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PARLIAMENTARY DEBATES
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OFFICIAL REPORT

ORDER OF BUSINESS

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

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

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

House of Lords

Tuesday 23 November 2021

2.30 pm

Prayers—read by the Lord Bishop of Coventry.

Charities and Civil Society: Ministerial Responsibility

Question

2.36 pm

Asked by ***Baroness Pitkeathley***

To ask Her Majesty's Government what assessment they have made of the impact of including charities and civil society within the remit of a Minister who is also responsible for sport, tourism and heritage on the level of ministerial attention charities and civil society will receive.

Baroness Pitkeathley (Lab): My Lords, I beg to ask the Question standing in my name on the Order Paper and declare an interest as president of the National Council for Voluntary Organisations.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, we greatly value the important role that charities and civil society groups play, and work across government to support them as they do so. This includes in the areas of sport and heritage where, as in so many others, charities and volunteers play a crucial part. Aligning those ministerial responsibilities creates a real opportunity for an innovative and collaborative approach to growing the sector's contribution. My honourable friend is committed to his brief and will ensure that charities and civil society organisations benefit from significant attention.

Baroness Pitkeathley (Lab): I thank the Minister for his reassurances, but research by the commission on civil society showed that ministerial engagement with the social sector is significantly lower than engagement with business, despite the huge contribution made by that sector in the Covid crisis, as the Minister acknowledged. In the absence of a dedicated Minister, will the Government consider returning to a system of having nominated civil servants in every government department, not just DCMS, responsible for engagement with civil society, as was the case some years ago, when I chaired the advisory body for the third sector set up by a previous Government?

Lord Parkinson of Whitley Bay (Con): My Lords, with 170,000 registered charities in England alone, it would of course be impossible for any or all Ministers to speak to every charitable organisation that does such important work. It is a duty for all Ministers in the roles they perform. In my portfolio, I have already in my weeks of office had the pleasure of working with the Music for Youth organisation and the Intermission Youth Theatre, and I know that ministerial colleagues across government take very seriously the role that civil society organisations play, not least my honourable friend, with his specific responsibilities.

Lord Colgrain (Con): I declare my interests as set out in the register, with particular reference to the Harris (Belmont) Trust and Rochester Cathedral. Does my noble friend agree that within whichever department charities sit, the role of their volunteers is paramount? What measures can the Government take to facilitate their rapid return after the pandemic to both charities and those other organisations where volunteers fulfil a vital need, such as special constables in the police force? Will he also give an opinion on whether the position of volunteers could be included on future census forms?

Lord Parkinson of Whitley Bay (Con): The Government recognise the vital importance of volunteering and its wide-ranging benefits, not just to the organisations for whom people volunteer but for individuals themselves. We know that, during the pandemic, volunteers have had to make adjustments or pause their volunteering and we are very grateful to them for adapting as they have. My honourable friend is seeking to learn from the new approaches developed in the pandemic. We have launched a new volunteering futures fund, through which £7 million will be made available to improve the accessibility of volunteering in the arts, culture, sport, civil society and many other sectors. On the point about the census, it was included in the 2018 White Paper published by the Minister for the Constitution. It was rejected by the Office for National Statistics, but DCMS's community life survey captures people's volunteering.

Lord Crisp (CB): My Lords, as has been mentioned, voluntary and community associations have had an enormous impact on health and well-being during the Covid pandemic. There are several important organisations. I think of those such as C2, Connecting Communities, the Health Creation Alliance and others which support and develop those organisations. Will the department engage with the Department of Health and Social Care to support and develop those enabling organisations, as well as the sector more generally?

Lord Parkinson of Whitley Bay (Con): My right honourable friend the Secretary of State is of course a former Health Minister, and the new Health Secretary is a former Culture Minister, so the insights that each have gained in their respective departments will, I know, be brought to their work. My honourable friend the Minister works with a range of groups—charities themselves but also sector representatives— including through round table meetings.

Baroness Merron (Lab): My Lords, the voluntary and community sector deservedly gained a high profile during the pandemic, particularly as so many people responded to the call to volunteer at a time of national need. What assessment has the Minister made of the effectiveness of government machinery in harnessing that activity to support the sector? With all due respect to existing ministerial efforts and responsibilities, does

[Baroness Merron]
he feel that there is a case to be made for a full-time Minister who will work across Whitehall and beyond to ensure focus on this?

Lord Parkinson of Whitley Bay (Con): The noble Baroness is absolutely right to point to the fantastic work that volunteers did during the pandemic. The Government stood by them with support, including an unprecedented £750 million package specifically for charities, social enterprises and the voluntary sector, and my honourable friend, with his responsibilities, is the champion for the sector in government.

Lord Addington (LD): My Lords, I must remember to declare my interests. Does the Minister agree that having one Minister in the smallest department in government, who is covering dozens of other subjects, does not exactly instil confidence? Also, if they are not going to have a powerful enough Minister, when will we get an idea about a coherent strategy throughout government for dealing with the charitable and voluntary sector, which is simply too big to ignore?

Lord Parkinson of Whitley Bay (Con): My Lords, it is not being ignored. Ministers in every department, big and small, work with a range of charitable and civil society organisations and greatly value the work that they do. This is not something just for DCMS, but my honourable friend, with his responsibilities, is the Minister with specific focus on championing them and ensuring that across government we are giving the sector the support it needs, such as I have mentioned.

Lord Holmes of Richmond (Con): My Lords, I declare my interests as set out in the register. Does my noble friend agree that there is some sense in combining these responsibilities, as, for example, in the case of the British Paralympic Association, an excellent sport organisation and an excellent charity? Does he also agree that in our honourable friend Nigel Huddleston we have a Minister with the talent and tenacity to make a stunning success of his new portfolio?

Lord Parkinson of Whitley Bay (Con): I certainly agree with my noble friend and thank him for that. He is right to point out that the briefs of civil society and sport have been combined before to great effect, and right to point to the fantastic organisations that work at increasing people's participation in sport and physical activity through charitable and civil society groups.

Baroness Prashar (CB): My Lords, I declare my interest as a trustee of Beacon Collaborative, a charity dedicated to promoting philanthropy. As has been said, Covid highlighted not only the importance of civil society but how fragile its sustainability and financial resilience are. Does the Minister agree that the growth of philanthropy is very desirable to increase support for civil society and, if so, can he tell us what the Government are doing to enable greater giving and philanthropy? Is he confident that the current ministerial arrangements are sufficient to support civil society and the growth of philanthropy, and to gain insights into the needs and values of the sector?

Lord Parkinson of Whitley Bay (Con): The noble Baroness is right to point to the huge importance of philanthropy in supporting the groups, and to the fantastic work that they do across the country. In addition to the support that the Government gave from the taxpayer, we are keeping a close eye on the health of the sector as it emerges from the pandemic. I am glad to say that the work of the Charity Commission shows that only 1% of charities foresee a critical threat to their survival in the next 12 months. However, we continue to keep a close eye on them.

Lord Roberts of Llandudno (LD): My Lords, what worries me is the way we are trying to overload the responsibilities of one particular Minister. I think of the Minister for Intergovernmental Relations. I think it should be the Minister for Inter-Gove-rnmental Relations, because he already looks after housing, communities and levelling up. Let us give him Scotland, Wales and England. It is nonsense. Is it not only overworking somebody who does a good job in many ways but denying the younger and newer generation experience at that level to take over major government responsibilities at some time? What are the Minister and the Government thinking about in this sort of situation?

Lord Parkinson of Whitley Bay (Con): The Minister with responsibility for civil society is my honourable friend Nigel Huddleston, not my right honourable friend Michael Gove, though, as I say, all Ministers across government work with the third sector in the important work they do. I also point out that responsibility for the voluntary sector and volunteering in the Welsh Government is held by two people who combine that with responsibilities for welfare reform, fuel poverty, fire and rescue services, domestic abuse, youth justice, community safety and much else.

Baroness Sater (Con): My Lords, I declare my interests as set out in the register. As has been said, volunteers have always played an incredible role in British life. I think of the Olympics, the Paralympics, the ongoing Covid pandemic and the tireless efforts of millions of everyday people across the country. Does my noble friend agree that more can be done to harness and galvanise the spirit of volunteering by introducing a framework that links a volunteer's voice within and across national and local government, and a volunteer champion to protect and recognise achievements, to stand up for their views and interests, and to help order the future functioning of volunteering? Will my noble friend therefore consider appointing a commissioner for volunteering to support the sector and give it the status that it so richly deserves?

Lord Parkinson of Whitley Bay (Con): My Lords, the Government highly value the contribution of volunteers across the whole of society. We witnessed the huge difference they can make during the pandemic, as well as in the examples my noble friend raised. Volunteers are represented in discussions with government by a variety of sector representatives and bodies, but I will take her interesting suggestion back to my honourable friend the Minister and discuss it. I have also pointed

to the volunteering futures fund, which the Government have announced to support more people to volunteer and play their important role.

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

Zimbabwe: Makomborero Haruzivishe

Question

2.47 pm

Asked by ***Lord Oates***

To ask Her Majesty's Government what representations they have made to the Government of Zimbabwe about (1) the continued detention of opposition politician Makomborero Haruzivishe, and (2) political repression in that country.

Lord Oates (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and in doing so I declare my interest as co-chair of the All-Party Parliamentary Group for Zimbabwe.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, the UK remains concerned about the political situation in Zimbabwe. We regularly urge the Zimbabwean Government to live up to their own constitution by ensuring that the opposition, civil society and journalists are allowed to operate without harassment, and that due legal process is respected. The Minister for Africa reinforced these messages when she met President Mnangagwa on 1 November. Our embassy is also in touch with Mr Haruzivishe's lawyers as we await the outcome of his appeal.

Lord Oates (LD): I am grateful to the Minister for his reply, yet despite the Government's efforts, MDC youth leader Mako Haruzivishe remains incarcerated and the political and human rights situation in Zimbabwe continues to deteriorate. In the light of this, do the Government agree that regional leaders have a critical role to play in encouraging the Zimbabwean Government to respect human rights and the rule of law? Can the Minister tell the House what discussions the Government have had at ministerial level with the Government of South Africa and the newly elected Zambian Government in this regard?

Lord Ahmad of Wimbledon (Con): My Lords, I pay tribute to the noble Lord's role on the APPG. He is of course right that it is important that regional Governments have a role to play. In this regard, we have engaged directly at the highest level with the South African Government and we continue to engage with other regional partners, as well as regional associations, including the African Union, on this priority.

Lord Anderson of Swansea (Lab): My Lords, in the Government's view, which country has the clout to bring effective pressure on Zimbabwe on political oppression? We probably have less influence than China, which is most unlikely to bring any such pressure. Zimbabwe's conduct clearly tarnishes the image of the whole region. Is this recognised by its neighbours, particularly South Africa, and are they playing a positive role in this regard?

Lord Ahmad of Wimbledon (Con): My Lords, the short answer to the noble Lord's final question is that we are engaged very much with South Africa and, yes, it wants to see a progressive, inclusive Zimbabwe as part of the region and the wider world. Zimbabwe holds ambitions to join the Commonwealth as well. It is a collective effort. I do not think that one country alone can influence the progression and inclusiveness of democracy. It is therefore important that we, together with key partners, continue to play this role.

Lord Purvis of Tweed (LD): In response to the last element of what the Minister indicated, Zimbabwean press promoted the fact that President Mnangagwa met our Prime Minister and the Secretary-General of the Commonwealth in Glasgow at COP 26. As the Minister is also the Minister for the Commonwealth, can he say whether we are making clear that, while we want the Commonwealth to be inclusive and open to Zimbabwe being a member, the conditions of a free and fair political system and the restoration of the 2013 constitution and the rule of law are essential criteria for membership and rejoining the Commonwealth?

Lord Ahmad of Wimbledon (Con): My Lords, I totally agree with the noble Lord; those points are being made. On the COP engagement, it was the Minister for Africa, my honourable friend Vicky Ford, who met with the President of Zimbabwe.

Lord Flight (Con): The British Government have already expressed their concerns over the continued incarceration of a pro-democracy activist and MDC Alliance youth leader, who has now been released on bail having been in jail for 202 days for allegedly inciting public violence when he whistled at Harare's busy Copacabana terminus. This is despite the fact that he has filed an appeal against both conviction and sentence in the High Court. The noble Lord, Lord Ahmad, has advised that the British Government and embassy in Harare are in touch with his lawyers while awaiting the outcome of his appeal. The UK regularly urges the Zimbabwe Government to meet their international and domestic obligations by respecting the rule of law and the freedoms enshrined in the Zimbabwean constitution. What else might be effective?

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend is right to point out that our ambassador is engaged directly in raising various human rights issues, including the case he mentioned, and will continue to do so. What more can we do? We continue to work with key partners on ensuring that human rights are upheld according to the constitution.

Lord Jones of Cheltenham (LD) [V]: What representations have Ministers made to the Zimbabwe Government about the continued suspension of by-elections in Zimbabwe? Several dozen are outstanding.

Lord Ahmad of Wimbledon (Con): My Lords, my honourable friend Vicky Ford had various points of discussion on the broader human rights agenda with the President. We continue to engage in the capital on the issues the noble Lord raises.

Lord Collins of Highbury (Lab): My Lords, the simple fact is that the messages from the UK Government are not being heard by the Zimbabwean Government, and certainly not being acted on. Just over a year ago, I raised with the Minister the Government's strategy for working with civil society groups in Zimbabwe to defend human rights. I specifically asked whether the Foreign Office would

"work with the TUC and its international affiliates to ensure that we support workers who are organised in Zimbabwe to defend their own human rights."—[*Official Report*, 27/10/20; col. 125.]

The Minister at the time, the noble Baroness, Lady Sugg, outlined the support we were giving to civil society groups. She also promised to follow through on meeting with the TUC. Has that meeting taken place? What is the outcome? What support are we giving to those sorts of civil society groups in Zimbabwe?

Lord Ahmad of Wimbledon (Con): My Lords, I do not believe the specific meeting took place directly with the TUC. We certainly have been meeting in Harare with various unions, including teaching unions, most recently in September 2021 on salaries and the impact of Covid-19. Trade unions form an important part of civil society in any country, and we engage with them at all levels.

Lord St John of Bletso (CB): My Lords, is the Minister aware that last week the Zimbabwe cabinet signed off on the patriot Bill, which would make it a criminal offence for anyone to criticise President Mnangagwa and for any member of the opposition to speak to any foreign Government in a negative way about Zimbabwe? At a time when Zimbabwe is considering rejoining the Commonwealth, can the Minister make it clear that our Government will support this only when the rule of law is restored and freedom of speech and political freedoms are protected?

Lord Ahmad of Wimbledon (Con): The noble Lord has articulated the position of Her Majesty's Government very well, and those principles will apply.

Baroness Ritchie of Downpatrick (Lab): My Lords, will the Minister outline what discussions Ministers have had with their Commonwealth counterparts about the continuing political repression in Zimbabwe and about the need to build local economies and political democracy?

Lord Ahmad of Wimbledon (Con): My Lords, we continue to engage with Commonwealth partners on a range of issues concerning human rights. On the specific question of Zimbabwe rejoining the Commonwealth, we are clear that we would only support readmission to the Commonwealth if Zimbabwe met the admission requirements. We continue to articulate that in relation to fundamental human rights to our Commonwealth partners as well.

Baroness Hoey (Non-Afl): My Lords, Zimbabwe will only become a democracy when the people have a genuinely free and fair election. We have seen that recently in Zambia. Can the Minister go further and actually say what more could be done to get Zambia and other countries within SADC to put the pressure on Zimbabwe? It has to come from those countries. We can help, but we must make sure that they do their bit so that we can get back to a situation where the people of Zimbabwe genuinely have a free and fair election in 2023.

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Baroness: she is quite right to say that. SADC and other organisations—including, more broadly, the AU—have a key role to play and must lead on these discussions, as people want to see an inclusive, progressive Zimbabwe. Within Zimbabwe, we must see rights restored, constitutions respected and human rights—which includes the rights of other political parties to participate fully in the democratic process—guaranteed. Those will form part of our current and future discussions with key partners.

The Earl of Sandwich (CB): My Lords, the US embassy in Zimbabwe has issued some devastating reports on conditions in prisons in that country, including ill-treatment of activists, violence against women and rape. Does the UK embassy confirm these reports? Can he confirm the continuing harassment of Hopewell Chin'ono, who is a highly respected figure, as reported by the American Bar Association?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Earl's final point on the case of Mr Chin'ono, yes, we are very much engaged on that particular case. I have not seen the details of the report to which he referred, so if I may, I will write to the noble Earl in that respect.

Isles of Scilly: Ships

Question

2.57 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government whether their award of £48 million from the Levelling Up Fund to the Council of the Isles of Scilly for the purchase of new ships requires the Council to demonstrate value for money by arranging competitive tenders for the (1) procurement, (2) construction, and (3) operation, of the ships.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Council of the Isles of Scilly submitted a full application, which included an economic and a commercial case. The Department for Transport reviewed these documents through a detailed assessment process, including assessing the value-for-money of the application. The process is set out in the fund's technical and explanatory notes. Officials from the DfT will be writing to the Council of the Isles of Scilly to set out further business-case requirements.

Lord Berkeley (Lab): My Lords, I am grateful to the Minister for that response. However, she did not say whether the council would be required to go out to tender for the supply of the ships or operating the service. At the moment, the application is to give the Isles of Scilly Steamship Company—the monopoly supplier of services—a free gift of something like £48 million to operate a service, with no conditions. Does she think that is the normal way to conduct public sector financial business?

Baroness Vere of Norbiton (Con): I am pleased to be able to reassure the noble Lord that, of course, the current status of the bid is that it is in its very early stages. As I said, we will be writing to the sponsor setting out further requirements for the business case. By the time this comes for ministerial sign-off, we will have had not only an OBC but also an FBC, and it will be done with the five different businesses cases. That would be normal, according to the Treasury rules. It will be a very rigorous process, during which we will, of course, assess the commercial elements of the bid. The noble Lord should just follow the process carefully; the bid would appreciate his support and guidance in getting it through the government systems.

Lord West of Spithead (Lab): My Lords, I declare an interest in that I like ships. Notwithstanding what the noble Lord, Lord Berkeley, says, I am delighted that a ship will be provided by some means for the Scilly Isles; it is very much needed. We are still awaiting the refreshed national shipbuilding strategy—we have been waiting rather a long time—but this will presumably be encompassed within that. Will the ship be built in the UK with UK steel? Appledore shipyard, for example, which is very close by, is ready to do the build; we have a lot of shipyards waiting for this work. Will the Government ensure that it meets the very highest standards as a green ship? In that context, we should make it the very best ferry in the world because there are opportunities for sales. Can we please not make a complete pot mess of this, as the Scottish Government have of the ferries that they have been trying to get?

Baroness Vere of Norbiton (Con): I reassure the noble Lord that I like boats too.

Noble Lords: Ships!

Baroness Vere of Norbiton (Con): I said that on purpose. It is the case that there will be a proper and correct procurement process that goes alongside this money. It is a significant amount of money and, as it is so significant, the Government will be keeping a close eye on the procurement strategy.

Baroness Randerson (LD): My Lords, the Minister has still not confirmed that high environmental standards will be required. I would welcome her doing that. "Scillonian III" is 44 years old, so these replacements will be built for the long term; they must be of the highest environmental standards. Will those standards also be imposed on onshore infrastructure servicing not just these ships but the many small boats that use the Isles of Scilly?

Baroness Vere of Norbiton (Con): Yes, the Government are keen to uphold the highest environmental standards. This is one of the attractive things about this bid. We will be funding the building of three vessels and harbour improvements. Part of the harbour improvements will involve improving the electricity supply, which will allow hybrid and electric vessels to use the harbour very effectively. Funding this bid aligns with the Government's decarbonisation strategy and the Clean Maritime Plan.

Lord Rosser (Lab): The Minister has referred to the bid. Will the new vessels under that bid mean that fewer crossings will be cancelled due to bad weather? Will they result in more crossings made, and throughout the whole year?

Baroness Vere of Norbiton (Con): I certainly hope that both those things will be true. As the noble Lord will know, there is at the moment a very ageing vessel that chugs back and forth. It is very dirty, it keeps breaking down, the cost of maintenance is very high and it has to be taken out of service for maintenance to take place. It is also the case that, to fund that maintenance, passenger fares go up and demand therefore goes down. There is so much about this bid that is very attractive. We would hope that, out of all of this, we will see better services to the Isles of Scilly.

Baroness Jones of Moulsecoomb (GP): Will there be a requirement in the contract to eliminate the use of fossil fuels?

Baroness Vere of Norbiton (Con): I cannot comment on the detail of the contract; indeed, I am not entirely sure to which contract the noble Baroness is referring. We will be looking in the business case at the environmental credentials of the bid. These are very decarbonised vessels, and this is a huge step forward for maritime in the area. As I have said, however, the development of the OBC and the FBC will take a couple of years, so there will be many opportunities to discuss this further in the future.

Lord Foulkes of Cumnock (Lab Co-op): Will the Minister ensure that the tendering is open, and not the kind of privileged access tendering that we have seen for protective equipment and clothing during the pandemic?

Baroness Vere of Norbiton (Con): As I have set out many times, the tendering will be part of the business case that will be put forward by the sponsor of this project. We will, of course, be looking in it for open tendering, because we understand, as well as I am sure noble Lords do, that competition is the best way to improve quality and reduce cost.

Gender Pay Gap

Question

3.04 pm

Asked by ***Lord Sikka***

To ask Her Majesty's Government what assessment they have made of the persistence of the gender pay gap, and what steps they are taking to close it.

The Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office and Department for Work and Pensions (Baroness Stedman-Scott) (Con): I assure the noble Lord that we are continually looking at and assessing the gender pay gap. The national gender pay gap has fallen significantly under this Government and by approximately one-quarter in the last decade. The gap is caused by a range of factors, and reporting regulations have helped to motivate employers and focus attention on how improving equality can happen in the workplace. However, to continue making progress we need to understand in even more detail the real barriers that women face in the workplace and then take action to ensure that everyone has the opportunity to fulfil their potential.

Lord Sikka (Lab): My Lords, the gender pay gap continues to blight the lives of many women, denying them access to good food, housing, education, healthcare, pensions and economic freedoms. I ask the Minister to commit to two things: first, not to award public contracts to organisations that have failed to eradicate the gap and, secondly, to give women a statutory right to know the pay of male colleagues doing equivalent work, with appropriate confidentiality.

Baroness Stedman-Scott (Con): As ever, the noble Lord is very incisive and focused on the things he wants to change. I note the two points that he makes. While I cannot commit to doing them, I will go back to the ranch, tell them that the noble Lord, Lord Sikka, is on the prowl again, and see what they say.

Baroness Jenkin of Kennington (Con): My Lords, I take this opportunity to wish the Minister a very happy birthday.

Noble Lords: Hear, hear!

Baroness Jenkin of Kennington (Con): Guidance from the Government Equalities Office states that employers reporting on the gender pay gap should record their employees' gender identity, not their biological sex. Some argue that for the vast majority of people, gender identity matches birth sex and that recording employees' gender identity would therefore have no significant impact on an organisation's gender pay gap. However, in male-dominated professions such as telecommunications, where fewer than 5% of the workers are female, even a small number of misclassifications can have a significant distorting effect on the data. Does my noble friend agree that this is the case? Will she now review the GEO guidance so that it makes it clear that employers must record employees' birth sex, not their gender identity?

Baroness Stedman-Scott (Con): Let me be very honest and straight with my noble friend: the Government have no plans to change the guidance. Gender pay is not supposed to be a data-collecting exercise, and to make it so would increase the burden on employers.

Baroness Stuart of Edgbaston (CB): My Lords, the world of work is changing. One of the effects of the pandemic has been more working from home, which I think will continue. There is a real danger that the gender pay gap, rather than being diminished, will actually increase because we will have more people working from home with caring responsibilities, and this will disproportionately affect lone parents and women. What will the Government do, not just to reduce the gap but to prevent it widening?

Baroness Stedman-Scott (Con): The gender pay gap is something that the Government take very seriously. The point that the noble Baroness makes about flexible working and working from home, and the impact that those have on women in particular, is well noted. Flexible working is wide-ranging and includes part time and flexitime, and it can be crucial for opening up opportunities, particularly for women. I cannot give a categorical answer about what we will do other than to say that we are mindful of this in everything we do in the Government Equalities Office. It may be that I come back to the noble Baroness with a bit more detail.

Lord Davies of Brixton (Lab): My Lords, my supplementary question handily spans both parts of the Minister's multitasking portfolio—an opportunity too good to miss, and a sort of birthday present. Will the Minister acknowledge that one of the biggest consequences of the gender pay gap is the gender pensions gap? Can she therefore outline what steps the Government are taking to address that specific dimension of the problem? When will action be taken to address the acknowledged shortcomings in the benefits that accrued from automatic enrolment for the many women on low pay in broken employment?

Baroness Stedman-Scott (Con): I thank the noble Lord for that wonderful birthday present. Let me just say that auto-enrolment has been a fantastic success, and we want that to continue. On the point he raises about net pay and the pensions gap, the Government are absolutely going to rectify the anomaly. We published a call for evidence. The Government will pay a top-up to low earners, making contributions to pensions schemes using a net pay arrangement, from 2024-25 onwards.

Baroness Burt of Solihull (LD): My Lords, I wonder if the Minister has heard of the book *The End of Bias: How We Change Our Minds*, by Jessica Nordell, on the incremental, cumulative effect of unconscious bias. Her model found that only a 3% unconscious bias in performative evaluation resulted in 87% of men in the top jobs. It is a shocker, but it explains a lot. If the Minister has not seen it, could she have a look and consider its implications for government policy?

Baroness Stedman-Scott (Con): I wish I had known about this before, because somebody could have bought it for me for my birthday. I will go out and find that book, and I will read it. As for changing bias and the distortions in salaries between men and women, no one needs to push our door on that—we are there. As the good man Sir Winston said, those people who can change their mind can change anything.

Baroness Thornton (Lab): I join other noble Lords in wishing the noble Baroness a happy birthday. Research by the Fawcett Society found that three out of five

women who had been asked about salary history believed it damaged their confidence in negotiating better pay and believed a low past salary was coming back to haunt them. Does the Minister recognise that, when companies ask about salary history, it can mean that past pay discrimination follows women, people of colour and people with disabilities throughout their working life? Does she share my concern that this issue means new employers replicate pay gaps from other organisations? Could the Government consider this matter and allow it to be part of the influencing of their policy?

Baroness Stedman-Scott (Con): I completely agree with the noble Baroness. You can sit in front of an employer and tell them what your salary is, and then they think they can get away with paying you just a little bit more. That is not on. I share the noble Baroness's concerns, and I will feed those back into the policy-making process.

Baroness Altmann (Con): I declare my interest as in the register, and I echo the birthday wishes to my noble friend. Following on from the question from the noble Lord, Lord Davies, I am delighted that Her Majesty's Treasury will introduce measures to top up the pensions of those women who are receiving lower net pay each week due to the pension choice of their employer. The gender pensions gap is an urgent issue; it is twice the size or more of the pay gap. What measures are the Government taking to ensure employers help to close the gender pensions gap?

Baroness Stedman-Scott (Con): My noble friend has been a long-term campaigner on the gender pensions gap and the net pay issue, and I am glad that we have some good news on the horizon. It was a Conservative Government who introduced mandatory gender pay gap reporting, in 2017, which means that all large employers—those of more than 10,000 employees—have to calculate it publicly. This has placed the gender pay gap at the top of the agenda and prompted conversations with business. Employers are now focused on understanding and tackling the causes of the gaps in their own organisations.

Lord Dubs (Lab): Does the Minister agree—and I ask her to be bold in this instance—that complete transparency of income is the best way of dealing with the gender pay gap and discrimination on the grounds of race and disability? Surely the only answer is that we should have all incomes in the public domain through the tax system; that way we would know who is earning what and where discrimination takes place, and we would also see who is on the fiddle.

Baroness Stedman-Scott (Con): You cannot argue with that. On transparency, I am absolutely with the noble Lord, but the issue of publishing everything on tax and salary is well beyond my pay grade. I will talk to my friends in the Treasury.

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, that concludes Oral Questions for today.

Dormant Assets Bill [HL]

Third Reading

3.15 pm

Motion

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

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I beg to move that this Bill do now pass and, in doing so, take the opportunity to thank noble Lords from all sides of your Lordships' House for their interest and contributions to the progress of the Bill so far. I am grateful for the scrutiny that they have brought, and the co-operative and constructive spirit in which the debates have taken place. I am also grateful for the broad cross-party support that the Bill has received so far. It is clear that all corners of your Lordships' House share the same ambition to ensure the scheme's continued success in unlocking dormant assets for public good.

I first thank my noble friend Lady Barran, who expertly led the Bill through Second Reading and Committee. I am very grateful for the opportunity to follow in her capable footsteps. I pay tribute also to the Front Benches opposite. The noble Lord, Lord Bassam of Brighton, and the noble Baroness, Lady Merron, have helpfully challenged the Government's approach, and I thank them for the collaborative way in which they have done so. I also thank the noble Baronesses, Lady Barker and Lady Kramer, from the Liberal Democrat Benches, for all their invaluable contributions, which have been detailed and thoughtful. Noble Lords from across your Lordships' House have contributed to a rich discussion on the Bill, and I am very grateful for all the points which have been raised.

As ever, I am grateful to the House authorities and parliamentary staff for their hard work behind the scenes. I acknowledge the extraordinary work of the officials who have worked so hard on the Bill for many months: the Bill team, the policy teams at DCMS and at Her Majesty's Treasury, the lawyers in both departments, my own private office, the Office of the Parliamentary Counsel and the clerks in this place.

I take this opportunity to clarify aspects of the debate on Report regarding the additionality principle, an issue I discussed with the noble Baronesses, Lady Barker and Lady Kramer. Section 24 of the 2008 Act empowers the Secretary of State to add or remove named distributors of dormant assets funding. Currently, the only named distributor is the National Lottery Community Fund, and all funds, including those distributed through the four independent spend organisations in England, flow through it. Section 24 also provides for making consequential amendments, including to Schedule 3, where responsibility for reporting on the additionality principle is set out.

The Government consider additionality to be critical to the scheme's success, and we have reiterated this position throughout our debates on the Bill. Indeed, we are clear that the voluntary participation of the

[Lord Parkinson of Whitley Bay]
industry is dependent on it. While we emphasise that there are no plans to change or add new distributors, I can reassure noble Lords that it is the Government's policy that any new distributor added should be required to report on this principle in the same way that the fund is required to do so now.

The dormant assets scheme has spent the last decade working to tackle systemic social and environmental challenges and to level up communities which need it most. This Bill is set to unlock almost £1 billion of additional funding to ensure that the scheme continues to support innovative, long-term initiatives that seek to address some of the UK's most important challenges.

Lord Bassam of Brighton (Lab): My Lords, the Minister will be pleased to hear that I will be brief, but some thanks are worth echoing. I thank the Minister; it is never easy taking up another person's Bill halfway through. I have had to do it myself and, at times, I lurched from being completely out of my depth to being a total shambles, so I know how it feels. The noble Lord was neither of those things; he was courteous and considerate of the points that we made and the amendments we moved.

Like the noble Lord I am delighted that we are moving to unlock previously untapped assets. I hope that the next iteration of this legislation—this is, after all, the second Bill on dormant assets—will bring forward even more dormancy and unlock it, so that communities can benefit.

I also thank the Minister's predecessor, the noble Baroness, Lady Barran, for her time spent on the Bill. She was, like him, very courteous and open-minded about ways in which we can forge improvements. She was also willing to meet and discuss aspects of the legislation. I echo his thanks to my noble friend Lady Merron—my good friend—for her part in this. It is always a pleasure to work with her. I also thank the noble Baronesses, Lady Kramer and Lady Barker, on the Lib Dem Benches, who also played an active and energetic part.

Of course, the noble Lord, Lord Hodgson, played a decisive role on Report in helping to support the amendment that we sponsored on the community wealth fund, for which there was all-party support. Before the Commons is invited to reject that amendment, I suggest to the Minister that it might be an idea to sponsor some discussion between his ministerial colleagues and other Benches in your Lordships' House to see if there is a way in which we can find some common ground on this—because I am very persuaded, as I know others are, of the benefit of the community wealth fund as a way forward. As he said, these resources can do a lot to take forward the shared agenda of levelling up and bring additional resources to bear in hard-pressed communities. We for our part would be very happy to meet and discuss this to see what common ground we can secure, because this is an important opportunity for us all, if we want to make it stick.

We wish the Bill well. It has been improved by your Lordships' House, not just by the amendment on the community wealth fund but in other aspects as well. I thank the Minister for his comments on additionality, which will be very helpful. I am happy to support the Bill as it goes on its way.

Baroness Barker (LD): My Lords, I also thank very much the Minister, his predecessor—the noble Baroness, Lady Barran—and the team. As is always the case with a Bill that is very technical and arcane, they had to display endless patience with the opposition as we painstakingly made our way to the place that they were already at. I also thank my noble friends Lady Bowles and Lady Kramer, who brought to the Bill a completely fresh eye from the financial sector and who set a very high standard of scrutiny for a Bill that is normally given over to those of us interested in the world of charity.

We achieved three things during the passage of the Bill. First, we made it clear that this is not simply an exercise in spending dormant money because it is there. We made sure that the scheme is about achieving impacts on financial inclusion in areas of deprivation. Secondly, we enabled it to be run using far more difficult asset classes than just bank accounts, and we made sure that the reporting systems for that were fit for purpose. Thirdly, we made sure that everyone involved in the scheme is under a duty to report—this is about additionality, not giving the Government a fund that they can dip into in difficult times.

In years to come, we will have reports from the disbursing body and the Secretary of State that I hope will show the impact of this, particularly in one respect: the endeavour to get rid of moneylenders in poor communities. If we achieve that, we will together have achieved something good and which we can be proud to support.

Lord Parkinson of Whitley Bay (Con): My Lords, I am grateful to the noble Lord and the noble Baroness for their comments, and I echo the tributes that they paid to the noble Baroness, Lady Bowles of Berkhamsted, my noble friend Lord Hodgson of Astley Abbotts and many others who contributed to the debates on this.

I will certainly discuss the point that the noble Lord raised with my honourable friend Nigel Huddleston, the Minister with responsibility for the Bill, in his capacity as Minister for Charities and Civil Society, as we just heard in Questions. I am sure that he will want to continue the discussions that we have had on community wealth funds as the Bill goes to another place but, as I say, I am very grateful that it does so with genuine cross-party support and a fair wind behind it. I grateful to all noble Lords who have ensured that this is so.

3.25 pm

Bill passed and sent to the Commons.

Armed Forces Bill

Report

3.25 pm

Clause 3: Nomination of Circuit judge to sit as judge advocate

Amendment 1

Moved by ***Lord Morris of Aberavon***

1: Clause 3, page 2, line 6, after "judge" insert "licensed by the Lord Chief Justice to try murder, manslaughter and rape offences"

Lord Morris of Aberavon (Lab): My Lords, I beg to move my Amendment 1, which would add my own words to the Government's insertion of "or a Circuit judge", and to speak in the same group to Amendment 2, which I support, in the names of the noble Lord, Lord Thomas of Gresford, the noble and learned Lord, Lord Thomas of Cwmgiedd, and other noble Lords.

My amendment seeks to put on the face of the Bill the type of circuit judge that can be nominated to sit as a judge advocate. My understanding is that, at present, the Lord Chief Justice is able to nominate a High Court judge to do so and, in practice, from time to time does so. High Court judges have wide experience to try a whole range of cases, and those of the Queen's Bench Division from time to time try the most serious offences, such as murder, manslaughter and rape, while they are on circuit. Circuit judges do not as a rule try such cases, save for those who are licensed by the Lord Chief Justice to do so. They are very senior and experienced judges. Trying a murder case can be a challenge, although those experienced to do so have the custom and practice to do it extremely well.

I hope that we can have a clear view that the type of judge who should sit is one who is licensed to try murder and manslaughter cases. I have the assurance of the Minister that they would be very experienced judges. I am grateful for her remarks but I emphasise that, administratively, in future there is no guarantee that what she says on paper now will mean that only those who are licensed to try in the criminal courts try such cases.

Turning to Amendment 2 to Clause 7, I racked what one of my mentors, the late Lord Elwyn-Jones, Lord Chancellor, used to call my brain for a suitable amendment that would be in order for Report to revisit the proposition, which I argued for in Committee, to civilianise the court martial system in certain serious criminal cases. My poor offering is the new clause proposed in Amendment 25 on page 8 of the Marshalled List. The noble Lord, Lord Thomas of Gresford, has shown greater ingenuity than me, and I now give notice that I will not move my amendment and will instead support his.

My campaign to civilianise the court martial system goes back a long way, to the time of the controversy concerning Sergeant Blackman's case. The Minister was particularly kind to refer to my interest then. Following a number of debates that I was fortunate to initiate, the Ministry of Defence, with unaccustomed speed, set up an inquiry led by His Honour Shaun Lyons, and we are grateful to him. I am sure that this action owes a great deal to the then Minister, the noble Earl, Lord Howe, and the noble Baroness, Lady Goldie. Regrettably, Shaun Lyons's recommendations for murder, manslaughter and rape have not been accepted by the Government.

I am glad that the protocol that I initiated and signed in the agreement between the Attorney-General's office and the military prosecutors has stood the test of time. The ultimate authority in the Bill is the Director of Public Prosecutions, who works under the supervision of the Attorney-General, and, from my reading of the Bill, there is no undermining of the system. The Government were loath to accept my amendment in Committee. The amendment of the noble Lord, Lord Thomas of Gresford, does exactly what I had hoped would be plain sailing at Committee stage, and I congratulate him.

3.30 pm

I believe that every soldier, sailor and airman—and their female counterparts—should have the same rights as civilians to a trial by a jury of 12, with all the statutory protections for majority verdicts, which time has proved work well in ensuring both just and timely verdicts. There is no such provision in court martials. It may well be, as the Minister said, that verdicts of two to one occur in a small number of less serious cases, but they have no place in modern criminal jurisprudence. Neither does a system whereby the most junior member of a court martial is asked to give his verdict first. This is even more important now, given the provisions in Schedule 1 for the constitution of court martials to include other ranks. Every service person should have the same protection for his or her day in court as a civilian counterpart. Our forces are now much closer to those in civilian life than they were and should have the same rights, hallowed and developed over centuries, as civilians have, and it is with pleasure that I support Amendment 2.

Lord Thomas of Gresford (LD): My Lords, I am most grateful to the noble and learned Lord, Lord Morris of Aberavon, for his support, and I congratulate him on the attempts that he has made over a long time to civilianise military law. I am pleased that he mentioned Lord Elwyn-Jones, who admitted me to the rank of Queen's Counsel in the Moses Room rather a long time ago.

The issue in Amendment 2 is: should members of the Armed Forces accused of murder, manslaughter, rape or other sexual offences alleged to have been committed within the United Kingdom be tried by court martial or in ordinary courts? The Mutiny Act 1689, in the reigns of William and Mary, laid down the principle that there should be annual renewals of the Armed Forces Act. The recital to it said:

> "No man may be forejudged of life or limb, or subjected … to any kind of punishment … by martial law, or in any other manner than by the judgment of his peers and according to the known and established laws of this realm."

That is the sentiment that the noble and learned Lord, Lord Morris of Aberavon, has just enunciated, and it is a principle derived from the Magna Carta.

But this recital in the Act contained an exception to that stirring principle. In respect of

> "every person being mustered and in pay as an officer or soldier in their Majesty's service, who excited, caused or joined in any mutiny or sedition in the Army, or deserted their Majesty's service",

the punishment was death.

The other means of disciplining service personnel was under the Articles of War, issued under the King's sign-manual, but only for the purpose of operations abroad, particularly in the colonies, not in the United Kingdom.

The Mutiny Act applied throughout Great Britain and Ireland, so that even in peacetime a soldier mutinying or deserting would be tried and punished under martial law, not civil law, and without the protections offered through civil law procedures.

[Lord Thomas of Gresford]

The great jurist Sir William Blackstone, writing in 1765, was incensed that soldiers should be dealt with by court martial in peacetime and regretted that

"a set of men, whose bravery has so often preserved the liberties of their country, should be reduced to a state of servitude in the midst of a nation of freemen!"

When, in 2006, therefore, the Labour Government introduced into their Armed Forces Act a provision which permitted the trial of service personnel by court martial for serious offences committed in this country—a course which I strongly opposed at the time—they were going against centuries of history. The serviceman was now open to court martial for any offence, including murder, manslaughter and rape, even when committed in the United Kingdom. Importantly, he had lost the right to be tried by an ordinary jury of 12 of his peers and was subject to the verdict and punishment of up to seven officers, arrived at by a simple majority.

That is enough history; we must look at the position now, in 2021. We have before us the strong recommendation of His Honour Judge Lyons in his review. As it happens, his first recommendation is that the court martial jurisdiction should no longer include murder, manslaughter and rape when those offences are committed in the United Kingdom, except with the consent of the Attorney-General. The Defence Sub-committee under Sarah Atherton, Member of Parliament for Wrexham, published its report in July, entitled *Protecting Those who Protect Us*. That report calls urgently for the implementation of His Honour Judge Lyons's recommendation.

It is true that, in his recent report, Sir Richard Henriques accepted concurrent jurisdiction, as it is called, but the reason he gives is that there may be cases which occur both abroad and in this country, and consequently a single trial would be preferable. That reason would not have any force in respect of murder cases, where there is universal jurisdiction.

I do not believe that a murder case, for a murder committed in the United Kingdom, has been dealt with by way of court martial since 2006. However, I have been able to trace two cases where charges of manslaughter by negligence occurring in this country were tried in that way, both relating to the Castlemartin range in west Wales. In the most recent case, in 2012, a soldier was killed during a live firing exercise. That case was about the planning, organisation and running of that range and required reconstruction of the scene, with accurate grid references and bearings to establish to the criminal standard the origin of the fatal round. Three were convicted and the officer was sentenced to 18 months' imprisonment, with the others receiving service punishments. It follows, and I do concede, that there may be cases involving complex military issues where a court martial may be appropriate, but these are very rare—two cases in some 14 years.

In reply to the Minister's comments in Committee, I said that she had misinterpreted this amendment. I have used the word "normally", which means what it says: that offences committed in the UK would be tried in the ordinary Crown Courts, or in their equivalents in Scotland and Northern Ireland. That would be part of the protocol of the DSP and the DPP. It would be in only exceptional cases of the nature to which I have referred that the Attorney-General would need to be approached. I am not suggesting that he should be involved in the decision-making process of venue ab initio. Incidentally, there is no bar to the Attorney-General making a decision on venue, just as he or she may do in deciding on the commencement of proceedings. The Minister suggested the contrary in her reply in Committee.

Much more common are cases of rape and sexual offences occurring in this country being tried by court martial. It is obvious from the report of Sarah Atherton's Defence Sub-Committee that complainants, their families and the public simply do not have confidence in courts martial. We can argue about the figures, but if the level of conviction is so low then this perception will have an effect on recruitment and, more importantly, retention. There are many victims within the armed services who will wish to leave for a civilian life if their complaints are not upheld.

