and open appeal. It was held in secret, without any possibility of observation. Can the Minister confirm what representations the UK has made to Iranian officials during this process, which has now led to the intolerable position referred to—of Nazanin not knowing whether she will arbitrarily returned to prison?

With regard to the valid question on torture, the Islamic Republic of Iran has ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It is not a far stretch to suggest that Iran's conduct in this case is in clear breach of this international convention as well as of the optional protocol and the ICCPR that Iran has signed up to. What are the Government doing? The Foreign Secretary said in her statement:

"We are doing all we can to help Nazanin get home ... and I will continue to press Iran."

It is now incumbent on the Government to state exactly what they are doing and what levers they are seeking to pull. The Iranians will know that she is the fourth Foreign Secretary to have made similar comments about this. What will be different this time?

Turning to the wider issue of the JCPOA, I had the privilege of serving on the International Relations Committee. Its report on nuclear non-proliferation and the hearings we had specifically on the JCPOA were very clear that the UK Government were correct not to follow the path of the United States but to maintain their position and to work much more closely with the E3 within Europe and the other signatories to seek a way forward for the United States to recognise its responsibilities as a signatory; and also for Iran to be open and allow much greater access, the lack of which has frustrated international inspectors in recent months. In that regard, can the Minister outline the position of the Government regarding the lack of access on the inspection of certain facilities? I understand that the Iranians are using the drone attack as a pretext for saying that there was a breach of security and damage, and for preventing the continuation of international inspections. Do the Government agree with that position, and how are we seeking to persuade the Iranians to open up access?

As the noble Lord, Lord Dubs, indicated, this is a regional issue as well. There have been some welcome signs of dialogue between the Kingdom of Saudi Arabia and Iran in recent months, looking at opening consular access and with slow but hopefully positive work towards full diplomatic relations being restored. There are a couple of areas still outstanding, which I should like the Minister to refer to. One was referred to by the noble Lords, Lord Dubs and Lord Lamont. How are the Government treating the debt issue? Do they believe that this is completely separate from the wider negotiations, or have they or the Iranians tabled this issue as part of the wider discussions with the UK and our partners on JCPOA? What is the Government's understanding of the latest position of the United States regarding compatibility? The new US Secretary of State has made his public comments known. Do the Government agree with Antony Blinken on what Iran needs to do for restoration, or do we have a separate position? All these issues are valid and timely, and I commend the noble Lord, Lord Dubs, for raising them.

7.42 pm

Lord Hannay of Chiswick (CB): My Lords, like the noble Lord, Lord Purvis, I served on the International Relations and Defence Committee of your Lordships' House. As the noble Lord has said, we came to the very clear conclusion that it was in Britain's interest to sustain the JCPOA and t do everything possible to reverse the action taken by the Trump Administration. That was our clear position, and I think it was the right one.

Successive British Governments, as far back as when Jack Straw was Foreign Secretary, and of different parties, including the coalition, took the view that active diplomacy backed up by economic sanctions was the best way to head off the risk of Iran acquiring fissile material capable of arming a nuclear weapon. Those Governments sustained that policy even in the face of great pressure from the Trump Administration to renege on the JCPOA which had been agreed with Iran in 2015. I believe they were right to do so and are right now to continue doing so, in concert with the Biden Administration's efforts to revive the JCPOA and to bring Iran back into conformity with its provisions.

Why so? Because alternative courses of action, including that chosen by President Trump of "maximum pressure," showed no signs whatever of working and contained massive risks to the whole international community: the risk of an Iran either with nuclear weapons and the means of their delivery, or so close to that as to represent a credible threat to obtain them; a potential, indeed probable, nuclear arms race in a very volatile region; irreparable damage to the Nuclear

[Lord Hannay of Chiswick]
Non-Proliferation Treaty, which is a cornerstone of international peace of security; and the possibility of another armed conflict in a region which has already seen too many of them. Frankly, that is quite a list of risks.

Of course, it takes two to tango in this attempt to revive the JCPOA. The hiatus in the Vienna talks following the Iranian presidential election leaves the diplomatic route hanging by a thread, exemplified by the visit to Tehran last week of the co-ordinator of the E3's position. But the risks from the diplomatic route collapsing makes going the last mile worthwhile—indeed, necessary, I suggest—and I strongly support the Government's policy of doing just that.

I also share the views expressed by the noble Lords, Lord Dubs and Lord Lamont, that we ought discreetly to look for ways in which our interests and those of Iran overlap, whether it be the future of Afghanistan, drugs or the handling of flows of refugees. I do hope that the Government will find some way of opening up channels of discussion—not linking it with any other issue but simply reflecting the fact that there is an overlap in our fundamental interests in these matters. Iran suffers as much as any country from the flow of drugs, suffers hugely from the flow of refugees, and will be a victim of any terrorist outbreaks based either on the activities of ISIS in Afghanistan or on the Taliban themselves—because they will be directed against Iran's co-religionists, the Hazara.

In the long run, the best solution to tensions in the Gulf region remains agreement by all sides to respect each other's sovereignty and territorial integrity, to cease meddling in each other's internal affairs, and to work together on economic co-operation, of which there could be a massive amount. But that will be a work of years, not of weeks or months. I just hope that we will not lose sight of it, because it is the only viable way forward in a region where we have considerable political, security and commercial interests. Until we can get to that position, we will be continually faced by these crises.

As to the cruel and unjustified treatment of British-Iranian dual nationals, exemplified by the case of Nazanin Zaghari-Ratcliffe, no effort to bring that to an end should be spared by the Government. However, I have to say that linking it in any way to the nuclear issue is only too likely to prove counterproductive and unsuccessful.

7.48 pm

Lord Browne of Ladyton (Lab): My Lords, I thank my noble friend Lord Dubs for initiating this important and timely debate, and I join other noble Lords who paid tribute to him for his tireless work on this and other humanitarian issues. He is an admirable member of this House. I agree with everything said so far, I think, and it is a privilege and a challenge to follow such thoughtful and informed speeches. I will do my best.

Only three days ago, an Iranian court apparently upheld Nazanin Zaghari-Ratcliffe's sentence of another year in prison, prolonging her cruel and unjustified detention that began in 2016. The Government say they are doing all they can to get her home, but Iran has made it clear that her freedom and that of the other dual nationals has a price: the repayment of the debt owed since Iran bought tanks that were not delivered after the Islamic Revolution in 1979. On 7 June, in an Oral Question referring to Nazanin's case, my noble friend Lord Dubs asked about the money owed by the UK. The Minister, in his Answer, said:

"On the long-standing debt, we continue to explore options to resolve this case, but I do not want to go into details here."—[*Official Report,* 7/6/21; col. 1188.]

I will not ask him to go into details of plans, and in fact I will offer him a plan at some point in this speech.

On this issue, I agree with my honourable friend Tulip Siddiq, the Ratcliffe family's MP. She said:

"It's time for the UK government to pay the debt we owe to Iran, stand up to their despicable hostage-taking and finally get Nazanin home."

In preparation for this debate, I asked my colleagues in the European Leadership Network—particularly a young man called Sahil Shah, who helped me enormously—who have been working since 2018 to preserve the JCPOA across Europe, Asia and the United States, to come up with a plan. I have a proposal. The speakers thus far have asked enough questions of the Minister; I will not ask him any questions, but will instead put to him a proposal that, if it can be made to work, may help both to secure Nazanin's release and to unlock the stalemate of the JCPOA talks—without linking them together.

This week, the Iranian Foreign Minister explained to lawmakers in Tehran their policy of "action for action". He said that the US must show good will and make a serious move before Iran returns to nuclear talks. Since Trump unilaterally abrogated the JCPOA, Europe, including the UK, has strongly opposed US secondary sanctions imposed under its "maximum pressure" campaign and, to keep the deal alive, has offered multi-sector economic engagement. However, because of fear of US sanctions, which are all-pervasive, it has failed to deliver any economic engagement—including, importantly, in the humanitarian sector. As a matter of fact—or a matter of law, I should say—sanctions on humanitarian trade are against both US domestic and international law. Contrary to expectations, the Biden Administration have essentially kept to this Trumpian strategy.

The need for increased Covid aid to Iran is dire. The Delta variant hit Iran hard: a recent study by BBC Persian found 200,000 excess deaths there, and many believe that to be a gross underestimate. Neither America nor Europe will ever be secure from the virus until the world, including Iran, is secure. We already have enough petri dishes allowing the virus to run riot and develop variants. We should be picking them off where we can; Iran is one that we can pick off. It is in our interests. We should ask the US to allow Iran to use its foreign exchange reserves, which are held in key countries, to aid its pandemic response. Doing so would ease humanitarian trade during a time when the pandemic has caused immense human suffering in a population already toiling under severe economic hardship from years of sanctions. The death toll in Iran is appalling.

The IMF estimates that, because of the maximum pressure sanctions, Iran has access to only around 10% of its total foreign reserves. Iran negotiated with South Korea, Japan, Germany and Iraq—countries where it maintains foreign reserves, but also where the US maintains strong bilateral relationships and exercises its muscle. Trump successfully discouraged all four from accommodating Iran, both directly and indirectly. The Biden Administration are now doing the same. I remind noble Lords that this all should be in contravention of US domestic and international law.

Instead—this is the plan—Biden could go beyond the escrow structure that has been used to facilitate the use of Iranian oil revenues for humanitarian trade.

Baroness Scott of Bybrook (Con): I remind the noble Lord of the six-minute limit.

Lord Browne of Ladyton (Lab): Thank you. I have just a few sentences left, that is all.

On the condition that the reserves will not be transferred outside of the countries in which they are held, the US could recognise the authority of these four independent Governments to determine the scope of acceptable bilateral humanitarian trade with Iran. This approach could extend to the United Kingdom; we could use what we owe Iran to pay for the purchase of vaccines and other necessary medical supplies through INSTEX, which we set up with France and Germany but through which we have been unable to mobilise any trade. I commend this plan to the Minister and the Government.

7.55 pm

Lord Austin of Dudley (Non-Afl): My Lords, it is a pleasure and a privilege to follow the noble Lord, Lord Browne. I congratulate him on the plan that he set out, which I am sure the Government will consider.

I also congratulate the noble Lord, Lord Dubs, on securing this important debate. He is completely right to describe the kidnapping and plight of Nazanin Zaghari-Ratcliffe as heart-breaking; he is also completely right to say that the Government should examine whether Magnitsky sanctions could be used against the perpetrators. Our new Foreign Secretary was right to adopt a resolute and determined approach to securing the release of detained British citizens; she was also right to make this a high priority as soon as she was appointed.

We must be absolutely clear about the nature of this regime. This is not a democracy run by reasonable people with whom negotiation bears fruit. It is a brutal regime that executes its opponents, hangs gay men from cranes, denies women basic rights and even, as we have heard, kidnaps British citizens for use as political pawns. In the past few months, it has killed a British national and a British serviceperson in its attacks on ships in international waters. It equipped Hamas terrorists with the missiles that they rained down on civilians in Israel earlier this year, causing the terrible conflict that we saw in May. It has prolonged the brutal civil war in Syria and attacked allied forces in Iraq, while its support for Hezbollah terrorists led to last week's carnage in Beirut and threatens another civil war.

I never accepted that relaxing sanctions on Iran would encourage the regime to behave more responsibly and reasonably, given that, under the previous sanctions regime, with its economy on its knees, the regime spent huge funds on sponsoring and supporting terrorism. It was always clear that, with sanctions relaxed and more funds at its disposal, the regime would increase the funds provided to terrorists such as Hamas and Hezbollah.

Iran has clearly broken the promises made in 2015. Experts estimate that it is now just two or three months away from acquiring enough fissile material for a nuclear weapon. It promised not to enrich uranium above 3.67% or stockpile enriched uranium higher than 3.67% for at least 15 years. However, according to the IAEA report in May, it had 62.8 kilograms of enriched uranium at 20%. At the start of September, the IAEA estimated that it had 84.3 kilograms of 20%-enriched uranium, plus an additional 10 kilograms of nearly 60%-enriched uranium. Last weekend, Mohammad Eslami, the head of Iran's Atomic Energy Organization, announced that Iran had more than 120 kilograms of 20%-enriched uranium.

None of these actions—installing advanced centrifuges and obstructing IAEA inspectors, both before the US Administration withdrew from the JCPOA, while enriching uranium to 60% and producing uranium metal, which is a significant component of nuclear weapons—have any credible civilian applications. This is why Israel's new Prime Minister, Naftali Bennett, said this last week:

> "The Iranian nuclear program is at its most advanced point ever … the Iranians are playing for time, and the centrifuges are spinning."

Professor Eyal Zisser said:

> "The only thing separating Iran from a nuclear weapon is a political decision from its leaders … Iran has enriched enough uranium to make a bomb, and even if it hasn't done so yet and hasn't developed the ability to launch one on a ballistic missile, this is still just a technical matter requiring just a few weeks of effort".

Can the Minister tell us what steps will be taken to build a concerted multilateral push against Iran to address the nuclear issue and its destabilisation of the rest of the region? Is it now time to refer back to the UN Security Council and to consider the snap-back of prior sanctions, which were clearly pivotal in bringing Iran to the negotiating table in the first place? Will the Government ensure that any new deal must include Iran committing to unfettered IAEA access to the full extent of its declared—and undeclared—nuclear facilities?

Finally, given Iran's use of its funding to sponsor terrorism across the region, what assessment have the Government made of the case for banning Hamas in its entirety? This is a genocidal terrorist organisation opposed to any peace agreement in the Middle East. It wants to wipe Israel off the map and murder the Jews who live there. I believe that it should be banned in its entirety in the UK to prevent it raising funds in this country.

8.01 pm

Viscount Waverley (CB): My Lords, this short debate is a helpful opportunity to attempt to offer an insight into the complex world of Iran. Some are of the view

[Viscount Waverley]
that modern-day Iran, which is now pivoting towards the East, is of the West's making. The corrupt leadership in Iran does not represent its people, who should not be punished with policy failures and requiring long-term planning.

At the core of this evening's short debate is the strategy to resolve the JCPOA. What is the Government's strategy to bring this all to an end? What is made of Iran's increasing implied threat of going military on its nuclear programme unless the world does this or the other? Is the regime trusted in negotiating in good faith?

Although the Revolutionary Guard is loyal to the regime, in practical terms the regime is more reliant on the Revolutionary Guard than the Revolutionary Guard is on the leadership, who consequently have become more assertive. Iran is in reality a de facto military Government, with all key positions controlled by commanders. They are in full control of the running of the economy of the country. The Iranian people, the West and the world are hostage. How long is the West going to allow this behaviour to continue?

Worryingly, Iran will more increasingly negotiate through hostage diplomacy; China has provided evidence just recently that it can be turned to an advantage. This is a dangerous turn of events, with the potential to get out of hand globally. A crucial question is: how will the Government respond if Iran, or any other state, continues to follow a policy of hostage-taking to achieve its goals?

I fear that the raising of dual citizens might play more into the hands of Tehran as there is an association with the return of money that is legally due for return. While the regime believes that it has right on its side, it will do nothing. I sincerely hope that I am proved wrong. The UK not returning the tank money plays into the hands of the leadership as it is an easy message to explain that it is the UK that is not abiding by the rule of law.

There still remains the recognition by Iran of Israel. It should not be forgotten that Israel also owes money from the days of the Shah, giving credence to an international coalition against it. Some are of the singular view that there is only one state that has the means to bring about resolution to the situation in Iran and the region: Israel.

In today's climate, we should forget regional negotiations with the US at the table. We are entering a cold-war phase, with Iran having cut a 25-year deal to give first rights to Russia and China on construction, intelligence and military matters. Where does this leave us? There is, however, one core fundamental: the language of power is all that is understood. When faced with credible condemnation pressure, the leadership buckles. Will the Minister set out before the House where the Government perceive the regime's weak points are so that we can all join in to make for a better world with Iran at the table?

8.05 pm

Baroness Coussins (CB): My Lords, as if the continued detention of Nazanin Zaghari-Ratcliffe is not shocking enough, I want to draw attention also to the harassment, death threats, arrests and detention being suffered by the many dual nationals who work for the BBC Persian Service, based both in Iran and in London. I am hoping that the Minister can update the House this evening on what steps the Government can take to up the ante on their representations to the Iranian Government, because the problem simply has not eased up. It has escalated over the past three years, with many family members of BBC employees also now subject to interrogation and harassment.

Since 2017, the Iranian Government have pursued criminal investigations into BBC Persian staff, alleging that their work constitutes a crime against Iran's national security. Some 152 named individuals, most of them dual nationals, are the subjects of an injunction to freeze their assets, preventing them buying or inheriting property in Iran. Recent testimonies from staff show that interrogation techniques have become more frightening and aggressive towards elderly parents, siblings and other family members. Some staff have been threatened with kidnapping. Female staff in London are being particularly targeted with online attacks, fake stories about rape and sexual harassment by male colleagues at the BBC, and fake pornographic pictures posted on social media. Staff have been unable to return to or visit Iran to see sick or dying elderly relatives, for fear of detention or worse.

The objective of the Iranian Government appears to be to coerce people to stop working for the BBC, and to undermine the independence and quality of the World Service journalism. Repeated reports, resolutions and appeals to and from the United Nations have got nowhere: indeed, some brave BBC Persian journalists who have provided testimony have been further victimised.

I am aware that the FCDO has raised concerns in bilateral discussions with Iran, and has pledged to continue to do so, but this just does not seem to be enough or achieve any change. The injunction remains in place; BBC Persian staff and their families continue to have their rights infringed, and journalists continue to be the subject of systematic and sustained attacks.

I really want to hear something more and new from the Minister on what our Government can and will do to defend the independence of the BBC Persian service and, most importantly, the lives, safety and welfare of the people who work for it, and their families.

8.08 pm

Lord Walney (CB): My Lords, this has been a fascinating debate, but it has often seemed as if there have been two separate, entirely different countries that were being discussed. One showed Iran as a potential partner for peace, a potential future trading ally that has been wronged by the West and President Trump, and let down by the UK. The other, which I fear is closer to reality, is a country described in contributions by the noble Lords, Lord Austin and Lord Waverley, and the noble Baroness, Lady Coussins: it is run by a military dictatorship that remains the biggest exporter of Islamist terror in the world and reaches into our own country in the way that the noble Baroness, Lady Coussins, just set out and provides a real and credible threat to its neighbours in the region and, in the future, to our way of life.

I accept and agree with the arguments made by a number of erudite and experienced noble Lords for the resumption of the JCPOA. If the agreement is resumed, it must be effective. I would like to see it going wider than the nuclear parameters it has been set, but I fear that is unrealistic. Let us be under no illusion, however, that Iran is now breaking the agreement, forging forward towards being a nuclear power. I hope the Minister will reaffirm that the UK understands that there is no scenario in which this can be accepted and allowed to carry on.

When we talk about the inducements necessary to bring Iran back to the table, let us be clear that there is no scenario in which Iran can be allowed to become a nuclear power in the region. The G7 recently made that clear, as did the United States in its bilateral engagement with Israel a couple of weeks ago. The UK also needs to be clear that no one will allow this threshold to be reached. I hope that will be part of restoring a level of deterrence that can bring Iran back to the table effectively.

Surely deterring Iran from becoming a nuclear threat in the region and to the world and from continuing its disgraceful role as an exporter of Islamist terror is a wider issue than this sanctions/enrichment trade-off. It requires a more significant reappraisal of the West's approach to its alliances, foreign policy and outlook in the world.

Capability is of course an issue, but the resolve to act is surely just as important. In recent years, Iran has shown what it can do with a fraction of the capability of our allies in the West. If we do not have the resolve to face down acts of aggression or the foresight to understand the scale of the threat to our liberal democracies and the rule of law in this environment, the threat Iran can pose with very little capability can spread. Look at Yemen. With a low level of resource, the Iranians have empowered an Islamist proxy to prolong a conflict that has not only caused untold suffering for Yemenis but weakened essential ties between the coalition formed against the Houthi Islamist terror group and against the Islamist expansionist terror which Iran has represented and championed since 1979.

The same currents applied in Lebanon and in Syria before that. Iran and Russia have exploited a relative lack of resolve and strategic common sense from the West, resulting in appalling misery for millions of Syrians, a refugee crisis that is further impacting on the West and the emboldening of those who would undermine our way of life.

This matters even more because of the emergence of China, which will in years ahead be able to bring world-class military capability and might to challenge any weakness in the West's resolve. Basic hostility to our world view, plus military capability, plus ongoing weakness from the West to deter threats could pose an existential challenge to our way of life in the decades ahead. Let us hope that Iran's acceptance into the Shanghai Cooperation Organization is largely symbolic for the moment, but it is a symbol whose importance we must countenance.

