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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Wednesday 27 April 2022

3 pm

Prayers—read by the Lord Bishop of Chelmsford.

Retirement of a Member: Lord Young of Graffham

Announcement

3.07 pm

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

West Coast Main Line

Question

3.07 pm

Asked by ***Lord Snape***

To ask Her Majesty's Government what plans they have, if any, to replace Avanti Trains as the principal operator on the West Coast Main Line.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the department is currently in discussions with Avanti West Coast, as per the prior information notice first issued in October 2020, about a subsequent direct award. A decision will be made later in the year.

Lord Snape (Lab): My Lords, I thank the Minister for that not-too-helpful response. Does she regret the replacement of Virgin Trains by this particular organisation? Does she agree with me that the problem of national rail contracts is that, under the present system, they are, in effect, cost-plus contracts? There is no incentive on train operating companies either to run trains or to provide a decent service, something this particular company has taken advantage of. Will she send Avanti a short message—how about, "Arrivederci"?

Baroness Vere of Norbiton (Con): I am grateful to the noble Lord for that. I also am aware that he has written to Avanti West Coast citing his concerns. It has no record of any correspondence from him; however, the managing director is very happy to speak to the noble Lord—perhaps he can say that Italian word at that meeting. It is the case that both for the ERMAs and the national rail contracts, there are very firm incentivisation elements. For example, Avanti earns a fee based on performance and, for the six months to March 2021, it was judged as getting a score of one for customer experience—that is the lowest, not the highest. Therefore, because it got the lowest, it got no fee for that element. So there is incentivisation, and we hope to make it better because we want to see excellent customer service across our railways.

Lord Goddard of Stockport (LD): My Lords, I shall ask the Minister a straight question. If she came to this Chamber 17 minutes late to answer these questions, how does she think the House would feel? If she was summoned again at 9 pm with a Statement from the other place and she was 38 minutes late, does she think that we would be impressed with that performance? Those were the train delays on my journey from Stockport to London on the Thursday before we broke for Easter. That is by no means a one-off—the timetable is fantasy island. The morale of staff is at an all-time low. Until last week, they were wearing Virgin uniforms—three years on—with the badge cut off. The morale of staff is down, the service to customers is poor and I see no reason for carrying on with this franchise.

Baroness Vere of Norbiton (Con): My Lords, had I turned up late to the Dispatch Box, obviously I might have had to resign—but not today. It should be remembered that we understand that there have been various issues relating to services. We work extremely closely with all the train operating companies, as the customers come back to the railways, to make sure that they run on time. There has been an issue around cancellations regarding staff-related absence, but we are working through that and things are improving. Of course, part of having these contracts in place means that we will be able to get better service for customers.

Lord Berkeley (Lab): My Lords, I have heard the same stories as my noble friend about the pretty appalling customer service from Avanti, and I reflect on the fact that the present structure seems to require the Treasury to micromanage everything—even if Network Rail wants to paint the railings on a station, it has to get Treasury approval. This is probably not a very efficient way of working. Can the Minister assure the House that, when we hear details of the Great British Railways, which is going to save us all from appalling services, that will be taken into account and somehow there will be some delegation and authority for the railways to run on their own with incentives and not too much bureaucracy?

Baroness Vere of Norbiton (Con): I absolutely agree with what the noble Lord has just said. Of course, the Great British Railways transition team is already focused on delivering improved services for customers and driving revenue recovery. At the moment we know that passenger demand is about two-thirds of what it was pre-pandemic. It is looking very closely at boosting strategic freight again which is really important and developing this whole 30-year vision for how we want our railways to operate in the longer term.

Lord Lexden (Con): If my noble friend had time during the period of the Prorogation, perhaps she could think of undertaking a journey, heavily disguised, on this unfortunate and benighted railway and reporting her experiences to the House when we resume.

Baroness Vere of Norbiton (Con): I am always very happy to take the train. When I take my local train, I am actually always pleased with the service, although I look around and see that there are not as many

[Baroness Vere of Norbiton]
passengers on it as I would like to see. I think that is one of the biggest challenges we face. We have the railway infrastructure and operating companies which have historically been operating at much higher passenger levels and we have to look at how we are going to adjust the railway in the future, maintaining excellent customer service but also good value for money for the taxpayer.

Lord Jones (Lab): Will the Minister acknowledge the great importance to the Welsh economy of the Holyhead to London Euston route, acknowledging that there are not many highly skilled or well-paid jobs in north-west Wales? Can the Minister indicate when the pre-Covid rate of service might be reconstituted, particularly the hourly service that existed from Chester to Euston which has been much emaciated? Can she help?

Baroness Vere of Norbiton (Con): I do not think that I would be able to stand here and commit to every single service coming in the same form as it was pre-pandemic, because life has changed and the reasons why people are travelling by rail have also changed. Avanti West Coast started off with four trains per hour plus extra peak trains. Back in February, that went up to six trains per hour—on 28 February—and then as we approach the summer timetable which comes in in May, we will be up to seven trains per hour and eight on key hours. That will improve the service to Chester and, I hope, to north Wales.

Lord Polak (Con): My Lords, it is always easy to complain and make comments, but yesterday I was on an Avanti train from Euston to Liverpool, where my mother was having an operation. I waited until she was conscious and therefore I missed my train, which I had booked at 2.47 pm. I would like the Minister to agree with me and call out the train manager at Liverpool Lime Street on the 3.47 pm Avanti train. When I explained my situation, that I had missed my train, he said, "Don't you worry whatsoever. Go and sit down." It was great customer service, and I would like to call that out.

Baroness Vere of Norbiton (Con): I thank my noble friend for that contribution and I have nothing further to add.

Lord Tunnicliffe (Lab): My Lords, can we go into this Avanti contract a little more? *Modern Railways* magazine, which tends to be an authoritative magazine in the industry, says that Avanti will be taking over the service on a national rail contract on 16 October. Can the Minister confirm that that is true? When does she expect to actually conclude the contract with Avanti? Can she explain what revenue risk, if any, Avanti will be taking? Will she perhaps illustrate what other risk Avanti will be responsible for? The key question, I think, given that there is not going to be a competitive process, is: how do we know we are getting value for money?

Baroness Vere of Norbiton (Con): Avanti already has an emergency recovery measures agreement, which was awarded to First Trenitalia, which is Avanti, in August 2019. That was initially for seven years, so the national rail contract we are currently negotiating with Avanti will replace that. It will start on 16 October if negotiations reach an appropriate point. We will not award the contract if it is not right to award the contract, because, of course, there are alternatives. As for the revenue risks, obviously these contracts operate as all rail contracts do, whereby the Government take on the revenue and the costs; however, the train operating companies do annual business planning every year, which has to be agreed with the department. On that basis, within that, there are various performance measures that have to be met, and that is how we are able to control the railway and ensure companies are delivering value for money.

Lord Vaux of Harrowden (CB): My Lords, I use the Avanti West Coast every week and, frankly, the customer service is pretty good. It has introduced standard premium, which is a vast improvement, with at-seat ordering, et cetera—I think it is pretty good. But can the Minister tell me about what is laughably called TransPennine Express, which has been on strike for weeks now every Sunday? What are the Government doing to bring the strike to an end?

Baroness Vere of Norbiton (Con): Yes, I am aware that the TransPennine Express is subject to some industrial action. Of course, we are working very closely with the train operating companies, and we hope to bring that strike to a resolution as soon as possible.

Amnesty International Report 2021/22

Question

3.18 pm

Asked by ***Baroness Chakrabarti***

To ask Her Majesty's Government what assessment they have made of Amnesty International's *Annual Report 2021/22*, published on 29 March; and what steps they intend to take in response to the findings about human rights issues (1) globally, and (2) in the United Kingdom.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, we recognise the huge contribution that civil society, including Amnesty International, makes in promoting respect for human rights and holding Governments to account for their actions. The UK has a long-standing commitment to the promotion and protection of human rights, both internationally and domestically, and we will continue to show global leadership, encouraging all states to uphold international human rights obligations and hold those who violate human rights to account.

Baroness Chakrabarti (Lab): I am grateful to the Minister for his ever-courteous response. No country is perfect when it comes to human rights. Is there anything at all in Amnesty's assessment of the UK

position that the Government are looking to improve? Is there a particular priority for the Government in their approach to trying to encourage at least their friendlier international partners to do better on their record?

Lord Ahmad of Wimbledon (Con): My Lords, first, I agree with the noble Baroness that the issue and the challenge of human rights is never a job done, whether we are talking globally or domestically. I often say that it is the most challenging part of my portfolio at the FCDO but also the most rewarding. Of course, the United Kingdom Government have prioritised human rights in a range of areas. We will be focusing, for example, on freedom of religion or belief in the conference in July this year. I myself will be leading in the conference on preventing sexual violence in conflict, already brought starkly to all our attention by the conflict in Ukraine. Also, domestically, I think we have a very vibrant civil society space, and I think that needs to be recognised.

On Amnesty International, as the noble Baroness knows, as Human Rights Minister I had a very strong relationship with its previous director, Kate Allen, and we continue to work actively with civil society groups, including my right honourable friend the Foreign Secretary, who has an advisory group on human rights that works directly with her on this important priority.

Lord Purvis of Tweed (LD): My Lords, in this House this week we debated and approved an order which, for the very first time, placed the UAE on a legislative list for high risk of money laundering, fraud and financing of terrorism. The Amnesty report highlighted arbitrary detentions, cruel and inhumane treatment of detainees, suppression of freedom of expression, the undermining of the right to privacy, death sentences and reported executions. I cannot see, in our £10 billion investment partnership with the UAE, any trigger clauses on human rights abuses that could limit market access to the UK. Are there any such clauses in our investment relationships with the UAE that could trigger such a mechanism?

Lord Ahmad of Wimbledon (Con): My Lords, our relationship with UAE is very broad, and the noble Lord focused on the investment and business relationship. That is an important aspect of our bilateral engagement, but as the noble Baroness, Lady Chakrabarti, just pointed out, no country, including our own, is ever going to complete this journey of human rights. However, we have very positive discussions with the UAE; I have held discussions on various aspects of human rights, including issues of freedom of religion or belief within the context of the UAE and broader. Where there are particular concerns I will raise issues directly, candidly and privately with the UAE administration.

Baroness O'Loan (CB): My Lords, can the Minister assure the House that there will be no erosion of the human right to due process, under the rule of law, in prosecutions in the United Kingdom, and particularly that there will continue to be prosecutions for killings in Northern Ireland which occurred during the Troubles where there is evidence to justify prosecution?

Lord Ahmad of Wimbledon (Con): My Lords, the United Kingdom prides itself on being a country which upholds the rule of law, both internationally and domestically. Wherever crimes have happened, and wherever there is evidence in support of those crimes, the justice system will ensure that victims get access to justice, and one hopes that justice would be served as quickly as possible. I am proud that I represent on the world stage a country that upholds these values. As I have said before, we are not perfect—no country is—but we have proud traditions and a strong justice system, and that is something I am very proud to extend across the globe.

Lord Collins of Highbury (Lab): My Lords, at the annual session of the United Nations Human Rights Council earlier this month, the Minister welcomed the resolution on human rights defenders, who are facing unprecedented restrictions and abuse in every region of the world. The Government's integrated review set working with human rights defenders and civil society as a priority. Could the Minister tell us what progress has been made on developing a meaningful plan of action to make this commitment a reality? Will the human rights and civil society directorate develop a strategy that addresses these key issues?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord is right to raise the issue of a human rights strategy, particularly on human rights defenders. I pay tribute in this context to Amnesty International, which works with us on developing key aspects of the structures and support that we provide to our network to support human rights defenders. In 2019 we launched the document *UK Support for Human Rights Defenders*, which sets out in detail how we will engage with human rights defenders to promote and protect human rights throughout the world. I know Amnesty has also talked about a specific government strategy on human rights, and that is something I am considering with officials in the team as part of our broad approach, which includes the international development strategy.

The Lord Bishop of Chelmsford: My Lords, I am grateful to the Minister for referencing freedom of religion and belief. Amnesty International's latest annual report sets out the parliament of Iran's introduction of two articles to the country's penal code that further undermine the right to freedom of religion and belief. These articles prescribe up to five years' imprisonment and/or a fine for insulting Iranian ethnicities, divine religions or Islamic denominations, or for engaging in

"deviant educational or proselytising activity that contradicts … Islam."

On this basis, three Christians were sentenced to lengthy imprisonments, just last July. I declare an interest in that I am originally from Iran. Could the Minister outline what representations are being made to the Iranian authorities on the matter of freedom of religion and belief?

Lord Ahmad of Wimbledon (Con): My Lords, I was present when the right reverend Prelate delivered her maiden speech and reflected on her experiences. She is

[Lord Ahmad of Wimbledon]
of great value on the Benches she represents, and on this important issue. Yes, we raise the issue of human rights, and we raise quite candidly and specifically the issues of consular cases which are ongoing in Iran around the broader issue of freedom of religion or belief. I speak as a person of faith: the strongest test of your faith is when you have the ability to stand up and defend the rights and obligations of another belief or faith. That is something we pride ourselves on here in the United Kingdom. Speaking on the broad issue of human rights, it is a proud tradition we carry around the world, and long may it live on.

Lord Cormack (Con): My Lords, I am sure my noble friend would agree that on this subject there is real concern about many areas of the world. May I single out two? One is Hong Kong and the other is India, where the Prime Minister paid a visit last week and where those who worship according to the Muslim, Christian and other faiths are constantly in a degree of difficulty and often treated abominably. Was the Prime Minister able to raise this? What have we been able to do recently in the context of Hong Kong?

Lord Ahmad of Wimbledon (Con): My Lords, first, in Hong Kong, particularly with the introduction of the national security law, the issue is less one of freedom of religion or belief and more one of freedom full stop. The concerns we have in Hong Kong are well documented. We have an extensive support scheme through the BNO scheme, run by the Home Office, and more broadly when it comes to China's suppression of rights. We see the abuse of freedom of religion most vividly in Xinjiang, and we have led on the Human Rights Council on that aspect. My noble friend also raises India, which is a strong democracy. I am the Minister responsible for our relations with India. As someone of Indian heritage, in part, and as a Muslim by faith, I assure my noble friend that we have very constructive engagement on a broad range of rights. India has a strong constitution and justice system and, within both those processes, the rights of every community, irrespective of faith, are fully protected.

Lord Alton of Liverpool (CB): But my Lords, we are talking about Article 18 violations for 1 million Uighur Muslims in Xinjiang and Article 19 violations in Hong Kong—the denial of media and press freedoms. What can the noble Lord say to us about the position we take in the United Nations Human Rights Council, of which China is also a member? When do we hold it to account on these violations? Which of the 30 articles in the 1948 convention—the Universal Declaration of Human Rights—is China not in breach of?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Lord's second question, I would hazard a guess and say that, regrettably and tragically, most if not all may have been breached when it comes to the application of human rights in China. On the earlier point about the situation of the Uighurs, as I have already said, we have led the way on the Human Rights Council. It has not been easy; it has been challenging. However, the fact is that on every vote we have had at the Human Rights Council we have had an increasing number of countries supporting the position that the United Kingdom has led on. There is an egregious abuse of human rights in Xinjiang, for not just the Muslim Uighur community but other minorities as well.

Covid-19: Global Vaccine Inequity

Question

3.29 pm

Asked by ***Lord Londesborough***

To ask Her Majesty's Government what plans they have to increase the United Kingdom's role and contributions to address COVID-19 vaccine inequity across the world.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, the United Kingdom is at the forefront of the international response to Covid-19, spending over £2.1 billion since 2020 to address its impacts. We are keeping further support under review. Our funding has enabled COVAX to deliver over 1 billion vaccines to 86 developing countries. With supply no longer a major issue, the United Kingdom is also now focusing on tackling delivery bottlenecks and improving uptake to meet country targets, working closely with the COVAX Covid-19 vaccine delivery partnership.

Lord Londesborough (CB): My Lords, we are now just two months away from the WHO target of vaccinating 70% of the world, yet across Africa just 17% have had their first jab. The pandemic is not over—far from it. Some 700,000 Covid deaths have been recorded across the world in the last three months, and the vast majority of those were unvaccinated people. Can the Minister say when Britain will follow Germany's example and provide 2022 funding to the global Access to Covid-19 Tools Accelerator, specifically our fair share contribution of £750 million? For wealthy countries, this is surely a small price to pay, not just to help vaccine supply but to support struggling health systems across low-income countries, and indeed to protect us all from the emergence of another variant.

Lord Ahmad of Wimbledon (Con): My Lords, we have worked very much at the heart of the COVAX facility. We were the first country to commit over £0.5 billion to COVAX so that vaccines could reach the most vulnerable. The noble Lord is of course correct that there is more to do, and we fully support the World Health Organization's target to fully vaccinate 70% of the world's population. We have committed over £1.6 billion of UK aid to address the impacts of Covid-19, including £129 million to support the global development, manufacture and delivery of Covid-19 vaccines. These include projects such as in Ethiopia, where the UK leads the partner co-ordination group, and in Nigeria, where our health programme is supporting vaccine delivery in five of the poorest states. I agree with the noble Lord that there is much more to do, but we are very focused on reaching the most vulnerable and are working with the World Health Organization in pursuit of that objective.

Lord Lancaster of Kimbolton (Con): My Lords, on 13 December, my noble friend informed your Lordships' House in answer to a similar Question that 131,000 doses of vaccine had been donated bilaterally to Nepal. That was very gratefully received, but with a population of some 30 million, it barely touched the sides. Can my noble friend say whether there are any further plans to donate bilaterally to Nepal? I declare my interest as on the register.

Lord Ahmad of Wimbledon (Con): My Lords, I pay tribute to my noble friend's work in Nepal, and I am grateful for his briefings on his work there. We delivered 131,000 AstraZeneca vaccines to Nepal in October and since August, overall through the COVAX facility, we have delivered a further 2.2 million donated vaccines to Nepal. COVAX remains in our view the best way to allocate vaccines, but we are also working directly with the Nepalese Government to ensure that we focus some of our support directly on the medical, social and economic consequences of Covid-19. I hope to visit that country soon, and we will be focused on these priorities bilaterally with the Government of Nepal.

Lord Browne of Ladyton (Lab): My Lords, on 12 May, the White House will co-host the second global Covid-19 summit, a gathering intended to build momentum for vaccine donations, discuss efforts to end the pandemic and prepare for future health threats. Can the Minister confirm that we will participate in that summit meeting, and if so, can he tell the House what our priorities are for the meeting and whether the Government plan to make any announcements of actions there to address the continuing global vaccine inequity challenge?

Lord Ahmad of Wimbledon (Con): My Lords, I can confirm to the noble Lord that we will of course be actively engaged and working with the United States on that very event. In terms of priorities, as I have already said, we are very much focused on the most vulnerable. When we look at the global south there is much work still to be done. Indeed, two weeks ago during our UN presidency of the Security Council, I chaired a meeting of the Security Council specifically on Covid-19 which focused on reaching the most vulnerable, particularly those affected by conflict or humanitarian crises.

Lord Purvis of Tweed (LD): With just 15% of those in the lowest-income countries vaccinated and less than 1% having received a booster, the UK committed 100 million doses to COVAX last summer with the target of delivering 30 million by the end of 2021. I have checked on COVAX this afternoon and we have delivered just 29 million. Of the top 10 donor countries to COVAX we have delivered the lowest amount, so I point out to the Minister that we are not at the forefront but are lower than the top 10. Why is that? Why have we not delivered what we have committed to deliver?

Lord Ahmad of Wimbledon (Con): My Lords, I have great respect for the noble Lord, but on this point, I must disagree. We have led the way, including on the COVAX facility itself. Had it not been for UK investment of more than £0.5 billion, that facility would not have got off the ground. That is fact. Secondly, we have reached over 52 million vaccines. The noble Lord shakes his head, but the fact is that we have donated. We are living up to our pledge; we have focused on the 100 million doses, which we seek to achieve. I know the noble Lord reads a lot of reports, but perhaps we can share our data and exchange notes on this and address this point directly. As I have illustrated, we are working directly—bilaterally—with countries around the world. Yes, there are certain problems, such as with the AstraZeneca vaccine, because of, for example, shelf life. There may be another vaccine which is perceived more valid because it has a longer shelf life. Supply is not the issue: the real issue at the moment is one of logistics, and we are very much focused on that priority as well.

Lord Collins of Highbury (Lab): My Lords, let us turn to that issue. It is absolutely vital. Supply is not the issue, but it is the delivery mechanisms that the Minister addressed in the first place. At a time when we need universal health coverage in Africa—the means to deliver vaccine—this Government are cutting funding to that facility. When will the Government get their priorities right?

Lord Ahmad of Wimbledon (Con): My Lords, this is a serious matter that requires a serious response. The fact is that the Government have got their priorities right. It was entirely appropriate, when it came to vaccine delivery and vaccinations, that we ensured that our own population was prioritised, and we delivered on that. We have led the world on manufacturing. The noble Lord knows that it was our association with India—a country mentioned in the previous Question—that led to the upscaling of manufacturing when it came to the vaccines, when the world needed it most. Yes, logistics is an issue: the noble Lord and I have talked about this. That is why we are currently working in Sierra Leone, Ethiopia, Uganda and Nigeria on that very issue of logistics and structures to ensure—whether it is for this variant or the next or for any vaccine—that the structures set up, particularly in the global south, are robust enough to deal with this continuing pandemic.

Baroness Greengross (CB): My Lords, is stockpiling not one of the issues we should address? It seems to me very immoral that wealthier nations stockpile. Amnesty has pointed this out. If we had a proper human rights framework, it could not happen. Should we not do something to ensure that many of the wealthier nations do not stockpile while others are finding it very difficult to get adequate amounts of vaccines? We need to find solutions as a matter of urgency.

Lord Ahmad of Wimbledon (Con): My Lords, the noble Baroness refers to the earlier stages of the vaccines. As vaccines were being developed, undoubtedly those countries that were first in production and manufacturing held vaccines in reserve, but the whole essence of the accelerator within the COVAX scheme was to ensure that the most vulnerable were provided with supplies of vaccines. As I said in response to the question from the noble Lord, Lord Collins, the issue

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within countries has been one of logistics. There have, sadly, been examples where the supply has reached a port of a given country, but where the challenge has been the duration of the shelf life of the vaccine and the logistics within country. That is where we are currently focused, particularly when it comes to second doses and booster vaccines in the global south.

Baroness Ritchie of Downpatrick (Lab): My Lords, the BMJ published an article on 22 March that stated that 2.8 billion people in the world remain totally unvaccinated. In view of that, would the Minister take on board the need to reinstate the overseas aid budget to 0.7% of GNI to help address that same inequity?

Lord Ahmad of Wimbledon (Con): My Lords, I hear what the noble Baroness says; as I said, I firmly believe in the 0.7%. However, equitable access to vaccines is not an issue of money. It is one foremost of logistics, which I have pointed to. There have also been issues of vaccine hesitancy in areas such as the Caribbean and Africa. In that regard, we talked in the previous Question about the important role of civil society at the heart of finding solutions. That is exactly what civil society has helped to do in partnership with the British Government and others, to ensure that vaccine hesitancy is addressed. In this case, I pay particular tribute to faith leaders, especially in Africa and the Caribbean, who have helped to address getting over that initial hurdle of taking the vaccine in the first place.

European Research Council

Question

3.40 pm

Asked by ***Viscount Stansgate***

To ask Her Majesty's Government what assessment they have made of reports that the European Research Council has written to 150 researchers based in the United Kingdom to say that they must move to institutions in the European Union within the next two months, or else give up their grants.

Viscount Stansgate (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and update the House on my interests in the register, as I was recently elected president of the Parliamentary and Scientific Committee, which, as the House may know, is Parliament's oldest all-party group.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the UK government guarantee means that eligible successful ERC applicants will receive the full value of their funding at a UK host institution and need not leave the UK. Therefore, this communication from the ERC does not accurately reflect the options available to UK applicants. The UK remains committed to association, but the EU is not honouring commitments made when the TCA was agreed. If the EU continues to delay, we will introduce a bold alternative package.

Viscount Stansgate (Lab): My Lords, I thank the Minister for his reply, but it is still disappointing. I shall put it in context for the House: €625 million-worth of grants were announced this week, with 61 grants to people based in Germany and the second highest number, 45, to people based in the UK. It is these people who have been told that they will lose their money if the Horizon Europe agreement is not reached by the deadline, which the European Research Council today told me is 19 September this year. Does the Minister accept that time is running out for an agreement to be reached between the EU and the UK on Horizon Europe? Does he accept that the problem is the Northern Ireland protocol and that, to some extent, science is being held hostage by the failure to agree the protocol arrangements between the UK and the EU? Is this a situation that we should be proud of when all of us in this Chamber want the UK to be a science superpower? Finally, the last time I raised this question, the Minister said that the money was safeguarded. Can he assure the House that the amount allocated by the Treasury will be spent on science and, if so, on what, where and by what mechanism?

Lord Callanan (Con): I partly agree with the noble Lord. I agree that time is running out but not that the Northern Ireland protocol is the problem. The EU entered into an agreement which it is now refusing to implement; that is the long and short of the problem. As soon as some Members stop making excuses for the EU's bad behaviour, we might succeed. We stand ready to associate with the Horizon programme as soon as the EU is prepared to sit down and implement the agreement that it signed.

Baroness Ludford (LD): My Lords, everyone agrees that UK participation in Horizon is of benefit to researchers in the UK, the EU and beyond, but also of mutual benefit is the UK's commitment to stick to legal engagements that it has made. I am afraid that there is some pot and kettle going on from the Minister. Why are this Government again threatening to breach the Northern Ireland protocol and to take powers—we expect this in the Queen's Speech—and undermine the trust that is essential to making other co-operation work? This is linked to the Northern Ireland protocol, but it is the Government's failure to honour their commitments which is the problem.