The noble Baroness also repeated the justification advanced in 2006 that public confidence can be maintained in the whole service justice system

"only if the service justice system not only has but can be shown to have the capability to deal with all offending fairly, efficiently and in a manner which respects and upholds the needs of victims."—[*Official Report*, 27/10/21; col. GC 166.]

That was the justification in 2006 to give a boost to the status of the partly reformed system of courts martial.

I said at Second Reading that I generally welcome the reforms in this Bill. They nearly conclude the long journey since the Findlay human rights case in 1995 towards founding the service justice system on justice rather than, as it has been historically, on discipline. We have finally buried the Mutiny Act, under which General Braddock in the Seven Years' War could issue the order of the day:

"Any Soldier who shall desert tho' he return again will be hanged without mercy."

This amendment is designed to complete the journey towards justice.

Lord Thomas of Cwmgiedd (CB): There is one brief reason that I would add to what has been so eloquently said by the noble and learned Lord, Lord Morris, and the noble Lord, Lord Thomas of Gresford. We have always tried, and marked the seriousness of, crimes set out in the amendment by trial by jury. Magna Carta conferred on defendants the right to trial by jury. Today, we take account of the interests of the victim of such crimes and they have confidence only in trial by jury, particularly as so many of these cases turn on credibility. On that, the judgment of ordinary men and women, drawn from a jury, is the only way to achieve justice. For those three reasons, we should not deprive people of trial by jury in these cases.

Baroness Bennett of Manor Castle (GP): My Lords, I will speak very briefly, having attached my name to Amendment 2 in the name of the noble Lord, Lord Thomas of Gresford. I did that because, as we came to the deadline, I noticed that there was a space, and I really felt that, given the level of support that the issue covered by this amendment achieved at Second Reading, it deserved the broadest cross-party and non-party support possible.

I will also reflect on what I said in Committee on this amendment. Much of our leadership on this has come from Members from legal backgrounds, who focused on the rights of the defendant. I understand that, but I also note that I am the only female Peer who has attached my name to the amendment. There is very much a gender aspect to this. Women currently make up 10% of our full-time military—about 15,000 in number. They are still a significant minority right across the forces.

As the noble Lord, Lord Thomas of Gresford, just alluded to, we have a military culture stretching back many centuries that was, for most of that time, entirely male dominated. Offences such as domestic violence, child abuse, rape and sexual assault are disproportionately committed against women. Last night in this very Chamber on the policing Bill we were discussing how difficult it is to get our civilian justice arrangements to cater adequately for these offences. How much more difficult is it in the military context, with the culture we just heard outlined?

I commend the amendment to the House and, looking back to the Second Reading debate, note the breadth of support it achieved.

3.45 pm

Lord Coaker (Lab): My Lords, it is a privilege to speak after my noble and learned friend Lord Morris, the noble Lord, Lord Thomas of Gresford, the noble and learned Lord, Lord Thomas of Cwmgiedd, and the noble Baroness, Lady Bennett. I support Amendment 2 in our names, an exceptionally important amendment that seeks to build and improve on the current situation, according to the principles laid out by the noble Lord, Lord Thomas of Gresford, and the noble and learned Lord, Lord Thomas of Cwmgiedd, on the need for trial by jury.

As we heard in Committee, the independent review by his honour Judge Shaun Lyons and Sir Jon Murphy recommended that murder, manslaughter, rape, sexual assault by penetration and child and domestic abuse cases, where alleged to have happened in the UK, should be removed from the military justice system, except where the consent of the Attorney-General was obtained. Lyons recommended establishing a serious crime unit and removing murder, manslaughter, rape, sexual assault by penetration and child and domestic abuse cases from the SJS. One did not stop the other.

As noble Lords have pointed out, there is a problem here, in some of the issues of principle that have been raised and in looking at some of the statistics. In Committee, the Minister said that it was not possible to draw

"a meaningful statistical or data comparison between the service and civilian justice systems",—[*Official Report*, 27/10/21; col. GC 165.]

because the small database would mean that some changes would result in a "disproportionate effect".

I looked for some statistics to put before your Lordships, to highlight some of the issues that the noble Baroness, Lady Bennett, talked about. These statistics, regarding the court martial system within the Ministry of Defence, as given by the Government in answer to a Written Question in February 2021, show the issue that has been highlighted, not only by Sarah Atherton MP's report but by many other reports and stories that come out of the Ministry of Defence. For example, according to the Government's own figures, in 2015, 31 charges were heard, with three defendants found guilty. There were 40 sexual assault cases that year, in which 21 defendants were found guilty. In 2019, nine cases of assault by penetration were heard, with two defendants found guilty. There are many other figures that can be used. These statistics were issued on 3 February 2021 by the then Minister, Johnny Mercer MP, in response to a question, highlighting some of the issues and the need for us to reflect on whether we can improve the system.

Sarah Atherton MP, his honour Judge Lyons and many others have said that it is not only about a case of justice or the principle of trial by jury. There are very real problems within the military justice system in this respect. Therefore, this amendment takes us to a very important issue of principle and a very important way in which we might do better in bringing justice to some of these women.

In Committee, the Minister said that the Government had

"committed to publishing a defence-wide strategy for dealing with rape and serious sexual offences in the service justice system."—[*Official Report*, 27/10/21; col. GC 166.]

However, on 8 November, her ministerial colleague, the Armed Forces Minister, said that the Government have only an intention to publish a defence-wide strategy for dealing with rape and serious sexual offences in the service justice system. Can the Minister comment on whether publishing that strategy is a commitment or an intention, and how that strategy would seek to improve conviction rates in the system?

Supporting the amendment tabled by the noble Lord, Lord Thomas, and the excellent way in which he presented it, is a way of ensuring that we move towards the principles that we seek to ensure for all our citizens, and to do something about some of the problems that we see in the statistics I have mentioned.

Lord Robathan (Con): My Lords, if I may intervene briefly, I will start with a confession: I have not read the Mutiny Act 1689, to which the noble Lord, Lord Thomas, referred so eloquently. But I have a little experience, in that I have sat on a court martial as part of the board. I have never been court-martialled, I am glad to say, but I have experience of military justice—some decades ago now, because I am getting old. I also have some experience of it from working in the Ministry of Defence in the coalition Government. The Bill as a whole tries to make the criminal justice system in the military better. It is all to be applauded, and I am particularly impressed with the setting up of the defence serious crime unit.

I found a slight contradiction in the amendments that we are discussing today; perhaps it might be explained later. Is it because defendants—typically soldiers—are too harshly treated that they should have trial by jury? When I was serving, my experience was that, in the military justice system, there was a certain attitude: "If he is before a court martial"—it was almost exclusively a "he"—"he must be guilty". Or is it because, as it says in Amendment 25, we need to improve the rates of conviction for serious offences? This seems to be a slight contradiction.

[Lord Robathan]

Is it because people do not like the whole courts martial system? That is a serious question to be addressed. In my experience, which is aged and limited, the courts martial system works pretty well, so let us know exactly why it should be that we wish to change it for these matters—and I know Judge Lyons has said so. Notwithstanding the comments of the noble Lord, Lord Thomas, that we should not consider discipline to be part of this, it is very important that we have a disciplined force. That is why we have courts martial, though no longer the death penalty for mutiny.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, I am delighted to join your Lordships in the Chamber this afternoon on Report to discuss these proposed amendments to the Armed Forces Bill. This is an important Bill. I know it enjoys support across the Chamber, but interesting issues have arisen and merit discussion.

I also observe that many of the issues that were vigorously and articulately debated in Committee have resurfaced. That was a good debate, probing the legislation for the Bill. Please be assured that I will endeavour again to address the points raised and to dispel the concerns that noble Lords have around the Bill.

Your Lordships may take comfort that I am as passionately driven as anyone in this Chamber to ensure that we deliver the best for our service men and women, our veterans and their families, balanced against the resources to hand. I say with confidence that the Bill seeks to achieve that overriding objective. I am grateful to my noble friend Lord Robathan for acknowledging that this is exactly the improvement that the Bill seeks to deliver.

With that said, I will now speak to Amendments 1, 2 and 25. Just for the avoidance of doubt, I understand that the noble and learned Lord, Lord Morris of Aberavon, will not now move Amendment 25, and therefore I propose not to use my speaking notes and have a Mogadon effect on the Chamber. If the noble and learned Lord is content with that, I can perhaps shorten this debate a little.

Amendments 1 and 2 focus on the service justice system. I thank the noble and learned Lord, Lord Morris of Aberavon, for tabling Amendment 1. It seeks to amend Clause 3 so that a circuit judge or a High Court judge can be nominated by the Lord Chief Justice to sit as a judge advocate only when they are ticketed to deal with cases of murder, manslaughter and rape.

First, I reassure your Lordships that judge advocates hearing murder, manslaughter and rape cases in the courts martial have the same training and requirement for ticketing as judges hearing those cases in the Crown Court. The Judge Advocate-General and all judge advocates sit in the Crown Court for up to 60 sitting days a year and are as qualified, capable and well trained as civilian judges sitting in the Crown Court.

Tickets are allocated based on the Judge Advocate-General's judgment that a particular judge advocate has the appropriate training, experience and ability to try the case in question. Judges nominated by or on behalf of the Lord Chief Justice to sit as a judge advocate will likewise have whatever tickets are necessary for the case that they will be trying. I trust that this will assure the noble and learned Lord that all the judges sitting in the courts martial are qualified to try whatever case is before them.

There may also be some misapprehension about another situation: when the service courts might need additional judges. As drafted, the amendment would allow only judges ticketed for murder, manslaughter and rape to be nominated to sit in the court martial. The judiciary in the service courts is already able to deal with these serious offences, so the Judge Advocate-General may need to request the nomination of a judge for other reasons. It might be because they have particular expertise or experience that is relevant for another type of offence. There might also simply be a temporary shortage of judge advocates, perhaps when the service courts have an unusually high caseload. A judge nominated to sit in the service court would need to be ticketed only for the particular type of case that they are trying; they would not need a ticket for murder, manslaughter or rape, unless of course they were dealing with those offences. I hope that that reassures your Lordships and, therefore, that the noble and learned Lord will feel able to withdraw his amendment.

I turn now to Amendment 2 in this group, tabled by the noble lord, Lord Thomas of Gresford, and supported by the noble Lord, Lord Coaker, the noble and learned Lord, Lord Thomas of Cwmgiedd, and the noble Baroness, Lady Bennett of Manor Castle. It seeks to ensure that certain serious crimes—murder, manslaughter, domestic violence, child abuse, rape and sexual assault with penetration—are all tried in the civilian courts when committed by a serviceperson in the UK, unless by reason of specific naval or military complexity involving the service the Attorney-General has specifically consented for such crimes to be tried at courts martial.

By way of preface, I say that it was very clear from our debate in Grand Committee that we all have a common aim: to ensure that, where there is concurrent jurisdiction, each case is heard in the most appropriate jurisdiction. This amendment seeks to achieve this through two procedural safeguards—namely, that there is a presumption that these offences are heard in the civilian courts and that, to overturn that presumption, the Attorney-General's consent must be obtained.

We accept the need to improve decision-making in relation to jurisdiction, and a key part of that is of course for the civilian system to have a potential role in each case. We differ on the need to restrict the legal principle of concurrent jurisdiction by introducing a presumption in favour of one system over the other, and that is what the noble Lord's amendment manages to create.

As I said in Grand Committee, the recently published review by Sir Richard Henriques was unanimous on two things, in supporting not only the continued existence of the service justice system but the retention of unqualified concurrent jurisdiction for murder, manslaughter and rape. Importantly, the review found the service justice system to be fair, robust and capable of dealing with all offending. The creation of a defence serious crime unit elsewhere in the Bill will further improve the skills and capability of the service police

to deal with these most serious offences. Therefore, we do not believe that a presumption in favour of these offences being heard in the civilian courts is necessary or justified.

We acknowledge that change is required to improve clarity as to how concurrency of jurisdiction works in practice. Instead of introducing an Attorney-General consent function, as recommended by His Honour Shaun Lyons, we believe that a better approach is to strengthen the prosecutors' protocols and enhance the role of prosecutors in decision-making on concurrent jurisdiction. Independent prosecutors are, after all, the experts on prosecutorial decisions.

4 pm

Clause 7, therefore, places a duty on the heads of both the service and the civilian prosecutors in England and Wales, Scotland and Northern Ireland to agree protocols regarding the exercise of concurrent jurisdiction. Well-designed protocols ensure that decision-making is taken at the right level by those with access to the most up-to-date information. In terms of these offences, the Director of Service Prosecutions has already stated, in his evidence to the Bill committee in the other place, that there will be a requirement for the service prosecutors to consult their civilian counterparts when dealing with certain offences so that expertise from both sides can be addressed to the jurisdiction decision.

Further, the Bill makes clear that, where there is disagreement on jurisdiction, it is the Director of Public Prosecutions who will always have the final say. Together, these procedural safeguards ensure that the civilian authorities are always involved in decisions on concurrent jurisdiction in certain cases and can always veto such cases being heard at court martial. I hope that explanation has provided noble Lords with the assurance that sufficient consultation with the civilian authorities will take place to assure that we have good decision-making and cases are heard in the most appropriate jurisdiction.

The noble Baroness, Lady Bennett, raised the important issue of what she described as the imbalance of women in the military. I can say that elsewhere in the Bill we are broadening the pool from which members of the court martial board can be drawn to include rank OR-7. This will increase the number of women who can sit on court martials. The noble Baroness made an important point; it is recognised within the MoD, and we are taking steps to try to improve the presence of women in the court martial system.

The noble Lord, Lord Coaker, raised a point about the proposed defence rape and serious sexual crime strategy. I can confirm that we intend to publish that strategy—a defence-wide strategy—for dealing with rape and serious sexual offences in the service justice system. That will aim to reduce the prevalence and impact of rape and other serious sexual offending in the Armed Forces, and to improve the handling of those cases in the service justice system. I do not know where the preparation of that strategy has got to, but I can undertake to make inquiries. It is my colleague, the Minister for Defence People and Veterans, who is dealing with that. I will make inquiries and write to the noble Lord with further information.

I hope that on the basis of that further information which I have been able to provide that noble Lords will feel able to withdraw or not to press their amendments.

Lord Morris of Aberavon (Lab): I withdraw my amendment.

Amendment 1 withdrawn.

Clause 7: Concurrent jurisdiction

Amendment 2

Moved by ***Lord Thomas of Gresford***

2: Clause 7, page 4, line 27, at end insert—

"(4A) Guidance under subsection (3)(a) must provide that where offences of murder, manslaughter, domestic violence, child abuse, rape or sexual assault with penetration are alleged to have been committed in the United Kingdom, any charges brought against a person subject to service law shall normally be tried in a civilian court unless, by reason of specific naval or military complexity involving the service, the Attorney General consents to trial by court martial."

Member's explanatory statement

This amendment would ensure the most serious crimes – murder, manslaughter, domestic violence, child abuse, rape and sexual assault with penetration – are tried in civilian courts when committed in the UK unless the Attorney General has specifically consented for such crimes to be tried by court martial by reason of complexity involving the service.

Lord Thomas of Gresford (LD): My Lords, I am most grateful to the noble Baroness for her careful reply, but I feel that I must test the opinion of the House.

4.03 pm

Division on Amendment 2

Contents 210; Not-Contents 190.

Amendment 2 agreed.

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4.30 pm

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, the noble Baroness, Lady Brinton, will be taking part remotely.

Clause 8: Armed forces covenant

Amendment 3

Moved by ***Lord Coaker***

3: Clause 8, page 9, line 17, at end insert—

"(d) a relevant employment function,

(e) a relevant pensions function,

(f) a relevant compensation function,

(g) a relevant social care function,

(h) a relevant criminal justice function, or

(i) a relevant immigration function."

Lord Coaker (Lab): My Lords, it is good to be back. In moving Amendment 3 in my name, I will speak to Amendments 5, 6 and 7. I thank the noble Baroness, Lady Brinton, for signing those amendments. I also thank the noble and learned Lord, Lord Mackay, for tabling Amendment 4, which is extremely important, and the same as an amendment tabled in my name in Committee.

As I said in Committee, we support the aims of this Bill, but at present believe that there is a missed opportunity to deliver real improvements in the lives of our service personnel, veterans and their families. Like all noble Lords, we believe that the Armed Forces covenant represents a binding moral commitment between the Government and service communities, guaranteeing them and their families the respect and fair treatment their service has earned. In Committee, the Minister argued that central government in the Bill is unnecessary. She said:

"The Government are already subject to a legal obligation to report on the delivery of the covenant."—[*Official Report*, 27/10/21; col. GC 194.]

But we all know that a reporting function is very different to a statutory provision ensuring that Ministers are subject to the duty of due regard. Ministers are arguing, as noble Lords will see in the Bill, that it is unnecessary for them, but necessary for local authorities, for NHS trusts, for NHS governors, and for a range of other public bodies to have a statutory duty to have due regard for the covenant. As said by the noble and learned Lord, Lord Mackay, it is not only many of your Lordships who are dismayed that the Government seem determined to stand against ensuring that the due regard principle applies to central government, but the Royal British Legion and many others. They believe that the due regard principle should apply to central government in the way it applies to others. I am very supportive of the amendment in the name of the noble and learned Lord, Lord Mackay.

Service charities, including Help for Heroes, the Royal British Legion and the Army and Naval Families Federations are also concerned about the narrow scope of the covenant, concentrating as it does on education, housing and healthcare. Service charities have pointed out that this narrow focus could, in their view, create a two-tier Armed Forces covenant. That is why we have retabled Amendments 3, 5, 6 and 7, extending the scope of the covenant in the Bill to include employment, pensions, compensation, social care, criminal justice and immigration.

The Minister has explained that the new covenant reference group will evaluate the new duty. That is very welcome, and I thank her for that concession, but it is clear that the narrow scope of housing, healthcare and education does not go wide enough to stop all areas of potential disadvantage against members of the Armed Forces, veterans and their families. As the covenant reference group will have that new duty to evaluate how the covenant is working, how will the process of evaluation take place? For example, will it have to report to the Defence Committee on an annual basis?

Not extending the scope of the covenant is a missed opportunity by the Government, and I very much look forward to the Minister's further justification of why they are resisting that. I also look forward to the noble and learned Lord, Lord Mackay, speaking to his Amendment 4, which I think is particularly important as it would extend the "due regard" principle to central government as well as the other public bodies mentioned in the Bill.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, the noble Baroness, Lady Brinton, will not be taking part in these proceedings because she is double-booked in Grand Committee.

Lord Lancaster of Kimbolton (Con): My Lords, I have much sympathy with these amendments. Back in 2010, when I served in the Committee on the Bill, I proposed similar amendments, so noble Lords may ask why I now express some hesitancy about extending the remit. I suppose it comes from my experience as Minister for the Armed Forces and Minister for Defence Veterans, Reserves and Personnel. When we roll back the clock, if I am entirely honest, in the early days of implementing the Armed Forces covenant we struggled

[Lord Lancaster of Kimbolton]
to get traction. It took some time to convince all the local authorities within the United Kingdom to sign up and indeed to get employers to sign up. I am delighted that now we have close to 2,000 signatories to the Armed Forces covenant.

My concern really lies around the fact that, as we continue to extend the width, we may struggle to get buy-in into this if we create yet more of a burden for local authorities in particular. Especially after Covid, as they have had a difficult couple of years, they might not see the benefit of this if we simply overburden them with yet more categories. My suggestion in Committee was not that we should not extend the categories but that we should do it incrementally over a period of time. In many ways, had that been suggested today, I would have been happy to accept this amendment, but that is not the case, which is a shame. During that early stage of the process, we also struggled to demonstrate the benefits of this to veterans.

It is a shame that we have an Armed Forces Bill only once every five years because I do not want to have to wait another five years to slowly extend the remit of the covenant. However, I simply feel that at this stage such a step would be a bit too much too soon, for the reasons that I have tried to explain.

Lord Mackay of Clashfern (Con): My Lords, I think it might be convenient for me to speak to my amendments in this group, Amendments 17 and 4. Something about Amendment 4 has been said already and I will not repeat that, but I shall attempt to elaborate on it somewhat.

On Amendment 17, when I was trying to consider this issue more carefully after the Minister's argument in Committee, I happened to notice that this clause has a curious provision at the beginning: it is the same as the opening clause that was in the 2011 Bill on the Armed Forces covenant report. The only reference to "Armed Forces covenant" here is by dropping the word "report". That struck me as rather strange in a Bill dealing with the Armed Forces covenant.

My noble friend may be able to put me right on this, but I have not found a definition of that covenant in the Bill. It is true that there is a definition on the website, but the website is not yet by law an Act of Parliament. We have to distinguish between these two. I am happy to think that what I have proposed in Amendment 17 is not very different from what is on the website, but it would at least be in the statute—in the part on definitions and principles that apply to England—and would apply through it.

My main argument, of course, is in relation to Amendment 4. It is right that central government in the form of the Secretary of State, who is responsible to Parliament for the Armed Forces, should be responsible for respecting the Armed Forces covenant. If he does not have a duty to respect it, it is difficult to put that duty on local authorities, health authorities and so on. In Committee, I referred to what I regard as an important example of where this was really necessary. In the first Gulf War, there was a feeling early on—of course, I have no detail on this that I could go into—that there might be poison gas coming from the opposition in Iraq. A possible protection against that gas was provided to some of our Armed Forces. Needless to say, I do not know what it contained, and I do not think local or health authorities knew either. Importantly, therefore, the illnesses of a neurological character contracted by some veterans were thought to be possibly connected to the protection against the poison gas.

As it happened, I do not think the poison gas ever emerged, but some veterans had had this protection and there was a question about that. I sent the Minister a copy of the Library report on this; there was an inquiry into it by one of my judicial colleagues. The eventual opinion expressed by Her Majesty's Government was that the illness was not sufficiently definite to be called Gulf War syndrome—it was probable that it was due to a variety of things and, therefore, it was not to be classified in that way.

I cannot see how anybody other than the Secretary of State could be responsible for carrying out an investigation of that kind. It is therefore vital that he should have regard to the principles; of course, the areas that he has to have regard to are in the Bill now and not subject to the extensions of Amendment 3 and the other extensions that the noble Lord, Lord Coaker, referred to. It is a simple case of three zones, as it were, in which the Secretary of State has to have regard to the principles. If anybody has to have regard to the principles of the Armed Forces covenant, I should have thought that the Secretary of State responsible to Parliament for the Armed Forces would be the leading person in that capacity.

It is for this reason that I tabled Amendment 4—having benefited from the copyright very kindly given. I look forward to what my noble friend the Minister has to say. I am sure she will have a good answer which will not be good enough. Unless this is accepted by the Government, or some provisional point of view for the future is accepted, I therefore intend to test the opinion of the House on this matter.

4.45 pm

Lord Craig of Radley (CB): My Lords, I support the noble and learned Lord, Lord Mackay of Clashfern, on Amendment 4, and I support his Amendment 17. He has brought to your Lordships' attention an example of where due regard is necessary from the Secretary of State. When he did so in Committee, I said that I had another one, and I would like to take the opportunity to spell that out, because this cannot be devolved or left to local authorities to be dealt with.

Some servicemen recruited in Hong Kong were full members of Her Majesty's Armed Forces, having taken the oath of allegiance and paid full UK taxes on their pay. They held British passports; some trained in this country or elsewhere to fit them for their role in Hong Kong; some were involved in jungle-style warfare training in Borneo; one large unit was sent to Cyprus to release further UK armed personnel for Operation Granby, the first Gulf War in 1991. Many in the Royal Navy Hong Kong Squadron served worldwide on Her Majesty's ships. Now retired, they are still rightly classified as UK veterans and deserve fair treatment under the military covenant. But a few who served in those units that disbanded in 1997 missed out when allocations to retain their British citizenship were made in 1984. Some but not all of these servicemen were indeed allowed to retain their British passports and citizenships.

Those that were missed out and overlooked have long been campaigning for a return of this right, which has been replaced by BN(O) status without the benefit of full British citizenship. This injustice occurred when they were still serving.

Their case was first raised in this House in 1986, over 35 years ago. It has been recommended by the Hong Kong LegCo and was strongly supported by Lord MacLehose, drawing on his long and distinguished tour as governor of Hong Kong from 1971 to 1972. The Minister who wound up that debate about Hong Kong replied:

"I hope that your Lordships will recognise that there are some complex issues to be considered here … But, again, I can assure your Lordships that we shall give this the most careful consideration."—[*Official Report*, 20/1/1986; col. 102.]

Note that promise of careful consideration. Nothing happened. Nothing further was said or done. Regrettably, repeated assurance of careful, active consideration by the Home Office to this day still produces no decision. Surely these few veterans deserve better—a definitive answer, not just prevarication and stalling behind a misleading false promise of active consideration. How many more years of consideration do the Government require? Are the Home Office hoping that when the veterans are all dead the problem will be forgotten?

Following the enactment of the convenant in 2011, a small association, of which I am privileged to be honorary patron, was formed by some former members of the Hong Kong Military Service Corps to press their case again. I myself have repeatedly raised it in debates and Questions for Written Answer and written to the Prime Minister to support representations by those affected in Hong Kong. I am far from alone. Over the past nine years or more, many Members of both Houses have approached Ministers, Home Secretaries and Prime Ministers on behalf of these veterans, but over the past decade the response has been increasingly incredible and ridiculous—that is, that it is under active consideration.

Over 18 months ago, at their request, I forwarded 64 individual applications from those Military Service Corps veterans to the Home Secretary. None has been answered. There has not even been an acknowledgment from the Home Office. Understandably, the present situation in Hong Kong has strengthened the wish for this matter to be resolved and for those now few remaining individuals to be treated as full citizens. Will this Government at last do the right thing for these veterans?

Surely this is a further extreme example of the reason for a duty of care and due regard to be placed in statute on the Secretary of State. I am sure in future other issues affecting a group of veterans, not just individuals, will arise, which cannot be dealt with at devolved or local authority level. The Royal British Legion and other service charities have provided cogent arguments why it is not right to exclude central government from a statutory duty of due regard for veterans. I endorse that view based on their detailed and dedicated experience helping the veteran community. I strongly support this amendment.

Lord Alton of Liverpool (CB): My Lords, I am very pleased to support Amendment 4, in the names of the noble and learned Lord, Lord Mackay of Clashfern, the noble Lord, Lord Coaker, the noble Baroness, Lady Smith of Newnham, and my friend the noble and gallant Lord, Lord Craig of Radley. As the noble and learned Lord, Lord Mackay, told us, his amendment gives us the opportunity to address specific injustices experienced by our ex-servicemen and he is absolutely right in telling us that the lead on this should not be local authorities but national government. That is why not only are we right to hang specific cases on this amendment, but the purpose of the amendment itself is also clear and right.

Over the past decade, my noble and gallant friend and I have knocked on the doors of Ministers and raised questions on behalf of Hong Kong veterans. I know how greatly he is admired and respected by that cohort for his dedication and commitment to their cause. We have also worked with Mr Andrew Rosindell, the Member of Parliament for Romford, who has put great energy into putting right what is a clear injustice. The treatment of Hong Kong ex-servicemen has not been commensurate with the Armed Forces covenant, and the noble and learned Lord and others are seeking to put it right.

I also pay tribute to Roger Ching, the chairperson of the HKOR Benevolent Association, and who says of the treatment of Hong Kong's ex-servicemen that

"The attitude of successive Governments towards servicemen and women and veterans is appalling."

In 2014, my noble and gallant friend and I met with the late James Brokenshire when he was a Home Office Minister. He was characteristically courteous, but neither he nor a series of successive Home Secretaries have been able to correct the signal injustice faced by Hong Kong's ex-servicemen.

It is worth recalling that, from 1857 until 1997, more than 40,000 Hong Kong men lost their lives protecting our interests and the interests of the Crown. In the Great War, 100,000 British-Chinese soldiers served on the Western Front, and by the time of the Armistice the Chinese Labour Corps numbered nearly 96,000 men. In subsequent conflicts, they served alongside British servicemen: in the Second World War, in Korea, in the Malayan anti-communist campaigns and elsewhere, as the noble and gallant Lord has told us. In this month of all months, we should not only honour that contribution but do something practical to show that with memory of past sacrifice comes contemporary engagement with a long-running failure to honour the past.

In July 2006, the United Kingdom granted full British citizenship to all British Gurkha soldiers and their dependants who had served in Hong Kong. It was a generous and good decision. But why has there been such a different treatment for all but a handful of Hong Kong veterans? When Hong Kong was handed back to the Chinese Communist Party in 1997, a points-based system meant that only 159 of the 654 soldiers who applied to live in the United Kingdom were successful.

Campaigners responded to that clear injustice, and one group, 38 Degrees, even set up a petition which gathered more than 117,000 signatures. Yet the response since right of abode was set up in 1997 has failed to bring a settlement, with successive Home Secretaries repeating the mantra of which my noble and gallant

[Lord Alton of Liverpool]
friend has reminded us this afternoon: that the applications are "under consideration". For how much longer are we to be given this unsatisfactory, stalling response?

Last year, Rosie Laydon, a presenter and reporter for Forces TV, was in touch with me. She said:

"British Hong Kong veterans do not feel the current Government offer of visas to those with BNO status offers adequate recognition of their service. They have told me that they believe they should be granted British citizenship unconditionally"—

and I agree. They also told her that, as former members of the British Armed Forces, under Chinese national security laws, now imposed on Hong Kong, they are liable to be charged with spying for the United Kingdom Government.

Here I should declare that I am a patron of Hong Kong Watch, a vice-chair of the All-Party Parliamentary Group on Hong Kong and sanctioned, along with the noble Baroness, Lady Kennedy of The Shaws, by the CCP after taking part, in my case, in an international team monitoring the district council elections in 2019. Since then, we have seen the enactment of the CCP's draconian national security law, and I should like to hear from the Minister, for whom I have enormous respect, as she knows, what assessment she has made of the implications of loyal service to the Crown for the safety of our ex-servicemen in Hong Kong. We need to see this matter is a question of honour, but we also need to see it as a question of safety and security.

Recently, the noble Lord, Lord Ahmad of Wimbledon, told me in a Parliamentary Answer:

"The National Security Law is being used to systematically stifle rights and freedoms, not protect public security."

He also wrote:

"The UK is deeply concerned about the situation in Hong Kong and the systematic erosion of rights and freedoms and the high degree of autonomy enshrined in the Sino-British Joint Declaration."

Perhaps when the Minister replies, she can tell us when the United Kingdom is going to do anything more to hold the People's Republic of China to account for the destruction of the basic freedoms of Hong Kong.

Meanwhile, I point out to your Lordships' House that the *Times* has reported that the Foreign Secretary, Liz Truss, says that the CCP is "committing genocide" in Xinjiang—something that the House will return to on Thursday. In the context of Xinjiang, Tibet and Taiwan, I may add that there have been more than 150 sorties trying to intimidate Taiwan in the course of just five days. In Xinjiang, we have heard the United States Secretary of State, Antony Blinken, say that

"the forcing of men, women and children into concentration camps"—

his words—

"trying to, in effect, re-educate them to be adherents to the ideology of the Chinese Communist Party, all of that speaks to an effort to commit genocide."

Is it any wonder, then, that loyal servants of the Crown fear for the consequences of being abandoned in Hong Kong? The CCP has imprisoned lawyers, dissenters, pastors and journalists, such as the young woman, Zhang Zhan, tortured and jailed for four years for shining a light into the origins of the Covid pandemic in Wuhan. On Friday last, concerned for her deteriorating health, the United Nations called for her release.

In this context of arbitrary arrest, imprisonment, torture and re-education—even genocide—who can seriously doubt that Hong Kong's ex-servicemen, like Afghan interpreters or judges, will be primary targets as "two systems, one country" becomes "one system, one party, one ideology"? Recall that this is the same CCP responsible for the massacres in Tiananmen Square and for the enormities of the Cultural Revolution—and the deaths of 50 million Chinese people.

Through the Armed Forces covenant, we have the opportunity to demonstrate that we will not abandon loyal servants of the Crown, that we do not forget our debt of honour and obligations and that Parliament will go on supporting my noble and gallant friend until this wrong has been put right. It is for those reasons that I strongly support the amendment placed before your Lordships' House by the noble and learned Lord, Lord Mackay of Clashfern.

5 pm

Viscount Brookeborough (CB): My Lords, I support these amendments, in particular Amendment 4, tabled by the noble and learned Lord, Lord Mackay of Clashfern. I have special reasons for doing so. I note that the noble Lord, Lord Lancaster, said that, when he was in office, it took a long time to persuade local councils and devolved powers to agree to implement the covenant. I dispute the fact that he got them all to agree; I come from Northern Ireland and there is a particular problem there. For that reason, Amendment 4 is even more important.

In Northern Ireland, the devolved Government and many of the councils do not support the covenant. Therefore, where do we go for support? The only place we can go, without, if you like, disfranchising our veterans, is to a Secretary of State. I am sure the Minister will say that this amendment comes in the part of the Bill that affects England and that it therefore does not affect the other nations and cannot stand on its own. However, it would take just a stroke of a pen to add this for Wales, Scotland and Northern Ireland.

The Northern Ireland issue is colossal. We do not have more veterans than anywhere else but, because of our Troubles and the local security forces, we have an awful lot more in relation to our size. Of course, we have veterans from Iraq and Afghanistan, as well. The number is significant, and these people have nobody at all to be their champion as far as the covenant goes.

At the moment—one does not need to go into the detail—the covenant is actually being administered quite well at a different level, below the radar, and we do not want to bring that up as a subject. However, on the idea of having a final place or person that people can go to, I support Amendment 4 because it brings a Secretary of State into this. It should therefore be written throughout that the Secretaries of State in the devolved areas have responsibility for this and are just quietly overseeing it. It is not necessarily a devolved issue and can be retained through the Secretary of State. He would have an influence on our veterans being supported as they should be. I certainly support these amendments.

Lord Dannatt (CB): My Lords, I also support Amendment 4. I ask your Lordships to reflect on the origin of the Armed Forces covenant, which we find in

the Armed Forces Acts, going back to 2011. It was not a new idea dreamed up by the Government of the day but the beginnings of the codification of something that had existed for quite some time as an informal covenant or agreement between those who serve and the Government who require them to carry out certain operations.

The covenant is effective when the balance between the requirements placed on the Armed Forces community and veterans is itself in balance. In the days and years leading up to 2011, when the Armed Forces covenant went into law, and particularly during the most difficult period when operations in Iraq and Afghanistan were being conducted together, the balance was definitely out of kilter and we were out of balance as far as the informal aspect of the covenant was concerned.

Who could better personify and embody the government side of the balance between the Government who require the Armed Forces to carry out operations and the servicepeople who conduct those operations than the Secretary of State? I fully support Amendment 4. I support the further codification of the covenant and any moves to increase its scope, but particularly the amendment in the name of the noble and learned Lord, Lord Mackay of Clashfern, which would make the Secretary of State a pinnacle and personification of the Government's side of the covenant. That is absolutely critical.

Lord Sentamu (CB): My Lords, I too support Amendments 4 and 17. What brings me to this conviction is a case in which the widows of four soldiers from the Royal Marines were asked to leave their houses within three months of their deaths. They had nowhere to go. Another soldier who survived the same battle came to see me in Bishopthorpe, together with four other members of the Royal Marines, to say that we had to protest about the way widows were treated. There was talk about the covenant, but it had not yet come through. To raise the profile of this issue, they wanted me to join them in a parachute jump. At my age, this is quite serious business, but I thought that yes, I would join them. We were up there, at 14,500 feet, and, thank God, I survived; there was no real trouble, and I landed properly. Do you know what happened? People who saw this and learned what had been done donated a lot of money, and those four widows were housed in new builds, supported by a landowner who gave them a place to build houses.

That is what the covenant is about in the end: that we should look after anybody who has done their duty for the service of the Crown and the nation. The Bill is right to require local authorities and other places to have due regard to the covenant, but I would have thought that the Government should be first in line to have due regard to it, because the Secretary of State is answerable to Parliament, unlike local authorities. We could have some junior Minister reporting on what is happening and what is not happening, but the issue of democracy at the heart of this is that members of the Government are answerable to Parliament and can therefore be asked questions. The noble and learned Lord, Lord Mackay, is right to include the Secretary of State in Amendments 4 and 17. If they were agreed, the covenant would no longer be given to people of good will to try to do whatever they want—the Government would actually be answerable, and we could ask them questions.

This amendment is timely. I hope we will all support it and that the Government will see it as an improvement, not an attempt to create more jobs and work for the Secretary of State. In the end, our soldiers ultimately look to them for a voice, for help and for support.

I did that parachute jump and was very glad to see the covenant a few years later, but it still did not quite do what this amendment is trying to do. I say to the Government: do not come back to this again—include the Secretary of State.

Baroness Smith of Newnham (LD): My Lords, I will speak to Amendment 4, which I have co-signed, and Amendments 3, 5, 6 and 7 in the names of the noble Lord, Lord Coaker, and my noble friend Lady Brinton. We have already seen this afternoon one of the slight peculiarities of our system, which is currently not quite hybrid: we had a long delay on the first Division, because somehow the technology did not quite work. At the moment, the technology does not quite work either for noble Lords who seek to be both in Grand Committee and in your Lordships' House, in the main Chamber, simultaneously. For those of us here physically, it can be possible to move very quickly between the Moses Room and the Chamber. Our colleagues appearing virtually have to log on half an hour before an item of business, so my noble friend Lady Brinton apologises for not speaking on this group.

I will speak to the amendments she has co-signed with the noble Lord, Lord Coaker. There is one aspect in particular which ought to be mentioned: paragraph (i) of Amendments 3, 5, 6 and 7, which mentions an immigration function. If we are going to talk—as the noble and gallant Lord, Lord Craig of Radley, and the noble Lord, Lord Alton, have done—about Hong Kong service personnel who served with our Armed Forces, initially as citizens and then losing that citizenship and perhaps having only the right to BNO status, I fear that we need to think about immigration questions and the Home Office.

I am aware that the Minister will be responding on behalf of the MoD, even though obviously she is also responding on behalf of the Government as a whole. I am therefore aware that some of the things we will ask might not be within her gift, but I very much endorse the impassioned calls from the noble and gallant Lord, Lord Craig of Radley, and my noble friend Lord Alton about the situation for Hong Kong veterans. They served for us. We owe them a debt of gratitude and the citizenship rights they expected.

If the Minister cannot commit, as I suspect she will not, to changing this piece of legislation in the way that some of us might want, can she at least undertake to go and talk to her colleagues in the Home Office and discuss ways in which we can look at veterans—not just the Gurkhas or Commonwealth veterans, who will appear in later groups of amendments, but the Hongkongers? This is vital, in part to demonstrate that the United Kingdom respects those who have worked with us. We have a moral obligation. Can we trust the Government to live up to it?

[Baroness Smith of Newnham]

We heard the noble Lord, Lord Lancaster, suggest that he actually had some sympathy with this group of amendments, particularly Amendments 3, 5, 6 and 7. He would like to bring in these additional functions, alongside healthcare, education and housing, but thinks it is too much, too soon. But, as we have heard, we will not have another full Armed Forces Bill for five years. Would it not be appropriate to bring forward and approve these amendments now, acknowledging that maybe they will not all be brought in on day one? Indeed, if they were all brought in on day one, that would be nothing short of a miracle—but, if they are enshrined in the Bill, it means that the Government will have a duty to look at these additional functions, and even the noble Lord, Lord Lancaster, who appears to be most sceptical about the amendments, acknowledges that these functions should be considered. So I ask the Minister to think again about these functions and whether they should be added to the Bill.

I particularly want to speak to Amendment 4, to which I added my name. It seems quite extraordinary for a Government to say, "We are so committed to the Armed Forces covenant that it has to have statutory status, yet it should not place a duty on us. We ourselves should not have to pay due regard to it, but we will ask local authorities, local health authorities and housing associations to do so". Why are we not asking the Secretary of State for Defence to have a duty? Why are we not asking the Secretary of State responsible for levelling up, houses, communities and whatever else is now part of that portfolio?

We have heard from the noble Viscount, Lord Brookeborough, that it would also be important for the Secretary of State for Northern Ireland to play a part. As he pointed out, the amendment refers only to England. It would be very simple to have additional lines that would give it validity in Northern Ireland, and indeed Scotland and Wales. If the Minister were to say, "We can't do something that's for England only", could she perhaps consider bringing back at Third Reading some amendments that would deal with this?

From the letter that the Minister sent to us last week, we know that she will say that the Government are out of scope of the Bill because, actually, it is at local level that we see problems. Well, if it is only at local level that we see problems, surely it would be of no difficulty whatever for the Secretary of State to find himself in the Bill and for the Government to have a duty enshrined in this piece of legislation. The Government should be leading, not simply setting duties for other—lower—levels of local government. The Government themselves should take responsibility and the moral lead.

5.15 pm

Baroness Goldie (Con): My Lords, I thank all noble Lords for a genuinely interesting and thoughtful debate. I will focus on the amendments that comprise the grouping: Amendments 3 to 7 and Amendment 17. To that end, I thank the noble Lord, Lord Coaker, for tabling his well-intended—I know that that is what they are—Amendments 3, 5, 6 and 7, and I thank the noble Baroness, Lady Brinton, for supporting them.

I was aware during the debate that some contributors made fairly wide-ranging speeches, not least focusing on citizens of Hong Kong and former Hong Kong military service personnel. These are important issues, but I would rather deal with them under Amendment 26, which seems more relevant to that particular area of concern. So, in addressing the amendments in group 2, I will confine my remarks to the issues covered by them.

The purpose of these amendments is to widen the scope of the new covenant duty to the areas of employment, pensions, compensation, social care, criminal justice and immigration in all four home nations. As I made clear in Committee, the new duty created by the Bill is designed to initially focus on the three core functions of healthcare, education and housing. This quite simply reflects those already in statute that are the most commonly raised areas and where variation of service delivery across localities can inadvertently cause disadvantage to the Armed Forces community.

Importantly, future areas of concern can be addressed as and when they arise through the powers in the Bill that allow the Government to widen the scope of the covenant duty, if needed, through secondary legislation. We are working with key stakeholders to establish an open and transparent process by which the scope of the legislation can successfully adapt to address the changing needs of the Armed Forces community.

As a number of your Lordship have indicated, our plan is to use the covenant reference group as the focus of this work. It has a broad representation from the Armed Forces community, service charities, families' federations, the Local Government Association and senior officials from both central government departments in Westminster and the devolved Administrations. I suggest that the covenant reference group is therefore ideally placed to be closely involved in the future development and running of this process. It will bring the necessary expertise and representation together to best consider suitable additions to the scope of the duty.

I wish to make clear—I am not being evasive or trying to elude or escape responsibility—that we have to be very careful about what we are creating with the Bill, understand how it will work in practice, make assessments, and then have a clearer sense of what may be needed and may require to be added in the future. This will also provide an opportunity for areas of concern to emerge and be highlighted, and it may be possible that these can be addressed through other means.