The UK has shown its ability to think creatively with the recent strength of the AUKUS alliance. Our challenge should be to apply that scale of ambition, innovative thinking and strength of partnership to the Middle East, to restore that sense of deterrence.

8.15 pm

Baroness Smith of Newnham (LD): My Lords, I start by paying tribute first to the noble Lord, Lord Dubs, for bringing the issue of Iran and, in particular, concerns about dual nationals, especially Nazanin Zaghari-Ratcliffe, back to the Chamber, and secondly to my noble friend Lady Northover. As my noble friend Lord Purvis of Tweed pointed out, while she was our foreign affairs spokesperson in the Lords, she raised these issues on 20 occasions.

I also pay tribute to the noble Baroness, Lady Coussins, for yet again bringing to the Chamber's awareness the concerns of nationals in another country—people working as journalists for the BBC Persian service and people working to get the truth out, who are very often the interpreters on whose behalf she is speaking. It is very easy to think that we are focusing on just one or two very narrow issues. Understanding the difficulty of journalists in speaking truth to power and getting a message out in Persian is important. So although slightly beyond the remit of this debate on the JCPOA and dual nationals, those issues are important. Will the Minister say what support the Government are giving to the BBC Persian service?

From these Benches, I support the JCPOA, as did the opening speakers. Later in the debate, slight concerns were expressed, but at the beginning I thought every speaker was going to say almost the same thing: that the JCPOA was a very important agreement. Like my noble friend Lord Purvis, the noble Lord, Lord Hannay, and the noble Baroness, Lady Coussins, I was a member of the International Relations and Defence Committee when it looked at nuclear non-proliferation. As the noble Lord, Lord Lamont, pointed out, the JCPOA was not good just for Iran. It was good for security and non-proliferation. We heard from the noble Lord, Lord Austin, that Iran has breached the agreement. It has, but what signal did the United States under Donald Trump send by pulling out of the JCPOA? As the noble Lord, Lord Browne, pointed out, President Biden does not seem to have deviated very much from the actions of President Trump. Can the Minister tell us what conversations he, the Foreign Secretary or the Prime Minister have had with President Biden or with Blinken about the JCPOA and getting the United States back on board?

The rhetoric of candidate Biden, Senator Biden, when he ran for the presidency and what is happening how may not be as in sync as they might be. Given that the United Kingdom is so keen to have global reach, part of that surely has to be in our negotiations with the United States. If we want the JCPOA to function, the E3 are important, but ensuring that the United States is back at the table is crucial. I very strongly agree with the noble Lord, Lord Hannay, that the UK's position has been about active diplomacy and sanctions. What sort of active diplomacy are the Government pursuing at present, not just to get the US back to the table, but to get Iran back to the table? In particular, what work is the new Foreign Secretary doing to ensure that the rights of dual nationals are being secured? As we have heard, we are now on the fourth Foreign Secretary who has been dealing with Nazanin Zaghari-Ratcliffe. When he was Foreign

[Baroness Smith of Newnham]
Secretary, the Prime Minister's words were perhaps not always as diplomatic as they might have been. Can we hope that Liz Truss will do a better job?

It is vital that we understand that some of Iran's actions, not just in uranium enrichment but in human rights and perhaps torture, need to be looked at so that we understand, and we would like the Government to show, that while it is important that we get Iran back to the table, we also should not be afraid to call it out when there are concerns on torture.

My final point picks up on the points from the noble Lords, Lord Dubs and Lord Lamont, at the start of this debate. If the UK has a debt of £400 million to Iran and we want to show it that we are serious about our commitments, surely we should look at resolving that debt so that we can say that we have done everything we should and we are now holding it to account to deliver on the JCPOA and on the rights of dual nationals.

8.20 pm

Lord Collins of Highbury (Lab): My Lords, I add my thanks to my noble friend Lord Dubs for initiating this debate and for consistently raising these issues on a regular basis. I join the noble Baroness and the noble Lord, Lord Purvis, in paying tribute to the noble Baroness, Lady Northover, who is retiring from the Front Bench. She has assured me that although she is retiring from the Front Bench she will continue to come to this Chamber and raise these issues. No doubt we will see her in the very near future.

The noble Baroness mentioned the fact that we are now on the fourth Foreign Secretary. However, the Minister has an incredible record of longevity in this Government and I welcome him to his place. He continues to work in support of all noble Lords, particularly in these sorts of cases.

The Government of Iran are clear that they are not prepared to act in accordance with the global rules-based order. The UK and our allies must make it clear that their lawless actions carry costs. The Iranian attack on the merchant vessel earlier this year was a flagrant breach of international law and, when viewed alongside its continued detention of dual nationals, there is an evident need, as my noble friend Lord Dubs said, for a strategy with our allies to end this pattern of behaviour.

On the comprehensive plan of action, put simply, the Trump decision to abandon the plan has not worked. In the words of Roger McShane of the *Economist,* by the end of President Trump's term, Iran was closer to holding the bomb than at the beginning. I agree with the noble Lord, Lord Lamont, that President Biden is right to open the possibility of reviving the agreement and the UK, as part of the E3, must consider how we can support that process should the opportunity arise in November. I hope the Minister will give us some indication of what he thinks the prospects of that will be.

We must also recognise that without an agreement in place Iran will continue to advance its nuclear development. Given that Tehran is now hampering inspections by the International Atomic Energy Agency, there can be no ignoring the fact that the opportunity for diplomatic agreement may not always exist.

On the debt issue, I agree with my noble friend and other noble Lords that we have to separate this issue. We cannot be complicit in it being used as a bargaining tool. If it is right that we return the money—and the courts have said so—we should hear from the Minister tonight what is hampering that process. I ask him to give us some very clear indication of what is going on.

On dual nationals, the ongoing detention of Nazanin Zaghari-Ratcliffe, as well as of Anoosheh Ashoori and others, continues to be a political bargaining chip. Their imprisonment is creating an unimaginable ordeal for them and their families, and it is now obvious that the Government's approach to securing their release has not worked. The latest developments in Nazanin's case and her appeal at the weekend are a new setback. I hope that the Minister—and all Ministers in the FCDO—will reflect on her husband Richard's comments that the Government are now simply engaged in "managed waiting". The real issue here—the key question asked by my noble friend Lord Dubs—is how we are working with our allies, particularly the European Union, to ensure that we can secure their immediate and unconditional release. I look forward to hearing the Minister's response.

8.25 pm

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I join others in thanking the noble Lord, Lord Dubs, for once again raising the important issue of the situation of those arbitrarily detained in Iran, and the particular cases. I pay tribute to him for doing this consistently. I assure him, and indeed your Lordships' House, that I remain, both in my capacity as Minister for Human Rights and as a member of the Government, fully committed to ensuring that we use every lever at our disposal to continue lobbying for the release of all the dual nationals in Iran.

The noble Lord asked, quite specifically, why we do not name every single individual in Iran who is subject to that detention. The simple answer is that we are engaging, quite regularly, with various members of the families of those detainees. In certain cases, it is at their request that we have not named parties publicly, but I assure the noble Lord that we continue to raise their cases, albeit at certain times quite discreetly.

I recognise the very insightful contributions by all noble Lords. If there is one natural conclusion I could reach from this debate, it is that I do not think there is anyone, wherever they sit in your Lordships' House, who disagrees with the general thrust, both on the importance of the JCPOA and the need for Iran to act, do the right thing and release Nazanin Zaghari-Ratcliffe and other people the noble Lord named. I will come on to that in a moment or two.

I join the noble Baroness, Lady Smith, and the noble Lords, Lord Purvis and Lord Collins, in recognising the vital role, and the strength, of the relationship I had with the noble Baroness, Lady Northover. I pay tribute to her efforts and I am sure the noble Lord, Lord Collins, is quite right that we will continue to hear valuable contributions from her. I think it is important to put it on record, that, together with the noble Lord, Lord Collins, on a whole raft of issues we

have enjoyed not just engaging directly and a real understanding of each other's position, but, if it is appropriate for me to say so as a Minister of the Government, a sound friendship that helps us unravel some of the issues in a way that is extremely important when it comes to sensitive issues.

I welcome the noble Lord, Lord Purvis, to his place and look forward to engaging with him on a raft on issues. Of course, the continued role of the noble Baroness, Lady Smith, on the Front Bench is vital. Also, since we have talked about longevity in office, I believe that the noble Lord, Lord Collins, has also sustained his position, certainly during my tenure as Minister of State.

Turning first to the JCPOA deal, the nuclear deal demonstrated between 2015 and 2019 that it did and can deliver results—a point made by the noble Lord, Lord Hannay, who has great insight on these matters. However, what is also clear, as the noble Lord, Lord Austin, reminded us, is that since July 2019 it is Iran that has incrementally stepped away from compliance with the deal. This point was also made by the noble Lord, Lord Walney. Since that stepping away, the IAEA has also further confirmed that Iran has continued to produce uranium, metal-enriched up to 20% for the first time and, as we learn, alarmingly, has significantly increased its capacity to produce uranium enriched up to 60%. I hear very clearly the warnings that were sounded by the noble Lords, Lord Austin and Lord Walney, in this respect.

To underscore the severity of Iran's action, it is unprecedented for a state without a desire to develop nuclear weapons to enrich uranium to 60%, a point made by the noble Lord, Lord Collins. Iran has no credible civilian need for such capability, which constitutes a significant step towards developing a nuclear weapon. Iran has chosen irreversibly to upgrade its nuclear capability, and it remains in clear violation of its JCPOA commitments.

I will review the detailed suggestions from the noble Lord, Lord Browne, but I say to him and to my noble friend Lord Lamont that Iran has a rich history of culture, engagement and enlightenment. Our battle, our challenge, our dispute, is not with the Iranian people but with the Iranian Government, who are persisting on this particular, most tragic path. Simply put, Iran's nuclear programme has never been so advanced, and of course it remains deeply concerning. However, I agree with the noble Lord, Lord Hannay, who speaks with great insight and experience, that it is even more important now for peace and security in the region that Iran return to negotiations. The noble Baroness, Lady Smith, my noble friend Lord Lamont and other noble Lords, including the noble Lord, Lord Purvis, all emphasised that point.

As I have often said, the JCPOA is not perfect but it is the best framework we have to monitor and constrain Iran's nuclear programme. The United Kingdom has rigorously abided by the terms of the agreement, and let me assure noble Lords that we remain committed to it. Iran stepped away from the negotiations in June; its reason was the election. However, it has not returned. At the UN we have seen not just the United Kingdom, the US, France and Germany but Russia and China adding their support to the need for Iran to return to the negotiations. Rather than return, it has continued advancing its nuclear programme, which is irreversibly reducing the real value of the JCPOA.

The noble Lords, Lord Walney, Lord Austin, and Lord Purvis, and my noble friend Lord Lamont, asked me specifically about the United Kingdom's position. We align ourselves with the position that the offer on the table from the United States to lift sanctions which are inconsistent with the JCPOA in return for Iran returning to full compliance with its nuclear commitment is both fair and comprehensive, and we are working with our partners to secure that. France, Germany, Russia, China and the US have also, as I said, echoed calls for Iran to cease immediately its reckless behaviour, which is a danger to us all.

We are ready to restart negotiations. If we cannot resume talks and achieve a deal soon, we and our international partners will have to reconsider our approach. Various noble Lords, including the noble Lord, Lord Austin, raised the issue of the global human rights sanctions regime. Of course, I cannot speculate, but we are engaging diplomatically as well. One of the first meetings that my right honourable friend the new Foreign Secretary, Liz Truss, had during UNGA on 22 September was with the Foreign Minister of Iran. Let me assure the noble Baroness, Lady Smith, that the Prime Minister has also raised the issues of the JCPOA and dual nationals directly with the President of Iran.

Let me pay tribute to the role played by the noble Baroness, Lady Coussins, in respect of BBC Persia. We fully support BBC Persia, and she is aware of the representations we have made. She asked what more can be done. I will certainly take back this issue and reflect, but she is fully aware of our role as a leading voice on the Media Freedom Coalition. Perhaps there is further work we can scope in that respect, and I would be pleased to discuss further steps that can be taken in that regard.

The noble Lord, Lord Dubs, raised the issue of representation, of consular support and attending various hearings. Of course, the issue is that Iran does not recognise dual nationals, as he knows, but we have nevertheless been relentless in our pursuit of the release and safe return of British nationals detained or forced to remain in Iran. They include Anoosheh Ashoori, Morad Tahbaz and of course Nazanin Zaghari-Ratcliffe, who have been separated from their loved ones for far too long. We are engaging directly with the families in certain instances, and both the current and previous Foreign Secretaries have talked directly with Nazanin herself.

Although Iran does not recognise dual nationality and therefore continues to refuse our request for consular access, the UK Government have worked for the immediate return of detained dual British nationals at every opportunity. We have consistently raised the cases I have referred to, and indeed others, at the highest levels of the Iranian Government. Last month during the UN General Assembly, as I said, the Prime Minister discussed these very cases and their release—and with former President Rouhani at a previous UN General Assembly as well—while the Foreign Secretary pressed the issue with Foreign Minister Amir-Abdollahian.

[Lord Ahmad of Wimbledon]

The noble Lord, Lord Dubs, raised the issue of diplomatic protection. By exercising diplomatic protection in the case of Mrs Zaghari-Ratcliffe, we formally raised it to a state-to-state issue and we will take further action where we judge it will help secure her full and permanent release. Of course, what we have seen happen recently is tragic and my right honourable friend the Foreign Secretary issued a very strong statement on 16 October, condemning Iran's decision to proceed with its baseless charges against Nazanin Zaghari-Ratcliffe. Her predecessor also engaged frequently on their cases with the then Foreign Minister Zarif. In Tehran, we are in touch with our ambassador, Simon Shercliff, who continues to raise these cases with Iranian interlocutors.

I take note, of course, of the wider regional issues. My noble friend Lord Lamont mentioned the situation with Afghanistan. In this respect, there has been a glimmer or degree of co-operation with the Iranian authorities on those seeking to leave Afghanistan, particularly those minorities who seek refuge within Iran. But frankly, turning back to the dual nationals, our lobbying continues at every opportunity; it helped secure the temporary release of Mrs Zaghari-Ratcliffe in March 2020 and the removal of her ankle tag in April this year. I assure noble Lords that we will not be satisfied until all these British nationals are returned home.

All noble Lords who contributed raised the issue of the IMS debt. In this respect, it is unhelpful, as the noble Lord, Lord Collins, said, to connect wider bilateral issues with those arbitrarily detained in Iran. It remains in Iran's gift to do the right thing. In terms of the debt itself, there was an adjournment of the April hearings at the request of Iran's Ministry of Defence. A final decision on a new date has not been made but we continue, as I said, to work on this issue and explore options. It is a 40 year-old case that we need a resolution on.

I am conscious of our time limit and there are a number of other questions. The noble Lord, Lord Dubs, normally reserves questions for the end of his contributions. Most of his contribution, rightly, was made up of specific questions. I will of course write to him on those I have not able to answer.

Let me assure all noble Lords who have participated in this important debate that we continue to press Iran. We will work with our allies and press Iran to return to nuclear negotiations around the JCPOA in Vienna at the earliest opportunity, and to full compliance with its commitments under the JCPOA. The deal on the table, we believe, is balanced. It cannot remain there indefinitely; if we cannot reach agreement soon, we will have to reconsider our approach.

On the issue of detention and torture and Iran's commitment to the ICT, I totally agree with the noble Lords, Lord Dubs and Lord Purvis, and the noble Baroness, Lady Smith, that Iran is a signatory to that convention and needs to ensure that it upholds its obligations to it. We will explore how we can bring further focus to this important issue, including opportunities that arise, for example, within the Human Rights Council. I further and finally assure all noble Lords that the detention and treatment of British nationals in Iran remains, and will remain, a top priority for the new Foreign Secretary, for our Prime Minister and for the Government as a whole. Iran has subjected them to a cruel and inhumane ordeal over the last five years. I assure noble Lords that we will do all we can to continue to ensure and secure their release, so that they can once again be reunited with their families in the UK.

House adjourned at 8.40 pm.

Grand Committee

Tuesday 19 October 2021

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, I will now open this session of the Grand Committee. Members are encouraged to leave some distance between themselves and others—it is hardly necessary to point that out—and to wear a face covering when not speaking. If there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and will resume after five minutes if all Members have cast their votes in that time.

Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021

Considered in Grand Committee

3.46 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, for organic products imported from another country to be legally sold as organic in Great Britain they must be certified as organic by a third country or third-country control body that the UK has recognised as having equivalent or compliant standards.

The lists are currently contained within retained EU Commission Regulation EC number 1235/2008. Annexe III of this regulation lists third countries recognised as equivalent and gives the name and website of the competent authority for each country, along with a list of the control bodies operating in that country, their control body codes and websites. Annexe IV of the regulation lists third-country control bodies recognised as equivalent and gives the name, address, website, code numbers, applicable countries and approved product categories for each control body.

This statutory instrument was made to streamline the process of listing and accessing the details of the third countries and third-country control bodies that we recognise as compliant and equivalent for the purposes of UK organic regulations. The amendments made by this instrument do not constitute a policy change.

As the law stands, it would be necessary to pass a new SI to confirm recognition of a new country or control body, or for changes to existing recognition, such as changes to their name, website address or approved goods categories. With hundreds of organisations listed, this information can change frequently. When the UK was an EU member state, these changes were advised on by the European Commission and approved by representatives of the EU member states at the regulatory committee on organic production, not by the European Parliament.

Given the administrative nature of these changes, we believe that making numerous new SIs to reflect them would be disproportionate. The time taken to pass such SIs to update the lists would have a negative impact on trade in organics. Details held on these lists are necessary for port health authorities, local authorities and other relevant parties to ensure that the goods in question have been certified in a recognised third country or by a recognised third-country control body. The delay between the changes taking place and being reflected in legislation would result in discrepancies between the documents and legislation. This can cause disruption to trade, as even minor discrepancies may delay goods being checked at ports.

This SI will not alter the criteria according to which third countries and third-country control bodies are recognised. I would like to reassure the Committee that the process for allowing third-country products to be placed on the GB market as organic remains robust and follows highly technical criteria set out in the retained organics regulations: Council Regulation 834/2007 and Commission Regulations 889/2008 and 1235/2008. This SI simply seeks to move the lists currently referenced in legislation to the GOV.UK website, where they can be updated directly by officials. We will continue to uphold the high standards expected by UK consumers and businesses.

Our approach with this SI follows best practice in other policy areas, where minor amendments are made to lists on various topics without requiring an SI. For example, the register of protected geographical food and drink names, which determines what goods can be sold under particular names in GB, is updated by the Secretary of State on the advice of officials. These decisions are made by evaluating the merits of each case in accordance with criteria outlined in legislation. This change will also improve the accessibility of these lists for stakeholders by providing all the relevant information in a single location, removing the need to consult multiple pieces of legislation, a problem that stakeholders have raised in the past.

These proposed changes have been welcomed by stakeholders including UK port health authorities, UK organic control bodies—through the UK organic certifiers group—and the devolved Administrations at the UK organics four nations working group. International partners such as the United States Department of Agriculture have also welcomed the proposed changes.

The proposed lists on GOV.UK will be updated to reflect the terms of the trade and co-operation agreement, extending EU organic equivalence recognition until 31 December 2023 as agreed, without the need to pass an additional SI. Current UK legislation includes EU recognition only until 31 December 2021, so the lists will need to be amended before that date to be in line with the trade and co-operation agreement. If this SI does not pass, a separate instrument will be required to extend EU recognition to the end of 2023. If a new SI is not passed by the end of the year, that could cause a delay to trade and there would be a risk of political controversy.

A breach of our commitments under the TCA would potentially leave the UK open to retaliatory action from the EU, such as withdrawal of its recognition

[Lord Benyon]
of UK organics standards, which would prevent GB organic goods from being sold in the EU. Given the importance of the EU market to UK organic producers, this would risk a severe impact on the sector and its contribution to the UK economy. The UK has committed to updating the lists of recognised third countries and third-country control bodies to reflect changes that occurred shortly before the end of the transition period but were not captured in the retained legislation. This includes adding, removing and amending some control bodies in Annexe III and Annexe IV.

Until this SI comes into effect, goods certified by those newly recognised control bodies risk rejection at the border and we also risk that goods certified by control bodies that are no longer recognised may enter the GB market. Delay to these changes would cause disruption to trade and risk a perception that we are in violation of our treaty obligations. Under the current terms of the Northern Ireland protocol, EU organics regulations continue to apply in Northern Ireland as they do in the EU. As such, Northern Ireland continues to use the list of recognised third countries and third-country control bodies in EU law and this SI will have no effect on trade in Northern Ireland. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I am most grateful to my noble friend for setting out the remit of the statutory instrument that is before us this afternoon. We have been greatly assisted by the 14th report of the Secondary Legislation Scrutiny Committee, which my noble friend will be aware has a number of outstanding concerns that I will raise.