Lord Callanan (Con): I am sorry that the noble Baroness refuses to accept where the blame lies in this circumstance. The UK has not breached any agreements that we signed with the European Union. We have abided by all of them. The EU signed an agreement to say that we would associate with the Horizon programme but is refusing to implement that agreement. The Liberal Democrats and others should stop thinking that everything which the EU does is perfect and believe that there are some cases where it gets things wrong.

The Earl of Clancarty (CB): My Lords, despite what the Minister has just said, the problem is the Northern Ireland protocol, as the last two questioners have said. The EU Research Commissioner confirmed

last September that this is why we are being shut out of Horizon Europe while other non-EU countries are being welcomed on board with open arms.

Lord Callanan (Con): The Northern Ireland protocol is a completely separate agreement. It is different from the agreement that the EU signed. I am sorry, but we should not accept the EU's excuses on this. The EU signed an agreement, and it should abide by it. I wish that noble Lords would sometimes be on the UK's side rather than wanting to see fault in everything that we do. We should allocate the blame where it belongs.

Lord Lennie (Lab): We should all live by the agreements that we sign. Should the European research grants be withdrawn from the UK-based researchers, have the Government sought or received any assurances that these grants will be restored once associate membership of the Horizon Europe programme is re-achieved?

Lord Callanan (Con): The UK has provided a guarantee to all those researchers. If the ERC continues to say that they will not be eligible for grants, as long as the EU itself refuses to agree participation in the Horizon programme, then the Government have said that we will guarantee all those researchers' grants.

Lord Hannan of Kingsclere (Con): My Lords, of the world's top 40 universities, seven or eight—depending on which ranking we use—are in the United Kingdom. None is in the European Union. Does the Minister really think that the success of our higher education sector is dependent on participation in the Horizon programme?

Lord Callanan (Con): My noble friend makes a very good point. We think on balance that it is worth associating with the Horizon programme, which is why we agreed to participate, paying our full amount into it of course for that participation. However, if the EU refuses to stand by the agreements that it signed, we will put alternative arrangements in place, and all the sums that would have been allocated to researchers under the Horizon programme will instead be funded directly by the UK.

Viscount Hanworth (Lab): My Lords, we should soon be admitted to the Horizon Europe programme for funding research and innovation if the Government were to undertake not to invoke Article 16. However, what progress can the Government report in their endeavour to seek collaborative research arrangements with other countries, in particular with the Swiss, who have also not been readmitted to Horizon?

Lord Callanan (Con): The noble Viscount makes a very good point and, of course, alludes to the previous answer that I gave to my noble friend Lord Hannan. There are many good universities around the world, not just necessarily in the EU. We have a number of different, collaborative research programmes with other parts of the world. Ironically, under the Horizon programme, it is of course possible for third countries to associate in collaborative research programmes, provided they pay their fair share of the bills. The EU is not just treating us unfairly in terms of the agreement it signed, but is actually treating us differently from other countries in the world.

Lord Davies of Brixton (Lab): My Lords, does the Minister understand that top-quality academic research is inherently an internationally co-operative effort? Oh, my phone is ringing. Pending the completion of the Horizon project, the UK's universities—despite what his noble friend Lord Hannan might suggest—are inherently at a disadvantage, because of the complexity and the fact that they will no longer, in practice, be able to be the co-ordinator of the project, with the loss of the academic prestige and indeed funding that it involves.

Lord Callanan (Con): Perhaps we should all have musical accompaniments to our answers and questions; I am sure they would be much improved. The noble Lord makes an important point: the leadership of these programmes is important and international collaboration is important in science, but we should not make the mistake of thinking that the EU is the repository of all knowledge and wisdom on scientific matters. There are many other parts of the world. Yes, of course we want to co-operate with EU institutions, but we also want to co-operate with others across the world.

Lord Wallace of Saltaire (LD): My Lords, I am sure the whole House welcomes what the noble Lord has said about the importance to the UK Government of observing international treaties and agreements that we have signed. Does he intend to imply clearly, and would he like to clarify, that this means there is absolutely no question that the Government will go back on the Northern Ireland protocol?

Lord Callanan (Con): The Northern Ireland protocol is built into the treaty. The exercising of the Northern Ireland protocol, if we chose to do so, would be in compliance with the treaty obligations. It is a section of that treaty. I merely make the point that the UK has not broken any of its obligations that it signed with the EU. It is the EU that is in default, and it is about time the Liberal Democrats recognised that.

The Earl of Kinnoull (CB): My Lords, the Horizon programme is actually very complex. It would not be completely easy for us to begin the programme, say, 18 months late, without some element of further negotiation. Are the Government already dealing with that on a "what if" basis or will be a further delay, assuming that the protocol is finally sorted out?

Lord Callanan (Con): As I said, we stand ready to commence negotiations for our association as soon as the EU is prepared to do so. In the meantime, of course, as the House would expect, we are putting in place alternative arrangements if that proves not to be possible.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for making good the shortfall if we are not remaining part of the Horizon programme. But does he accept that universities have benefited from match funding from other universities in other member states and that that is going to be lost? Do the Government intend to replace that with other establishments from outside the European Union?

Lord Callanan (Con): I am afraid I do not understand the point my noble friend is making; there is no shortfall as such. The UK pays its fair share for our participation in Horizon and has always done so, and a similar amount of money will be made available in the future if association proves impossible.

Arrangement of Business

Announcement

3.50 pm

Lord Ashton of Hyde (Con): My Lords, yesterday I updated the House on arrangements for consideration today of Commons amendments and reasons on the Judicial Review and Courts Bill and the Nationality and Borders Bill. In addition, we are expecting the Commons to send back a message on the Elections Bill. The House will be asked to consider amendments and/or reasons to that Bill today. The deadline for tabling amendments will be 30 minutes after the message is published. The precise deadline will be displayed on the annunciator.

Should today's initial proceedings not resolve all outstanding questions on these three Bills, the Commons will deal with them again today. We expect that this House will then be asked to consider their amendments and/or reasons this evening. We will make further announcements throughout the day on the arrangements in this scenario. The Government Whips' Office will continue to ensure that the latest information on how business will proceed and on deadlines for tabling amendments is circulated, and Members can, of course, speak to my office for advice.

High Speed Rail (Crewe–Manchester) Bill

Motion to Agree

3.52 pm

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

That if a High Speed Rail (Crewe–Manchester) Bill is brought from the House of Commons in the next session of Parliament the Standing Orders of the House applicable to the bill, so far as complied with or dispensed with in this session, shall be deemed to have been complied with or (as the case may be) dispensed with in the next session.

Lord Berkeley (Lab): My Lords, I would like to speak very briefly to this Motion. I emphasise that I am not suggesting that I oppose it; it is a normal procedure Motion, and it should in my view carry over. However, I want to raise two issues of some concern about the progress of a Bill that will start in the other place and eventually come here.

First, I detected serious disagreements between different authorities in the Midlands and the north about what is in the integrated rail plan and the present Bill, which concerns Crewe to Manchester. There were quite public disagreements, and I am not sure how they can be resolved, but they clearly do need resolving to meet the objective—which the Government have rightly followed—of prioritising east-west improvements in the Midlands and the north. I am hoping that the noble Lord, Lord McLoughlin, who has just been appointed chair of Transport for the North, will be able to help with this.

My other concern is over budgets. The integrated rail plan budget of £96 billion was designed to set out the rail improvements that need doing as well as HS2, but it includes the HS2 budget. If you deduct from that £96 billion what is already going to be spent on HS2 from London to Crewe, there is actually no money left at all for other projects. That is really serious from the point of view of the people in the north and Midlands who want improved east-west connections. One of the main questions is whether the Manchester terminal for HS2 should be a surface station or underground so that you can carry on through to other places. I think the second option is more important and modern. But that is not the point; it needs agreement between all the parties.

One of the problems with a hybrid Bill is that once Second Reading has been agreed in the other place, it is very difficult—in fact, almost impossible—to make any changes. I know that some colleagues from all parts of the House of Commons would like to kill the Bill. This would be a very great shame. I am not saying I support what they are doing. It would be a shame to kill it, because so much work has gone into it.

I think it would be useful if the progress of the Bill were paused until there were proper agreement between all these authorities and the Department for Transport about what is really wanted. Is there a sufficient budget to achieve it? If that were to delay things by a few months, so much the better. It is difficult to start a Bill in the other place at this stage when one, if not more, of the major mayors in the area is highly critical of what is being done. I hope that this can be resolved. I am sure the Minister will have some views on this and I look forward to her comments.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I simply do not recognise many of the noble Lord's concerns, particularly around things such as budgets. I am well aware of his feelings about the HS2 project. We have had many conversations and debates, both in your Lordships' House and beyond, about it. His views are well known. I am not surprised that the noble Lord has raised these issues in the manner in which he has done, and I am sure that he would like to see the Bill paused—but it is not going to be.

This hybrid Bill will probably take three to four years to complete its parliamentary passage, which is perfectly normal for a hybrid Bill. The noble Lord raised important issues about getting people to agree and understand. The petitioning process is part of that process, to ensure that we make people as happy

as we possibly can in the context of building a very substantial transport infrastructure project. So, no, the Bill will not be paused and I beg to move.

Motion agreed.

Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill

Third Reading

3.57 pm

Motion

Moved by ***Baroness Redfern***

That the Bill do now pass.

Baroness Redfern (Con): My Lords, I wish to emphasise again that this is a rather technical Bill, which has been made easier because some noble Lords here in the House today are very knowledgeable in this area. Those who spoke during the progress of the Bill have made it very clear that this is an important and long-awaited Bill. There cannot be many Private Members' Bills that have been repeatedly called for in other debates over the course of several years.

This Bill was expertly presented and taken through the other place by Margaret Ferrier. I thank her, the departmental officials and my right honourable friend the Minister for Pensions for all the work that was done to get this Bill to this place. Though it might look complex as a piece of legislation, the Bill has a simple purpose of helping pension schemes meet their legal obligations. Specifically, it will help occupational pension schemes use the GMP conversion to correct the issue of men and women being treated differently in formerly contracted out defined benefit occupational pension schemes because of the impact of having a guaranteed minimum pension.

It is therefore with very great pleasure that I stand here today to present this Bill as it reaches its final stage in this House.

Baroness Sherlock (Lab): My Lords, I briefly pay tribute to all involved in this Bill, including Margaret Ferrier MP, who steered it through the other place, and the noble Baroness, Lady Redfern, who has done the same for us here.

As the noble Baroness said, my noble friend Lady Drake and I can now stop badgering the Minister for a Bill on GMP equalisation. Although the Government Whips never did come through with government time, I commend the DWP for its wholehearted support of a Private Member's Bill that happened to cover just the right territory at just the right time.

4 pm

I am sorry to have missed the earlier stages because of Covid, but I am very grateful to my noble friend Lady Merron, who did such a marvellous job in my place. There are a couple of outstanding issues, such as the position of pension schemes already in the Pension Protection Fund, raised by my noble friend Lady Drake, and the concerns raised by the Delegated Powers Committee, to which Ministers were only able to respond yesterday. However, we do not wish to hold up the Bill, so we will take these offline and hope to deal with them with the Minister before regulation. The key thing is that we are finally about to pass a Bill which the Government are confident will give the necessary legal certainty to schemes seeking to equalise guaranteed minimum pensions. This is good news, and we are pleased to support it.

Baroness Scott of Bybrook (Con): My Lords, I must again thank my noble friend Lady Redfern for presenting this Bill so ably today. I am pleased to be to here to give my support, and that of the Government, to the Bill. It is an important step towards schemes finally laying to rest the issue of the unequal effect of guaranteed minimum pensions. I pay tribute to my noble friend for her stewardship of the Bill and to other noble Lords who have contributed their views during its passage through the House.

I pay tribute to the late Lord McKenzie of Luton. I am saddened that he is not here to see this Bill through today, and I know that many others here feel the same way.

It is also right that we acknowledge and thank Members of the other place for their contribution. Margaret Ferrier, the honourable Member for Rutherglen and Hamilton West, took the Bill through. It is down to her, and to my noble friend Lady Redfern, that we have the Bill in front of us now. I also thank the Members in the other place who contributed to the debates on the Bill. The cross-party support the Bill has achieved in both Houses shows the long-standing commitment of Members to resolve this issue. This Bill will now provide the industry with the legal clarity it has been seeking in relation to GMP conversion legislation. Once again, I thank my noble friend Lady Redfern and express my and the Government's strong support for the Bill.

4.02 pm

Bill passed.

British Sign Language Bill

Third Reading

Motion

Moved by ***Lord Holmes of Richmond***

That the Bill do now pass.

The Lord Speaker (Lord McFall of Alcluith): My Lords, before we begin consideration of the British Sign Language Bill, I would like to point out that a British Sign Language interpretation of proceedings is available to watch on parliamentlive.tv and on screens in the Chamber.

Lord Holmes of Richmond (Con): My Lords, at Second Reading we had a first in your Lordships' House: proceedings were signed for the first time. As the Lord Speaker has pointed out, there is another first for your Lordships' House today: signing is available for the benefit of Members and all others in the Chamber this afternoon.

[Lord Holmes of Richmond]

The British Sign Language Bill takes a ministerial commitment in a Statement in 2003 and puts it on a statutory basis: to recognise British Sign Language as a language in England, Scotland and Wales—enabling, empowering, including. What does this mean in practice? Take, for example, hospital appointments. The news may or may not be good but, whether good or bad, it will always be personal, perhaps the most personal interaction we have with the state. As a result of this Bill, BSL signers will be able to have such appointments and/or communications with the state in an inclusive manner, rather than having to rely on parents, spouses, siblings or children to communicate such news.

I pay particular thanks to Rosie Cooper MP, who perfectly piloted this Bill through the Commons; she joins us at the Bar of your Lordships' House today. I thank the ministerial team, my honourable friend Chloe Smith in another place, and my noble friends Lady Stedman-Scott and Lady Scott in your Lordships' House.

I pay tribute to the Bill team and to all the officials at DWP who have worked tirelessly to get the Bill to this stage. Finally, and perhaps most importantly, I pay tribute to all those individuals and organisations who have campaigned for this change for so many years: the BDA, the RNID and David Buxton, a man who has done as much as most in this area, and who rightly joins us in the Gallery of your Lordships' House for this historic moment.

My Lords, the British Sign Language Bill: enabling, empowering and including BSL signers, and benefiting us all.

Lord Bruce of Bennachie (LD): My Lords, this is an historic day for the deaf community, who have campaigned for many years for recognition of their language. But it is also our language, and the clue is in the title: British Sign Language. It is the language of the deaf community of Scotland, Wales and England.

It is also the means by which the deaf community integrate and exchange with the hearing community. This Bill is not the end; it is the beginning of the deaf community's ability to take their rights forward, to use their language and to develop it to advance their quality of life across the range.

I urge deaf people to take advantage of the law to demand their rights and to ensure that we get more interpreters in more situations, enabling them to communicate in every way possible—personally, privately, commercially, professionally—as the noble Lord, Lord Holmes, has said, in education, health and all the spheres which we, as hearing people, take for granted.

David Buxton is in the Gallery with other representatives of the deaf community and Rosie Cooper is here at the Bar. They have all worked so hard to make this day a historic start for the deaf community. It is a beginning, not an end, and I urge deaf people to take advantage of it.

Baroness Sherlock (Lab): My Lords, I too pay tribute to all those involved with the Bill, especially my honourable friend Rosie Cooper, who not only steered this Bill through another place but built such wonderful cross-party support to bring us to where we are today. The noble Lord, Lord Holmes, did a fine job carrying it through this House, so I thank and commend him too.

It is such a privilege to know that finally, the words we say here are being interpreted for BSL users at home, so I thank and congratulate all those BSL users who have campaigned to get to this point today. I encourage them to keep up the pressure.

I was sorry to miss the earlier stages of this Bill—also due to Covid—but I was very grateful to my noble friend Lady Merron, who did such a great job at the Dispatch Box that I was not missed in the slightest. Indeed, there were no calls for me to return. I am also grateful to Milton Brown from our Opposition Whips' Office, who worked very hard on this Bill and the other DWP Bill that concluded today.

I was very moved by the stories told during the passage of this Bill of gifted BSL users being denied opportunities, and, as the noble Lord, Lord Holmes, said, of children having to interpret for their parents in situations they should never have been exposed to, simply because they could not get the interpreters they should have had a right to.

I hope that as the Bill goes through, people watching at home and in the Gallery are confident that it is one more step in making our country a better place for BSL users and their families. We are very pleased to support this Bill.

Baroness Scott of Bybrook (Con): My Lords, it is indeed an historic day for our deaf community. I thank all noble Lords who have participated in the passage of this Bill through our Lordships' House, but I also want to say a particular thank you to my noble friend Stedman-Scott, who at Second Reading set out a range of support that the Government will provide to ensure that the commitments in the Bill are taken forward.

I particularly congratulate my noble friend Lord Holmes on leading on this Bill. His plea for haste and a smooth passage was sincere in its purpose: to recognise British Sign Language in statute without delay. He has brought together noble Lords from across the House in united support on this important issue. I know he has consulted closely with noble Lords who have had a long-standing passion to promote British Sign Language and support deaf signers. I am so pleased that he, and all noble Lords who have spoken in support of this Bill, have succeeded.

By passing this Bill, we will start to remove some of the barriers to deaf BSL signers' increased participation in work, education, culture and wider society. By increasing their participation, the richer and more inclusive all our lives will be. I extend my congratulations to the Member for West Lancashire in the other place, who introduced this Bill, and to all those involved in the BSL Act Now campaign, who have campaigned tirelessly for this important piece of legislation. Many of them have joined us today to witness what I sincerely hope will be an historic moment for deaf communities and every citizen in England, Scotland and Wales. The Government are committed to supporting all people with a disability, including deaf people, to lead fulfilled

and independent lives. Supporting this Bill is part of that effort, and I am delighted that we all have played our part today.

The Lord Speaker (Lord McFall of Alcluith): As Lord Speaker, I welcome the BSL organisation and its members here today. I congratulate them and fellow parliamentarians who have steered this historic Bill to its successful conclusion—[*Applause*.] I will tolerate that disturbance.

4.10 pm

Bill passed.

Judicial Review and Courts Bill

Commons Amendment and Reasons

Motion A

Moved by ***Lord Stewart of Dirleton***

That this House do not insist on its Amendments 1, 2 and 3, to which the Commons have disagreed for their Reasons 1A, 2A and 3A.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, with the leave of the House, in moving Motion A, I will also speak to Motions B and C. A number of changes were made to this Bill in the House of Commons. I will cover both those changes and the amendments tabled to the Bill today.

Turning first to the Motions on judicial review, the Government have listened to the varied concerns, and the Bill that returns to us puts forward a compromise. The presumption, which was the issue of most concern to your Lordships, is gone, making use of the new remedies entirely discretionary. However, the other changes that your Lordships made to the JR measures, such as removing the ability to limit the retrospective effect of quashing orders and addressing the judgment in the Eba and Cart cases, have been undone in the other place. I will therefore set out again the Government's reasoning for these measures.

Starting with prospective-only quashing, the aim of Clause 1 is to provide courts with flexibility in remedies, allowing them to respond effectively to the case before them. Conventional retrospective quashing can be a blunt tool, which sometimes does not allow complex circumstances adequately to be addressed in a remedy. My noble friend Lord Wolfson of Tredegar and others have already set out persuasively circumstances where limiting or removing the retrospective effect of a quashing order would be in the interests of justice. The counter-arguments, I submit, have not really disputed this, but rather raised hypothetical circumstances where such a remedy would likely be inappropriate.

My view is that we should trust our courts to determine when these powers should and should not be used, with help from the skilled advocates who appear before them, who will no doubt address remedies when they make submissions. That there are circumstances where they would not be appropriate is an argument against this power only if you do not trust courts to use it properly.

We have substantial evidence that judges can and do use these remedies to good effect. Canada, another common-law jurisdiction, has made use of these remedies for decades. There, a court will use such a remedy if its ruling involves a substantial change in the law and if issuing a suspended or prospective order will not be unfair to the plaintiffs. Canadian jurisprudence shows a nuanced approach where fairness and harm are consistently considered alongside other factors, such as the proper remit of the court and separation of powers. For example, in the Canadian Supreme Court case of Hislop, the court said:

> "The key question becomes the nature and effect of the legal change at issue in order to determine whether a prospective remedy is appropriate. The legitimacy of its use turns on the answer to this question."

After considering various factors, it went on to say:

> "They may include reasonable or in good faith reliance by governments … or the fairness of the limitation of the retroactivity of the remedy to the litigants."

Finally, the court considered the effects on others, aside from the litigants, drawing on an earlier judgment in the case of Kingstreet Investments Ltd. v New Brunswick in which the court held that taxes collected pursuant to an ultra vires regulation are recoverable by the taxpayer. A similar question was raised by the noble Lord, Lord Marks, at an earlier stage of this Bill. The Supreme Court of Canada's view was expressed trenchantly:

> "Where the government has collected taxes in violation of the Constitution, there can be only one possible remedy: restitution to the taxpayer."

4.15 pm

I submit that we can trust our judges to follow the example of their Canadian counterparts and to use these remedies as and when they deem them to be appropriate for all parties involved, with consistent regard to interests and expectations of those who may benefit from or be disadvantaged by retrospective quashing, as set out in new subsection (8)(c) and (d), as inserted by Clause 1.

I think it also worth noting that, although separate, the removal of the presumption should reduce concern about prospective-only remedies. I remind your Lordships that the vote on this issue on Report was very narrow. I hope some of those who previously opposed giving judges this new power will now be able to remove their objection.

At this point, I should also touch on Amendment 1B by the noble Lord, Lord Marks, on the interests of other parties who may be able to claim a remedy if a retrospective instead of prospective order is used. I do not think that this amendment is necessary. New subsection (8) sets out what judges should consider when determining an appropriate remedy, and as I have set out already, that includes the interests or expectations of persons who would benefit from the quashing of the impugned act. I believe this is sufficient to include the concept that the noble Lord, Lord Marks, puts forward. The court may also set conditions on the orders it makes, which means it has the capacity to tailor the remedy further. I am also reluctant that the list of factors should direct the court in any way, which this amendment appears to do. I trust the court to decide what is appropriate in each case. Therefore, I urge the noble Lord not to press this amendment.

[Lord Stewart of Dirleton]

I turn now to the Eba case measures and to Clause 2. The judgment in the Eba case in Scotland, and the Cart case in England, made permission to appeal decisions of the Upper Tribunal subject to judicial review. The ouster clause, which will prevent this type of review in future, save for jurisdictional or procedural errors, is returned to the Bill in amendments made by the other place. This removes the alternative approach your Lordships adopted, originally proposed by the noble and learned Lord, Lord Etherton, which would have allowed judicial review of this sort to continue but made that judgment final. This effectively moved the bar one stage higher in the court system than the Government's original proposal. I recognise that it was a thoughtful and considered attempt by the noble and learned Lord to find a middle ground. It is legitimate to argue that the bar should be set higher. As the Government set out, this is a question of where to draw the line, and there is no absolute, correct answer.

We will all, I think, agree with the principle that there has to be finality to judicial processes to ensure that the court system can serve individuals efficiently and effectively. We believe that the scrutiny offered by appeal to the First-tier Tribunal, and then the Upper Tribunal, is sufficient—a proposition which is made out by the very low success rate of Cart or Eba judicial reviews. The Government are firmly of the view that our original proposal was the correct approach and that, unlike with the presumption, we must insist on this matter.

I know that a number of noble Lords, in particular Lord Marks, have expressed more general concern about the Government using an ouster clause to give effect to their policy on Cart and Eba and that it has been suggested as a template for future potential ouster clauses. To be clear on to this, we describe this clause as a template because it is clear about Parliament's intent, targeted at a specific and clearly identified policy mischief—in this case invoking the supervisory jurisdiction of the High Court over a refusal of permission to appeal from the First-tier Tribunal to the Upper Tribunal, itself a judicial body—and has appropriate protections in the form of the natural justice exemption. In these ways, it seeks to learn the lessons of previous failed attempts at ouster clauses that were too broad, too vague and did not offer adequate protections. Overall, I believe that removing the presumption strikes a balance on the judicial review measures. It is sensitive to the aims of the Government but also accommodates the concerns expressed in your Lordships' House.

Noble Lords will have also seen that the other place disagreed with the amendment of the noble Baroness, Lady Chapman, on legal aid for coroners' inquests. Although the other place formally disagreed with this amendment because it engaged financial privilege, I assure noble Lords that the Government considered it carefully and did not disagree with it on a technicality. I know that your Lordships have debated that amendment twice already, so I do not intend to go into it in great detail. However, the Government have always believed that families should be at the heart of the inquest process and that there should be a fair funding system to support them. During the debates on the Bill and elsewhere, the Government have listened to the arguments made about the nature of inquests where public bodies are represented. I also note the argument that, while the inquest process is inquisitorial, the reality for many bereaved families is that it can feel adversarial where a public body is represented and a bereaved family is not.

The Government continue to ensure that inquests put bereaved families at the centre of the process. Our legal aid means test review is currently out for consultation and proposes to make access to legal help for bereaved families at inquests non-means tested, which follows our change in January to make access to legal representation at inquests through the exceptional case funding scheme non-means tested. However, I have heard the arguments that the Government's recent reforms to exceptional case funding do not go far enough. The means test review invites views on our proposals to remove the means test for legal help at inquests where the case relates to a potential breach of ECHR obligations or significant wider public interest. If anyone, whether a charity such as Inquest or a bereaved person, does not think that these proposals go far enough, they can of course respond to the consultation to that effect, proposing alternative solutions. The Government will consider all responses to the consultation and respond in the usual way. On that basis, therefore, I do not believe that Amendment 11B, tabled by the noble Lord, Lord Ponsonby, which calls for a further review of legal aid for inquests, is necessary.