In adopting this approach, we considered the practicalities of extending the covenant duty to further policy areas, and the timelines involved. Any addition to the scope of the duty will require extensive consultation with stakeholders and the devolved Administrations in order to identify the appropriate bodies and functions to bring into scope and to work through any issues arising as a result of different procedures and legal frameworks in devolved policy areas.

I suggest that a better way forward lies in first working through and resolving any practical implications arising as the new covenant duty in the Bill is implemented. This will give us a good indication of where amendments may be required to better meet the changing needs of our Armed Forces community in the future.

By retaining the flexible nature of the legislation, the Government hope to establish a firm legal foundation for the covenant while avoiding any unnecessary administrative burden. The new duty builds on the existing widespread commitment to the covenant, thereby contributing to a further strengthening of covenant delivery across the entire United Kingdom. That is not in any way dodging the bullet. I am not trying to be evasive; I am trying to explain why I think this a sensible and cautious way to proceed, and I therefore ask the noble Lord not to press these amendments.

I turn to Amendment 4, tabled by my noble and learned friend Lord Mackay of Clashfern, and supported by the noble and gallant Lord, Lord Craig of Radley, the noble Lord, Lord Coaker, and the noble Baroness, Lady Smith of Newnham. The purpose of Amendment 4 is to make central government departments subject to the new covenant duty. This new duty arises when a specified public body exercises a relevant function. Those functions, which are specified in the Bill, are exercised by local authorities and other public bodies, and are not matters for which central government has day-to-day responsibility.

The problem with the amendment as drafted is that it would not, as I far as I can see, serve any identifiable meaningful purpose. I can understand the enthusiasm among opposition Members of this House to land anything they possibly can on the Government. I know that my noble and learned friend Lord Mackay is not motivated by these sentiments and that he genuinely believes that there is an omission here that should be addressed, but I am trying to explain that I am not quite clear what the omission is, and I am certainly not clear how the amendment would address it.

It occurred to me that, in addressing the principle of this amendment, it would be useful to explain the Government's thinking behind the design of the new covenant duty and how we see it establishing a firm foundation from which to build into the future. I hope noble Lords will indulge me: I will go into this in some detail because my noble and learned friend raises an important issue, and I believe it merits serious discussion and a considered response. I will attempt to give due attention to his amendment.

As I have outlined before, in considering how to take forward our commitment to further strengthen the covenant in law, we looked first at what the covenant has already achieved without being brought into any statutory provision. The considerable number of successful covenant initiatives across many different policy areas shows how the covenant provides a framework through which the widespread admiration and support for our Armed Forces community can flourish, allows scope for innovation and permits future growth. That is why we designed the new covenant duty around the principle of "due regard" as a means of building greater awareness and understanding of the lives of the Armed Forces community, which will bolster, rather than weaken, this support.

We considered carefully which functions and policy areas the covenant duty should encompass, including those that are the responsibility of central government. This required an assessment of the benefits arising from their inclusion, focusing on the purpose of the duty: to raise awareness among providers of public services of how service life can disadvantage the Armed Forces community, and so encourage a more consistent approach across the UK.

We were mindful that central government is responsible for the overall strategic direction for national policy, whereas the responsibility for the delivery of front-line services and their impact generally rests at local level. The Government are fully aware of issues impacting on the Armed Forces community. Indeed, we work with other departments and organisations to raise awareness across all service providers. The inclusion of central government in the scope of the duty was therefore not seen as necessary.

The noble Viscount, Lord Brookeborough, raised a particular issue with reference to Northern Ireland. The key front-line services we wish to target are generally devolved issues. They are not the responsibility of the Westminster Government, so any additions to the scope of the duty in respect of central government would not address the concern he has but would cause a greater disparity in covenant delivery if the—

Viscount Brookeborough (CB): I thank the noble Baroness for giving way. I remind her that when we found that the Executive were not operating on things that they should operate on, as in this case—I am talking about abortion—this Government, from here, overrode the Assembly. Therefore, there is a precedent for doing so.

Baroness Goldie (Con): The noble Lord refers to a very difficult and sensitive issue, and I think he is referring to the time when the Executive were not functioning in Northern Ireland. This Bill is concerned with the actual delivery of services that exist at the moment. It is the responsibility of Northern Ireland's devolved legislature to deliver health, housing and education, although it may not directly be doing any of these things. That is why bringing in central government does not address the noble Lord's concern. Indeed, there is an argument that, if you brought in the Westminster Government but not the devolved Governments, there would be an even greater disparity in covenant delivery. The reason the devolved Governments are not in this Bill is that it would seem to be beyond its scope.

I have previously explained that, as we look to the future, the vital element in our approach rests with the new powers granted to the Government in the Bill to add to the scope of the duty. This will allow it to effectively adapt to the changing needs and concerns of the Armed Forces community. We are engaging with government officials and covenant stakeholders to establish an open and transparent process, by which possible additions to the new duty can be thoroughly considered and evaluated, and we expect issues of concern to be raised, as they are now, by members of the Armed Forces community, by service charities and by other stakeholders through our existing networks. So, to be clear, we see no restriction to the nature of any issue raised, including those that fall within the responsibility of central government.

My noble friend Lord Lancaster asked wisely whether it would not have been better to approach this incrementally. I think that is exactly what would be better, and that is what the Government are intending

[Baroness Goldie]
to do. His other words, I think, were about being very wary of doing too much too soon. The reason the Government are being cautious about this is that we are breaking new ground. We are going where Governments have not gone before in relation to the covenant. We hope it will lead to improvement right across the United Kingdom, but we have to assess in practice how this will all work once this legislation has gone through.

The plan, as we look to the future, is for the work to be focused through the covenant reference group, which, as a number of your Lordships are aware, is made up of independent representatives from service charities, such as the Royal British Legion, the War Widows' Association and the families' federations, and, as I said earlier, includes senior officials from central government departments at Westminster and from the devolved Administrations. That group plays an important role in working with the Government to set out the overall direction of the covenant. It ratifies the grant-awarding priorities of the Armed Forces covenant fund trust, as it is recognised as having a clear understanding of the issues of most concern to the Armed Forces community.

I think it was the noble Lord, Lord Coaker, who asked about the covenant reference group and its terms of reference. The covenant reference group feeds into the ministerial covenant veterans board, chaired by the Defence Secretary and the Chancellor of the Duchy of Lancaster, and that board last met on 8 November. So, at the senior levels of government, this work is very much on the radar screen and being addressed.

In my opinion, the covenant reference group is ideally placed to be closely involved in the evaluation process, both in terms of its development and the conduct of its work. Where there is evidence to support the inclusion of new bodies and functions, a recommendation will be made to the Secretary of State for Defence, who will then consult with relevant stakeholders. Where a decision is made to exercise the power to extend the scope of the duty, further consultation will be required with key stakeholders before making regulations, which would need to be approved by both Houses of Parliament.

Crucially, any evaluation process must also ensure that extending the scope of the new duty would help to address any perceived problem, as it may not always be the appropriate response and there may be other methods of addressing the areas of disadvantage required under the covenant that do not necessarily require statutory powers.

5.30 pm

I am aware that the attraction of trying to attach an obligation to central government is, in the minds of your Lordships, a convenient way of addressing a raft of perceived deficiencies and shortcomings, or issues that have not been addressed. Actually, there is a very good litany of achievements under the covenant that has not required any legislative status as such. I am thinking of things such as the inclusion of veteran-specific care pathways for mental health and prosthetic care in the NHS in England, and of Operation Courage, which brings together all three veterans' mental health services—the transition, intervention and liaison service, the complex treatment service and the high-intensity service. I am thinking also of the Homelessness Reduction Act 2017, which requires the Secretary of State to refer members of the regular Armed Forces in England to a local housing authority if they believe that they may be made homeless or threatened with homelessness within 56 days. We have the Armed Forces (Flexible Working) Act 2018, providing flexible working opportunities for the modern service family. We have a new schools admission code for England, which came into force in September of this year, specifically to ensure that service families are not disadvantaged by the mobility requirement when applying for school places. The Department for Education allocates additional funding in the form of the service pupil premium to state-funded schools in England with service children. The strategy for our veterans lays out our—

Lord Kerr of Kinlochard (CB): I do not disagree with all the good things that the noble Baroness is describing, which the Government have brought about, but I have not heard her address the central argument of the noble and learned Lord, Lord Mackay of Clashfern: that it might be easier for the Government to persuade others to go on doing good things if the Government bound themselves in the same way as they are seeking to bind others. I suppose the noble Baroness could say that the Government feel bound already, but if so, why not spell it out in the Bill?

Baroness Goldie (Con): I am sure the noble Lord has been listening carefully to the argument that I have been advancing, but I have been trying to distinguish between identified, critical core services—in this case housing, education and health, which the Armed Forces community said mattered most to them—and how we address the delivery of these services. In the main, these services are not delivered by central government but by a range of other agencies, and may be the responsibility of devolved Administrations, in turn delivering them through their agencies. The point I am making is that adding an obligation to central government does not seem in any way to address the need that we have identified that has to be addressed: the current disparity in the delivery of services across the United Kingdom. That, quite simply, is what the Bill is seeking to rectify. That is why trying to attach a covenant obligation to central government is something of a red herring—I do not actually see what it is going to deliver.

Before the noble Lord interrupted me, I was simply explaining, by way of illustration, the point I have just been making: exactly what it has been possible for the Government to do without attaching any statutory obligation on them, and I am not even halfway through my list. At the risk of being tedious with your Lordships, I was also going to mention, finally, a new holistic transition policy that co-ordinates and manages the transition from military to civilian life for service personnel and their families when they leave the Armed Forces. The Defence Transition Services also supports those in that position. We have the Career Transition Partnership, and a range of initiatives and support packages covering a wide range of activity, all of which benefit our Armed Forces personnel. I merely adduce that list to illustrate how alternative processes allow areas of concern to be brought to light more readily and addressed more quickly through other means,

if necessary, including action to be taken by central government departments and devolved Administrations, where appropriate.

I think it was the noble Lord, Lord Coaker, who specifically raised the evaluation process. This would feed into our existing commitment to review the overall performance of the covenant duty as part of our post-legislation scrutiny. That review will be submitted to the House of Commons Defence Select Committee and will also be covered in the covenant annual report. This is in addition to regular parliamentary scrutiny, such as Parliamentary Questions and regular reviews by the Select Committee, or whatever form of inquiry Members of the other place and of this House may wish to undertake. The detail of the evaluation process is still being worked on with our stakeholders, but I hope that this background and the outline of the process provides reassurance that it represents a better way forward and that we are committed to continuing our work to mitigate the impact of service life on the Armed Forces community, wherever it may occur.

Listening to some of the contributions, it occurred to me that there may be a misunderstanding of the role of the Armed Forces covenant. My noble and learned friend Lord Mackay of Clashfern recalled an interesting and arguably disturbing situation, in which it is possible that Armed Forces personnel suffered harm. I undertake to look at that instance in detail; he provided a reference for where I can find more information.

However, I say to my noble and learned friend that central government, and the MoD in particular, are directly responsible for the Armed Forces, and the MoD has always looked after the welfare of service personnel. During the Bill's passage through this House, we have heard how the support provided has improved, expanded and developed over time, particularly in relation to issues such as mental health. Central government and the MoD answer to Ministers, are held to account in Parliament, and may be held to account by the courts of this land. But the covenant is a separate concept: it is a promise by the nation as a whole to the Armed Forces community that they will not be disadvantaged because of their service. It brings in other organisations, such as health providers and local authorities, who are not directly responsible for the Armed Forces community but whose decisions undoubtedly affect them. It is this new duty that will ensure that these organisations consistently apply the principles of the covenant and can be confident of the legal basis for doing so. Based on this fairly lengthy explanation, I hope that my noble and learned friend will not press his amendment.

I turn to Amendment 17, also tabled by my noble and learned friend Lord Mackay of Clashfern. I know that he is motivated by the best and most honourable of intentions, but I am somewhat unclear about its purpose. The new definition contained in the amendment adds nothing to the duties already set out in the Bill. Indeed, perhaps disquietingly, it seems to decrease the scope of that duty, which I know is not my noble and learned friend's intention.

We are clear that the Armed Forces covenant is a promise by the nation to support our Armed Forces community. The amendment characterises the scope and character of that promise as an agreement between the Secretary of State and servicepeople. But, with the greatest respect to my noble and learned friend, in doing so, it fails to capture its essence: it is a much broader and more widely embracing concept.

The covenant was framed during a time of great pressure on the Armed Forces community. As I have described at some length, it has been delivered highly successfully in the succeeding decade because it captures the spirit of appreciation and voluntary support for that community from people of every walk of life across the United Kingdom. This voluntary spirit is why it is called a covenant and framed as something far greater than the more transactional approach that this amendment could engender. To express the covenant in the way proposed by this amendment goes against the spirit of the covenant and the many successful initiatives that it has produced, built on the widespread admiration and support to which I have referred.

The Armed Forces covenant is described on the government website for the Armed Forces, and on the front of the annual report, as

"an Enduring Covenant Between the People of the United Kingdom, Her Majesty's Government—and—All those who serve or have served in the Armed Forces of the Crown and their Families."

That definition is not in statue, but the principles of the covenant appear in the Armed Forces Act 2006. That is why this Bill has been taking forward greater detail, to try to assist the delivery of vital services for our Armed Forces community.

The description I have just given of the covenant far better captures its nature, which provides the framework through which support for our Armed Forces community can thrive and grow. I thank your Lordships for indulging me with patience and courtesy, as these were important points which had to be addressed at length. In view of the explanation I have given, I hope my noble and learned friend will feel able to withdraw his amendment.

Lord Mackay of Clashfern (Con): My Lords, I thank the Minister for her very detailed answer to my amendment. It was clear to me, from the beginning of this provision titled "Armed Forces Covenant Report" in the 2011 Act, that all that had been done to make any references to the Armed Forces covenant in this was to delete the word "report". But it seemed to me that, in the ordinary course of statutory interpretation, you need to know what you are talking about, and I was surprised—I thought I must have missed something, though the Minister now confirms that I did not—that there was nothing in statute to define the Armed Forces of the Crown covenant. A covenant is a contract, and it is obvious that the people of the United Kingdom are represented in this agreement by the Secretary of State. Therefore, it seems to me odd that the Secretary of State is not prepared to have regard to the principles given at the opening of this provision. Of course, the term "Secretary of State" includes the Secretary of State for Defence and other Secretaries of State as well, if that is relevant to the provision in question. I find it hard to have the Government of the United Kingdom say that they are not prepared to be bound to have regard to the principles of the covenant.

If I should by any chance be successful, this will go back to the House of Commons, and the Commons will have to ask themselves whether it is reasonable

[Lord Mackay of Clashfern]
that the Government of this country should refuse to be bound to have regard to the principles of the Armed Forces covenant. I do not think the Government intend that, but that is the effect of leaving this out. Having this on a website is not equivalent, as yet, to having it in law—the statute book is still distinct from a website. It rather comforts me that the definition on the website includes the Government. I think that something of this kind is necessary, and I had rather hoped that the Minister might think of Third Reading as a time to put in a definition, but there is no offer of that kind, and I understand why she is not a position to do that.

I thank all who have supported me, as I think all who have spoken apart from the Minister have, which is a very good situation so far as I am concerned. I am not concerned about anything except that the Armed Forces covenant should be as effective as possible in law in our country. I do not subscribe to the other extensions that were being suggested in amendments because I can see that there is power to do that and, as and when resources are available, it would be right to bring that in by regulation.

In the meantime, I very much regret to tell my noble friend that in all conscience I do not feel able to withdraw the amendment. It is a matter that has to be faced by those who are responsible for this if they are not prepared to subscribe to having regard to the principles of the Armed Forces covenant.

5.45 pm

Lord Coaker (Lab): My Lords, I believe that in order for the noble and learned Lord, Lord Mackay, to move his very important Amendment 4, I need to withdraw my Amendment 3 as the lead amendment in that group. In doing so, I thank the Minister for her response, which tried to address some of the concerns that I raised about the covenant reference group and the fact that the group could make suitable additions in future. That takes on board the point of the noble Lord, Lord Lancaster, about incrementalism perhaps being a better way forward than the "all in at once" approach in my amendment. I thank the Minister for her reply but, in withdrawing my amendment, I want to say that I very much support Amendment 4.

As the noble and learned Lord, Lord Mackay—and all noble Lords across the Committee apart from the Minister—said, at the end of the day, whatever the rights and wrongs of this, the people of this country would be incredulous to find that the due regard principle was applicable to local authorities, public health authorities and so on, but not to central government. I think people would find that incredible, and that is why it is so important for us to support Amendment 4 in the name of the noble and learned Lord, Lord Mackay. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4

Moved by ***Lord Mackay of Clashfern***

4: Clause 8, page 9, line 18, at end insert—

"(za) the Secretary of State;"

Member's explanatory statement

This amendment would place the same legal responsibility to have "due regard" to the Armed Forces Covenant on central government as the Bill currently requires of local authorities and other public bodies.

Lord Mackay of Clashfern (Con): I move that the opinion of the House be taken.

5.47 pm

Division on Amendment 4

Contents 219; Not-Contents 173.

Amendment 4 agreed.

Division No. 2

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6.03 pm

Amendments 5 to 7 not moved.

Amendment 8

8: Clause 8, page 15, line 35, at end insert—

"(3A) Guidance under this section—

(a) may not be issued unless a draft has been laid before Parliament, and

(b) comes into force on whatever day the Secretary of State may appoint by regulations."

Member's explanatory statement

This amendment would provide for guidance under new section 343AE to be laid in draft before Parliament and for the coming into force of the guidance to be governed by regulations (and is to be read with Baroness Goldie's amendments at lines 36 and 43 of page 15 and page 18, line 39).

Baroness Goldie (Con): My Lords, I am delighted to speak to the government amendments that will implement specific recommendations of the Delegated Powers and Regulatory Reform Committee in respect of the Armed Forces covenant. Among this group are some minor and technical corrections to the Bill.

The Delegated Powers and Regulatory Reform Committee—whose painstaking work is often unsung and to whom I pay tribute and offer thanks—made two recommendations in respect of the Armed Forces covenant. These relate to the power under new Section 343AE to issue guidance to which public authorities must have regard when exercising relevant statutory functions, and to those who are classed as "service people" and are therefore beneficiaries of the covenant duty. Having considered the committee's recommendations and recognising the impact these matters may have on the duties imposed on public bodies, we have brought these amendments to provide for greater parliamentary scrutiny in these key elements of the duty.

I will first address government Amendments 8, 9, 11, 12, and 19, which relate to the statutory guidance that we are preparing in support of the duty. These amendments will require the guidance to be laid before Parliament in draft before it can be issued and provide for the guidance to be brought into force by regulations using the affirmative resolution procedure. Given the status of the guidance and its importance in supporting the public bodies that will be subject to the duty, these amendments will provide Parliament with a greater opportunity to scrutinise this document before it is issued.

Amendments 16, 18 and 20 relate to the definition of "relevant family members" for the purpose of the covenant duty. The covenant principles relate to disadvantages arising for "service people", with special provision being made for such people. The term "service people" is defined in Section 343B of the Armed Forces Act 2006 to include "relevant family members" of service and former service personnel, but this does not include a description of precisely who is a relevant family member for the purposes of the covenant duties. As this group of people will need to be considered by those public bodies in scope of the new duty, we have accepted the committee's recommendation to specify in regulations who is to be regarded as a relevant family member and that the affirmative resolution procedure is appropriate.

These amendments will therefore amend Section 343B of the Armed Forces Act 2006 to provide for "relevant family members" to be defined in regulations that will be subject to the affirmative resolution procedure. The definition set out in the regulations will apply to both the new "due regard" duty and the Armed Forces covenant report. However, for the purposes of the report, the definition will also include such persons connected with service members and ex-service members as the Secretary of State may decide, as is currently the case under Section 343B.

In addition to the recommendation of the Delegated Powers and Regulatory Reform Committee, the amendments will also require the Secretary of State to consult with the devolved Administrations and other stakeholders he considers appropriate before making the regulations.

There are further minor and technical amendments to Clause 8. Amendments 10 and 13 amend new Sections 343AE(4)(c) and 343AF(7)(c) to correct drafting omissions to ensure that the duty on the Secretary of State to consult a Northern Ireland department on regulations or guidance applies only where the Northern Ireland devolved context is affected. This mirrors the position for Wales and Scotland.

Amendment 14 to new Section 343AF, which is inserted by Amendment 19, removes a superfluous part of the definition of Northern Ireland devolved competence, also bringing it into line with the approach for Wales and Scotland. I hope your Lordships will support these amendments, which will provide Parliament a greater opportunity to scrutinise these key elements supporting the covenant duty before they become law.

Amendments 21 and 22 are minor and technical in nature and are being brought forward to improve the drafting of the Bill and ensure consistency with existing legislation. Amendment 21 will allow the regulations that replicate the effect of Section 10(5) of the Police Reform Act 2002 to also replicate the effect of Section 54(2D) of the Police Act 1996. The service police complaints commissioner and Her Majesty's Chief Inspector of Constabulary have complementary statutory functions and are charged with the oversight of the service police forces. This amendment will require them to enter into arrangements with each other for the purposes of securing co-operation and providing assistance in the carrying out of their respective functions. Amendment 22 would provide for the records of the service police complaints commissioner to be "public records" for the purpose of the Public Records Act 1958. I beg to move.

Lord Tunnicliffe (Lab): My Lords, we welcome the increased parliamentary scrutiny for the statutory guidance on the application of the duty for due regard. This was a recommendation of the Delegated Powers Committee, which we thank for its work on this. Could the Minister give us some indication of how the consultation with the devolved Administrations on drafting the guidance is going? We also welcome the Government's acceptance of the Delegated Powers Committee's recommendation to ensure that regulations defining "relevant family members" are subject to the affirmative procedure.

Baroness Smith of Newnham (LD): My Lords, from these Benches, I echo the comments of the noble Lord, Lord Tunnicliffe. The amendments that have been brought forward all seem sensible and, as the Minister said, we owe a debt of gratitude to the Delegated

Powers and Regulatory Reform Committee for looking in such detail at this legislation, as in so many cases, and particularly for being glad, as always, to have any changes made with affirmative assent rather than negative approval. There is little to add at this stage. We look forward to the Minister moving these amendments and then moving to other groups that might be a little more contentious.

Baroness Goldie (Con): My Lords, I thank the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Smith of Newnham. We are working with our stakeholders over the course of this year to develop the accompanying statutory guidance document. Their views are essential to ensure that the guidance is practical, useful and robust. We are also engaging with a wide range of stakeholders, including devolved Administrations, covenant partners across government, the Armed Forces community, local authorities, relevant ombudsmen and the service charity and welfare sectors. As I indicated, the Secretary of State is required to consult the devolved Administrations and other stakeholders whom he considers appropriate before the guidance can be published. Once it is, the document will remain subject to periodic update to ensure that it continues to remain up to date. I hope that answers the points that the noble Lord was interested in.

Amendment 8 agreed.

Amendments 9 to 14

Moved by ***Baroness Goldie***

9: Clause 8, page 15, line 36, leave out "issuing guidance under subsection (1)" and insert "laying draft guidance under this section before Parliament"

Member's explanatory statement

This amendment is supplementary to Baroness Goldie's amendment at page 15, line 35.

10: Clause 8, page 15, line 42, after "department" insert "so far as the guidance relates to devolved Northern Ireland functions"

Member's explanatory statement

This amendment corrects an omission in provisions setting out the Secretary of State's duty to consult before issuing guidance.

11: Clause 8, page 15, line 43, at end insert—

"(4A) Subsection (3A) has effect in relation to any revised guidance."

Member's explanatory statement

This amendment is supplementary to Baroness Goldie's amendment at page 15, line 35.

12: Clause 8, page 16, line 4, leave out "current version" and insert "version currently in force"

Member's explanatory statement

This amendment is consequential on Baroness Goldie's amendment at page 15, line 35.

13: Clause 8, page 17, line 39, after "department" insert "so far as the regulations contain provision that is within Northern Ireland devolved competence"

Member's explanatory statement

This amendment corrects an omission in provisions setting out the Secretary of State's duty to consult before making regulations.

14: Clause 8, page 18, leave out lines 17 to 21

Member's explanatory statement

This amendment corrects the definition of "Northern Ireland devolved competence" by removing a redundant limb.

Amendments 9 to 14 agreed.

Amendment 15

Moved by ***Lord Lancaster of Kimbolton***

15: Clause 8, page 18, line 28, at end insert—

"**343AG Regional committees**

(1) The Secretary of State may by regulations make provision to give committees established under section 25 of the Social Security Act 1989, known as Veterans Advisory and Pensions Committees, additional functions specified in the regulations relating to all former members of Her Majesty's forces and their relevant family members, and a new name.

(2) The regulations may in particular provide that it is a function of the committees—

(a) to report and make recommendations to the Secretary of State on matters that are or may be relevant to—

(i) their armed forces covenant report, and

(ii) sections 343AA to 343AD and guidance issued under section 343AE;

(b) to provide a distinct, identifiable, and independent point of reference in their region for both the veteran community and all those supporting it;

(c) to raise awareness of, and support the implementation of—

(i) services provided to the veteran community alone or with others,

(ii) the Government's strategy for veterans, and

(iii) the terms of armed forces covenant;

(d) to act as an advocate, promoter, facilitator, or communicator of services that are relevant to the veteran community;

(e) to report and make representations and recommendations on existing or proposed services that are relevant to the veteran community."

Member's explanatory statement

This amendment seeks to extend the statutory functions of Veterans Advisory and Pensions Committees (VAPCs), currently limited to functions relating to compensation schemes for veterans and their families (the War Pensions and the Armed Forces Compensation Schemes) to all aspects of veteran life.

Lord Lancaster of Kimbolton (Con): My Lords, I shall be brief. I apologise to your Lordships' House for failing to remind the House of my particular interest as a serving member of the Armed Forces and therefore subject to the provisions of the Bill. I hope that Amendment 15 is uncontroversial. It relates to the Veterans Advisory and Pensions Committees, among which there are 13 regional committees—nine in England, two in Scotland, one in Northern Ireland and one in Wales. They were created under Section 25 of the Social Security Act 1989 and are mandated to simply do two things: act on behalf of the Ministry of Defence—to be very much its eyes and ears on the ground and be an independent body that can offer candid advice to Ministers—and, equally, to support veterans. But, because of the Social Security Act 1989, they are mandated to act only in the areas of war pensions and the Armed Forces Compensation Scheme. While I will not give a number for this, it applies to only a relatively small number of veterans. At their wish, this amendment simply tries to update their role to that which they are currently carrying out.

Indeed, the Government have recognised for some time that this needs to be done. When I was a Minister some seven years ago, we were potentially going to

[Lord Lancaster of Kimbolton]
include a similar amendment in the Armed Forces Act 2016 but we did not, so I am simply trying to correct that wrong. It is important because there is a feeling that, for some years now, the Government have been advertising that they should be acting on behalf of veterans when it comes to the Armed Forces covenant—but they are not mandated to do so, and this amendment simply attempts to do that.

6.15 pm

I recognise, however, that it is potentially a slightly clunky amendment. While the Minister can say many things, there are some things she cannot say. It would probably be much better if there were to be a government-supported Private Member's Bill. I have no doubt there would be lots of keen champions and Members of Parliament at the other end itching to take it on. But I recognise that because due process has to be followed it may be difficult for my noble friend to be specific in supporting that today.

I am pleased that, by bringing this amendment forward in Committee, there has been progress. For example, since then terms of reference have been agreed with the VAPCs to enable them to set up an informal parallel structure so that they can begin to support veterans through the Armed Forced covenant. That will be renewed after one year. All that my amendment tries to do is empower the Secretary of State after that review after one year to put the new role on the statutory footing we have talked about for some time.

While I do not intend to divide the House on this amendment, I hope that my noble friend will be able to recognise why this is important, and that she will be able to say she will potentially look at this and that legislation may well be necessary; mind you, we have said that before. I hope that we can finally move forward on this issue.

Baroness Smith of Newnham (LD): My Lords, the noble Lord, Lord Lancaster, brought a similar amendment forward in Committee, which we discussed. He has made very clear why there is a case for expanding the role of the Veterans Advisory and Pensions Committees. He seems to be exhorting various people to think about Private Members' Bills but, as that is not the role of your Lordships' House today, could the Minister say how far the Government would be willing to explore his ideas? Is there a neat way in which she might be able to bring forward a suitable amendment at Third Reading which means that, while he does not need to divide the House today, the intentions could be brought on to the face of the Bill?

Lord Tunnicliffe (Lab): I thank the noble Lord, Lord Lancaster, for tabling Amendment 15. I have not much more to add than my comments in Committee, so I will not hold up the debate for long. I again thank everyone involved with the Veterans Advisory and Pensions Committees across the country. These committees help to ensure that veterans and their families receive the help and care they need on pensions, allowances and other issues, and act as an important bridge between the veteran community and national government.

Baroness Goldie (Con): I thank my noble friend Lord Lancaster for retabling his amendment. I understand his motivation for doing so. I thank the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Smith, for their contributions. I will not rehearse the whole structure behind the VAPCs, which my noble friend very eloquently did. I will make two points in response to him. First, for several years, VAPC members have undertaken activities that go above and beyond the scope of the statute. They have undertaken these additional activities on a non-statutory basis instead, and there have been no substantive issues with them doing so.

My second point is to acknowledge—and I hope this reassures my noble friend—that there may be ways in which we can improve on this arrangement. The Government are committed to looking again at the role of the VAPCs. That is why the MoD and the Office for Veterans' Affairs recently agreed with the chairs of the VAPCs a new set of non-statutory terms of reference to guide their activities. The terms of reference envisage that VAPC members will undertake many of the activities listed in his amendment, such as raising awareness of the strategy for our veterans and the proposed new duty to have due regard to the covenant. The terms of reference are set for an initial period of 12 months. I confirm to my noble friend that we intend to use this period and the evidence we gather during it to work with the VAPCs to review what they have done, how effective they have been in doing it, and whether and how their statutory role might need to be amended in the future.

Anticipating the point from the noble Baroness, Lady Smith, I hope my noble friend will understand why seeking to amend this Bill at the present time is premature. The Government have already set themselves on a course to review the role of the VAPCs, but we are doing this first via the introduction of new terms of reference, and we want to give the VAPCs a chance to perform under them before we take firm decisions about their longer-term future.

Legislative change may well need to follow and the evidence we gather over the coming months will help to inform us on this point. As it is, we are not sure that the legislative provision proposed in my noble friend's amendment is necessarily the most suitable or effective way of achieving the desired outcome. For example, it would provide for only a specific and rather limited adjustment to the VAPCs' statutory role, when instead we might want to consider more fundamental changes.

My noble friend will appreciate that I cannot speculate about the precise vehicle or timing for any future legislative change. However, I am very willing to commit to him that I and my officials will explore what changes we can make in this area and I hope that, with that reassurance, my noble friend will be content to withdraw his amendment.

Amendment 15 withdrawn.

Amendment 16

Moved by ***Baroness Goldie***

16: Clause 8, page 18, leave out line 32 and insert—

"(b) subsection (4) is amended as follows—

(i) in the definition of "relevant family members", after "means" insert "such persons as may be prescribed, and for the purposes of section 343A also includes";

(ii) at the appropriate place insert—"

Member's explanatory statement

This amendment and Baroness Goldie's amendment at page 18, line 37 would provide for "relevant family members" to be defined in regulations.

Amendment 16 agreed.

Amendment 17 not moved.

Amendments 18 to 20

Moved by ***Baroness Goldie***

18: Clause 8, page 18, line 37, at end insert—

"(c) after subsection (4) insert—

"(4A) In subsection (4) "prescribed" means prescribed by regulations made by the Secretary of State under this subsection.

(4B) Before making regulations under subsection (4A) the Secretary of State must consult—

(a) the Welsh Ministers so far as the regulations contain provision that is within Welsh devolved competence,

(b) the Scottish Ministers so far as the regulations contain provision that is within Scottish devolved competence,

(c) the relevant Northern Ireland department so far as the regulations contain provision that is within Northern Ireland devolved competence, and

(d) any other persons the Secretary of State considers appropriate.

(4C) Subsections (8) to (10) of section 343AF apply for the purposes of subsection (4B) as they apply for the purposes of that section.""

Member's explanatory statement

This amendment and Baroness Goldie's amendment at page 18, line 32 would provide for "relevant family members" to be defined in regulations. This amendment also imposes requirements with regard to consultation.

19: Clause 8, page 18, line 39, at end insert—

"(eda) regulations under section 343AE(3A),"

Member's explanatory statement

This amendment supplements Baroness Goldie's amendment at page 15, line 35 and would apply affirmative resolution procedure to regulations bringing guidance into force.

20: Clause 8, page 18, line 40, at end insert—

"(ef) regulations under section 343B(4A),""

Member's explanatory statement

This amendment supplements Baroness Goldie's amendment at page 18, line 32 and would apply affirmative resolution procedure to regulations prescribing persons as "relevant family members".

Amendments 18 to 20 agreed.

Clause 11: Service police: complaints, misconduct etc

Amendment 21

Moved by ***Baroness Goldie***

21: Clause 11, page 23, line 6, at end insert—

"(2A) If regulations under subsection (1) include provision corresponding (with or without modifications) to section 10(5) of the Police Reform Act 2002 (general functions of Director General), the regulations may also provide for subsection (2D) of section 54 of the Police Act 1996 (functions of inspectors of constabulary) to apply (with or without modifications) in relation to the Service Police Complaints Commissioner as that subsection applies in relation to the Director General of the Independent Office for Police Conduct."

Member's explanatory statement

This amendment would enable regulations to impose on the chief inspector of constabulary duties which would be reciprocal to duties imposed on the Service Police Complaints Commissioner by the same regulations.

Amendment 21 agreed.

Schedule 4: Service police: complaints, misconduct etc

Amendment 22

Moved by ***Baroness Goldie***

22: Schedule 4, page 52, line 23, at end insert—

"2A_ In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place insert—

"Service Police Complaints Commissioner.""

Member's explanatory statement

This amendment would provide for records of the Service Police Complaints Commissioner to be public records for the purposes of the Public Records Act 1958.

Amendment 22 agreed.

Clause 12: Framework for establishment of tri-service serious crime unit

Amendment 23

Moved by ***Lord Thomas of Cwmgiedd***

23: Clause 12, page 24, line 20, at end insert—

"(3A) After section 115A insert—

"Further provision in relation to independence of investigations

115B Further provision in relation to independence of investigations

(1) The tri-service serious crime unit must contain a victim and witness care unit, funding for which is to be made available by the Secretary of State.

(2) The Deputy Provost Marshal for serious crime must be a civilian appointment.

(3) The tri-service serious crime unit must carry out its investigations in a manner that is operationally independent of the military chain of command.

(4) The Provost Marshal for serious crime must produce a report annually to the Minister chairing the Service Justice Board, who must arrange for the report to be laid before Parliament.

(5) Before the tri-service serious crime unit is established, a Strategic Policing Board, consisting of a non-executive director (who is also a member of the Service Justice Executive Group), a retired chief constable, a recently retired senior military officer, and a retired judge, must be established to provide assurance and governance of the Provost Marshal for serious crime and the Defence Serious Crime Unit.

(6) The tri-service serious crime unit must be established by 1 April 2022.

(7) By 1 July 2022, the Provost Marshal for serious crime, Director of Service Prosecutions and Judge Advocate General must agree protocols on fatalities and ill-treatment cases.""

Member's explanatory statement

The amendment is intended to strengthen the independence of the tri-service serious crime unit in accordance with the recommendations of the Henriques Report.

Lord Thomas of Cwmgiedd (CB): My Lords, I rise to move Amendment 23 and support Amendment 27. The issue addressed by Amendment 23 is quite clear: the adequacy of the statutory provisions to protect the independence of the Armed Forces police and, in particular, this new unit.

I do not think there is any difference about the constitutional principle. It was set out in one of the cases dealing with the Iraq war, Ali Zaki Mousa (No. 2), where it was said that the Armed Forces police

"must be able to make their decisions entirely independently of the Secretary of State for Defence, any civil servant in that Ministry and, even more importantly, of anyone in the hierarchy of the armed forces."

That was the principle applied by Sir Richard Henriques in his report, which set out the practical way in which that principle could be given effect and applied.

This amendment seeks in particular to fill in the essential areas of protection needed to ensure independence. They are all set out in the proposed new subsections of the amendment. We went into these in Committee, but I will highlight three of them.

First, the deputy head must be a civilian. It is important to bear in mind that, in the cases that went into the independence of the investigations in Iraq—the Ali Zaki Mousa cases—IHAT had a civilian head, and he brought a different perspective. This is a very important point made by Sir Richard.

Secondly, there can be no watering down of the principle of the operational independence of the military command. I will come to the provision of the Bill which does water it down.

Thirdly, there is the establishment of the strategic police board. When you occupy a position where you can be put under pressure, it is very important to have the protection of someone. Within the Armed Forces, the Director of Service Prosecutions has the Attorney-General. The Judge Advocate-General has the Lord Chief Justice. There can be no reason for not putting into statute a very clear provision that the strategic policing board can support the head of the unit if he or she comes under pressure, which he or she no doubt will.

Why are these statutory provisions necessary? I am grateful to the Minister for her very careful letter, in which she sought to deal with the adequacy of what is in the Bill, which is, essentially, the appointment of the provost marshal of the tri-service unit, the method of his appointment and, if I may say so, a somewhat watered-down expression of the principle of independence, and in particular operational independence. There are three reasons why I urge your Lordships to consider this amendment as important in strengthening the position.

First, as the Minister, with the assistance of her lawyers, has set out, there are a number of cases, two of them in particular involving Ali Zaki Mousa, that looked at the independence of the way in which the investigation was made of the conduct of the Armed Forces police. But it is critical to remember that in those cases what was put under the microscope was the particular structure that had been carefully set up. There is no case that says that the current position is adequate. Indeed, that must be the position, otherwise would why would Sir Richard have gone to the trouble to which he went in making these recommendations? What is set out in the report, which I have already mentioned, is what is required.

The second reason why statutory provision is needed is to protect the Armed Forces. Indeed, my principal reason for moving the amendment is to try to protect the Armed Forces from the risks of it being able to be argued that the position of the Armed Forces police is not independent. In the cases that related to IHAT, on which the Ministry of Defence relies, there was a very careful examination. For example, in the Ali Zaki Mousa case there were five days of hearings spread over a considerable period of time, a vast quantity of documents, statements from very senior people across the Armed Forces, and some cross-examination. It is obviously undesirable to have a repetition of that process and it is therefore essential that the position is made clear in statute.

Noble Lords might say that this is a one-off circumstance. I referred in Committee to something that happened during the Malaysia emergency in 1948 that came up for investigation in the courts many years later in 2011. One of the central issues there was that the investigation had not been independent. Again, issues arose during the course of the Blackman case as to the independence of the investigation. Much more recently, there have been reports in the *Sunday Times*, of which we are all well aware, that again cast doubt on the independence of the investigation. All I feel it necessary to say is that all these attacks on the independence of an investigation could and should be avoided by putting the matter beyond doubt in legislation. The current legislation simply does not go far enough.

The third reason for saying that the current legislation is not correct is that it does not reflect the proper constitutional position, and these matters ought to be put on a statutory basis. The duty set out in Clause 12(3), which is to try to ensure operational independence, is not enough. There must be operational independence, and that should be a statutory principle.

6.30 pm

Furthermore, experience has shown that the measures recommended by Sir Richard are measures that are needed to ensure and protect independence, particularly the points I have mentioned in relation to a statutory policing board and a civilian deputy. It is also important for the perception of independence to have a properly constituted witness and victim unit.

I may be very old-fashioned, but I believe that it is Parliament's job to specify in circumstances such as this what is necessary to protect the independence of a body, not leave it to the Executive, which is the body against which it needs protection—the Executive whether it be in the form of the Ministry of Defence or the Armed Forces. It is entirely consistent with the principle that we legislate for a standing Army every five years that, when legislating, we deal with issues that have arisen, and when an issue has plainly arisen, for which Sir Richard Henriques has set out what needs to be done, Parliament should legislate and it should not be left to the Executive.

I regret, therefore, that I do not accept what the Minister said in her kind and detailed letter. There is no real reason given in that letter why these provisions should not be put on the statute book, to put the matter absolutely beyond doubt. I urge your Lordships that we all in Parliament do our duty and do not simply leave it to the Ministry of Defence to decide what is necessary or unnecessary for the protection of independence.

Lord Robertson of Port Ellen (Lab): My Lords, I speak to Amendment 27, in my name and those of other noble Lords, which calls for an independent defence representation unit. The amendment moved by the noble and learned Lord, Lord Thomas of Cwmgiedd, is the principal amendment in this group, but this amendment is important and I am sure the Minister will have been well briefed on the subject. As the noble and learned Lord said rhetorically in Committee:

"I do not understand why we always expect the Armed Forces to have second best."—[*Official* Report, 2/11/21; col. GC 295.]

And, in respect of independent representation, I fear that that is precisely what they get at the moment.

In Sir Richard Henriques' fine report, he points to the fact that there is independent representation in Canada, Australia and South Africa but not for the British Armed Forces. There is talk that the present representation is a mere sticking-plaster solution. In Committee, the Minister said in mitigation of the stance that these proposals would not be accepted that,

"approximately 40 of these recommendations require policy and legal analysis … and I cannot accelerate that at the moment"

and

"we have so far been able to undertake only a light-touch analysis of some of his recommendations."—[*Official Report*, 2/11/21, cols. GC 295, 297 and 288.]

I put it to the House that this recommendation is simple, clear cut and very necessary indeed. There is no reason why the Government need postpone further consideration of it. The Minister said in Committee that further consideration will be given when legislative time was allowed, and most of us know that that is usually shorthand for a long time in future. I strongly believe that a defence representation unit is urgent.

In his report, Sir Richard says he has considered the arguments carefully here, and that

"The Unit must be fully independent of the military command and act under the general supervision of the Attorney General. Any guidelines or instructions issued by the Attorney General must be published."

He also makes the very strong point that

"there should be a significant saving on Legal Aid from the creation of this Unit. … Many of the delays at Court Martial may be avoided by the services supplied by the Unit."

I do not intend to take up the time of the House this evening as we move through the consideration of this Bill, but I shall also read out paragraph 8.3.10 of Sir Richard's report:

"Budgeting can only be a speculative process in this sphere. I have no doubt that there will be a saving in Legal Aid expenditure, the cost of Services Legal Aid approximating £1.8 million in the year 2019/2020. The cost of adjourned trials in the Court Martial caused by a lack of, or by delayed representation cannot be assessed. The provision of this facility to Service personnel and veterans should not be dictated by budgetary speculation, but by the moral obligation to provide proper support to those who serve or have served their country."

His final sentence needs to be emphasised and repeated:

"The knock on the door will carry markedly less menace with the knowledge that competent legal assistance will be readily available."

For the last couple of years, we have come to know precisely the anxiety and mental cost to serving and former members of the Armed Forces caused by that knock on the door. I therefore suggest to the Minister that Sir Richard Henriques's recommendation that a defence representation unit be created to provide a triage service to service personnel and veterans under investigation for criminal conduct be a matter of some urgency. I look forward to the Minister saying to us tonight that that will be brought forward.