Paragraph 7.5 of the Explanatory Memorandum says that

"instead of laying new statutory instruments for new recognitions or changes to existing recognitions, the law be amended"

in the way that my noble friend outlined. It concludes:

"This will save a considerable amount of officials' and Parliamentary time and allow for greater speed in updating information."

I do not think that Parliament has ever asked for less time to scrutinise legislation. As my noble friend will recall, when much of the legislation went through under the treaties and the Acts taking us out of the European Union, concern was expressed at the amount of parliamentary scrutiny that there would be.

My first question to my noble friend is this. Paragraph 10.1 specifically states:

"The changes to the listing of control bodies and third countries have been discussed with UK control bodies … and with the devolved administrations at the Organics Four Nations Working Group."

I am interested to know whether that was just one meeting. Was there the opportunity for the devolved Parliaments and Governments to raise any concerns that they must have?

My noble friend will be aware that, in this very Room last week, the Common Frameworks Scrutiny Committee met to raise a number of issues. His department was mentioned, as there are, I think, 14 common frameworks that relate to it. I might be wrong, but I do not think that Parliament has seen a single one of those. Obviously, it is of great interest to us to see what has been agreed. I mention that as background. I would like to think that the Scottish, Welsh and Northern Irish nations have had the opportunity for both their Parliaments and Governments to raise any concerns that they had.

I turn briefly to the issues raised in appendix 3 of the 14th report of the Secondary Legislation Scrutiny Committee—the exchange of letters with our honourable friend Victoria Prentis, in the other place, as Minister for Farming, Fisheries and Food. The Secondary Legislation Scrutiny Committee has done the House a great service in pointing out its concerns. I would like to quote from the report:

"These Regulations replace a legislative process for updating a list of third countries and third country control bodies which are recognised as equivalent in relation to organic standards, with an administrative process."

It concludes that

"there should be parliamentary oversight of updates to lists."

Will my noble friend explain to us this afternoon why there is the need for such speed in this regard? Can he convince us that there has been proper parliamentary oversight of what was delegated to the Government to perform this?

The report goes on to cite a letter from the Lord President to the chairman of the committee, our noble friend Lord Hodgson of Astley Abbotts:

"I agree that it is important that Parliament has the opportunity to scrutinise significant changes in addition to streamlining processes to ensure that the regulatory system best serves the needs of British businesses and consumers."

Obviously there was a long debate about equivalence at the time that the legislation went through. Noble Lords ought to know my admiration for the organic sector and its importance to the rural economy.

I conclude by again raising an issue that was raised by our noble friend Lord Hodgson of Astley Abbotts with our honourable friend Victoria Prentis. On page 30 of the report, the committee sets out again its concern that the decisions before us this afternoon have been removed from the oversight of Parliament by switching from a legislative to a purely administrative process. I am not entirely sure that my noble friend has set out the context for why we will not in future be able to look at these statutory instruments, albeit briefly, or why we are losing the parliamentary oversight, which seems to be the nub of the concern expressed in the 14th report of the Secondary Legislation Scrutiny Committee.

4 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I am grateful to the Minister for his introduction to this SI. I thank him and his officials for the useful briefing that they took the time to provide to me and to the noble Baroness, Lady Jones of Whitchurch. As has been said, the SI allows third countries equivalence on organic produce without the need for the time-consuming process of passing secondary legislation on each occasion. The power now rests with the Secretary of State to decide.

Paragraph 2.2 of the Explanatory Memorandum states that changes to the lists of countries and produce

"will be communicated to relevant stakeholders in a timely manner".

Can the Minister say exactly what "a timely manner" is? Will the list always be updated immediately after equivalence is granted, or will there be occasions when this may take longer?

I note that no impact assessment was prepared for this SI, as the changes are said to be merely administrative. I am sympathetic towards streamlining procedures relating to legislation but do not believe that Parliament should be bypassed in all cases, especially when trade agreements are being considered.

The noble Baroness, Lady McIntosh of Pickering, has already raised my next point. The chair of the Secondary Legislation Scrutiny Committee, of which I am also a member, wrote to Minister Prentis challenging the assumption that the new administration process was merely technical and would have low impact. The committee took the view that making an equivalence decision on a third country would almost certainly be more important than suggested and felt that removing the oversight of Parliament by switching from a legislative to a purely administrative process was a concern. In her response, Minister Prentis indicated that

"when a third country applies for equivalence recognition for the purpose of organics trade, it must provide all necessary information, including details of its control system and production standards, on the basis of which a decision can be made … recognition is limited to … three years. The Secretary of State may recognise a third country as having equivalent organic standards only once they are satisfied that these criteria for recognition have been met … Additionally, a third country recognition is generally part of a wider trade agreement, which would require Parliamentary ratification".

If Parliament is to be involved in a trade agreement with a third country, why cannot it be involved in that country being added to the list for organic equivalence, especially if that is going to be part of its trade agreement? Can the Minister indicate how many countries are likely to apply for organic equivalence which are not in negotiation for a wider trade agreement? This might help us to see just what the scale of the workload would be if each was to go through the statutory instrument process instead of the informal administrative process proposed today.

As the Minister said, there is a cut-off date for reassessment of 23 December 2023. What will happen after that date? Will this be a cliff edge, or will there be renegotiations prior to that date?

A number of countries are in negotiations for trade agreements with the UK. How can the public be assured that the very high standards that they currently enjoy on organics will not be lowered during negotiations? I remain concerned that this speeding up of the administrative process has no legislative grounding and look forward to the Minister's response and possible reassurance.

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the Minister for introducing this SI and for the helpful briefing that he organised beforehand. On the face of it, this seems to be an innocuous change, but, like other noble Lords, I do not feel that it is quite as straightforward as it first appears. I therefore have a number of questions that I want to raise.

First, we have a strong and blossoming organic sector in the UK and it is important that we protect the very high standards that consumers expect of organic products. In particular, it is vital that the UK organics market cannot be undercut by inferior products from third countries claiming to be of the same organic standards. When this was debated in the Commons, the Minister, Victoria Prentis, made it clear that organic trade between the UK and any third country in the future will be the subject of the provision of free trade agreements or treaties.

This immediately rang alarm bells because, as we have seen with other trade deals, most notably the one with Australia, the Government have been prepared to sell out our high food standards when it suits them to have a wider trade deal. Can the Minister clarify the status of our current organic standards? If, as he says, they are set out in retained EU legislation, could they be disregarded in a future trade deal?

Victoria Prentis also said that Parliament would have oversight of those trade deals that might impact organics. Can the Minister clarify whether this is the same oversight that exists for all other trade deals, on which Parliament has in truth had no real say and, as we all know, the views of the Trade and Agriculture Commission, which was set up to act as a mediator, if you like, are widely disregarded? Would organics be caught up in that same process?

Secondly, one of the main arguments put forward in the Explanatory Memorandum for the change is that ports, local authorities and businesses will be able to find an up-to-date list of the organic products that can be imported, as they will be listed on the government website rather than in legislation. I do not find this a compelling argument. I do not really see why this cannot be done in parallel with the original scrutiny process of making changes via SIs. For example, the Minister, Victoria Prentis, said that there were 13 countries, plus the EU, and about 55 control bodies currently listed. Despite what the EM says, I cannot imagine that there will be a swamp of new applications which will become unmanageable. If the concern is that those organisations change their addresses frequently, surely the solution would be to deal with this aspect of approval administratively rather than through the whole recognition of a new country or control body. I would be grateful if the Minister could clarify why it is not possible to have those two systems working in parallel with the original parliamentary scrutiny that we have previously enjoyed.

Thirdly, as noble Lords have said, the Secondary Legislation Scrutiny Committee has drawn these regulations to the special attention of the House on the grounds that they are politically or legally important. We agree with its analysis

"that secondary legislation is indeed an appropriate vehicle for the type of changes that are the subject of this instrument, and that the Secretary of State's general accountability to Parliament is not a suitable replacement for parliamentary oversight of individual decisions in this area."

As my colleague Daniel Zeichner said in the Commons in agreeing with the Secondary Legislation Scrutiny Committee,

"We have all heard that argument and we know how well that works in practice. Frankly, we need something better than that."—[*Official Report*, Commons, Delegated Legislation Committee, 21/9/21; col. 5.]

To press the Minister on this, if the SI goes through, how would we in practice hold the Secretary of State to account for listing an organic producer that we thought was in danger of undercutting our current organic standards? If a trade deal were signed that opened up the market for a third country for organics with lower standards, which of the many Secretaries of State would

[Baroness Jones of Whitchurch]
we be trying to hold to account anyway? Would it be the Secretary of State from Defra or from the Department for International Trade? Whom will we chase on these issues if such an event occurs?

Finally, I ask the Minister about the devolution implications of this SI. In an exchange in the Commons with David Doogan of the SNP, the Minister revealed that there is a long-standing disagreement about whether this issue is a devolved matter. Rather than getting legislative approval from the devolved Governments, as would be the normal process, the Government on this occasion sought the approval of the organics four nations working group. Does the Minister feel that this is a satisfactory way to proceed? What is being done to get the devolution disagreements back on track so that we can have the proper process of agreement in place?

While I am on that, there is some question over whether the UK organic certifiers have agreed to the proposals, as suggested in the Explanatory Memorandum. As my colleague Daniel Zeichner reported, they reported to him that their preferred form of scrutiny of future applications is an independent expert group, rather than their having to rely purely on the Secretary of State to make those decisions.

We feel that this SI is unsatisfactory in a number of regards and hope that the Minister will be prepared to reflect further, not only on our concerns but on those of the SLSC, which we feel were well made. I look forward to his response.

Lord Benyon (Con): My Lords, I am grateful for noble Lords' interest in this issue and for the questions that have been asked. To start with, I say to my noble friend that this is of course a massive increase in scrutiny. When we were a member of the EU, this did not ever come before Parliament; it did not even come before the European Parliament but was dealt with by a committee in the Commission. Everything we are doing is open to all Members of both Houses to scrutinise in the ways in which they ingeniously will, holding Ministers and the Executive to account. There are mechanisms in it, which I will come to in a moment.

I will answer as many of the questions as I can. If I cannot, I will write to noble Lords. My noble friend Lady McIntosh asked about the frequency of meetings of the four nations working group. My understanding is that it meets every month, so this is a very regular affair. I will come on to the points my noble friend made about the slight tension between the devolved Governments.

I think my noble friend Lady McIntosh also asked whether SIs are appropriate, whether they are a frequently used vehicle for minor changes in other policy areas, and why they should not be used here if they are used for many minor matters. The changes to lists that would be covered under this updated process would be administrative changes based on technical evaluations; they do not represent a policy change. These include very minor changes to information required about control bodies, such as their name, legal address and other contact details. Although minor, these details are necessary for port health authorities, local authorities and other relevant parties to ensure that the goods in question have been certified in a recognised third country or by a recognised third-country body.

We are aware of a number of cases in which minor changes to a control body's information have resulted in goods being delayed at a port due to discrepancies between the details on certification documents and in legislation. As such, delays in updating this information in the list could result in a disruption to trade. Without the move to online lists effected by this statutory instrument, any amendment, however small, would be delayed by the time taken for a further SI to go through the legislative process. The faster mechanism introduced by this SI will enable the UK businesses that depend on this to take advantage of new opportunities to trade more quickly. This may provide a competitive advantage over other nations, such as those in the European Union burdened by cumbersome and lengthy processes.

My noble friend and others mentioned that we have legal agreements with 13 countries and 55 control bodies and asked whether updating their lists would be necessary. Yes, we have equivalence agreements with 13 countries, the EU and the EEA states, and 55 control bodies. However, the situation is much more complex in practice because third-country control bodies can certify businesses operating in a number of different countries, with different rules for their operations in each.

Equally, where a third country is recognised as equivalent, the control bodies in that country must also be listed individually. A full list of recognised countries and third-country control bodies runs to over 100 pages, with each page containing significant detail. As we continue to recognise new third countries and third-country control bodies as an independent trading nation, this is likely to expand over time.

4.15 pm

On the questions from the noble Baroness, Lady Bakewell, there is a legitimate query about how quickly Defra will be able to publish updates to the lists after a new decision is made. Once a change has been agreed, the process is fairly swift. It is likely to take approximately two working days, as that is the standard time for updates to GOV.UK to be put into effect, dependent on communication capacity at the time. The time taken for decisions on whether or not to make a change would vary in length based on the complexity of the change in question. For example, if a third-country control body alerts us to a change to its name or website, that can be approved quickly.

The noble Baroness made a point about how Defra would alert stakeholders that changes had been made. Stakeholders will be made aware of the changes in a timely manner by email, and any new third-country recognitions will be consulted on with stakeholders as part of the decision-making process. I add in answer to a number of points that the organic sector desperately needs this—I think noble Lords agree with that and understand it. We are not making this change in the teeth of opposition from the organic sector; it wants a simple, streamlined process.

The noble Baroness, Lady Bakewell, and a number of other noble Lords asked about parliamentary oversight of the approval of third countries and third-country control bodies, and that point was also raised by the SLSC. We believe that, given the administrative and low-impact nature of amendments to the lists of recognised third countries and third-country control

bodies and the very detailed technical assessment required by this instrument to add a country or control body to the list, scrutiny at official level is appropriate. The recognition of a third country's organic standards as equivalent is based on an extensive technical evaluation of the third country's organic standards to ensure that they are comparable to the UK's standards, and an evaluation of its enforcement mechanisms to ensure that those standards are being met in practice. The final decision will have Secretary of State oversight, and, if recognition is agreed, the third country must meet continuing obligations, including the provision of annual reports and notification of infringements or changes to standards.

It was asked why reference to EU equivalence is made until 31 December 2023 and what will happen after that date. In the EU-UK Trade and Cooperation agreement we committed to recognising the European Union as equivalent for the purposes of organics until 31 December 2023 and vice versa. This is in line with the convention for EU recognition of third countries for organics, which is limited to three years at a time. We will use the recognition provided by this SI to reflect our recognition of the EU in our official list. This SI will allow us to move our recognition of the EU on to official lists. At the end of the current recognition period, equivalence will need to be renegotiated between the UK and the EU. Our intention is that, when the current mutual recognition ends, we will seek to renew it.

On whether this SI will allow the Secretary of State to lower organic standards, the noble Baroness, Lady Jones, makes an important point. The key point of this is to maintain organic standards; that is what we need for international trade, and that is what the sector wants. The UK standards for organic production, which third countries must equal if their goods are to be recognised as equivalent and imported to the UK, are set out in retained regulations 834/2007 and 889/2008. Amendment to these regulations requires a statutory instrument, so will require parliamentary scrutiny. I think that that point answers a number of the queries made. The Secretary of State cannot simply decide to amend these standards, and it is not in our interests to lower those standards, because it would affect our ability to trade with other countries.

The standards for third-country organics recognition are set out in articles 32 and 33 of retained EU regulation 834/2007 and 1235/2008. There is detailed technical guidance on what will be required to recognise a country as equivalent—for example, carrying out a full standards comparison, reviewing a technical dossier, conducting annual reviews and carrying out audits.

On the point about the Trade and Agriculture Commission, I respectfully take a different view from the noble Baroness. Its views are not ignored; it is a relatively new body, and we want to make sure that it works. It is vital that it works for farmers and the UK economy.

I was asked why Defra cannot publish the lists on GOV.UK without taking them out of legislation. Defra could publish copies of the lists of third countries and control bodies on GOV.UK without removing them from legislation, but that would not solve the main issue, which this SI seeks to resolve. Lists published on GOV.UK would not be legally binding if they were not underpinned by the correct legislation. Port health authorities, for example, would not be able to work on the basis of those lists when checking which organic products may be imported into this country. In such a scenario, any change would still require that a new SI be passed.

I have already touched on the question about ongoing disagreements on aspects of organic regulations and whether they are retained and devolved, but I shall be open with noble Lords. There is an ongoing disagreement between the UK Government and the devolved Administrations about whether certain aspects of implementing trade policy are devolved or reserved. That disagreement is not specific to the organic sector. The source of this dispute is over the question of what is or is not reserved. While it is agreed that trade is in general a reserved matter, there is a dispute over whether domestic enforcement of agreements is reserved. To allow the continued functioning of the organic sector, the four Administrations agreed that Defra should remain the UK competent authority and they should work together through the four nations working group. Although this issue has not been resolved, it is not affecting day-to-day operations—that is absolutely key. The process of seeking a legal resolution would be costly and time-consuming, and therefore the Administrations have not considered it necessary.

I re-emphasise that we are not doing this to the organic producers—we are doing it for them; it is a measure that they want. We are setting up an expert working group that will work with Defra officials to determine whether a third country or third-country control body has an equivalence to GB standards. Consultation will also take place within the sector, and this will be considered before the Secretary of State agrees to any recognition.

With that, I hope that I have answered your Lordships' questions and that noble Lords share my sense of the need for this instrument to streamline the existing process for amending lists of third countries and third-country control bodies recognised as compliant and equivalent by the UK and to facilitate the trade in organics between the UK and EU. As outlined in my opening remarks, the instrument will allow for the timely extension of EU recognition until the end of 2023, as agreed in the trade and co-operation agreement, as well as avoiding any unnecessary disruptions to trade caused by inaccurate information in legislation.

I believe that I have answered all noble Lords' questions, but I shall have to check *Hansard*. I hope noble Lords will forgive me if I have missed any out, and I shall reply in writing.

Motion agreed.

Water and Sewerage Undertakers (Exit from Non-household Retail Market) (Consequential Provision) Regulations 2021

Considered in Grand Committee

4.25 pm

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

That the Grand Committee do consider the Water and Sewerage Undertakers (Exit from Non-household Retail Market) (Consequential Provision) Regulations 2021.

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, the technical amendments in this instrument, which was laid before the House on 21 July, amend the Water Industry Act 1991 to reapply developer service duties to water and sewerage undertakers —generally known as water companies—operating in retail exit areas wholly or mainly in England.

As part of competition introduced into the water sector, a "retail exit area" is where a water company, such as Thames Water, has transferred its "retail"—business or non-household—customers, such as supermarkets, to a separate company or "retailer". The retailer liaises with Thames Water for the water and sewerage services to be provided to the business customer and the retailer bills the business customer for the services and offers it advice on how to improve its use of water.

This market allows business customers to have all their water and sewerage services looked after by one retailer, saving them time and money in dealing with billing for these services. This was not possible when water companies dealt with business customers directly. The market also enables retailers to work directly with housing developers for their water and sewerage services, which they need when building new homes, as housing developers are of course also businesses.

To set up the developer services for retailers, we disapplied some water company duties through the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016. These disapplications have had unintended consequences for developer services, which is why we are now seeking to reapply the duties and to set up developer services for retailers in a slightly different way. I should make it clear that all the amendments introduced by this instrument are therefore technical operability amendments and do not introduce any policy changes.

The Water Industry Act 1991 is the principal piece of legislation setting out the duties and functions of water companies in England and Wales. The retail market is a devolved matter and the 2016 regulations applied to English water companies only. The market opened in April 2017, but water companies did not all transfer business customers to retailers when the market opened. The last water company to transfer its business customers to a retailer was in 2019. The effects of the way in which the developer services market was set up were therefore not fully realised for a few years after market opening.

When setting up the market for developer services, Defra recognised that some developers might still wish to work with the water company for the housing developer services, for example. We envisaged that housing developers choosing this route would make their own contractual arrangements with the company. However, in subsequent discussions with Ofwat, the economic regulator of the water industry, and with the water industry itself, it emerged that contractual arrangements are not straightforward. They do not sufficiently replicate the water company duties within the 1991 Act that were disapplied and the unintended consequences include Ofwat no longer being able to determine complaints from a housing developer about the developer services provided, as well as water companies having restricted access to water and sewerage pipes to maintain them.

Retailers are also choosing largely not to be part of the developer services market, for two principal reasons. The first is that, due to the technical nature of developer services and the expertise required, retailers are generally not big enough to be able to provide that. Secondly, as most residents of new developments are household rather than business customers, the retailer does all the work to get the water and sewerage connections made but then must transfer the household business to the water company, so the retailer does not increase its customer numbers.

4.30 pm

This statutory instrument is therefore needed to resolve those issues. It makes no changes to the water retail policy for developer services; it just enables us to refine our legislative approach for how we are delivering it. It reapplies developer services duties to water companies but with modifications to those original duties. That will enable water companies to provide developer services to housing developers without the need for separate contractual arrangements.

The SI addresses the unintended consequences, such as Ofwat being unable to determine complaints, but still enables retailers to continue to provide developer services if they wish to do so. We have also modified those duties, so that if a developer first approaches the retailer for the service and they choose to undertake it, the developer cannot then change its mind and ask the water company to provide the services directly to it instead.