More widely, the Government are committed to supporting bereaved families going through the inquest process. Of course, how bereaved families are supported in the wake of a major disaster and proposals for an independent public advocate have been an important part of this debate. That will require further detailed work to ensure that any new functions such as those proposed are in the wider public interest; that they properly meet a need that inquests and inquiries do not; and that they do not adversely cut across established structures and processes. The Government will consider this further as part of our work to respond to Bishop James Jones's review of the experience of the Hillsborough families. I beg to move.

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Marks of Henley-on-Thames***

At end insert "and do propose Amendment 1B in lieu—

1B: Page 2, line 23, at the end insert—

"provided that the court should seek to avoid exercising the power under subsection (1)(b) in such a way as to deprive a remedy from any persons who would have been entitled to seek a remedy by reason of the unlawfulness of the impugned act but who had not themselves been party to the application for the quashing order.""

Lord Marks of Henley-on-Thames (LD): My Lords, I am very grateful to the Minister for the careful and comprehensive way in which he opened this debate. Nevertheless, I regret the fact that the House of Commons rejected our Amendments 1 to 3 on prospective-only quashing orders. However, I greatly welcome the

acceptance by the other place of the amendment moved by the noble Lord, Lord Anderson of Ipswich, removing the presumption that the court must generally exercise the new powers unless it sees good reason not to do so.

That presumption was by far the most offensive part of the Bill. It was rightly opposed across the House by lawyer and non-lawyer Peers alike. The noble Lord, Lord Anderson, is to be congratulated on the success of the amendment and I am grateful to the Government for accepting it. What we now have is an unfettered judicial discretion, circumscribed only by the requirement to consider the factors listed in Clause 1(8).

I have made it very clear that I oppose prospective-only quashing orders in principle. I do so first on the basis that their effect is to give retrospective validation to actions or decisions previously taken or regulations passed by government that the court finds unlawful and merit a quashing order. They breach the principle that it is for Parliament, not the courts, to change the law.

The second main reason for my opposition to such orders is that they do not protect those disadvantaged by unlawful government action taken before a quashing order takes effect. Where such an order is made, therefore, persons who are not before the court to present their cases are left with no remedy in respect of the unlawful action so they lose out against the well-funded, well-represented litigant who secured the prospective-only quashing order and the Government do not have to remedy the wrong for those affected before that order takes effect. That is a serious breach of the principle that proven wrongs should carry a remedy.

I pointed out on Report that this involves us or may involve us in breaching our international obligations, in particular in environmental cases, under Article 9 of the Aarhus convention, the obligation to provide an adequate and effective remedy to all affected by a breach by public authorities in environmental law, and in ECHR cases under Article 13 to ensure provision of an effective remedy for breach of the convention. I believe those principles outweigh any possible usefulness of the availability of a tool in the judicial toolbox to relieve government of the effects of unlawfulness.

It is said that unlawfulness may have worked to the benefit of some who relied on the law as they erroneously, as it turned out, believed it to be. For such unusual cases, any unfairness can be cured by administrative action or by suspended quashing orders with conditions to which we have not taken objection and/or by changing the law if Parliament sees fit to do so.

That said, the elected House has rejected our amendments, so my amendment in lieu is tabled to bring into sharp focus only the second factor that I have outlined—the lack of a remedy for all those adversely affected by previous government unlawful action if a prospective-only quashing order is made. My amendment in lieu would require the court to seek to avoid making such an order in cases where a person who would have been entitled to seek a remedy because of the unlawfulness in question would be deprived of a remedy by the fact that the quashing order was prospective-only. The amendment would address the point I have been making and would keep us in line with our international obligations.

I would like the Minister to accept it but if he cannot do so, as he indicated from the Dispatch Box in opening, then in line with the confidence that he expressed that it is intended that the courts should exercise the discretion, now thankfully presumption-free, with a view to avoiding the deprivation of a remedy that my amendment seeks to address, I would like to hear that assurance repeated and clarified.

I should add that I have been very grateful to the Minister and to this colleague in the other place, Minister Cartlidge, for engaging with me on this issue in two meetings and to the Bill team for the helpful pack it has put together relating to the principles applied by the Canadian courts addressing the question of prospective-only quashing orders. Those cases in Canada have, of course, persuasive authority in this jurisdiction and it is clear that the Canadian courts have exercised the discretion with great care. They have worked on the basis that before a prospective-only quashing order may be justified, first, the court's decision on unlawfulness must represent a substantial change in the law and, secondly, the interests of all litigants and potential litigants must be carefully considered and balanced. I point out that without the removal of the presumption, those principles would not be applied in this jurisdiction. They are, however, principles that I endorse and which underlie my amendment in lieu. I await the Minister's further response with interest.

4.30 pm

On Cart JRs, while I regret the rejection of the amendment from the noble and learned Lord, Lord Etherton, which I thought was an elegant compromise and removed what I see as a pernicious danger of this clause being used as a template for future ouster clauses, I am prepared to trust that this clause will be treated, as the noble and learned Lord assured us in his opening that it would be, as strictly limited to the circumstances it addresses.

On legal aid at inquests, I look forward to hearing the amendment to be moved by the noble Lord, Lord Ponsonby. I do not believe, as has been advanced by the Government, the proposition that there is a distinction between inquisitorial and adversarial processes which justifies the inequality of arms that is inherent in a system that allows rich and powerful bodies, public and private, to outspend and outdo bereaved families at inquests. In our view, legal aid exceptional case funding does not meet that case. I beg to move.

Lord Anderson of Ipswich (CB): My Lords, the presumption in Clause 1 was a curious and misshapen thing—so much so that I did wonder when moving against it whether it was always intended to be the hunk of meat that would be thrown off the back of a sledge to distract the ravening wolves. But these things do not dispose of themselves and I am grateful to the noble and learned Lord, Lord Stewart of Dirleton, to the Justice Minister, James Cartlidge, who is also my MP, and, before them, to the noble Lord, Lord Wolfson, for the good grace, courtesy and good sense with which they agreed to put it out of its misery.

I do not share the principled objection of the noble Lord, Lord Marks, to prospective-only quashing orders. The noble and learned Lord, Lord Brown, wrote

[Lord Anderson of Ipswich]
about this in the *Times* and I respectfully endorse what he had to say. But I am pleased that the noble Lord agrees at least that these prospective-only orders, whose place in our law is confirmed by Clause 1, are at least mitigated by the removal of the presumption.

Lord Pannick (CB): My Lords, may I pay tribute to the noble Lord, Lord Wolfson of Tredegar, on his resignation as Minister of Justice? He played a significant role behind the scenes in ensuring that the Government have made the welcome concession of agreeing to the amendment from the noble Lord, Lord Anderson, to remove the presumption. The noble Lord's resignation has confirmed, if there were any doubt, his commitment to the rule of law. His resignation will be welcomed only by his senior clerk at One Essex Court Chambers in the Temple as he returns to the commercial Bar, as well as to the Back Benches.

On topics as diverse as the Cart jurisdiction and breastfeeding, the noble Lord's contribution as a Minister was marked by his hard work, his eloquence, his ability to respond constructively to the concerns of other noble Lords, and his wit. He is an enormous loss to the Front Bench and I very much look forward to his Back-Bench contributions.

As I said in Committee, echoing the words of the noble Baroness, Lady Jones of Moulsecoomb, the only thing to be said in favour of Part 1 of this Bill, on judicial review, is that it could have been a great deal worse. I cannot work up any greater enthusiasm at this stage for these provisions. The Bill, in Part 1 on judicial review, is not quite as much of a damp squib as the efforts of a former Lord Chancellor, Chris Grayling, in his infamous Social Action, Responsibility and Heroism Act 2015—but it is a close call.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I rise diffidently to agree wholeheartedly with the approach of the noble Lord, Lord Anderson, to this legislation. I strongly support Motion A; I cannot, I am afraid, support Motion A1 from the noble Lord, Lord Marks. I suggest that it would in fact compromise and complicate what is a valuable, new, flexible, broad power that gives a judge the ability to make whatever order he or she thinks is best calculated to do justice in the individual case, and to meet the problem that we have encountered over many years of not having any power to validate retrospectively anything that has happened in the past. I do not know whether anyone noticed the piece I wrote in the *Times* about my noble and learned friend Lord Hope's Ahmed case, but that was a classic case in point which shrieked out for this new power.

So there it is: orders can now be made subject to whatever limitations or conditions the judge thinks right and appropriate, and I respectfully suggest that this is so much better than the approach of the noble Lord, Lord Marks, with whom I am almost always in agreement—but surely not on this. He prefers retrospective legislation, but how unwieldy, inflexible and incapable of being adapted to the individual case that is, and how unwelcome as a whole we consider retrospective legislation—so I support Motion A.

Lord Garnier (Con): My Lords, I join the noble and learned Lord, Lord Brown, in all that he has said, and I say with greater confidence, albeit with some reticence, if that is not a contradiction, that I disagree with my friend, the noble Lord, Lord Marks, with whom I am a fellow member of chambers. I think it is fair to say that the Back Benches of the Conservative Party in this House are now more greatly adorned by the promotion, I would say, of the noble Lord, Lord Wolfson, to these Benches, and I look forward to his contributions from his Back-Bench seat. The noble Lord, Lord Pannick, correctly described my noble friend, but he and I need to be very careful because we now have yet another competitor for a car park space in Brick Court.

Lord Ponsonby of Shulbrede (Lab): My Lords, I too would like to thank the Minister for his careful introduction to the Motions before us today. I would also like to thank all those who worked to improve this Bill during its progress through both Houses, and I single out my honourable friend the Member for Hammersmith, Andy Slaughter, and Alex Cunningham, the Member for Stockton North. I would also like to thank noble, and noble and learned, Lords from the Cross Benches who have taken an active interest, particularly in the judicial review parts of this Bill, which has led to the substantial improvements which we have just heard about.

There has been a spirit of consensus on parts of this Bill, particularly those concentrating on court procedures. I thank the noble and learned Lord's predecessor, the noble Lord, Lord Wolfson, for numerous discussions about court procedures and how they might be monitored and improved. That is not a point of contention we are considering today.

I start with Motion A and the amendment to it, Motion A1, from the noble Lord, Lord Marks, on Clause 1 of the Bill. Yesterday the Government accepted the amendment in the name of the noble Lord, Lord Anderson, which would do away with the presumption that quashing orders would be prospective. As my honourable friend said yesterday, this

"extracts the worst of the sting in clause 1". —[*Official Report*, Commons, 26/4/22; col. 604.]

I congratulate the noble Lord, Lord Anderson, on this achievement. It is in the spirit of recognising this compromise and move by the Government that, while we are sympathetic to Motion A1, in the name of the noble Lord, Lord Marks, we would not support it if it were pressed by the noble Lord.

In Motion B, on Clause 2 of the Bill, the Government propose that the House do not insist on its Amendment 5, in the name of the noble and learned Lord, Lord Etherton. The amendment would have retained Cart reviews in the High Court and Court of Session in limited circumstances. I understand the noble and learned Lord will not be revisiting this issue, and we will not oppose the Government's Motion. For the avoidance of doubt, I should make it clear that we see no purpose in Clauses 1 and 2 of this Bill. It would be our preference to remove these clauses from the Bill in their entirety, but we recognise the votes yesterday and we will not be opposing the Government's Motion.

I now turn to the Government's Motion C and my amendment to it, Motion C1. The original amendment in my name ensured that bereaved people, such as

family members, would be entitled to publicly funded legal representation in inquests where public bodies, such as the police or a hospital trust, are legally represented. The original amendment in this House was won with a handsome majority. The purpose of the amendment was to achieve an equality of arms at inquests between bereaved people and state bodies. This is an issue not just of access to justice, but of fairness. How can it be right that state bodies have unlimited access to public funds for the best legal teams and experts, while families are often forced to pay large sums towards legal costs, or risk representing themselves or resorting to crowd-funding? This fundamental point was acknowledged and agreed with yesterday by Sir Bob Neill, chairman of the Justice Select Committee in the other place.

The reason given by the Government for objecting to this amendment was that it would involve a charge on public funds. I acknowledge that point and the amendment now asks for a review. I also acknowledge the point that the noble and learned Lord made—that that is not the sole reason for the objection to the amendment in my name.

Five years have passed since Bishop James Jones delivered his report on the experience of the Hillsborough families. In that report, Bishop Jones made recommendations, which included publicly funded legal representation for bereaved families. In May 2021, the Justice Committee recommended that for all inquests where public authorities are legally represented, non-means-tested legal aid or other public funding for legal representation should be available for people who have been bereaved. This is a long-standing issue which, to be fair to the Government, as we have heard today, they acknowledge there is more work to be done on.

I have had a number of meetings with the Minister and his colleague Mr Cartlidge. Unfortunately, we have not reached an agreement on this matter, although I thank them for the efforts that have been made. I want to run through the arguments they advanced during our meetings. First, as the noble and learned Lord has said, there is a means test review under way. The Government's argument is that by highlighting one particular group—namely, bereaved families—it would raise expectations for that group and that may not be fair to that group while the review is under way.

4.45 pm

The second point which was made to me is that other groups which are being considered within this general review of legal aid may feel disadvantaged if a spotlight is shone on this particular disadvantaged group. That was the essence of the arguments that we had in our discussions. I have to say that that is a weak argument. The Ministry of Justice—indeed any government department—is well used to managing expectations, and managing competing claims for public funds. It is what it does every single day. We are suggesting to recognise the strength of feeling through a multitude of family groups, well-established pressure groups—not least Inquest—through well-established bodies and indeed through what the Government themselves have said in acknowledging that this is a real issue.

We therefore have an opportunity here today to press home the view which this House took on Report with a handsome majority, to ask the Government to think again and to put in place a review of the funding for these families so that there can be a sense of fairness in coroners' courts, where many people feel they are not getting a fair hearing or a fair crack of the whip.

Lord Stewart of Dirleton (Con): My Lords, I have listened to submissions from your Lordships in the course of this short debate at the ping-pong stage. I think the House and those who spoke were united in the warm words for my noble friend Lord Wolfson of Tredegar, who is indeed, as your Lordships said, a grievous loss to the Front Bench. That loss is offset only by his arrival on the Back Benches, where I am sure he will contribute his wisdom, his ready wit and his good sense to our debates going forward. As to the matter of car parking at the chambers of the noble Lord, Lord Pannick, and those of my noble and learned friend Lord Garnier, I regret that that matter lies outwith the power of the Government to seek to resolve.

On the point just taken from the Opposition Front Bench by the noble Lord, Lord Ponsonby, I reiterate my point. I accept all that he said about the impact of inquest proceedings on families and the well-expressed and carefully considered arguments advanced by family groups and pressure groups, and in this House and in the other place. However, I return to the central point, which is that in light of the review procedure put forward by the Government—a review published on 15 March that is to be followed by a full consultation, after which the Government hope to publish a consultation response in autumn 2022—I urge the House to take the view that the amendment the noble Lord proposed from the Front Bench is premature.

On the point taken by the noble Lord, Lord Marks, I am happy to reiterate what I said about the nature of the ouster clause in these proceedings, in the manner in which it has been formulated, in the hope that what I have said from the Dispatch Box indicates that the Government treat this as a particularly focused instrument.

I am grateful to the noble and learned Lord, Lord Brown of Eaton-under-Heywood, speaking as he does with particular knowledge of these matters, having sat in the Cart hearing itself. I accept and adopt respectfully his confidence in the ability of our judiciary properly to use the tool in the judicial toolbox—the club in the judicial golf bag—which the Bill seeks to give.

In those circumstances, I return to my invitation to the House to accept the Bill as received from the Commons. I express my gratitude to all noble Lords who have contributed today, who have courteously and thoughtfully engaged with me and, for that matter, the Minister in the other place. On behalf of my noble friend Lord Wolfson of Tredegar, who of course carried out the bulk of work on this measure, I thank noble Lords for their thoughtful engagement with him, in the course of his stewardship of the Bill in your Lordships' House.

Lord Mackay of Clashfern (Con): My Lords, I would like to say something about the proposal in relation to the coroners' court. The problem in the coroners' court is that well-heeled litigants are allowed to participate in the coroners' inquest when the people with real interest, namely the relatives of the deceased

[Lord Mackay of Clashfern]
whose death is being inquired into, are not able to afford any protection at all. The well-heeled litigants are able to use litigation experts—counsel, senior counsel maybe—and leave the relatives of the deceased without anything at all in the way of legal assistance.

This point arose in this House in connection with the Liverpool situation some years ago. The suggestion was that these well-heeled people should not be allowed to participate in the inquest, unless they were prepared to make available to the relatives legal advice and help to exactly the same limit that the well-heeled people were proposing. That applies to those well heeled by the taxpayer, and applies to those who are well heeled in other ways. It is much more general than legal aid.

Therefore, it seems to me that the inquiry that the Government are proposing would be well added to by taking account of this possibility, which we certainly advocated here. I think I am right in saying that my noble friend Lord Hailsham was also involved on that occasion. At that time, it seemed to be a Home Office responsibility, because it was the Home Office that was responding to the report from Liverpool. It was said that we would get an answer to this very obvious way of dealing with this and making it fair in due course. "Due course" is a very flexible expression. I would think it highly likely that it should be involved in this inquiry. Just restricting it to legal aid seems to make it impossible to really get adequate representation. It is much better that the representation should be equal and level on both sides.

Of course, in some of these inquests, there may be more than one well-heeled participant. Therefore, it should be made a condition of them being allowed to participate, if it is joint and several or if it is just one, that they are prepared to make resources available to the relatives of an equal standard to the resources that they wish to use. That seems abundantly fair; it is not a charge on a public interest or the public purse, except in the case where the well-heeled people are supported by the taxpayer. The taxpayer will have to pay what they seek to put out for their lawyers. I cannot see why dividing this between themselves and the other parties is not a fair way of dealing with it. It does not in any way increase the responsibility of the public purse.

Viscount Hailsham (Con): My Lords, may I make one observation about Motion C1, which I am minded to support? It will bring a clear recommendation to Parliament within a year. This seems to be a very strong recommendation for it.

Lord Marks of Henley-on-Thames (LD): My Lords, I thank everybody who has spoken in this short debate. I also thank the noble and learned Lord, Lord Mackay, and the noble Viscount, Lord Hailsham, for the spirit of what they said on the legal aid point. I thank the noble and learned Lord for his helpful suggestion. I am also grateful to the Minister for the way in which he opened this debate and for his careful response. I add my warm thanks for the contribution of the noble Lord, Lord Wolfson, during his time as Minister, and for his engagement with all of us on the Bill and on many others, going back to last year and to what is now the Domestic Abuse Act.

I will not press Motion A1 to the vote. I maintain my opposition to prospective-only quashing orders. I have read and appreciated the contribution of the noble and learned Lord, Lord Brown, to the *Times* newspaper on this point. I understand his point of view. He puts it as eloquently and as highly as it can be put. Nevertheless, there are two arguments.

At this stage, we should recognise the importance of the Government's withdrawal of the presumption which would effectively have fettered the discretion of the judges. I will seek leave to withdraw this Motion on the basis of the description of the discretion as given by the Minister. I do so with confidence that the Government will apply the principles applied in the Canadian courts and develop the jurisprudence in a way that secures protection for all parties or potential parties before the courts. I beg leave to withdraw Motion A1.

Motion A1 (as an amendment to Motion A) withdrawn.

Motion A agreed.

Motion B

Moved by ***Lord Stewart of Dirleton***

That this House do not insist on its Amendment 5, and do agree with the Commons in their Amendment 5A to the words restored to the Bill by the Commons' disagreement to Lords Amendment 5.

5A: Page 4, line 2, leave out "passed without" and insert "the Bill for which would not require"

Lord Stewart of Dirleton (Con): My Lords, I have already spoken to Motion B. I beg to move.

Motion B agreed.

Motion C

Moved by ***Lord Stewart of Dirleton***

That this House do not insist on its Amendment 11, to which the Commons have disagreed for their Reason 11A.

11A: Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this reason may be deemed sufficient.

Lord Stewart of Dirleton (Con): My Lords, I have already spoken to Motion C. I beg to move.

Motion C1 (as an amendment to Motion C)

Moved by ***Lord Ponsonby of Shulbrede***

At end insert "and do propose Amendment 11B in lieu—

11B: Insert the following new Clause—

"Independent review of publicly funded legal representation for bereaved people at inquests

(1) The Lord Chancellor must commission an independent review of the need for provision of publicly funded legal representation for bereaved people at inquests not more than six months after the passing of this Act.

(2) The review must be chaired by a person appointed by the Lord Chancellor.

(3) The review must include a consultation with interested stakeholders, whose submissions must be published.

(4) The Lord Chancellor must publish the outcome of the review and lay it before Parliament no later than one year after the passing of this Act.""

Lord Ponsonby of Shulbrede (Lab): My Lords, I beg to move Motion C1.

4.58 pm

Division on Motion C1

Contents 219; Not-Contents 229.

Motion C1 (as an amendment to Motion C) disagreed.

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Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kakkar, L.
Kamall, L.
Keen of Elie, L.
King of Bridgwater, L.
Kinnoull, E.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Mackay of Clashfern, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrow, L.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Spencer of Alresford, L.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Stroud, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Thurlow, L.
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Tyrie, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Wasserman, L.
Watkins of Tavistock, B.
Wei, L.
Wharton of Yarm, L.
Wheatcroft, B.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Aspley Guise, L.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

Motion C agreed.

Nationality and Borders Bill

Commons Reasons

5.16 pm

A message was brought from the Commons, That they disagree to an amendment made by the Lords to the Nationality and Borders Bill in lieu of an amendment to which the Commons disagreed, which was in lieu to a Lords amendment to which the Commons disagreed, for which the Commons assign a reason. They disagree to certain other amendments made by the Lords in lieu of amendments so restored to the Bill by the Commons disagreement to a Lords amendment, for which the Commons assign a reason. They disagree to the remaining amendments made by the Lords to the Bill in lieu of Lords amendments made in lieu of certain other amendments in lieu to a Lords amendment to which the Commons disagree, for which they assign a reason.

Motion A

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

That this House do not insist on its Amendment 5D, to which the Commons have disagreed for their Reason 5E.

5E: Because the Commons consider that the provisions of Part 2 are compliant with the Refugee Convention without the need for an interpretation provision; and that it is not appropriate to give the courts a power to make a declaration of incompatibility.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I beg to move Motion A that this House do not insist on its Amendment 5D, to

which the Commons have disagreed for their Reason 5E. With the leave of the House, I will also speak to Motions B and C.

We return again to consider the Nationality and Borders Bill, and I am grateful to noble Lords on both sides of the House for the careful consideration they have given to the issues at hand and the care with which they have scrutinised this Bill. We must now make progress to pass this on to the statute book.

I turn first to Motion A and Amendment 5F, which would require that the provisions of Part 2

"must be read and given effect in a way which is compatible with the Refugee Convention".

The Government's position remains that the provisions of this Bill are compliant with the refugee convention. The other place has consistently accepted this position. Ultimately, though, I cannot support this amendment as it is an attempt to copy Section 3 of the Human Rights Act 1998, the effect of which on the interpretation of the legislation is unique and far outside the ordinary rules of statutory interpretation. The amendment goes on to provide a mechanism for the courts to declare that certain provisions may be incompatible. Again, I must take issue with this for the same reasons, because we absolutely assert that the interpretations of the refugee convention which we are taking in this Bill are fully compliant. I will explain to the House why it is open to us to take this view.

The refugee convention leaves certain terms and concepts open to a degree of interpretation by contracting states. This ensures that it can stand the test of time and be applied across many jurisdictions with different legal systems. Necessarily, therefore, there is a need to define and apply such terms in domestic legislation in accordance with the principles of the Vienna convention —the noble Lord, Lord Kerr, made that point yesterday —taking a good-faith interpretation in accordance with the ordinary meaning of the language of the convention.

The provisions in Part 2 are in line with this. They are clear and unambiguous, and are a good-faith interpretation of the refugee convention. The plain fact is that there may be differences in interpretation in different contracting states—that is how international law necessarily must work to allow it to remain relevant and applicable across a range of jurisdictions—but this does not mean that the interpretation we are taking here, to which we ask Parliament to agree, is not a good-faith interpretation. We have considered carefully the compatibility of these provisions with the refugee convention, and a great deal of the Government's position was comprehensively set out in the all-Peers letter sent by my noble friend Lord Wolfson.

We need to consider one of the primary purposes of Part 2: to provide a clear interpretation of key components of the refugee convention. This will benefit all those who interact with the asylum system, be they Home Office decision-makers, the courts, legal representatives or, most importantly, asylum seekers themselves. We have talked at length about how people seeking protection deserve a clearer, quicker and more just system. Let us not take away from the gains made by this Bill by casting doubt on what Parliament has agreed are fair interpretations of the convention.

The new amendment is not only unnecessary because the contents of Part 2 are fully compliant with our international obligation; it is also contrary to a fundamental purpose of this Bill, which is, where possible, to tightly define the nature of our obligations under the refugee convention while remaining compliant with those obligations to support consistent and accurate decision-making.

Yesterday, the noble Baroness, Lady Chakrabarti, said that her Amendment 5D, to which this amendment is similar in effect, was intended to do

"no more, but no less, than that already provided for in law by the ECHR".—[*Official Report*, 26/4/22; col. 148.]

The ECHR has been given effect in domestic law through the Human Rights Act 1998 and is constitutionally different, as the ECHR has a supranational body whose judgments relating to interpretation are binding. The Human Rights Act therefore gives courts the authority, so far as it is possible to do so, to read and give effect to primary legislation and subordinate legislation in a way that is compatible with the convention rights.