Lord Thomas of Gresford (LD): There is no doubt that serious crimes are more difficult to investigate in the military than in civilian life due to the exigencies of service. On the other hand, serious crimes occur less often than they do in the territory of every civilian police force. That is why Sir Robert Henriques concluded that

"there should be a senior civilian appointment within the Defence Serious Crime Unit … with experience of major investigations and the ability and necessary experience to control a major incident room."

He thought that such a number two should have the

"experience and ability to record, retain, manage and process several hundred allegations simultaneously using the most up to date technology."

I would hope that the noble Baroness could explain, if she resists that particular proposal, that there is some system of training somebody up to the standard Sir Robert Henriques was talking about in his recommendation. How is a person going to get that experience to control a major incident room and carry out the various tasks he is referring to? It is not possible. That is the practical reason why he wanted a civilian as number two.

In recommendation 13 of his report, he said that the candidate would have

"achieved sufficient rank and recognition within civilian policing to act as an ambassador for the interests of Service police within the wider policing community."

It is important that the service police are seen to be a first-rate service; there should be nothing second rate about the legal service provided to the Armed Forces on whichever side of a particular trial they may be. It is important that the service police should have status and expertise in all fields. I recall, for example, a court martial in Germany involving a German victim, where it was necessary to fly in a criminal pathologist from England to examine a body and later give evidence, and other scientists had to be imported as well. That was only one aspect of the case—the management of a large case is extremely difficult. I respectfully suggest that you cannot get that experience within the service police because they are scattered and do not organise themselves in that way.

I commented at very considerable length in Committee on the necessity to maintain the serious crime unit in a manner that is operationally independent of the military chain of command—for all the reasons that I gave then, and those so eloquently advanced by the noble and learned Lord, Lord Thomas of Cwmgiedd. I do not propose to repeat those comments but very strongly support what he has said.

[LORD THOMAS OF GRESFORD]

I emphasise the need also to set up a strategy policing board of experienced civilians—as referred to in paragraph (5) of this amendment—to which the provost marshal for serious crime and the defence serious crime unit should be accountable. That should be done now. There was some suggestion that the provost marshal for serious crime had already been chosen—that is the wrong way round. You need to get together the body of people who will provide support and to whom these various bodies will be accountable.

I will say a brief word about Amendment 27. I strongly agree that there should be a defence representation unit. There are a number of very competent and able solicitors around the country who carry out this task, but it is not well paid, and they have to travel considerable distances to do it; legal representation is frequently delayed as a result.

I remember my great friend Gilbert Blades, who was the solicitor in the Finlay case that started all this off in 1995. His method of attracting clients was to drive around in a pink Rolls-Royce, the arrival of which at an army unit would cause something of a stir. I do not imagine that a defence representation unit would pay the sort of fees that would enable a person employed there to buy a Rolls-Royce, but there we are. It is very important that such a unit be set up; I support that amendment too.

Lord Coaker (Lab): My Lords, we strongly support Amendment 23 moved by the noble and learned Lord, Lord Thomas of Cwmgiedd, to which my noble friend Lord Robertson, the noble Lord, Lord Thomas of Gresford, and I have added our names. I thank the noble and learned Lord for the clear and concise way in which he outlined the need for this amendment and why the Government should think again with respect to it.

We welcome the establishment of the DSCU but remain concerned as to why the Government will not accept something as seemingly sensible as this amendment. It seeks only to implement Henriques' full vision for the unit. Without it, independence is not necessarily guaranteed—a point that a number of noble Lords have made—and nor are the other recommendations for how the unit will function. If the Government accept such recommendations, why not put them on the face of the Bill?

The Minister has argued that the other Henriques recommendations remain in the mix but do not need legislative underpinning; however, there is a difference of opinion between what does and does not need legislative underpinning. For example, the noble and learned Lord, Lord Thomas, has argued that there needs to be a statutory provision for the witness and victim care unit, but the Government seem to say that it is not needed. Can the Minister tell us what legal advice the Government have received to come to such a very different conclusion?

6.45 pm

By giving the other recommendations legislative underpinning, the Government would demonstrate to Parliament, personnel and victims how seriously they are taking the reform of the services justice system and the reforms being proposed. What the noble and learned Lord, Lord Thomas, is suggesting in Amendment 23 is an important and fundamental principle: a guarantee of the independence of the serious crime unit. It is seeking not a promise of future government action or a written statement—well intentioned as those are—but a guarantee of the independence of the serious crime unit. That is something that this Parliament, this Chamber and this House have said is of such importance that we should put it on the face on the Bill, so that it becomes not a choice for the serious crime unit but a legislative necessity. That is at the heart of what is being suggested. I find it difficult to understand why the Government do not accept that point.

There is another disappointment. Another key point that Henriques made was the importance of civilian representation; the noble and learned Lord, Lord Thomas, mentioned that with respect to the strategic policing board and other measures that he has put forward. It is deeply disappointing that the Ministry of Defence has dismissed the idea of the deputy provost marshal being a civilian. Again, that would have demonstrated to the public the importance that the Government attach to the independence of the unit. That is another mistake that the Government have made with respect to these amendments.

The point made by my noble friend Lord Robertson about the defence representation unit in Amendment 27 is important. He made his points really well, so I will not repeat them, but the necessity to ensure that Armed Forces personnel and veterans are properly supported when they face legal action is a principle I am sure we would all support. My noble friend may not put that to a vote, but it is an important point of principle that the Government need to consider.

Baroness Goldie (Con): My Lords, I thank the noble and learned Lord, Lord Thomas of Cwmgiedd, for his amendment. I know this is an issue in which he is keenly interested and one which he has pursued with vigour. I will speak first to Amendment 23 in his name and supported by the noble Lords, Lord Coaker, Lord Robertson of Port Ellen and Lord Thomas of Gresford.

We had a useful and, I think, constructive debate in Grand Committee on the defence serious crime unit and this amendment. The DSCU is an important part of Sir Richard Henriques' recent review. Indeed, 20 of the 64 recommendations of that review relate to that unit. I am extremely pleased that we have been able to take swift action to make the necessary changes to primary legislation in order to deliver that unit, and I think everyone shares that view.

Let me address at the outset the specific issue of the number of Sir Richard's 20 recommendations on the DSCU that the Government are accepting. I think noble Lords were left with the impression that only a small number had been accepted, because the government amendments in Grand Committee related only to three recommendations on the DSCU. It is certainly not the case that only a small number of recommendations have been accepted. Let me explain. With one exception, where we are taking a slightly different approach to civilians, the Government accept all Sir Richard's recommendations on the DSCU. All the recommendations that we accept and that require primary legislation are

dealt with in the Bill. The three recommendations I referred to in Grand Committee reflect those that require primary legislation to constitute the DSCU. These are the changes needed to deliver an operational unit. In particular, they give the provost marshal for serious crime the same powers and duty of investigative independence, on the same terms, as the existing provost marshals. The other recommendations that the Government accept do not require primary legislation.

This mirrors the usual position of a review of this nature, where some recommendations require primary legislation to be implemented and others simply do not. I have sought to explain this in clear terms today, but I have also made available a fact sheet to set out in detail the Ministry of Defence's work on the DSCU. Indeed, a number of your Lordships helpfully referred to that. I have circulated that fact sheet to opposition defence spokespersons, but I have copies with me in the Chamber today if anyone wishes sight of one.

I also want to assure noble Lords that the Ministry of Defence is now taking forward the DSCU project, both the legislative and non-legislative elements, with considerable speed and energy. As well as the swift work on the primary legislation, work on the necessary changes to secondary legislation is well under way. In Grand Committee, noble Lords agreed a power to make consequential secondary legislation, which will facilitate this once the Bill is passed. A DSCU implementation team has been established, led by a senior civil servant. It is a multidisciplinary team of project management and service police specialists representing the three services. An individual has now been selected to be the provost marshal for serious crime designate. Their initial focus will be to lead the implementation of the DSCU to full delivery. I noticed the comment by the noble Lord, Lord Thomas of Gresford, that he thought this was putting the cart before the horse, but I disagree. This is a sensible, logical, structured way in which to proceed.

I now turn to the specific issues raised in this amendment. In general terms, I do not believe that adding these further Henriques DSCU recommendations to primary legislation is necessary. They will form part of the work that is already under way to establish the DSCU. I am happy to confirm that we are already working towards a DSCU by April 2022 and will look to implement a victim and witness care unit shortly after. In addition, the implementation team has already started work on the establishment of a strategic policing board, which is also to be in place by April 2022. The provost marshal for serious crime will produce an annual report to the Minister for Defence People and Veterans, which that Minister will provide to Parliament. None of these matters requires primary legislation.

Let me say a bit more about three specific issues: the independence of the DSCU, the role of civilians, and the investigative protocols. On independence, the amendment includes the language:

"The tri-service serious crime unit must carry out its investigations in a manner that is operationally independent of the military chain of command."

However, I respectfully suggest to the noble and learned Lord, Lord Thomas of Cwmgiedd, that this is already reflected in the Bill. I remind your Lordships of the recommendations from Sir Richard regarding the implementation of a defence serious crime unit. He was specific. He said:

"The Provost Marshal (Serious Crime) should have a duty of operational independence in investigative matters owed to the Defence Council, on the same terms as that owed by the"

existing

"Provost Marshals under section 115A of the Armed Forces Act 2006."

That is what we achieve in this Bill and what we are delivering under Clause 12(3).

As the noble and learned Lord indicated, the UK courts have already found that, under the existing structure, the service police are capable of being

"hierarchically, institutionally and practically independent"

of those that they are investigating. It is therefore right that the duty on the new provost marshal for serious crime is the same as the existing duty on the provost marshal of each of the service police forces. I urge noble Lords to look at Clause 12(3) if anyone is in any doubt about the impact of that clause.

The Ministry of Defence shares Sir Richard's ambitions for an increased role for civilians in the DSCU. It is already possible under existing arrangements for civilians to work alongside the service police in delivering service police functions. There are examples of civilians taking on leadership roles in the service police, and of secondments from civilian police forces to the service police. As part of the work of the DSCU implementation team, we will look at options to appoint a civilian in a senior leadership role and at how experienced civilian police can work with the unit. I say specifically to the noble and learned Lord, Lord Thomas of Cwmgiedd, and the noble Lords, Lord Thomas of Gresford and Lord Coaker, that what we cannot do at this stage is have a civilian as deputy provost marshal, because that is a role for service persons and currently subject to Armed Forces systems of command and discipline. At present, simply making them a civilian might give them the title of deputy provost marshal but without the concomitant mechanisms of accountability and control. I am sure that is not what the amendment desires to achieve, but it would be its effect. The role of civilians therefore needs further consideration and work as part of the implementation exercise. However, I hope I have indicated that there is no antipathy within the MoD to the role of civilians in this important process.

I want to address the protocols regarding fatalities and ill-treatment cases referred to in the amendment. As we set out in the ministerial Statement, and as I confirmed in Grand Committee, the non-legislative protocols for dealing with fatalities and ill-treatment cases on overseas operations—between the service police, the Director of Service Prosecutions and the Judge Advocate-General—should rightly be considered by those independent bodies in the first instance. I draw noble Lords' attention to Sir Richard's own view on this, which is that "an agreed protocol" is "preferable to legislation". That particularly avoids compromising the independence of the Director of Service Prosecutions. We support Sir Richard's recommendation that the protocols should be non-legislative. Taking that approach will allow for more flexibility as the protocol text can

[Baroness Goldie]
be amended at speed in response to lessons learned during its application. Sir Richard also made the point that agreements along the lines that he proposed,

"doubtless with variations to achieve flexibility",

could be achieved but only once the issue of coronial jurisdiction had been resolved. That was his recommendation 41, and we will engage with the Ministry of Justice on it.

We will be supporting the service police, the Director of Service Prosecutions and the Judge Advocate-General in this important work. The principles of timeliness, regular reviews and consultation are extremely significant. However, there are likely to be issues for these bodies and individuals to consider. In particular, they would need to be comfortable that the arrangements respected the proper relationships between the police, the prosecutors and the judiciary. Further work will be needed to ensure that we address Sir Richard's concerns over investigations without falling foul of the constitutional principles of the independence of the investigation, the prosecution and the judiciary.

As I have set out, these are important but complicated matters, and the service police, the Director of Service Prosecutions and the Judge Advocate-General need time to properly consider them. While I am sure they will seek to undertake the necessary work to progress them as quickly as possible, it is vital that they get them right and it is important to respect their independence. I do not think it would be appropriate for Parliament to set a timeline of July 2022 for their implementation. I therefore urge the noble and learned Lord to withdraw his amendment.

I will speak to the other half of the group—Amendment 27—which has been tabled by the noble Lord, Lord Robertson of Port Ellen, and supported by the noble Lord, Lord Coaker, and the noble and learned Lord, Lord Thomas of Cwmgiedd. This amendment seeks an early decision—one month after Royal Assent of the Bill—on whether the MoD is going to accept or reject the recommendations in the Henriques review report for the establishment of a defence representation unit and, if the recommendations are accepted, requires the Minister to lay a report before Parliament, setting out a plan and timeline for establishing the unit by July 2022.

7 pm

As I set out in Grand Committee, we have prioritised our efforts within the MoD on ensuring that we have the appropriate statutory framework in place for the establishment of the defence serious crime unit. I make no apology for prioritising that work; it is critical and necessary, and it will bring vast improvement to the service justice system. But, beyond that, the department has not yet been able to undertake the necessary detailed analysis of the rest of Sir Richard's recommendations.

The recommendations for the establishment of a defence representation unit, covered by this amendment—recommendations 48, 49 and 50—are included in a larger group of recommendations that we have identified as needing further detailed policy and legal work to determine how we might take them forward. We are currently undertaking work that we hope will allow us to prioritise this larger group of recommendations, taking into account work that is already in hand on the Lyons/Murphy recommendations. When that work is complete, we will be in a better place to manage and track progress on what is clearly an ambitious programme of work.

In respect of the recommendations to establish a defence representation unit, we absolutely agree with the principle of ensuring appropriate legal advice and support to individuals under investigation. But further careful consideration is required to determine the most appropriate and effective way of delivering that support. Until that work is completed, it is not possible to determine whether we can accept the recommendations on the DRU as presented. Therefore, I hope that the noble Lord will understand why we do not wish to be time-bound in this work. I hope that your Lordships are reassured that we are taking the time now to develop a sensible programme and significant body of work so that we can ensure proper oversight and management of the work on Sir Richard's recommendations.

I understand the interest in these matters, and I do not doubt for one moment the sincerity of the intentions of the noble Lord, Lord Robertson, in relation to them. He is interested, he wants progress to be made and he wants to make sure that the MoD's feet are held to the fire. I totally understand that. I am happy to repeat the undertaking that I gave in Grand Committee to keep the House informed of progress on these matters: I shall undertake to do that. But I hope that, in these circumstances, the noble Lord will withdraw his amendment.

Lord Thomas of Cwmgiedd (CB): I am grateful to all noble Lords and noble and learned Lords who have spoken in this part of the debate. I will first say something briefly about Amendment 27. It is critical to a justice system that you have a properly defended and functioning defence service, and therefore I very much hope that, in the event that this amendment is not pursued, the undertaking given to keep the House closely informed of developments is greatly appreciated.

I turn to the main amendment, Amendment 23. I accept that the police in the armed services are capable of being independent, and indeed in most cases they are—but, as has been shown by recent cases, that has not always been the case, to the enormous damage of the Armed Forces. Therefore, with this amendment, I seek to put the principle and the protections on a clear basis to save future damage.

The Minister asked noble Lords to look at the difference between what is in the Bill and what is in the amendment. On the duties of the provost marshal, the Bill says that he owes

"to the Defence Council, to seek to ensure that all investigations carried out by the tri-service serious crime unit are free from improper interference."

There is nothing there at all that reflects the proper constitutional position that they should be operationally independent of the military chain of command. That is what is set out in the amendment. I simply do not understand why this fundamental principle of the way in which the police operate in the Army, Navy and Air Force should have second best. It is in their own interests to ensure independence.

Then there is the quibble that you cannot, for some reason, fit a civilian into the structure. I do not begin to understand that. In the cases I did which involved this area, one of the principal reasons why the courts concluded that the Iraq Historic Allegations Team was independent was that it had a civilian head. I therefore do not understand what the objection is, not only for the reasons given by the noble Lord, Lord Thomas of Gresford, namely that civilians bring experience, but because they also bring an outside perspective.

The real issue in this case is the need for statutory protection. Perhaps the Ministry of Defence lawyers take the view that all that is required are the three provisions in the Bill. I accept that the Government want to proceed with the implementation, but our difference of opinion relates to whether Parliament should do its duty and specify this in the legislation and put a proper duty in relation to operational independence into the Bill, with the necessary vital safeguards. Without those safeguards, a duty will not work—or do you take the very narrow view that it is not required?

For the good of Her Majesty's Armed Forces, we ought to stop speculation about investigations not being independent. We must make sure they are seen to be independent by Parliament itself providing on this occasion, as part of the five-year review, that there are sufficient safeguards for independence. Therefore, for the good of Armed Forces and the service police, I would like to take the opinion of the House on this issue.

7.07 pm

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7.20 pm

Amendment 24

Moved by ***Lord Coaker***

24: After Clause 19, insert the following new Clause—

"Independent defence authority

(1) The Secretary of State must review whether it is desirable to establish an independent defence authority which is responsible for interpersonal conduct within the armed forces and which has a remit, in particular—

(a) to assess cultures of behaviour and to identify where inappropriate behaviour is systemic,

(b) to promote good behaviour and, where necessary, cultural change,

(c) to investigate specific instances of inappropriate behaviour,

(d) to mediate employment-related grievances, and

(e) to advise service members about their rights in relation to service discipline.

(2) Within the period of one year beginning with the day on which this Act is passed, the Secretary of State must conclude the review and lay a report before Parliament.

(3) If the Secretary of State recommends that it is desirable to establish an independent authority, the report must—

(a) set out details of a reporting and investigation system which is outside of the chain of command and outside the single services, and

(b) explain how the authority is to have properly trained staff and a properly resourced budget."

Member's explanatory statement

This amendment is based on recommendations in the report of the House of Commons Defence Sub-Committee on Women in the Armed Forces, "Protecting Those Who Protect Us: Women in the Armed Forces from Recruitment to Civilian Life".

Lord Coaker (Lab): My Lords, I beg to move Amendment 24 in my name. I am grateful to the noble Baronesses, Lady Smith of Newnham and Lady Bennett of Manor Castle, for supporting this amendment, which seeks to establish a defence authority responsible for cultures and inappropriate behaviours outside the chain of command. This is a direct recommendation from both Wigston and the Defence Sub-Committee's recent report into women in the Armed Forces.

I am sure one of the arguments we will hear from the Minister again is that we do not need an independent defence authority, as the Government established the diversity and inclusion directorate in April this year. But I remind the Minister of the conclusion of the Defence Sub-Committee's report, which stated that:

"the Directorate's mandate differs in key ways from the Authority recommended by the Wigston Review. For instance, the Directorate will not handle the most serious behavioural complaints outside of the Single Services, centrally."

Therefore, there is a clear difference. The report was also clear that

"the MOD has not fulfilled the recommendation for a Defence Authority"

with the directorate. I would be grateful to know what the Minister says to that.

The report found that

"the Services are failing to help women achieve their full potential … Within the military culture of the Armed Forces and the MOD, it is still a man's world … There is too much bullying, harassment and discrimination—including criminal behaviours like sexual assault and rape—affecting Service personnel."

I know the Minister and all noble Lords will agree that this has to change and we need to do better. The debate is about how we do that.

The Minister will understand how much this is a real issue. We read in our newspapers and heard on the news recently:

"Army boss announces culture audit after defence secretary talks."

This is a probing amendment, not something I will seek to divide the House on. Notwithstanding that, the amendment deals with a very important matter, which I know all of us will be concerned about. The news continued:

"The head of the British army has announced an independent audit of its culture amid concerns over bullying, sexual harassment and discrimination. Gen Sir Mark Carleton-Smith said the audit

will 'reinforce the best and weed out the worst' It comes after Defence Secretary Ben Wallace met Army leaders earlier over concerns about culture and discipline."

I am really pleased that the Defence Secretary and General Sir Mark Carleton-Smith have done that. The debate is whether an independent defence authority, established according to the recommendations of Wigston and the Defence Sub-Committee, would help deliver that and ensure that the changes that we all want occur quickly and make a real difference.

In closing, I ask the Minister whether we have yet been told the date on which the Government will publish their response to the Defence Sub-Committee's report. I understand that it may be next week. Can the Minister confirm that? I gently say to the Minister that it would have been helpful for the passage of the Bill had we had the Government's formal response to that report before the conclusions of our deliberations—with Third Reading next Monday.

As I said, this is a probing amendment. I know the Minister cares about these issues and wants change to occur. All I am saying is that the Army, the Defence Secretary and everyone agrees, but it is how we deliver it, whether we cannot get a little bit of a move on, and whether an independent defence authority—as recommended by the bodies I have mentioned—would help with respect to that.

Baroness Smith of Newnham (LD): My Lords, I support the amendment in the name of the noble Lord, Lord Coaker, which I and the noble Baroness, Lady Bennett of Manor Castle, have signed.

In the first group of amendments this evening, the noble Baroness, Lady Bennett, pointed out that she was the only female Peer speaking in that group. At that stage, I did not speak, not because I did not think it was important to speak on service justice but because we felt from these Benches that it was appropriate to have one person speaking, and that person was my noble friend Lord Thomas of Gresford. He is rather more expert on the military justice side of things than I am. I would like to add my support to tackling the range of issues that are faced by women in the military.

The noble Lord, Lord Coaker, pointed out that this is a probing amendment, but it is an important amendment because the report that was done for the House of Commons Defence Sub-Committee, brought forward by Sarah Atherton, was a very revealing one. I know that the Minister is aware of the report, not just from iterations in this Chamber but because, at some point during the Summer Recess, I happened to turn on "Woman's Hour", and I heard none other than the Minister and Sarah Atherton MP talking about the report.

These are issues of concern not only within the Armed Forces and the Palace of Westminster; they are issues that have traction much more broadly. They are important issues and, while it might not be necessary to include this amendment in the Bill, it is vital that the Government take notice of the issues that have been raised by serving female personnel and veterans.

As the noble Lord, Lord Coaker, pointed out, there is a set of issues that needs to be thought about. Bullying and harassment have no place in the Armed Forces. Some of the issues that have been revealed, as mentioned in the previous group of amendments by the noble and learned Lord, Lord Thomas of Cwmgiedd, are actually very damaging to public understanding of the Armed Forces. We need to be very careful to make sure that, if discipline is not maintained and there are issues affecting people in the Armed Forces—particularly women—they are looked into. If the Minister is not able to accept the language of this amendment, we would be grateful if she would explain a little bit more about what the Ministry of Defence is doing to help bring about behavioural change.

Statements from the Secretary of State might be of interest, but the current Secretary of State seems to talk to the media an awful lot. Sometimes it feels as if he is rather shooting from the hip. It would be nice to know that some of these comments are actually based on practice and ways of effecting change. Can the Minister give us some comfort in this regard?

Baroness Goldie (Con): My Lords, I thank the noble Lord, Lord Coaker, for tabling this amendment. He is quite right: it raises issues that all of us care about very deeply, as the noble Baroness, Lady Smith, so eloquently described.

In essence, the amendment proposes a new clause requiring the Secretary of State to review whether an independent defence authority is desirable. It might be helpful to your Lordships if I try to set a little bit of context for this, and then try to address the specific questions that the noble Lord, Lord Coaker, and the noble Baroness, Lady Smith, raised.

First, we believe that the vision of a central defence authority, as it was foreseen in the Wigston review, is being delivered through the diversity and inclusion directorate. The noble Lord, Lord Coaker, specifically raised this point, so let me try to address these issues and reassure him. Eleven out of the 12 Wigston recommendations relating to the authority have now been achieved. They have been delivered. Your Lordships may remember that Danuta Gray was ordered to carry out a progress assessment one year after the Wigston review to see how it was getting on. She is independent of the MoD, and she concluded that a new diversity and inclusion directorate would, in effect, fulfil the functions of a central defence authority.

7.30 pm

Of course, the new diversity and inclusion directorate is independent of the single service chains of command; I think that is a very important detachment. It carries out a number of important functions to improve the lived experience of all those working in defence. This includes ownership of the policy for behaviours, informal complaints and service complaints, while also holding the services to account through the department's performance and risk-monitoring process. The director of the diversity and inclusion unit is working closely with the Permanent Secretary and the Chief of Defence People, so the directorate is embedded at a high level within the MoD. The director of the D&I directorate is someone with not just influence but authority and the ear of everyone at the top levels of the MoD.

Indeed, since it was established, the directorate has delivered a number of initiatives. These include a pan-defence climate assessment tool for heads of establishments

[Baroness Goldie]
to understand their culture; changed policy to mandate mediation; and the establishment of a fully confidential and independent 24-hour bullying, harassment and discrimination helpline for both civilian and military personnel to raise concerns. The directorate also continues to develop programmes to support victims and has introduced a new harassment investigation service. That is a dedicated outsourced service, independent of the MoD, and it has been set up to support the whole of defence in delivering fair, efficient and effective investigations for complaints of bullying, harassment, discrimination and victimisation.

Further, to improve the independence of the service complaints system and the consistency of decision-making, we will be mandating the use of central teams within each service to determine whether a service complaint is admissible. This is quite an important change in culture and process, and it will be a positive development in bringing reassurance to those who seek to make a complaint and who wish to have confidence in the process. But the net effect of that will be to remove the complainant's direct chain of command from that part of the process, which is an important development.

While we consider that the D&I directorate satisfies the role of an independent defence authority, we will continue to review our policies and processes to ensure that they are fit for purpose. That will include undertaking an annual review of behaviours across defence, as well as a review of the service complaints system two years after implementation of the changes we are currently making. This review will confirm whether the reforms we are making, both in legislation and policy, have achieved the benefits that we expect.

Therefore, while I totally understand the sentiment behind the noble Lord's amendment and would absolutely be pushing this if I was in his position, the arrival of the diversity and inclusion directorate—not just its creation but the bedding in that it has enjoyed and the progress it is making—is significantly delivering on what it was anticipated that the independent defence authority would do.

The noble Lord, Lord Coaker, raised a couple of points. He raised the recent Army audit, which is part of the service's continuous efforts to hold itself to account and to transform at pace the Armed Forces output so that service personnel are getting the service they deserve if they have concerns or issues about behaviour, conduct, attitudes and culture.

A lot of measures are in place. It was interesting that "audit" was used. It was not a review or an investigation but is much more concerned about what is in place and whether it is working and delivering what needs to be delivered. The noble Baroness, Lady Smith, was not cynical but a little sceptical of my very good friend, the right honourable Secretary of State for Defence, Mr Ben Wallace. He has an absolute passion for tackling this, to change cultures, change attitudes, change how things are happening, and this Army audit, to which the noble Lord, Lord Coaker, referred, is testament to that. This Army board was summoned because the Defence Secretary said, "I want answers and explanations. I am not going to be fobbed off. I am going to have you all before me, around a table, explaining what is going on." Coming out of that was a willingness to carry out an audit, which is a perfectly healthy and positive measure.

The noble Lord, Lord Coaker, asked for a specific date on the response to the House of Commons Select Committee. I am unable to give that. I thought that it was imminent, but I gather that there are still some bits of contact between the Secretary of State and the committee, so that the committee chair and sub-committee chairwoman are absolutely in the picture. Obviously, when we give that response, and the clock is ticking—I am not talking about it being weeks away—it will be for the committee to determine what it does with that response, since it is not the MoD's property as such but the property of the parliamentary committee.

I do not think that I am telling any tales out of school if I say that the best thing that happened in that Select Committee inquiry was permission, given by the Secretary of State, for serving women to be allowed to give evidence. That was a big shift from what might have been a previous government attitude to these issues. I felt it was courageous and absolutely the right thing to do, and I told them so. As a result, although the evidence of these ladies made uncomfortable reading for the MoD, none the less it was critical that these brave women were not just permitted to give their evidence and had the courage to give their evidence but could understand that it would be used to good effect. We owe a huge debt to those serving personnel and veterans who gave their evidence in such a brave manner, for sharing their experiences. There is no shadow of a doubt that it has formed not only what the committee said but the response which the MoD will be giving to the committee.

While I understand what is behind this amendment, which reflects something that we all care very deeply about, progress is being made. I understand the frustration of the noble Lord, Lord Coaker, that the response to the committee is not available to inform this debate. I am afraid it is an issue of timing. It is a very substantial response, and so there is a healthy reason for the delay. I cannot go further than that at the Dispatch Box.

In these circumstances, I ask your Lordships to understand that very good progress has been made, and I invite the noble Lord to withdraw his amendment.

Lord Coaker (Lab): I thank the Minister for her comments. I also thank the noble Baroness, Lady Smith, for her comments. As she said, this is a probing amendment, but it is an extremely important amendment. The way in which the Minister answered reflected the seriousness with which she takes this, and I know that the Defence Secretary is working hard on this.

What we all want to see now is progress. In my remarks, I said that I was very pleased to see that the current head of the Army, General Sir Mark Carleton-Smith, is undertaking the audit—I know that he will take it seriously. Change is out there, and there is a need for Ministers and the Defence Secretary, with senior officers in all three branches of the services, to continue to push this. As we have seen, there are very real problems in cases that have been reported in the papers—I will not go into the detail of them—and some very serious issues remain.

But the only thing I ask—perhaps I need to ask the question every now and again—is for the Ministry of Defence to consider how it keeps all of us updated on the progress that is made over the coming months. With that, I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendment 25 not moved.

Amendment 26

Moved by ***Lord Tunnicliffe***

26: After Clause 19, insert the following new Clause—

"Indefinite leave to remain payments by Commonwealth, Hong Kong and Gurkha members of armed forces

(1) The Immigration Act 2014 is amended as follows.

(2) In section 68(10), after "regulations" insert "must make exceptions in respect of any person with citizenship of a Commonwealth country (other than the United Kingdom) who has served at least four years in the armed forces of the United Kingdom, or any person who has served at least four years in the Royal Navy Hong Kong Squadron, the Hong Kong Military Service Corps or the Brigade of Gurkhas, such exceptions to include capping the fee for any such person applying for indefinite leave to remain at no more than the actual administrative cost of processing that application, and"."

Member's explanatory statement

This new Clause will ensure that Commonwealth, Hong Kong and Gurkha veterans applying for Indefinite Leave to Remain following four years of service will only pay the unit cost of an application.

Lord Tunnicliffe (Lab): My Lords, I rise to move Amendment 26, in the name of my noble friend Lord Coaker. We have retabled this amendment from Committee due to the strength of feeling on this issue across the House. Commonwealth service personnel and other non-UK personnel have contributed an enormous amount to our national defence, and we owe them a debt of gratitude.

Extortionate visa fees have left non-UK veterans facing financial ruin and feeling abandoned by the country they served with courage and distinction. I was shocked when the noble and gallant Lord, Lord Craig, said in Committee that Hong Kong veterans feel that

"they are being treated as aliens, not veterans of Her Majesty's Armed Forces."

I remember how the noble Lord, Lord Dannatt, said that the welcome approach to former Afghan staff means that government policy towards

"foreign and Commonwealth soldiers who have stood shoulder to shoulder with us and fought in many campaigns … is an anomaly and it is bizarre."

I also remember how the noble Lord, Lord Lancaster, said that the MoD policy change that now allows Gurkhas to apply some 18 weeks before leaving service

"does not address the issue of cost".

The Minister stated:

"We recognise that settlement fees place a financial burden on non-UK serving personnel wishing to remain in the UK after their discharge".

So why is action on this issue so slow? I am grateful that the Minister told the House that 6,398 responses were received in the Government's consultation, but we are still not further forward when the Minister says only that

"the Government will publish their response in due course."—[*Official Report*, 2/11/21; cols. GC 337-41.]

This answer is no longer acceptable. We need to know when and how the Government will act, and they should not hide behind the usual ministerial lines to kick the can down the road.

I remind the Minister of the large sums involved. Under current rules, Commonwealth personnel face a fee of £2,389 per person to continue to live in the UK, after having served for at least four years. This means that someone with a partner and two children could face a bill of £10,000 to stay in Britain. I will listen very closely to the Minister's reply.

Lord Dannatt (CB): I will make two points, a broader one and a narrower one that is particularly germane to this amendment. My broader point picks up the discussion in your Lordships' House about the wider duty of care standard, which we debated in the context of the overseas operations Bill, introduced at Second Reading of this Bill and discussed and debated in Committee. I am encouraged by the Minister's various responses at the various stages of these two Bills. The Ministry of Defence appears to be going very much in the right direction, which is why an amendment requiring the Secretary of State to put in place a duty of care standard has not featured on Report of this Bill.

My narrower point still relates to duty of care and duty of care standards, with particular regard to former service men and women who served in Hong Kong, Gurkhas, and foreign and Commonwealth individuals. The latter make up a large proportion of the British Armed Forces today. I come back to the very narrow point I made in Committee: it is an anomaly that among those withdrawn from Afghanistan in Operation Pitting in August were former members of the Afghan national army, who have now been given right of residence in this country and are in a better position than foreign and Commonwealth soldiers, and Gurkha soldiers who have served shoulder to shoulder with us for at least four years, and in many cases for much longer.

7.45 pm

This is bizarre and it is an anomaly. It really must be addressed favourably and in a short timeframe. As the noble and gallant Lord, Lord Craig of Radley, said earlier, this issue, particularly in relation to Hong Kong, has been raised time and again, not year after year but decade after decade. The time to solve this one is now. I very much hope that the noble Baroness and the Government will move quickly on this issue. It is high time to do so.

Lord Craig of Radley (CB): My Lords, I support Amendment 26. I believe that, until the issue of citizenship is resolved in favour of the few remaining veterans of the Royal Navy Hong Kong Squadron and other military members of Her Majesty's Armed Forces recruited there, they deserve de minimis to benefit from this financial concession on the grounds of their full status as veterans. I have already in Amendment 4 explained the full background to these claims. Let us see whether the Government are finally able to make up their mind in favour of these long-standing requests. What response will the Minister make now—and please will she not just respond that it will be actively considered?

Baroness Smith of Newnham (LD): My Lords, I support this amendment. Many of the issues have been rehearsed at earlier stages of this legislation, as the noble Lord, Lord Dannatt, pointed out. We have even heard some of the arguments rehearsed in the second group of amendments this afternoon. However, I feel I need to speak again at this stage to try to bring together a few issues, because the question of service personnel who have put their lives on the line for the United Kingdom, whether from Hong Kong, the Commonwealth or the Gurkhas, needs to be recognised. We need the Government to do more than give lip service to this.

As the noble and gallant Lord, Lord Craig of Radley, pointed out just now, until citizenship is resolved for those from Hong Kong who have served with our forces, the very least we can do is look at ways to ensure that indefinite leave to remain does not cost people a king's or a queen's ransom. The cost of securing indefinite leave to remain is unconscionable. If somebody has a right to indefinite leave to remain, surely it is appropriate that the cost of securing it is the cost of administering it. If those of us who are British apply for a passport, we pay an amount of money that seems a lot to many individuals but is essentially an administrative cost. The cost of securing indefinite leave to remain is far more than that administrative cost.

I am aware that decisions on this are down not to the Secretary of State for Defence but to the Home Office. Therefore, rather than asking the Minister to commit at this stage to reducing the cost of applications for indefinite leave to remain, all we can ask her to do is to go back and raise this question again with the Home Office.

I also ask the Minister whether we cannot help her. Is there some way in which Parliament can say to the Home Office, "This is something you must do"? It goes beyond questions of how many individuals are coming to live in the United Kingdom or targets of tens of thousands of people. It is about the UK's duty to those who have served with us. Is there some way in which Parliament can make that case to the Home Office? Can we, as Members of your Lordships' House and the other place, help the Ministry of Defence do the right thing and put some pressure on the Home Office to reduce the costs?

It is not appropriate to ask for £2,000 or more from somebody who served with us, or from their family. If somebody who has a spouse and children wants and needs indefinite leave to remain, surely they do not want that on their own; they want to come with their families. The noble Lord, Lord Dannatt, pointed out at this stage and in Committee that people who have come from Afghanistan under ARAP have come with their dependants. If we think that there is a right for citizens from the Commonwealth and Hong Kong and the Gurkhas who have served with us—and for us—to come and live in this country, surely we should give them the opportunity to do so without making the cost prohibitive.

If the Minister cannot give us a guarantee on reducing the costs—I suspect she cannot—can she at least give us some guidance on how we might be able to help her to persuade the Home Office to do the right thing?

Viscount Brookeborough (CB): My Lords, this was brought home to me when I was presenting Iraq campaign medals to returning soldiers a number of years ago. Since then I have met many who have returned from Afghanistan at official events. It is extraordinary when you hand out the medals and you come to somebody who is quite obviously of Commonwealth origin, and you actually have discrimination standing there in front of you. You have wounded people, if not physically then mentally, who are on parade. You are standing there and giving them a medal, and under your breath you are saying, "This is horrifying. I am totally horrified that you do not have the same or similar rights as the man or lady next door."

This—our regard and respect for those people—surely comes under the spirit of the covenant. We simply cannot let this lie. It is not a great number of people, compared with the number receiving money put out as a result of Covid or, dare I say it, the number crossing the Channel. This could be killed here and now, in one go, and all those people would be not only happy but that much prouder to be as British as we would like them to be for their service abroad. I support this amendment.

Lord Alton of Liverpool (CB): My Lords, we had a good debate earlier when my noble and gallant friend Lord Craig spoke to Amendment 4 tabled by the noble and learned Lord, Lord Mackay of Clashfern. There was a degree of unanimity around the House that this issue needed to be addressed. The Minister was good enough to say that, although she would not reply on Amendment 4 to the issue of Hong Kong ex-servicemen, when we reached this part of our proceedings on Amendment 26 she would be able to give us some reply. I rather hoped that might mean she wanted some space to try to digest some of the points that he and I tried to make earlier.

I particularly reinforce what the noble Baroness, Lady Smith of Newnham, said about the relationship between the MoD and the Home Office on this. If nothing else comes of this evening, will the Minister agree to facilitate a meeting involving perhaps those who have participated in this debate but also her noble friend Lady Williams of Trafford, at which we might try to make some progress on these two questions—one about citizenship and the other about the specific position of the Hong Kong ex-servicemen?

If the Minister has the figures, I wonder if she could share with the House the number of people we are talking about who fall into the category—whether the figures I gave earlier are correct or not. Sometimes it is what you do in small things that matters most, and we are talking about very small numbers of people. It was a point alluded to my noble friend Lord Brookeborough a few moments ago, that when you compare this very small group with the number of people who try to arrive in the United Kingdom—some illegally—it is how we behave towards them that will matter.

This brought me back briefly to debates in another place in 1983, when I spoke on the nationality Act about citizenship and the effects it would have on people in Hong Kong. Sadly, many of the things predicted during that debate have come to pass. The trajectory

we all hoped that Hong Kong might be on post 1997 —"one country, two systems", and an honouring of the difference between Hong Kong and mainland China —has clearly not happened. That has left people in a precarious position, and none more so than those who served the Crown. I reinforce the point I made earlier: these people's lives are clearly now in danger, and we have a duty to do something about that. It is a point that my noble friend Lord Dannatt made as well.

That is all I wanted to say. I know I had the chance to speak earlier on. I hope the Minister will think about how she can, in a practical way, take these two relatively small questions forward and see if we can get some justice for those involved.

Baroness Goldie (Con): My Lords, I thank the noble Lord, Lord Coaker, for tabling this amendment and the noble Lord, Lord Tunnicliffe, for his remarks in support of it. I am also grateful to those who have contributed to the debate, not least the noble and gallant Lord, Lord Craig of Radley, the noble Baroness, Lady Smith, the noble Viscount, Lord Brookeborough, and the noble Lords, Lord Dannatt and Lord Alton.

I think your Lordships will understand that I am at the Dispatch Box as MoD Minister. I cannot speak on behalf of the FCDO or the Home Office, but let me try and address some of the more technical issues to at least give context to what the amendment seeks to achieve. The first thing I want to say is that the Government highly value the service of all members of our Armed Forces, including: our Commonwealth nationals, our Gurkhas in Nepal, who have a long and distinguished history of service to the UK both here and overseas; and former British Hong Kong service personnel.

Before I address the detail of the proposed new clauses, I would like to say a few words about the process for setting immigration fees. Application fees for immigration and nationality applications have been charged for a number of years. They are charged under powers set out under Section 68 of the Immigration Act 2014. They play a vital role in our country's ability to run a sustainable borders and immigration system, reducing the burden that falls on taxpayers.

Sitting beneath the Immigration Act are a fees order and fees regulations, all of which are scrutinised by both Houses before they come into effect; there is a democratic prism to all this. This system ensures checks and balances, and it seeks to maintain the coherence of the immigration fees framework as set out in legislation. If we were to remove these fees during the passage of this Bill, as the noble Lord, Lord Coaker, suggests in his amendment, it would undermine the existing legal framework for fees, without proper consideration for either the sustainability of the system or fairness to the UK taxpayer. It would also reduce clarity in the fees structure by creating an alternative mechanism for controlling fees which sits outside the immigration fees regime.

When non-UK service personnel, including Commonwealth citizens and Gurkhas from Nepal, enlist in the regular Armed Forces, they are granted exemption from immigration control status for the duration of their service. That is to allow them to come and go without restriction. They are free from any requirements to make visa applications or pay any fees while they serve, and that is unlike almost every other category of migrant coming to work in the UK. Those who have served at least four years or been medically discharged as a result of service can choose to settle in the UK after their service and pay the relevant fee.

As a number of your Lordships are aware, the time before discharge that such settlement applications can be submitted has been extended this year from 10 to 18 weeks. Those applying for themselves do not have to meet an income requirement, be sponsored by an employer, or meet any requirements regarding their skills, knowledge of the English language or knowledge of life in the UK, again putting them in a favourable position compared with others who seek to settle here. We recognise, however, that settlement fees may place a financial burden on non-UK serving personnel wishing to remain in the UK after their discharge, and we recognise the strength of feeling of parliamentarians, service charities and the public on this issue.

8 pm

Your Lordships will be aware that the Ministry of Defence, together with the Home Office, ran a public consultation between 26 May and 7 July 2021 regarding a policy proposal to waive settlement fees for non-UK service personnel in HM Armed Forces. The results of the consultation have been used to advise Ministers and, once collective agreement has been secured for a final policy, the Government will publish their response, make any associated changes to fees through fees regulations, which are updated at least twice a year, and appropriately address tax implications through the relevant secondary legislation.