My department is presently reviewing progress in the whole retail market through a post-implementation review of the 2016 retail exit regulations. Our post-implementation review will look at progress since the 2017 market opening in the round, and it will be completed in the new year.

Both the JCSI and the SLSC have formally considered this instrument and approved it. In line with published guidance, there is no need to conduct an impact assessment for the instrument; this is because no—or no significant—impact on the private or voluntary sector is foreseen, as the instrument relates to the maintenance of existing regulation. The territorial extent of the instrument is England and Wales. The territorial application of the instrument is England. I commend the draft regulations to the House.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for talking us through the regulations today. I remember that, when the original legislation went through—rather than the regulations themselves—concern was expressed about what would happen if a retail company were to fail. I do not know whether that has been resolved in the existing regulations; as my noble friend has explained, it seems that these regulations apply to that very narrow area of a retailer providing services to housebuilders.

I want to take this opportunity to ask a question in that regard. My noble friend is aware of my passion for SUDS—sustainable drains. Where housing developers

build major new developments, is it envisaged within the original regulations that SUDS could be applied as a condition of planning permission for the work being agreed?

The Explanatory Memorandum says that the instrument—I believe it is the second regulation—will

"reinstate the … duty on undertakers to provide connection services, on request, in retail exit areas".

Is that deemed to be an automatic right to connect? Is there any leeway to ensure that we can actually insert a condition that SUDS must at that stage be envisaged? That could save any contribution to flooding down the line.

The Explanatory Memorandum says at paragraph 7.3:

"The main retail services provided to non-household customers through the retail market",

as my noble friend said,

"are billing and administration services. However, with the opening of the market, it was designed so that retailers could also provide new water and sewerage connections services to business customers."

My noble friend said that this was limited. Has it been so limited as to have never actually happened, or has it happened in literally only one or two cases? Paragraph 7.3 goes on to say:

"These services primarily concern connections to water and sewerage services for new developments, involving predominantly housing developers."

My noble friend is aware of my interest. I latched on to something he said during the passage of the Environment Bill before it went to the other place: the automatic right to connect no longer being automatic. Will that apply in these as well as other cases?

Paragraph 7.6 goes on to say: "We"—and I presume the "we" is the Government—

"consider that 'non-household premises' includes new housing developments which are under construction before anyone is using the premises as their home."

Does that mean that existing housing developments do not fall into this category? Is there any chance that the regulations before us this afternoon will apply to those existing housing developments? It goes on to say that

"Until people move in, we consider that a development does not fit that definition",

as given in that paragraph. On what basis has the department reached that conclusion? What background brought it to that position?

Paragraph 7.7 says that

"There are several unintended consequences",

as my noble friend set out,

"of the 2016 Regulations' amendments. These concern new connection services, the laying, inspecting, maintaining, adjusting, repairing".

I still maintain, as I am sure my noble friend is aware, that, when making these new automatic connections automatic, we are dealing with Victorian, antiquated piping. Whether it is the retailer or the water company providing these services, the pipes are deemed to have to connect. At the moment, the water company is not a statutory consultee, whereas the Environment Agency, for example, is; I do not believe that the advice the water company is giving planning authorities has the same legal force as that from the Environment Agency.

I ask my noble friend whether the problems with the regulations set out in Paragraph 7.7 could be avoided by ending the automatic right to connect. It is unacceptable; we have an opportunity, at this stage in the regulations, for the water company or retailer to say that they cannot make physical connections when housing developments are being made and that there will be overflow into the storm drains and the possibility that sewage will come back into either the new developments or, worse, existing developments that have not been affected in the past.

I welcome this opportunity to ask questions on those points, with a special emphasis on whether sustainable drains can be part and parcel of this, and that the water company or retailer should say whether the existing infrastructure simply cannot take the amount of wastewater envisaged to come out of any new houses.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for introducing this SI and for his comments. On the face of it, it seems like a straightforward change in the legislation to bring the retail sector into line with domestic housing arrangements following the changes made in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016. I note that this instrument relates only to England, but the extent of it is England and Wales where there are cross-border issues.

The water and sewerage industries were privatised in England and Wales in 1989. In 2014, reform of the Water Act enabled competition in the market. In 2016, the transfer of non-household retail business prevented the provision of retail service to new non-household customers that arose in its area. Given what we now know about the effects of supply and demand on water and sewerage systems, this would seem a sensible step.

Paragraph 7.4 of the Explanatory Memorandum enables

"developers to make new connection requests to their retailer."

There is no mention in the Explanatory Memorandum, nor in the instrument itself, of whether there would be capacity for new development to be safely connected under the automatic right to connect, which the noble Baroness, Lady McIntosh of Pickering, has already mentioned.

The Minister will know that during the passage of the Environment Bill there were many debates about the effect of effluent being discharged into rivers, lakes and other watercourses and the extremely detrimental effect this has on both water quality and the wildlife that previously inhabited those areas. I ask the Minister whether the local relevant sewerage and water capacity will be part of the consideration when developers apply for connection for retail. The automatic right of developers to connect for housing developments has caused considerable problems, not only in effluent discharge, but has contributed to localised flooding during prolonged periods of rainfall.

This is a minimal change to the legislation, but the legislation relating to domestic properties is far from perfect. Once the drainage and sewerage management plans are in place, that should ensure better collaboration between developers and those dealing with the supply of water and disposal of sewage. But these are not yet in place. Duties in Section 41 and 45 no longer apply to premises in a retail exit area. To indicate that new households under construction are not classified as household

[Baroness Bakewell of Hardington Mandeville] premises until people move in is somewhat late in the day to deal with capacity issues and whether sewerage systems are able to cope with the additional demand.

A Section 98 duty to comply with sewer requisition is the duty to provide a public sewer or a lateral drain. This appears not to apply in relation to premises in the retail exit area that were not household premises. Just what is the legal obligation to ensure that there is sufficient capacity in the sewerage system for new connections from retailers? This might be a small retail outlet, or it might be retail premises relating to an already overlarge housing development, which would be a much larger connection.

I am sure the Minister can understand my concerns and I would be grateful for his reassurance that capacity will form part of the connection requirements. I note that a consultation period took place between 29 April and 25 May 2021. This period included a bank holiday. Seventeen responses were received but the EM does not say whether Water UK or the Consumer Council for Water were among those. However, I understand from officials that, since there were responses from some water providers if not from Water UK itself, there seems to have been a general positive agreement in the industry in response to this SI.

I would be grateful for the Minister's clarification on the consultation exercise. I understand why Defra has introduced this new measure but remain extremely concerned about the effect on flooding of connecting retailers to the sewerage system without first checking that the system has the necessary capacity.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction to this SI. I am sure he will be relieved to hear that we accept that it is broadly technical in nature and, as such, will not be opposing it. It deals with relatively small consequences of the reform of the water industry and the right of water companies to exit the non-household retail market in their sector. As the Minister has said, several unintended consequences have arisen from the new provisions and this SI deals with one such anomaly relating to new housing developments.

I have to say I was amused to read the Commons Minister Rebecca Pow stating when introducing this measure that it was underpinned by the Government's commitment to

"strong, independent regulation that protects customers and the environment"—[*Official Report*, Commons, Delegated Legislation Committee, 22/9/21; col. 4.]

because, arguably, that is exactly what we do not have. This is why water companies such as Southern Water get away with regularly pouring sewage into our rivers and sea with no comeback from their customers or for their customers. But I accept that that is a slightly wider issue than the SI before us today.

4.45 pm

The Minister in the Commons also argued that while water companies did not have to provide the water connection service for new development under the existing regime, they

"have stepped in to carry out the role even though, legally, it was not actually in their power. They did not have to do it, but out of the generosity of their hearts they have carried on doing it."—[*Official Report*, Commons, 22/9/21; col. 6.]

This generosity is a whole new side of the water companies that many of us will be rather unfamiliar with, but I am interested in the consequences of changing the regulations in the way that is being proposed. As the noble Baronesses, Lady McIntosh and Lady Bakewell, have said, many of us have been concerned for some time with the expectation that water companies are obliged to connect new developments to existing water and sewerage systems, even when they know that the infrastructure does not have the capacity to carry this extra load.

Will water companies be able to operate with more discretion about which housing developments they provide connection services for under these new provisions? Would they be able to insist that the system must be underpinned by sustainable drainage systems before they connect them? In other words, what new flexibility and powers will the water companies have under these changes? Can the Minister also clarify whether there will be any additional costs when they are no longer acting out of the generosity of their hearts, and will those costs be passed on to the customer?

Finally, can I ask about the devolution implications of this provision? This SI deals with the water and sewerage industry in England. Given the complexities that have been thrown up by the changed legislation and the 2016 regulations, do the devolved nations have an equivalent scheme, or have they found a more straightforward way of regulating the supply of water to the non-household retail market, which has not thrown up these anomalies? Is there an opportunity to learn from what might be better practice in the devolved nations?

I look forward to the Minister's response.

Lord Goldsmith of Richmond Park (Con): My Lords, I thank noble Lords who have contributed to this debate. If nothing else, it has highlighted the complexity of the water industry and the legislation which governs it.

My noble friend Lady McIntosh takes a very keen interest in this issue, as I have discovered since taking part in these debates. The right to connect is an issue that she has raised before and which has been discussed at length in connection with the concerns raised during the passage of the Environment Bill over storm overflows, in particular the right to connect surface water drains to foul sewers. This is outside the remit of developer services and these regulations, which concern only the construction of new sewers and the connecting of new homes to wastewater sewer services. However, in providing developer services, water companies will often proactively discuss with the developer how they will drain their sites, suggesting ways to avoid connecting surface water drains to foul sewers.

The issue of possible failure is being considered as part of the post-implementation review, and Defra is reviewing SuDS as part of our review of Schedule 3. My noble friend raised the issue of retailer involvement. Some retailers have been involved with the new connections but mainly with retail developments. Most retailers are referring developers to water companies.

The noble Baroness, Lady Bakewell, raised issues around network capacity. Amending the duties to reference capacity would effectively be a new duty on

water companies and would therefore also be out of the scope of these regulations. Also, reapplying Section 98 would also reapply Sections 99 and 100, which concern the financial arrangements regarding any new public sewer. Section 100(4) enables the water company to include in the costs charged to the developer the costs reasonably incurred in providing new public sewers and any reasonable proportion of costs incurred to provide additional capacity in existing sewers that have been constructed in the previous 12 years.

My noble friend also raised the issue of drainage and sewerage plans. Plans are currently being produced now for drainage and sewerage management. Draft plans will be consulted on in April next year, and these are currently non-statutory. My noble friend asked whether the Consumer Council has responded to the consultation. The answer is yes. We also spoke at length with Water UK, which agreed with the changes.

Many of the hugely important issues raised by the noble Baroness, Lady Jones, were debated during the passage of the Environment Bill. She raised the case of Southern Water, whose pollution of our waterways has been met with a reaction from the courts, leading to fines and so on. The regulatory regime that governs water companies and the pollution of waters and rivers is an issue that has been raised effectively by my noble friend the Duke of Wellington through various amendments. There is no doubt that the water companies will have to step up and that Defra will have to take a more robust approach to dealing with them. I do not think that anyone in the country regards the pouring of raw sewage into our waterways as a routine matter, as opposed to an emergency situation for the prevention of deaths. It is not acceptable, and that is our view in Defra.

We have been working closely, and discussions will continue, with my noble friend the Duke of Westminster —the Duke of Wellington. I can only apologise to my noble friend, for the fourth time; it is becoming a tick that I cannot rid myself of. Someone is playing games with me.

Baroness Bloomfield of Hinton Waldrist (Con): Not me.

Lord Goldsmith of Richmond Park (Con): It is my noble friend Lady Bloomfield.

I look forward to meeting my noble friend the Duke of Wellington shortly to discuss progress on some of the issues that he raised.

The noble Baroness, Lady Jones, raised the devolved nations. Scotland has its own process; Wales does not have a retail system in place. We are exploring the Scottish process with it, as part of the post-implementation review.

The noble Baroness also raised the issue of water companies providing the developer services. Water companies have provided services, in discussions with developers, and ensure that discussions about connections to sewers and SUDS provision occur to reduce surface water being sent to public sewers.

I think that I have answered the questions that were raised, so I will close there. All the changes introduced by this instrument, as the noble Baroness, Lady Jones, noted, are technical, operability amendments required to ensure that we are able to continue to operate the regulations and the retail market appropriately. They make no changes to water retail policy for developer services; they just enable us to refine our legislative approach to how we deliver them. I therefore commend the draft regulations to the House.

Motion agreed.

Airports Slot Allocation (Alleviation of Usage Requirements) (No. 2) Regulations 2021

Considered in Grand Committee

4.55 pm

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

That the Grand Committee do consider the Airports Slot Allocation (Alleviation of Usage Requirements) (No. 2) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these draft regulations will be made under the powers conferred by the Air Traffic Management and Unmanned Aircraft Act 2021, known fondly by everybody as ATMUA. ATMUA created a more flexible set of powers for Ministers to implement slot alleviation measures related to the impacts of Covid-19, subject to a vote in both Houses. It allows us to tailor our response in ways that were not possible beforehand.

Ordinarily, airlines must operate slots 80% of the time to retain the right to the same slots the following year; this is known as the 80:20 rule or the "use it or lose it" rule. However, the powers provided by ATMUA enable the Secretary of State to provide alleviation from this rule if he is satisfied that there is a reduction in demand due to the Covid-19 pandemic and that the reduction is likely to persist.

Under ordinary circumstances, the 80:20 rule helps to encourage efficient use of scarce airport capacity while allowing airlines a degree of flexibility in their operations. In response to the Covid-19 pandemic, the EU Commission waived the 80:20 rule for the summer 2020 and winter 2020 seasons. Following the UK's departure from the EU, the UK Government decided to extend this waiver to cover the summer 2021 season, going through until the end of October 2021, through the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2021.

Through the provision to airlines of legal certainty that they would be able to retain their slots even if not operated, the commercial impacts of the Covid-19 outbreak on the industry were mitigated. This is because airlines might otherwise have opted to incur costs and operate flights at low load factors merely to retain slots. That would have been bad for emissions and, of course, bad for their finances.

Due to continued uncertainty and low passenger demand forecasts, we set out a package of measures on 19 July to alleviate slot usage requirements for the winter 2021 season, which runs from 31 October 2021 through to 26 March 2022. This package was developed following consultation with the aviation industry and

[Baroness Vere of Norbiton]
careful consideration of the responses that we received. Industry expressed a range of views, ranging from calls for a full waiver to support for no alleviation at all.

The draft instrument being considered today applies to England, Scotland and Wales. Aerodromes are a devolved matter in relation to Northern Ireland and, as there are no slot co-ordinated airports in Northern Ireland, the Northern Ireland Executive agreed that it was not appropriate for the powers of the Act to extend to, or apply in relation to, Northern Ireland.

In the draft instrument, the Government have set out a package of alleviation measures designed to work together. These include changing the minimum usage ratio to 50:50, meaning that airlines are required to use their slots at least 50% of the time to retain the right to operate these same slots the following year. The reintroduction of a utilisation rate should encourage efficient slot use while also supporting sector recovery.

Secondly, the draft regulations also allow airlines that hand back a full series of slots to the slot co-ordinator—

4.59 pm

Sitting suspended for a Division in the House.

5.06 pm

Baroness Vere of Norbiton (Con): My Lords, we were talking about the content of the SI and discussed the first element, which changes the minimum usage ratio to 50%.

The second element is that the regulations allow airlines which hand back a full series of slots to the slot co-ordinator before the start of the season to retain the right to operate that series of slots the following year. This will provide an opportunity for other airlines, including new entrants, to apply for and operate these slots on a temporary or ad hoc basis. This measure will apply to traded and leased slots but not to newly allocated ones; this is to prevent carriers acquiring slots with no intention to operate them. Airlines which have announced that they have permanently ceased or will permanently cease operations at an airport before the start of the winter 2022 season will not benefit from this measure in winter 2022.

Finally, the draft regulations expand the reasons which airlines may use to justify not using slots to include Covid-19-related restrictions. This provides a backstop against the risk of unforeseen Covid-19-related measures or restrictions being imposed during the season. This will apply where unforeseen Covid-19-related measures—including flight bans and quarantine or self-isolation requirements—are applied at either end of a route and have a severe impact on demand for the route or its viability. It will apply where restrictions could not reasonably have been foreseen in time to hand back the full slot series. There will be a three-week recovery period during which these provisions, sometimes known as force majeure, may still apply following the end of the Covid restrictions. These measures will cover the winter 2021 scheduling period, as I have noted. We are currently considering alleviation for summer 2022 and plan to consult with industry to inform our policy decision later this year.

This instrument provides necessary relief for the aviation sector for the winter 2021 scheduling period. Through this package of measures, we have aimed to strike a balance between supporting the financial health of the sector and encouraging recovery. I commend this instrument to the Committee.

Baroness Randerson (LD): I thank the Minister for her very clear explanation. I certainly appreciate the need for these adjustments to take the heat off the airlines during what is still a difficult time for aviation.

I note that one of the reasons why the non-use of slots is justified is a result of government-imposed measures which make routes unviable. It is a pity that the airlines are getting the benefit of this alleviation on slot allocation when there appears to be no clear obligation on those same airlines to return money to consumers on the basis of the same government restrictions on flying. Not all airlines by any means have behaved badly, but the CMA has recently cited a lack of clarity in consumer legislation for its abandonment of attempts to ensure that all airlines did the decent thing and offered proper refunds. Can the Minister say whether the Government have any intention to clarify consumer law?

I note also that there has been no impact assessment because this legislation is designed to be for a period of less than 12 months. But in fact, although it sets out rules for 2021-22, it also bestows rights to the control of future slots into 2023. That is what the winter period of 2022 becomes—it moves over into 2023. This situation has already existed for 18 months, and, as the Explanatory Memorandum itself points out, slots have significant competitive operational and financial value. Taken together, this will have a distorting impact on the industry—it can have nothing else. The Explanatory Memorandum warns of the impact on smaller airports and the likelihood that the relief to a 50% level for the use of slots will have an impact on small airlines wanting to accumulate new slot rights at congested airports. Therefore, although this measure is undoubtedly environmentally desirable and commercially necessary at this time, it will favour the big and established airlines. I would be interested to hear the Minister's comments on that.

Paragraph 7.6 of the EM recognises the dubious practices of some airlines, which seek basically to game the system by seeking to accumulate new slots for this winter which they have no intention of using, simply to gain historic rights for use in the future. So my question to the Minister is this. In the past, Gatwick has had some concerns about what it saw as unfair hoarding of slots. Is the Minister aware of this issue—I am sure she is—and has it been resolved to the satisfaction of Gatwick Airport?

Paragraph 3.1 of the EM refers to reasons for delay in laying the draft SI and the need to use the latest data on the level of air traffic. Can the Minister please give us an update on what the latest level of air traffic is at the moment? What percentage are we up to compared with 2019, for example?

Finally, is the Minister aware of what action our neighbouring countries are taking on this issue? Are they taking similar action on slots? Everyone started from a similar position on the rules on slots across the

EU and in neighbouring countries. In the early period of the pandemic, I recall that they all moved forward in a fairly similar way. Are we still in tune with the actions of our neighbours?

5.15 pm

Lord Rosser (Lab): I too thank the Minister for her explanation of the content and purpose of this instrument, which comes into force at the end of this month. As has been said, in essence, the effect of this statutory instrument is further to suspend the usual rules that UK airport slots must be used for 80% of the time to minimum to avoid the airline concerned losing the slots for the following season. The suspension is due to the Covid-related reduction in air traffic.

The 80:20 rule was waived by EU legislation for the summer 2020 slot-scheduling season and for the winter 2020-21 season, and the Government put in place a similar waiver for the summer 2021 season, which runs until 30 October. In the light of current UK flight traffic levels, the Government now consider it necessary to provide continuing relief and amend the 80:20 rule to cover the winter 2021 season, which, as the Minister said, runs from 31 October this year to 26 March next year.

These regulations make three changes in relation to slots allocated for the winter 2021 season, as set out by the Minister in introducing this statutory instrument, including reducing the required percentage rate from 80% to 50%. The regulations also enable an air carrier to retain rights to a series of slots for the winter 2022 season, if it returns the complete slot series on or before 7 September 2021. Could the Government say how many and which air carriers—if the date was 7 September 2021—have exercised their rights under that part of the regulations?