However, the Act goes further and recognises the primacy of Parliament, as a declaration of incompatibility does not invalidate either the primary legislation or subordinate legislation where primary legislation prevents removal of incompatibility. The refugee convention has no supernatural court—I mean supranational court; things are getting spooky—and is not incorporated into domestic law. It is no different to other international instruments beyond the ECHR, and there is no rational reason to treat it or Part 2 of this Bill differently to other parts of the Bill in this regard. The amendment would have wider cross-government implications.

The amendment now includes a requirement for the Secretary of State to be notified when the court or tribunal is considering whether to make a declaration of incompatibility with the refugee convention, and allows the Secretary of State to join proceedings. Unfortunately, that does nothing to alleviate our objections to the amendment, as I have just outlined. Our position remains that the provisions in Part 2 are fully compliant with our international obligations, in particular those under the refugee convention.

Turning to Motion B and Amendments 6H and 6J, I must again insist that we cannot accept anything that goes against one of the absolutely fundamental aspects of this Bill: deterring people from making dangerous and unnecessary journeys. The status of Clause 11 as a deterrent is closely tied to the "first safe country" principle. Although the inadmissibility policy encourages asylum seekers to claim asylum in the first safe country they reach, it might not always result in an asylum seeker being removed to a safe third country; for example, due to some documentation or logistical issue. Consequently, the differentiation policy is required to add an extra layer of deterrent to the asylum policy framework, and we have a moral obligation to act to prevent such dangerous and unnecessary journeys. I cannot, therefore, accept this amendment.

I turn now to Amendment 6H, which again seeks to shift the burden of proof in applying Clause 11 on to the Secretary of State and seems to intend to make it more difficult for the Government to apply one of their core principles. First, I assure noble Lords that

[Baroness Williams of Trafford]
my officials are developing detailed guidance for decision-makers to assess whether the claimant qualifies for refugee status and, where they do, whether they are a group 1 or group 2 refugee. As is currently the case, we will continue to support claimants throughout the asylum process to ensure that they are able to present all evidence substantiating their asylum claim, including in relation to whether they are group 1 or group 2 refugees, for example via a substantive asylum interview with a Home Office official. As I explained, while Home Office officials will continue to provide this support, it remains necessary for the claimant, not the Secretary of State, to demonstrate whether they are group 1 or group 2. I therefore cannot accept this amendment.

I turn now to Amendment 6J, which, to be clear from the outset, is completely unnecessary. The Government, as I and my colleagues in the other place have said many times, are fully committed to complying with our international obligations. All the clauses in this Bill, the changes to the Immigration Rules which will be required to implement them, and the *New Plan for Immigration* more broadly will be compliant with all our international obligations. This includes our obligations under the refugee convention, the European Convention on Human Rights, and the United Nations Convention on the Rights of the Child.

In fact, there is already legislation which ensures compatibility between the Immigration Rules and our obligations under the refugee convention. Section 2 of the Asylum and Immigration Appeals Act 1993 already sets out the primacy of the refugee convention in the Immigration Rules. It states:

"Nothing in the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the Convention."

I remind noble Lords that it is our unwavering position that all provisions in the Bill, including Clause 11, are compliant with our obligations under the refugee convention. I also assure noble Lords that Section 2 of the 1993 Act will continue to act as an additional safeguard for policies covered in the Immigration Rules, which will include differential treatment of refugees. As such, I cannot support the amendment.

Turning lastly to Motion C, Amendments 7F and 7G would effectively create an amnesty to allow people who have claimed asylum prior to the commencement of the Bill, along with their adult dependants, the right to work after six months rather than the current 12 months, as well as removing the condition restricting jobs for people who are allowed to work to those on the shortage occupation list. The amendment would not only reward people who have in many cases arrived illegally in an attempt to undermine our economic migration system, but it would create enormous operational burdens for the Home Office to implement, very likely—as per the findings of the Government's review into the policy —leading to a net yearly loss to the department in running costs.

I reassure noble Lords that the Government want to see all claims being settled within six months, so that people can get on with rebuilding their lives, including working. We are making every effort to ensure this is a reality under the *New Plan for Immigration*. I therefore advise the House that we cannot accept this amendment. I conclude my remarks there and beg to move.

Motion A1 (as an amendment to Motion A)

Moved by ***Baroness Chakrabarti***

At end insert "and do propose Amendment 5F in lieu—

5F: Insert the following new Clause—

"Interpretation of Part 2

(1) So far as it is possible to do so, the provisions of this Part must be read and given effect in a way which is compatible with the Refugee Convention.

(2) If a court or tribunal determining a question which has arisen in connection with the provisions of this Part cannot read and give effect to those provisions in a way which is compatible with the Refugee Convention, it must make a declaration to that effect.

(3) Where a court or tribunal is considering whether to make a declaration of incompatibility, the Secretary of State is entitled to notice in accordance with rules of the court or tribunal.

(4) In any case to which subsection (3) applies the Secretary of State is entitled, on giving notice in accordance with rules of the court or tribunal, to be joined as a party to the proceedings.

(5) Notice under subsection (4) may be given at any time during the proceedings.""

Baroness Chakrabarti (Lab): My Lords, once more I thank noble Lords for caring about the refugee convention, and I thank the Minister for the courtesy of each and every one of our exchanges over many months.

5.30 pm

Last night, however, her colleagues in the other place gave barely one thought, and certainly two fingers, to your Lordships' House. The Minister there made just one argument, a shorter version of the noble Baroness the Minister's, which I will come to. He gave just one argument against my amendment: that courts should not be able to declare laws incompatible with human rights. Therefore, the Government's position in the other place moved from "this Bill complies with our obligations and so do we" to "and what's more, the courts have no place at all in scrutinising our compliance." Yet earlier today, on the Judicial Review and Courts Bill, the noble and learned Lord, Lord Stewart of Dirleton, for whom I have enormous respect, urged us to trust courts. That was in relation to prospective-only quashing orders, which generally will be more likely to suit the Government than individuals, let alone desperate, vulnerable refugees.

The Minister developed her colleague's argument a little more just now, and I am grateful for that. She made a distinction regarding being able sometimes to declare laws incompatible with the ECHR, on the basis of the European convention having a court in Strasbourg that sits as an occasionally perhaps supernatural, but certainly supranational court. However, I am afraid that that distinction does not work for me, not least because many of her colleagues spent many years complaining about that international court and saying that our courts know better and that therefore, we should pay less attention to the court in Strasbourg and more attention to empowering our own courts.

That is what the courts themselves have done in recent years in relation to the jurisprudence of the Human Rights Act. They have been more confident as domestic courts empowered to defend our rights and freedoms here. That is what our courts should be doing in relation to the refugee convention as well.

What is more, one minute, the Minister said that the refugee convention was not incorporated into our law, and the next she reminded us that it is, by way of Section 2 of the 1993 Act, which provides that Immigration Rules must comply with the refugee convention. How odd it is that Immigration Rules, which are a legislative device, should comply with the refugee convention but individual acts of discretion, whether by Home Secretaries, immigration officers or prosecutors, need not necessarily do so. That seems very odd indeed—an internally illogical and incoherent argument.

We talked about human rights all over the world at Oral Questions earlier and had the privilege of hearing from the noble Lord, Lord Ahmad of Wimbledon. Democratic states have written constitutions which entrust supreme courts with the authority to hold Governments to account and even to strike down legislation that violates fundamental rights. Here, in our system, courts can only ensure that executive discretion is lawfully exercised, including by prosecutors, immigration officers and Home Secretaries. Executive discretion is lawfully exercised and very rarely can declarations, which are only persuasive, be issued. The incompatible law remains in place and the declaration is simply, "Please think again, Government and Parliament." That is done when a law is found to be absolutely in violation of fundamental rights. However, it now seems that even that level of judicial scrutiny is too rich for this Government's blood.

I recognise that we may be only a revising second Chamber, but if not to defend the rule of law, what are we for?

Lord Brown of Eaton-under-Heywood (CB): My Lords, I rise, I hope for the last time—a hope which will be shared by every Member of this House—to support this amendment. There are not many issues that it is worth going to the stake for, but surely the rule of law is one. I have spent 60 years of my life on it and do not propose to stop here. I suggest that your Lordships support this too.

This Motion as now put fully respects the sovereignty of Parliament, just as the Human Rights Act does. It is the one simple provision that is needed to ensure that questions about the legality of this Bill can be brought before our courts and decided by an independent judge, and it is surely the least contentious way of achieving that. Indeed, it is beyond logical objection. In truth, the only objection raised is that it is unnecessary —surely the weakest objection that one can ever produce. If we never passed a provision which was unnecessary, the statute book would be a good deal lighter and the better for it. But here, it is needed, unless Parliament—your Lordships' House and the other place—is happy to oust the courts' jurisdiction in the whole area of what constitutes a right to refugee status, to asylum sanctuary.

It did not appear seemly yesterday to intervene during the short contribution of—if he will allow me to call him this—my noble and learned friend Lord Mackay of Clashfern. My reverence for him is boundless, not least because 30 years ago he had the sagacity to promote me to the Court of Appeal. However, he surely cannot maintain that, because the Attorney-General advises, as she may well have done, that this Bill is refugee convention compliant, that is that and we should just buy into it without thought: that this would be a sufficient basis for putting the whole Bill beyond the purview of the courts. Think about Miller 2; think about the prorogation order. We were told very plainly, and none of us doubts, that Geoffrey Cox, QC and then Attorney-General, had said that this is perfectly lawful. But that did not put it beyond the courts. If ever there was a case for not putting compliance with international law beyond the courts, this surely must be it.

I will make three short points on the speech of the noble Lord, Lord Horam, yesterday, which attracted a rather ungenerous rebuke, although that is by the way. His first point was the general one that this is merely "an enabling Bill" giving the Government "power to do something". That is surely not so in respect of the important group of clauses we are considering here, which, under the heading "Interpretation of Refugee Convention", redefine it. Without our amendment, the courts would have no alternative but to apply those provisions, whether or not they are regarded as compatible with the convention. There is nothing by way of this being merely an enabling Bill; it is a declaratory Bill beyond question.

Secondly, the noble Lord, Lord Horam, reminded us of the five-page letter circulated by the then excellent Minister, whose ears must be burning already from the previous debate, and quite rightly, because his loss is a terrible one for us all. The letter set out the Government's legal arguments for contending that these definition provisions can be viewed as convention-compliant. I have the greatest regard for the noble Lord, Lord Wolfson, and certainly there is not a soul at the Bar who could have made more persuasive arguments to that effect. But they are just that: arguments. They should not therefore, of themselves, necessarily win your Lordships' support. Included among those arguments were many that had been roundly rejected in the course of this country building up a quarter of a century's worth of plain, authoritative jurisprudence that decided the questions of what the refugee convention required, which the noble Lord, Lord Wolfson, acknowledged are now being overturned by the Bill.

Thirdly and finally, the noble Lord, Lord Horam, at col. 157 of yesterday's *Hansard*, said that he fully agreed with the noble Lord, Lord Pannick, and myself,

"about the 2001 refugee convention".

He called it the 2001 convention; obviously there is the 1951 convention. He continued:

> "I do not want this Government to step outside that in any way. It would be a tragedy if that happened. It should not be allowed to happen; I believe that it will not happen."—[*Official Report*, 26/4/22; col. 157.]

But surely he must accept that there needs to be scope, therefore, for somebody to look at it independently once the statute is enacted.

Finally, if we look at the front cover of this Bill, we will see a statement, required by the Human Rights Act, by the Minister—the noble Baroness, Lady Williams

[Lord Brown of Eaton-under-Heywood]
—which says, under the heading of the European Convention on Human Rights, that it is her view that

"the provisions of the Nationality and Borders Bill are compatible with the Convention rights".

She may well indeed have been so advised by the Attorney-General, but surely nobody has ever doubted that that means that it is enough in itself; it is not. What the Act says is that you should try to construe it compatibly and if you cannot you declare it—precisely the mirror image of what is now proposed for this self-same legislation.

I urge your Lordships—not at this stage because it is so late in the day and the ping-pong ball has been returned two or three times already—to consider whether we really should quit on the constitutional issue on this vital rule-of-law question. At this stage, I urge the noble Baroness to divide the House on the issue and let it be supported by all those who want this country to abide by the rule of law.

Lord Pannick (CB): My Lords, I support what was said by the noble and learned Lord. When this matter went back to the House of Commons last night, the Minister there said that the amendment from the noble Baroness, Lady Chakrabarti, was "unnecessary, inappropriate and unconstitutional". What the Minister failed to recognise, with great respect, is that whether there has been compliance with the refugee convention has been a matter for the courts of this jurisdiction for at least the last 40 years.

5.45 pm

In the case of Sivakumaran, which is reported in [1998] Appeal Cases, pages 958 and 990, Lord Keith of Kinkel said, for your Lordships' Appellate Committee, that the provisions of the refugee convention

"have for all practical purposes been incorporated into United Kingdom law."

That principle was recognised by Parliament in Section 2 of the Asylum and Immigration Appeals Act 1993. With the greatest respect, the noble Baroness, Lady Williams, is simply wrong to suggest that the refugee convention is not part of our law. It is distinct from most other international agreements for that reason.

I well appreciate that this Government do not like their decisions to be subject to supervision by the judiciary for legality. But, even for this Government, to present political expediency as a constitutional doctrine is a hard sell. What is inappropriate and unconstitutional—to use the Commons Minister's words last night—is for the question of compliance with the refugee convention now to be determined not by the courts but a whipped House of Commons exercising its judgment.

There is another constitutional error, and a fundamental one, in the Government's approach to this issue. The noble Baroness, Lady Williams, told the House yesterday that

"there may of course be more than one good faith, compatible interpretation"—[*Official Report*, 26/4/22; col. 170.]

of the convention. She is nodding her head. Again, with the greatest respect, that is incorrect as a matter of law. In the case of R v Secretary of State for the Home Department ex parte Adan, reported at page 477 of [2001] 2 Appeal Cases, on pages 516-17, Lord Steyn, speaking for the Appellate Committee, rejected a submission made by counsel for the Home Secretary that there was a range of acceptable interpretations of provisions of the convention. I well remember the case, because I was the counsel for the Home Secretary who made that very submission. I repeat the declaration that I made yesterday that I practise at the Bar often in immigration cases.

What Lord Steyn emphasised in rejecting the submission that there were a range of possible acceptable interpretations was that:

"The subject of the Refugee Convention is fundamental rights".

Noble Lords will forgive me if I again quote, because it is such a fundamental point, but he also said, on behalf of the Appellate Committee of this House, that:

"In principle … there can only be one true interpretation of a treaty … In practice it is left to national courts, faced with a material disagreement on an issue of interpretation, to resolve it. But in doing so it must search, untrammelled by notions of its national legal culture, for the true autonomous and international meaning of the treaty. And there can only be one true meaning."

That is why the views of the United Nations High Commissioner for Refugees—who is so critical of the provisions of the Bill—are so important.

So the suggestion by the Minister, on behalf of the Government, that the Bill is a good-faith and therefore permissible interpretation of the convention is wide of the mark. The question is whether the Bill is a correct interpretation of the refugee convention—to which the answer is plainly no. To return to the phrase used by the Minister in the Commons last night, what is inappropriate and unconstitutional is for the Government, by the Bill, to try to prevent the judiciary of this country giving the correct answer to the question of whether the application of the provisions in the Bill would breach this country's international obligations under the convention. I think we all know what answer the judiciary would give if that question were put to them—and we all know why the Government are so determined to resist the Motion from the noble Baroness, Lady Chakrabarti.

So why are we pursuing this; why should we pursue it? The reason is very simple, as the noble and learned Lord, Lord Brown of Eaton-under-Heywood, has just said—because the Government are inviting Parliament to act in breach of this country's international obligations and to prevent the judiciary from passing judgment on that question, contrary to the views of UNHCR, the Joint Committee on Human Rights, your Lordships' Constitution Committee, the Bingham Centre for the Rule of Law, Amnesty International and so many other informed bodies. As your Lordships' Constitution Committee said at paragraph 59 of its report on the Bill, published on 26 January:

"Compliance with the UK's international obligations is a constitutional issue."

When the Government's position is based, as it is, on fundamental misunderstandings of our constitution and breaches of our international obligations, this House should exercise its power to invite the other place to think yet again. If, as I hope, the noble Baroness, Lady Chakrabarti, wishes to test the opinion of the House, she shall have my support.

Lord Clarke of Nottingham (Con): My Lords, I attended throughout the debate on the Bill yesterday and remained completely silent, and I arrived today intending to follow that good advice again, because I was actually unable to attend the earlier stages of the Bill at any scale and thought it would be quite wrong for me to join so late. But this is an important issue, which I have listened to very carefully, and I would quite like to register my views.

Yesterday, I voted with the Government against all the amendments to the Bill, because I think we have reached the stage where the opinion of the Commons should prevail, and I am not fundamentally against them trying this new innovation of offshoring illegal immigrants. I very much doubt that it will work, but I think they are allowed to have their way and see what happens. But I did vote yesterday in favour of the amendment from the noble Baroness, Lady Chakrabarti, and the more I listen to the debate, the more it seems to me that there are hugely important constitutional issues here. We are not getting a satisfactory reply, and we are not even getting, in the House of Commons, any very considered response from the Ministers available.

We all know that the present Government particularly dislike their important subjects being subject to judicial review: they were very upset when their Prorogation was overturned. Many other Governments have rather regretted it, but I think it is a vital protection. The Government's view that what they are doing complies with our international legal obligations and with our own unwritten constitution—which has no force if the courts could not sometimes apply it—is very unwise. I think we should just defend that essential protection. The idea that the opinion of the Attorney-General, whoever he or she may be, in a Government of whatever complexion, if accepted by the Government, should not be a matter that goes any further or be a subject either for Parliament or for the courts, is sweeping and, with the greatest respect, slightly absurd, because no Attorney-General, however distinguished, has ever been infallible on these matters. So I do believe that, among the many important provisions of the Bill, this is the most important of all because of its wider constitutional questions.

I congratulate the parliamentary draftsmen on their ingenuity in producing terms that exclude the jurisdiction of the courts entirely on such matters. I am sure that, if it were done this time, we would find it happening with ever more regularity, in Bill after Bill presented by future Governments to this House. We should make one last attempt to stop that and I am afraid that I have not been persuaded to turn away from my support for the noble Baroness, Lady Chakrabarti, if she presses her amendment again.

Lord Kerr of Kinlochard (CB): My Lords, it is a great challenge as well as a great honour to speak after the noble and learned Lord, Lord Clarke. I shall speak to Motion B1, which again seeks to bring the Bill into line with our international commitments. I believe there is a very important point of principle at stake here. There may actually be two points of principle—I am not sure about the second one—but the key one is pacta sunt servanda. The rules-based system works only if the rules are respected by all. We have just heard again—and we could hardly have heard more authoritatively—that this Bill is in breach of our commitments under the refugee convention.

The noble Lord, Lord Coaker, reminded us yesterday that UNHCR, to which we gave the job of supervising the interpretation of the convention, has confirmed yet again, authoritatively, in the strongest possible terms, that the Bill breaches that convention. We have heard from the Government Front Bench chop logic about how the Vienna Convention on the Law of Treaties allows conflicting national interpretations—but that really will not wash, as the noble Lord, Lord Pannick, has reminded us. We agreed to UNHCR's supervising role: it is in the convention. We can complain from the stands when the referee rules our man offside, but we are not allowed to send on a substitute referee, and the referee's ruling stands. So, it is not surprising that this House has voted three times to remove or improve Clause 11, which is where the breach of the convention is crystallised.

Yesterday, we heard from the Conservative Back Benches suggestions—I think it was just one suggestion—that all this was foreshadowed, and so legitimised, in the 2019 Conservative manifesto. Not so. I have checked. What the manifesto says is:

> "We will continue to grant asylum and support to refugees fleeing persecution"—

and, later on:

> "We will ensure, no matter where you come from, your rights will be respected and you will be treated with fairness and dignity."

"Fairness" and "dignity" are fine words, but how can they be reconciled with depriving desperate people of their convention rights and their access to public funds, condemning them to destitution without even the miserable £5 a day subsistence that we pay to those stuck for years in the asylum process queue? Can we honestly say that those to whom we would in future be giving nothing at all would be being treated with fairness and dignity? No: Clause 11 is wrong in principle—pacta sunt servanda—and it would be shaming in practice.

My second point I put much more tentatively. Again, it is one the noble Lord, Lord Coaker, touched on yesterday. I put it tentatively because I have never served in the other place, but he has, with some distinction. It seems to me that this House is being treated with contempt. Of course, the elected Chamber must have the last word, but its view must surely be informed by an understanding of the considerations that led the revising Chamber to propose the changes it did. If I am right, are the Government, with all due respect, not cheating when they blandly assert no incompatibility the convention, when they make no attempt to refute—but simply ignore—this House's demonstration that there is clear incompatibility, and when they allow minimal time to discuss an issue that is so important to our reputation as a law-abiding country?

6 pm

A revising Chamber surely has the right to have its revisions properly considered. That is why I would have wished us to give the other place a last chance to reconsider Clause 11 and the case for putting respect

[Lord Kerr of Kinlochard]
for international obligations plainly on the face of the Bill. But I have been advised by those whose judgment I respect that there is a limit to the number of issues that can be kept in play at this stage of the game; and I have been advised that, after three successful votes, I have reached that limit. Three strikes, and I am out, it seems. So, I will not be putting Motion B1 to the vote. I am very grateful to all those who have supported it three times. The record will show that this House believes in pacta sunt servanda. I am grateful to the Minister for the courtesy she showed in dealing with obstreperous points from me. I urge all those who would have voted for Motion B1 to vote, as I will, for Motion A1 from the noble Baroness, Lady Chakrabarti, if she puts it to the vote, as I very much hope she will.

Lord Paddick (LD): My Lords, like the noble Lord, Lord Kerr of Kinlochard, whom I have the greatest respect for, I am not a lawyer, so it is with some trepidation that I enter the arena. But that is my role. As far as my common sense tells me, international agreements such as the 1951 refugee convention mean nothing if each and every signatory to the convention can reinterpret the agreement to suit its own political ends. The whole point of the refugee convention, like the European Convention on Human Rights, is to prevent rogue states passing domestic legislation that overrules the rights of refugees or the basic human rights of their own citizens in the wake of what was then the recent history of the Second World War.

On the back of their attempts to reinterpret the 1951 refugee convention, this Government appear to be about to remove the United Kingdom from the European Convention on Human Rights, judging by the comments of the Deputy Prime Minister on BBC Radio 4's "Today" programme this morning. In the context of those convicted of terrorism offences challenging their segregation in prison, Dominic Raab said, at two hours and 21 minutes into the programme,

"it shows you why our Bill of Rights is so important to replace the Human Rights Act."

So much for the Minister relying on the Human Rights Act in her arguments. I am reminded of "First they came" by the German Lutheran pastor, Martin Niemöller. If we do not speak out about this Government eroding the rights of refugees, as they seek to do in this Bill, the next step will be to erode the rights of each and every one of us.

Motion A1 is a final attempt to at least make the Government honest. As the noble Lord, Lord Kerr, said yesterday, if the Government were to say, "We know this Bill does not comply with the refugee convention, but we are going to enact it anyway", they would at least be being honest. Motion A1, as I understand it, simply allows the courts to make a declaration that any parts of the provisions in Part 2 of the Bill are incompatible with the refugee convention and require the Government to take note of the finding—the Government having been given the opportunity to be joined as a party to the proceedings. If the noble Baroness, Lady Chakrabarti, divides the House, we will support her. I understand why she may not want to divide the House, but if this were our amendment, we would. This time, it is refugees' rights; next time, it could be our rights that are in danger if the Lord Chancellor, the Secretary of State for Justice, the Deputy Prime Minister, gets his way.

We also strongly support Motion B1 for similar reasons. It should be for the Secretary of State to prove why a genuine refugee is to be categorised as a class 1 or class 2 refugee. In any event, any Immigration Rules that are applied to whichever group a genuine refugee is categorised by the Secretary of State as falling into must not permit any practice that would be contrary to the Government's international obligations. If this were our amendment, we would be dividing the House, but we respect the noble Lord's decision.

On Motion C, I can understand why the noble Baroness, Lady Lister of Burtersett, having won the argument yesterday by one vote, has chosen not to pursue the right to work for refugees, despite the Government being unable to produce a shred of evidence to counter the comprehensive and compelling evidence provided yesterday by the noble Baroness, Lady Stroud, which clearly demonstrated that the right to work is not a so-called pull factor. The arguments made by the Minister about costs, devoid of any facts based on real-world experience unlike those of the noble Baroness, Lady Stroud, were speculative and, never having been presented before during the passage of the Bill from my recollection, smacked of last-gasp desperation.

Liberal Democrats have long campaigned and will continue to campaign for the right of asylum seekers to pay their own way, to secure the dignity that comes from being able to support themselves and to integrate more effectively in society by being able to work. In case this is my last opportunity to speak on this Bill, may I say how appalled and disgusted I am by it? There is only one political party to blame for this shameful legislation, and that is the Conservative Party.

Lord Coaker (Lab): My Lords, let me start by saying that I totally agree with my noble friend Lady Chakrabarti; I totally agree with the noble Lord, Lord Kerr; I totally agree with the noble Lord, Lord Paddick, and I totally agree with the noble and learned Lord, Lord Brown. Along with many noble Lords and Baronesses in this House, I have argued time and again against a Bill that most of us think is wrong and unethical. We have argued against the Government time after time on these issues, and I am going to spend a couple of minutes saying why I support the amendments from the noble Lord, Lord Kerr, and my noble friend Lady Chakrabarti.

I wanted to put that on record to start with because I do not want the position that we have taken—thinking that we have come to the end of the parliamentary political process with this—to be misunderstood to mean that we do not agree with my noble friend Lady Chakrabarti or with the noble Lords, Lord Kerr, Lord Pannick and Lord Paddick, or with any other Member who supports these amendments, because I do, and we do. But there comes a point—even I accept this, after what I said yesterday—where you have to recognise that this would be the fourth time that we would have sent this back.