For those non-UK veterans of the Armed Forces who do not have settled status in the UK, we are also exploring what options there are to assist them. Under the British nationality selection scheme, a limited number of personnel who were settled in Hong Kong could apply to register as British citizens. All veterans would have been eligible to acquire British National (Overseas) status between 1986 and 1997, and therefore many should hold that status already. Those who hold that status may be eligible for the BN(O) visa that was launched in January of this year. This provides a route to settlement in the UK, meaning that many former British-Hong Kong service personnel, their spouses and dependants will already have, or be on the path to having, settlement and subsequently British citizenship. The fees they pay are therefore connected to their BN(O) status and not their former service.

I am aware that the Minister for Safe and Legal Migration, Kevin Foster MP, met with a delegation of Hong Kong Military Service Corps personnel in May this year and listened to their representations. The Home Office is continuing to consider the representations made on behalf of those personnel who were unable to obtain citizenship through the selection scheme, but there are currently no plans to reopen applications for BN(O) status or expand the eligibility for the BN(O) route. As the noble Baroness, Lady Smith, helpfully observed, this is a Home Office responsibility and not an MoD one.

Lord Alton of Liverpool (CB): Can we press the Minister further on this point about the link between the MoD and the Home Office? She is of course right, but she has just said that it is a continuing process of consultation. The Home Office has been saying that for year after year, as referred to by my noble and gallant friend in his remarks earlier. When does the Minister think that that will conclude, and will she respond to the point made by the noble Baroness, Lady Smith, and me about the importance of facilitating a meeting between the Home Office, the MoD and noble Lords who are involved and interested in this issue?

Baroness Goldie (Con): I would say to the noble Lord, Lord Alton, that I understand the strength of feelings so ably articulated by him, the noble Lord, Lord Coaker, the noble and gallant Lord, Lord Craig of Radley, the noble Lord, Lord Dannatt, the noble Baroness, Lady Smith, and the noble Viscount, Lord Brookeborough. I understand the strength of feeling expressed in the House in relation to individuals who have served this country. But, as I have explained, there is an existing legal framework in place for immigration fees which already enables proper consideration to be given by government and Parliament to the full range of issues in setting those fees.

The issues raised by this amendment are already subject to a consultation that is entering its final stages. I can tell the noble Lord, Lord Alton, that I have no magic wand that I can wave, and that this is another department's responsibility. I can also confirm that the specific issues around Hong Kong are also under consideration.

Viscount Brookeborough (CB): The Minister talks about consultation. I ask her to let us know who has been consulted and how many of the cohort group have been. Clearly, it will be very wide of the mark if none of them has been spoken to. So how many people, who, when, and has it involved the cohort?

Baroness Goldie (Con): All I can do is undertake to write to the noble Viscount, because I do not have the specific detail in front of me. The consultation process ran and it was a joint process, but I will find out the specific information that he requested and write to him.

The noble Lord, Lord Coaker, helpfully indicated that this is a probing amendment, and I am very grateful to him for proposing not to press this to a Division. As I said earlier, I sense the strength of feeling, and *Hansard* will be testament to that strength of feeling. I give the noble Lord, Lord Alton, the assurance that through the conduit of the MoD I will indicate the desire of your Lordships for some clarity in seeing how these matters are to unfold. Therefore, while I cannot give the answers that noble Lords are no doubt impatient to receive—I sympathise with their impatience but think they will understand that I am in an impossible position in terms of providing the answers—I certainly undertake to use my offices as a Minister in MoD to see whether I can do anything to facilitate the provision of information. In these circumstances, I hope the noble Lord will withdraw his amendment.

Lord Tunnicliffe (Lab): Well, as the number two member of this team, I am glad I managed to imitate my boss with such accuracy that it was unnoticed—but I will recover.

I note that all noble Lords who have spoken in this debate have spoken in favour of a change of heart by the Government. It is time the Government got a grip on this. The sense that this is simply a detail in a wider issue simply does not understand the concept. These people have demonstrated a loyalty that most of us have never had to. We are honoured to have a couple of people here who have demonstrated that loyalty: to be willing, on the whim of a politician, to go out and fight for us—not for their country but for Britain. You cannot ask for more loyalty than that; it is a test that I am not sure I would have passed. But these people came along and served. The history of Commonwealth soldiers, sailors and airmen fighting for this country is a long one, and they deserve to be considered quite separately from these wider issues.

I am not going to divide the House—frankly, there is not enough of the House around to be worth dividing—but I hope the Minister will take away the enormous strength of feeling on this issue. What really came out to me from this is that it is crucial that the Government, at the most senior level, understand that this is not an immigration issue; it is about people who have been willing to demonstrate ultimate loyalty to our Government and who would make the perfect citizens of this country. I hope the slightly warm sense that we got from some of the Minister's words will bear fruit very soon. With that, I beg leave to withdraw the amendment.

Amendment 26 withdrawn.

Amendment 27 not moved.

Amendment 28

Moved by ***Lord Russell of Liverpool***

28: After Clause 19, insert the following new Clause—

"The minimum term for service

In section 329 of the AFA 2006 (terms and conditions of enlistment and service), after subsection (2) insert—

"(2A) Where time is prescribed under subsection (2)(c) by reference to number of years from the date of enlistment, the age of the person on that date may not be taken into account.""

Member's explanatory statement

This amendment ensures that soldiers aged under 18 are not required to serve for a longer period than adult personnel.

Lord Russell of Liverpool (CB): My Lords, I shall speak to Amendment 28. I do so in place of the noble Baroness, Lady Massey, who would otherwise be here, but is indisposed. I thank her for having introduced this amendment and another one so ably in Committee.

In Committee, this was grouped with another one that came before it which talked about trying to achieve a total cessation of the recruitment of under-18s by the United Kingdom, a practice that we are singular among all the members of NATO in pursuing. In the event, because the two were grouped together, the

former amendment took about 98% of the airtime of the debate and there was very little discussion of this one, which is in part why we have decided to bring it back here for debate today. I emphasise that this is for debate; I do not intend to divide the House.

I will try, together perhaps with some other noble Lords who have put their name to this amendment, to put a case for the Government to look very carefully at their current practice of asking junior entry soldiers to serve two years more than entrants at age 18. This is to see whether this is the right thing to do in the first place and, more profoundly, whether the entire approach to junior entry is fit for purpose.

In Committee, the Minister made it very clear that, up until their 18th birthday, junior entrants have a statutory right to ask for discharge. However, after 18, they are in for four years and, under the current system, no allowance is made for the first two years at the Army Foundation College in Harrogate. A judicial review in 2015 concluded that this is unequal treatment in law, but is not unlawful, since the Equality Act 2010 exempts the Armed Forces from its prohibition on age discrimination.

In 2015, the Army carried out a review and estimated that, if it equalised the minimum service period for all recruits, it would have to recruit and train approximately 40 additional personnel each year to compensate for the relatively small number of junior entrants who might choose to leave after four years. To put that into context in 2015 terms, 40 personnel would be 0.5% of the Army's enlisted intake for that year, which totalled 8,020 individuals. While the Navy and Air Force both take on a small number of junior entrants, neither service chooses to discriminate in the same way as the Army.

The 2019 junior entry review, undertaken following a recommendation from the Defence Committee in another place, suggested an amendment to the terms of service to a Type S engagement, whereby 18 year-olds can either opt to leave or convert their engagement to a short career versatile engagement, which would recognise the first two years of service and count towards the four years' minimum length return of service.

The review recommended that this approach be considered, saying that it

"could be deemed a positive change"

and was

"unlikely to be contentious"

to either a junior entry cohort or their "gatekeepers"—I assume that means the staff at Harrogate, although I am not sure how they would feel about that term. The review continued that

"any move to implement"

the new terms of service on leaving the Army as an under-18 year-old

"would make the process … more transparent, which would bring an increase in the confidence of recruits and their gatekeepers."

Its only caveat was whether this would enable the Army to achieve its desired manning balance along with other assessments of length of service.

In light of the announcement this year that the Army will be further downsized by 10,000 troops, does the Minister agree that this would be an opportune moment to institute the proposed new terms of service and put the matter to rest? Will she tell the House what the Government's current thinking is? Can she inform us on any actions or, if not, tell us how she might consider progressing this? Will she undertake to come back to the House and report on any progress and timings?

There are two further issues I want to explore to test the MoD and Army's thinking on the current junior entry structure and content. First, in 2021, is it recruiting the right people for today's and tomorrow's Army? This Government and our current, rather busy, Home Secretary frequently refer to an immigration policy that should be focused on attracting and admitting "the brightest and the best". At the same time, the Army is increasingly conscious that it needs to recruit more young people who are interested and competent in STEM studies and in furthering their education, particularly the sort of technical education that the Army of tomorrow will need to manage challenges such as cyber warfare and the use of artificial intelligence.

8.15 pm

The 2019 junior entry review highlights the heavy reliance—70% of the intake—on a segment of young people which is named Get-On Community Pride, not a particularly attractive brand. This cohort is described as unambitious, tends to live in poorer areas and is likely to be actively demotivated by the prospect of further education, which "would potentially jeopardise inflow". The review further states that

"introducing more education/STEM into the JE scheme could potentially damage levels of attraction among the existing"

core main target audience. Simply stated, the dilemma is that the Army is on the record as stating that it needs to recruit more females, more BAME individuals and more STEM-literate entrants and those interested in education, but is hamstrung by the fear—increasingly irrelevant and unhelpful, I think—of demotivating its current predominant recruiting pool.

I refer briefly to the recommendations made by the independent advisory panel, which works very closely with the college at Harrogate, and each year produces a report with some recommendations. These are the highlights of its recommendations. In its opinion,

"the relatively frequent change of Commanding Officers and other senior staff at"

Harrogate

"every two years, means that there is a loss of leadership momentum and organisational memory."

Remember, this is an educational establishment. Imagine if in a school, every two years the leadership was recycled and completely new people came in, perhaps with little or no relevant experience. The report states:

"A longer period of command would be beneficial."

Secondly, the panel sees "a strong benefit" in the leadership of the college itself having much "more input into the selection of key personnel"—that is, the people who will be recycled into replace them, because at the moment it appears that they have little or no say in whether those nominated to replace them are fit for purpose and will be good at that task. It also notes that

"the growing awareness of the emotional and mental health needs of a significant minority of young people"

[Lord Russell of Liverpool]
at Harrogate creates growing pressures and that Harrogate must do more to make appropriate provision. Finally, it says:

"We have observed over the last year"—

this is 2018-19—

"a growing frustration at the number of JS who arrive at the College on reception days but who for either medical or other reasons leave very soon afterwards, sometimes within a matter of days."

I was a headhunter for 30 years, and I would not describe that as a particularly effective or successful recruitment or screening policy. Does the Minister acknowledge this dilemma that is faced by the Army looking at its current junior entry strategy? Does she agree that the status quo is becoming increasingly untenable, and can she tell us what discussions and plans, if any, are evolving to deal with it?

Given the emerging research findings about the incidence of mental health issues and trauma experienced by some serving and retired Army personnel, mentioned in particular in Committee by the noble Lord, Lord Browne of Ladyton, is the Army certain that the support, training and guidance that the junior entry cohort currently receives is conducted using best practice and is not inadvertently causing some of them—who, in law, are children—harm?

The Minister asked for the relevant research to be forwarded to her by the noble Lord, Lord Browne. I suggest to her that these emerging findings, taken together with the findings and recommendations of the 2019 Wigston report on inappropriate behaviours in the UK Armed Forces, and some of the incidents and alleged incidents of bullying at the Army Foundation College, be looked at with great care and attention.

As I said earlier, I will not divide the House. I move this amendment in the spirit of wanting to work with the Government and with the Army in moving quickly to implement the new terms of service and to redefine and craft a junior entry policy that is fit for the 21st century and not the 19th century. I beg to move.

Lord Browne of Ladyton (Lab): My Lords, I have added my name to this amendment and propose to speak for a few minutes in support of it. First of all, I congratulate the noble Lord, Lord Russell of Liverpool, on the concise way in which he put the arguments for this amendment—he has exhausted nearly all my notes. I do not want to take up unnecessary time in the House this evening—we are running later than expected—as I think he made the arguments very well, but I want to reinforce a couple of them.

Before I do that, I want to go back to the genesis of my involvement in these amendments. I did not put my name to either of the two amendments debated in Committee, although I do support raising the minimum recruitment age for the Army to 18. I support that because, in studying and researching these amendments, I came across some quite persuasive evidence of an inappropriate level of potential damage to young people who had gone through that. I investigated further why that could be the case and learned quite a lot about the immaturity of people at 16 and their physical and mental ability to handle properly what they may have gone through in training. I have now discovered other things about this which worry me even more. I did not think that the benefit to our military, or to other young people, justified potentially damaging such a significant number of young people. That is why I spoke to it in that fashion in Committee.

This amendment was tagged on to that. When I looked at it, I honestly thought that, in this day and age, in the 21st century, there was no justification for continuing this discrimination. It seemed that we were on the wrong side of history on this, and there was no justification for pursuing or sticking with it—I thought it was a no-brainer. I was not surprised that there was not much debate about it; it seemed pretty straightforward, and I more or less said that.

When the Minister responded to the debate and seemed not to concede that this was even discrimination, I intervened and asked her a specific question about what the Army thought it got out of this and why it persisted in doing it. She again gave me an answer, which is to be found in *Hansard* at col. GC 461. She did not quite say that it was not discrimination but suggested that the Army was not intending to discriminate. She promised to write to me, and she did so today. Her letter expands on what the Army is intending to do.

The truth is, of course, that there was a review in 2015, and the Army put its best case forward at this attempt at judicial review. Two things came out in that very clearly, particularly in the evidence of the brigadier who was then the Army's chief witness—whose name does not really matter but whose evidence is in the public domain.

It was about force level—about the ability, for a longer period, to take advantage of people in whom they had invested a lot of training. It seems from the noble Baroness's letter to me that it is now more about what the recruits get out of this than what the Army gets out of it; that is a welcome development. We could go back to the debate about whether it is justifiable for some of these recruits, with the potential for damaging others, but I do not want to rehearse all that.

We debated all this on 8 November. The issue was not been raised in the debate at all, but Corporal Kimberly Hay was convicted of punching two recruits in the very establishment that everybody was singing the praises of just a couple of days later. I was surprised. I had no knowledge of this, obviously, but it had not been mentioned. That incident led me to delve into this issue a bit more. I discovered that, between 2014 and 2017, 50 cases of assault went to court martial but with no findings of guilt. This seemed to have been for process reasons rather than because any witnesses were deemed not to have been telling the truth. The criticisms made about the unsatisfactory nature of the prosecution were about the way in which the Army police had investigated the matter, rather than that any of the many witnesses who gave evidence against some 17 trainers had not been believed. Around the same time, between 2014 and 2020, there were 60 complaints by trainees or parents about the way in which trainees were treated at AFC Harrogate.

None of this seems to have been reflected in the debate or the information given in the debate. That certainly makes me want to reconsider many of the things said in support of AFC Harrogate and what it

was actually doing with these young people. My suspicion is that this issue will not go away—that, like many issues over the last 10 years that have become apparent about institutions, it will be a slow burner but eventually much more will come out. Of course I cannot ask noble Lords to make decisions about changing legislation on the basis of an argument as weak as that, but history tends to suggest that there is something there that needs to be investigated.

My final point is to ask what the Army in the current circumstances gets out of this. Over the last decade, the size of the Army's core recruitment pool—16 to 24 year-olds—in the United Kingdom has remained steady at about 7 million potential recruits. I am not suggesting that the Army seeks to recruit them all, but that is the cohort. The stability of this demographic is projected to continue—it will not go down—but the targeted strength of the Army has reduced by 29% from 102,000 in 2011 to a planned 72,500 by 2025. In broad terms, for every four new soldiers the Army needed to recruit and retain a decade ago, it needs only three now, drawn from a demographic that has stayed about the same size.

The Army's own evidence to the judicial review—which failed because of the terms of the Equality Act, not because the distinction was not discrimination—was that, if it lost those recruits for those extra two years, it would then need to recruit 40 more recruits each year. That was the evidence that it put in. I cannot take all these complicated figures to their logical conclusions, but it suggests to me that the problem is solved for the Army. I do not see what the justification is now for continuing with this discrimination. The Army should follow the logic of its own junior entry review of 2019, which is to change the terms in which they sign up 16 year-olds into the service.

8.30 pm

Baroness Bennett of Manor Castle (GP): My Lords, I will speak very briefly. I was not able to take part in the debate on these amendments in Committee because I was at the COP 26 climate talks, but at Second Reading I very much majored on the issue of the recruitment of 16 and 17 year-olds into the Army in particular. I would have attached my name to the amendments in this group had there been space. I am following two extremely powerful and important speeches, which I really hope the Government are going to listen to, approached in a very constructive, positive spirit.

I want to make one point. The noble Lord, Lord Russell of Liverpool, outlined for us how the judicial review found that this was unequal treatment, but that the Army was not covered by the Equality Act. The fact that there is a legal exemption does not mean it needs to be used. The Army could choose to say that it will accept, at least in this manner, to follow the Equality Act. That would be a step towards justice for young people, many of whom come from extremely disadvantaged backgrounds and are trying to find their best way forward in life. We need to give them that opportunity.

Lord Coaker (Lab): I will make a very brief comment based on what the noble Lord, Lord Russell of Liverpool, and my noble friend Lord Browne have just said. There was some debate in Committee about raising the age of recruitment, and there was disagreement about that. It is incumbent upon the Government to take very seriously the points that the noble Lord, Lord Russell, and my noble friend Lord Browne have made, about the allegations and reports there have been, whatever the rights and wrongs of that. Also important is the point raised in the amendment about the length of service and what is taken into account.

For those of us who, like me, do not support raising the age of recruitment, it is particularly incumbent upon us to ensure that reports and allegations of the sort we have heard from the noble Lord, Lord Russell, and my noble friend Lord Browne, alongside some of the other concerns raised, are taken very seriously by the Government. They should address them as quickly and urgently as possible and report the results of their deliberations into the public domain.

Baroness Smith of Newnham (LD): My Lords, I do not quite support this amendment but will speak in rather the same spirit as the noble Lord, Lord Coaker. From the Liberal Democrat Front Bench, in Committee, I also spoke against raising the age of recruitment, but of course that is not what this amendment seeks to do.

The debate has focused on three issues: first, the age of recruitment, which is not formally the subject of this amendment; secondly, the question of the minimum term for service, which is, officially, what is in the amendment; and, thirdly, the issue of Harrogate, which has been discussed at some length. The noble Lord, Lord Browne of Ladyton, suggested that everyone spoke in laudatory terms about Harrogate in Committee; while the noble Lord, Lord Lancaster, spoke in laudatory terms, I think the rest of us were very much looking forward to the Minister facilitating a visit, so that we could understand what happened at Harrogate a little better—although I think the noble Lord, Lord Coaker, might have visited.

There is clearly a need to separate three different issues here, one of which is how the current facility works. The sorts of cases that the noble Lord, Lord Browne of Ladyton, mentioned clearly need to be looked into. It would be very helpful if the Minister could explain what the MoD is doing to investigate the sorts of cases that are currently hitting the headlines and reassure the House that appropriate action is being taken. That needs to be separate from whether or not we believe that the age of recruitment is actually right.

However, it is important to consider the age of recruitment and what happens to 16 and 17 year-olds when we look at what is in this amendment. It may be only a probing amendment, but it is nevertheless one where we need to look at what is actually understood by "service". It is very clear that there is a difference in the language that is used by those who oppose recruitment at 16 and the arguments against child soldiers, for example, which seems to suggest that, somehow, 16 year-olds are being allowed to go off to the front line—they are not; you cannot go to the front line until you are 18, and then only if you have been trained.

What do the Government understand by "service"? Is it that 16 and 17 year-olds can be recruited and trained, but that somehow that does not count as service for the purposes of the minimum service

[Baroness Smith of Newnham]
requirement? If that is the case, could the Government make it very clear? If Harrogate, or whatever an appropriate equivalent might be, is about training, is it seen as an appropriate alternative to continuing education in school or a further education college, which, as some of us believe and as the noble Lord, Lord Coaker, argued in Committee, can be very relevant for some 16 and 17 year-olds who want not to go back to mainstream education but to do something different? Clearly, if that is the case, what is happening for 16 and 17 year-olds needs to be appropriate.

All of us must surely agree with the comment of the noble Lord, Lord Russell, that we need to craft a recruitment policy fit for the 21st century and not the 19th century. Could the Minister reassure us that what is available is fit for the 21st century, and that what is happening at Harrogate has been investigated and we do not have anything to worry about? Can she explain to us the Government's understanding of service that is accrued from the age of 16 to 18, inclusive?

Baroness Goldie (Con): My Lords, I know that you are all waiting agog for my response to what has been a wide-ranging and very interesting debate, but I am required to make a correction in relation to our previous debate on Amendment 26. I have been informed that the process that I described is slightly different. The precise fees payable are made through both the affirmative and the negative resolution procedure, which is different from what I may have read out from the speaking notes. I am pleased to put that correction on the record.

I thank the noble Lord, Lord Russell, for raising this issue, which is important and which we are all interested in. Clearly, some of your Lordships have concerns about it. As I said, it led to a very interesting debate. The essence of the amendment is that your Lordships are concerned that those who join the Armed Forces before their 18th birthday are obliged to serve longer than those who join after it.

Obviously, this is a bit of reprise of what I said in Committee, but I clarify that this is a matter not of length of service but of discharge. The statutory "discharge as of right" rules allow all new recruits, regardless of age, to discharge within their first three to six months of service, depending on their service, if they decide that the Armed Forces is not a career for them. In addition, service personnel have a statutory right to claim discharge up to their 18th birthday, subject to a maximum three-month cooling-off period. These rights are made clear to all on enlistment. Ultimately, all service personnel under the age of 18 have a statutory right to leave the Armed Forces up until their 18th birthday, without the liability to serve in the reserves, which would be the obligation on an adult aged over 18 who was leaving the services.

The noble Lord, Lord Russell, referred to a specific example, and I confess that I was not familiar with it. I understood that he referred to the RAF, but if he would care to write to me with the details, I will certainly look at that in detail.

The noble Lord, Lord Russell, was specifically concerned about the perceived unfairness to the under-18 group who serve longer than a new start of 18 years or over if they pursue a career in the Armed Forces. The noble Lord, Lord Browne, alluded to some extent to the letter I sent him in an endeavour to explain what these arrangements are about and the rationale behind them. I reiterate for the benefit of the Chamber that the policies in place covering the recruitment of young people below the age of 18 are designed carefully to be lawful, fair and fit for purpose, both for the individual and the service they volunteer to join.

The primary reason for the minimum period of service in the Army for those under 18 is that the Army must ensure that it maintains the right workforce levels to enable it to deploy personnel over the age of 18 on operations at home and abroad. Recruits under the age of 18 are not fully deployable on operations, and their notice period therefore runs from the point at which they become fully deployable alongside those who enlist after their 18th birthday. This minimum period of service for those under 18 also allows the Armed Forces to provide our young people with world-class training. It develops well-rounded junior personnel, both morally and conceptually, and, in turn, all this quite simply brings huge benefit to the individual, the Armed Forces and wider society. I feel that is positive and something that we should celebrate.

I acknowledge the recent reports of entirely unacceptable behaviour at the foundation college resulting in the conviction of an instructor, and the noble Lords, Lord Russell, Lord Browne and Lord Coaker, and the noble Baroness, Lady Smith, referred to this. That is something we all deplore. It indicates to me that there is a system which works: that if somebody behaves absolutely unacceptably in a criminal fashion, they are dealt with within the system. I do not think we should be complacent about this in any way. I was as disturbed to read that report as anyone, but it suggested to me that there are systems in place.

I think the noble Baroness, Lady Smith, particularly sought reassurance about this. I want to reassure her and your Lordships that for under-18s any reports of bullying are taken extremely seriously, and tough action is taken against those who fall short of the Army's high standards. The duty of care for all our recruits, particularly those aged under 18, is of the utmost importance, and we recognise the need to treat under-18s differently.

The Armed Forces foundation college—

Lord Browne of Ladyton (Lab): I am very much obliged to the noble Baroness for giving way; she is very generous. However, at this point I think it is appropriate to ask her specifically if it is true that there were 60 complaints between 2014 and 2020 from parents or trainees about bullying behaviour at AFC Harrogate. Is that true?

Baroness Goldie (Con): I do not have that information before me. I will certainly undertake to investigate, and I will write to the noble Lord with whatever I find out.

Lord Browne of Ladyton (Lab): With respect, if it is true, will the noble Baroness also express in that letter whether she is concerned that that does not appear to have been reflected in the inspections of AFC Harrogate? If it had been, I am sure the noble Baroness would have shared that when we discussed this in Committee.

Baroness Goldie (Con): As I said to the noble Lord, all I can offer to do is to look at *Hansard* and the detail of what he said, and to check that out and see what I can ascertain. I will undertake to do that and write to him, and I will offer any comment that seems appropriate depending on what I find out.

What I was going on to say, particularly in response to the point raised by the noble Baroness, Lady Smith, is that—as the noble Lord, Lord Browne, has indicated—the foundation college, alongside all phase 1 and phase 2 training organisations, is subject to Ofsted inspection on a routine basis. Ofsted is an independent inspectorate. I and the Government have no control over what it says and does; it is for Ofsted to enter establishments, ask its questions, make its inspections and come to its conclusions.

What I can say to the noble Baroness is that the college was independently inspected by Ofsted in May 2021 as part of the 2020-21 inspection cycle into welfare and duty of care in Armed Forces initial training. Harrogate was awarded an overall grade of outstanding by Ofsted at the inspection, which followed the outstanding grade it received in October 2017. That grade was awarded due to the excellent standard of provision of duty of care and welfare encountered by Ofsted at the college.

8.45 pm

As I said, I read the news report of the conviction of an instructor with great concern, as everyone in this Chamber would, but I have simply to set before your Lordships the broad context of the environment of the college. I will look into the matters raised by the noble Lord, Lord Browne, to see what I can find out and I shall respond to him. As I indicated, we are also satisfied, because of our awareness of and concern with our duty of care to under-18s, that there are systems in place at the college whereby young people can have a voice and speak out. Contact with parents is maintained. Parents who are concerned will have a point of contact with the college and one would expect any parent who was concerned to activate that contact. Notwithstanding the negative aspect of that newspaper report, I still commend the college to you all and repeat the invitation to those who would like to visit it. I would be very happy to co-operate and co-ordinate that to make it possible.

The difficulty with a debate such as this is that there will be some Members of your Lordships' House who just do not like the idea of young people aged under 18 having anything to do with the Armed Forces. I accept that that is a view that they might wish to hold and of course they are entitled to hold it. I do not agree with it. I happen to think that what we do with these young people is positive and beneficial. In fact, the Armed Forces remain one of the UK's largest apprenticeship providers, equipping young people with valuable transferable skills for life. Some of them might leave before they become 18, but they do not leave with no equipment. They will at least have received instruction in numeracy and literacy. Irrespective of age, all recruits who need it receive education in these key skills of literacy and numeracy. Also irrespective of age, more than 80% of all recruits enrol in an apprenticeship programme, equipping them with the skills they need to succeed and which they will continue to build on throughout their careers. They will serve them well when they leave.

As I said, there is probably a fundamental divergence of view on this. I, on behalf of the MoD, think that this is a good system for young people aged between 16 and 18. It serves them well and is good for the Armed Forces. I totally understand the natural interests in issues of governance, well-being and welfare where this training is provided. I absolutely accept that and it is right and proper, but it would be quite wrong to cast this college in a negative light. The evidence is that it has been doing a very good job and a lot of young people have benefited as a result of their attendance at it.

I am probably not providing the answers that the noble Lord, Lord Russell, wanted to hear, but that is the Government's position. I hope that, with that explanation, he will feel able to withdraw his amendment.

Lord Russell of Liverpool (CB): My Lords, I thank the Minister for her response and all noble Lords who took part in this brief debate. I must confess that, as I listened to the Minister and I reflected on her response to the previous amendment, I was reminded of the saying that is often used about ourselves and the United States of America, which is that we are two countries divided by a common language. On many occasions I felt that the discourse coming from all sides of the House seemed to be of a different nature or dialect from the response we received from the Front Bench.

To be clear, Committee saw an end to the argument—certainly for this Bill—about the rights and wrongs of recruiting junior entrants at 16. That is not what we are talking about.

The point I was trying to make was to probe the Ministry of Defence on whether it has actually thought and reflected on whether what it is currently doing with its junior entry programme is fit for purpose. I could imagine that, if you are dyed deep blue right the way through and support the Conservative Party, you might regard the Army Foundation College as a particularly wonderful example of what is known as "levelling up". It is taking a cohort of young people, primarily young men, from difficult neighbourhoods and complicated backgrounds, who are completely unenthused by conventional education and find attraction and allure in going into the military.

But, as we have seen from the evidence, the process the Army goes through to select these individuals appears to be seriously flawed on two counts. First, as we heard from the independent appraisal, the number of young people who are leaving within days of arriving in Harrogate does not speak very highly of the efficacy of the recruitment process. So at the very least I think the Army should look carefully at that.

The second point I come back to is more fundamental. The noble Baroness, Lady Smith, echoed my appeal to try and think of a junior entry programme that is fit for the 21st century rather than the 19th century. I have every sympathy with the cohort in question, which takes up 70% of the intake. But the size of our Army is reducing and the technical challenges we are

[Lord Russell of Liverpool]
faced with are increasing. Your Lordships may have read about this slightly alarming supersonic missile that has apparently gone around the world at five times the speed of sound and apparently has the Americans very rattled. That is the state of the world we are moving into and, with the best will in the world, even the most outstanding students among the cohort the Army is currently recruiting from are unlikely to be of great help in trying to deal with the sort of warfare that the remainder of the 21st century may expose us to.

I do think there are some fundamental questions that the briefing notes—which the Minister has followed assiduously—do not seem to have prepared her for. So what I would ask her to do is, at a minimum, reflect on some of the comments that have been made, particularly some of the more profound questions about looking at the current junior entry strategy, and try to see whether it is fit for purpose.

At the very least, I would have hoped there was an acknowledgement in the briefing of the junior entry review that was conducted at the request of the Defence Committee in the other place, which had inside it a suggestion of new terms of service that would solve what this amendment asks for. The fact that it was not even referred to, either in her briefing notes or in her response to me, is disappointing, and I would ask that she and her officials look carefully at the content of what has been discussed, isolate those questions that have been asked and undertake to write back to us with answers. I would be most grateful. In the meantime, I beg leave to withdraw the amendment.

Amendment 28 withdrawn.

Amendment 29

Moved by ***Lord Browne of Ladyton***

29: After Clause 19, insert the following new Clause—

"Use of novel technologies by the UK Armed Forces: review

(1) Within three months of this Act being passed, the Secretary of State must commission a review of the implications of increasing autonomy associated with the use of artificial intelligence and machine learning, including in weapons systems, for legal proceedings against armed forces personnel that arise from military operations, and produce recommendations for favourable legal environments for the United Kingdom's armed forces, including instilling domestic processes and engaging in the shaping of international agreements and institutions.

(2) The review must consider—

(a) what novel technologies could emerge from the Ministry of Defence and the United Kingdom's allies, and from the private sector, which could be used in military operations,

(b) how international and domestic legal frameworks governing conflict need to be updated in response to novel technologies,

(c) the United Kingdom's engagement with current and new routes of international efforts to secure a new legally binding instrument governing the use of novel technologies in conflict, and

(d) what protection and guidance armed forces personnel need to minimise the risk of legal proceedings being brought against them which relate to military operations in response to novel technologies.

(3) Within the period of one year beginning on the day on which the review is commissioned, the Secretary of State must lay a report before Parliament of its findings and recommendations."

Member's explanatory statement

The amendment mandates a review within three months of the passing of the Act of implications of increasing autonomy associated with the use of AI and machine learning in weapon systems. The review must focus on the protection and guidance that Armed Forces personnel need to ensure that they comply with the law, including international humanitarian law, and how international and domestic legal frameworks need to be updated.

Lord Browne of Ladyton (Lab): My Lords, this amendment is also in the names of the noble Lord, Lord Clement-Jones, and the noble and gallant Lords, Lord Houghton of Richmond and Lord Craig of Radley. Once more, I am grateful to them for their continuing support of this amendment.

This is the fourth time this amendment, or a variant of it, has been debated in your Lordships' House in a relatively short time. This version of it has been shaved. The specific references to overseas deployment and overseas operations have been taken out, but subsection (2)(c), which relates to

"engagement with current and new routes of international efforts to secure a new legally binding instrument governing the use of novel technologies in conflict"

has been added to it as part of what the review that it would mandate needs to consider. I will explain that, hopefully in a relatively short period of time.

The amendment mandates, within three months of the passing of the Act,

"a review of the implications of increasing autonomy associated with the use of artificial intelligence and machine learning … in weapons systems".

The review would be required to focus on the protection and guidance that Armed Forces personnel need to ensure that they comply with the law, including international humanitarian law, and how international and domestic legal frameworks need to be updated.

I have no intention of repeating the points I have previously made. I will just take a few seconds to remind noble Lords of assurances we have been given by the Minister thus far. I draw noble Lords' attention to cols. GC 437-38 from the Grand Committee. I accept that we have been given some reassurances that the MoD is "alert to" the complex issues that this amendment raises and is working and

"has worked extensively on them over the … last 18 months."

I also accept that presently the Government's position is that the Minister

"cannot set out details until these positions have been finalised, but work to set a clear direction of travel for defence AI, underpinned by proper policy and governance frameworks, has reached an advanced stage"—

so we are in keen anticipation—and that:

"Key to this is the defence AI strategy",

which, it is hoped, will be published

"in the coming months, along with details of the approaches we will use when adopting and using AI."—[*Official Report*, 8/11/21; col. GC 437.]

These are substantially the Minister's words. I do not intend to read all of this; people can read it for themselves.

Withdrawing the amendment in Committee, I indicated that I expected the issues, which are moving at a dramatic pace, to have moved on by the time we got to Report, and that the probability was that this amendment would come back, because there would be developments. There have been developments. Some of them are that my knowledge of matters relevant to this amendment has increased, but another of them was much more dramatic.

Last Wednesday the "Stories of Our Times" podcast published a podcast—do we publish podcasts?—entitled "The rise of killer robots: The future of modern warfare". This was hosted by a journalist, a woman, a podcaster, Manveen Rana. The guests were Matthew Campbell, a *Sunday Times* foreign affairs features editor, General Sir Richard Barrons, former Commander of the UK Joint Forces Command, and General Sir Nick Carter, Chief of the Defence Staff. I think a British academic based in the United States also contributed. If I can find a way to do this—I think it might be possible—it is my intention to ensure that every parliamentarian in this building, here and in the other place, gets access to this podcast because, more dramatically and probably with better effect, it makes the points that I have been trying to get across in the last three attempts and this one, explaining why it is crucial that this work is done.

9 pm

For reasons I will come to, it is crucially important that this work is done in a context in which responsibility for these weapon systems is taken by elected politicians at the highest level. We in Parliament must know that the politicians who are responsible for decisions about them fully understand the implications of these weapon systems and exactly what their capabilities are and may become. In my view—I cannot overstate this—this is the most important issue for the future defence of our country, future strategic stability, and potentially peace: that those who take responsibility for these weapon systems are civilians, that they are elected, and that they know and understand.

Anyone who listens to this podcast will dramatically realise why, because there are conversations going on among military personnel that, in my view, demand the control of politicians. I have no intention of going through all of this, as it takes 33 minutes; it would have been helpful if we had all heard it before I spoke. That was impossible, though I did share it with a limited number of your Lordships, and I sent it to the Minister. I gather that she was not able to access it, but she would be surprised at some of the vocabulary used in it. In it, there were some sentences deployed which the House must know and understand.

General Sir Richard Barrons says that

"artificial intelligence is potentially more dangerous than nuclear weapons."

If that is a proper assessment of the potential of these weapon systems, then that is the reason they must come under the control of elected politicians who know and understand their implications. That debate, after nuclear weapons were first used, occupied the United States of America for the best part of a decade. They decided, at the end, to split responsibility for nuclear weapons between the civilian side of the government and the military, but that the civilian side would have responsibility. That is why we talk of these weapon systems, as we do in the United Kingdom, as being the Prime Minister's weapons. They are awesome in their abilities. These weapon systems as described in this podcast are equally awesome. Even more worrying, once we make the development from AI to AGI, they potentially have the ability to develop at a speed we cannot physically keep up with.

There is an existing context, under the United Nations Convention on Certain Conventional Weapons known as the GGE process, which seeks to find a way at the UN level of making a regulatory agreement in relation to artificial intelligence and artificial general intelligence enabled weapon systems. There is a frustration developing in that discussion, and 68 countries are calling for a new legal instrument to regulate lethal autonomous weapons. These sorts of frustrations in that environment are not unusual; they led to the cluster munitions convention and antipersonnel landmines treaties. The UK was involved in helping to lead both. Developments there also led to the ban treaty relating to nuclear weapons. They are an unhelpful development sometimes but at others the only way that progress can be made in relation to certain weapon systems. If this happens, it is incumbent on us to decide where we will be in this discussion, which is why subsection (2)(c) is added to the amendment in its current form.

Specifically, these states that are pulling away are calling for a combination of both prohibitions and regulations in the form of a legally binding instrument. A smaller subset of them have mentioned their support for the less nuanced approach of a simple ban. Presently, there are no NATO states in this group, but Austria, which is a partner for peace with NATO, is on the list, and Belgium looks like it is close to national support for a new international instrument. Its Parliament recommended incorporating a ban into national legislation in 2018 and there is some indication that the defence committee in Belgium is considering making another powerful recommendation on this. Therefore, this will impact the alliance that we depend on for our strategic and other defence if it develops.

The second point in addition to what I have said before comes from the words that the Minister deployed in Committee. Several times in debates of this nature, parliamentarians, including my noble friend Lord Coaker and the noble Baroness, Lady Smith of Newnham, have asked for an unequivocal statement that there will always be a human in the loop when decisions over the use of lethal force are taken. Responding to these calls most recently, the noble Baroness repeatedly said that the UK does not use systems that employ lethal force without "context-appropriate human involvement". It has been brought to my attention that this novel formulation offers less assurance over the UK's possible future use of these weapons than the UK's previous position, which was that Britain does not possess fully autonomous weapons systems and has no intention of developing them.

I have a letter written on 8 December 2017, from the Foreign and Commonwealth Office, and therefore dated now. It is to the United Nations Association of the UK:

"The UK commits to maintaining human control over its weapon systems as a guarantee of oversight and accountability. The UK does not possess fully autonomous weapon systems and has no intention of developing them."

[Lord Browne of Ladyton]
That was a strong reassurance, but it seems that the language has changed. If it has, can the Minister tell us why the UK is no longer stating that it has no intention of developing LAWS, and why the UK appears unwilling to state that humans will always remain in control of the decision to use lethal force?

Finally, on the issue of the long-awaited AI strategy, it appears that the MoD, through an FoI, has confirmed that it has carried out no public consultation in relation to this. There has been some informal consultation but, surprisingly, there is no public consultation or open consultation about this. When it is eventually published, will it be a done deal, or will it be in White Paper form for further discussion in a public and open way?

I have nothing more to add today. Bearing in mind everything that I have said about these weapons systems in the past, I have made my position plain. I do not think the issue is going to go away. The way the amendment has been formed has been interpreted as a one-off event but I have to make it clear to Parliament, the House and the Minister that this is not my intention. The review that I think has to take place, which has to be reported on to Parliament by senior Ministers, who must come and explain it in a way that makes it clear that they fully understand these weapons and why they have made these decisions, is just the beginning of a long-standing process. This is an issue that will be with us for a long time, and we need to start thinking, in a relationship between the Government, Parliament and the country, about where we want to be with these weapons systems.

Lord Craig of Radley (CB): My Lords, the noble Lord, Lord Browne of Ladyton, has given us a very thoughtful, well-researched and deeply troubling series of remarks about the future in this area. I wanted to concentrate on a rather narrower point. Those who are ordered to fight for the interests of this country must do so—now and in the future, as more novel technologies find their way into kinetic operations—in the certain knowledge that their participation, and the way in which they participate, is lawful in both national and international jurisdictions. As has become evident in some of the asymmetric operations of recent years, there is real evidence that post-conflict legal challenges arise, and future operations may prove impossible to clear up quickly and comprehensively unless we have thought deeply about it.

Risking one's life is a big ask, but to combine it with a risk of tortuous and protracted legal aftermath is totally unacceptable. I support the simple thrust of the amendment to demonstrate that the Government indeed have this matter under active review, as one must expect them to. It is infinitely better that the answers to these issues are there before a further operation has to be waged, not after it is over, when issues that should have been foreseen and dealt with press on individuals and others in our Armed Forces. Should the protection of combat immunity not be brought into the frame of discussion and resolution of this seriously troublesome issue?

Lord Clement-Jones (LD): My Lords, it is a great pleasure to follow the noble Lord, Lord Browne of Ladyton, and the noble and gallant Lord, Lord Craig, in supporting Amendment 29, which the noble Lord introduced so persuasively, as he did a similar amendment on the overseas operations Bill that I signed and in Grand Committee on this Bill—I apologise for being unable to support him then. Since we are on Report, I will be brief, especially given the hour. Of course I do not need to explain to the Minister my continuing interest in this area.

We eagerly await the defence AI strategy coming down the track but, as the noble Lord said, the very real fear is that autonomous weapons will undermine the international laws of war, and the noble and gallant Lord made clear the dangers of that. In consequence, a great number of questions arise about liability and accountability, particularly in criminal law. Such questions are important enough in civil society, and we have an AI governance White Paper coming down the track, but in military operations it will be crucial that they are answered.

From the recent exchange that the Minister had with the House on 1 November during an Oral Question that I asked about the Government's position on the control of lethal autonomous weapons, I believe that the amendment is required more than ever. The Minister, having said:

"The UK and our partners are unconvinced by the calls for a further binding instrument"

to limit lethal autonomous weapons, said further:

"At this time, the UK believes that it is actually more important to understand the characteristics of systems with autonomy that would or would not enable them to be used in compliance with"

international human rights law,

"using this to set our potential norms of use and positive obligations."

That seems to me to be a direct invitation to pass this amendment. Any review of this kind should be conducted in the light of day, as we suggest in the amendment, in a fully accountable manner.

9.15 pm

However, later in the same short debate, as noted by the noble Lord, Lord Browne, the Minister reassured us, as my noble friend Lady Smith of Newnham noted in Committee, that:

"UK Armed Forces do not use systems that employ lethal force without context-appropriate human involvement."

Later, the Minister said:

"It is not possible to transfer accountability to a machine. Human responsibility for the use of a system to achieve an effect cannot be removed, irrespective of the level of autonomy in that system or the use of enabling technologies such as AI."—[*Official Report*, 1/11/21; col. 994-95.]

The question is there. Does that mean that there will always be a human in the loop and there will never be a fully autonomous weapon deployed? If the legal duties are to remain the same for our Armed Forces, these weapons must surely at all times remain under human control and there will never be autonomous deployment.