Earlier this month, it was reported that while easyJet operated at 58% of its 2019 capacity during the summer months, that was expected to increase to 70% over the winter months. Do the Government regard 70% capacity over the winter months as a likely figure for industry-wide levels, and, if not, what capacity figure do the Government expect over the coming winter months? How confident are the Government that this will be the final suspension of the 80:20 rule due to the Covid-19-related reduction in air traffic? I take it that the answer is "not very confident" from a comment that the Minister made, I think, in relation to the summer of next year. If the Government are not confident, is consideration being given to lowering the 80% level at some stage, on a more permanent basis?

The Government's Explanatory Memorandum states:

"The Department for Transport received 54 responses to the consultation from air carriers, airports, and trade and representative bodies."

Since it is not clear from the EM, how many of those responses supported all three of the changes made by these regulations, as set out by the Minister, in relation to slots allocated for the winter 2021 scheduling period? Since it is not clear from the EM how many of those responses supported all three, could the Government now provide that figure? I await the Government's response.

Baroness Vere of Norbiton (Con): I thank the noble Baroness, Lady Randerson, and the noble Lord, Lord Rosser, for their contributions to the short debate today and for their welcome—I think—for these regulations. I think they do the right thing for the industry. As ever, both have asked me questions that I am unable to answer today, so I shall be writing, but, in the meantime, I hope to run through a few of the elements that have been raised.

First, it is worth reflecting on where the aviation sector is at the moment. Obviously, it remains not where we want it to be, but it is in a much better place than it was. As of the end of September 2021, UK flight traffic continues slowly to recover but remains 49% below corresponding 2019 levels. Even with the ongoing relaxation of restrictions and the anticipated reopening of travel to the US, Covid-19 is likely to remain a considerable source of uncertainty for some time. I think that also addresses the point made by the noble Lord, Lord Rosser, who asked where we see things going in the future. It is not really possible for us to say what we think capacity is going to be like over the winter months, and certainly we will need to maintain as much flexibility as possible. We have to make sure that we discourage slot hoarding and inefficient slot use. We need to make sure that we support the airlines' financial health as much as we can, and we have to protect future connectivity, both domestically and internationally.

Part of what the Government are working hard on at the moment is what the future for aviation looks like, because we recognise that it has been an incredibly challenging time for what feels like a long period now and the sector is vital to our future as a global trading nation. My department is working on a strategic framework for the aviation sector which will focus on building back better and ensuring a successful UK aviation sector in the future. The framework will explore a number of issues, including workforce and skills, regional connectivity, noise, innovation and regulation, and the consumer issues so rightly highlighted by the noble Baroness, Lady Randerson. The framework will of course also consider climate change and decarbonisation, as well as the role that aviation plays in the UK's global reach. We hope to have that published by the end of the year. I look forward to discussing it with noble Lords then.

The noble Lord, Lord Rosser, asked what proportion of full slot series have been handed back. I do not have that data, and I am not entirely sure that we would have it, for commercial reasons, but if I am able to find out a bit more information I shall certainly write to the noble Lord and set it out. Whether they use slots has to be a commercial decision for the airlines; they will take into account the services and routes they operate. The provision allows them such flexibility so that they are able, before the start of the season, to do something about what they think is going to happen if they potentially have too many slots that it is clear they will not need. We are aware that a number of airlines have returned their slots and then reapplied for a proportion of them as ad hocs. This is a legitimate use of the provisions, which are designed to promote flexibility. These slots may of course have been allocated to another carrier. In those circumstances, the decision is not exactly risk free, but it was obviously the right one for the airlines that chose to do that.

[Baroness Vere of Norbiton]

The noble Lord, Lord Rosser, also asked for greater detail on the breakdown of the 54 respondents and who felt what about which of the interventions we are proposing. I do not have that. I have said previously that there was a range of views. We felt that the 50% minimum usage threshold was supported by the largest number of respondents, and it is consistent with proposals being put forward by IATA—again, that is helpful.

The noble Baroness asked what the EU is doing. It is doing something fairly similar at the moment. I think we have slightly more flexibility because we have the powers under ATMUA, but, given that aviation is so interconnected, we look at what the EU is doing as well as at what is happening in the US, where domestic flights have continued to a significant degree but international flights have not. We believe we have the right balance.

The noble Baroness, Lady Randerson, asked about an impact assessment and highlighted some of the impacts that have been set out very well in the Explanatory Memorandum. There are pros and cons. It is a careful balance that we are trying to achieve, but a formal impact assessment is not needed—obviously, my officials checked this out carefully—because the regulations apply for a six-month period; that is, it is less than 12 months. However, we have done what we can to set out clearly the benefits and potential disbenefits of the interventions in the Explanatory Memorandum. Given that our interventions are matched by so many other countries, I believe it is probably the right way to go.

I turn to some of the longer-term issues relating to slots. It is the case that we are considering the whole slot allocation system as part of future aviation policy. We are not entirely convinced that the current system is working as efficiently as it could. It is worth looking at it because, as we recover from the impacts of Covid-19, we want to make sure that we have the right level of competition to ensure that the customer gets the best levels of connectivity and indeed price. This work will involve consultation with our international partners and all our UK stakeholders. It is not a small endeavour but it is something that we will be looking at in future.

Without the instrument, we would return to the default 80:20 slot usage rule. I do not believe that noble Lords want to go there and no one has indicated that that is the case. I therefore think that the instrument provides an appropriate way forward and I beg to move.

Motion agreed.

Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2021

Considered in Grand Committee

5.26 pm

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

That the Grand Committee do consider the Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2021.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the two instruments that I am speaking to today, along with the Heavy Commercial Vehicles in Kent (No. 3) Amendment (No. 2) Order 2021, are a package of measures and it is important that they should be debated together. I am grateful to the House for facilitating this. While the Heavy Commercial Vehicles in Kent (No. 3) Amendment (No. 2) Order 2021 requires the negative procedure, it should be taken into account when considering the two amending orders, as it completes the whole picture. Taken together, they support the effective management of Operation Brock and strengthen the enforcement regime that underpins it.

As noble Lords will be aware, the Government have been working with partners in the Kent Resilience Forum to continue to develop Operation Brock. Operation Brock is a co-ordinated multiagency response, owned by the Kent Resilience Forum, to manage heavy commercial vehicle traffic during cross-Channel travel disruption, specifically when capacity for HCVs to leave the UK through the Port of Dover or the Channel Tunnel—together, the short straits—is significantly restricted.

In the instances to date when Operation Brock has been deployed, it has successfully managed to limit the effects of traffic disruption on freight traffic and other road users, both on the main motorway and local road network. We need to be able to continue to use Brock should cross-Channel disruption occur in future—for example, due to bad weather or industrial action. The existing legislation will expire at the end of the month and the amending orders seek to put it on a stable footing by removing the sunset clauses. Together they are a vital part of Operation Brock, as they provide the enforcement and the traffic restriction regime that underpins its operation.

By way of background, the legislation was first put in place in 2019 in preparation for a potential no-deal departure from the EU. It was updated in 2020 in preparation for the end of the EU transition period and once again in 2021 in response to the coronavirus pandemic.

The No. 1 2019 order provides powers to traffic officers to support Operation Brock and sets the amount of the financial penalty deposit for breaching restrictions created by the three orders. The amount of the deposit for breaching the restrictions introduced by the instruments is set at £300. The No. 1 amendment order removes the sunset clause and removes references to redundant offences from the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 to reflect amendments made by the other amending orders.

The No. 2 2019 order restricts cross-Channel HCVs from using local roads in Kent other than those on the approved Operation Brock routes when Operation Brock is active. The amending order updates which roads are restricted and removes the sunset clause.

To complete the picture, the Heavy Commercial Vehicles in Kent (No. 3) Amendment (No. 2) Order 2021, which is subject to the negative procedure, will again remove the existing sunset clause provisions from the No. 3 2019 order. That order restricts access for cross-Channel HGVs to the motorways in Kent, including the contraflow on the M20 and use of the M2, when Operation Brock is active.

To summarise, these amending instruments continue the powers from the 2019 orders by removing the sunset clause. In doing so, Brock will be an available option for the Kent Resilience Forum to keep traffic moving to, from and through Kent. These orders remove the extraneous elements that are no longer needed—the provisions relating to the EU transition period and to the Covid-19 pandemic, which were intended to be temporary. We wanted to underpin the core enforcement and traffic restrictions of Brock for the longer term. These orders are of vital importance to allow sensible traffic management in Kent. Operation Brock has proven to be an efficient traffic management measure. I commend the orders to the Committee.

5.30 pm

Lord Naseby (Con): My Lords, I am grateful to my noble friend on the Front Bench for expanding a little on what is in orders No. 1 and No. 2. I took the opportunity to have brief consultations with some hauliers in my former constituency of Northampton South. I will go through the paragraphs of the Explanatory Memorandum that I think are relevant; they are coterminous across the two orders.

My noble friend talked at some length about the sunset clause, in paragraph 2.6. In my experience in both Houses, the purpose of a sunset clause is that it is a time to review a situation. It ensures that the department involved knows that there is a particular time when the order, or whatever it may be, must be reviewed. If the Government of the day decide that they no longer need it, okay, it is finished. But my noble friend said that they would like to keep it, just in case they might need it at some future time. With great respect, that is a burden on the industry because hanging over it is the fact that, at any point in time, Her Majesty's Government can suddenly bring it in again, even though it is in a modified form. My conclusion is that there should be a sunset clause, maybe in 10 years or whatever is an appropriate time, because that ensures that there is then a proper review. Otherwise, all we do is add to legislation sitting there to no purpose. That is my view on that.

On paragraph 7.1, has there been any report on the review of the effectiveness of Operation Brock? That is an important dimension, particularly to hauliers. There is no mention that there has been, but I would have thought that somebody must have done one and that, if they have, it ought to be published. On paragraph 7.3, is my noble friend saying that the requirements listed are definitely no longer needed at all—in which case, has this been publicised sufficiently to the industry?

Paragraph 7.6 is about the supply chain, which we all know is causing a problem. Do Her Majesty's Government expect normally not to need any further legislation, as has happened over the recent change on inviting in foreign truck drivers? No legislation was needed and an announcement was made. While I am on that, I have to say frankly that it has gone down like a lead balloon among UK hauliers, for two reasons. First, the hauliers ask, "If the short-term people from the continent can be given multi-drops and pick-up cabotage in a difficult situation, why on earth are we UK hauliers not allowed to do that?" Quite frankly, there is a great problem out there—it is painfully obvious—so if we are giving it to the foreigners coming in, which I welcome, why are our own people not allowed to do the same for a short period as well?

Paragraph 10.2 on consultation says that there were just 14 responses. I am not quite sure how to read that. Is that 14 companies—if it is, it would have been helpful to list them as companies—or 14 people who are interested in the industry who have responded? What is it? The universe of that is really quite important. If it is companies, is it just companies using Dover, or is it some other universe? It would be enormously helpful if my noble friend could tell us what the universe is.

The haulier handbook in paragraph 11.1 is very welcome and the trade welcomes that. Regarding the 17 locations, I am not quite clear, but I assume that this affects all ports trading between the UK and the EU. I did not have time to work out how many ports there are, but it must be a fair number. So, if the 17 locations are all related to Dover, that is fine, but if they are across the UK then that is not quite so fine.

Finally, I raised the training of HGV drivers with my noble friend on the Floor of the House the other day. My noble friend will know that there was a scheme for professional career development loans for drivers and for some reason it was closed in 2019. The amount of the loans available were from £300 to £10,000. These were for families that were probably not that well off and probably could not find that money very easily. If we have a shortage of HGV drivers—which we appear to have—why on earth was the scheme closed to new entrants in 2019? I do not expect an answer today, but can my noble friend have a look at that situation and see whether we should not be reopening that straightaway?

Baroness Randerson (LD): I start by thanking the Minister for her explanation. I share some of the noble Lord's concerns. I have real concerns about these SIs. Although they seem to be perfectly reasonable attempts to introduce a more systematic way of dealing with the pressures on Kent roads and ports, especially Dover, in practice this is yet another step in the creeping accumulation of powers by this Government. This is an issue to which our attention was drawn by the Secondary Legislation Scrutiny Committee.

This is an unusual example, because they are SIs that were introduced for one reason; that did not occur, but the Government are using the opportunity to take away the sunset clause and make it a permanent situation. They were introduced under cover of emergency procedures, hence without the usual consultation and safeguards, and are now being converted into long-term measures. This general trend in a number of pieces of legislation is exacerbated by Covid and the pandemic—although that is not relevant in this particular case.

In practice, these amending orders remove the sunset clauses in existing legislation. They make the powers that make up the response which is Operation Brock a permanent feature. The county of Kent will live under a series of extraordinary measures with certain categories of vehicles requiring passports to enter the county. Operation Brock is now to be used as a response to unforeseen disruption; for example, bad weather or

[Baroness Randerson]
industrial action and, I assume, other forms of unforeseen disruption as well. But these are occasional disruptions, and they happen across the UK as a whole, not just in Kent, so there is always the danger that this will be seen as a precedent.

My unease is even greater because when the Government originally introduced these measures, they anticipated—I have to say, I believed them—that there would be long queues on motorways because of new port procedures following our leaving the EU.

In fact, that has not happened, partly because the number of HGVs using the motorways has fallen, partly because there are not any drivers, or at least anything like the number that there used to be, because there has been a general falling-off in levels of trade with the EU, and because the trucks that used to take the land bridge between Northern Ireland and continental Europe now go largely via the Republic and straight down to the rest of the EU. Added together, these issues have meant a reduction in the number of HGVs, so there has not been the level of queuing. The Government took other measures which undoubtedly alleviated the possibilities of queuing. Although it complained vociferously about it, after the first few weeks, the industry became better prepared in terms of the paperwork than it was feared that there might be.

Kent access permits, which the first order is concerned with and as the noble Lord has pointed out, are undoubtedly an additional bureaucratic hurdle for the logistics trade at an already difficult time. It is yet another piece of paper, another form to be completed. I am interested in the practicality of this. Can the Minister explain how often these powers have been used? She referred to that briefly, but can she give us a little more detail about how often these powers have been used so far and how long Operation Brock has been in force on these occasions? Also, how is the logistics industry informed that Operation Brock is active? Someone might be aware that it is snowing, but perhaps not if they are in Newcastle and it is snowing in Kent.

This is an additional piece of bureaucracy for local hauliers too, albeit so that they can continue to use local roads, which obviously is important for them. Paragraph 10.2 of the Explanatory Memorandum referred to the consultation and said that there were 14 responses, and that the majority were in favour. What were the views of the industry representatives? I am particularly interested in the views of local councils because they represent local residents, who have had their lives seriously disrupted by traffic issues in the past. It was hoped that Operation Brock would solve this.

Paragraph 13.2 says:

"The vast majority of HCV drivers travelling via the Channel Tunnel and Port of Dover work for foreign hauliers".

We know that this balance has changed in recent months, so it would be very useful for all of us if the Minister could update us on the most recent percentages and the balance that there is now between UK domestic hauliers and foreign hauliers using those routes. I look forward to the Minister's responses.

5.45 pm

Lord Rosser (Lab): Again, I too thank the Minister for her explanation of the purpose and content of the orders we are discussing.

The Department for Transport has said that Operation Brock was originally created to deal with disruption caused by our exit from the European Union and then in response to the Covid-19 pandemic. As I understand it, Operation Brock creates, among other measures, a contraflow road layout on the M20 and the setting up of concrete barriers so that lorries heading for mainland Europe can queue on the coast-bound carriageway if there are disruptions or delays at Dover or the Channel Tunnel. Any decision to put out or remove the concrete barriers involves the Government.

The Government now want to remove the sunset clauses from Operation Brock on the basis of the argument that this will mean the Kent Resilience Forum will be better prepared to respond to any type of traffic disruption in the area not related to our EU exit, including industrial action and severe weather. I do not know whether the industrial action reference is to possible action by heavy goods vehicle drivers, who have sought unsuccessfully to get a better deal following the Prime Minister's assurance that they should be paid more.

This Government claim to be averse to ratcheting up regulation, yet here we have a regulation that was brought in on a temporary basis to address the chaos of the Prime Minister's Brexit deal and his inadequate response to the Covid-19 pandemic—as set out in the recent joint report from two Commons Select Committees, both chaired by two of his own MPs—now being made permanent, despite the fact that the Government have removed most Covid restrictions and tell us that the PM's Brexit deal has only upsides and no significant downsides. Can the Government explain why, if disruption at Dover and the Channel Tunnel from industrial action and severe weather is such a threat that these temporary orders must now be made permanent, it was not considered necessary to bring them in in the nine years from 2010 to 2019?

The striking thing about the two Explanatory Memoranda is that they offer no evidence or explanation why making these orders permanent is necessary or what the consequences, based on past experience, would be if the sunset clauses were applied to Operation Brock. In essence, the Explanatory Memoranda—and thus the Government—are saying that these powers would be nice to have in perpetuity, even though we have no clue how frequently and for how long they would be needed, even based on past experience. In the absence of any proper case being made, this appears to be an example of a government desire to have powers for the sake of it.

The other possible explanation for making these powers permanent is that the Government know that the Prime Minister's Brexit deal has significant downsides and are expecting significant disruption or delays at Dover and the Channel Tunnel if relationships with the EU in general, and the French in particular, deteriorate still further. In that situation, the Government would attribute the need to make these orders permanent primarily to delays for some other reason—such as

industrial action or severe weather—rather than admit that the Prime Minister's brand of hard Brexit is not all sweetness and light for Britain. The Explanatory Memoranda slip in a reference in paragraph 8 to

"delays from customs checks at the international borders in Kent",

which may refer to the continuing problems associated with the Prime Minister's Brexit deal.

I ask the following questions, to which I would like a full government response, either today or subsequently. As far as I can see, although I may be wrong, none of these questions is addressed in the Explanatory Memorandum. First, what happened before Operation Brock when there were delays at Dover and the Channel Tunnel unrelated to our EU exit or Covid? Once again, if those delays were so bad that the Operation Brock powers now need to be made permanent, why did the Government allow that position to continue for nine years from 2010?

Secondly, on how many occasions since 2010 has disruption caused by severe weather been such that Operation Brock would actually have been brought into operation, and for how long, had the now proposed permanent powers been available?

Thirdly, on how many occasions since 2010 has disruption caused by industrial action been such that Operation Brock would actually have been brought into operation, and for how long, had the now-proposed permanent powers been available?

Fourthly—as the noble Baroness, Lady Randerson, asked—on how many separate occasions since the present regulations first came into effect has Operation Brock been brought into operation in full, for what reason, and for how long on each occasion? As has been said, we have not had an evaluation of the effectiveness or otherwise of Operation Brock to date, yet these powers are being made permanent.

Fifthly, what is the cost of building and removing on each occasion the Operation Brock contraflow barriers on the M20? Have there been any occasions when the barriers have been put up and then removed without being used?

Sixthly, how many additional traffic officers have already been required in connection with Operation Brock and it being brought into effect, and how many will be required if the sunset clauses are removed and the order becomes permanent?

My seventh question relates to the Explanatory Memoranda, which refer to a national consultation between 26 May and 20 June this year, and say that key affected stakeholders in Kent were

"made aware of the consultation when it launched",

whatever that phrase means in practice. We are then told, as has already been pointed out, that the consultation received 14 responses, which the Government admit was "low", but that it included "members of the public". Has any other national consultation received just 14 responses? Were the views of local residents actively sought? In some quarters, Operation Brock has proved controversial, with complaints from some local residents affected about disruption caused during work to install the required infrastructure.

I hope that the Government in their response will, not only today but subsequently, provide answers to the questions that I and others have raised, but also provide a rather better argued case than is contained in the Explanatory Memoranda as to why this order must now become permanent, contrary to what we had been told would be the case up to now. Clearly, something of some significance must have happened or come to light, which could not have been known or appreciated before, to justify the Government's change of mind over bringing into effect the sunset clauses. We are entitled to be told exactly what that something is and the detailed case for the Government's U-turn over the sunset clauses. I await the Government's response.

Baroness Vere of Norbiton (Con): My Lords, I thank all noble Lords for their considered contributions today. I hope to put their minds at rest—but also I shall write, because I do not quite have all the answers to the questions. That always annoys me a bit, but I shall do my best.

Briefly, I would like to take noble Lords back, although I am afraid that my memory is a bit dodgy, to what is probably just over 10 years ago, when I remember spending many hours with my children in a hot car in Kent trying to get across the short straits. It was dire. I sat on a local road in Kent for hours. I think it was due to industrial action—it was a sunny day, so it probably was not bad weather. But we know that, when there is disruption at the short straits, Kent stops. What we are trying to put in place today is something to help the people of Kent. I shall endeavour to set out the rationale behind that and how the interventions that we have put in place to deal with a potential no-deal exit and Covid turned out to be good things—progress, so to speak. That progress should be grasped on this occasion, and not left to rot.