The noble Lord, Lord Kerr, was kind enough to say what he did about me in the Commons, but I think that the Commons currently guillotines legislation far

too quickly, which means that things are not properly considered. Frankly, that causes resentment—as happened the other day when we sent 12 amendments back and they were discussed in an hour—and people to ask why we should not send things back more often.

That is the root of the problem. But as someone who has stood for election on many of these issue and, like others, lost, fighting for this out in the community, I accept that the battle or argument now has to go beyond Parliament and out into the country. This is what elections are about. The Government get their way in the end because they won the 2019 general election and can pursue their agenda in Parliament. I can be angry, and this House can send a Bill back 10 or 12 times, but if the Conservative Government have a majority in the Commons, they will simply reject it. Of course we have a right to ask the Commons to think again, and in some cases it has done. I accept that there is a debate around how many times we should send Bills back, and whether we should send this one back once more; there is a legitimate question as to whether three times is enough or whether it should be four. But the position we have come to is that we think we are now at the end of the line. That is clearly not a view that everyone agrees with, but let it not be said that the disagreement is about the content of the Bill or the worth of the amendments; it is not. It is just about the best way to take this forward. That is the point I wanted to make.

It is worth reiterating that, as much as any other, the amendment from the noble Lord, Lord Kerr, goes to the heart of the Bill. Essentially, it was trying to say that the differential treatment of refugees would mean that vast numbers of people who come and claim asylum in this country would be criminalised. I cannot believe that that is acceptable, and that is what the amendment is getting at. We had the almost farcical situation where we were trying to imagine how someone could actually get here legitimately to claim asylum. We are an island, so what country can you come through unless you fly? But you cannot fly, because of the database checks that are carried out when you get on a plane, and so by definition you must come through a safe country to get here. According to the Bill we have before us, anybody doing that is coming illegally and should be stopped—unless they have come on one of the safe routes, but these are unavailable to large numbers of people.

The amendment from the noble Lord, Lord Kerr, goes absolutely to the heart of the matter. He and other noble Lords pointed out that this would have criminalised Ukrainians fleeing at the beginning of the conflict, and Afghans who had helped the British Army. That is why the noble Lord's amendment is crucial, but these arguments have to be won not only in this Chamber but out in the country. But instead, to be frank, the Government say that we have a real problem with illegal immigration in this country and they are the only ones who will fix it—ignoring the fact that they have been in power for 12 years and have not managed to sort it out in that time.

The noble Lord, Lord Kerr, will appreciate that this is not a debate as to whether the amendment is right but about where we go to now. That is a position that noble Lords will have to consider for themselves, but we have considered it very carefully and come to the view that we have.

I have not always agreed with my noble friend Lady Chakrabarti, but on this she is absolutely right and I totally agree with the points she has made. Other noble Lords have joined in: the noble Lord, Lord Pannick, made his usual excellent contribution, as did the noble and learned Lord, Lord Brown, supported by the noble and learned Lord, Lord Clarke, who pointed out the importance of obeying international law and respecting our international obligations.

6.15pm

I will read out the UNHCR's observation, because it is so damning of our country and our global reputation. In talking about this Bill and the importance of my noble friend Lady Chakrabarti's amendment, it said that

"the United Kingdom's international obligations under the Refugee Convention and with the country's long-standing role as a global champion for the refugee cause"

are at risk because of the Nationality and Borders Bill.

That is absolutely tragic. It is not the Government's intention, but that is what the UNHCR is saying would be the consequence of passing the Bill as it stands. I support absolutely what my noble friend Lady Chakrabarti is trying to do around the refugee convention.

As the noble and learned Lord, Lord Clarke, says, that is why it is so important. If the Government say that they are complying then they should put it in the Bill, so there is no doubt about it. But the Government refuse to do that and use words such as "compatible". You then get into semantics. Is "compatible" the same as "complying"? I do not know, but as a non-lawyer I would think that it would carry more weight if it was on the face of the Bill than if it was not.

Again, it comes down to this point: which is the best way forward? From our perspective, my noble friend Lady Chakrabarti is absolutely right and the noble Lord, Lord Kerr, is absolutely right, but we are at the point in the parliamentary process where sending it back a fourth time would not be the appropriate way forward. Noble Lords will have to make their own judgment, but that is the judgment we have made. The battle will carry on and the campaign for a proper refugee system will carry on. That campaign will take place not only in this Parliament but in the various communities up and down the country, as we fight to remain the global champion that we have always been, and to offer asylum to those who deserve it and need it.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken in this debate. I made the point yesterday about the time we have spent on this; I do not think your Lordships have ever felt that we in any way have tried to rush this or any other legislation. We have gone many days in Committee, for 12 hours or more, discussing at length all the concerns and issues at hand. Many of the points have been remade today in a very articulate way.

I think my noble and learned friend Lord Mackay feels that he has been slightly misrepresented by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. I wonder if he might check *Hansard* and come back to my noble and learned friend.

[Baroness Williams of Trafford]

In response to the concern of the noble Baroness, Lady Chakrabarti, this has been clearly set out, as I have said before. These provisions are clear and unambiguous and a good faith interpretation of the refugee convention. The courts of course have an important role in ensuring that legislation is applied correctly, but it is for Parliament to make that legislation. That is the rule of law and is the result of our dualist system.

Turning to the noble Lord, Lord Pannick, we maintain that the general rule of interpretation in Article 31(1) of the Vienna convention requires a treaty to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. On that basis, as the noble Lord, Lord Pannick has quoted, we have taken a wide-reaching exercise to understand this and considered relevant factors, such as the law in other jurisdictions, case law and the words of academics. We believe that all provisions reflect a good faith, compatible interpretation of the refugee convention.

With those words, and echoing the words of the noble Lord, Lord Coaker, I think that it is time to pass this Bill.

Baroness Chakrabarti (Lab): I thank all noble Lords once more. It is often a huge privilege to hear debates from all sides in this Chamber, but sometimes that privilege comes with an awesome burden, as the Minister knows all too well. I am referring not just to this Chamber but to noble Lords in other places in this building where they beaver away at their work.

I have had the privilege in recent months to serve on the new and important Justice and Home Affairs Committee, chaired by the noble Baroness, Lady Hamwee, which had the privilege of hearing not so long ago from the Home Secretary. While I will repeat my admiration for the Minister and the way in which we can disagree well, this is not the case with everyone.

I want to say a word about good faith, which has been cited a few times. Before that committee, the Home Secretary gave evidence about the pushback policy. The committee has members far more august than me, including my noble friend Lord Blunkett, who quizzed the Home Secretary about the legal basis for pushing back boats in the channel and the controversy that had raged. She assured us that there was a legal basis and that the purpose of the policy was to deter refugees and the evil trade. The purpose was to deter asylum seekers and we were assured that there was a legal basis, as was Parliament and the public. When that policy was judicially reviewed, the Home Office sought public interest immunity over provisions in the policy document that revealed that the Home Office knew that it would be contrary to the refugee convention to ever repel a boat with a person who said, "I need asylum. I am a refugee". It was only because the courts were able to say no to the public interest immunity that the Government and the Home Secretary were exposed and that policy is now over. That is how important the rule of law is.

I have been torn in making my mind up about this Division right now. I have been so grateful for the support of my noble friends—my noble friend Lord Coaker in particular— but when the noble and learned Lord, Lord Brown of Eaton-under-Heywood says he will go to the stake for the rule of law, I will go with him. I have moved the Motion and would like your Lordships' House to agree it.

6.23 pm

Division on Motion A1

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6.43 pm

Motion A agreed.

Motion B

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

That this House do not insist on its Amendments 6D, 6E and 6F, to which the Commons have disagreed for their Reason 6G.

6G: Because the provision in Lords Amendments 6D and 6E conflicts with clause 36; and because the provision in Lords Amendment 6F is unnecessary.

Baroness Williams of Trafford (Con): My Lords, I have already spoken to this Motion, so I beg to move.

Motion B1 (as an amendment to Motion B) not moved.

Motion B agreed.

Motion C

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

That this House do not insist on its Amendments 7F and 7G, to which the Commons have disagreed for their Reason 7H.

7H: Because the Commons consider that asylum-seekers (save in limited circumstances) and their adult dependants should not be permitted to work while a decision on their claim for asylum is pending, even for a trial period of 3 years.

Baroness Williams of Trafford (Con): My Lords, I have already spoken to this Motion and I beg to move.

Motion C agreed.

Energy Security Strategy

Statement

The following Statement was made in the House of Commons on Tuesday 19 April.

"With permission, Mr Speaker, I will make a Statement on the British energy security strategy.

Our strategy provides a clear, long-term plan to accelerate our transition away from expensive fossil fuel prices set by global markets we cannot control. It builds on our success over the past decade in which we gave the go-ahead to the first nuclear power plant in a generation and achieved a fivefold increase in renewables. The *British Energy Security Strategy* marks a significant acceleration in our ambition. It is confirmation of three mutually reinforcing goals of our energy policy and, indeed, of any well-constituted energy policy: security, affordability and sustainability.

We recognise the pressures that many people across our country are facing with the cost of living. This has been greatly influenced, as we all know, by global factors. That is why my right honourable friend the Chancellor of the Exchequer announced a £9 billion package of support, including a £150 council tax rebate this month and a £200 energy bill discount in October to cut energy bills quickly for the vast majority of households. We are also expanding the eligibility for the warm home discount, which will provide around 3 million low-income and vulnerable households across England and Wales with a £150 rebate on their energy bills this winter. As I speak, our energy price cap is still protecting millions of consumers from even higher wholesale spot gas prices. Furthermore, we are investing over £6 billion in decarbonising the nation's homes and buildings—set out very clearly in last year's *Heat and Buildings Strategy*—which saves the lowest-income families around £300 a year on their bills. I want to reassure the House that the Chancellor has promised to review his package of support before October and will decide on an appropriate course of action at that time.

Cheap renewables are our best defence against fluctuations in global gas prices. By 2030, 95% of our electricity will be produced by low-carbon means. By 2035, we aim to have fully decarbonised our electricity system. We will double down on every available technology. The strategy sets out a new ambition to propel our offshore wind industry. It will increase the pace of deployment to deliver 50 gigawatts by 2030, instead of the 40 gigawatts committed to in the manifesto. Of that 50 gigawatts, up to 5 gigawatts will be floating offshore wind. The strategy also commits us to slash approval times for new offshore wind farms from four years to one year. We also feel—this is reflected in the strategy—that our solar capacity can grow by up to five times by 2035.

As is well known, most of Britain's nuclear fleet will be decommissioned this decade. We need to replace what we are losing, but we also need to go further. From large-scale plants to small nuclear modular reactors, we aspire to provide a steady baseload of power that will complement renewable technology. Obviously, the right time to take those decisions would have been 20 years ago, but of course the Labour party all but killed off the British nuclear industry. That is why we will be reversing decades of underinvestment and building back British nuclear. We aim to deliver up to 24 gigawatts of nuclear power by 2050, approximately three times more than today, which will represent 25% of our projected energy demand.

We are also doubling our ambition for low-carbon hydrogen production. The capacity we aim to reach by 2030 is 10 gigawatts, with at least half of that total coming from green, electrolyser-produced hydrogen. This fuel will not only provide cleaner energy for vital British industries to move away from fossil fuels but will be used for storage, trains, heavy equipment and generating heat. The transition to cheap, clean power cannot happen overnight. Those calling for an immediate end to domestic oil and gas ignore the fact that it would simply make the UK more reliant on foreign imports. It would not, in fact, lead to greater decarbonisation globally.

Producing more of our own energy will protect us into the future. We feel that this historic change, this decarbonisation challenge, represents a huge opportunity for the United Kingdom: more wind, more solar and more nuclear, while also using North Sea gas to transition to cheaper and cleaner power. This is a long-term plan to ensure greater energy independence and to attract hundreds of billions of private investment to back new industries that can create hundreds of thousands of high-quality jobs and stimulate business across the UK. This is not only a matter of reaching net zero, vital as that is, but an issue of national security. These are all objectives that everyone across the House, I am sure, shares. We all wish to see a homegrown clean energy system that will protect our people into the future, create good clean jobs, attract private investment and, above all, drive down bills for the British people. I commend this Statement to the House."

6.45 pm

Baroness Blake of Leeds (Lab): My Lords, I thank the Minister for coming here to answer our questions. However, I am disappointed that we only have this

opportunity 20 days after the publication of the strategy, due to the Government's decision to publish it while the other place was not sitting and thereby avoid immediate scrutiny.

On the Statement itself, I will begin with the aspects that we welcome. The last Labour Government gave the go-ahead for new nuclear sites in 2009, which have seen little-to-no progress. It now time for the pace to pick up on Sizewell C and the development of small modular reactors. The establishment of Great British Nuclear, if it achieves its goals, should be welcome, but, frankly, what is needed is action rather than additional bureaucracy and figures plucked out of the air without regard to cost, speed or deliverability. Can the Minister set out a timetable for the establishment of this body and, more importantly, the delivery of the eight reactors the Statement suggests could be set up at a rate of one per year?

We also welcome the Government's target for offshore wind of up to 50 gigawatts by 2030. We need to ensure that developments of this kind lead to creating British jobs, which is not always the case under schemes from this Government. Can the Minister offer assurances that this will be addressed as the strategy is implemented and that other necessary steps to achieve it, such as grid investment in the North Sea network, will be taken?

However, the main issue with the strategy is what is missing. In short, these steps, while welcome, will not provide for households struggling with the cost of living crisis. They do not constitute the green-energy sprint that is needed to cut household bills, reduce reliance on Russian imports and cut emissions this decade. Measures that could have made an immediate difference to households and businesses have been ignored. On the cheapest, quickest, cleanest renewables such as onshore wind and solar, the Government have caved to Back-Bench pressure.

Onshore wind is four times cheaper than gas and overwhelmingly popular, but hundreds of projects that communities want, and are ready and waiting for, have been blocked. Earlier versions of the strategy showed that the Government were well aware of this, yet this strategy contains little beyond vague platitudes, and nothing to reverse the results of their ban on onshore wind projects in 2015, which destroyed the market, with only 20 new turbines granted planning permission between 2016 and 2021. Doubling onshore wind capacity to 30 gigawatts by 2030 could power an extra 10 million homes, add £45 billion to the UK economy and create 27,000 high-quality jobs. Does the Minister accept that bills will be significantly higher as a result of this failure?

The story with solar is not much different. Slashing solar subsidies in 2015 crashed the market, and many projects that could have been enabled are waiting in abeyance. Why have the Government watered down their ambition, rather than properly committing to tripling solar power by 2030?

The main hole in the Statement, for all those millions of people paying at least an extra £170 per year on energy bills, concerns energy efficiency. Energy efficiency is the best, quickest, most effective way to reduce energy bills, but there is no new money for it. Vulnerable people in this country need a national emergency plan to insulate homes, which could cut bills for the millions of pensioners and low-income households who need it most. At the same time, it would create new, skilled jobs. Instead, vulnerable people are being condemned to live in cold, draughty homes and paying more than they need to. The Minister previously admitted that the Government were keen to go further. So, who stopped them, the Secretary of State or the Chancellor?

The Government have missed another opportunity to close the door to fracking and continue to float the idea of a new coal mine in Cumbria. They have also failed to adopt Labour's proposal of a windfall tax on oil and gas firms that are making record profits while bills skyrocket. Overall, it is fair to say that the energy strategy is disappointing and underwhelming. We can only ask how the Minister expects to reassure your Lordships' House of the Government's commitment to net zero if they continue to act to the contrary.

Lord Oates (LD): My Lords, there are things to welcome in this Statement but unfortunately, there are also many missed opportunities. Energy security is obviously critical at this time, but we must understand that it is about not just security of supply to the United Kingdom but the fact that millions of households right now feel a complete lack of security regarding their ability to pay their energy bills going forward, and particularly as we go into the next cold period.

The Government had an opportunity to take up my right honourable friend Edward Davey's proposal: a windfall tax on the super-profits of the oil and gas industry, which the Labour Party has also argued for. That could have unlocked finances to give further support to people who will be desperately vulnerable this winter.

As the Liberal Democrats and many others in this House have repeatedly stated, curtailing the wasted energy that leaks out of our buildings should be the No. 1 priority in the hierarchy of measures we take to improve our energy security, reduce carbon emissions and cut costs for households. But there was nothing new in the Statement on this front. I asked the Minister at Questions yesterday why the number of insulation measures installed annually in the UK had fallen from a high of 2.3 million during the coalition to an average of less than 10% of that peak since then. He did not really give me an answer, to be honest, but I do not blame him for that. If he was unconstrained by collective responsibility, he would be able to be clear that it was down to the myopic foolishness of the Treasury, which has kyboshed many of the schemes that have been brought forward in the past. Not least of these is the green homes grant, which was destroyed by its lack of understanding that this has to be a long-term project, not a short-term stimulus measure. I hope the Minister will not be deterred, however, by that myopia, and will continue to urge his government colleagues to take a more creative approach to this issue, including fiscal measures such stamp duty discounts and council tax rebates for homes that improve their energy performance certificate ratings.

Can the Minister also tell us when the new ECO4 regime, which he mentioned yesterday, comes into effect? Am I correct in thinking that there is gap between ECO3 and ECO4 coming into effect? If so, why is that being allowed to happen?

[Lord Oates]

Like the noble Baroness speaking for the Labour Benches, I welcome the extra commitments on offshore wind, but I also share her view that this is a massive missed opportunity for onshore wind. Onshore wind, as has been said, is one of the cheapest ways of powering green energy, and it is absolutely reckless that we are putting it aside.

On oil and gas, I hope the Government are really thinking about the danger of stranded assets on any new exploration. That is a dangerous thing.

I should declare my interest as a member of the UK Hydrogen Policy Commission in saying that I very much welcome the Government's commitment to doubling their ambition to 10 gigawatts by 2030, and that for the first time, at least half of that will be green or electrolytic hydrogen.

Our ambitions are now similar to those of many of our international competitors, which is welcome, but the funding allocation behind them is completely different. We are not putting in anything like the money that our competitors are. Could the Minister look at that issue in particular?

Finally, will the Minister also look at the support that will be needed by local authority planning departments and councillors, which will have to deal with an increasing number of hydrogen-related planning applications? Currently, most do not have the necessary skills or resources to deal with them or to address the inevitable concerns. Will he also look at the regulatory environment that will be required? The hydrogen strategy suggests that regulations will be made on a piecemeal basis as hydrogen is scaled up, but this misses the point that regulatory certainty is absolutely required if the scale-up is to happen at all. I hope he can address a few of those questions.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): I thank the noble Baroness, Lady Blake, and the noble Lord, Lord Oates, for their relatively constructive comments. I know they do not necessarily agree with everything we are doing and would like us to go further in some respects, but I know that in general, their hearts are in the right place. The strategy is of course a long-term plan to accelerate the transition away from expensive fossil fuel prices that, obviously, are set by global markets we cannot control. I know that both the noble Baroness and the noble Lord will support us on that.

Starting with the vital issue of concerns about energy prices, correctly raised by the noble Lord, the strategy reconfirms that the Government are committed to helping with the cost of living. That includes over £9 billion of help for families struggling with their bills. We are aware, of course, that Ofgem will set the next price cap in August, and we will want to review the current support arrangements at that point, well in advance of them taking effect in October.

The noble Lord also raised issues concerning energy efficiency. I know that he and I agree on the critical role that energy efficiency plays in both our energy security and in helping consumers to manage their energy bills. I disagree with him, however, in that this Government have gone further than any other in setting out an ambitious energy efficiency strategy, including through our landmark heat and buildings strategy. I know he will want to push us to go further but, in essence, we are heading towards the same destination—although apparently, we have different rates of getting there.

In response to the noble Lord's question about ECO, there is no gap between ECO3 and ECO4. There is a delay due to legal considerations in tabling the SIs to implement ECO4, but we are certainly in touch with the industry bodies to explain that, and there is no gap in the implementation. The increased budget associated with it, at £1 billion a year, takes effect.

The noble Baroness, Lady Blake, raised the subject of onshore wind—I am sure there will be further questions on this as we proceed through the Statement—and also solar. Noble Lords are correct: onshore wind and photovoltaic solar are the cheapest forms of renewable energy. We are fortunate to have more onshore wind that pretty much any other country in northern Europe, and we continue to promote it passionately.

That said, both onshore wind and large solar projects —which can be controversial in some circumstances— should be pursued on the basis of local community support. Clearly, where that local backing exists, the strategy includes support for new projects and the enabling national network infrastructure.

Offshore wind is an area in which we have been hugely successful, and it has had a transformative effect compared to other renewables. Offshore wind is especially suited to the UK's geography, and we truly are leading the world in its technology and capacity. It rightly forms one of the centrepieces of the strategy. As the noble Lord, Lord Oates, referred to, we are increasing our ambition to deliver up to 50 gigawatts by 2030, including up to five gigawatts of innovative floating wind capacity. By 2030 we will have more than enough wind capacity to power every home in the United Kingdom.

In response to the question by the noble Baroness, Lady Blake, I say that this is all bringing vital investment into the UK, particularly to our coastal communities. It will support 90,000 direct and indirect jobs by 2030. I met the Mayor of Tees Valley last night, who was telling me about some of the enormous projects being built on his patch, entirely to benefit from this expansion of offshore wind capacity.

I also welcome the support of Labour—if not the Liberal Democrats—from the noble Baroness, Lady Blake, for nuclear. It is very welcome. Energy security means being able to meet demand even on the coldest days of winter when there is neither sun nor wind. We need a baseload of decarbonised power to complement the renewables we are installing and while most of the current nuclear fleet is reaching the end of its lifespan and will be decommissioned this decade. We will be reversing decades of underinvestment and we will build back British nuclear.

In response to the question from the noble Baroness, Lady Blake, about the new body, I say that this will be set up immediately to bring forward new projects backed by substantial funding. We will launch the £120 million future nuclear enabling fund this month. We intend to take one project to a final investment

decision in this Parliament and two in the next—subject to value for money and the appropriate approvals, as always.

On the subject of fracking, which the noble Baroness, Lady Blake, also asked about, it is right and sensible that, with wholesale gas prices around 10 times their level at the end of 2019, we review the science and evidence picture around fracking. The strategy commits to assess whether the previous conclusion against licensing has shifted or if scientific developments have changed, and we will do that.

I welcome the support of the noble Lord, Lord Oates, for hydrogen. I am happy to look at the comments he made about support for local authorities in terms of progressing hydrogen applications. I am sure we want to provide as much technical support as necessary and I agree with his comments about the importance of regulatory certainty in this area.

7.03 pm

Lord Howell of Guildford (Con): My Lords, I declare my interests in energy as in the register. Can I couple that with a plea that we have a full debate in the new Parliament on all these issues? There are things here which affect both the immediate situation for all of us—certainly most of the households in this country—and the long-term condition of this country facing its energy needs in the future. We have heard some very unchallengeable and sensible ideas on this, but I am not sure they meet the immediate crisis effectively.

Can I draw the Minister's attention to the section in the energy security policy paper which points out that there is "no contradiction" at all between short-term concerns to boost oil and gas production, referring to the North Sea, and the long-term climate aims? On the contrary, the two are linked together; that is what it rightly says in the paper. Can the Minister extend that thought to say that there is no contradiction in now seeking major oil producers in the Middle East to produce a lot more oil and gas to cause prices to tumble and partly replace Russian exports? It would really help bring down electricity, petrol and gas prices, and begin to meet the further huge increase coming our way like a rolling wave in October.

Can I plead that we go back to the great oil producers and press them hard that, unless they do this, they are financing Putin's child murder in Ukraine? If they do it, we will begin to see a much greater easing of prices than any of the present well-intentioned short-term subsidies and additions we have had so far. That is the aim. Anything else is splendid, but it does not help the huge crisis in energy which will affect 70% of households of this country. I have heard nothing from either opposition party which will do that.

Lord Callanan (Con): As usual, given his experience of the subject, my noble friend makes important points. On the subject of a debate, regrettably that is above my pay grade, but I will pass on his comments to the Chief Whip. Obviously, I stand ready to assist the House in any debates that it wishes to have. Regarding my noble friend's comments about North Sea oil and gas, I say that he is completely correct. We are clear that oil and gas will continue to have a role as a transition fuel in the medium term. In carbon footprint and security terms, it makes eminent good sense to source these from the North Sea. That has to be preferable to importing them either from Russia or as LNG. That is why we will ensure a future for the North Sea, making use of our great reserves as we transition. We are holding a new licensing round in the autumn subject to the climate compatibility checkpoint.

Baroness Jones of Moulsecoomb (GP): My Lords, I am going to ignore the quagmire of nuclear, which cannot come on stream for decades, and the quagmire of fracking, which is a ridiculously expensive and disruptive process, and all the other ridiculous ideas about more oilfields in the North Sea. I will talk specifically about biomass companies like Drax, which in fact produce more carbon than burning fossil fuels, yet the Government choose to give them renewable subsidies. Will the Minister meet me and one or two scientists who can explain the whole process to him, and possibly take that back to his department?

Lord Callanan (Con): I am sorry that the noble Baroness has ignored the quagmire, as she puts it, of some very important subjects. I am sure we will want to debate them in future. She raised this matter with me yesterday. In principle, I understand the point she is making, but I point her to the website of Ofgem, which does the appropriate sustainability checks on the biomass used in Drax. It is from waste sources, and it is renewable. The Greens are shaking their heads, but I am afraid there is a case for it. It is sustainable and renewable, which is why it qualifies, but it is subject to strict sustainability criteria. They are checked and published.