However, that has recently directly been contradicted. The noble Lord, Lord Browne, described the rather chilling *Times* podcast interview with General Sir Richard Barrons, the former Commander Joint Forces Command. He contrasted the military role of what he called "soft-body humans"—I must admit, a phrase I had not encountered before—with that of autonomous

weapons, and confirmed that weapons can now apply lethal force without any human intervention. He said that we cannot afford not to invest in these weapons. New technologies are changing how military operations are conducted. As we know, autonomous drone warfare is already a fact of life: Turkish autonomous drones have been deployed in Libya. Why are we not facing up to that in this Bill?

I sometimes get the feeling that the Minister believes that, if only we read our briefs from the MoD diligently enough and listened hard enough, we would accept what she is telling us about the Government's position on lethal autonomous weapons. But there are fundamental questions at stake here which remain as yet unanswered. A review of the kind suggested in this amendment would be instrumental in answering them.

Lord Houghton of Richmond (CB): My Lords, I support this amendment. I am sorry that my name has not found its way on to the Order Paper; I had Covid last week and I failed the IT test of getting it properly registered.

I come at this from perhaps a different angle. I have spent perhaps rather too much of my latter career in the Ministry of Defence and understand the way it functions. It spends the vast majority of its time—and I think this is understandable—managing the crisis of the moment. It spends very little time, in truth, on strategic foresight, and therefore it spends quite a bit of the other part of its time on making good that lack of strategic foresight—and much of what this whole Armed Forces Bill is about is making good that lack of foresight. The thing that I support so much about this amendment is that it is an attempt to get ahead of the game.

The MoD properly stops and looks to the future in the times of its periodic reviews, and there was much to commend the last integrated review. There are two things I would pluck from it that are relevant to this amendment. First, the review was littered with the idea that the country was making a strategic bet on the future by way of investment in technology: technology would be the source of our new prosperity; it would be the source of our technological edge; we would become a superpower; it was the reason that we could reduce the size of our Armed Forces; it was through the exploitation of novel technology that we could hold our heads up high and not fear for our safety.

At the same time, elsewhere in the review—this is my formulation, not the review's—two forms of warfare were identified. There is the one we do not want to fight—the reversion to formalised war at a scale above the threshold of kinetic conflict—and then there is this grey area of hybrid war; the war that we are currently engaged in, where our malevolent and malicious enemies seek to exploit every trick in the book and the rules of warfare in order to exploit new vectors of attack to effectively defeat us during peacetime in mendacious ways.

You can read as much as you want into the second thing, but this idea of a permanent competition for relative survival and advantage is undoubtedly a feature of the current global security situation. Therefore, in those moments of strategic foresight in the integrated review, we have in some ways identified the fact that the advantage given by novel technologies will be decisive and that we have enemies who will be mendacious in ways that we cannot quite comprehend.

I worry that, in the months to come, this Chamber might revert to its defence arguments being about counting the number of ships, air squadrons or tanks. The amendment will hold the Ministry of Defence and its generals to account by parliamentarians for the ways in which these weapons evolve—they will evolve at pace—and the rules that are to be employed by not just us but our adversaries and what is and is not their proper exploitation.

Having paused in that integrated review and discerned the future, however darkly, it would be gross negligence if we did not wish upon ourselves an instrument by which the evolution of these weapons and the rules involved in their employment were not the closest interest of parliamentarians and this House. The Ministry of Defence should be held to account over the coming months and years to see how it all plays out. This amendment would do so, and it has my unreserved support.

Baroness Bennett of Manor Castle (GP): My Lords, I apologise again for not speaking in Committee due to being at COP. I offer support and regret that I did not attach my name to this amendment. What the noble Lord, Lord Browne, said about public consultation in this process is really important, as is what the noble and gallant Lord, Lord Houghton, said about parliamentary scrutiny. Those two things very much fit together.

I am very aware that the Minister started this day, many hours ago now, promising to read a book, so I will refer to a book but not ask her to read it. It is entitled *Exponential: How Accelerating Technology is Leaving Us Behind and What to Do About It*, and it is by Azeem Azhar. The thesis is that there is an exponential gap: technologies are taking off at an exponential rate, but society is only evolving incrementally. In terms of society, we can of course look at institutions like politics and the military.

Another book is very interesting in this area. Its co-author, Kai-Fu Lee, has described it as a scientific fiction book, and it posits the possibility of, within the next couple of decades, large quantities of drones learning to form swarms, with teamwork and redundancy. A swarm of 10,000 drones could wipe out half a city and theoretically cost as little as $10 million.

It is worth quoting the UN Secretary-General, António Guterres, who said:

> "The prospect of machines with the discretion and power to take human life is morally repugnant."

That relates to some of the words in the podcast that the noble Lord, Lord Browne, referred to; I have not listened to it, but I will.

Fittingly, given what the Secretary-General said, the United Nations Association of the UK has very much been working on this issue, and communicating with the Government on it. In February, the Government told it that UK weapons systems

> "will always be under human control".

What we have heard from other noble Lords in this debate about how that language seems to have gone backwards is very concerning.

[Baroness Bennett of Manor Castle]

This is very pressing because the Convention on Certain Conventional Weapons will hold an expert meeting on 2 December, I believe, which will look at controls on lethal autonomous weapons systems—LAWS, as they are known. It would be very encouraging to hear from the Minister, now or at some future point, what the Government plan to do if there are no positive outcomes from that—or, indeed, whatever the outcomes are. While the Government have ruled out an independent process, both the mine ban convention and the Convention on Cluster Munitions were ultimately negotiated outside the CCW.

Finally and very briefly, I will address proposed new subsection (2)(d) and how individual members of the Armed Forces might be held responsible. There is an interesting parallel here with the question on deploying autonomous vehicles—the issue of insurance and who will be held responsible if something goes wrong. Of course, the same issues of personal responsibility and how it is laid will face military personnel. This may sound like a distant thing, talking about decades, but I note that a report from Drone Wars UK notes that Protector, the new weaponised drone, is "autonomy enabled". I think Drone Wars UK says it has been unable to establish what that means and what the Government intend to do with that autonomy-enabled capability, but the first of an initial batch of 16 Protectors is scheduled to arrive between 2021 and 2024, and the Protector is scheduled to enter service with the RAF in mid-2024.

So I think this is an urgent amendment, and I commend the noble Lord, Lord Browne, and the others on this, and I would hope to continue to work with them on the issue.

Baroness Smith of Newnham (LD): My Lords, I would like to support this amendment, in the name of the noble Lord, Lord Browne of Ladyton, the noble and gallant Lord, Lord Craig, and my noble friend Lord Clement-Jones. The noble Lord, Lord Browne, has probably spent an hour, this evening and in aggregate, explaining to the Chamber the need for this amendment.

As the noble Lord and my noble friend Lord Clement-Jones have pointed out, on 1 November, some of the issues raised about novel technologies and autonomy were raised; I am not sure the House was wholly persuaded by the answers the Minister was able to give on that occasion. I think it is essential that the Government think again about how they might respond to the noble Lord, Lord Browne, and to this amendment, because we have heard how vital it is that we understand the danger that the world is in. We cannot just ignore it or say we might think about it at some future date because it is not a matter for today.

If we are keen to recruit for the 21st century, recruitment is not just about cannon fodder; it is about people who are able to understand the legal aspects of warfare and the moral issues we need to be thinking about. We need service personnel, but we also need—as the noble Lord, Lord Browne, so eloquently argued—politicians and officers who are able to make decisions. There are questions about autonomy that need to be understood and focused on now, and it is crucial that we talk with our partners in NATO and elsewhere. We cannot simply say we are not interested at the moment in debating and negotiating international agreements; we absolutely have to. The time to act on this is now; it not at some future date when the Government think they might have time. We need to do it today.

Lord Coaker (Lab): My Lords, this is one of these debates that takes place very late at night that should have a packed Chamber listening. It is not a criticism, but the importance of the debate is immense. I thought the introduction from my noble friend Lord Browne was tremendous—I really did. We went from a situation where we all thought "Hopefully we won't be too long on this amendment" to everybody listening to what he had to say and then thinking they had important contributions to make.

Lots of noble Lords have made outstanding contributions, but this is a bit of a wake-up call, actually. This is happening. My noble friend Lord Kennedy mentioned that he was in a Home Office debate and they were talking about what the police were looking at and, no doubt, what Border Force and all sorts of other people are looking at. But in the sense of the military here, as the noble and gallant Lord, Lord Craig, pointed out, we are going to ask people to operate within a context and a legal framework. What will that be? Because we are going to order them to do things.

9.30 pm

This is the change—I make no apology for spending a couple of minutes on it—which my noble friend Lord Browne mentioned. The Government's policy was:

> "The UK does not possess fully autonomous weapon systems and has no intention of developing them."

I asked the Minister in Committee just a couple of weeks ago to unequivocally state that there will always be a human in the loop when decisions over the use of lethal force are taken. The Minister said, as my noble friend Lord Browne said:

> "UK Armed Forces do not use systems that employ lethal force without context-appropriate human involvement."—[*Official Report*, 1/11/21; col. 995.]

We all know what that means. It is a very careful use of language, but it has shifted considerably from one statement to the next. As the noble and gallant Lord, Lord Houghton, asked, as did my noble friend and other noble Lords, where is the parliamentary accountability? Where has the decision for that been taken? What parliamentary debate took place that said it was now okay for the UK to make that quite considerable change of policy?

It may be, I suspect, that some of the answer we get from the Minister will be, "We can't talk about this, it's secret". Yet it is not secret, so what is going on? This is why I said it was a bit of a wake-up call. Parliament needs to debate this; I could not agree more with the noble and gallant Lord, Lord Houghton. It is for this Parliament as the democratic part of the process of government that runs this country to determine what is appropriate. It is not for meetings—wherever they take place—to determine that.

The most important part of the amendment before us is proposed new subsection (3), which talks about the review commissioned by the amendment being reported to Parliament with its findings and recommendations,

so that Parliament would have the opportunity to debate and discuss what the policy of Her Majesty's Government, those who represent it and the establishment of this country, was with respect to the use of artificial intelligence, increasing autonomy, machine learning and all of those sorts of things.

The one thing I would say to the Minister is that she is a member of Her Majesty's Government. She is the representative of the Government that all of us here are collectively talking to around this amendment. I think what noble Lords want—certainly what I want—is for the Minister to go back and say "These were the sorts of comments that were made in Parliament by numerous Lords"—and no doubt it would happen in the other place as well—"so what is it that we going to do about this? What is going to happen as a consequence of the crucial amendment that Lord Browne put before us?"

Knowing the Minister in the way that I do, I know she will go back and ask this. But the system needs to respond to us, to this Chamber, to this debate and to all the various points that have been made; that is what democracy is about. It is about the Chamber that represents the people speaking up for the people to the system and demanding that it change and respond to them. That is what we expect from this debate. I thank my noble friend Lord Browne again for putting the amendment and for his continued efforts with respect to this really important issue.

Baroness Goldie (Con): My Lords, the noble Lord, Lord Coaker, is right: we have kept until the end of the day—unfortunately when few people are around—one of the best debates we have had during this stage of the Bill. I thank the noble Lords, Lord Browne and Lord Clement-Jones, and the noble and gallant Lord, Lord Craig, for tabling this amendment. I know that their interest is informed and determined, and I can tell them that it is welcome. Having debated this issue with them now on several occasions, I understand the depth of their concern in this important area. I am grateful to them for the way they have engaged with me and officials and I look forward to further engagement, for we will surely debate these issues in this House for many years to come. I say to the noble Lord, Lord Coaker, that any Government would expect to be accountable to Parliament in respect of matters of such significance.

As with so many issues relating to the rapid march of new technology, this is both complex and pressing. The Government continue to welcome the challenge and scrutiny being brought to this question, and, as I noted on previous engagements, I do not dispute the noble Lords' analysis of the importance of proper legal consideration of novel technologies. Indeed, I attempted to access the podcast to which the noble Lord, Lord Browne, referred. I do not know whether the Chamber will be delighted or disappointed to learn that, such is the security of my MoD computer, I could not get anywhere near it, so I have still to enjoy the benefit of listening to that podcast, which I intend to do.

As I said, I know that the amendment is extremely well intended and timely, but I hope to persuade your Lordships that the proposed review is not the right means of addressing these issues. However, I assure your Lordships that the department is alert to these questions and has been working extensively on them over the course of the last 18 months. Indeed, the noble Lords, Lord Browne and Lord Clement-Jones, have been engaging with officials in the department. They might have a better understanding than most of what is taking place.

Setting a requirement for a review in law would actually risk slowing down the work needed to develop the policy, frameworks and processes needed to operate AI-enabled systems responsibly, and to address the legal risks that service personnel might otherwise face. That is an issue of profound importance and one in which the noble and gallant Lord, Lord Craig of Radley, is rightly interested.

Noble Lords will understand that I cannot set out details of the department's position until these have been finalised, but I can assure your Lordships that work to set a clear direction of travel for defence AI, underpinned by proper policy and governance frameworks, has reached an advanced stage. The noble Lord, Lord Browne, will I am sure have a sense of where that is headed. Key to it is the defence AI strategy, which we hope to publish in early course, along with details of the approaches we will use when adopting and using AI.

These commitments, which are included in the *National AI Strategy*, reflect the Government's broader commitment that the public sector should set an example through how it governs its own use of the technology. Taken together, we intend that these various publications will give a much clearer picture than is currently available, because we recognise that these are vital issues that attract a great deal of interest and we need to be as transparent and engaged as possible. I wish specifically to reassure the noble Lord, Lord Coaker, about that.

I know from their contributions, to which I listened, that noble Lords will understand that this AI strategy cannot be the last word on the subject, but I hope that, when we do publish details, your Lordships will be substantially reassured that we are on the right track, and that substantial effort and engagement will follow. There is no end to the march of technology—that is one of the reasons why we have questioned the utility of a snapshot review process—nor will there be an end to our challenge of ensuring that we do the right thing with that technology, especially where grave matters of life and death and national security are concerned.

As we undertake this work, one of our top priorities must be to develop the terminology and vocabulary necessary to ensure we illuminate, clarify and improve understanding and awareness, and to find the right way to debate these issues. This is by no means a comment on any of the discussions that we have engaged on in this House; it is more a general observation on the difficulty of debating concepts such as lethal autonomous weapon systems when there is no definition and different views are not always clearly differentiated.

Are we concerned that AI could usher in a new era of weapons which, whether controlled by a human or not, could result in devastation and atrocities? Or are we concerned at the ethical implications of a machine, rather than a human, taking decisions which result in

[Baroness Goldie]
the death of even a single human? The answer is both, but the discussion is not best served when it jumps between such disparate topics.

The MoD has to keep pace with the threats that confront this country and consider how to deal with them. When I spoke in Grand Committee, I commented, in response to the noble Baroness, Lady Smith, that context-appropriate human involvement could mean some form of real-time human supervision, which might be called "human in the loop", or control exercised through the setting of a system's operational parameters. The noble Lord, Lord Browne, correctly observed that some might call the latter a fully autonomous weapon. But I wonder whether they would use that term, or perhaps more importantly be concerned, if the use case they had in mind was a system mounted on a Royal Navy vessel to defend against hypersonic threats. Such a system might well be lethal—that is, capable of taking human life—but in many ways it would not be considered fully autonomous, even if it detected the threat and opened fire faster than a human could react.

We must be careful to avoid generalisations in this debate. We in the Ministry of Defence have a responsibility to ensure that our position is properly communicated. That is a responsibility we acknowledge, and I say again to the noble Lord, Lord Coaker, that it is a responsibility of which we are cognisant and about which we will be vigilant.

The crucial point, which is also the reason why this amendment is unnecessary, is that all new military capabilities are subject to a rigorous review process for compliance with international humanitarian law. Any determination as to the exercising of context-appropriate human involvement will similarly be done carefully on a specific case-by-case basis. We also adjust our operating procedures to ensure that we stay within the boundaries of the law that applies at the time.

International and domestic frameworks provide the same level of protection around the use of novel technologies as for conventional systems because their general principle is to focus on the action, rather than the tool. These frameworks therefore offer appropriate levels of protection for our personnel. We are committed to ensuring that our Armed Forces personnel have the best possible care and protection, including protection against spurious legal challenges. I think I said in Committee that, earlier this year, we acted to bolster this protection in historical cases through the overseas operations Act.

This is a fascinating and complex area. I hope my remarks provide reassurance to your Lordships that the Ministry of Defence takes these matters very seriously, is already doing all that needs to be done and is planning to be proactive in communicating its approach appropriately to Parliament and the public. On this basis, I suggest that this amendment is not needed. The noble Lord, Lord Browne, has been kind enough to indicate that he will not press it, but I hope that he and other Members of this House will remain engaged with us in the MoD, as we will remain engaged with our international partners and allies, and our own public and civil society, so that we can make rapid progress on these important and challenging questions.

Lord Browne of Ladyton (Lab): My Lords, I thank all noble Lords who contributed to this debate, including the noble Baronesses, Lady Bennett of Manor Castle and Lady Smith of Newnham, my noble friend Lord Coaker, the noble and gallant Lord, Lord Craig of Radley, and the noble Lord, Lord Clement-Jones. I am sorry that the noble and gallant Lord, Lord Houghton, could not add his name to the amendment, but in my head it is there.

I thank the Minister, who was characteristically engaged with the debate and the issues. At this time of night, I do not want to start debating with her on whether some of her comments about this amendment and what it would do are justified. I do not believe that this would slow down the work; it is just a compilation of the things that the Government ought to be doing anyway. I do not care about the three months; a promise that this will be done, and done transparently, is what I, as a parliamentarian, demand of the Government. At some point, this will need to be done and need to be shared with Parliament. We will need to take joint responsibility for these weapons systems if we seek to deploy them in any fashion—even limited versions of them.

My second point is that I am glad to see that our country is complying with its international legal obligations to subject new technology to a rigorous review to make sure that it is compatible with international humanitarian law. I am satisfied that that is happening. I do not understand why my Government do not publish those reviews. The United States and many other countries publish such reviews. Why are they not published, so that we, the politicians who engage, not so much in this House but in the other House, in paying for them with taxpayers' money, know that we are complying with this? Other countries can do so perfectly well.

I have been obsessed with this issue since 2013, when I read the *Resilient Military Systems and the Advanced Cyber Threat* report of the US Department of Defense's Defense Science Board. It said specifically that the United States did not have a resilient weapons system that could not be penetrated by cyber, because it had penetrated them. It went on to say that the same was true of "all of our allies". It did not say in the report that it did that to all of their allies, but I would not be surprised if it did.

In 2013, I took that to the then Ministers in the Ministry of Defence and said, "Have you read this? We are deploying some of this tech that has been penetrated, and it can be penetrated by cyber threat." I have to say that it was penetrated with software downloaded from the web; no one wrote a single line of code in order to do it. I have yet to meet a Defence Minister of that generation who ever even bothered to read the report.

This is where we are now—this will be my last word on this. General Sir Richard Barrons, Commander Joint Forces Command from 2013 to 2016, is publicly saying of autonomous weapon systems that it is not a question of tomorrow—the technology exists now, it is unstoppable and we need to get on to that bandwagon. He has been saying that for years. I do not know how many senior military officers who have worn our uniform are involved in this and saying this, but one of them doing so publicly terrifies me, because I am far from

satisfied that I—a former Secretary of State for Defence—or any of our current Ministers understand this well enough to keep people who think like that under proper control. That is what concerns me. I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

House adjourned at 9.48 pm.

Grand Committee

Tuesday 23 November 2021

Arrangement of Business

Announcement

3.45 pm

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

Conformity Assessment (Mutual Recognition Agreements) (Construction Products) (Amendment) Regulations 2021

Considered in Grand Committee

3.46 pm

Moved by ***Lord Greenhalgh***

That the Grand Committee do consider the Conformity Assessment (Mutual Recognition Agreements) (Construction Products) (Amendment) Regulations 2021.

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, these regulations were laid before both Houses on 16 September 2021. They are part of the Government's programme to implement the UK-Canada Trade Continuity Agreement, specifically in the context of construction products.

These regulations are made using powers in the Trade Act 2021 to amend the Conformity Assessment (Mutual Recognition Agreements) and Weights and Measures (Intoxicating Liquor) (Amendment) Regulations 2021, known as the 2021 regulations. They make a simple amendment in order to cite the construction products regulations as specified regulations within that legislation.

This brings me to the detail of our statutory instrument. Using powers from the Trade Act 2021, these regulations make an amendment to the 2021 regulations to include the UK CPR as a specified regulation. They do no more than is necessary to implement the mutual recognition agreement on conformity assessment under the UK-Canada Trade Continuity Agreement. They do not change the key CPR requirements for placing construction products on the market in Great Britain. For those reasons, they are very simple to understand.

The effect of making this amendment can be considered in two parts. First, these regulations ensure that, pursuant to the UK-Canada Trade Continuity Agreement, the UK recognises and accepts a conformity assessment procedure or result issued by a Canadian conformity assessment body that has carried out the assessment of a construction product against UK CPR requirements. The effect of this is that a conformity assessment procedure undertaken by a Canadian conformity assessment body against UK designated standards will be treated as if it were performed by a UK approved body, enabling Canadian-assessed UK conformity assessment marked products to be placed on the market in Great Britain.

Secondly, and finally, these regulations enable the Secretary of State to assign an identification number to, and include in any register, a Canadian conformity assessment body carrying out an assessment in relation to the UK CPR and include a Canadian accreditation body in a register of those bodies. As a result, manufacturers can easily find and use a Canadian-based conformity assessment body that is accredited to undertake conformity assessment procedures against UK designated standards prior to export to Great Britain.

In summary, our overall approach to these amendments is entirely consistent with both the policy and legal intent of the Trade Act 2021 and enacts the policy that the Government have an obligation to execute as part of their international agreements. Equally, these regulations, and the 2021 regulations they amend, are entirely concurrent with the Northern Ireland protocol, which applies in Northern Ireland. These regulations serve a very specific purpose: to amend the 2021 regulations to ensure that the UK CPR is a specified regulation. This is necessary to enact the provisions of the UK-Canada Trade Agreement protocol on conformity assessment that came into force on 1 April 2021.

This instrument is necessary to ensure that we remove a technical barrier to trade between the UK and Canada and meet our obligations within the UK-Canada Trade Continuity Agreement, which has already come into force. I hope that colleagues will join me in supporting the draft regulations. I commend them to the Committee.

Lord Jones (Lab): My Lords, I thank the Minister for his introduction to these regulations. Time is of the essence and I propose to be brief. In paragraph 4 of the helpful Explanatory Memorandum, reference is made to the territorial applications. So far as Wales is concerned, I refer to paragraph 10 on consultation and ask by what means were the consultations carried out? Were they carried out by officials—probably—or by Ministers? Was business done simply by letter? How did the department and the Senedd relate on this technical matter, which one supports? On this issue, how does a great department of state deal with a Parliament in faraway Wales? The Minister may have an observation to make.

Paragraph 12 deals with impact. Can the Minister furnish an example of how these regulations affect a specific business? Perhaps he can give one example, large or small. Paragraph 13 deals with small businesses, which are the lifeblood of the Welsh economy. Clearly, Government UK are the agency involved in communications with small businesses. Was the Federation of Small Businesses involved? Were chambers of trade and the CBI involved? What were the channels of communication used by Government UK where Wales is concerned? Is there an existing estimate of the envisaged effects? Also, is there a word missing from the first line of paragraph 13?

If the answers are not available now, might the Minister write? He might know that with regard to the European Union, Wales very heavily decided that it wanted to come out.

Baroness Pinnock (LD): My Lords, the Minister read out the technical details with gusto. He obviously enjoyed doing it. In a nutshell, what we are being asked to accept today is the transfer of a protocol attached to the EU Comprehensive Economic and Trade Agreement with Canada into UK law.

This simple transfer has involved a Command Paper—351—followed by the process in both Houses and presumably a time since January 2020 when Canadian building products were not able to be certified in Canada and the certification accepted by UK authorities. Perhaps the Minister will be able to explain whether that is the case and whether building products from Canada have had to be certified here in the UK as well as in Canada during this period.

Then there is Regulation 6, which appears to relate to the assessment of the Canadian assessment bodies and whether these comply with UK standards. Can the Minister explain how the assessment body in Regulation 6 is held accountable for its determinations?

At the heart of all this are the UK construction products regulations. These regulations may well be comprehensive and require construction products to comply with basic safety standards. However, regulations are only ever as good as the processes for ensuring full compliance. The Grenfell Tower tragedy has exposed the awful failings in this regard. The question, therefore, to the Minister is a very important one: how will the Government ensure complete compliance with the assessments of complex construction materials and, as importantly, ensure that the products are used as per the regulations? Those are the lessons from Grenfell.

In conclusion, this SI is a straightforward transfer of mutual recognition agreements from EU law to the UK in relation to construction materials from Canada. The wider issue is this: quis custodiet ipsos custodes? [*Interruption*.] Well, our beloved Prime Minister uses Latin all the time, so I thought I would add some in.

A noble Lord: Res ipsa loquitur.

Baroness Pinnock (LD): Exactly, perhaps. Quis custodiet ipsos custodes? Who guards the guardians? This is important. With those remarks, I broadly agree with the proposed changes.

A noble Lord: I only went to a technical school.

Lord Kennedy of Southwark (Lab Co-op): My Lords, it is good to be back in the Moses Room with the Minister. As other Members have said, the regulations before us are technical. I can say at the outset that I am happy to support them.

My noble friend Lord Jones asked about consultation. I am sure that the Minister, the noble Lord, Lord Greenhalgh, will come back on that point, particularly in regard to consultation with the devolved Administrations. My noble friend mentioned the Senedd, but it would be interesting to hear what consultations have taken place with the other Administrations. I also noted from the Dispatch Box that there was no consultation with the public because it was not deemed necessary.

The noble Baroness, Lady Pinnock, raised an important issue in respect of Regulation 6. It is absolutely fine to agree the regulations as they are here now; there is no problem with them whatever. But the question is always, is it not, what happens when things go wrong. I think that was the noble Baroness's point. It is a fair point. We are authorising a body in another country to certify that products are correct and stuff, but further down the track, if things go wrong, what processes are there? How do we deal with that? This is the nub of the question that the noble Baroness and I want answered.

I will leave it there. I accept that, if the Minister does not have an answer now, he will write to colleagues and place a copy in the Library. As I said, I am content with the regulations as they stand.

Lord Greenhalgh (Con): My Lords, I particularly appreciated the contribution from the noble Lord, Lord Jones, who I gather has had more than half a century of parliamentary service. That is quite incredible; I am almost the same age as the number of years he has served in both Houses. The noble Lord is obviously very passionate about Wales. He wanted to know about the consultation. No public consultation was carried out, because it was not considered necessary.

I understand a bit about the principles of this. It is all about opening up markets. We know that there is a shortage of construction products; that was the nature of the question from the noble Baroness, Lady Pinnock, and the noble Lord, Lord Kennedy. Although it is good in principle, how do we ensure in practice that the construction products that are recognised by a conformity assessment body that is not our own do not result in any dumbing down in standards? Obviously, as the Minister for Building Safety, that has been the key question on which I have wanted reassurance. We are absolutely committed to maintaining high standards for construction products. We know what we saw in the tragedy of Grenfell; indeed, I referenced Lakanal House in Southwark and Garnock Court in 1999. Every decade, we have had a tragedy.

I assure noble Lords that this legislation does not amend the standard of construction products being placed on the market. That is the critical thing for everybody to recognise. However, there is a shortage of construction materials, so we will get high-quality products, increase availability and encourage the flow between the UK and Canada. That can only be a good thing, but I take the point. I hope that I have given sufficient reassurance and answered the specific point on consultation.

If there is anything else, I will be happy to pick it up and write to noble Lords, for example on some of the technical points.

Lord Jones (Lab): Thank you for writing.

Lord Greenhalgh (Con): Thank you. To conclude, we think that these regulations are vital, as is getting these construction products assessed against UK CPR requirements. If those assessments are to be carried out by Canadian conformity assessment bodies, we need to ensure that they are assessed against our own regulatory requirements.

I have done my best to answer the questions I can answer. I will write to the noble Lord, Lord Jones. I take it that noble Lords support the regulations, and I thank them for that.

Motion agreed.

Local Audit (Appointing Person) (Amendment) Regulations 2021

Considered in Grand Committee

4 pm

Moved by ***Lord Greenhalgh***

That the Grand Committee do consider the Local Audit (Appointing Person) (Amendment) Regulations 2021.

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, the regulations we are considering today were laid in draft before the House on 21 October 2021. If approved and made, they will provide for the appointing person to set fee scales for local audit later in the financial year, apply standardised fee variations in specific circumstances and appoint auditors for shorter contract periods where appropriate.

These regulations are designed to provide the appointing person with greater flexibility to ensure that the costs to audit firms of additional work are met, and to reduce the need for time-consuming case-by-case consideration of fee variation requests, in order to support the timely completion of local audits.

The Local Audit and Accountability Act 2014 enables the Secretary of State, through secondary legislation, to make regulations. This statutory instrument was laid before Parliament under the affirmative resolution procedure. The 2014 Act placed responsibility on local bodies to appoint their own auditors. However, the Act also provided for an "appointing person", specified by the Secretary of State, to appoint auditors on behalf of local bodies that choose to opt in to such arrangements. Public Sector Audit Appointments Ltd, a subsidiary of the Local Government Association, is the body currently appointed to perform this role.

In September 2020, Sir Tony Redmond published his independent review into the effectiveness of external audit and transparency of financial reporting in local authorities. The Redmond review found that there was an increasing disparity between the fee scales set by Public Sector Audit Appointments Ltd and the amount of work being carried out by auditors. This had led in turn to a large increase in the amount of fee variation requests. These are requests from auditors to charge additional fees beyond those provided for in the fee scales set by Public Sector Audit Appointments Ltd for each audit year.

The Local Audit (Appointing Person) Regulations 2015 provide for fee variations relating to the audit of a particular authority to be considered by Public Sector Audit Appointments. In practice, this means that Public Sector Audit Appointments Ltd can consider and approve fee variations on a case-by-case basis only.

In its response to the Redmond review, the Government committed to review regulations to provide Public Sector Audit Appointments Ltd with greater flexibility to ensure that the costs to audit firms of additional work were met more easily. To provide this flexibility, earlier this year the Government consulted on potential amendments to the 2015 regulations. The overwhelming majority of respondents to the consultation agreed with the Government's proposals, which we now propose as the following amendments to the 2015 regulations.

First, this statutory instrument will amend the regulatory deadline for Public Sector Audit Appointments to set fee scales from before the start of the financial year to 30 November of the financial year to which the fee scales relate. This will enable Public Sector Audit Appointments Ltd to take into account more up-to-date information when setting fee scales, including results from previous audits. More accurate fee scales should help to reduce the number of instances where fee variations are required.

Secondly, this instrument will enable Public Sector Audit Appointments Ltd to set standardised fee variations to be applied to all local bodies or groups of local bodies. This change is designed to streamline the fee variation process where a particular issue has had a similar impact on the audit of large numbers of local bodies. Circumstances in which these may apply could include a regulatory or policy change, such as a change to accounting or auditing codes, or even one-off events that have a national or far-reaching impact, as we have experienced with the pandemic. In these circumstances, Public Sector Audit Appointments Ltd will be able to apply a standardised fee to all affected bodies, preventing the auditor from having to submit a fee variation request for each individual body. Public Sector Audit Appointments will be required to consult both opted-in local bodies and local auditors before setting standardised fee variations.

Thirdly, this instrument will give Public Sector Audit Appointments the flexibility to appoint auditors for one or more financial years at time, up to a maximum of five consecutive years. This could include years which precede the date on which the local authority opts in, if those years still have an audit outstanding. Under existing regulations, Public Sector Audit Appointments is required to appoint an auditor to that authority for the remainder of the compulsory appointing period, which could be up to five years, depending at what point in the appointing period the authority elects to opt in.

In conclusion, these changes will help to support the stability of the local audit market by making it easier for firms to claim for the costs of work completed—

4.05 pm

Sitting suspended for a Division in the House.

4.12 pm

Lord Greenhalgh (Con): My Lords, in conclusion, these changes will help to support the stability of the local audit market by making it easier for firms to claim for the costs of work completed. Alongside this, we are continuing to implement all the recommendations that we committed to in our response to the Redmond review.

[Lord Greenhalgh]

I hope that colleagues will join me in supporting the draft regulations. I commend them to the Grand Committee.

Lord Jones (Lab): My Lords, I thank the Minister for his introduction and the details he has to hand. Can he give instances of the likely typical fees that will be set by the appointing person? Fees are public money. How will the appointing person be selected or chosen? Will it be a ministerial appointment, or will it be left to local government itself via its own representative bodies? What will be the likely salary of the appointing person, or is that settled already? I ask questions the answers to which may not be to the Minister's conscientious hand. If that is the case, might he please write?

4.15 pm

Baroness Pinnock (LD): My Lords, I draw attention to my relevant interests as a vice-president of the Local Government Association, a member of Kirklees Council and a member of that council's audit and governance committee.

The Redmond review into local authority financial reporting and audit is far-reaching in its recommendations and broadly welcomed by those in local government, who want greater simplicity and transparency in financial reporting and auditing. One challenge facing local government audit requirements is the narrowing number of private audit firms willing to take on such audits. Yet sound auditing is an essential prerequisite for value-for-money judgments and financial transparency, as local government financing becomes ever more complex.

The proposals in this SI tackle some of the issues regarding process. These relate to fee scales, deadlines, standard fee variations and the length of time for which an auditor is appointed. Setting the end of November as the deadline for setting fee scales so that up-to-date information can be included in the calculation seems sensible, as does setting standardised fee variations. However, can the Minister confirm that such fee variations will be in proportion to the local authority accounts being audited?

I have some concerns about the potential for an auditor to be appointed for as long a period as five years. As external auditors rely heavily on a good working relationship with the local authority finance team and its internal auditors, there is always a risk that a cosy relationship develops. Can the Minister explain the thinking behind the ability for the same auditor, rather than the same audit company, to continue for five years? An explanation of the criteria that will be used by the appointing person to appoint for shorter periods "where desirable" would be helpful, as would an outline of the circumstances for audit firm rotation partway through an audit period, to understand the thinking behind that. If the Minister does not have all that in front of him, it would be good if he could write me a note.

There is a far deeper concern with local authority audits than will be dealt with by this SI. The Financial Reporting Council, which regulates the accounting industry, said this year that 60% of the English local authority audits it had reviewed did not meet its required standards. The House of Commons Public Accounts Committee detailed the problems this July. I will quote from the summary of its report, as we need to think about it:

> "Without urgent action from government, the audit system for local authorities in England may soon reach breaking point. With approximately £100 billion of local government spending requiring audit each year",

the Ministry of whatever it is called now—levelling-down, communities and whatever—

> "has become increasingly complacent in its oversight of a local audit market now entirely reliant upon only eight firms, two of which are responsible for up to 70% of local authority audits. This has not been helped by the growing complexity of local authority accounts … If local authorities are to effectively recover from the pandemic, it is critical that citizens have the necessary assurances that their finances are in order and being managed in the correct manner."

Both the FRC and the Public Accounts Committee report raise fundamental issues about local authority auditing which are not addressed by this SI, but which I hope the Minister can respond to either now or in writing. Having said that, with the exception of the questions I raised earlier, I concur with the changes that have been proposed.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I, too, declare my interest to the Grand Committee as a vice-president of the Local Government Association.

Audit is about ensuring the proper inspection of a body's financial affairs, ensuring that the financial dealings of the organisation, and the information that residents get, is correct and proper. It gives confidence to local people and, of course, to the Government and everybody else that an organisation is acting properly—or it identifies irregularities.

I was first elected a councillor in 1986—I am showing my age now. I remember the old district auditor, who used to look after the accounts. Of course, that is now all gone; we have local audits run through the Local Government Association.

The noble Baroness, Lady Pinnock, raised an important point on fee scales, what those fees are, when they can be varied and changed, and why. There is also the risk around the relationship: if the same person does the work every year, there may be an issue with things becoming too cosy. For me, there is the whole question of value for money. This is council tax payers' money that we are spending here—so what are we doing to ensure that, when any fees are varied, we are getting value for money? The noble Baroness made the point that fewer and fewer firms are willing and able to do this work, which is also an issue for the Government to look at.

For me, it is about ensuring that public money is spent wisely, properly and legally. If fees are going to be varied, how do we ensure value for money? Then there is the issue of the reduced number of firms doing this work. How do we ensure that the relationship is not too cosy and is always properly professional? Having said that, I have no issue with the regulations, and I shall leave it there. I hope that the Minister can respond to the issues raised. I know that, if he cannot, he will come back to noble Lords with a letter and place it in the Library of the House.

Lord Greenhalgh (Con): My Lords, we have had an interesting short debate on these regulations, and I thank all noble Lords for their contributions. The problem around audit is long-standing. I remember when I first became a councillor, which was a little later than the noble Lord, Lord Kennedy, back in January 1996—a very cold month, if I remember—there were real difficulties with filing accounts on time, even then. This has been a long-standing problem and is not a recent one. Those who have read the Redmond review will recognise that the best way to deal with it is by investing and providing additional funding to support local bodies to improve standards. The point made by the noble Baroness, Lady Pinnock, is important. There is a contribution of some £15 million to support local bodies with rising audit fees, making sure that there is the competence required to file accounts in a timely way.

Often, there will be an issue around reconciliation of accounts, which is quite shocking. If you cannot reconcile your accounts—the fundamental accounts in control—money can be lost. There have been examples of councils losing money. So, having high-quality audit is extremely important, as is the completion of audits, which is vital in maintaining transparency and assurance of local authority accounts. Late delivery of local assurance can have a significant impact, not just on local authority financial planning but on the timely completion of whole government accounts. That is why the Government are continuing to implement all recommendations of the Redmond review, including the regulations before us today.

I will do my best to answer some of the questions and I will follow up in writing if I am not able to. In answer to the noble Lord, Lord Jones, the appointing person is specified by the Secretary of State at the Department for Levelling Up, Housing and Communities. It is not a salaried position; they are paid by the local authorities. Importantly, we are keen on the use of the scheme through the Local Government Association and Public Sector Audit Appointments Ltd, which has the specific technical expertise. Of course, local authorities can choose who they like. We recognise that this is a good scheme, which happens to be over a five-year period.

In response to the noble Baroness, Lady Pinnock, I will write on her specific points about shorter appointments, but all appointments require local authorities to voluntarily opt in. We recently consulted on proposals to establish the audit, reporting and governance authority, which is due to replace the Financial Reporting Council as the new systems leader for local audit. We will publish our consultation response in due course.

This is a largely technical provision, which I think has the support of noble Lords.

Baroness Pinnock (LD): Before the noble Lord sits down, I asked whether the standardised variations of the fees would be in proportion to the accounts that were being audited.

Lord Greenhalgh (Con): I thank the noble Baroness for that specific point. It is obviously technical in its nature. Public Sector Audit Appointments Ltd will be required to consult local bodies and local auditors before setting standardised fees.

Motion agreed.

Antique Firearms (Amendment) Regulations 2021

Considered in Grand Committee

4.27 pm

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

That the Grand Committee do consider the Antique Firearms (Amendment) Regulations 2021.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the draft regulations were laid before the House on 14 September. The Committee will recall that it debated the Antique Firearms Regulations on 6 January this year. The regulations introduced a statutory definition of antique firearms to prevent criminals from exploiting a lack of legal clarity to obtain old but functioning firearms for use in crime. The regulations came into effect on 22 March this year and were based closely on long-standing Home Office guidance. They now define in law which firearms can safely be regarded as antique and therefore exempt from control, and those that must be subject to licensing.

Here, I have to issue an apology. Following concerns raised by law enforcement, the new definition does not include seven types of cartridge, which, together with their associated firearms, have featured most often in crimes involving antique firearms. This means that these particular firearms can no longer be regarded as antique. However, owners were able to retain them on a firearms certificate and a six-month transition period was included in the relevant commencement regulations to allow owners to license, sell or otherwise lawfully dispose of their firearms. That transition period ended on 22 September this year.

During the transition period, it was brought to the Government's attention that a category of cartridges that had previously been included in the Home Office guidance had been inadvertently omitted from the regulations. These cartridges are for vintage rifles, punt guns and shotguns with bores greater than 10. The regulations, which this Committee may recall are unusually technical and lengthy, listing over 450 old cartridge types, went through checks prior to being laid. Regrettably, however, this omission was not picked up. Unless we correct the error, owners of the omitted firearms would have to license them, incurring unnecessary inconvenience and expense, with no benefit to public safety.

4.30 pm

Since antique firearms are not licensed, I cannot say exactly how many firearms might be affected by this omission, but I understand that there could be 200 to 300 owned by around 100 collectors. They are also the sort of old firearm that can be found displayed on the walls of pubs. The Antique Firearms (Amendment) Regulations 2021 will correct this omission by adding this category of cartridges to the list in the schedule to the 2021 regulations, as was always intended.

In the meantime, the Government have made the Policing and Crime Act 2017 (Commencement No. 11 and Transitional Provisions) (Amendment) Regulations 2021,

[Baroness Williams of Trafford]
which extended the transition period in respect of the omitted firearms until 22 January next year. That will ensure that owners remain in lawful possession while the amendment regulations before us today can be considered by Parliament and, I hope, approved and brought into effect.

Although the owners of these firearms will not require a firearms certificate to possess them once the omission has been corrected, the way in which the transitional provisions were drafted in the commencement regulations means that owners could still lodge an application for a certificate with their local police force before the end of the extended transition period. Otherwise, they could technically commit a historic offence of unlawful possession. This is because owners who choose to retain their firearms can only benefit from the transitional provisions, including the temporary disapplication of unlawful possession offences, if they have applied for a certificate before the end of the transition period.

The Home Office has issued advice on the government website to make owners aware of this omission and the need to apply for a firearm certificate before 22 January next year. The NPCC lead for firearms licensing has suggested to police forces that they simply hold on to any applications that they receive and then cancel them once the amendment regulations come into effect. This will avoid owners having to pay unnecessary fees and will avoid nugatory work for police forces.

I again apologise to the Committee for having to take up more of its time to correct this omission. The 2021 regulations have been checked by officials and external stakeholders for any further omissions or errors. As a result, the amendment regulations will also make a number of minor and typographical corrections to the descriptions of other cartridges specified in the 2021 regulations. Although none of these corrections represents any significant flaw, it is worth making them now to ensure that the 2021 regulations are accurate. I commend these regulations to the Committee.

The Duke of Montrose (Con): My Lords, I am grateful to my noble friend the Minister for explaining the reasons behind this amendment, which follows rather rapidly on the original document. I declare an interest as an owner of a 200 year-old gun, which is a muzzleloader, but I think it was excused in the earlier legislation.

The Minister mentioned various classes of gun that would be excepted. I guess that her list was the existing one, because I cannot see that this amendment includes any new classes; it merely corrects the spelling of "ammunition". Was this corrected along with the external advice of people who own these guns? I would be grateful to hear from her.

Lord Addington (LD): My Lords, when the Government recognise their mistake, cock-up, call it what you like, and put their hand up quickly, one should applaud, because that way we end up with fewer mistakes down the road, so I thank the Government for addressing this.

I remember doing the other regulations. There was a long and complicated list, as the noble Baroness said. One point I tried to make at that time but could not was why World War I guns of exactly the calibre as World War II guns were not included in the list, but that has gone.