Looking at where we are, the whole point of these regulations is to put in place a permanent framework around a temporary traffic management solution. My noble friend Lord Naseby asked whether it had been successful. I would say that the proof of that is in the pudding. It has been successful; we have not had great big tailbacks in Kent. We also know that it is more effective than the previous intervention, Operation Stack, which really did not go down very well with the local community.

The whole point of Operation Brock is that it allows HCV drivers to be stationed on the M20 and stops them rat-running through local roads and blocking them, as happened on my very unfortunate journey many years ago. It will only ever be used in the event of significant disruption at the short-strait crossings. The noble Lord, Lord Rosser, read an awful lot into that, which I am afraid is simply not there. All sorts of things could cause disruption at the short straits. The whole point of what we are trying to do today is that, if there is any disruption, the county of Kent does not come to a standstill, because that is not good for people trying to cross the short straits and certainly not good for the people of Kent.

5.56 pm

Sitting suspended for a Division in the House.

6.02 pm

Baroness Vere of Norbiton (Con): To return to discussing the Operation Brock traffic management scheme, maybe I can take noble Lords back, not as far as previously but just a couple of years, to when we bought the quick movable barrier. This was an opportunistic purchase; someone came along and said, "Oh look, there is a machine that you can store on the side of the M20 and can quickly put out these blocks." Previously we had put up a metal barrier that had taken a very long time to put in, and when it was in then it was in and you could not take it back down again. It caused massive amounts of disruption.

The whole point of the QMB was that it was an opportunistic purchase, because the technology became available, and we realised that it would work incredibly well in Kent and form part of Operation Brock. That is why we went ahead and did it. This is one of those things that sometimes happen when you have to reach out for solutions, and one becomes available that actually looks good for the longer term. That is just what has happened in this case.

As noble Lords will know, when we put out the QMB, it allows HCVs either to use the coastbound section of the M20 in free flow or to be controlled using a traffic light system at the front of the queue to split the port of Dover and Eurotunnel traffic. It basically organises all the freight movements going through Kent. What we propose is that, when Operation Brock is in place, those HCVs are not drifting around the local roads of Kent, blocking people's driveways and stopping them doing their day-to-day business.

The noble Lord, Lord Rosser, asked about the cost of the QMB, and I am happy that I have the answer for him today. The estimates for the ongoing resourcing of the QMB, when implemented over a six-month period, are £9.5 million and £5 million for National Highways and Kent County Council respectively. The cost of deploying and removing the QMB for an incident are in the order of £200,000.

What is the current status of the QMB and Operation Brock—how many times we used it and so on—so far? Noble Lords will recall that the closure of the border by the French Government towards the end of last year caused vast amounts of chaos for the traffic in Kent, although that was somewhat improved by the fact that we had Operation Brock, and so on. So we deployed the QMB going into the start of 2021, and we stood it down in April. It was deployed for a further couple of weeks in July when we felt that there may be delays, not at our border but potentially in leaving the country because of the checks at the French border.

Operation Brock is not currently deployed, so the moveable barrier is stored quite nicely all along the side of the M20. It just sits there, not doing anything. There are no obligations on hauliers—nothing happens at all. I point out to the noble Baroness, Lady Randerson, who seemed to be under the impression that there is some sort of Kent access permit that will still be in place, that there will not be—it will be taken away. If I am a local haulier, the only bureaucracy I am seeing from this is that I should speak to my local county council to get the pass that I will need to make sure that I am not stuck in Brock queues—we would not want that to happen. They will probably do that, because it is definitely in their interests to do so. If I am a haulier travelling around the UK, I will want to know whether Brock is in operation. The haulage grapevine works incredibly well, but even if it does not, the national highways VMS—variable messaging systems—would say "Operation Brock is currently in operation". All hauliers know what Operation Brock is; there is no confusion whatever in that regard.

What is the alternative if we do not take these powers? I sense that there is a feeling that there is a bit of power mission creep here. We have this lovely QMB, which we purchased because it was a good opportunity to purchase good technology. The alternative is for us to put the QMB in place and have no powers of enforcement whatever, which would be slightly pointless. We need to continue to make sure that if a pesky haulier decides to wander into the local roads of Kent, which would be very bad for the local people, the Kent Police can go to that haulier and say, "Excuse me, Madame"—or Monsieur—"where are you going?" If they say, "I'm going to the short straits" and they are not where they should be, they will get a £300 fine. That is exactly what these powers are designed to do. If we do not have them, we cannot do that. We could put in the QMB, and you could say, "You have to come back to Parliament and ask for the powers then". Neither I, we or the people of Kent have time for that. It is therefore important that we have all these things in place just in case they are needed. Of course I hope that they will never be needed, but you know what? There will be disruption due to bad weather; we will probably need it, and it is good that we have it.

My noble friend Lord Naseby asked whether this had been successful in the past. The proof of the pudding in this is how effective enforcement has been in the past, when we have had to use these regulations owing to EU exit or Covid reasons. When the Kent access permit was mandatory, in the three-and-a-half-month period from 1 January to 19 April, which was the period in 2021 I talked about, there were 2,174 offences, each carrying a £300 penalty. As of 31 August, 2,129 of those had been paid. That is, 98% of those fines were paid, which is good: £638,000 of fines were collected. This is good for the people of Kent.

We asked the hauliers, and not that many people responded. That does not surprise me at all, because I should imagine that they know what Operation Brock is, and it is good for them that there is a sensible system of queuing. However, I will provide more in-depth information if I have it about what people said in their response. We received feedback from local residents. There was an open consultation in summer 2021, and we sought the views of local residents and received and considered a number of responses. I do not know how many, so I will check and write to the noble Lord on that.

On the removal of the sunset clause, I thank the SLSC for its work on this, but I was a little concerned by it saying that this would mean

"making Operation Brock permanently available".

That is a good thing; I think the people of Kent would think that a good thing. It would mean that Operation Brock was permanently available, but not permanently

in place. It would be in place only in those periods when, otherwise, Kent would literally come to a standstill. We looked at where we were with the legislation and decided that we did not need sunset clauses. We can of course come back to the legislation at any point in the future—for example, in five years' time, if we are fortunate enough still to be here—and a discussion can be had. If we have not used Operation Brock in all that time and it is asked why we have all these powers, maybe at that stage we can have that discussion, but I do not think it worth while having it now, because we need the powers to make sure that the system works as effectively as it should. Given that there is no time-limiting factor on any potential cause or reason for using Operation Brock, there seems to be no reason for a sunset clause.

I hope that I have put noble Lords' minds at rest. I am very focused on the people of Kent and their amenity to use their local roads, as well as on the hauliers, so that they can get from A to B as efficiently and effectively as possible. I know that noble Lords have some reservations, so I shall write with further details to try to reassure them. In the meantime, I commend the regulations to the Committee.

Motion agreed.

Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2021

Considered in Grand Committee

6.11 pm

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

That the Grand Committee do consider the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2021.

Motion agreed.

6.11 pm

Sitting suspended.

Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

Debate before Second Reading

6.13 pm

Moved by ***Lord Greenhalgh***

That the Grand Committee do consider the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill before Second Reading.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, this is a Bill with two distinct and important measures. The first is a measure to change the valuation assumptions that are applied when making business rate determinations in the light of Covid-19. The second measure provides for the investigation and disqualification of the former directors of dissolved companies.

Let me start with the business rates measure. Clause 1 of this Bill is about how the impacts of Covid-19 should be accounted for in rateable values, the key component of business rates liabilities. This clause will ensure that the coronavirus and its effects will not be considered as a material change of circumstance for the purposes of assessing rateable values. This measure is needed to respond to the unprecedented volume of appeals received by the Valuation Office Agency since the start of the pandemic. It will provide local authorities with certainty and security against a potentially crippling financial blow. It will ensure that the law operates in the way it was designed to do, by using general revaluations of non-domestic properties to reflect the impacts of major economic events in rateable values. As noble Lords will recall from when we debated and approved the Non-Domestic Rating (Lists) (No.2) Bill, a matter which I am sure is at the forefront of all noble Lords' imaginations, the next revaluation in England has been moved to 2023 based on the market at 1 April 2021 so that the system can better reflect the impact of the pandemic.

The pandemic has of course hit businesses hard, and the Government have responded with unprecedented support. To take business rates alone, over this financial year and the last one, we are providing £16 billion of business rates relief for retail, hospitality, leisure and nursery properties. We are introducing a further £1.5 billion of relief in recognition of the complex ways in which Covid-19 has impacted the economy and supply chains. Local government has also needed government support. Business rates provide a stable source of income for local authorities to plan the financing and delivery of local public services. The events that necessitated this measure threatened that stability and certainty in a profound way.

The Local Government Finance Act 1988 provided the source of our valuation and local business taxation systems. Ensuring that this system operates as it was designed to do is a vital part of the Government's rationale. Business rates bills are calculated by multiplying the rateable value of the property by the multiplier or tax rate, then applying various reliefs. The rateable value of a property is, broadly speaking, its annual rental value at a set valuation date. These rateable values are updated at regular revaluations undertaken by the Valuation Office Agency, which provides a consistent tax base for all businesses and a stable income stream for all local authorities.

Of course, ratepayers can challenge rateable values outside of general revaluations for a number of reasons, such as to correct a factual error or to reflect what is called a material change of circumstances, or MCC. If not satisfied with the outcome of the challenge, the ratepayer may appeal the VOA's decision to the valuation tribunal.

The MCC system was not designed to reflect changes in economic factors, market conditions or the general level of rents. The 1988 Act was not designed with Covid-19 in mind, and the MCC system has never been used in response to an event with such economy-wide impacts as Covid-19. Moreover, the Government are clear that relying on the MCC system to help businesses that need further support in light of the pandemic

[Lord Callanan]
would be misguided. It would mean significant amounts of taxpayer support going to businesses with properties such as offices, many of which have been able to operate normally throughout the pandemic, of course. It would also mean resolving such disputes through the courts. This could take many years and would create additional uncertainty for ratepayers and local councils.

Instead, the Bill will clarify the law such that coronavirus, and the restrictions put in place in response to it, cannot be used as the basis for making a successful MCC challenge or appeal. It will ensure that changes to the physical state of the property can continue to be reflected in rateable values as and when they occur, irrespective of whether this is as a result of coronavirus, but that the general impact of the pandemic on the property market will not be reflected until the next revaluation in 2023. This approach will provide much-needed certainty to councils and ratepayers alike.

We have of course worked closely with the devolved Administrations on these and other matters over the last 18 months. Following a request from the Welsh Government and amendments tabled on Report in the other place, the Bill will extend to Wales as well as England. Scotland has begun its own legislative process, which mirrors our approach.

The Government welcomed the support of Labour Members in the other place. The Public Accounts Committee also recorded its approval for the Government's approach, as did the local government witnesses in Committee. These endorsements speak to the fundamental soundness of the policy rationale behind the business rates measures in the Bill.

The second part of this Bill addresses the problem of potential abuse of the process whereby companies are struck off the register and dissolved. I am proud to pay tribute to the resilience and determination of the many thousands of British company directors who have steered their companies through challenges from lockdowns, social distancing, and other restrictions on trading, all of which were necessary to limit the spread of Covid-19 and to keep our country safe. The responsible and effective stewardship of companies has helped to save countless jobs and livelihoods and will continue to provide an invaluable contribution to the economy as it recovers from the effects of the pandemic.

Unfortunately, there will always be those few individuals who do not comply with their duties as directors, and who do not act in the best interests of the company, its employees, or its creditors. It is important that that majority of honest and diligent directors, and the wider public, are protected from the potentially very damaging actions of those few bad apples. Directors who behave recklessly or irresponsibly can expect to have to answer for their conduct and may face proceedings to disqualify them from acting in the management of a company. Evidence to support disqualification action comes from investigation of companies and the conduct of their directors, and I would like to explain a little of how this process works in practice.

For insolvent companies, conduct is investigated through powers in the Insolvency Act 1986 and the Company Directors Disqualification Act 1986. Insolvency officeholders submit returns to the Secretary of State, reporting on the conduct of the directors in question. These are vetted, and where misconduct is suspected, it is assessed on the basis of public interest; for example, how much harm there has been to creditors and the wider public. Further investigation may be undertaken through examining company records and seeking information from third parties, including creditors, and directors themselves will also be asked to provide information and given opportunities to explain their actions. Where evidence of misconduct is found, a period of disqualification may then be sought. Investigations may also occur in live companies, using powers in the Companies Act 1985.

This Bill extends the circumstances in which the Secretary of State may investigate the conduct of directors to where the company has been dissolved without being subject to insolvency proceedings. It will extend the deterrent effect of the disqualification regime to those directors who abuse the company dissolution process. The Government consulted on this measure in 2018, when it was welcomed by stakeholders. Implementation is now particularly important to help reduce the risk of the fraudulent avoidance of repayment of government-backed loans made to businesses to support them during the pandemic.

It is an unfortunate fact of life that people who abuse the system will seek to take advantage wherever they can, so counterfraud checks were built into the lending process for bounce-back loans. For example, as a condition of the guarantee agreement, lenders were required to undertake appropriate anti-fraud and anti-money laundering checks before loans were made, and if they did not, they would not be able to call on the Government's guarantee in the event of a borrower's default. The new power to investigate and disqualify former directors of dissolved companies will back up those anti-fraud measures by deterring wrongful avoidance of repayment, and so help to ensure that public funds are protected. It will also pave the way to seek compensation from disqualified directors guilty of misconduct that has caused loss to others, including in relation to bounce-back loans.

Noble Lords may also be interested to hear about other actions taken by my department to minimise the risk of companies fraudulently avoiding repayment of their bounce-back loans. In March 2021, the department entered a blanket objection to any company with an unpaid bounce-back loan being struck off the register. This has prevented almost 51,000 companies, with total unpaid loans of over £1.7 billion, being dissolved. This action has ensured that lenders can continue to make recoveries on loans due to be repaid and will ensure that the public purse is protected. I commend this Bill to the Committee.

6.24 pm

Baroness Blower (Lab): My Lords, there are many in this Committee with considerable and specific expertise in relation to the matters covered by this Bill, none more so than my noble friend Lord Sikka. I venture to speak in this debate, however, to seek clarification from the Minister on matters relating to the role of local councils.

On 25 March, Her Majesty's Government announced that they would give councils £1.5 billion to offer grant relief to businesses, excluding retail, hospitality and leisure, that have been hard hit by the Covid pandemic. As I understand it, this relief is an alternative to any adjustment to rateable value as a result of changes in circumstances. I therefore have a number of questions for the Minister. I do not think that the basis of the calculation of £1.5 billion is known, except presumably by those who made it, nor is it unambiguously clear to me how the money will be disbursed. Can the Minister say what will happen if the fund is exhausted and whether perhaps any local councils would be expected to top it up?

Further, in regard to local councils, given that one assumes there will be criteria for disbursement, is it foreseeable that there may be disputes and possibly appeals? If there were, this would inevitably result in additional administrative and IT costs. It is not clear that any additional funding or financial support will be available to local councils to carry out these duties and responsibilities. Can the Minister tell the Committee whether local councils—their finances already hard hit, not just because of Covid but from years of cuts—will be expected to bear the administration costs of the scheme? If so, what assessment has been made of the impact on local ratepayers and local services? I look forward to the Minister's response.

6.26 pm

Lord Bourne of Aberystwyth (Con): My Lords, it is a great pleasure to follow the noble Baroness, Lady Blower, who certainly made some very telling points. I thank my noble friend the Minister for setting out the purport of the legislation, which is clearly important. It is legislation that I broadly support. It clearly comes in two parts, "Rating" and "Directors Disqualification".

On the "Rating" part, it is worth making the point that the Government have given some £280 billion of support to business since the start of the pandemic and that, during 2020-21, more than half of business rate payers have paid nothing. That support continues, and quite right too. The material change of circumstances would be a blunt instrument in the present situation and I can certainly see the point, on financial rectitude and common sense, of proceeding to the basis of valuation in 2023 on an unchanged basis. In the other place, the Public Accounts Committee has approved of that approach.

I have a similar question to the noble Baroness about the £1.5 billion of support. The noble Lord quite rightly referred to the importance of certainty for business, but there is uncertainty as to how this particular fund is going to be disbursed and which businesses will benefit from it. It would be good to hear when there will be clarity on that because, to reiterate the point, certainty is vital for business—as it is for us all in our everyday lives.

There is then the question of whether it will be enough and what will happen if it is not. The case has been well made in relation to, for example, airports. I know that might not be a fashionable point as we approach COP 26, which I strongly support, but we are all heavily dependent on airports in our everyday lives, as we have clearly seen, so it would be good to have some reassurance for that section of the community.

In passing—I appreciate that it is probably beyond the pay grade of both Ministers—I look forward to the Budget next week and perhaps some indication of some tax changes so that digital businesses and the Netflixes of this world, which clearly have not been paying enough tax on a fair basis, are perhaps brought into a position where they pay a fairer tax. I hope that we will get some indication of when that is going to happen.

I move to the second part of the legislation, which relates to "Directors Disqualification". As the Minister rightly said, this disqualification change predates the Covid pandemic. In a sense, it has nothing to do with Covid; it is something important that needs to be done quite independently of Covid. I appreciate that we all have a great interest—quite apart from tackling the fraud—in ensuring that the bounce-back loans are properly dealt with, but it would be good to hear that this is not the sum total of what is intended here.

It has been a serious issue over a period of time that directors have used the ability to dissolve their company to dodge the impact of insolvency legislation. I hope this is not going to be limited to the bounce-back provision, and I hope the Government are minded to use the Insolvency Service more widely to tackle other frauds. Many creditors of companies are in a very parlous position because of this considerable loophole, which has been abused over a period of time.

I certainly welcome the partial closing of the loophole, but it would be good to hear that the Government intend to move further than that. It has been suggested by the Insolvency Service that more than 5,000 dissolutions of companies a year have sidestepped the insolvency protections of the Insolvency Act 1986 and the Company Directors Disqualification Act 1986. This particular legislation deals only with the protection offered by the Company Directors Disqualification Act. It does not seem to do anything about the Insolvency Act protections, because we do not know that the company is necessarily going to be brought within the purport of the insolvency legislation. There are considerable protections in that 1986 Act that will not govern these companies, notwithstanding the provisions in this legislation.

As I say, this legislation is worth one or two cheers but not three because, as far as I can see, it does not go far enough. It would be good to hear that the Government recognise that and intend to take it further to protect other creditors and to tighten it regarding those who abuse the provisions of the Companies Act—the ability to operate through a company and the separate personality provisions entailed in that. I look forward to hearing more on that point.

I also want to raise the point about reimbursement. This deals with the disqualification of directors and tightens that particular screw for directors using dissolution inappropriately, but as far as I can see it does not do anything directly in relation to them disgorging the profits that they have made fraudulently. It is important that that should happen. The Minister referred to this in a rather vague, amorphous way, but it would be good to hear specifically what it means. Is this going to be by virtue of a compensation order? How is it going to be done?

[Lord Bourne of Aberystwyth]

Further to that point, given what I have said about the number of companies that come within this particular provision—up to 5,000 a year, on a calculation made by the Government themselves—what are we doing about the resources for the Insolvency Service? It is stretched already and, if it is expected to take on this extra work, it will need extra resource if, as we all hope, it is to do the job appropriately.

I support the legislation, but we should not run away with the idea that it solves all the problems in this area. It does not, and we will need more action.

6.33 pm

The Earl of Lytton (CB): My Lords, the procedure for this debate before Second Reading was queried at the time of the Chief Whip's commitment Motion. I had not realised that not only has this procedure been used only once before—namely, last October during our hybrid phase—but, so far as I know, the Procedure Committee has not reported on it. I have to say that I consider it unsatisfactory to separate in time and place the bulk of debate here from a decision to give a Second Reading some other time in the Chamber. Can the Minister confirm what discussions with the Procedure Committee have taken place about using this procedure now that we are out of hybrid mode? He may need to come back to me on that on some other occasion.

As to the matter for debate, noble Lords will know of my involvement, over a lifetime as a property professional, with business rates and local government finance and in this House, from the day of my maiden speech to the present time. With my having declared that matter, it will come as no surprise that it is the rating part in Clause 1 of the Bill that I seek to address, and that only. I do not propose to disappoint the Minister in what I have to say, but I apologise in advance because I will need a little time to explain it. I declare at the same time that I am an occupier of business premises and I benefit from a small-business exemption—but, for the avoidance of doubt, I did not claim any Covid grant or relief for the interruption of business activities.

I acknowledge that the Government have made great efforts to relieve business rate payers of many of the worst effects and burdens that have arisen during the pandemic, but it is far from the case that it has been applied equally to all, or indeed evenly across the spectrum of property. Nor has it been in any way linked to impact or means, so far as I can tell.