Lord Kerr of Kinlochard (CB): There is much in the Statement to welcome about the long term but, as Keynes said, in the long term we are all dead. What worries me is that there is not a word in the Statement about how we are going to help people deal with the very real household energy crisis we are in now that will vastly increase in October. The reference period that will decide by how much the cap goes up ends in July. We know now that there is going to be a big increase again; there is no reason for us to wait. It is not very reassuring to be told that

"the Chancellor has promised to review his package of support before October".—[*Official Report*, Commons, 19/4/22; col. 75.]

Why is he not doing it now? I suggest that, when he looks at it, he looks not just at little packets of money here and there, but at the possibility of indexing the energy element in universal credit to the energy component in the household expenditure of the people on universal credit. That is the most efficient way of targeting it. It is sad to see a long-term strategy which tells us nothing about onshore wind, storage or the improvements to the grid which are badly needed. The more we invest in wind, the more we will need grid improvements.

Lord Callanan (Con): The noble Lord's question was somewhat contradictory. He complained that the strategy did not address some of the short-term problems but in the end, he referred to it as what it is: a long-term strategy. The clue is in the title. The reality is that it takes many years to put in place energy infrastructure, and it is right that the Government address these factors and look to the long term to

[Lord Callanan]
make sure that we are putting in place the appropriate steps, such as the nuclear RAB Bill, to provide the long-term security of supply and power that the country needs. That does not obviate the difficulties that we have in the short term. As I suspect the noble Lord knows very well, I cannot comment on what the Chancellor may do in response before any future fiscal event, before the next price cap comes in. However, I can assure the noble Lord that the problems the nation faces with high energy prices are at the forefront of the Government's consideration.

Lord Rooker (Lab): I will make two brief points to the Minister, but as an aside on Drax, if memory serves me correct, when it started using the pellets, they were from trees in north America that had been grown for the printing industry, and the paper industry completely collapsed. Communities had been destroyed, and the fact that they could use this wood seemed a positive benefit. However, that may not currently be the case—it has been many years since I paid a visit.

On the nuclear issue, my noble friend is right in the sense that in 2009 the Labour Government left half a dozen sites for nuclear power stations, but the Statement is correct in that we lost 20 years. The Labour Government Cabinet was discussing this issue in late 2002 and early 2003. I was a simple Minister of State—I was not involved in that—but I remember writing a note for my Cabinet colleague, my senior. That is the kind of thing I remember because it was Christmas Day and I was sitting in Charing Cross Hospital at the time, as a visitor. The issue had been discussed but it was flattened by two or three members of the Cabinet. I will not name anybody, but that was a lost period.

The central issue I want to ask the Minister about was not referred to: batteries. The International Energy Agency has said that because of the use and storage of batteries for transport, propulsion and homes, the world will need a sixfold increase in lithium, cobalt and rare earths. Where are they processed? Some 60% of the world's lithium is processed in China, as is 65% of the world's cobalt, although it is mined in the Congo, where 40,000 children are involved in mining it. Some 87% of the world's rare earths are processed in China. Therefore, the issue has to be, what do we do with colleagues and friendly countries—we cannot do it ourselves—to avoid in 20 years' time being in the same position we are in now with gas and oil from Russia: being hooked to China for the metals we need for batteries? It is a grip that has enormous potential, and it needs dealing with now. I used the word "processing"; China is not mining it all but is controlling the process from the mining. A huge amount of cobalt comes from the Congo but it ends up being processed in China. China has a grip on this and I know people are trying to deal with it—I think the EU is—but the Government have to be part of a plan. They will not be able to do it on their own; they have to work with others. We need to cease dependence on such a large scale on metals that will be vital for our industries and our energy security.

Lord Callanan (Con): The noble Lord raises a number of important points. On the biomass supplying Drax, he is right that it is mainly produced from waste-wood sources that would otherwise not be utilised. I think he was agreeing that that was a mistake on the part of the Labour Government, who got elected in 1997 on a manifesto that said there was no case for new nuclear. It is easy for us to look back at mistakes made in the past but in retrospect, that was a mistake. This comes back to the point made by the noble Lord, Lord Kerr: that in an advanced industrial country, this infrastructure takes many years to put in place. We let the UK nuclear industry wither on the vine because, of course, at the time we had ample supplies of clean gas and not so much concentration on climate change.

The noble Lord is in essence right about rare earths, but the Government are very well aware of this. A number of innovative battery technologies are also being developed but we are looking very closely at the necessity of various rare earths for existing battery technology, such as cobalt and lithium, and at where alternative supplies can be procured.

The Lord Bishop of Manchester: My Lords, I declare my interest as both a Church Commissioner and a board member of a housing association. As things stand, a community with local renewable generation is not allowed to sell the energy it generates directly to local people. Instead, it has to sell it to a utility, which sells it on to customers, creating disproportionate costs. Moreover, community-level generation could be further promoted by ensuring that new housing developments include green energy or even a requirement that they place no increased demand on the grid by generating more of their energy needs. The Bible assures us that the sun shines on both the righteous and the unrighteous. Indeed, I can assure the Minister that it does so even in my notoriously rainy city of Manchester. Can he outline what will be done to promote greater take-up of community energy generation programmes?

Lord Callanan (Con): I thank the right reverend Prelate for saying that the sun shines on all of us—I am delighted to hear that. Community energy is important and we are supporting a number of community projects within Ofgem. I realise that there is a campaign to increase the take-up of community energy and we are in principle supportive of that. However, if those community energy projects also wish to be connected to the national grid and take advantage of other forms of energy and supply, it is right that they pay a proportionate share of costs for that. They are not insulating themselves from the national grid and from other forms of energy production and supply. Nevertheless, we want to see what we can do to support community energy, Ofgem is engaged in it, and we will look at what more we can do to help.

Viscount Stansgate (Lab): My Lords, reference was made in the Statement to low-carbon hydrogen production. Does the Statement mean that the Government have in effect taken a long-term strategic decision—by which I mean well beyond 2030—that the hydrogen they intend this country to produce will be green and not blue?

Lord Callanan (Con): Ultimately, yes, but in the short term we will want to support both forms of hydrogen production to get the market started and we

will look towards providing something similar to the contracts for difference scheme for hydrogen production. As the noble Viscount is aware, we announced an expansion of hydrogen production in the strategy.

Lord Teverson (LD): My Lords, is it still the case that despite this plan, just one person in a local community can in effect veto an onshore wind plan for that community?

Lord Callanan (Con): I do not think so—I do not think it would be that specific. We will not have one person vetoing an application. However, we would want to make sure that there was general community support for further onshore wind capacity before development proceeded.

Baroness Foster of Oxton (Con): Ukraine has certainly focused all our minds and minds in all countries, particularly across Europe. In particular I welcome the Government's policy on expanding our nuclear energy programme and that they have now agreed to acknowledge that shale gas extraction should be considered. Notwithstanding that the shale gas extraction programme was halted, the initial work has been done. The technology has improved and horizontal extraction techniques take up a much smaller land area. This could come on stream as soon as 18 months' to two years' time, given the work that has already being done, albeit that it will be a long-term programme. Will my noble friend assure the House that the Government will crack on with this programme, as it is vital that we become energy self-sufficient as soon as possible?

Lord Callanan (Con): I know that my noble friend feels strongly about this subject but it is important that we take account of the recent scientific consensus, and we will do that. We have always been clear that the development of shale gas must be safe and cause minimum disruption and damage to those living and working near sites, and that is not a new position. However, my right honourable friend the Secretary of State has asked the British Geological Survey to look again at this process. I think my noble friend is wrong in thinking that we could get large amounts of fracking on stream within 18 months. So far, we have had maybe two wells; to get significant amounts of fracked gas you would need many hundreds if not thousands of such wells, so it is quite a disruptive process and can take quite a long time. Nevertheless, we will be guided by the science and will look again to see whether it is possible to do it, with the consent of local communities.

Baroness Hayman (CB): My Lords, I declare my interest as co-chair of Peers for the Planet. I return the Minister to his answer to the noble Lord, Lord Teverson: he said that he would not want one person to be able to veto an onshore wind development. Is that not precisely what is implied by the ministerial Statement that now governs these issues? Is that not why we have had a complete standstill on onshore developments? In an earlier answer, the Minister said that community support was important; it is in all planning applications, but why should these planning applications have a far higher standard, which requires unanimity from the local community? I ask why the Statement said that we would double down on every available technology, yet did not look at that issue, and why it makes a very limited proposal for developments that would support local communities in terms of cheaper electricity. That is fine but it does not give the volume that we need. May I ask specifically about the part of the Statement that says that we will look at arrangements to support the repowering of existing onshore wind sites? This is a real issue: we will not only not expand but contract because of the difficulties of repowering. What is the nature and timescale of the inquiries that will be made?

Lord Callanan (Con): I know that the noble Baroness is a passionate supporter of onshore wind. She brought her Bill on it recently and we debated the subject at great length. I know she will continue to probe and push me, as is correct, on this subject about which she feels so strongly. The Government are clear: we want to see an expansion of onshore wind and we would like to see the communities that host this new Bill's infrastructure benefit from developments in their areas. We hope that will drive greater levels of community consent, which will allow more of the procedures to come forward. I will write to the noble Baroness with details of repowering existing onshore wind infrastructure.

Baroness McIntosh of Pickering (Con): Will my noble friend look closely at the possibilities for energy from waste and distance warming that are tried and tested and work so successfully, not just in this country but across most of Europe? Will he also ensure that many of these projects could be fed into the local grid rather than into the national grid, as happens currently?

Lord Callanan (Con): Energy from waste is an important topic, both in generating electricity but also for heat networks. I have visited a number of very innovative energy from waste plants; there is one in particular in east London that is extremely successful and powers and heats thousands of local homes in the community. By the very nature of a heat network, under an energy from waste plant, it does of course benefit and help the local community.

Elections Bill

Commons Amendments and Reason

7.24 pm

A message was brought from the Commons, That they agree to certain of the amendments made by the Lords to the Elections Bill. They disagree to another amendment made by the Lords but propose amendments to the words so restored to the Bill, to which they desire the agreement of the Lords. They disagree to a further Lords amendment but have made amendments in lieu thereof to which they desire the agreement of the Lords and they disagree to the remaining amendment for which they assign a reason.

Motion A

Moved by ***Lord True***

That this House do not insist on its Amendments 22 and 23 and do agree with the Commons in their Amendments 22A to 22I to the words restored to the Bill by the Commons disagreement to Lords Amendment 22 and in their Amendments 23A to 23K in lieu of Lords Amendments 22 and 23.

22A: Page 21, line 13, at end insert—

"(3A) The statement must not include provision in relation to elections, referendums and other matters so far as the provision would relate to the Commission's devolved Scottish functions or the Commission's devolved Welsh functions."

22B: Page 21, line 15, at end insert—

"(5) For the purposes of subsection (3A)—

(a) the Commission's "devolved Scottish functions" are the Commission's functions in relation to—

(i) Scottish Parliamentary general elections, elections held under section 9 of the Scotland Act 1998 (constituency vacancies), and local government elections in Scotland, so far as those functions do not relate to reserved matters within the meaning of the Scotland Act 1998, and

(ii) referendums held throughout Scotland in pursuance of provision made by or under an Act of the Scottish Parliament;

(b) the Commission's "devolved Welsh functions" are the Commission's functions in relation to—

(i) general elections of members of Senedd Cymru,

(ii) elections held under section 10 of the Government of Wales Act 2006 (elections for Senedd constituency vacancies),

(iii) local government elections in Wales, and

(iv) referendums held under Part 2 of the Local Government Act 2000 or Part 4 of the Local Government (Wales) Measure 2011 (referendums relating to local authority executive arrangements), so far as those functions do not relate to reserved matters within the meaning of the Government of Wales Act 2006."

22C: Page 22, line 14, leave out "Public Administration and Constitutional Affairs" and insert "Levelling Up, Housing and Communities"

22D: Page 22, leave out lines 15 to 18 Page 22, leave out lines 15 to 18

22E: Page 22, line 34, leave out from beginning to end of line 16 on page 23

22F: Page 23, line 21, leave out "Public Administration and Constitutional Affairs" and insert "Levelling Up, Housing and Communities"

22G: Page 23, line 25, leave out "Public Administration and Constitutional Affairs" and insert "Levelling Up, Housing and Communities"

22H: Page 25, line 16, leave out "Public Administration and Constitutional Affairs" and insert "Levelling Up, Housing and Communities"

22I: Page 25, leave out lines 17 to 22

23A: Page 21, line 13, at end insert—

"(3A) In preparing the statement, the Secretary of State must have regard to the duties imposed on the Commission by section 145(1) (duties with respect to compliance with controls imposed by this Act).

23B: Page 22, line 23, at end insert—

"(aa) must prepare a report containing the Secretary of State's response to the consultation."

23C: Page 22, leave out line 24 and insert—

"(3A) If, after complying with subsection (3), the Secretary of State proposes to designate the statement, the Secretary of State must lay before Parliament a document that—

(a) explains the Secretary of State's proposals,

(b) sets them out in the form of a draft statement, and

(c) contains the report prepared under subsection (3)(aa).

(3B) Where a document is laid before Parliament under subsection (3A), no draft of the statement that the Secretary of State proposes to designate is to be laid before Parliament before the end of the 60-day period.

(3C) In preparing a draft statement for laying before Parliament, the Secretary of State must consider any representations made during the 60-day period in relation to anything in the document laid under subsection (3A).

(3D) If, after the end of the 60-day period, the Secretary of State wishes to proceed with designating the statement, the Secretary of State must lay before Parliament—

(a) the draft statement (incorporating any changes made in light of any representations made as mentioned in subsection (3C)), and

(b) a report containing the Secretary of State's response to any such representations."

23D: Page 22, line 25, leave out "(3)(b)" and insert "(3D)"

23E: Page 22, line 33, at end insert—

"(aa) "the 60-day period" means the period of 60 days beginning on the day on which the document mentioned in subsection (3A) is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the days on which it is laid);"

23F: Page 23, line 17, leave out "for the purposes of subsection (5)(a)" and insert "or the 60-day period for the purposes of subsection (5)(a) or (aa) respectively"

23G: Page 23, line 42, after "consultation" insert "and other pre-designation"

23H: Page 24, line 18, leave out "9 months" and insert "12 months"

23I: Page 24, line 32, at end insert ", or

(c) at the request of the Speaker's Committee, where the request—

(i) is made by notice given to the Secretary of State, and

(ii) gives details of the changes to the statement that the Speaker's Committee propose should be made.

(2A) Where a request is made in accordance with subsection (2)(b) or (c), the Secretary of State must inform the Commission or the Speaker's Committee (as the case may be) how the Secretary of State proposes to deal with the request."

23J: Page 25, line 2, leave out "4C(2) (consultation requirements)" and insert "4C(2) to (3C) (consultation and pre-designation requirements)"

23K: Page 25, line 29, leave out "4C(3)(b)" and insert "4C(3D)(a)"

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, with the leave of the House, I will also speak to Motion B.

On Motion A, the Government have listened with respect to your Lordships' concerns but they consider the measures in these clauses necessary and to take a reasonable approach to reforming the accountability of the Electoral Commission, while respecting their operational independence. Much concern has been expressed about the duty to have regard. The Government's firm view is that this duty will not allow the Government to direct the commission's decision-making, nor will it undermine the commission's other statutory duties. However, while the other place has by a large majority reinstated Clauses 14 and 15, we have listened carefully and respectfully to the concerns expressed. I have also had the pleasure of meeting the

noble and learned Lord, Lord Judge, and others, and consulted colleagues in government. As a result of these conversations, and in a sincere effort to address the concerns raised by your Lordships, my colleague in the other place, Minister Badenoch, also tabled government Amendments 23A to 23K in lieu, which were accepted by the House of Commons. I will briefly outline them.

Amendment 23 underscores the independence of the commission by requiring the Secretary of State, when preparing a statement, to have regard to the duty placed on the commission by Section 145(1) of the Political Parties, Elections and Referendums Act 2000, to monitor and ensure compliance with the rules set out in that Act. Further, this amendment would prohibit the statement from including any provision about specific investigatory or enforcement activity.

Amendments 23C to 23H, 23J and 23K provide for enhanced parliamentary scrutiny of a statement—another thing your Lordships have asked for—that has been subject to statutory consultation by providing both Houses with a supplementary opportunity to consider the draft statement and make representations before it is laid for approval. The amendments also make consequential changes to Clause 14.

Furthermore, Amendments 23B and 23I would require the Secretary of State to publish a response to the statutory consultation on the statement, and to respond publicly to a request for the statement to be revised that comes from the Speaker's Committee on the Electoral Commission.

Taken together, the Government believe that our amendments, in addition to provisions already built into Clause 14—but which I accept failed totally to persuade your Lordships—should now put beyond doubt the question of whether the Statement could be used to unduly influence the commission to take a particular course of action in its investigatory or enforcement activity.

Turning to the amendments tabled by the noble Lord, Lord Judge, the Government do not, respectfully, share the view that it is necessary to clarify in the law how the duty to have regard to the statement will be interpreted. I was pleased to have the opportunity to hear the noble and learned Lord's views, and I know he has discussed those also with officials. The Government do not agree with the proposal to amend the provisions to expressly state that the commission would not be bound to follow the statement when carrying out its duty to have regard to it. The duty to have regard works in similar ways to other existing statutory duties without the need for such language as proposed in the noble and learned Lord's amendment to be included. Any further elaboration of this duty might have unwanted implications for how the many other duties to have regard that appear on our statute book should be interpreted. For these reasons, it is simply not a proposal that the Government can accept and I urge the House to reject it.

The Government do not agree either with the proposals from noble Lords which would require Ministers on the Speaker's Committee on the Electoral Commission to recuse themselves when the committee considers how the commission has discharged its duty to have regard to the statement. Executive representatives have always had a role in the parliamentary oversight of the commission via the committee, which, set in the context of the overall framework, is entirely appropriate. Furthermore, the Speaker's Committee, not the Government, determines its own procedures. Therefore, it would not be appropriate to impose legislative constraints on the operation of the committee in this way. This is rightly left to Members of the other place to consider. For these reasons, the Government also oppose this amendment and respectfully urge the House to reject it.

7.30 pm

I turn to Motion B on voter identification. I bring to the attention of noble Lords their Amendment 86, to which the other place has disagreed by way of Reason 86A, and to Amendment 86B in lieu, tabled by the noble Lord, Lord Rennard. The Government's policy on voter identification has been clear and consistent. In the pilots undertaken by the Government in 2018 and 2019, the Electoral Commission found that photo identification was the best approach to pursue, which gave the public the greatest confidence. The experience in Northern Ireland has shown that photo identification does not present a barrier to people voting. In the first parliamentary election after the introduction of photographic identification in 2005, turnout was higher in Northern Ireland than in Great Britain. For these reasons, I urge the House to support the Government's decision to disagree with Amendment 86 and to reject Amendment 86B in lieu.

I have heard and appreciate the concerns raised. I hope that noble Lords will understand the earnestness with which I and the Government have listened to and sought to answer many of the concerns about the Bill raised by noble Lords on all sides. This is an important matter, but I firmly believe that the policy is strong. To reassure your Lordships, I will say that this is not a static position. Should further forms of photographic identification become available and sufficiently secure, the Bill already makes provision to enable the list to be amended so that additional identification can be added by secondary legislation.

We have accepted responsibility for post-legislative scrutiny. We will ensure that the list of documents is regularly reviewed so that it remains up to date and fit for purpose. We are already considering potential future additions. For example, we are aware that the Office for Veterans' Affairs is developing a veteran's card, which may be appropriate. Furthermore, we will monitor existing forms of identification. For example, should rail cards, such as those proposed previously in the amendment from my noble friend Lord Willetts, become more secure, we will of course look to consider them, along with any other secure forms of identification. Our work will take into account technological advances, too, and we will carefully monitor the development of digital forms of identification.

I repeat that the Bill includes provision for the evaluation of the effect of voter identification to be completed following the first three sets of elections where the requirements apply. This will provide further opportunity to review the specific practicalities of this policy. This is in addition to the statutory post-legislative

[LORD TRUE]
scrutiny review of the whole Act that will take place, as provided by the amendment that I tabled after discussions with your Lordships at previous stages.

Finally, a list of existing identification types in the Bill is one element of this policy. To ensure that the implementation of the requirement is as accessible and effective as possible, a voter card will be freely available to electors who do not have one of the other forms of photo identification. There will be an extensive national communication campaign, conducted by the Electoral Commission, to complement the local efforts of electoral registration and returning officers. As I have said from the outset, we are determined that every eligible voter will continue to have the opportunity to vote. The Government are confident that our plans will ensure that photo identification works for all voters.

We have developed the debate on these topics at length, and more than once. The hour is late. The other place has considered these matters. In relation to Motion A, my colleague Minister Badenoch has laid before your Lordships genuine and significant changes which the other place has approved and which bring into legislation safeguards that your Lordships felt might be necessary. The Government have made concerted efforts in a range of areas to address the concerns raised by noble Lords throughout the passage of the Bill, and I respectfully submit that now is the time to put it on the statute book. I beg to move.

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Judge***

At end insert "and do propose Amendments 23L and 23M as additional amendments to the words so restored to the Bill—

23L: Clause 14, page 21, line 19, after "to" insert ", but is not bound by,"

23M: Clause 15, page 25, line 40, at end insert—

"(1A) When the Speaker's Committee carries out the function in subsection (1), members who are Ministers of the Crown must recuse themselves.""

Lord Judge (CB): My Lords, I must get this right. I beg to move Motion A1, as an amendment to Motion A, to insert the words at the end as printed on the Marshalled List. So we are all very much wiser, are we not?

What I am actually talking about is the words in one amendment,

"but is not bound by".

In the other amendment, the text is much lengthier:

"When the Speaker's Committee carries out the function in subsection (1)—

to which I shall come—

"members who are Ministers of the Crown must recuse themselves."

So now I hope we know what we are talking about.

On Monday, we had a very interesting debate. A substantial majority of your Lordships' House—cross-party, I hasten to add—thought it right to remove the two clauses from the Bill. These two clauses have been renumbered, upnumbered and their numbers changed, so I will go back to the original numbers, 14 and 15. We are dealing with the power given to the Secretary of State by this Bill to issue a strategy statement setting out his or her priorities and the guidance to which the commission would have to have regard. This House took the view that that provision would have left the commission exposed and would have been inconsistent with the need for the commission to be—and to be seen to be—independent of the Government and indeed of all political parties.

Perhaps it is just worth looking at the way in which the Electoral Commission came to be founded. The Fifth Report of the Committee on Standards in Public Life used these simple words:

"Those who have advocated the establishment of an Electoral Commission have been emphatic that it should be independent both of the government of the day and of the political parties. We agree. An Election Commission in a democracy like ours could not function properly, or indeed at all, unless it were scrupulously impartial and believed to be so by everyone seriously involved and by the public at large."

Today, the other place has considered the amendments that this House suggested, and it has restored the original Clauses 14 and 15, with some amendments. I welcome the amendments; they are a step forward. But they are a step forward on a ladder on which we had not reached the first rung in the original legislation.

On a separate matter, I am very grateful to the Minister for the conversations we have had. If I may say so, we had a robust exchange of views. I am pleased that there have been improvements, but they do not add very much. What they amount to is this: they make it absolutely clear that the Secretary of State must not issue a statement that might lead the commission to act inconsistently with its statutory duties. Well, that is important, but nobody ever thought that anybody would be able to issue instructions to be unlawful. Well, I suppose somebody might have thought, "We'll issue instructions to be unlawful"—but I do not think we will consider that in this particular situation. I am perfectly happy to accept that these amendments increase parliamentary supervision of the processes, but I respectfully suggest to the House that, although there is an improvement, it does not address the independence and the perception of independence of the commission.

I respect the decision of the other place—and that is it. I am not seeking to restore the original decision of this House. However, I am proposing that there should be these small amendments to ensure that the independence is established. I also propose to ask the other place to think again about these two amendments; I am not being critical in any way about this because it did not have this material to consider. I will deal with these amendments very briefly, including the words "not bound by".

I will refer back to the letter which the Minister kindly sent today to all Peers, which includes this passage in relation to "must have regard to": "The Government's view is that this duty will not allow the Government to direct the commission's decision-making, nor will it undermine the commission's other statutory duties or displace the commission's need to carry out these other duties. It simply means that, when carrying out their functions, the commission will be required to consider the statement and weigh it up against any

other relevant considerations. Therefore, the commission will remain operationally independent and governed by its commissioners".

I do not understand the words "operationally independent"; the commission is either independent or not. That is at the foundation of the argument against this amendment. Even if it were correct, it does not address this crucial question: the issuing of the statement must mean that the Secretary of State will have an influence on the decisions of the commission. Self-evidently, the commission cannot say, "Aha, here's the statement, yippee", and chuck it out the window or put it in the bin. It will influence the decision; that is the point of it and exactly its purpose. On this issue, my amendment is very simple. As I have discussed, I recognise the argument that "must have regard to" also carries this implication of "not bound by"—I do not think that it does, but I recognise the argument. Assuming that I am wrong, and assuming that it does carry that implication, in the context of an elections Bill and the sensitivities which surround all electoral questions, surely it is so much simpler to express plainly and unequivocally in the Bill that the Electoral Commission will not be bound by the statement issued by the Secretary of State. That is what I am seeking with this amendment.

As to the other amendment, your Lordships will remember that I suggested that having two Ministers of the Crown on the commission would ultimately mean that the judge—that is the way in which the commission would do its work—would include two Members of the Government whose Government had issued the statement. In my old life, we called that "judge in his own cause"; that is what it amounts to. Whereas I understand the need for an examination—I am not happy about it, but I understand the argument—it would be much more appropriate and consistent with an independent commission that Ministers of the Crown should not be judging whether or not the commission had followed and had proper regard to the statement given to it by the Secretary of State.