Exactly what criteria are being used to determine what makes a firearm antique? There have been comments about black powder. It is technically possible to reproduce everything, so what are the criteria for how difficult it has to be? Hearing them again might help to clarify why we are doing this, so that anybody who is listening in—I am sure there is rapt attention outside—will know exactly why we are categorising certain weapons as antique.

Lord Ponsonby of Shulbrede (Lab): My Lords, the Labour Party supports these regulations. They are largely technical in nature. This instrument corrects an error in the Antique Firearms Regulations 2021. In his summing-up of the brief debate in the other place on 8 November, the Minister, Kit Malthouse, described the whole experience of correcting this error as a "chastening experience" for him and the firearms team at the Home Office, and he expressed the hope that there would not be a recurrence of a similar error in future. I thank him for that candour, and I thank the noble Baroness for repeating the apology.

In 2017, the Government legislated through the Police and Crime Act to provide a statutory definition of an antique firearm. The Home Office consulted on what the cut-off date for manufacture should be, the propulsion systems and the cartridges. This information informed the 2021 regulations. It is these regulations that are being updated. The instrument corrects an omission from the regulations. It amends the schedule to the 2021 regulations by adding cartridges for vintage rifles, punt guns and shotguns with bores greater than 10. It also makes minor corrections to the descriptions of some other types of cartridges in the schedule.

From reading the short debate in the other place and the Library note, I have a few questions for the Minister. First, the territorial extent of this instrument is England, Wales and Scotland. What is the position in Northern Ireland on similar issues with antique firearms? I would be grateful if the Minister could comment on that. Secondly, the Library note explains that the ongoing approach to monitoring and reviewing this legislation is twofold. The first is to establish a non-statutory group of experts who will meet annually to consider the latest developments in the criminal use of antique firearms. Secondly, the Home Office is to carry out a three-year review of the 2021 regulations. Can the Minister say whether these groups have been established and when they are next due to meet?

In his response to the debate on 8 November in the other place, the Minister spoke of the prevalence of the use of antique firearms in criminal activity. He said that the National Ballistics Intelligence Service

"saw a rise in the use of antique firearms between 2008 and 2016, with 95 uses in 2016, and recoveries have decreased slightly."—[*Official Report*, Commons, Delegated Legislation Committee, 8/11/21; col. 7.]

He also said that there had been six fatalities since 2006 from the use of these weapons. This data seems very out of date. When would the Minister reasonably expect

to have a more up-to-date analysis of the extent of the problem of the use of antique weapons in criminal activity?

Finally, in the other place, my honourable friend Conor McGinn asked the Minister about the new statutory guidance to chief police officers on firearms licensing coming into force. He asked about the information to be provided about any medical conditions, particularly mental health conditions, of people applying for licences. I understand that this is outside the scope of this statutory instrument, but can the Minister say whether the twofold monitoring approach, which I mentioned earlier, will cover developments in mental capacity assessments of those who currently hold firearm licences?

We support these regulations. Our priority, like the Government's, is to protect the public, and we agree that a systematic, ongoing review of regulations is the best way to achieve this.

Baroness Williams of Trafford (Con): I thank the noble Lords who have spoken in this debate. My noble friend the Duke of Montrose asked whether there is a new type of gun. The answer is no. The classes of vintage rifles, punts and shotguns with bores greater than 10, which were omitted, are now being inserted. Nothing new is being inserted—these should have been inserted in the first place, hence my apology.

As to the definition of antique firearms, that is specified in the Antique Firearms Regulations 2021. They must have been manufactured before 1 September 1939.

The noble Lord, Lord Ponsonby, asked about the territorial extent. It is a devolved approach. They have a similar approach to Great Britain. Shooting in Scotland is covered by the same legislation as England and Wales, apart from air rifles.

I will consult the department on the data when I go back. The noble Lord, Lord Ponsonby, thinks that this data seems to be a bit out of date. The data I have is that the antiques firearms recovered per year in criminal circumstances increased from eight in 2008 to 95 in 2016. The number of recoveries has decreased slightly since 2016, down to 80 in 2020. I will see if I have any more up-to-date information for him. I will also find out for him when the non-statutory groups of experts in the three-year review are due to meet, because I am not sure at this stage.

I hope I have answered all the questions.

Lord Ponsonby of Shulbrede (Lab): I have one additional question. Will the review groups also look at the mental capacity and that other aspect of the licensing process?

Baroness Williams of Trafford (Con): I will definitely get back to the noble Lord on that. I think there has been something on that recently.

Lord Addington (LD): I raised the point that the rifles used by the British Army in 1917 are effectively the same as the rifles used in 1940. The same is true of the German and American armies. Why is there this artificial cut-off? The rifles fire the same bullets. They are using the same calibre of bullets, the same propulsion, the same white powder for the same lethal intent. Some clarification of that would help. If it is about killing capacity, it is there in these slightly older weapons.

Baroness Williams of Trafford (Con): I get the point the noble Lord is making. Clearly, there has to be a cut-off somewhere, but I will find that out for him.

Motion agreed.

Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021

Considered in Grand Committee

4.44 pm

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

That the Grand Committee do consider the Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021.

Viscount Younger of Leckie (Con): My Lords, this draft order was laid before the House on 18 October 2021. It will support the Scottish Government's decision to raise the age of criminal responsibility in Scotland from eight to 12 by making cross-border provisions necessary for the implementation of this change.

This order, known as a Scotland Act order, is made in consequence of the Age of Criminal Responsibility (Scotland) Act 2019, which I shall now refer to as the 2019 Act. Scotland Act orders are a type of secondary legislation made under the Scotland Act 1998, which has formed the foundation of the devolution settlement with Scotland for over 20 years.

The 2019 Act raised the age of criminal responsibility in Scotland from eight to 12. The Act also established the role of the independent reviewer. This is a position that oversees the disclosure of convictions, and other relevant information, related to when a person was under the age of 12. The 2019 Act provides specific powers for the police to investigate instances of serious harmful behaviour by children under the age of 12.

To support this change, amendments are required to UK legislation to ensure that the 2019 Act can be implemented fully. The order is designed to protect and support children. With this in mind, I first want to explain the disclosure provisions set out in Part 2 of the legislation.

While the 2019 Act made it possible for Scottish Ministers to request certain information from chief police officers in Scotland relating to the behaviour of children, the Act also created the position of the independent reviewer. In their post, the independent reviewer will be responsible for determining whether this information ought to be released if it relates to a time when the person in question was under the age of 12.

This Scotland Act Order will ensure that the powers of the independent reviewer apply across the UK, so that information provided by chief police officers from other forces will be reviewed by the independent reviewer before it is released to Scottish Ministers.

[Viscount Younger of Leckie]

The order also extends provisions of the 2019 Act, which currently apply to Police Scotland, to constables of non-territorial forces operating in Scotland. This will ensure that consistency in policing is achieved across Scotland, with equality of treatment for any child in that jurisdiction regardless of the situation. That said, it is not expected that these non-territorial forces will use these provisions often, if at all.

Police across the UK are also supported by this order. Section 75 of the 2019 Act has made it an offence in Scotland for a person to obstruct investigations into behaviour of a child under the age of 12 who is believed to have caused serious harm to another person. The order will extend this offence to include obstructions that occur elsewhere in the UK. Similarly, the order facilitates the cross-border enforcement of court orders made under the 2019 Act for the collection of information from a child under the age of 12 in other parts of the UK. This may be necessary if a child has returned home to another part of the UK following a serious incident in Scotland.

Let me offer a real-world example of the changes that the order seeks to make. Let us consider what might happen if a child who lives in England is involved in a serious incident while on holiday in Scotland. The order provides that a Scottish court order authorising collection of information from that child can be enforced in England. This will enable the incident to be effectively investigated so that the right support can be put in place for the child and any person involved in the incident. Through the changes made by this order, children in Scotland will be better supported.

This order will also enable appropriate bodies such as Police Scotland and local authorities to engage with their counterparts across the UK to ensure that harmful behaviour is addressed proportionately and accurately. Court orders sought and granted in Scotland will be enforceable by police forces across the UK in relation to a child whose behaviour causes harm and who then leaves Scotland before Scottish police were able to enforce the order.

It is important to point out here that the number of children affected is very small. In Scotland, data provided by the Scottish Children's Reporter Administration shows that, in 2016-17—those are the most recent figures—only 16 serious cases involving children under 12 resulted in an interview. Police Scotland also advised that only 10 children under 12 were searched during that same period.

In summary, this instrument will ensure that the Age of Criminal Responsibility (Scotland) Act 2019 can be fully implemented, with necessary cross-border provisions put in place. We believe that this order is a sensible and pragmatic step to assist the Scottish Government. I commend it to the Committee and beg to move.

Lord Bruce of Bennachie (LD): My Lords, I thank the Minister for explaining the circumstances; indeed, I thank him for the Explanatory Notes, which make this clear. However, they raise some interesting questions.

First, it is perhaps worth recording that, prior to the 2019 Act, the situation in Scotland was anomalous in quite remarkable ways. The age of criminal responsibility was eight, yet we had a well-developed set of children's panels and children's hearings which were designed to ensure that children were not treated as criminals and not subject to the criminal process. The surprise is how long it took to address the age of criminal responsibility.

Secondly, the rest of the UK is now out of step with Scotland: the age of criminal responsibility is 10 in the rest of the UK and 12 in Scotland. This raises the question not of the enforceability of this order but of whether the relevant authorities will understand, engage with and be fully conversant with the differences. I think we all recognise that, sadly, children, including very young children, are capable of quite wicked acts, acts that are by definition and in their characteristic criminal. However, if they are under the age of criminal responsibility, they will not be subjected to the criminal process.

So, when there is an issue of questioning, following up on or investigating children, will the authorities in other parts of the United Kingdom approach it in the same way as the authorities in Scotland, given the different background? Will this lead to children who have crossed the border being treated differently and adversely through a lack of appreciation and understanding of the differences between the two regimes? Although we do not expect many cases like this, that issue could raise an anomaly.

On a broader issue that is perhaps a matter for the United Kingdom Government, at 12, the age of criminal responsibility is still considered by many authorities to be too low. I think the Council of Europe suggested that it should be at least 14, while the United Nations thinks that it should be 16. Is any consideration being given to the rest of the United Kingdom raising the age of criminal responsibility? Also, because the final stages of the Act will not come into force until next month, are any issues likely to arise from the transitional arrangements—that is, will children under the age of 12 who committed a crime or were engaged in the system before the Act came into force still be subjected to the old regimes both north and south of the border? How might that play out? Of course we understand the need for the order—that is not in question—but I hope the Minister recognises that some issues could arise out of the differences in both the age of criminal responsibility and the procedures applied in Scotland compared with England.

As a final footnote, the children's panel and children's hearings have generally been recognised as a highly progressive mechanism for dealing with young offenders below the age of criminal responsibility, yet they have not been replicated. With the wonders of our United Kingdom, I wonder why we do not pursue best practice. This is one area where Scotland, having lagged behind, certainly on the age of criminal responsibility, has now overtaken England and has a much more constructive, progressive system for handling young people who get into trouble. Having read the guidelines for the child interview rights practitioners, which are quite thorough, I wonder whether there will be people in other parts of the United Kingdom who have conformed to the same sort of guidelines that have been established for the Scottish process.

I hope the Minister understands what we are talking about. I accept that it is very few cases, but despite the law trying to ensure that there is a common practice across the United Kingdom, the differences might lead to a situation where the law and the practice do not coincide.

Lord Falconer of Thoroton (Lab): I am grateful to the Minister for introducing this instrument so clearly. We support it in the context of increasing the age of criminal responsibility from eight to 12. It is appropriate that measures be taken to give effect to that, particularly in relation to the cross-border element. I am interested in how it works in practice. I might not have understood it, but I would be grateful if the Minister would help me on this.

As I understand it, in Part 2 of the order we are dealing with a situation where, typically, a chief constable of an area in England has information about what somebody did between the ages of eight and 12. We are talking about something that either is or would have been a criminal offence in England when the person committed it. If the position is that the chief constable of the English area has that information, is the effect of this provision that, before the chief constable provides that information to Scottish Ministers, the independent reviewer must consider whether the chief constable of the English area should make that information available to the Scottish Ministers?

If that is the position, before the chief constable refers the matter to the independent reviewer, does he or she have a discretion as to whether they submit that information to the independent reviewer? If the chief constable has such a discretion, could the Minister—I gave no warning of this, so I would quite understand if he needs to write to me—give some indication of the basis on which the chief constable should determine whether to submit that information to the independent reviewer? Separately, could he indicate what approach the independent reviewer will take as to whether such information should be made available from the chief constable of the English area to the Scottish Ministers?

What I am trying to get at is some assistance for the English police forces. Understandably, the order gives no indication of the right approach in relation to this. Given what the Scottish Government are asking the UK Government to do, do the Scottish Government want the norm to be that the English police forces do not disclose the information about what the person did between eight and 12, save in exceptional circumstances? If that is the policy intention, what other sorts of things would be exceptional circumstances?

5 pm

I would have thought that the policy might be that, if there was a conviction or something similar to it for somebody between eight and 12, it would be extremely likely to be only for something incredibly serious, because it is very unlikely that anybody would be prosecuted in England—and never between eight and 10, because the age of responsibility is 10 in Scotland. The numbers of prosecutions of people between 10 and 12 are minute, and will only occur in very serious cases.

Is the practicality, therefore, that it will always be so serious that you would always expect the chief constable to report to the Scottish Ministers on any such prosecution? Separately from all those questions, but connected with the same approach, would matters other than prosecutions be covered—for example, investigations, cautions, referral to local authority care proceedings, or something like that?

I am sorry to have given no warning about these questions. As I say, we support the order. We are just very keen to see how it works in practice.

Viscount Younger of Leckie (Con): I start by thanking the noble Lord, Lord Bruce of Bennachie, and the noble and learned Lord, Lord Falconer, for their general support for this order. As I alluded to earlier, the instrument before us today will support the Scottish Government in the implementation of the 2019 Act and ensure that effective and proper cross-border co-operation is undertaken. I re-emphasise that the order will ensure that disclosure of information relating to when a person under the age of 12 is properly managed—I shall come back to this point—that police forces operating in Scotland are all working under the same regulations, and that it will provide support for Police Scotland in its work across the UK.

The noble Lord, Lord Bruce, asked a number of questions, which I hope I can answer. The first is very simple: why has it taken so long, going back to 2010, for us to get to this point today? He might not expect any other answer than the one that I am about to give: that this is certainly a matter for the Scottish Government. In some defence of the Scottish Government, I would say that it is important to recognise the complexity and sheer volume of work required to ensure that we get to this point and that the work of this important side is successful. It is fair to say that the Scottish Government have taken a phased approach to implementation, prioritising changes that have the most material positive effects for children and young people. But it is for the Scottish Government to say why it has taken so long.

The noble Lord, Lord Bruce, asked about the age of criminal responsibility and how it compares with arrangements in other parts of the UK. He will know that the age of criminal responsibility in England and Wales was set at age 10 by the Children and Young Persons Act 1963 and has been maintained by subsequent Governments. Most children aged 10 to 14 are diverted from the formal criminal justice system or receive an out-of-court disposal. Younger children should not be prosecuted for offences unnecessarily when a better alternative may be available. A child's needs, maturity and chronological age are always considered in determining the most appropriate response to offending. As the noble Lord will know—he is right to ask the question—this is a complex issue, and the needs of each child need to be taken into account.

The noble Lord also asked about cross-border co-operation work, and I think that the noble and learned Lord also alluded to this. Co-operation could be in the form of enforcement of a Scottish court order by an English or Welsh police force or the Police Service of Northern Ireland on behalf of Police Scotland. Information-sharing between Scottish, Welsh and English local authorities will also allow for the child's resident authority to take appropriate actions to address serious harmful behaviour that took place in Scotland. The

[Viscount Younger of Leckie]
Scottish Government have agreed to pay individual local authorities in England, Wales and Northern Ireland any additional costs each time the independent reviewer makes a request for information.

In respect of Northern Ireland, a number of statutory criminal justice agencies, including the Police Service of Northern Ireland, AccessNI and the Youth Justice Agency, have agreed to share information with the independent reviewer, on request, where a child is known to the authorities in Northern Ireland.

The noble Lord, Lord Bruce, also asked whether this order will create problems for complicated cases involving young people between Scotland and England. Again, it plays well into some of the questions raised by the noble and learned Lord. The answer is no. The order is designed to protect and support children in the very rare instances where cross-border co-operation is needed. It simply gives the relevant bodies the ability to effectively collaborate on investigating an incident of harmful behaviour so that the right support can be put in place for a child. Again, I make the point that this is child specific.

The noble Lord, Lord Bruce, raised the issue of transition. There are no transitional arrangements for police powers. There is nothing retrospective about raising the age, so something effective beforehand that was an offence still will be, but, as there are so few cases, there may well be none in the police system at the point of commencement.

The noble and learned Lord, Lord Falconer, raised a number of questions and I may well need to read *Hansard* and produce a letter for him. I appreciate the fact that he acknowledged that he did not give me any advance notice, but that is okay. He asked an important question: how does the cross-border arrangement work in practice? Operational guidance is being developed by Social Work, Police Scotland and the Convention of Scottish Local Authorities. Ministerial guidance has already been issued in relation to certain police powers in the Act, but the answer is that it is work in progress. Noble Lords may wonder why that is the case, given that we are 10 years in, but that is the answer.

The noble and learned Lord also asked how Police Scotland and Scottish local authorities work with their counterparts in the rest of the UK. I think that I have answered part of that question in response to the noble Lord, Lord Bruce, but I add that the order will enable Scottish bodies to work with their counterparts across the UK to investigate harmful behaviour by a child under the age of 12 in Scotland. This could be through the enforcement of court orders or information sharing between local authorities to help to address the harmful behaviour in the child's local residential area.

The noble and learned Lord also asked about the independent reviewer and how it works specifically. I hope that I can answer many of his questions in the following way. The independent reviewer can review information concerning the behaviour of persons while under 12 before the information can be disclosed on an enhanced disclosure or protecting vulnerable groups scheme record, as other relevant information. The reviewer has the power to gather additional information necessary to carry out the review and must invite representations from the applicant and take them into account when doing so.

This newly created role introduces a fairer and more proportionate approach to the disclosure of information that occurred while the individual was under the age of 12. The reviewer will take into account the interests of the young person and of community safety when deciding if an individual's actions during their childhood should be disclosed, to ensure that young people's life chances are not unnecessarily affected by harmful behaviour in childhood. However, I am aware that the noble and learned Lord asked some precise procedural questions, so I may not have given the full answer. I will need to read *Hansard* and get back to him.

The noble Lord, Lord Bruce, asked about children's court hearings and why these have not been implemented. It can be misleading to make simple comparisons between countries, because youth justice and wider social security systems differ considerably, which I suspect he will know. It is the aim of English forces to check information with the independent reviewer before submitting to the Scottish Government. That relates to a question asked, I think, by the noble and learned Lord, Lord Falconer.

I hope that I have covered the majority of questions. There is quite a lot of technical information here and I feel that I probably need to write a full letter just to check that I have everything in order and to ensure that full answers are given. Otherwise, with that, I beg to move.

Motion agreed.

Eggs (England) Regulations 2021

Considered in Grand Committee

5.11 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Eggs (England) Regulations 2021.

Relevant document: 17th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, this instrument allows marketing standards checks on class A eggs imported from third countries to continue to be conducted at the locations where they already take place. It is needed because, without amendment, the retained regulation on egg marketing standards will require these checks to be relocated, causing disruption to the current inspection process and requiring considerable additional resources, with no material benefit for consumers. This instrument will have effect only in England. The Scottish Government and the Welsh Government will make the same amendment to their own domestic legislation.

Marketing standards are intended to ensure that the market is supplied with products of a standardised and satisfactory quality to meet consumer expectations.

They are in addition to, and separate from, sanitary standards. Sanitary standards will continue to be checked at the border. The amendment made by this instrument is not a change of policy and confirms the existing arrangements for these marketing standards checks.

Through the functioning of the Northern Ireland protocol, Regulation 589/2008 on egg marketing standards, which Great Britain has retained, will continue to apply to Northern Ireland as it has effect in the EU. Therefore, the current checking arrangements for the movement of third-country class A eggs into Northern Ireland will not change. For class A eggs to be imported into Great Britain from a third country, the Secretary of State must determine whether the third country has equivalent egg marketing standards following an assessment of its legislation and checking practices. Only EU member states are currently recognised as producing eggs to this equivalent standard.

In the future, should we wish to import eggs from any third countries other than the EU, the Secretary of State must first make a similar determination of equivalence. Until then, class A eggs may not be imported into Great Britain from non-EU countries. We will continue to uphold the high standards expected by UK consumers and businesses.

Since a grace period has been granted for marketing standards and SPS checks on EU goods until 30 June 2022, checks will need to be conducted on class A eggs from the EU from July 2022. Any third-country imports that might be agreed before July 2022 would also require border checks. Under current legislation, all these checks would need to take place at the border.

If this statutory instrument does not pass, our current operating practices will not be compliant with our retained legislation. The change contained in this statutory instrument has been discussed with British egg industry stakeholders. Defra has held a joint consultation with the Scottish and Welsh Governments on the proposed change and continues to engage closely with the sector. I beg to move.

5.15 pm

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for introducing the instrument before us this afternoon, on which I have a number of questions. Paragraph 8.1 on page 2 of the Exploratory Memorandum says that:

"This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act."

However, it would seem that it relates entirely to our withdrawal from the European Union and the retained legislation that pertains to that. I am therefore not sure why that paragraph is there. Can the Minister clarify that please?

Paragraphs 10.4 and 10.5 of the Explanatory Memorandum refer to the consultation, which was carried out through

"the online survey Citizen Space".

I do not know about other noble Lords, but online surveys are complete anathema to me. They do not seem a very personalised or direct form of consultation. Can my noble friend please explain to us whether this is now the way forward? Is this the Government's consultation mode of choice? I want to place on record that I do not approve of that at all. It was also carried out on what is traditionally a holiday period—from 19 July to 16 August. I thought that consultations normally take place over a 12-week or three-month period to enable those who wish to respond in some detail to do so. This also allows the industry to talk among themselves to see whether they want only one person to respond, or everyone.

Paragraph 10.4 goes on to say that:

"The consultation targeted stakeholders from the egg sector, with close engagement with egg enforcement bodies."

It would be interesting to know whether the six responses received match those that were actually sought. How many targeted invitations were sent out? Of those six, only one agreed to the proposal. The overwhelming majority of respondents disagreed with it,

"preferring checks to take place at the border, due to concerns that these measures should mirror the requirements for import of Class A eggs into the EU."

I would like to know the basis on which we have moved away from the historic checks that we did at the place of import and why the Government are not carrying the industry with us.

I have to say that I am deeply unhappy that, to mitigate the concerns expressed by the vast majority of those who expressed any concerns at all, all we are going to do is to organise a round table. Clearly, we cannot amend the statutory instrument so I would be very interested to know what form the round table will take. The fact that a round table is going to be convened demonstrates that there are widespread concerns in the industry. I would be very interested to know who from the department will attend the round table. Will it be at ministerial level or official-only level?

I pay tribute to the report produced by the Secondary Legislation Scrutiny Committee, and refer to the committee's thoughts on page 12 and in Appendix 4 on page 32. It appears that there are going to be two different types of checks in relation to GB to Northern Ireland. There will be checks at the border to ensure that the consignment contains either class A or B eggs, as at present. However, all eggs from Northern Ireland will continue to have unfettered access to the UK market. There is clearly a discrepancy there.

Finally—I had better stop because I could spend the whole of the afternoon on this one little instrument—my noble friend said in his introductory remarks, if I heard him correctly, that sanitary standard checks will continue to be made at the border. If we are doing those checks at the border, why on earth can we not do all the checks at one place on imports into this country?

I did say finally, but I did not mean finally. Will my noble friend commit to bringing forward an instrument on the question of equivalence at such time as he suggests that non-EU countries may come forward with imports? I think he said that there would be an instrument at that time. Can he confirm that that is indeed the case? I think he will understand from my drift that I do not like the instrument before us.

Baroness Ritchie of Downpatrick (Lab): My Lords, the Minister referred to paragraph 10.3 of the Explanatory Memorandum, which states that consultation

[Baroness Ritchie of Downpatrick]
"was undertaken as a joint consultation with the Scottish Government and Welsh Government. Northern Ireland is not involved in these amendments, due to the effects of the Protocol on Ireland/Northern Ireland."

I declare an interest as a member of the House of Lords sub-committee that is scrutinising the protocol on Ireland/Northern Ireland, and I have some questions in this regard. What does that mean in practice? Can eggs from GB be put on the market in Northern Ireland, and vice versa? Do these eggs have to be checked before they can be put on the market in Great Britain or Northern Ireland? That issue was raised by the Secondary Legislation Scrutiny Committee. Living in Northern Ireland, I am very well aware that Marks & Spencer and Sainsbury's sell quite a lot of products that come from GB. What will the nature of these checks be? Where will they be carried out?

I support the protocol and believe in its sustainability, but perhaps the Minister can advise on progress in the ongoing negotiations on the protocol between the UK and the EU, with particular reference to the SPS arrangements. That was one of the "non-papers" from the EU in relation to this issue.

As this is a domestic statutory instrument, it falls to the Secondary Legislation Scrutiny Committee rather than our protocol committee to scrutinise it. What is the interaction between this statutory instrument and the protocol? Perhaps the Minister can give us some detail and clarity on that interaction and on the practical impact on the supply of eggs from GB to Northern Ireland and vice versa. As the noble Baroness, Lady McIntosh, said, eggs that travel from Northern Ireland to Britain enjoy unfettered access, so it would be good to get clarity on that.

It is important that the Government make a full analysis of the interaction of domestic primary and secondary legislation with the protocol. A lot of these statutory instruments come to us simply for information purposes, but we also get referred legislation from the EU that will affect and impact Northern Ireland on an ongoing basis. The Government have analysed the interaction of domestic primary and secondary legislation with the protocol. What has been done to ensure that that analysis takes place on an ongoing basis? If it is taking place, is it possible to publish the results and for a copy to be placed in the Library of both Houses?

Earl Cathcart (Con): My Lords, we started out as an egg producer on our farm in Norfolk about 10 years ago. For the first few years, it was a reasonably profitable business, but as more farmers have come into the market that profitability has increasingly been reduced. It is all about supply and demand. As the number of producers has increased, margins have been squeezed. In the past few years, we have been seriously considering whether it is worth our while continuing in the business, but as we employ three local people and it is still just profitable, we have continued in the hope that egg prices will go up.

On the surface, these regulations look innocuous enough. They went out to consultation, and of the six respondents, who all look after the interests of UK food and egg producers, only one was prepared to agree with them. The other five argued that the checks should take place at the border. Many emphasised that this change should be reciprocated by the EU to benefit British egg producers and egg exporters. This has not happened—I do not know whether Defra even tried—so exports from the UK to Europe will be subject to the full range of EU checks and bureaucracy, thus raising the costs and reducing the competitiveness of our exports.

As things stand, these regulations will make things lopsided—or rather, one-sided—with EU imports of eggs into this country being exempt from checks, bureaucracy and costs at the border but our exports being fully subject to all the EU rules and costs. So no level playing field there then. To my mind, Defra has scored an own goal here in not supporting its own UK egg producers, who have the highest welfare standards in the world, while helping with the import of cheap, low-welfare eggs. Thanks a bunch. One has to wonder why.

After the initial consultation, Defra held a virtual meeting in September with the consultees, who were told—I find this unbelievable—that the Government want their support to facilitate importing cheap EU eggs to help feed the nation. You could not make it up. Here we have a Defra official asking the very bodies that look after the interests of UK food and egg producers to support flooding the UK market with cheap, low-standard foreign imports. With margins already tight, we egg producers need that like a hole in the head. No doubt the Government were concerned about the supply chain problems, the lack of HGV drivers and the prospect, circulated in the media, that there would be empty shelves in the supermarkets at Christmas, but here we have Defra saying that it wanted cheap imports of eggs and to hell with its own egg producers.

Defra went on to say that it wanted to ease the process, as border inspections would involve more time and costs for egg importers. As an egg producer, am I bothered? All these regulations will do is flood our market with cheap eggs and increase the pressure to reduce the price that we get, thus further squeezing our margins. I am told that, when the consultees explained to Defra that UK producers could easily produce enough eggs to feed the nation—we already produce 90% of our requirements—but that with these regulations they were going to be undercut by lower-standard, lower-cost imports, Defra responded by saying that the consultees were acting only in the interests of protecting UK producer profit margins. As an egg producer, I say, "What profit margins?" They are tight enough already.

Just whose side is Defra on? Quite clearly, it is not its UK food producers. The Government have a cheap food policy priority and an anti-producer, pro-consumer mentality that seems prevalent in Whitehall. Surely the Government, and a Tory one at that, ought to protect and promote their own food producers, which they expect to operate with ever-higher welfare standards, rather than to protect and promote cheap imports? The problem is that although we have a Defra Secretary of State, George Eustice, an Agriculture Minister, Victoria Prentis, and my noble friend Lord Benyon, who all have farming interests and all support British farming, we have a Government who do not.

5.30 pm

Lord Rooker (Lab): My Lords, before I start, I want to register a complaint about this Room. Since 2013, I have sat on this side of the Room, previously being a Minister and chair of the FSA. I am fed up to the back teeth; that light up there has been flashing for over eight years. It does not affect people on the other side. I fully accept that you have to be pretty sensitive to it, but it has been like that for eight years and no one has done anything about it.

Having got that off my chest, I thank the Minister for bringing forward these regulations. I accept, as he said, that they are very narrow, but this is a golden opportunity to raise other issues relating to eggs, as has been the case. I agree entirely with the speech of the noble Baroness, Lady McIntosh of Pickering. Some time, I would like the Minister to answer the point just made by the noble Lord: what is our latest self-sufficiency figure? I found a figure of 89% of imports, or £1.7 billion, and exports of only £315 million. It is not a big issue. I just wondered what it was.

People joked about egg fraud when I raised it as a Minister, but it is big business. We must take steps to stamp it out. I will give only a snapshot. In 2010, Mr Owen of Bromsgrove was fined £3 million and did three years inside. That case started while I was at Defra, from 2006 to 2008, because of the way it was tipped off. Some 100 million eggs were mis-sold due to mislabelling. The defence had the brass neck to argue that Owen was not the only person "creating mischief in the egg industry". That is the kind of class act of barristers. That was the defence argument—a bit of mischief. Some 100 million eggs were mis-sold; basically, low-level stuff sold as free range.

In 2018—it has not gone away—there was payback of £500,000 and 30 months inside for Anthony Clarkson of Preston. Again, it was free-range egg fraud—buying barn eggs and selling them free range. There are plenty available. In February 2019, a Netherlands trader was convicted of selling eggs unfit for human consumption. The other thing is: can we trust the statistics on eggs? We are talking about big figures by definition. I regret to say that I have only just discovered that, from 1996, hopefully not until now, HMRC showed errors in its imports and exports of three times the real figure. For 2008, the claim was that 600,000 cases—a case is a lot of eggs, at least 360—were exported, but it turned out to be less than 200,000.

In February 2013, Defra reported that the UK imported 267,000 cases, but, in reality, it turned out to be 127,000 cases. The exports in the same year were given as 61,000 cases, but, in reality, it was only 16,000 cases. There is a brilliant graph of what HMRC was producing. I take exception to this because, at some point during that period, I would have answered Parliamentary Questions, both in 1997-99 and 2006-08, giving false information. I have never been informed about this; it has come about only because I was searching the web in preparation for this debate. I had no idea about the revised figures of this HMRC miscalculation. Quite a serious issue is: can we trust the figures that we are given?

As the noble Baroness, Lady McIntosh, said, this is all about the EU and Brexit. The EU's export figures and documentation are brilliantly accessible, unlike ours. I gather that, in 2019, the EU exported to the UK 12,048 tonnes of eggs for consumption—I have dealt only with eggs for consumption; I have not dealt with eggs for food production or day-old chicks. That figure is down in 2021 to 7,358 tonnes. The UK exported almost a similar figure in 2019: we exported to the EU 11,022 tonnes. That is now down to 6,685 tonnes. The EU imports eggs from all over the world. I am not familiar with the sanitary checks at the ports or the others. We are facilitating food imports from the EU without lots of checks because we accept it; we trust it. If anything is going around and being marketed in the EU, then it is okay by us—that is what we said—and it is why we are not employing loads of people to go round the world checking on food production, which is what the EU was doing for us before Brexit. We are relying on the EU to do it for us. If it is okay for the EU, it is okay for the UK.

The EU imports eggs from around the world—and I mean around the world: from Ukraine, USA and Argentina. It also imports from China—I repeat, China: the equivalent of 1,348 tonnes of eggs in 2020. Other countries include North Macedonia, Albania, Norway, Switzerland, Kazakhstan and Bosnia-Herzegovina. How do we know that the eggs that we import from the EU are only from the 27 member states? If eggs are being moved around the EU—and let us not forget that many of them will come in unmarked; they will be marked in the EU—how do we know that we are not importing from outside the 27?

I would hate to think, for example, that we were importing eggs from China without any checks. We would not know whether they were produced via slave labour, which, as we know, the cotton pickers are in Xinjiang. Who is checking on this? There are some serious issues. In 2020, the EU exported to the UK 100,160 tonnes equivalent. The UK was the biggest destination of eggs from the EU. The next were Japan, with 68,163 tonnes, Israel, with 14,809 and Russia, with 45,378, so the UK was by far the biggest recipient of exported eggs from the EU, with Japan being the next.

Where are they coming from and how do we know? Those are legitimate questions for me, for regulators, for food producers, for customers and for supermarkets. A lot has been done to improve the standards of egg production in the UK—I fully accept that—but how do we know that eggs are coming only from the 27 EU member states? There are some serious issues here that the Minister will, I hope, be fully briefed to answer.

My final point concerns another aspect of this. The eggs that are coming in will not all be for consumption; some of them will be for food production. I picked up from *Food Manufacture* magazine concerns about the importing of eggs to the UK for use in "British" products—that is, as ingredients in pre-prepared foods. We use imported eggs. If the fact is that we are only 89% or 90% self-sufficient, that 10% represents a hell of a lot of eggs.

I understand that there is a petition asking UK supermarkets, although this is not their full responsibility, and food producers to stop such imports. There is a complete lack of transparency in the sourcing of egg products in such foods. Customers today are faced with eggs on the shelves in supermarkets with the

[Lord Rooker]

British Lion brand and the name of the farm on them—great—but nobody knows where the eggs they are consuming in the pre-prepared foods they buy on the shelf next door come from, because there is a lack of transparency. They will certainly not all come from the UK as, by definition, they are imports. British Lion egg producers are quoted as saying:

"In recent years there have been a number of food safety issues associated with egg products produced in Europe and further afield."

"Further afield" means outside of Europe. They go on:

"Using them also adds unnecessary food miles and does not meet the guaranteed, high standards provided by the Code of Practice for the production of Lion Quality Egg Products."

What is the Minister's view of the petition?

I have a soft spot for Defra and MAFF, having spent four years in total in both departments. It is the producers' ministry; that is what I used to say when we were setting up the FSA. "We want the consumer to be looked at. Carry on being the producers' ministry", I used to say—but, listening to what the Minister said, it is no longer the producers' ministry if its approach is to smash up the UK industry by saying that it wants lots of cheap imports. If that is its attitude on eggs, that will be the policy attitude on other foods and ingredients, which is what some of us said would happen before Brexit. We were constantly told by the noble Lord, Lord Gardiner, who was the Minister concerned—I must have a dozen cases of this in my files upstairs—that there would be no diminution in the quality of and food standards for imported food. That was repeated day after day, month after month, with great sincerity. Nobody is questioning the noble Lord's sincerity but the reality is that the department is seeking to go back on that commitment. That is the only conclusion to draw in talking about cheaper food. Cheaper food comes about only because of less regulation, lower welfare conditions and worse pay and working conditions for workers. That is the only way it happens. It is what happens in this country, which is why we must be careful about the work of the gangmasters organisation.

The reality is that this is a good example. It is an egg. We all know what an egg looks like and what we can do with it. It is not so easy with other products, such as cuts of meat and grains; that is all too technical. The public understand that, if we as the public are being cheated on egg imports, how do we know we are not being cheated on other food imports when the ministry that is supposed to be looking after this and guarding the regulations is now hell-bent on trying to reduce standards? It is no good the Minister shaking his head; he has to give chapter and verse to answer exactly what his current department's attitude is.

5.45 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his introduction to this short statutory instrument. I think it is the shortest statutory instrument I have ever had to speak to, but it has very important issues at its heart.

A small percentage of British eggs are exported, and these are only ever grade A eggs, according to the Explanatory Memorandum. The British egg industry is 89% self-sufficient and produces plenty of eggs for consumer needs. A very small percentage of eggs are imported. During the period when Covid-19 was at its peak, eggs were imported from Spain due to supply chain difficulties. It is essential that only grade A eggs are imported and important that there should be adequate checks on these eggs.

It is, of course, practical for these checks to be done at the packing centres where egg marketing inspectors are already carrying out visits. However, I would like reassurance that it would not be possible for imported eggs to enter the retail market without going through a packing centre. I presume that if eggs were checked at the border on the point of import it would be very difficult for them to go unchecked and enter the retail chain. Can the Minister say whether it would be possible for eggs to leave the point of import and avoid going through a packing centre?

There is also an issue with labelling. Eggs stamped with the Lion symbol are processed through exclusive Lion packaging centres that do not deal with imported eggs, as that is prohibited under the Lion scheme rules. The BEIC, which runs the Lion Quality scheme for egg production, owns the Lion Quality trademark and is obviously keen to protect its product.

Eggs entering the GB market and coming from countries that have equivalent standards to home-produced eggs are not labelled. However, eggs coming from countries that do not have equivalent standards are labelled "non-UK standard" or "non-EC standard" and with the country of origin. How confident can consumers be that this labelling is accurate?

I understand that these eggs are likely to be used for mass catering and retail. Given the small percentage of imported eggs—10%—it is likely that these eggs will end up being used for catering purposes—

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I apologise for interrupting the noble Baroness. She will be aware that a Division has been called in the Chamber. The Committee will adjourn—I am hesitating to say for 10 minutes, because I am not quite sure whether that is what has been agreed—for certainly no more than 10 minutes to allow noble Lords to register their votes.

5.48 pm

Sitting suspended for a Division in the House.

5.57 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, as I said, given the small percentage of imported eggs—10%—it is likely that they will end up being used for catering purposes. However, the consumer will not be informed that they are consuming products made with imported eggs. Given the contribution made by the noble Lord, Lord Rooker, on the fraudulent labelling of eggs, is this a concern for the Minister?

The consultation carried out online received six responses, with one agreeing to the proposal and the other five expressing a preference for checks at the border. Could this poor response be due to the online nature of the consultation? Although it is practical for the checks to take place at packing centres, it is important

to keep the industry on board. With only one in six producers content with the proposals, it seems as though the Government are riding roughshod over the egg-producing industry. The noble Baroness, Lady McIntosh of Pickering, referred to this, although she did not use those words.

The Explanatory Memorandum indicates that:

"a round table will be scheduled with industry"

to mitigate any concerns. Can the Minister say whether this round table has taken place yet and, if so, what the outcome of the discussion was? If it has not yet taken place, has a date been fixed in the future? Can he provide reassurance that the cost of checks will not fall on the egg industry? The noble Earl, Lord Cathcart, referred to the costs involved. I am concerned to hear again from him that Defra is actively encouraging the import of cheap eggs. Why, given that GB is virtually self-sufficient in egg production?

Lastly, given that the Lion Quality assurance scheme accounts for 90% of GB egg production, can the Minister say how many packing centres are therefore likely to be dealing with imported eggs? The noble Lord, Lord Rooker, asked some very searching questions, and I look forward to the Minister's response, but I am generally content with this SI.

6 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction to this SI, and for the helpful briefing that he organised with officials beforehand. However, he will know that the Secondary Legislation Scrutiny Committee has drawn this SI to our attention. Like other noble Lords, partly arising from that, I have a number of questions.

Obviously, our main concern is to maintain our high animal welfare and food quality standards. Clearly, we can maintain those standards more easily if the eggs are produced within the UK. I am absolutely with the noble Earl, Lord Cathcart, on that issue. Can the Minister remind us what percentage of class A eggs are currently being imported from the EU into the UK? We have heard some statistics today, but it would be helpful to have clarification from the Minister on that. Is it the case, as my noble friend Lord Rooker is saying, that third-country eggs are also coming to us via the EU? Is that standard practice? I think we should know more about this. Given that many of these procedures in the SI are about potential third-country egg producers coming direct to us in future, it would be helpful if the Minister could say whether he is aware that there are, in the sidelines, third-country producers awaiting some sort of green light to be able to sell into the UK market, and what the consequences might be.

That is just a general point. I now want to ask some specific questions—and the first question is about arrangements on the Northern Ireland border. In response to the question from the Secondary Legislation Scrutiny Committee on this issue, Defra said that all eggs from Northern Ireland to GB would continue to have "unfettered access" to the UK market. Does that mean that there are no checks carried out on these eggs at all either at the border or at the so-called points of destination, or anywhere else?

Meanwhile, as I understand it, class A eggs going the other way—from GB to Northern Ireland—will continue to be checked at the border, as GB will have the status of a third country with regard to Northern Ireland. Those are the issues that my noble friend Lady Ritchie raised, and I agree with her: we need to know more detail on the practical application of how the rules will apply going in both directions. It would be helpful if the Minister could clarify those arrangements under the terms of the protocol. Also, can he clarify how the outcome of the current negotiations on the Northern Ireland protocol between the noble Lord, Lord Frost, and the EU might impact on the regulation of imports to and from Northern Ireland in future? Will eggs be caught up with this, and is this an issue on its agenda for change?

Secondly, like other noble Lords, we share the concern expressed by the Secondary Legislation Scrutiny Committee that the majority of respondents to the original Defra consultation were against the proposals in this SI. The Defra letter explains that a subsequent round table was held on 24 September. Stakeholders expressed concerns about whether imported eggs would be subject to the same standard of checks as domestic eggs and produced to the same high health, welfare and food standards. Rightly, my noble friend Lord Rooker raised issues about egg fraud, and he gave some shocking examples of it this afternoon. Clearly, we need to ensure that our consumers are not being mis-sold—and that is a concern that the stakeholders expressed at the meeting on 24 September.

What do the current checks on UK eggs entail? I do not quite see how we can differentiate between the sanitary provisions that the Minister was talking about and how they are marketed. I would have thought that the marketing is about the sanitary provisions, so the two should go hand in hand. Does the Animal and Plant Health Agency regularly and randomly visit UK poultry farms to check on animal welfare issues and on whether the birds are, for example, being reared organically? Does the same provision for checks on animal welfare et cetera also apply to imported eggs? Otherwise, how can we be sure that food standard equivalence is being applied?