I also acknowledge that, having introduced measures to grant emergency relief, it might be seen as perverse to allow those who benefited from them to make further claims for the same period due to material changes of circumstances, or MCCs. However, it would be simplistic to go down that road. I do not believe that those who set about to make MCC appeals were those same beneficiaries or intended to claim for the same period, given that the duration of relief was not known at that time. Indeed, it is likely that they were not one and the same. Either way, it should be a simple matter to make provision to prevent such double counting, if indeed there is evidence of it.

MCCs have always been available where substantial change has affected the assumed annual value of property; a supermarket opening up down the road, affecting traditional high streets, or changes in highway arrangements, affecting trade—that sort of thing. However, the Government suggest that this was never intended to address an issue of global impact such as a pandemic. From the dawn of rating under the statute of Elizabeth I to the General Rate Act 1967—on which I cut my professional teeth—and on to the present day, there has been plenty of time to ponder such matters, and yet we have this measure only now. Coincidence? I think not.

The reality is that in the pandemic some sectors did well, others realigned their processes and activities to stay afloat, and a further group floundered and continue to do so. It is not correct to say that the pandemic produced a general downturn lasting for more than a year, which is the usual benchmark for dealing with material matters for rating valuation purposes.

It is a concern that the Government took so long after the commencement of the lockdown to come forward with a measure of this type. Effectively, a year elapsed before the Government chose to lay, initially, a statutory instrument with prospective effect, with the promise of a Bill with retrospective effect—which is where we are now, of course. I do not believe that proper consultation with business rate payers was part of that process.

The courts have been at pains to point out that rateable values are meant to represent the benefit of occupation to the occupier. Where government prevents or limits such beneficial use, rateable values should reduce—but not, it seems, where HM Treasury deems otherwise. As a result, appeals against assessments on grounds of MCCs were made in good faith, in time, and were validated long before the end of March 2021. No attempt was made to avoid this wasted cost and effort during the period when doubtless many public servants were furloughed, but equally the resources were there to consider and act in an appropriate and timely manner on such issues. The Valuation Office Agency was actively involved in negotiations regarding these MCC appeals, in conjunction with ratepayers' representatives.

I have received representations from, among others, Heathrow Airport—referred to by the noble Lord, Lord Bourne of Aberystwyth—and some advice from rating experts Gerald Eve. If ever there was an MCC event sufficient to interrupt the operation of the nation's largest airport, this had to be it. While late in the day a grant scheme was set up, it was capped at £2 million per hereditament, so amounted to a flea-bite of a concession in something like the Heathrow rates bill.

Worse than that, it selectively, and, I suggest, unreasonably, failed to address the issues affecting very large assessments and operations such as Heathrow and Gatwick, which to all intents and purposes were completely shut down by force of law while, at the same time, support was given to other types of activity that were still able to keep going, as we have heard. It is therefore hard to comprehend precisely what sort of a material change of circumstances would afford any

relief to such a large enterprise, given the effect of the Bill. Nor does it dispel the impression of selective discrimination against a specific class of undertaking.

It is not just about mega-businesses of this sort—many others have suffered equally. Although the productivity may have held up, the double overheads of supporting remote working staff and maintaining empty office buildings have none the less been significant. The Government have protected office tenants from being hounded by their landlords to pay rent for space that they were prevented from physically occupying but have offered them zero protection when it came to business rate bills. That seems to be nothing short of double standards.

The Government have promised to set in place a £1.5 billion discretionary business rates relief fund in place of the MCC reductions that this Bill will now negate. I doubt whether many local authorities will exercise discretion in favour of an international airport, or indeed any but a relatively local cause célèbre, however significant the larger employment and economic activities are of big undertakings that underpin local economies and employment.

The explanatory paper produced at the same time as the SI gives examples in which a ratepayer with a £95,000 assessment might get £7,300 of relief, despite their turnover collapsing to zero. What that tells us is that any benefit is likely to be minimal and that £1.5 billion is a drop in the ocean. To follow what other noble Lords have said, could the Minister please clarify how the Government arrived at this sum of £1.5 billion as appropriate recompense for ratepayers badly impacted by the pandemic? Having been announced in March 2021, in the 2021 fiscal year, does this sum relate only to that year, with nothing further, or is it intended that there should be some further funding for 2021-22?

I find it disturbing that a deliberate decision has been made not to provide information as to how the £1.5 billion will be apportioned between councils and how they should make decisions as to which businesses in their areas should receive some of it—until, that is, this Bill is passed. Of course, that leaves businesses and billing authorities alike in no position to make any plans in relation to it. Can the Minister explain why he cannot today publish a draft of the proposed allocation of the £1.5 billion to each local billing authority and share the draft guidance planned to be issued to councils explaining the circumstances in which the Government believe that businesses should qualify for a share of the cash?

The apparent intention is to make the distribution according to the official data on the impacts of the pandemic on different sectors and not according to estimates of the impact on a property's value. All this is apparently to ensure

"an even and more proportionate allocation of support".

We were told that this would enable a speedier payment of support than would have been possible under the usual MCC appeal rules. I am afraid that I do not entirely follow that.

I feel that this is a matter of a veil of obfuscation. Fundamentally, it is about protecting Treasury income streams, first and foremost—and I am afraid that it is just too bad if businesses crumble. It lacks equity and fairness; the most desperate of businesses will be least able to mount a case or may have already gone under, waiting in desperation for government support that has failed to materialise. There is nothing in prospect for those at tipping point now. I have long said, and will say again, that if HM Treasury can think of nothing better to do than to disadvantage businesses which suffer serious losses, due in significant part to government edict, it will be of small concern to it that, in response, reduced exposure to a tax on business floorspace—perhaps by trading increasingly on the web—becomes a standard business plan and, for those who cannot avoid it, a fetter on the nature and extent of the financial risks they will be prepared to underwrite on behalf of the taxman. The moral hazard in all this is that it continues to underpin government willingness to game the system without taking adequate responsibility for the outcome. I suspect that, by the time the £1.5 billion fund kicks in, it will be too little and almost certainly much too late.

Of course, part of the answer is much more frequent revaluations—that, of course, is well beyond the scope of this Bill—but there was supposed to be a fundamental review of business rates, and many expected it to have progressed beyond the 2017 findings. I invite the Minister to give us an update on that if he is willing, but it is no wonder that some on the political spectrum suggest abolishing business rates altogether. It does not need to be so. It would be a perfectly good, fair and cheap-to-run system save for government insistence on overworking it and, essentially, unfairly treating businesses ever since the arrival of the poll tax in 1990. It is a salutary tale of mismanagement, and Clause 1 of this Bill continues the fundamental error.

I leave your Lordships with this thought: what else follows from this further incursion into business rate payer protections and stability of local government budgets?

6.45 pm

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to follow the noble Earl and to take part in this pre-Second Reading debate, which brings me to my first question for my noble friend the Minister. Can he enlighten noble Lords as to when Second Reading is due to take place?

I support this Bill in general, but associate myself with some of the comments from the noble Earl and from my noble friend Lord Bourne of Aberystwyth. I ask my noble friend the Minister to go back to the department and consider all possible new technologies which could assist in reclaiming BBLS, CBILS and other funds which may otherwise disappear into the ether for want of new technologies which can trace and track down such potentially fraudulent activity.

I support the Bill, but want to test the Minister to see whether we can take the opportunity of this small piece of legislation to go broader and look at the whole area of insolvency practice and potentially to consider in Committee whether it is high time to have a single independent regulator and ombudsman for the insolvency sector. They could consider both individual and corporate insolvencies and be funded through a

[Lord Holmes of Richmond]
levy. These ideas are hardly radical; they were certainly seen in other parts of our economy decades ago. This Bill offers an opportunity to look at the insolvency arena through these new governance glasses.

What is the situation now? There is a code of ethics which is voluntary. One can join a recognised professional body, of which there are currently four—there have been more—which do not necessarily act in concert or with consistency and which also act as trade associations for this part of economy, with practitioners able to shop between these RPBs if the mood suits, for reasons which we can all appreciate.

This sector of the economy is too important to be left to be governed as it currently is. It is also extraordinarily unique as an outlier when one considers it in comparison with, for example, legal or financial services.

What could we achieve with this Bill if we took a couple of amendments in Committee? We have the opportunity to end this inconsistency, to bring clarity and to stop the perception of conflict and, in some situations, the actuality of conflict. It is better for IPs and for everybody—better for businesses and better for the entire economy—bringing confidence to all involved, and confidence in this part of the economy. Any economy relies not just on brilliant businesses being built and succeeding but on how we deal with businesses when they get into difficulties. It is so important that this is run efficiently and effectively. If we see that a company is distressed and goes into insolvency procedures, how effectively could it be operated? Potentially, it could maintain employment, supply chains and the local community, if run optimally.

This is too important to be left as it currently is, and it was foreseen six years ago in the Small Business, Enterprise and Employment Act, in which powers—yet to be implemented—were given to the Secretary of State to have a single regulator for this service. Would my noble friend agree that six years is long enough to wait? If we bring amendments forward in Committee, it would make complete sense to implement that part of the Act.

We have the opportunity to end inconsistency and bring coherence and confidence to this sector and the wider economy. I look forward to returning to these points in Committee. I wish the Bill a swift and safe passage through Second Reading, whenever that might be, and I look forward to my noble friend's comments at this and future stages.

6.50 pm

Lord Cormack (Con): My Lords, I am very glad to follow my noble friend Lord Holmes of Richmond. I associate myself with some of the remarks made by my other noble friend, but particularly underline the very real importance of the speech made by the noble Earl, Lord Lytton, who has a lifetime's experience here.

I must begin by declaring an interest that, for almost half a century, I have from time to time given advice to the Machinery Users' Association, which was founded as long ago as 1884 to advise—I see the noble Earl nodding—industry and business on the rating of plant and industrial machinery. There is real concern in the association on behalf of its many members in many businesses and industries. There is an element of retrospectivity in this legislation, which is not good.

I am also somewhat disturbed by the way in which we are debating Second Reading but not debating Second Reading. This was scheduled to be taken on the Floor of the House on 26 October. It was then scheduled to be taken on the Floor of the House yesterday. The change, I might say, had nothing to do with the tragic events of Friday; it had been announced before then. I do not really think this is the way we should legislate when the legislation is very broad-ranging.

I will say nothing about the directors—with broad agreement over that section of the Bill, I do not need to—but we have real uncertainty facing many businesses. The noble Earl put this very graphically in talking about the £1.5 billion. When will we know how this will be distributed? What will be the criteria? We ought to know. Business ought to know.

I asked the MUA to give me one or two examples. I will not detain or weary the Committee by going into great detail, but I am told that the owners of a former British Home Store in Barnstaple, in Devon, cannot market it or let it—they could not begin to let it during lockdown—yet they were required to pay 100% of the rates and were not entitled to a retail discount. For another totally different company, a tenant in Sloane Street—an exclusive address, with costs to match—had premises effectively vacant from the beginning of the first lockdown. This could be replicated up and down the country. I do not dissent at all from anything the noble Baroness, Lady Blower, said about the importance of business rates to local authorities, but local authorities will get nothing at all if they are surrounded by bankrupt businesses, and it is very important—even at this late stage in the progress of the legislation—that the Government come clean a little more clearly.

The sum of £1.5 billion sounds extraordinary and magisterial—to all of us in this Committee it is—but not when spread over a whole country. How long is it for? What precisely will happen when revaluation comes about in 2023? I am delighted to see the noble Baroness nodding vigorously, because these questions must be answered. People's livelihoods and the livelihoods of local authorities depend to a large degree on this. It is a most unsatisfactory piece of legislation. It is two pieces of legislation cobbled together. One of them I do not particularly dissent from, because nobody could conceivably approve of fraud, and fraud perpetrated at the expense of the taxpayer during a pandemic is about as low as you can get. We would all agree with that. However, the rating put on at the beginning is a different subject which needs more comprehensive and joined-up thinking.

I am sorry that my noble friend Lord Callanan has been called away, but I ask my noble friend who will reply to this debate whether we can have some conversations, if not before Second Reading then at least before Committee, because it would not be beyond the wit of man and certainly should not be beyond the wit of government to table one or two amendments that would bring a degree of cohesion to the Bill. It should be accompanied by a reasonably detailed statement about how this £1.5 billion is to be used.

I could go on, but I will not. However, I am very grateful to the noble Earl, Lord Lytton, for bringing his lifetime of professional experience to our deliberations.

6.57 pm

Lord Sikka (Lab): My Lords, I am delighted to participate in this debate. I particularly commend the speech by the noble Lord, Lord Holmes of Richmond, and agree with almost everything that he said. I will confine my comments to the second part of the Bill, relating to insolvency. It is unlikely to achieve its aims.

The Bill assumes that the Insolvency Service will act in a timely manner, but it is hard to find much evidence to support that. Carillion collapsed in January 2018. Only on 12 January 2021 did the Insolvency Service apply for director disqualification orders against eight directors and former directors of Carillion. To date, none has been disqualified. BHS, which was mentioned earlier, entered administration on 25 April 2016 and liquidation on 2 December 2016, but it was only on 5 November 2019 that former BHS director Dominic Chappell was disqualified for 10 years. A number of executive and non-executive directors, including the BHS chairman, were severely criticised in the joint report by the House of Commons Work and Pensions Committee and the Business, Innovation and Skills Committee, but to date none has been disqualified. It is business as usual.

Of course, little people get picked on. The Bill has not really been preceded by any changes to the law relating to the formation of companies. Anyone, from anywhere in the world, can form a limited company in the UK. There is no authentication check on the identity of individuals forming the company, its directors or its shareholders. Private companies in the UK need one director only, who must be a natural person, and the BEIS website very helpfully tells people that directors do not have to live in the UK. How on earth will the Government enforce the UK legislation against directors who do not live in the UK?

Public companies need at least two directors but only one of them needs to be a natural person. The other can be a shell company located in an opaque tax haven where absolutely nothing is known about directors of companies. There are plenty of examples of that. UK-registered companies have around 7 million directors at the moment. I hope the Minister can tell the Committee how many of those are resident outside the UK or are bodies corporate registered in opaque tax havens. How many of those named are fake and do not exist? You can use any name you like.

Companies House acts mainly as a filing box and rarely performs any meaningful checks. Thousands of companies have directors whose addresses are in offshore jurisdictions and it is impossible for the UK to call foreign nationals to account for corporate offences. Can the Minister again please explain how the Insolvency Service will act against those individuals?

UK company law also permits nominee shareholdings and directorships, which enables concealment of the identity of real controllers and beneficiaries. How will the real controllers of companies be disciplined or disqualified? The Government also act in a very inconsistent manner when taking action against the filing of false information. I will give the Committee a pretty well known but real example.

Individuals connected with the mafia in Italy formed a company in the UK with the name Magnolia Fundaction UK Ltd. The company's officers used Italian to file information at Companies House. When translated into English, the document said that the name of one of the directors was "The Chicken Thief". He gave his occupation as "fraudster" and the address given was "The Street of the 40 Thieves in the town of Ali Baba, Italy". Companies House dutifully accepted such documents. When the matter was raised in the House of Commons on 14 September 2017, the Minister said,

"No action has been taken"—

I think the sound of the Division Bell is the cue for me to stop. I will return to the actions of the Chicken Thief afterwards.

7.02 pm

Sitting suspended for a Division in the House.

7.10 pm

Lord Sikka (Lab): To recap, I was talking about the individuals connected to the mafia who had a company in the UK called Magnolia Fundaction UK Ltd. They filed information saying that the director's name was "The Chicken Thief", his occupation "fraudster" and the address "Street of the 40 Thieves in the town of Ali Baba, Italy. Companies House gratefully accepted this and filed it away—that was it. When the Secretary of State was asked on 14 September 2017 what she was going to do about it, the reply was:

"No action has been taken at this time against the promoters and officers of Magnolia Fundaction UK Ltd for filing inappropriate information in Italian at Companies House."

Nothing has changed since; it is exactly the same.

I knew the names of some well-known convicted mafia criminals and, out of curiosity, I put one of their names into the Companies House website. The person turned out to be a director of an organisation called Business Bank Italy Ltd, registered in the UK. It had a website that was inviting people to invest. I reported that matter to the shadow Chancellor at the time, Anneliese Dodds, she raised it in the other place and eventually the website vanished.

Nobody in authority at the Insolvency Service or anywhere else even bothers to see whether criminals' names appear in the Companies House database. It is that bad, and we think that that kind of institutional framework will help us deal with misdemeanours by directors; it is not going to do that. What the Government have done is prosecute someone who demonstrated how easy it is to form a company with a false name and then announced in a newspaper that he had done it. So they went and prosecuted him—effectively, he was a whistleblower.

The proposed regime under the Bill for dissolved companies will suffer from the same problem as the current regime for live companies: the requirement that an interested party, most likely a creditor, raises concerns about the conduct of a company's directors with the Insolvency Service. But how will the creditors

[Lord Sikka]

know that a company is being dissolved? Directors are required to notify creditors of the proposed dissolution, and such creditors have an opportunity to object to the proposed dissolution before it takes effect, but not all such creditors may be notified. You can have pre-packs without any creditors meeting. People do not even need to be told. All kinds of things happen.

Once a company has been dissolved, there is no equivalent of a liquidator or an administrator of an insolvent company who has a duty to investigate the conduct of directors and report them to the Insolvency Service. This makes it more likely that only the particularly egregious examples of misconduct significant enough to come to the attention of the interested party will be investigated in respect of the directors of dissolved companies.

Companies can also be dissolved without any formal legal process. For example, Companies House can dissolve a company if it fails to file annual accounts. You do not need to go through any legal process; just do not file the accounts. Every year, thousands of companies do that, so many rogue directors can choose this method to dissolve companies. Such possibilities do not even appear in the Bill, as to who is going to find out and what they are going to do about it.

The Bill places considerable reliance upon insolvency practitioners but the insolvency industry has been engaged in corrupt practices for years. About 20 years ago I published a monograph—titled, appropriately, *Insolvent Abuse*—which documented many of the corrupt practices of the insolvency industry. Hardly anything has changed in the last 20 years. The industry is still running amok. This week the Financial Reporting Council confirmed its fine of £13 million on KPMG and £500,000 on its insolvency partner, together with costs of £2.8 million for investigation. The reason was that KPMG and its insolvency partner pushed Silentnight, which was a client of the accountancy firm, towards insolvency, so that the private equity group HIG, the client that it really wanted to cultivate, could buy the business out of administration by dumping the defined-benefit pension scheme for Silentnight's 1,200 staff. KPMG's partner lied to the Pensions Regulator and to the Pension Protection Fund.

KPMG has been central to numerous scandals, and its involvement in another will perhaps not surprise many in this House. However, it is still in business, and its lying partner is not facing any criminal investigation or charge. Perhaps the Minister can explain why there is one set of laws for ordinary mortals but another for accountancy firm partners, where they go in front of kangaroo courts and lie but still continue with their lives.

In case anyone thinks that was a hefty fine for the partner, usually the partnership agreement states that the firm will reimburse the partner, so his £500,000 fine will be reimbursed, while the £13 million fine for KPMG will go not to the members of the Silentnight pension scheme, who have lost some of their pension rights, but to the coffers of the Institute of Chartered Accountants in England and Wales, which authorised the cheating, lying partner. The institute will be quids in. It is akin to someone being fined for mugging and then being told, "By the way, make the cheque payable to the Institute of Muggers." That is what we have by way of self-regulation, and it is wrong on every count.

I urge the Minister to act to ensure that the money goes to the victims of KPMG, not the ICAEW, which does not deserve it. It has already recovered the costs of the investigation. These RPBs—recognised professional bodies—must not benefit from the misconduct of their members; in fact, they should be in the dock for authorising those members. What kind of supervision do they actually carry out?

The corrupt practices of the insolvency industry are also documented in last month's publication by the All-Party Parliamentary Group on Banking, *Resolving Insolvency: Restoring Confidence in the System*. It notes that insolvency practitioners

"sell their independence, and their considerable powers, in return for an appointment to an insolvency case."

Who usually appoints them? Banks. So they are basically colluding with banks. The report says that conflicts of interest are regularly being ignored. The interests of banks are prioritised and too many innocent people have lost their homes, businesses and savings as a result. Your Lordships can see the evidence; it is in the monograph that I launched.

Many victims claim that banks and insolvency practitioners have forged their signatures in order to repossess assets. Evidence of that has appeared in national newspapers and on the BBC, but the National Crime Agency has sat on the evidence for months or even years and has done absolutely nothing. I have been told by authoritative sources that there are hundreds of such cases, but nothing is getting done. The recognised professional bodies are essentially accountancy trade associations—I am sorry; I will finish. They have no independence from their members and have a long history of sweeping things under their dust-laden carpets.