I am asking this House to send back the amendments I have put forward on the basis that the other place could have a chance to look at them for the first time and make up its own mind about whether they are sensible. I urge that they be accepted, that they would make the improvements necessary to the Bill, and that they would make it possible to look everyone in the eye and say, "This is an independent body exercising an independent function". I beg to move.

7.45 pm

Lord Blunkett (Lab): I support the noble and learned Lord's amendments. I will be as brief as humanly possible, first because of his brilliant and forensic analysis of where we are and the importance of the amendments and, secondly, because there has been a tendency over recent times for noble Lords to filibuster their own amendments—I have seen it again and again. Therefore, I just want to comment on the second part of the amendments before us, the recusing of Ministers in dealing with the statement drawn up by the Secretary of State.

The Minister, in dealing with this element, talked about elected Members having traditionally been on the commission. I do not dispute that for a minute, but we are back to where we were when debating this earlier in the week: there seems to be a sad misunderstanding of the difference between Government and Parliament, and the role of Ministers representing a Government dominated by a political party and the role of elected Members, and therefore the commission, in carrying out their duties independently. This is a substantial constitutional matter; I am sorry that there are not more Members in the Chamber to hear it because, obviously, the troops outside will be rallied at the appropriate moment. Given that this is so fundamental to the way in which we conduct our democracy, election processes, and therefore the transparency and trust that people should expect, I believe that we should vote on this tonight. I am surprised that the Minister has not been able to convince his colleagues in the other place that they have got this very badly wrong. I promise them that it will come back to bite them.

Lord Rennard (LD): I speak to Motion B1. We have already agreed in this House that compulsory photo ID at polling stations is not necessary. At no stage in any of our debates have the Government presented any evidence that compulsory photo ID is necessary, or proportionate, to what they try to claim is a risk of impersonation. In fact, there is proof that impersonation at the polling station is not a significant problem. The number of replacement ballot papers issued in the last general election, mostly because of a clerical error in crossing off the wrong name, was just 1,341 out of over 32 million ballot papers issued. That is an average of two replacement ballot papers in each constituency, or just one for every 30 polling stations. Mostly, they were issued due to clerical error, not fraud. Therefore, spending £180 million over the next 10 years to make photo ID a requirement to be allowed to vote is wholly disproportionate and unnecessary.

In an earlier debate, it was stated by a Minister that if someone claimed your vote, they had stolen it and you could not get it back. However, the replacement ballot paper system means that this is not the case. Unlike someone stealing a parcel of yours at the Post Office, you can get a replacement ballot paper if one has already been issued in your name and an investigation is made, if necessary.

The Minister referred to Northern Ireland and the recent increase in turnout, which I am sure is not due to the popularity of photo ID. If we look back to when photo ID first came in for the 2003 Northern Ireland Assembly election, we see that estimates were that around 25,000 voters did not vote because they did not have the required ID, and almost 3,500 people—2.3% of the electorate—were initially turned away for not possessing the required ID. There are 20 times as many people in Great Britain, so you can do the maths.

However, there is a sensible alternative to the Government's proposals. It should be seen as a sensible compromise. It would safely address any legitimate concern that the Government claim to have about impersonation at the polling station. Perhaps significantly, it would also fulfil what was in the Conservative Party's manifesto in 2019.

In addition to the documents considered acceptable to the Government as proof of identity, there is a document already issued to every voter by the official

[Lord Rennard]
electoral registration officer. That document is the official polling card. In the local election pilots conducted under the Government's own rules, the poll card was deemed an acceptable form of voter ID in some council areas and was chosen by 93% of voters where it was an option. This compares with 5% choosing to use their driving licence and 1% choosing their passport. Most significantly, the number of voters turned away from polling stations was half the level of that in areas requiring photo ID. That is the real point of the Electoral Commission's analysis of those pilots.

Every voter on the electoral register is issued with a polling card. There is therefore no additional cost in making it an acceptable form of ID. A fraudster would have not just to impersonate someone at a polling station but to have stolen their poll card in advance. In the unlikely event of it being stolen, it could be replaced, and someone using the original could be arrested at the polling station for using it. So let us offer this compromise from this House. It offers greater security but no discrimination and no great expensive additional bureaucracy.

I believe that we do not require substantial further debate on this issue tonight, but we do need to act to prevent abuse of a majority in the other place.

Lord Cormack (Con): My Lords, I will not say very much about the amendment in the name of the noble Lord, Lord Rennard, because I wish to concentrate on that in the name of the noble and learned Lord, Lord Judge. All I will say is that I think we need identity cards in this country, full stop.

I feel very troubled tonight. At Second Reading, I made it quite plain that I was strongly opposed to Clauses 14 and 15. I made a similar comment in Committee. On Monday, I was glad to be able to support the noble and learned Lord, Lord Judge, the noble Lords, Lord Blunkett and Lord Wallace of Saltaire, and my noble friend Lord Young of Cookham, when, along with nine or 10 Conservative colleagues, I voted for the amendments in the name of the noble and learned Lord to delete those two clauses.

I am troubled because, frankly, although I accept the good intentions of the Minister, my noble friend Lord True—his integrity is not in any doubt whatever—I do not think that tinkering will really meet the points that were made by those of us who wanted to delete the clauses. It is not for me to say that we should insist, because it is very much the noble and learned Lord's amendment and he has made his decision, which, again, I respect totally. However, faced with a choice between tinkering and tinkering, I personally think that we have missed the opportunity to put this Bill in order by deleting two clauses that are fraught with danger to our constitution and election system.

The best we can hope for now is really scrupulous post-legislative scrutiny to see how this works out—it is essential that that happens—but we are put under a degree of pressure. Although this is the first stage of ping-pong on this Bill, when I came in this morning, all the robes for Prorogation were hanging up. The Government are clearly determined to prorogue Parliament tomorrow and not to use time later this week—which could have been used—or next week for a battle. I therefore find myself very much in the position of the noble Lord, Lord Coaker, at an earlier stage today, when he praised the noble Baroness, Lady Chakrabarti, and the noble Lord, Lord Kerr of Kinlochard, but said, "Really, the time has come". I believe it is quite clear that the time has come for the end of this Session of Parliament. It is not one that will go down in the history books as a Session of glory or a Session that has enhanced the democratic credentials of government. It will not go down in history as a Session that has seen our country maintain its staunch defence of the rule of law, as it has done in the past, but that is where we are.

Frankly, the most honourable thing I can do tonight is not to vote. I believe that we should have deleted the clauses, but we have not done so. We gave the Commons an opportunity to delete the clauses, but they completely spurned us. They are entitled to do that, but I do not necessarily think that they were wise in taking the line they took. However, that is the line they took, and it is the line they will take if the amendments in the name of the noble and learned Lord, Lord Judge, are passed tonight.

We should just mark this as a pretty sad episode and, as I say, scrutinise the legislation once it is on the statute book. We will need to come back to these issues. We must make absolutely sure that the Electoral Commission is not trammelled in its work and is able, as similar bodies in other democratic countries are, to ensure that our elections are scrupulously controlled, totally impartial and never subject to the whims of any political party—right, left or centre. This is a sad day for me, but that is the conclusion I have reached.

Lord Willetts (Con): My Lords, I want briefly to refer to Motions B and B1. In this House, we moved and passed an amendment that would have significantly added to the list of possible identifications that could be used by voters. I continue to believe that that would have reduced the risk of genuinely eligible voters finding themselves unable to vote. Nevertheless, that amendment has been substantially rejected in the other place and, as we have just heard from my noble friend Lord Cormack, we are drawing to the end of this Session.

I take some comfort from the words we have just heard from the Minister; I thank him for his engagement with this issue. He assured the House that it will be perfectly possible through secondary legislation to add to the list of identifications that can be accepted. He also assured the House that the Government will monitor the potential for new forms of ID to be used and improvements to the security of IDs, which appeared in our original amendment but have now been rejected. I hope that the evaluation he has promised will show that it is possible to add to the list of further IDs that can be used; that would be desirable. I very much hope that the Minister and the Government will be as flexible as he has said. In the light of his assurances and the clear rejection from the other place, I do not think that it is now our role to pursue this issue further.

Baroness Lister of Burtersett (Lab): My Lords, I support Motion A1, but I want to speak briefly to motion B1, which I also support. My primary concern throughout our debates has been the impact on the

ability of people experiencing poverty to exercise their right to vote. I am not going to repeat the arguments, but I hope I can get a couple of assurances on the record from the Minister.

First, I thank him, as I understand he has asked officials to include organisations led by people in poverty—such as Poverty2Solutions and, I would add, the APLE Collective—in their ongoing consultations about the implementation of the Bill, so as to get their expertise on the experience of poverty. I would welcome it if the Minister could place that commitment on the record.

8 pm

Secondly, I welcome the commitment he has made today to post-legislative scrutiny for evaluation and to keep under review the list of documents that will be acceptable as identification. Ideally, I would like to see a review immediately after the next general election, and I ask that the review looks explicitly at the impact on the ability of people experiencing poverty to exercise their right to vote.

A point I have made consistently is that, yes, while we have looked at groups protected under the Equality Act—although that does not seem to have made much difference to the outcome—it has been quite clear to me that there has been no attempt to look at the impact on people experiencing poverty who are not in a protected group. Given the evidence from the Joseph Rowntree Foundation and others, there is a real danger that their ability to exercise their right to vote will be seriously affected.

So that is all I am asking—those two assurances on the record.

Lord Carlile of Berriew (CB): My Lords, in relation to my noble and learned friend's amendment, I have a short but I believe very important question to ask of your Lordships. What is your Lordships' House here for if it is not this? My noble and learned friend has demonstrated beyond doubt that there is a risk—a measurable risk, not a fanciful risk—that the Electoral Commission might have its independence damaged and impugned if these amendments are not introduced into the Bill. What would the Government lose by accepting these amendments?

I therefore suggest to your Lordships that we have not yet heard any good reason why these amendments should not be sent back. I am unpersuaded by the argument that because some robes are hanging on hangers somewhere in the building, no doubt losing their creases—which is as good an argument as anything I have heard against my noble and learned friend's amendments—we should not delay matters for another day, which is available. There is an option: the Minister can go and consult his ministerial colleagues and come back to the House in a matter of minutes and say, "I have listened to the noble and learned Lord, Lord Judge; he has argued a brilliant case and it may well be that he is right". And if there is a risk that he is right—which is what I believe—we should not let this pass just because it is inconvenient to delay the end of the parliamentary Session.

Lord Rooker (Lab): My Lords, I had not intended to speak, but the fact is that, following what we have just heard, the Order Paper for Tuesday and Wednesday next week has Questions down from noble Lords. It is not as though we are slicing off tomorrow: the Order Paper is there, and it is there for a reason. Somebody worked out, in terms of the management of this place, that the House would sit. People put bids in for Questions, and they are sitting there on the Order Paper. The Minister—to whom I pay tribute for the way in which he has dealt with this Bill—did leave a gap open, which is not completely closed.

On what the noble and learned Lord, Lord Judge, said, we are certainly going to find out what the mettle of the electoral commissioners is made of, as a result of this kind of legislation. This is going to test those individuals—both the officers and the commissioners—in a way that they never contemplated when they applied for or were appointed to their posts.

I do not want to delay the House, but the other day I was reading—and I have not finished it—David Runciman's *How Democracy Ends*. I came across this page where he quoted an American political scientist Nancy Bermeo, who had identified six different varieties—David Runciman called them "coups"—of ways in which things get manipulated. These are two of them. I would just like the Minister to explain how this Bill differs from these two examples:

> "'Executive aggrandisement', when those already in power chip away at democratic institutions without ever overturning them. 'Strategic election manipulation', when elections fall short of being free and fair but also fall short of being stolen outright."

Now where does this Bill differ from those two definitions?

Baroness Altmann (Con): My Lords, I was not going to speak in this debate, but, having listened very carefully, I am deeply troubled at the idea that we would not try to see whether we can persuade the Minister and Conservative colleagues in the other place, right-thinking Conservatives, that there is a significant risk here of gerrymandering elections—something one would think was impossible to imagine in this country.

I think the House has been done a great service by the noble and learned Lord, Lord Judge, who has challenged us to stand up for what we can see is a significant risk. Indeed, when we think about what happens in the other place with the amendments that we are trying to point out are really important to insert in the Bills that are coming through in these final days, we see that they are not even being sufficiently debated. With a significant majority there is a risk that a Government can try to gather for themselves permanent or long-lasting powers that are not designed for the kinds of constitutional arrangements that we have in this country.

I therefore am finding myself deeply conflicted and troubled as to—in the words of the noble Lord, Lord Carlile—what we are here for if it is not consider, and ask the other place to consider, these matters.

Lord Wallace of Saltaire (LD): My Lords, briefly, we on these Benches will vote for both amendments on matters of principle, because we believe in constitutional democracy and citizens' rights. Sadly, throughout our discussions on this Bill, the Minister has resisted attempts to discuss this as a constitutional issue and as a matter

[Lord Wallace of Saltaire]
of principle. Indeed, as the Bill has gone through the Government have removed this area from the Cabinet Office and put it in with housing and local government under the Department for Levelling Up, so that the Commons committee on constitutional affairs will no longer cover such things as this. I regret that, too; it seems to me entirely improper.

I recall the noble Lord, Lord Hannan, making a very powerful speech some while ago on the importance of process in politics. By "process" I take him to mean the way in which we conduct ourselves in the political world, including the rule of law and institutional checks and balances Those conventions of political life are a fundamental part of democracy. That is what this Bill has failed to reinforce. I think we all recognise that a future Prime Minister or a future Government will have to return to this issue and produce a much better Bill that can command more cross-party support.

The amendment in the name of the noble and learned Lord, Lord Judge, addresses the question of parliamentary sovereignty—not Executive sovereignty. My noble friend Lord Rennard's amendment addresses the question of the right of every citizen to take part in the political life of the country and not to face unnecessary barriers. One of the many adverse effects of the Bill is that it makes it much easier and without barriers for overseas citizens to vote but more difficult for domestic citizens to vote. That is very odd, not entirely democratic and undesirable.

For those and other reasons, and on matters of constitutional principle, which the revising House should have particular concern for, we will vote for both amendments.

Baroness Hayman of Ullock (Lab): My Lords, in his opening remarks, the Minister talked about the post-legislative scrutiny that is going to be on the face of the Bill and said that this would include reviewing and monitoring further forms of acceptable ID. He mentioned that the Bill includes the provision to add further acceptable forms. We welcome that. I hold the noble Lord, Lord Willetts, in the highest regard and thank him for pressing the Government in his previous amendment on the importance of furthering the number of IDs that can be used.

Having said all that, we believe, as the noble Lord, Lord Rennard, said in introducing his amendment, that the Government have simply got it wrong on requiring voter ID to be presented at polling stations. We are disappointed and unhappy that there has been absolutely no movement whatever from the Government on this and that they have not wished to include any further accepted forms of ID in the Bill. If the Bill moves forward on ID as it stands, will the Minister provide assurances as to how the requirements for photo voter ID will be introduced, how local government will be supported, and what mitigations will be put in place to ensure that no elector will be disfranchised as a result of the Bill?

We very much welcome the amendments in the name of the noble and learned Lord, Lord Judge, on the Electoral Commission. There is clear concern, right across this House, about the undermining of the independence of the Electoral Commission. I will not go into any detail because we need to move on. The noble and learned Lord clearly laid out why there are still deep concerns in this House. The small amendments that he has offered would resolve these issues and greatly strengthen the Bill before it reaches the statute book. We agree wholeheartedly with what the noble and learned Lord, Lord Judge, is trying to achieve and support his decision to ask the other place to think once again on what is a matter of extreme constitutional importance.

Lord True (Con): My Lords, for the convenience of the House—I know it is late and I have made my arguments and placed them before your Lordships—but I was asked a couple of specific questions.

In response to the queries of the noble Baroness, Lady Lister, there has been correspondence with her and officials through the list of organisations that we consulted. We have affirmed that there is and will be ongoing consultation as part of the implementation programme. I can certainly say in the House that we will undertake to continue to consult the organisations that have been discussed as we go forward. I can give her that assurance.

One thing raised in the debate was that the noble Lord, Lord Carlile of Berriew, said that we were doing this because of Prorogation. That was something injected into the debate by another Member of your Lordships' House. I remain at the disposal of your Lordships. If noble Lords wish to be here again and again on this matter, I will rise to respond. The matter referred to is immaterial.

8.15 pm

However, the noble Lord, Lord Carlile, also asked whether I could go and consult colleagues in the other place. Because of the exquisite courtesy of the noble and learned Lord, Lord Judge, the Government had been advised of what he was proposing. When I said to your Lordships that these proposals would not be acceptable to the Government, and potentially, perhaps your Lordships might consider, to the other place, that was not off the cuff; it was an advised response. That is the advised position from me at the Dispatch Box, and should these additional amendments be sent back, I would not anticipate that the short passage of time would alter that advised position.

It is a matter for your Lordships to decide whether you wish to pursue things further. I believe, in all humility, that with the amendments laid by my colleagues in the other place—which the noble and learned Lord has, with his utter civility, accepted—improvements have been made to the position in the Bill. On balance, given what I have said about the Government's position on this proposition and given the offer on the table, in effect, from the Government in the Commons' proposals, and given the many changes and improvements that have been made—to the noble Baroness opposite I say that we will of course keep the House informed on the vital measures that we need to take to ensure that people are fully informed—and having listened carefully to another brilliant speech of advocacy by the noble and learned Lord, Lord Judge, the judgment ultimately to be made by your Lordships' House is whether it is appropriate to continue pursuing these matters for a

further stage. I respectfully submit that, given that the Government are not likely to—indeed will not—accept the proposals that have been put forward, it may be to the convenience of all that that is accepted. It is of course absolutely within the right of your Lordships to vote and decide as you wish, but I thought it was important that the House should understand the likely position and the Government's view of these proposals.

Lord Judge (CB): My Lords, I had no doubt whatever that I would ask the House to consider its views and to agree to the Motion in my name. I regret to say this but, having heard the last few observations by the Minister, I am encouraged to make sure that, if this becomes part of the law without the amendments that are included in this Motion, it will be the responsibility of those in the other place who voted for it. Therefore, I respectfully ask the House to agree to my Motion.

8.18 pm

Division on Motion A1

Contents 181; Not-Contents 202.

Motion A1 disagreed.

Division No. 3

CONTENTS

Addington, L.
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Allan of Hallam, L.
Altmann, B.
Anderson of Ipswich, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bradley, L.
Brinton, B.
Brown of Eaton-under-Heywood, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bull, B.
Burnett, L.
Burt of Solihull, B.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carlile of Berriew, L.
Carter of Coles, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Clarke of Nottingham, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Corston, B.
Craig of Radley, L.
Craigavon, V.
Davies of Brixton, L.
Deben, L.
Dholakia, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Eatwell, L.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Grender, B.
Grey-Thompson, B.
Grocott, L.
Hamwee, B.
Hannay of Chiswick, L.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hope of Craighead, L.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Judge, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Khan of Burnley, L.
Lawrence of Clarendon, B.
Layard, L.
Lee of Trafford, L.
Liddle, L.
Lister of Burtersett, B.
Low of Dalston, L.
Ludford, B.
Macdonald of River Glaven, L.
Mackenzie of Framwellgate, L.
Macpherson of Earl's Court, L.
Manchester, Bp.
Mann, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McDonald of Salford, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Miller of Chilthorne Domer, B.
Morgan of Huyton, B.
Morris of Yardley, B.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Pinnock, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Primarolo, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Ravensdale, L.
Razzall, L.
Redesdale, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Rooker, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
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Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Stair, E.
Stansgate, V.
Stephen, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Goss Moor, L.
Teverson, L.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Tyler of Enfield, B.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Walmsley, B.
Watson of Invergowrie, L.
Watts, L.
Wellington, D.
Wheatcroft, B.
Whitaker, B.
Wigley, L.
Wilcox of Newport, B.
Worthington, B.
Wrigglesworth, L.
Young of Norwood Green, L.

NOT CONTENTS

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Ahmad of Wimbledon, L.
Altrincham, L.
Ashton of Hyde, L.
Astor of Hever, L.
Astor, V.
Attlee, E.
Balfe, L.
Barran, B.
Bellingham, L.
Benyon, L.
Berridge, B.
Bethell, L.
Black of Brentwood, L.
Blackwell, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Bridgeman, V.
Bridges of Headley, L.
Brookeborough, V.
Brougham and Vaux, L.
Browne of Belmont, L.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Chadlington, L.
Chalker of Wallasey, B.
Chisholm of Owlpen, B.
Colgrain, L.
Colwyn, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Cumberlege, B.
Davidson of Lundin Links, B.
Davies of Gower, L.
De Mauley, L.

Deighton, L.
Dixon-Smith, L.
Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Finkelstein, L.
Finn, B.
Fleet, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fraser of Craigmaddie, B.
Frost, L.
Gadhia, L.
Geddes, L.
Glenarthur, L.
Glendonbrook, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goschen, V.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Harrington of Watford, L.
Harris of Peckham, L.
Haselhurst, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Mackay of Clashfern, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrow, L.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Nicholson of Winterbourne, B.
Noakes, B.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Risby, L.
Robathan, L.
Rock, B.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Tyrie, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Waldegrave of North Hill, L.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

Motion A agreed.

8.31 pm

Motion B

Moved by ***Lord True***

That this House do not insist on its Amendment 86, to which the Commons have disagreed for their Reason 86A.

86A: Because the Commons consider the requirement to provide adequate photographic identification to be the most effective means of securing the integrity of the electoral system.

Lord True (Con): My Lords, I have already spoken to Motion B, so I beg to move.

Motion B1 (as an amendment to Motion B)

Moved by ***Lord Rennard***

At end insert "and do propose Amendment 86B in lieu—

86B: Page 79, line 44, at end insert—

"(1HA) In this rule a "specified document" also means an official poll card issued by the returning officer for the election at which the voter intends to vote.""

Lord Rennard (LD): My Lords, I beg to move.

8.31 pm

Division on Motion B1

Contents 150; Not-Contents 208.

Motion B1 disagreed.

Division No. 4

CONTENTS

Addington, L.
Alderdice, L.
Allan of Hallam, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bradley, L.
Brinton, B.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bull, B.
Burnett, L.
Burt of Solihull, B.
Campbell-Savours, L.
Carlile of Berriew, L.
Carter of Coles, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Davidson of Lundin Links, B.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Drake, B.
Eatwell, L.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Grender, B.
Grocott, L.

Hamwee, B.
Hannay of Chiswick, L.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Healy of Primrose Hill, B.
Henig, B.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Khan of Burnley, L.
Lawrence of Clarendon, B.
Layard, L.
Lee of Trafford, L.
Lister of Burtersett, B.
Ludford, B.
Macdonald of River Glaven, L.
Macpherson of Earl's Court, L.
Marks of Henley-on-Thames, L.
Maxton, L.
McAvoy, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Miller of Chilthorne Domer, B.
Morgan of Huyton, B.
Morris of Yardley, B.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Pinnock, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Primarolo, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Ravensdale, L.
Razzall, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Stansgate, V.
Stephen, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Goss Moor, L.
Teverson, L.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Walmsley, B.
Watson of Invergowrie, L.
Watts, L.
Wheatcroft, B.
Whitaker, B.
Wigley, L.
Wilcox of Newport, B.
Worthington, B.
Wrigglesworth, L.
Young of Norwood Green, L.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anderson of Ipswich, L.
Ashton of Hyde, L.
Astor of Hever, L.
Astor, V.
Attlee, E.
Balfe, L.
Barran, B.
Bellingham, L.
Benyon, L.
Berridge, B.
Bethell, L.
Black of Brentwood, L.
Blackwell, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Bridgeman, V.
Bridges of Headley, L.
Brookeborough, V.
Brougham and Vaux, L.
Browne of Belmont, L.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Chadlington, L.
Chalker of Wallasey, B.
Chisholm of Owlpen, B.
Clarke of Nottingham, L.
Colgrain, L.
Colwyn, L.
Cormack, L.
Courtown, E.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Dixon-Smith, L.
Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Finkelstein, L.
Finn, B.
Fleet, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fraser of Craigmaddie, B.
Frost, L.
Gadhia, L.
Geddes, L.
Glenarthur, L.
Glendonbrook, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goschen, V.
Greenhalgh, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Harrington of Watford, L.
Harris of Peckham, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Keen of Elie, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Mackay of Clashfern, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McDonald of Salford, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Mobarik, B.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrow, L.
Moylan, L.
Moynihan, L.
Nash, L.
Neville-Rolfe, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
O'Loan, B.
Parkinson of Whitley Bay, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Risby, L.
Robathan, L.
Rock, B.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Tyrie, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.

Wakeham, L.
Waldegrave of North Hill, L.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

Motion B agreed.

Ukraine Update

Statement

The following Statement was made in the House of Commons on Monday 25 April.

"It is 61 days since Russia invaded Ukraine, and 74 days since my Russian counterpart assured me that the Russian army would not be invading. As the invasion approaches its ninth week, I want to update the House on the current situation and the steps that we are taking to further our support for the Ukrainian people.

It is our assessment that approximately 15,000 Russian personnel have been killed during their offensive. Alongside the death toll are the equipment losses. A number of sources suggest that, to date, over 2,000 armoured vehicles have been destroyed or captured. That includes at least 530 tanks, 530 armoured personnel carriers, and 560 infantry fighting vehicles. Russia has also lost more than 60 helicopters and fighter jets. The offensive that was supposed to take a maximum of a week has now taken weeks. Last week Russia admitted that the Slava-class cruiser "Moskva" had sunk. That is the second key naval asset that the Russians have lost since invading, and its loss has significantly weakened their ability to bring their maritime assets to bear from the Black Sea.