The Defra response to the Secondary Legislation Scrutiny Committee referred to the APHA carrying out random checks on domestic and imported eggs at warehouses, distribution centres and packing centres, but this does not seem to include visits to where the birds are being reared, so how can we be assured that the high animal welfare standards included in the marketing of imported eggs can be trusted? This was an issue raised by a number of noble Lords. Obviously, this matters because descriptions such as "free range" or "organic" carry a premium price, so the temptation for some degree of fraud is obvious for all to see.

Once we have finished the 21-month transition period with the EU, what arrangements will be in place to check welfare standards on site for both EU and third-country egg producers? Will we go to see where the chickens are being reared and the eggs are being produced?

Thirdly, are all UK eggs currently produced distributed via warehouses and packing centres or do some go straight to market? This was the question raised by the

[Baroness Jones of Whitchurch]
noble Baroness, Lady Bakewell. I can imagine that there is a healthy trade in local eggs at farm shops and farmers' markets or potentially in the restaurant sector, so how is the APHA monitoring the quality of eggs that do not go via those distribution centres? What would stop egg importers avoiding packing and distribution centres and therefore avoiding the checks? Could they also go straight to market or to some locality without going through the distribution centres?

Then there is the question of what happens at the ports. This issue was raised by the noble Baroness, Lady McIntosh. Presumably the APHA is already doing other checks at ports and custom points on foodstuffs being imported; it is already there with the resources, so it would not be too much of a stretch to check egg imports as well, particularly as we have heard that the phytosanitary checks will still carry on at the ports. Therefore you could argue that it would be more efficient to inspect all those consignments together, so I wonder why we are not still planning on doing that.

Finally, I am trying to get to the root of this issue. Is it an issue about overall APHA staffing levels? Is this ultimately the issue? Is it about staff shortages? What level of vacancies is being carried by the APHA? What proportion of APHA staff were previously EU staff who have left and cannot be replaced? Is this an issue at the heart of the matter?

The most important aspect of this debate is the need to maintain our high animal welfare and food safety standards. I absolutely share the concern of stakeholders and noble Lords this afternoon that these proposals do not provide sufficient reassurance that we will be maintaining those same high standards. I hope the Minister will be able to provide further reassurance on this issue, and I look forward to his response.

Lord Benyon (Con): I thank noble Lords who have contributed to this debate. I will endeavour to answer all the questions that have been asked.

My noble friend Lady McIntosh referred to the sentence in the Explanatory Memorandum that relates to whether we used the European Union (Withdrawal) Act powers for this statutory instrument. I can confirm that we did not. I think she and others also asked why, given that the egg sector opposes the proposal—or so it was deemed from five out of the six responses—the Government are moving ahead with it.

In response to the consultation, Defra and the Welsh and Scottish Governments held a round table, as has been said, on 24 September to address the concerns raised by the industry. Invited to the meeting were the checking authorities responsible for egg marketing standards checks across Great Britain—the APHA egg marketing inspectors, who operate in England and Wales, and the Scottish Government poultry officers. In response to concerns expressed by the industry that imported eggs should be subject to the same standard of checks as domestic eggs and produced to the same high health, welfare and food standards, Defra explained that the checks will continue to be made on a risk basis, as well as randomly, in line with Article 24.2 of Regulation 589/2008, and that food quality will not be impacted by this SI.

My noble friend Lady McIntosh also asked about the nature of the survey, noting that it was online. All relevant industry representatives responded and were at the round table, so it is fair to say that a pretty full consultation has happened. She asked about UK exports to the EU. I can confirm that UK exports are checked at the border for both hygiene and marketing quality.

A number of noble Lords asked about resources at the APHA. This statutory instrument changes the current legislation, requiring marketing standards checks to take place at the border to allow the continuation of a current practice. We have the resources to do this now. I am quite open that, if we were not to pass this and require those checks to take place at the border, it would put considerable resource demands on the APHA. It would require a border control post to have a very large chilled space, so that every lorry that came in with its 28 pallets of eggs could be safely unpacked and those eggs moved into a chiller space. If they were not, they would risk deteriorating in quality, so that would have to take place. They would then have to be reloaded and taken to a distribution point where we had the resources to check them. I hope noble Lords remember this important point.

The noble Baroness, Lady Ritchie, raised a very well-made point about the implications of this SI for Northern Ireland eggs entering the UK and whether they will be treated differently, with Northern Ireland continuing to follow EU rules. Eggs produced in Northern Ireland are not considered to be entering GB from a third country. The statutory instrument does not change the way eggs moved from GB to Northern Ireland will be checked. Northern Ireland eggs will continue to have unfettered access to the GB market, as at present, and will continue to be checked in the same way as domestic eggs from England, Scotland and Wales. In any case, the checks on third-country eggs are identical to those performed on domestic eggs. They will continue to be checked by egg marketing inspectors on a risk-assessed and random basis at the point of destination, at packing centres, at distribution centres and at wholesale premises.

I think she asked whether eggs from GB can be put on the market in Northern Ireland. Class A eggs imported into Northern Ireland from third countries will continue to be checked at the time of customs clearance and prior to their release for free circulation, in accordance with Article 24.3 of Regulation 589/2008, as it has effect in the EU. I think I have said whether eggs have to be checked before they can be put on the market in GB.

6.15 pm

My noble friend Lord Cathcart made an impassioned plea on behalf of egg producers. I say to him and the noble Lord, Lord Rooker, that Defra is absolutely determined and passionate about promoting British food. I know that nobody here would say that we want a ban on imports—I know noble Lords understand that that would cause a very difficult situation in our trade with our closest and most important partners—but we are now at nearly 90% self-sufficiency on eggs and it seems perfectly possible that we can improve on that still further. Nevertheless, there will be a free flow as supply chains dictate, but I can absolutely assure my

noble friend that we want to see eggs sold in the country being produced to our high welfare standards. Any eggs that come in must remain produced to our clear, high standards in a state of equivalence. I will come on to talk about that a bit more.

Imported eggs are subject to exactly the same level of checks as domestic eggs. These checks are conducted by APHA egg marketing inspectors on a random and risk basis. They check quality, weight, grading, labelling, marking and packaging, as well as farming methods such as free range, barn and caged. I have been fascinated to learn how they do this: using ultraviolent light, they can detect by looking at an egg how it has been produced. So the eggs that are being checked cannot be ones produced in battery cages that we would not allow here.

Fraud, which the noble Lord, Lord Rooker, raised, is an important point. I cannot stand here and guarantee that every egg coming into—or, indeed, produced in—this country is produced to the standard that it says on the box, but we have a very strict checking system. We currently import class A eggs only from EU member states. We recognise that eggs from the EU are produced to an equivalent standard. The EU has reciprocated on this and recognised the equivalence of our eggs. We have regular contact with our friends in the EU, and we will make sure that we continue to do so, so that the standard and quality of any eggs that come into this country do not put our producers at risk.

As I said, in 2020, the UK was 89% self-sufficient in eggs. A staggering 11.2 billion eggs are eaten in this country; we import 1.7 billion and export 315 million of them. Eggs are imported on commercial documentation, and importers are not currently required to pre-notify the authorities before the import of eggs under marketing standards or SPS rules, but, as I say, the Government will continue to promote British produce. We have not imported non-EU, third-country eggs for many years. At present, we only import equivalent, third-country, class A eggs from the EU. If dodgy eggs coming from appalling producing circumstances—both for the livestock and those operating the production—are coming into this country as class A eggs, they will be found and discovered by our inspectors. In the UK, all imported class A eggs are required to undergo marketing standards checks. I hope I have reassured my noble friend Lord Cathcart. He is obviously on the front line of this issue, but I want to get across to him and to other producers the message that we are on their side.

The noble Lord, Lord Rooker, talked about the origins of eggs. The regulations require the country of origin to be stamped on the egg itself, not just on the packaging. Eggs will also be accompanied by an export health certificate signed off by a vet—probably a measure introduced by the noble Lord himself when he was at Defra. The APHA will check the stamping on those eggs.

The noble Baroness, Lady Bakewell, made an important point. A relatively small number of imported class A eggs do not pass via packing and distribution centres. In this case, the eggs go straight to retail, but it is a small percentage. There is a possibility of further checks by trading standards officers from local authorities.

The noble Baroness asked whether eggs which are non-UK standard or non-EC standard can be sold in the UK. Eggs which are not of an equivalent standard to those produced domestically and which are deemed to be produced to non-UK/non-EU standards may still be sold in Great Britain. However, the packaging of such eggs must be marked with the country of origin and the farming method as non-UK standard. No eggs currently imported into the UK require such a label, as we do not receive eggs from countries that do not have equivalent standards. The Explanatory Memorandum to the SI states that if any third country—that is, non-EU country—wanted to export eggs to the UK, the Secretary of State would be required to sign that off to make absolutely sure that those standards were being maintained.

Defra explained in the round table and in the consultation that checks will continue to be made on a risk basis as well as randomly and that food quality will not be impacted by this amendment. I hope that has gone some way to reassure the important people whom we want to continue to support in the production of eggs in this country.

There were broader questions about egg marketing standards. I have to say from the six months that I have been in this role that the APHA is one of the most impressive organisations that I have dealt with. I have full confidence in it. Are there enough people? No, we need more. The noble Baroness, Lady Jones, made a very important point. It is well known that we are short of vets and other people, but we are able to manage this if this SI passes; if it does not, we would be short of the resources we need.

I think that I have answered all the questions on Northern Ireland.

Baroness Ritchie of Downpatrick (Lab): On Northern Ireland, I mentioned the importance of a full analysis by Her Majesty's Government of the interaction of domestic primary and secondary legislation with the protocol. I also asked what is being done to ensure that such analysis takes place and that, if it is taking place, a report could be placed in the Library of both Houses.

Lord Benyon (Con): The noble Baroness is right to raise this point, as others have done, about the ongoing negotiations around the Northern Ireland protocol. I do not feel qualified give an accurate, up-to-date report. After this Committee, I will find out whether there is going to be an immediate communication about the status of the Northern Ireland protocol and an analysis of its functioning, particularly in relation to this matter. If there is not, I will make sure that she receives more information. The noble Baroness, Lady Jones, raised that as well.

I have answered quite a few of the questions—probably not every single one.

Lord Rooker (Lab): The Minister has been very helpful; I fully accept that. I do not expect him to know the answer to this, but I hope that he will take my word for it that if any of us in this Room is wearing any cotton fabric or garment, it is possible using element analysis to find out where the cotton was grown. The same technique can be used to decide

[Lord Rooker]
whether lamb was created in Wales or New Zealand. Does the technique of element analysis figure in any of the checks about where eggs have come from?

Lord Benyon (Con): That is a very good point, and I will seek further information. I hope to reassure him and my noble friend Lord Cathcart that the idea that we are somehow allowing the import of substandard products that discriminate against our domestic producers is easily detectable through the measure that he mentioned which shows precisely how that egg is produced. I do not know whether it can deal with the point about fraud, or whether it can say, for example, that the egg came from Argentina or China, but this is a fresh food product, so obviously there is an issue about timing. I think that would militate some of the fraudsters who might want to try to enter the supply chain, but I assure the noble Lord that no undercutting of our producers will be facilitated by this measure or by my department in our determination to support the producers of this country. I really want to re-emphasise that point.

I hope that noble Lords fully understand the need for this instrument, which is to ensure that marketing standards checks on class A eggs imported from third countries continue to happen at the locations where they take place today. As I outlined in my opening speech, the instrument will also avoid any disruption to the level of checks that currently take place and will allow egg marketing inspectors to continue to uphold our high standards. I believe I have answered all the questions, but if I have not, I am very happy to provide written answers, I will check *Hansard* and respond in writing to any questions I may have missed.

Motion agreed.

Food (Promotion and Placement) (England) Regulations 2021

Considered in Grand Committee

6.27 pm

Moved by ***Lord Kamall***

That the Grand Committee do consider the Food (Promotion and Placement) (England) Regulations 2021.

Relevant document: 12th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): My Lords, obesity is seen as one of the biggest health problems this country faces. The latest national child measurement programme data from 2020-21 showed that around 40% of children leaving primary school were overweight or obese, with one in four living with obesity. Regular overconsumption of food and drink high in calories or the consumption of sugar and fat can lead to weight gain and, over time, obesity, which in turn has a significant impact on health and well-being and increases the risk of certain related diseases.

The Covid-19 pandemic has highlighted the impact that obesity can have on people's health. Evidence from a University of Liverpool study shows that those who are overweight or living with obesity and who contract Covid-19 are more likely to be admitted to hospital and suffer worse complications. This measure is part of the Government's healthy weight strategy, which we hope will contribute towards achieving the ambition of halving childhood obesity by 2030.

The instrument we are discussing today concerns the introduction of restrictions on promotions of less healthy products by volume price and location for retailers in England with 50 or more employees. Location restrictions will apply to store entrances, the ends of aisles, checkouts and their online equivalents—for example, home pages and payment pages. Volume price restrictions will prohibit retailers from offering promotions such as buy one, get one free or three-for-two offers on less healthy products.

6.30 pm

Less healthy products are defined as those that are of most concern to childhood obesity. It is a two-step process to determine whether a product is considered less healthy, which allows the healthiest products within categories to be excluded. First, products will be subject to the restrictions only if they are in the specified categories listed in Schedule 1 to the regulations.

If a product falls into one of these categories, the second stage is to apply the technical guidance to the 2004-05 nutrient profiling model, or NPM. If a food product scores 4 or above, or a drink product scores 1 or above, it will be considered less healthy and cannot be promoted. Healthier products within categories in scope of the restrictions will be excluded and therefore can be promoted.

The requirement applies to food sold in England only. We have engaged with Scotland, Wales and Northern Ireland throughout the consultation process. Subject to Parliament's approval, the regulations will come into force from 1 October 2022.

The aim of this policy is to restrict the promotion of products considered to be less healthy in favour of healthier options. We hope that this will help to improve children's diets and to reduce the overconsumption of food and drink high in calories, sugar, salt and fat that contributes to children being overweight and obese. We hope that this will shift the balance of promotions towards healthier options and maximise the availability of healthier products on promotion, making it easier for parents to make healthier choices when shopping for their families.

Data from previous Public Health England reports show that we buy almost 20% more as a direct result of promotions, while less than 1% of food and drink products promoted in high-profile locations are fruit or vegetables. Price promotions increase the amount of food and drink that people buy by around one-fifth and account for around 40% of all expenditure on food and drinks consumed at home. The location of products within stores also significantly affects what shoppers buy, with end-of-aisle displays increasing sales of soft drinks by over 50%.

Data from Public Health England's sugar reduction evidence report suggests that promotions increase consumer spending by encouraging people to buy more than they intended, increasing their consumption of less healthy products. Research from a study conducted

by Curtin University in Australia shows that children are uniquely vulnerable to the techniques used to promote sales.

Some supermarkets have already made voluntary commitments to reducing such promotions, which the Government welcome. However, these measures are not always implemented consistently or as recommended, so the Government intend to introduce legislation across the market to create—noble Lords have heard this phrase before—a level playing field within the retail sector.

Obesity has significant costs for society. Public Health England has estimated that the indirect cost to the UK economy from obesity-related conditions to be approximately £27 billion per year. The Government hope that this policy will deliver significant health benefits. The Government's own impact assessment estimates that the policy will have a net benefit to society of around £7 billion over the next 25 years.

Micro and small businesses will not be impacted by these regulations, since the Government recognise that they are likely to find the restrictions more challenging to implement. The Government will continue to work closely with the food and drink industry and local authorities to provide the support needed before implementation of the regulations in October 2022. Guidance is being developed to support these regulations.

The Government want to make the healthier choice the easier one and to support people to lead healthier lives. Together with food companies, supermarkets and health professionals, the Government hope to create an environment to empower consumers to make better choices and to live longer lives in better health. I beg to move.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the noble Baroness, Lady Brinton, will contribute virtually as the Liberal Democrat Front-Bencher at the appropriate point in the debate.

Lord Brooke of Alverthorpe (Lab): My Lords, I am grateful to the Minister and the Government for the initiative, which I would describe as making tentative moves to try to reduce the growth of obesity. I declare an interest as vice-chair of the All-Party Parliamentary Group on Obesity, and I am grateful to the Obesity Health Alliance, which has recently produced a very wide-ranging and thorough examination of the problem. I am grateful to it for the briefing.

It is worth remembering that the last serious attempt to tackle this was after the coalition Government came into power in 2010-11, when an alcohol strategy was drawn up and there was an engagement between government and the private sector, and the many representatives of the health business, if I can describe it like that, who were anxious to see changes effected. We had the creation of the responsibility deal, which ran from 2011 through to 2015, when it collapsed. The health officials were unhappy about the way in which the agenda was being run, and in 2013 many of them withdrew because they felt that the private sector—the manufacturers and retailers—were controlling the agenda and that public health was rather lower down the line than profits. So it went in 2015, and since then we have had very little change, apart from a growth in obesity.

On the alcohol front, on which we have spoken from time to time, apart from with youngsters there continues to be a problem there, with more and more people going into hospital and more and more people dying from liver problems. The real concern here has been with the growth in obesity among youngsters. We have been at this since 2006, when the Labour Government first kicked it off with the national measurement scheme. Initially, the idea was that we would engage over a very wide area, but because of the continuing cuts that have taken place in public expenditure at local level, it has not really made a great deal of headway. We have had a fallow period, with many of us complaining over the years, but it would be churlish not to say that I welcome this move, although that is not to say that I am going overboard over what the Government are proposing.

I have a number of questions. It has taken us six years—seven years, really, since it will be 2022 by the time we finish the consultation with the parties involved and this is put into effect—but the document talks about waiting another five years to do a review. Unless I have misunderstood, it will be five years before it is fully reviewed again. Could you correct me if I am wrong or, if I am right, explain why we have to wait another five years, which means that we will have run from 2010 to 2027 before we really look at some of the serious proposals made by the Government?

Secondly, I would like to know who is covered by the square footage provision. Obviously, hypermarkets and supermarkets are covered, but I would like to know whether convenience stores are also covered. I live in Battersea, near the bridge, and next to us we have a local co-op that does extraordinarily good business. Would it qualify to be covered by the changes that are proposed? I cannot remember the figure, but it may be 1,200 square feet. I would be grateful if the Minister could say whether convenience stores fall into it, because they are major retailers in this context as they sell nearly half as much as the supermarkets do. If they are not covered, it will be a major omission and something that we would want to return to.

Thirdly, I listen carefully to everything the Minister says as he finds his way with his new brief. At his first Questions, he talked about unintended consequences and said that it is very important when we are making changes that we try to foresee them. I am particularly interested in seeing how retailers effectively drive a coach and horses through so many areas of legislation with their ability to place their goods in a position which sells them best for them but on the other hand brings them to the attention of children, in particular.

Again, I mention my local Co-op. No longer can people see cigarettes. They are hidden. It took years to get that changed, but it is a worthy development that was put through by the Government. When I go in, I am now surrounded by alcohol. We have all this about advertising, thresholds and the rest of it, yet when children stand in the queue to buy their Mars bars in the Co-op, they are surrounded by alcohol and, on the other side, by doughnuts and a host of sweeties which are attractive to them and which, as we know, are at the heart of the growth of obesity. I wonder whether the Government have thought through what will go in

[Lord Brooke of Alverthorpe]
place of the movement of some of these articles which are presently being sold, which have been identified as being very risky from a health point of view. If they do not cover it, I suspect we will find, for example, that alcohol goes there, which is what has happened previously. I know that is not about child obesity, but none the less it relates to obesity, as 10% of all obesity comes from the sugar in alcohol. So we are continuing with the same problem, especially given that we still do not have any indication on alcohol. You queue there, and there is no indication of the sugar content or the calorific effects in the drinks. Perhaps the Minister might say what the Government are intending to do about that. I know it is not in this document, but it is all interrelated with obesity, and we cannot separate it too much.

In another initiative, trying to be as positive as I can be with the Committee, Sir Keith Mills, who was responsible for Air Miles and Nectar points, has been doing a special piece of work for the Prime Minister and has come up with a number of trials. Is there a correlation between the work that will be put in place in this document and what he is endeavouring to do in incentivisation? I may sound negative, but I believe in incentives to encourage people to eat and drink better and I believe in trying to find incentives in which the private sector, particularly retailers, will not to try to take advantage but will work together so that we will see positive incentives offered to them to effect changes in the formulation of food and the way in which they present drink and food in retailing terms. Is there a link between the activities he is undertaking?

Finally, can we see more experimentation? I am very pleased that Sir Keith Mills is doing that. Wherever we can try to engage with those who are interested in the private sector, we should try to get joint working taking place where, if the Government see it works yet the private sector does not want it, they will do what they are doing today. I hope they will stick to their guns, legislate and make the changes stick rather than change their mind and run away under pressure from the industry.

Baroness Neville-Rolfe (Con): My Lords, I congratulate the Minister on his clear and succinct explanation of these regulations and of the risks of obesity, which we have witnessed a great deal during the Covid crisis. The noble Lord, Lord Brooke of Alverthorpe, then spoke about the APPG's work on obesity.

I probably should register an interest. Although I no longer have direct food sector interests, I have shares in Tesco. In fact, I recall that it moved early in banning sweets from checkouts, but obviously it will incur costs from these regulations. I also have shares in Amazon, which, I suspect, could benefit from a shift online as a result of the regulations, which probably bear less heavily on online.

Forgive me for a brief diversion, but I was absolutely delighted to see that the regulations were made under the Food Safety Act. The passage of that Act was one of my proudest achievements as a civil servant. In fact, I supported the late Baroness Trumpington, whom I miss so much; she even gave me a toy pig for my baby, which has now been passed on to the next generation.

6.45 pm

I have three points to make. First, I am glad that my noble friend the Minister and his department have produced an impact assessment. Such impact assessments are always a concern of mine, as he will discover. They really help one to understand the problem. However, I need some help in understanding the one before us today. Perhaps I should make it clear that it is attached to the back of the SI. The first page seems to say that the cost to business is £53.5 million of the package a year. That seems very low, given all that is happening. The industry estimates that I have seen suggest that the regulations will cost each small shop £13,000 per site and each supermarket between £50,000 and £100,000 per site. I do not know how many stores will be affected because we need an answer to the question asked by the noble Lord, Lord Brooke, about scope. That page also says that there is a net present social value of £2,916 million; that sounds like nearly £3 billion, if I have my commas in the right place. I am interested as to how that relates to the business net present value of minus £148 million in the second column.

Page 4 summarises option 2, which I think has been the chosen one; that seems to be what the impact assessment is telling us. It seems to say that the benefit will be over 25 years, so we are looking at this quite big figure over 25 years. However, it gives a slightly different total of £2,038 million. So I do not understand how the costs and the benefits stack up. Where are they coming from and what discount rate has been used? That will be key in the final figure you come to. Can my noble friend the Minister enlighten us?

My second question relates to a briefing that I received from the Association of Convenience Stores—it represents smaller stores so it must have some concerns—the British Retail Consortium and the FDF. I forwarded the briefing to the Minister so that he could have a look at it. While reiterating their commitment to tackling obesity, the organisations criticised the drafting of these lengthy regulations, saying that there are many unanswered questions. They attached a list of the 25 most important ones, which include everything from the scope of businesses covered, which we have already identified as an important area, to the products affected, the location of placement restrictions in stores, the way in which online delivery is affected and whether Trading Standards or Environmental Health officers will implement the new regulations. The Minister will not be able to answer these questions today, but I wonder whether he will undertake to answer them and place the reply in the Libraries of both Houses in, say, the next month. Businesses must know what they are being asked to do. I remember that we were very strong on that point in relation to the Consumer Rights Act 2015, which I worked on constructively across the party divide when I was the responsible Minister. Chaos ensues if you do not know what the rules will be.

These are not Covid regulations. We must give business proper notice. We are asking for a major shift, especially in store practice and behaviour. I thought the points made by the noble Lord, Lord Brooke, about substitution effects and incentives were very interesting.

My final, brief third question is this. How will whoever is going to enforce these regulations, whether

it is trading standards or environmental health officers, be resourced to enforce these complicated and important new laws?

Baroness Brinton (LD) [V]: My Lords, I declare an interest as a vice-president of the Local Government Association. I thank the Minister for his introduction to these regulations. The comments of the noble Lord, Lord Brooke of Alverthorpe, as chair of the APPG on obesity, were particularly helpful.

These regulations sit behind recently revealed alarming figures showing that nearly a quarter of children are overweight or obese when they start primary school. That figure has risen to a third by the time they leave at 11. The Government are right to be concerned about the overconsumption of food and drink high in calories, sugar and fat, which leads to obesity and associated obesity illnesses. I will come on to the regulations shortly, but from these Benches we want to make two other comments.

First, the Conservatives in government have consistently cut public health budgets to local authorities over the last six years. The King's Fund says that, on a like-for-like basis, the 2019-20 budget is 15% less than that of 2013-14, including a more than 5% cut to obesity services. In addition, the reduction in school nurses as well as health visitors over the last decade has meant that some of the vital early face-to-face advice on nutrition to parents of young children has gone.

Worse, some of the excellent work done by chefs such as Jamie Oliver and by the campaign of Henry Dimbleby—both of whom over the years encouraged much healthier eating in schools—has been reduced if not lost. In fact, recent reports say that high-fat, high-carbohydrate foods such as the dreaded turkey twizzler are re-emerging on to school menus.

The second issue from these Benches is the decline in fitness of our primary school children. This has been a long-standing problem, but the sale of playing fields and focus in the curriculum on core subjects have all led to a reduction of time when children can exercise, take up sports and essentially get the habit early, which will also impact on their weight. This January, Sport England noted that children's activity levels were down in 2019-20—pre pandemic—with only 44% of children and young people meeting the Chief Medical Officer's guidelines on taking part in sport and physical activity for an average of 60 minutes a day. Now is the perfect time, as restrictions have been relaxed, to increase the time that young children can undertake sports and exercise. Can the Minister say what influence the Department of Health and Social Care has with the Secretary of State for Education in remedying this matter and what plans there are to fund more opportunities for young children to participate in sport and exercise?

Turning to the regulations, I note that this follows a decade of trying to encourage large supermarkets to reduce salt and sugar in their own direct products, as well as encouraging their suppliers to reformulate. However, not all of them have achieved enough, nor have they changed their attitudes towards promotions.

If the Grand Committee will permit me an anecdote, one of my adult children used to work as a buyer for a major supermarket, and its department had been asked to go back to suppliers to ask them to reduce sugar, salt and fat. My son was responsible for, among other things, dairy products. Most products and many suppliers were happy to work with the supermarket to achieve reductions, but both sides were completely stumped by one product: brandy butter. It has not just sugar and fat, but alcohol too. On this occasion, it was agreed there was very little they could achieve, other than to highlight its very red traffic light and recognise that it was a truly seasonal product that was not part of people's everyday habits. But it is good they were thinking about it.

While the public health responsibility deal has improved matters a little bit, it is not nearly enough. One key area remains obvious. That is the influence of promotions targeted at children and their parents, both in store and on television. Other speakers have referred to multibuys, end-of-carousel promotions and queuing eye-catchers—far too often, junk food and sweets. While the public health responsibility deal has helped a bit in those larger supermarkets, it is certainly not enough, and it is good that healthier choices will be much more visible in shops and that buy one, get one free and three-for-two offers on high fat, sugar and salt products will be restricted.

On food scope, it was worrying to read in the past few days that a high level of juice in baby and toddler food, which has a very high fructose content, is not labelled as high sugar because the juice is natural and not added, processed sugar. Most parents of babies and small children believe that such products are not high in sugar. Surely, this needs to be added to the formulation list for HFSS products. Is the department looking at this?

It is right that environmental health food authorities should be responsible for enforcing this in localities, but I ask, as others have, whether there will be extra funding for environmental health to be able to carry this out. We need to remember that members of environmental health have many other responsibilities too, including the vital role during the pandemic of test and trace, working with local resilience forums. The Government cannot keep loading extra responsibilities on to beleaguered local authorities without funding them properly. Will there be funding for this for the enforcement bodies?

From these Benches, we regret that the food sector has not responded well enough to remove the need for this regulation, but we believe that the long-term health implications for our children are being damaged by current custom and practice. But this cannot be done without other actions too: funding more sport and exercise opportunities and funding enforcement are just two critical elements. The minimum of another five years to implementation, as outlined by the noble Lord, Lord Brooke of Alverthorpe, is too slow. Can the Minister please ensure that these changes are speeded up?

Baroness Merron (Lab): My Lords, I appreciate the intent behind these regulations and thank the Minister for his introduction to them. I want to comment on the current situation and raise a number of questions following on from those that we have already heard, because I feel that it is the detail of the regulations that is wanting rather than what they are about.

[Baroness Merron]

To emphasise the points that have already been made in this debate and have been heard in your Lordships' House on many occasions, the UK has among the highest childhood obesity rates in western Europe. One in four children is overweight or obese when starting primary school, and the number is one in three by the time a young person gets to secondary school. These children are obviously more likely to become obese adults—let us remind ourselves that, at present, one in four adults is obese—and therefore at greater risk of conditions such as diabetes, heart disease, fatty liver disease, cancers and mental ill-health. As we know, the situation is worse in poorer communities. Indeed, one in three adults in the most deprived areas is obese, compared with one in five in the least deprived—a clear inequality if ever we saw one. The discrepancy among children is even more alarming: more than twice as many children are obese in the most deprived communities as in the least, and that gap has nearly doubled under this Government.

There is no doubt that in-store promotions are incredibly effective in influencing what we buy. Research shows that we buy 20% more than we intended when faced by promotions. Cancer Research UK has shown that greater volumes of high fat, sugar and salt are likely to be purchased by those who are already overweight or living with obesity, so we see a correlation between promotions and obesity, and it is right that these regulations seek to tackle that. So, yes, it is right to take action to address this situation, not by limiting people's freedom of choice but instead by supporting them to make healthier choices.

However, these regulations alone will not be enough, and it is this point that I want to emphasise to the Minister. We need a radical obesity strategy that goes much further, ensures that families are able to access healthy food and supported local leisure facilities, and ensures that poverty can be tackled. Without that, there will be no levelling up. All we will see is a continuing widening of the already considerable gap between those who have the means to manage their weight and those who do not.

7 pm

There are some specific angles that I would like to draw to the attention of the Minister with regard to these regulations. Can he advise why this policy is being introduced by secondary legislation when MPs were given the opportunity to debate and, crucially, to amend related obesity policies on junk food advertising just last night? Why could this not have been done in the Health and Social Care Bill? Does he accept that that would have allowed for rather more scrutiny and would have allowed your Lordships' House to vote on additional safeguards, rather than the procedure afforded to us here, which could be described as the "take it or leave it" procedure? What is the Minister's view on the Secondary Legislation Scrutiny Committee's comment that these regulations should contain a sunset clause to allow the policy to be evaluated effectively after a period of time?

Looking to enforcement, as we know, these regulations will be enforced by local authorities. Their budgets have been systematically cut over the past 11 years. What assessment has been made of the capacity of local authority trading standards to enforce any of this? Will additional funding and resources be provided in respect of this new and more intense role? Otherwise, we are passing regulations with all the right intent but without the means to deliver.

With regard to exemptions on promotions, can the Minister explain why the new rules on promotions apply only to medium and large businesses, and why corner shops are exempt from these regulations? This was raised and illustrated by my noble friend Lord Brooke. We understand the placement exemption because we all understand that it would be impossible for small retailers where every shelf is near an exit, an entrance or a till, but why does it apply to promotions? Why is it more onerous for small businesses than for medium-sized businesses or franchises not to provide a three-for-two or a buy one, get one free? It would be helpful if the Minister could advise us why smaller businesses have not been fully taken into account.

On timing—this was referred to by the noble Baroness, Lady Neville-Rolfe—businesses have had to grapple with the need to reconfigure space for social distancing to make them Covid-secure for staff and customers. Now, they must undergo a further configuration, still within Covid-secure measures, and perhaps another reconfiguration when Covid-secure policies are no longer needed. Can the Minister say what consideration has been given to this when discussing and deciding the timeline for implementing the placement regulations with the industry? Can he advise the Committee of when the guidance will finally be published?

With regard to the scoring system on high fat, sugar and salt, some experts have raised concerns that the food classification system used is outdated and that foods that are higher in fat get disproportionately penalised compared with those that are packed with sugar, which are less satiating and where evidence suggests the real obesity problem lies. Can the Minister advise what consideration the Government have given to this and what plans there are to review the impact of this policy on obesity, specifically with regard to the classification system for high fat, sugar and salt?

The Minister will be aware of existing concerns that some brands have deliberately marketed products as healthy despite what they really are. Indeed, some refined sugar-free bars contain more sugar than a chocolate bar. Research from Bite Back 2030 found that 57% of "health halo" foods surveyed would receive a colour-coded nutritional information label. Can the Minister confirm whether these will be captured by the regulations? What steps are the Government taking to help consumers to navigate packaging information and to clamp down on deliberate and dishonest marketing tactics used to encourage people to consume faux-healthy junk food products?

I note that the retail food and drink sector has committed to delivering the proposals, but that sector needs to be a partner in tackling obesity. It is disappointing that there are so many questions about the drafting of the regulations, which do not appear to enable this. I hope that the Minister will reflect on that and do what he can to put it right.

Lord Kamall (Con): I start by thanking noble Lords for their contributions to today's debate. I shall try to turn to some of the questions from noble Lords and to

answer as many as possible in the next three hours, if noble Lords will be patient with me. [*Laughter.*] Seriously, if I do not touch on a particular question, please write to me to follow up, particularly on some of the more technical questions.

I start with some of the questions from the noble Lord, Lord Brooke. He asked about the scope. Stores smaller than 185.8 square metres or 2,000 square feet—if you are wondering why such an unround number was chosen in metric—and specialist retailers that sell one type of food product category, such as chocolatiers or sweet shops, will be exempt from location restrictions but will need to adhere to the volume price restrictions. The policy will come into force in October 2022. The noble Lord referred to issues that I am always interested in, which are the evidence, as well as the impact, and how we look at the unintended consequences of any such moves. There will be a review within three—

7.07 pm

Sitting suspended for a Division in the House.

7.10 pm

Lord Kamall (Con): The policy will be reviewed within three to five years of it coming into force. I reassure the noble Lord that the intention is that the policy will come into force in October 2022. However, as the noble Lord and I have discussed in the past, I am always concerned about unintended consequences and evidence to see what has worked and what has not. In many ways, I am a fan of the discovery process. We do not have complete knowledge—in fact we have incomplete knowledge—and all we can do is trial and see what works and use the best evidence that we can to assess.

Part of this review of the regulatory framework provisions of the restrictions will consider whether penalties under the Regulatory and Enforcement Sanctions Act 2008 have been implemented effectively and achieve their ambitions. We will continue to keep the policy under review to ensure that it is both impactful and proportionate. I am sure noble Lords will agree that it is not sufficient just to pass a piece of legislation and hope it does its job. In fact, as I think many noble Lords would acknowledge, this in itself is not enough to tackle obesity. It has to be a multi-angled view with many different approaches. Some will work, some will not, but we have to learn from what works and make sure that we are not driving consumers into unintended consequences and leading them to worse health outcomes.

We hope that this strategy that we published in 2020 will be world leading. I think the noble Lord, Lord Brooke, mentioned Sir Keith Mills and his programme. This shows that it is not just this piece of legislation; it is a multichannel approach, if you like, including incentivising people to have healthier lifestyles —monitoring their steps and other exercise functions. Anyone who has looked at successful and unsuccessful diets will recognise the fact that it is not just about reducing what you take in; it is also about burning off those calories. We have to get the right balance. Each individual will have different BMIs and different physiologies and different strategies will work for different individuals.

In terms of the businesses that these regulations will impact, the location and volume restrictions apply only to medium and large businesses in England and around 24% of stores are in scope of the volume price restrictions. Given the size threshold for stores subject to location restrictions, these apply to approximately 16% of stores in England. Some 94% of estimated food retail revenue falls under the volume restrictions, while 84% falls under location restrictions. This means that these restrictions offer considerable potential, if done correctly, while ensuring that small businesses are not disproportionately impacted by the changes. I acknowledge that many noble Lords were concerned about the cost for both large and small businesses.

The original timescale was to be April 2022, but having considered feedback from the industry, we have made the decision to extend the implementation to October 2022. I am well aware that some in the industry are asking for a further extension and, as noble Lords can recognise from the tone of the debate today, some are in favour and some are against and the Government are trying to get the right balance. The Government want to bring in these measures so we can start analysing whether they work. We are also very mindful of the fact that it falls on industry to implement them.

The other issue raised was about smaller stores and what are called symbol groups, which, as noble Lords may understand, are smaller retailers that come under a wider brand. If we excluded symbol groups in their entirety, that would take away some of the health benefits of the policy. Franchises and symbol groups make up about 60% of those in scope of the volume price promotions and 14% of the location restrictions. Approximately only 12% of symbol group stores are over 2,000 square feet, therefore the vast majority of these stores will be exempt from the location restrictions. I hope noble Lords understand the point about the cost falling particularly disproportionately on smaller stores.

7.15 pm

I thank my noble friend Lady Neville-Rolfe for forwarding to me the list of 25 priority questions compiled by the Food and Drink Federation, the British Retail Consortium and the Association of Convenience Stores. It is a priority to finalise the guidance for businesses as soon as possible and make sure that it supports industry as far as possible to get the right balance. Officials are concentrating on completing the exercise and, as part of this, are considering the feedback that the authors of these questions have offered. Our intention is to provide a point of clarification to industry in the final published guidance, which we are working to publish as soon as possible after these parliamentary debates. So, watch this space and do challenge me if it does not happen imminently.

Baroness Neville-Rolfe (Con): It would be very helpful if, in responding to those questions and proposing the guidance, my noble friend the Minister could make a copy available, perhaps in the Library, to those of us who are interested in understanding because I do not think that this is the end of the era on this issue; I think we will revisit it again and again in various different ways.

Lord Kamall (Con): My noble friend makes a very reasonable demand that is difficult for me to refuse. Let me put it this way: I hope that I have not caused any shock waves, as it were.

There has been an impact assessment, which shows that the location restrictions over the 25-year appraisal period are expected to bring health benefits of more than £57 billion and provide NHS savings of more than £4 billion. The volume price restrictions are expected to accrue health benefits of more than £2 billion and provide NHS savings of £180 million. We recognise that there will be costs to businesses; once again, this is all part of that difficult balance and debate. A phrase I have often heard is, "Do not let perfection be the enemy of progress". We want to try as hard as possible to get this right. From the consultation that has been going on, we are very aware that this will have an impact on a number of businesses but, at the same time, there is lots of pressure, as noble Lords will have heard today, just to get on with it.

Baroness Neville-Rolfe (Con): I am sorry to interrupt again, but £57 billion is a much bigger figure than I have seen anywhere; £3 billion, perhaps separately, I could understand. It is really helpful to have the impact assessment but it is difficult to understand what the benefits and costs are, which we need to understand to give my noble friend the Minister the full support that he requires.

Lord Kamall (Con): Once again, I thank my noble friend for making that request. I always make it clear that it is important that we publish as much evidence as possible and let it be challenged; that is part of a healthy debate. If things do not work as intended, we should see what works and what does not. I am always very sensitive when someone says, "the evidence suggests". We need to have that challenge but also make sure that we know what works. At the end of the day, we all want to see less obesity across our country, so surely it is important that we make sure that the evidence is there. Where something does not work, we will just have to try other ways.

On compliance, it is for local authorities to decide how best to enforce the requirements. Where an enforcement officer suspects that HFSS food or drinks may be inappropriately promoted, they should request further information to verify. If the product is in scope and has been promoted contrary to the law, an enforcement officer will consider what action should be taken.

Baroness Merron (Lab): I thank the Minister; it is generous of him to give way. I would be very interested in how he sees the greater responsibility on local authorities. Picking up my question again, does he feel that local authorities are resourced suitably? Can they expect some recognition of this new and extremely important role, because the regulations require their co-operation too?

Lord Kamall (Con): I thank the noble Baroness for that question. The Government are committed to ensuring that enforcement is proportionate and fair, and we intend to support local authorities and the judicial system on additional costs incurred as a result of enforcing the policy. Up front, I cannot say what those costs will be, but we want to understand what they will be to help enforcement.

I was asked whether we had watered down the policies for some products. We have excluded some products that are not among the highest sugar or calorie contributors to children's diets or are not heavily promoted, but we will continue to keep the policy under review.

The noble Baroness, Lady Brinton, asked about weight management and other ways of tackling weight issues, including exercise. In March 2021, we announced an extra £100 million for healthy weight programmes to support children, adults and families in achieving and maintaining a healthy weight.

On infant foods, we will shortly consult on proposals to improve the marketing and labelling of commercial food and drink products for infants and young children. I acknowledge many of the concerns expressed by the noble Baroness, Lady Brinton.

The noble Baroness, Lady Merron, asked why we are using secondary legislation. The different legislative approaches being pursued reflect the current legislative framework and implementation routes available to the Government. For the promotion restrictions, we used existing powers in the Food Safety Act 1990 to lay secondary legislation before Parliament in July 2021. The statutory instrument has been subject to the affirmative parliamentary procedure.

On how we look at issues of inequality, noble Lords made a very fair point. Perhaps I may be so bold as to suggest that one issue for people I talk to in many of the communities that we are supposed to be reaching out to is that, for far too long, the public health industry has been dominated by white middle-class people who feel they know better than immigrant and working-class communities. It is really important that we understand those communities. As someone who comes one of the communities that have been patronised, I recognise that we have to make sure that we work with them and do not just sit in a place like this and assume that we know better. It is important that we really understand them. What is really good about the Office for Health Improvement and Disparities is that "disparities" are on the label, on the tin, which means that we have to look at how we address them.

There were some questions about why smaller businesses are exempt. I hope that I have answered them.

On people not being able to afford to eat a healthy diet, anyone who has watched daytime TV will know that some of those programmes can show you how to cook a meal very quickly and much more cheaply than is the case with many of the convenience foods that you can buy. The problem is how we translate that from the TV and entertainment to people's lives in reality. In many ways, it means understanding families, where the decisions are made and what they have access to in many of their communities. Anyone who has been to many of the immigrant communities, for example, will know that there are plenty of shops that sell and openly display fresh food, but how do we make sure that we translate that into healthy diets?

On their own, these regulations will not be enough. We also have to look at how we translate all this into understanding people's lives right at the family and

the community level. It is our goal to improve children's health and to reduce obesity. The shopping environment plays a vital role in the way products are marketed to us—for example, the pumping out of the smell of fresh bread from bakeries. We know that marketing people are experts in understanding consumer behaviours, with factors such as the location of products at the end of aisles affecting what we buy. The Government are committed to getting the right balance between stopping bad practice and working constructively with industry. We also want to evaluate the evidence of the restrictions once the policy is implemented.

We believe that retailers can play a vital role in creating a healthier food environment that does not promote the overconsumption of less healthy products. The Government hope that these regulations will enable us to achieve a healthier food environment and make progress to halving childhood obesity by 2030, and allow us all to live longer lives in good health. I commend the regulations to the Committee.

Motion agreed.

Committee adjourned at 7.24 pm.