About a year ago, replying to one of my Written Questions, the Minister said that 7,962 insolvency cases had still not been resolved, and that their age was between five and nine years, while 3,642 were more than 10 years old, and 14,328 were more than 15 years old. No regulator asks why insolvency practitioners are milking insolvencies. The longest one that I know of lasted 30 years, and that related to Israel-British Bank. PricewaterhouseCoopers made it last for 34 years, and it came to an end when there was not a penny left in the business. These are real-life sharks, and they really need to be dealt with.

There was a report by Sally Masterton, codenamed "Project Lord Turnbull", which was written in 2013 and formally published in June 2018 by the All-Party Parliamentary Group on Fair Business Banking. It referred to fraud at HBOS. There was no action by any recognised professional body, although the report made it clear that the fraud could not have been carried out without the complicity of the partners. There has been no investigation into the RPBs either. In the last 10 years, some 8,000 complaints about insolvency practitioners have been lodged with the RPBs and—guess what—only five out of 8,000 have had their licences withdrawn. Over the last seven years, only three IPs had their licences revoked. Is the Minister really content with that?

I finish with two specific requests. Can the Minister arrange two things? One is an independent public inquiry into the insolvency industry. Secondly, could he arrange for a relevant Minister to meet me and a former police and crime commissioner to see and hear the evidence about how banks, lawyers and insolvency practitioners are colluding and perpetrating devious practices that have deprived people of their homes, businesses and savings? I am sure that he does not tolerate corrupt practices and will willingly agree to these two requests.

7.22 pm

Baroness Pinnock (LD): My Lords, I draw the Committee's attention to my entry in the register of interests, which includes my roles as vice-president of the Local Government Association and as a member of Kirklees Council. The Bill includes two elements, which the noble Lord, Lord Cormack, described as being "cobbled together"—I cannot but agree. The only connection that I could find was that they both relate to businesses. Clause 1 concerns business rates, and Clauses 2 and 3 address the "directors disqualification" part of the Bill title. I anticipated a rather dull afternoon discussing this, so I thank the noble Lord, Lord Sikka, for changing my view of directors' disqualification. It has been a lively debate, and I think that a lot of people will be reading *Hansard* as a consequence.

I want to start by talking about Clause 1, which is the part about non-domestic rates. Many businesses have had a very tough 18 months during which they have endeavoured to keep afloat. I accept that the Government have provided considerable financial support to businesses to mitigate the worst of the impacts of the Covid pandemic. Nevertheless, it is not surprising to me that many have tried any potential route that may provide financial relief. As we have heard, this has resulted in businesses applying to the Valuation Office Agency for what is called a check of their rateable value, the aim being to get a revaluation based on material change of conditions that has impacted on their business as a consequence of Covid restrictions and measures. At this point, I thank the House Library for a very helpful explanation to a non-professional of the measures in the Bill.

The purpose of the Bill is to manage this growing number of checks. The government argument is that businesses have been able to access government loans and some grants to tide them over the Covid period and that these are sufficient to address the trading difficulties resulting from lockdowns and restrictions imposed by the Government. The problem with this argument is that, undoubtedly, some businesses will have not been able to access these funds and the recourse taken by unusually large numbers of applying for MCCs is a warning sign that all is not well. I concur with the noble Earl, Lord Lytton, and the noble Lord, Lord Cormack, on this matter, particularly that the £1.5 billion fund that has been set aside by the Government for relief to compensate for these changes is almost certainly inadequate. The pleas that we have heard from the noble Earl and the noble Lord, as well as from the noble Lord, Lord Bourne, that we must see the detail of the fund before we progress this Bill are urgent. I hope that the Minister can give us some assurances that this will happen before Committee.

Clause 1 is retrospective and has a catch-all approach. The only circumstances that businesses can use to apply to the VOA will be physical changes to the property and special considerations in relation to mineral extractions and waste disposal firms. I accept that unless this legislation is passed, the business rates system will be undermined. That is its purpose, but lots of things are not adequate. I am sure that the Minister will have put them right by the time that we are in Committee.

Noble Lords: Oh!

Baroness Pinnock (LD): We have a really lively session; it is excellent.

As a measure that will deal with an immediate problem flowing from the very rare circumstances of a pandemic, we can but agree with it. However, I have a few questions for the Minister. Can he explain the financial impact of these changes on local government? About 25% of local government funding comes from business rates, so any change, however small, can have a considerable impact on really tight council budgets. It is important for those of us who are concerned about local government, as the noble Baroness, Lady Blower, said, to know exactly what the impact will be. When the noble Lord, Lord Callanan, introduced the Bill, he emphasised the importance of certainty of local government funding from business rates.

Can the Minister explain what estimations have been made of the impact of impending rises in interest rates on businesses that have accepted government loans during Covid? The implications for what might happen are obvious. Concerning the £1.5 billion relief fund, we need to know the details and what happens when the fund runs out, as I suspect it will. Also, we need answers to the questions asked by the noble Baroness, Lady Blower, about administrative costs for local government in handling it.

Next, can the Minister say when much-needed fundamental changes to the business rate system will occur? We have been promised them for quite a long time now, and there is a lot of concern around local government and the business world that the current system is not answering the questions it needs to on town centre businesses on the one hand and digital businesses on the other, as the noble Lord, Lord Bourne, said. My concern is about warehouse and distribution centres, which do not pay their fair share by any means. That must be put right. Finally, will the Minister confirm whether a review of these measures is being planned within, say, a year of their introduction, so that we know what is going on?

I turn to Clauses 3 and 4, which relate to director disqualification. The last-minute changes to the timing of this debate have ensured that a number of people who would have spoken are not available. This includes my noble friend Lord Fox, who actually could have spoken because the Bill he has been speaking on has finished. I am sure he will be here for Committee but he has provided me with the following words, as this is definitely not my area of knowledge, let alone expertise.

He writes that these Benches welcome the intentions of the director disqualification part of the Bill. It is right that powers be created so that those who have fraudulently benefited from payments introduced to

[Baroness Pinnock]
protect businesses during Covid are brought to book and the money recovered. Like other noble Lords, we received a briefing from R3, which represents insolvency practitioners; I am sure the Minister and the department also heard from it. Its members must file a report on the directors' conduct with the Insolvency Service when acting as officeholders in a formal insolvency process, so its experience in this is welcome. Its concerns, like ours, focus on how the Bill will actually work and how it will help the wider creditor network.

First, we should be clear about one thing. The work of the Bill should not be at the expense of investigations into insolvent rather than dissolved companies. As R3 explains:

"R3 members already repeatedly express their frustration that not all their reports highlighting suspected serious legal breaches are acted on."

Can the Minister assure the Committee that additional resources will be available to take on the extra activity created by the Bill, rather than it cannibalising an already stretched situation? Perhaps he can offer some crumb of comfort to the wider insolvency community by talking to his colleague the Chancellor of the Exchequer about this. Given that the Chancellor is embarking on a "non-spending review", an activity such as this which brings money both back to government and into legitimate circulation will benefit the economy and pay back many times.

Our second point seeks detail as to how in practice this legislation will recover the money. What will be the mechanisms to recoup money from culpable directors? Do the Government intend to use tools such as compensation orders? This is significant because, unlike an insolvency process, where returns are made to the creditor body, the so far little-used compensation orders normally benefit only one creditor—in this case, we guess, HMRC.

Although the Government have indicated that they will expand the number of creditors who can benefit from a compensation order, this has not been made clear in the legislation, so we have to assume they will not. Where there are multiple creditors, an insolvency procedure has to date been more successful at recovering money owed to these creditors. How will the Bill protect all the other creditors as well as HMRC? I look forward to the Minister's response.

7.34 pm

Baroness Blake of Leeds (Lab): My Lords, I refer to my interests as laid out in the register. Following on from the noble Baroness, Lady Pinnock, one thing I am fast learning in this place is that the debates that look relatively boring often turn out to be those which have the most depth and interest, as this one has certainly proved.

I am extremely grateful for the evidence and expertise that we have heard from many speakers in the debate today, in particular from the noble Earl, Lord Lytton, and in the eloquent contribution from my noble friend Lord Sikka.

The Bill has the broad support of the Opposition Front Bench, but I refer to its limited objectives in that regard. The provisions to rule out Covid-19-related material change of circumstances business rates appeals, as well as the steps to give new powers to the Insolvency Service, are both appropriate and necessary.

On the first issue, we accept the logic of disqualifying Covid MCC appeals, given that a large number of these appeals could effectively result in a shadow revaluation and, as we have heard, a full revaluation is already scheduled for 2023. The demand for such appeals would certainly put strain on the system when the most effective use of the Valuation Office Agency's time and resource is the upcoming revaluation of business rates.

On the Insolvency Service, we support the closing of a legal loophole that for too long has allowed unscrupulous company directors to evade responsibility for their financial decisions. However, I would appreciate clarification from the Minister as to whether the service has sufficient resources to carry out this extra work. I also refer to the excellent contribution from my noble friend Lady Blower, who highlighted the real risks faced by local authorities if this situation is not resolved and the impact on local ratepayer services without the necessary resource and income.

As we have heard from several contributors, there remains an enormous question around how the amount of £1.5 billion was arrived at and whether there is any realistic prospect of it being adequate. The noble Earl, Lord Lytton, highlighted in particular the plight of the mega-large companies, which I think all of us have received some interest from, but also all the other anomalies—those of the smaller companies and the plight that they found themselves in. The answer to the question of resource is urgent.

With this in mind, our main concerns with the Bill are less in regard to what is in it than in regard to what is not in it. My Front Bench colleague in the other place, the shadow Chancellor, has called on the Government to cut, and eventually entirely scrap, business rates. The outdated rates system must be replaced with a new system of business taxation fit for the 21st century. We must look to shift the burden of business taxes to create a level playing field, unlike with the current system, which punishes investment, entrepreneurship and the high street. The noble Lord, Lord Cormack, stressed just how urgent this situation is. We must look for more frequent revaluations, instant reductions in bills where property values fall and rewards for businesses that move into empty premises. Ultimately, this is the only way we can help bricks-and-mortar retailers compete with online tech giants. In this sense, the Bill is a missed opportunity.

In the later stages of the Bill, we will seek amendments that can pave the way for this root-and-branch reform of business rates, but also explore ways to better tackle corruption. On this, I am pleased that the Bill will help the Insolvency Service to investigate directors, take disqualification action and potentially implement 15-year bans—but again we have to ask: does the service have enough resource to tackle the job in hand?

Given the significant losses to creditors that corrupt practices in insolvency and dissolution processes can bring, we would like to see wider legislation. We know that not only do these reckless, rogue directors cause enormous harm to the economic state of affected

businesses, but the emotional harm done to so many people working in business is truly immense. Unfortunately, the Bill is narrow in scope and therefore difficult to amend, but we will consider options for increasing reporting. As has been said repeatedly in this debate, the Government need to do much more.

As I said earlier, the Opposition Front Bench supports the provisions but, as is often the case with limited Bills such as this, it represents a missed opportunity. Business rates reform needs far more than a four-clause Bill to support our business community. If the Government are serious about confronting corruption, they must do far more than closing loopholes. I hope the Minister will provide assurances that the Bill is not the sum total of their efforts in these two areas.

I end by further emphasising just how important it is that draft guidance for local authorities on how to administer the scheme is laid down and published as soon as possible, including on how the resource will be apportioned between local billing authorities. I do not think it can be said often enough how stretched local authorities currently are. Budget discussions are happening across all levels of local government in a state of some despair. The atmosphere of uncertainty and concern about the future ability of councils to deliver services is something that we in this place all need to treat with the utmost seriousness and concern.

7.43 pm

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, it is a pleasure to close what has been an engaging and informed debate. I thank noble Lords for their contributions both in the Room and in discussions outside—although I have to say that 10 officials were present for a drop-in session and no one turned up. I am very happy to have engagement on this, but it has sometimes been difficult. This is a short Bill, but the measures contained in it are important issues of public policy and I am grateful for all perspectives.

It is hugely important that the integrity and clarity of the valuation system that underpins business rates are maintained. That is why we are taking forward this important measure to clarify that coronavirus and its impacts should not be considered grounds for a material change of circumstance appeal. The alternative would be to allow the pandemic to have a hugely distorting effect on the rating system, casting local government financial planning into jeopardy. I say in response to the noble Baroness, Lady Pinnock, that these would have been considerable sums. Places such as Westminster obviously have a huge business rate base that is then allocated more widely. Clogging up the appeals courts for years to come is not the way forward and would have set a dangerous precedent for the future.

I am grateful for noble Lords' support for the director disqualification measure in the Bill, which brings the conduct of former directors of dissolved companies into scope for investigation and potential disqualification proceedings. The United Kingdom has a world-class insolvency regime, and a strong enforcement framework is vital to that. Additionally, this measure will be an important tool for helping to combat bounce-back loan fraud and for deterring others from acting in breach of their duties as company directors.

Before I address the many points in this debate, which forms the largest part of my speech, I put on record that I have commercial property interests and am a company director—I should have raised that right at the start of my speech. Like the noble Earl, Lord Lytton, I did not claim from any of the schemes that we have been discussing today to mitigate against the payment of business rates.

In response to the noble Baroness, Lady Pinnock, I have to say that the purpose of the Bill is to restore the law to its intended practice and so no ratepayer will face seeing their bill increase as a result of the Bill. There will therefore be no material impact on the ratepayer.

The noble Earl, Lord Lytton, is a master of understanding procedure in the House, but I have been assured that this debate taking place in Grand Committee before Second Reading was agreed between the usual channels to prevent a very late sitting on Monday 18 October. In response to my noble friend Lord Holmes of Richmond, the Second Reading will take place tomorrow but without further formal debate.

The noble Baronesses, Lady Blake of Leeds and Lady Blower, raised the issue of how the £1.5 billion would be split and the approach to that. It will be allocated to local authorities based on the stock of properties in the area whose sectors have been affected by Covid-19 and which have not been eligible for existing support linked to business rates. Local authorities will then use their knowledge of local businesses and the local economy to make awards. The noble Baronesses, Lady Blower and Lady Pinnock, raised the issue of the additional administrative burdens. This will of course fall within the new burdens doctrine so that any administrative costs to local government will be covered.

Many noble Lords, including the noble Baronesses, Lady Blake and Lady Pinnock, the noble Earl, Lord Lytton, and my noble friends Lord Bourne and Lord Cormack, asked whether £1.5 billion is enough. This new £1.5 billion relief comes on top of an unprecedented £16 billion of relief over two years provided by the Government for the ratepayers most affected by the pandemic. This new scheme will be targeted at sectors that have been affected by Covid-19 but are not eligible for support linked to business rates. The new £1.5 billion of relief will enable local authorities to provide a meaningful level of support to those who have not been eligible for support linked to business rates.

My noble friend Lord Cormack and others raised the issue of the legislation's retrospection. The Government are intervening because we want to ensure that the law regarding valuation operates correctly while providing significant relief to ensure that support is provided to businesses most in need. Allowing rateable values to fall for market and economy-wide matters such as the Covid-19 measures would be out of line with the principles of rating, where such matters are reflected at general revaluations. It is right that we ensure that the law continues to follow these principles.

My noble friend Lord Cormack and the noble Baronesses, Lady Blower and Lady Blake, all wanted to know when the guidance for local authorities on the operation of the relief scheme will be published. I recognise

[Lord Greenhalgh]
that it is important because it will help local authorities make decisions over the design of the relief scheme. We will publish the final local authority guidance as soon as the Bill receives Royal Assent. I want to let Members know that we are engaging very closely with the Local Government Association, the Institute of Revenues, Rating and Valuation and, obviously, CIPFA, in ensuring that we get this right.

My noble friend Lord Bourne and the noble Earl, Lord Lytton, all raised the issue of airports. It is a core principle of the business rates system that market-wide economic changes affecting property values, such as the pandemic, can and should only be considered at revaluation. The drop in demand for airports in light of the pandemic is therefore exactly the sort of economic change which should not be reflected between revaluations. The next revaluation in 2023 will be based on the market on 1 April 2021 and therefore will better reflect the impact of the pandemic.

My noble friend Lord Bourne noted that the measure is itself not enough for bounce-back loan recovery. The Government have been clear that bounce-back loan facilities are loans and not grants and have worked closely with lenders to develop industry-wide principles for the collection and recovery of bounce-back loans. This includes the recovery approach that lenders should take in the event that a borrower defaults and there is a claim on the guarantee with net proceeds being returned to Her Majesty's Government.

Lord Bourne of Aberystwyth (Con): That is not the specific point I was concerned about. With respect to the Minister, I quite appreciate that it is right to go after the bounce-back loans. My concern was that it did not extend to other creditors who are owed money and that there is a focus just on the bounce-back loans, whereas there is obviously a large field of creditors who have no redress if that is the only concern that the Government have.

Lord Greenhalgh (Con): Beyond bounce-back loans, the Government are working closely with lenders to develop industry-wide principles so that we can learn from this and apply those in areas beyond bounce-back loans. However, I will write to my noble friend on that specific point.

The noble Baroness, Lady Blake of Leeds, and my noble friend Lord Bourne asked about the funding for the Insolvency Service. The Insolvency Service's resources are not limitless. However, all cases are carefully reviewed and assessed to determine the degree of harm caused to the public and to business, with the most serious cases prioritised.

The noble Baroness, Lady Pinnock, mentioned compensation orders and my noble friend Lord Bourne asked about the steps to get directors to reimburse. I want to clarify that compensation orders may be sought for a creditor or creditors, a class of creditors, or as a general contribution to the assets of the company. These are the rules for insolvent company director cases now and we are seeking to extend the same rules to dissolved company directors. The amount and to whom the compensation is to be paid is specified in the order or undertaking. The provision in the Bill extends this to former directors of dissolved companies, although it is unlikely that the court would order a contribution to the assets of the company in such cases.

I will not have to write to my noble friend Lord Bourne, because I have found the relevant note—I hope that noble Lords appreciate that this is not my ministerial area and I am having to pick this up as I go along. My noble friend asked whether the new measure would deal with all fraud and not just the bounce-back loans, and it will. It will, for example, deter directors from the practise of phoenixing, where the debts of one company are dumped using dissolution and a new company starts up doing the same thing. It sets that precedent to deal with the specific example of phoenixing.

In response to my noble friend Lord Holmes on the wider reform of insolvency, the Government recognise the important work that insolvency practitioners do and are currently reviewing the regulatory framework that governs them to ensure that the best possible outcomes are achieved for creditors. As part of this, the Government issued a call for evidence in 2019 to seek the views of stakeholders on the impact of the regulatory objectives introduced for the insolvency profession in 2015. The Government will respond in due course.

There was a tremendous speech from the noble Lord, Lord Sikka, from which I learned an awful lot. He raised issues related to company and insolvency law. Obviously, a number of them go beyond the scope of this four-clause Bill, but we keep the wider company and insolvency law frameworks under constant review and will bring forward amendments to the House as and when needed. However, the noble Lord will know that the Government are considering wider reforms to the register of companies, and that work is ongoing. Unfortunately, it is above my pay grade to be able to approve an independent inquiry such as he called for, but I am sure he can engage with colleagues at BEIS and take forward some of those points, and I know that the team here is very aware of his concerns.

Lord Sikka (Lab): Will the Minister be gracious enough to arrange for me and a former police and crime commissioner to see the relevant Minister so that the evidence that has been accumulated, showing corrupt practices by insolvency practitioners together with banks and lawyers, can be shown?

Lord Greenhalgh (Con): I think that by "a former police and crime commissioner" the noble Lord is referring to me, as a former Deputy Mayor of London for Policing and Crime. Where there is criminality, there are plenty of ways for the noble Lord to put forward his evidence. If he is having difficulty in presenting it to the Government, I shall do all I can to ensure that he gets to the right person. At the moment, this is beyond my direct area, but I am happy to engage and help him in any way possible.

I want to address a point raised by the noble Lord, Lord Alton of Liverpool, who could not be here today, but I know will be following the debate with interest, particularly after the contribution from the noble Lord, Lord Sikka. He wished to convey to me the plight of the English language teaching sector, an

important sector that has suffered terribly throughout the pandemic. The Government are carefully looking at the different sectors as we design the new £1.5 billion relief scheme for businesses that have not been eligible for existing support linked to business rates. We will confirm the eligibility of sectors in due course when we publish guidance in the proper way, but certainly the English language teaching sector is one of those that we are looking at very carefully. Ultimately, decisions on individual awards of relief will be a matter for local authorities.

I thank all noble Lords for their participation and engagement. My noble friend Lord Callanan and I look forward to working with noble Lords on future stages of the Bill and, hopefully, seeing it swiftly through its remaining stages, given the support that we have seen. I beg to move.

Motion agreed.

Committee adjourned at 7.58 pm.