As I said in my last Statement, Russia has so far failed in nearly every one of its objectives. In recognition of that failure, the Russian high command has regrouped, reinforced and changed its focus to securing the Donetsk and Luhansk oblasts. A failure of the Russia Ministry of Defence command and control at all levels has meant that it has now appointed one overall commander, General Dvornikov. At the start of this conflict, Russia had committed more than 120 battalion tactical groups, approximately 65% of its entire ground combat strength. According to our current assessment, about 25% of those have been rendered not combat-effective.

Ukraine is an inspiration to us all. Its brave people have never stopped fighting for their lands. They have endured indiscriminate bombardment, war crimes and overwhelming military aggression, but they have stood firm, galvanised the international community, and beaten back the army of Russia in the north and the north-east.

We anticipate that this next phase of the invasion will be an attempt by Russia to occupy further the Donbass and connect with Crimea via Mariupol. It is therefore urgent that we in the international community ensure that Ukraine gets the aid and weapons that it needs so much.

As Defence Secretary, I have ensured that at each step of the way the UK's support is tailored to the anticipated actions of Russia. To date we have provided more than 5,000 anti-tank missiles, five air defence systems with more than 100 missiles, 1,360 anti-structure munitions, and 4.5 tonnes of plastic explosive. On 9 March, in response to indiscriminate bombing from the air and escalation by President Putin's forces, I announced that the UK would supply Starstreak high-velocity and low-velocity anti-air missiles. I am now able to report that these have been in theatre for more than three weeks, and have been deployed and used by Ukrainian forces to defend themselves and their territory.

Over the recess, my ministerial team hosted a Ukrainian Government delegation at Salisbury plain training area to explore further equipment options. That was quickly followed by the Prime Minister's announcement of a further £100 million-worth of high-grade military equipment, 120 armoured vehicles, sourcing anti-ship missile systems, and high-tech loitering munitions for precision strikes.

However, as we can see from Ukrainian requests, more still needs to be done. For that reason, I can now announce to the House that we shall be gifting a small number of armoured vehicles fitted with launchers for those anti-air missiles. Those Stormer vehicles will give Ukrainian forces enhanced short-range anti-air capabilities, day and night. Since my last Statement, more countries have answered the call and more have stepped up to support. The Czech Republic has supplied T-72 tanks and BMP fighting vehicles, and Poland has also pledged T-72 tanks.

The quickest route to help Ukraine is with equipment and ammunition similar to what they already use. The UK Government obviously do not hold Russian equipment, but in order to help where we do not have such stock, we have enabled others to donate. Alongside Canada and Poland, the Royal Air Force has been busy moving equipment from donor countries to Ukraine. At the same time, if no donor can be found, we are purchasing equipment from the open market. On 31 March, I held my second international donor conference, with an increase in the number of countries involved to 35, including representatives from the European Union and NATO. So far these efforts have yielded some 2.5 million items of equipment, worth more than £1.5 billion.

The next three weeks are key. Ukraine needs more long-range artillery and ammunition, and both Russian and NATO calibre types to accompany them. It also seeks anti-ship missiles to counter Russian ships that are able to bombard Ukrainian cities. It is therefore important to say that, if possible, the UK will seek to enable or supply such weapons. I shall keep the House and Members on each Front Bench up to date as we proceed.

The MoD is working day and night, alongside the US, Canada and the EU, to support continued logistical supplies, but not all the aid is lethal. We have also sent significant quantities of non-lethal equipment to Ukraine. To date, we have sent more than 90,000 ration packs, more than 10 pallets of medical equipment, more than 3,000 pieces of body armour, nearly 77,000 helmets, 3,000 pairs of boots and much more, including communications equipment and ear defence.

On top of our military aid to Ukraine, we contribute to strengthening NATO's collective security, both for the immediate challenge and for the long term. We have temporarily doubled the number of defensive personnel

in Estonia. We have sent military personnel to support Lithuanian intelligence, resilience and reconnaissance efforts. We have deployed hundreds of Royal Marines to Poland, and sent offshore vessels and Navy destroyers to the eastern Mediterranean. We have also increased our presence in the skies over south-eastern Europe with four additional Typhoons based in Romania. That means that we now have a full squadron of RAF fighter jets in southern Europe, ready to support NATO tasking. As the Prime Minister announced on Friday, we are also offering a deployment of British Challenger 2 tanks to Poland, to bridge the gap between Poland donating tanks to Ukraine and their replacements arriving from a third country.

Looking further ahead, NATO is reassessing its posture and the UK is leading conversations at NATO about how best the alliance can deter and defend against threats. My NATO colleagues and I tasked the alliance to report to leaders at the summit in June with proposals for concrete, long-term and sustainable changes. Some of us in this House knew that, behind the mask, the Kremlin was not the international statesman it pretended to be. With this invasion of Ukraine, all of Europe can now see the true face of President Putin and his inner circle. His intention is only to destroy, crush and rub out the free peoples of Ukraine. He does not want to preserve. He must not be allowed to prevail. Ukrainians are fighting for their very lives and for our freedoms. The President of Ukraine himself said as much: if Russia stops fighting, there will be peace; if Ukraine stops fighting, there will be no more Ukraine."

8.44 pm

Lord Coaker (Lab): My Lords, in this House and across Parliament and beyond, as the Minister knows, we are united in our support for Ukraine and the actions the Government have taken. The courage shown by the Ukrainian people, both military and civilian, has been remarkable, and this bravery has echoed across the globe since the Russian invasion began, inspiring us all.

We have all condemned the invasion of a sovereign country and the barbaric acts that have been carried out in its name. We remain determined to end this unjustifiable war and ensure that all those responsible are brought to justice for their war crimes. These efforts have seen Russia forced into a new phase of changed tactics this week. The goal of outright conquest has been abandoned and the focus is now on the east.

Can the Minister share what further military assistance the Ukrainian Government have requested from the UK to deal with this new offensive? As Finland and Sweden are reportedly seeking to join NATO in response to the invasion, what steps are the Government taking to reassure our democratic partners that we will stand with them against any Russian aggression and consider quickly such applications?

Is it not the case that, rather than weakening NATO, Russia's actions have strengthened it: the complete opposite of what it intended and indeed expected? Overnight we have heard reports of false flag attacks in the breakaway Transnistria region of Moldova, as well as a renewed attack on the Azovstal steel plant, which houses resilient survivors of the brutal siege of Mariupol. It was also reported this morning that hangers in the Zaporizhzhia region, containing European and US weapons and ammunition, were destroyed by Russian missiles.

Can the Minister share what intelligence she can on this, particularly whether any UK-supplied provisions were lost? Talking of intelligence, does the Minister have any update on our assessment of Russian threats to attack Western targets? It is vital that we stand together to show that we will not be intimidated by any such threats. We welcome the announcement made by the Secretary of State on Monday to further supply Ukraine. Armoured vehicles fitted with anti-air missiles will enhance the short-range anti-air capabilities of the Ukrainian military. We also welcome efforts to move equipment from other allies to Ukraine.

Could the Minister say what logistical support the UK is providing to our allies to ensure that military aid reaches the front lines? The Secretary of State has said that the UK will seek to enable, or supply more long-range artillery and ammunition, as well as anti-ship missiles which Ukraine needs. Alongside that, what aerial reconnaissance is being provided? It has been only two days since the announcement, but I wonder if the Minister can update the Chamber on what is being done to deliver these weapons?

What is required next is a shift from old Soviet-era weapons, which enabled a short-term response to the initial offensive, to a medium term strategy in response to the latest phase. This will require newer NATO weapons and training for the Ukrainians to use them. Can the Minister outline what steps the Government are taking to facilitate that?

I also understand that approximately 1,000 UK troops are on standby for humanitarian support in the countries immediately adjoining Ukraine. Is there anything the Minister can tell us about their deployment and work?

I now turn to the front page of the *Daily Telegraph* this morning and the article which reports the Foreign Secretary making a speech, this evening I think, calling for plane parts to be sent to Ukraine and for increased defence spending. Will the Prime Minister, the Chancellor and the Ministry of Defence be involved in signing off these plans, and what plans do the Government have to review defence spending? Can the Minister update us on the Foreign Secretary saying that the free world will need to "reboot, recast and remodel" its approach to tackling aggressors, and that Ukraine has to be a catalyst for wider change. What does that mean for our current defence posture, and is that being reviewed?

Could the Minister update us on the total amount that the Government has now spent on military aid to Ukraine, including non-lethal equipment and how does this compare to our key allies? Are we now confident that all NATO partners, including Germany, are united in the provision of military equipment?

To conclude, it is the case that the Ukrainians' fight is our fight, and it is vital that we stand together against this unprovoked aggression, and prepare if necessary for the long haul. This country has a proud history of standing up for freedom and democracy and we must continue to do so today. We know the consequences of not doing so.

Baroness Smith of Newnham (LD): My Lords, on these Benches we also stand in support of the Ukrainian President and the people of Ukraine, who have so robustly stood up to the Russian invasion, I think for 63 days now. Normally, perhaps, your Lordships' House is relieved that Ministers are not required to rehearse the Statement, yet in this Statement there was a lot of detail which might have merited some rehearsal today. The Secretary of State went through in some considerable detail the losses Russia has faced and how Russia had assumed that it was going to be a short incursion into Ukraine and a rapid victory, which has clearly not been the case. From these Benches we support the efforts of Ukraine and our NATO allies on its borders.

Many of the questions that I wish to ask are similar to those raised by the noble Lord, Lord Coaker. We have had a lot of detail about the anti-ship and anti-tank missiles the United Kingdom has been supplying. There is a question of how far and for how long we are able to keep supplying them. I think it was some time before Recess that the noble Lord, Lord Lancaster, who is not in his place, asked to what extent the Government are replenishing their own missiles. Is the Minister able to say how long the Government are able to offer the sort of support they have been giving? What is the medium-term thinking?

The Secretary of State said:

"Looking further ahead, NATO is reassessing its posture and the UK is leading conversations at NATO about how best the alliance can deter and defend against threats."—[*Official Report*, Commons, 25/4/22; col. 463.]

Is the Minister able to go into any more detail about what sort of "posture" we are thinking about and what role the United Kingdom expects to play? In light of the French elections three days ago, we would assume that the response from France will be a supportive one. What conversations have Her Majesty's Government had with France and other NATO partners about the way forward?

In particular, what assessment are the Government making, not just about Russia in the Donbass, but also of the further actions being taken in Moldova, Transnistria and other areas? Has any assessment been made of Russian thinking about Kaliningrad? At the moment we have all been focused on Ukraine, but there is a whole set of other flashpoints which need to be thought about. It would be a Pyrrhic victory if we found that the situation in Ukraine was, if not resolved, at least held at bay, then we started looking at other entities that Russia might have its eyes on. What are the Government thinking in that regard?

Finally, I echo the questions put by the noble Lord, Lord Coaker. The Foreign Secretary appears to have a very clear view about sending aircraft. Is that the government position or simply the view of the Foreign Secretary? What thought are the Government giving to support for partner countries—Finland and Sweden—if they decide they want to be NATO allies? How does that affect the UK's thinking? If one of the excuses for the Russian actions in UK was that Ukraine had an interest in joining NATO or the European Union, does that affect Russian thinking about Finland and Sweden? What action does the United Kingdom think we may need to take in that regard to support countries which may become NATO members?

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, first, I say again to the noble Lord, Lord Coaker, and the noble Baroness, Lady Smith, how much I appreciate the tone of their contributions. As I have observed before, it is extremely important that the tremendous contribution coming from the United Kingdom to support Ukraine is seen externally as an absolutely united endeavour. I express my appreciation to both the noble Lord and the noble Baroness.

The noble Lord asked what further assistance is coming from the UK. The Statement that my right honourable friend the Secretary of State gave to the Commons on Monday detailed a lot of the information that your Lordships wanted. I observe that, as your Lordships are aware, there has been very close engagement between the United Kingdom and Ukraine. I understand that there are conversations in some form or another almost on a daily basis, as we listen to what Ukraine wants, what it needs and how we as a country can, either bilaterally or in concert with our allies and partners, try to provide that.

It was interesting that, yesterday, at the meeting in Germany, the Secretary of State met US Secretary of Defense Lloyd Austin, Ukraine Defence Minister Reznikov, and representatives from nearly 40 other countries to collectively discuss Ukraine's military needs. Our allies thanked the UK for its leadership in securing key military assistance to date. All countries agreed to continue discussions on an enduring basis. This goes some way towards explaining how we approach this. We can do a lot bilaterally but I think the real impact is from what we do in concert. I wish to reassure your Lordships that that is at the forefront for NATO member states.

In relation to what further equipment we are giving, the Secretary of State, when he made his Statement, was asked about the Brimstone missile. He mentioned that we had, in 2020-21, agreed in principle to develop and sell a maritime variant of the Brimstone missile. Ukraine recently asked for a longer-range ground attack missile, and the Government have been exploring if existing stocks of Brimstone could be released for such purposes. At the time of my right honourable friend's Statement, we thought that some time might be required to realise that aim—the request from Ukraine—and that that would then give the Defence Secretary an opportunity to return to update the House on sending Ukraine this new capability. I am pleased to say that our technical staff—here I wish to pay tribute to the tremendous calibre of expertise within the MoD, which has absolutely been on display in stellar form in our response to the situation in Ukraine—have had quicker successes adapting and providing the system. Instead of a further Oral Statement before Prorogation, I can inform the House that the UK will now provide Ukraine with Brimstone missiles. We will update the House on future developments and, in the meantime, we will continue to provide briefings. Obviously, Prorogation intervenes, but as Defence Minister in this House I will endeavour to keep Members up to date with developments.

The noble Lord, Lord Coaker, and the noble Baroness, Lady Smith, also raised the issue of Sweden and Finland. Although not members of NATO currently,

these are very important partner states of NATO and valued friends of the United Kingdom. We take their interests very seriously and would wish to support them as friends and allies. In relation to their NATO application, it is obviously their decision how they process that and deal with it. We work closely with them already in the JEF partnership, which, as your Lordships will know, is a very effective alliance of like-minded states operating in the Baltic. There is total interest in these two countries by the United Kingdom and a desire to support them in every way we can.

The noble Lord, Lord Coaker, made the interesting observation that, in a paradoxical way, Russia has managed to strengthen NATO. That is an astute, perceptive and absolutely accurate analysis. President Putin's appalling, unjustified and illegal invasion of another sovereign country has seen the reasons he adduced for this, and the very threat he said he was frightened of, fortify and intensify before his very eyes. Of course, it was never a threat, because NATO is a defensive alliance, but he has seen the potency of what happens when leaders of countries, and countries themselves, appalled at what someone else does, band together. They want to offer support and do the right thing, and that is what we have seen very much in evidence in the response to the situation Ukraine.

An important point was made by the noble Lord, Lord Coaker, about whether there is a threat that Russia may seek out targets in the West. We have been clear from the beginning that we would be consistent in supporting Ukraine. It is not a NATO member but it is a friend of the United Kingdom. We had already been involved, for several years, in helping, training and providing advice to Ukraine. Quite simply, the UK and our allies and partners are providing the tools for it to defend itself against a brutal and unjustified Russian invasion. Once weapons have been donated, their use is a matter for Ukraine, which has a right to defend itself by targeting legitimate military objectives. That is the business of Ukraine in defending itself against a completely illegal invasion and is a necessary response. That is why countries such as the United Kingdom, together with our international partners—not least our NATO partners—have been as one in responding to this. I think that has given President Putin cause for thought.

I was also asked about the logistical support that the United Kingdom is able to provide. It was a very welcome outcome of the second international donor conference—which took place on 31 March this year and was attended by 35 international partners—that we have offered to conduct logistics operations to support the delivery of donations from partner nations. That is very important support that the UK is providing, and it is received very positively by our partners.

A question was also raised about the discussions taking place in NATO. As I said earlier, the whole raison d'être of the meeting in Germany yesterday was to ensure that the critical discussions being prosecuted by the Defence Ministers of the member states were focused on both what we need to do at the moment in responding to the challenge in Ukraine and what the posture should be for the future. These are under very active consideration and are important questions to ask.

The noble Lord, Lord Coaker, raised the matter of the Foreign Secretary's statement and her view about warplanes going to Ukraine. I can say that we are working with our allies to ensure that Ukraine has what it needs to defend itself. I cannot comment on specifics, but we and many other western partners are now providing longer-range weapons systems to help counter the indiscriminate artillery fire that the Russian armed forces have been raining down on besieged Ukrainian cities. As I said earlier, the UK is taking a leading role in co-ordinating the delivery of military aid. It is important that we continue to listen to Ukraine and assess what stage the conflict has got to and what is needed to facilitate the response, and work with our allies to both analyse and reflect on what is needed and then deliver that.

On the matter of budget, as your Lordships will be aware, and as I have frequently observed from this Dispatch Box, the UK has a very good record of contributing to NATO. We have consistently met our 2% of GDP, and sometimes we have been above that. We are the most important contributor to NATO in Europe. That is a significant position, which we seek to maintain. In so far as our indigenous defence budget is concerned, we have had what I think has been universally regarded as a very good settlement from the spending review; it certainly enables us to fund the immediate needs and our planned priorities. But of course, as we look to the medium and longer term, we shall constantly do that through the optics of what we think we need and the resource package that may be required.

The noble Lord, Lord Coaker, and the noble Baroness, Lady Smith, raised the matter of humanitarian aid. I have indicated what we have been doing on the military front, and I have a summary here of our role in lethal and non-lethal military support. We have gifted approximately £200 million in aid to Ukraine, which we propose will grow to £500 million. On humanitarian aid, we have supported about £400 million, including £220 million which will be used to save lives and protect people inside the country and the wider region, and £174 million in economic support to bolster the Ukrainian economy and reduce Ukraine's reliance on Russian gas imports. We have also contributed £25 million from the Conflict, Security and Stability Fund to support the payment of salaries for the Ukrainian armed forces.

The noble Baroness, Lady Smith, raised the matter of the situation Russia finds itself in. It is important to reflect on the reality of what has unfolded on the ground and what President Putin's projected plan was—quite simply, the two have not matched up. What he thought would be a simple and short-lived incursion into Ukraine has been anything but. Such information as we have been able to secure—which is difficult to do—is very interesting. There is a now deleted post on Russian social media site VK from pro-Kremlin media outlet Readovka which claimed on 22 April 2022 that Russia's defence ministry stated at a closed briefing that it had lost 13,414 soldiers in Ukraine, plus another 7,000 missing, and 116 were reportedly killed aboard the Russian cruiser "Moskva", with 100-plus still missing.

All that is a reflection of two things: the extent to which this is proving to be a very bitter conflict for Russia, and—almost more importantly—it is a most

[Baroness Goldie]
appalling waste of lives, many of them young lives, and an appalling legacy of President Putin to leave families in Russia grieving lost family members and friends, who have faced such an appalling prospect in being committed to this barbaric incursion into Ukraine. That indicates that the situation for Russia is much grimmer than President Putin would ever wish to concede.

The noble Baroness, Lady Smith, asked, how long we will keep this going. We will provide support for as long as it takes. There will be and are conversations with the EU. We look at Moldova very carefully, and it is something we consider with our allies and partners.

9.08 pm

Baroness Finlay of Llandaff (CB): My Lords, today I was on a call with the Ukrainian Culture Minister, who was describing how the Russians had been systematically trying to destroy cultural assets and had been taking and burning books in the places they took over. They are actively destroying that whole Ukrainian heritage. In her response, the Minister has pointed out the danger to civilians there, many of them women and children. Hundreds, it seems, are still waiting for their visas and permission to travel under the Homes for Ukraine scheme. In many of these families, one family member has not had permission to travel but others have. I do not expect the Minister to be able to answer that point specifically today because it is outside her remit, but I ask her to make representations to our Home Secretary and to the Minister for Refugees that the situation is intolerable and must be rectified urgently. The number of people queuing today at the hub in Portcullis House wanting to raise individual cases that they have been contacted about was testament to the fact that we are not managing our promise to provide shelter to these refugees with the intention originally laid out in the Statement.

Baroness Goldie (Con): I thank the noble Baroness, who raises an important issue which resonates across the House. The information I have is that as of 20 April 2022, the UK visa schemes have issued 71,800 visas via the family and sponsorship schemes. I appreciate that many will regard that pace as too slow. The noble Baroness has clearly described the frustration and anxiety of those who feel they are not getting the response they seek. I certainly undertake to relay her concerns to my colleague in the Home Office. I suggest that a correspondence be entered into between the Home Office and the noble Baroness.

Lord Lee of Trafford (LD): My Lords, may I ask the Minister about the very sad situation with Ukrainian casualties, both military and civil? Our medical teams during the Afghan situation developed very specialised skills in this area post-conflict. The Statement refers to our sending 10 pallets of medical equipment. Has Britain offered any more help on the medical side? Has there been any offer of our willingness to bring Ukrainian military casualties to this country or to send more medical teams to Ukraine to help with the pretty ghastly situation on the ground there?

Baroness Goldie (Con): Part of the humanitarian assistance to date has included granting in kind to the Ukraine Armed Forces medical equipment from the MoD's supplies. This includes items for combat medical needs, field dressings, bandages, tourniquets, splints and chest seals. I understand that the possibility of our offering more assistance from the UK end is being looked at. I do not have any further information on that, but I undertake to make inquiries and report to the noble Lord.

Earl Attlee (Con): My Lords, I offer my support for everything the Ministry of Defence, the Secretary of State and other government departments are doing. Is the Minister aware of one difficulty: the paucity of briefing that we are receiving? This means that we will know what the media want us to know, but not what Ministers and officials need to tell us and can tell us. This is important, because without these briefings we cannot speak with authority outside the House and be more effective in supporting the policy, while not ignoring our constitutional duties.

Does the Minister also agree that it is premature to consider our defence expenditure at this point without knowing what the outcome of the conflict will be? On the point about resupply made by the noble Baroness, Lady Smith, I hope the Minister will be able to state that she will not hesitate to increase the production of defence materiel as required and without any artificial constraints.

Baroness Goldie (Con): First, I say to my noble friend that I certainly would wish to co-operate in every way I can with providing information and briefing to your Lordships. With the intervention of the Recess and imminent Prorogation, that has logistically proved a little difficult, but I undertake to resume these briefings and hope that provides reassurance to my noble friend.

On the budget, as I said earlier, we constantly review the immediate need and the potentially committed expenditure that we have embarked on. We also look at the medium to longer-term interest. That is what we will be doing, because critical to that—my noble friend is quite right—is what we think the implications are for this sustained and continuing contribution from the UK. Regarding what has been supplied already and what will be supplied, I reassure him that we do not compromise our core reserves—our stores—that we need for our national security and the other global contributions we make. We keep a careful eye on that.

Viscount Stansgate (Lab): My Lords, I have three brief questions for the Minister. First, the Statement says:

"The next three weeks are key."

Will the Minister outline in what way that is meant, given that this war has continued for much longer than we had originally thought it would? Secondly, what is the Government's current assessment of Russian capability and intention to occupy the whole of the south coast of Ukraine, thus creating the possibility of a landlocked Ukraine state? Thirdly, in respect of the impressive range of equipment that is outlined in this Statement, do the Government have any concerns about the West's ability to get it through to the Ukrainians who are

going to use it? As I understand it, Russia has begun to target things like railway lines, which might well be the means by which this equipment is transferred from the West to the Ukrainians, who are fighting so bravely.

Baroness Goldie (Con): I think that when the Secretary of State referred to the next three weeks, he had in mind what has been a clearly discernible change of approach by the Russian leadership and military. That has involved two things. It has involved a new command structure, which indicates that the previous structure was not working. It also indicates that Russia realises that it is going to have to consolidate its resources and it therefore wants to focus on the eastern part of the country. That is a critical part of the conflict, because it is very clear that Russia is determined—we see it from the activity already taking place in towns and cities within that area—to try to strike this land bridge down through the south-eastern part of the country. That is what the Ukrainians are determined to resist, and it is what the UK—with all our allies and partners—is determined to support Ukraine in repelling.

On the issue of the next three weeks, we all know that President Putin has set his May Day parade day as an iconic, tokenistic opportunity to—no doubt—declare how successful he considers this illegal war has been. That would always raise an expectation that he might be prepared to escalate activity, and therefore there is a critical need to anticipate and respond if that is the case. This is a critical part of the conflict, but I think it is clear from the response in the support for Ukraine that the Ukrainians know that they have a lot of friends, and they now have a lot of really substantial equipment and weaponry to help them in the defence of their country.

Lord Craig of Radley (CB): My Lords, I very much welcome the Statement and the support which the Government are giving to Ukraine. I was very grateful to hear the assurance from the Minister that the kinetic capabilities of our own forces are being protected. I hope that industry is rising to the challenge, which it obviously must be facing. One thing which was not mentioned was the impact of economic sanctions on the fighting capability of the Russians. Has any assessment been made of those sanctions as they affect the military capabilities of the Russians, both immediately and in the longer term?

Baroness Goldie (Con): The noble and gallant Lord has asked an interesting question. There is no question that the broad mechanism of sanctions applied both by individual countries and in concert by united nations is having an impact on Russia. I do not think that there is any question about that. The extent to which that will impact on the Russians' military endeavour and their capacity to, quite simply, pay salaries or fund equipment or buy new equipment is probably much more difficult to anticipate, but it is a very interesting question. As time passes, we might begin to get a clearer picture of what this means for the Russian military endeavour.

We all understand at the moment that what we are seeing are, quite simply, signs of the failure of that Russian endeavour, because there have been clear indications of failure. Part of that might be down to incompetence and ineptitude on the field, but some of it might be increasingly down to inability to keep supplies coming, logistics flowing and the normal support necessary to sustain armed forces in conflict. It is an interesting point, and I will take it back to the department. If I come across any further information, I shall share it with the noble and gallant Lord.

Lord Pickles (Con): My Lords, it is clear that getting the necessary equipment through to the Ukrainians and dealing with humanitarian help is of the first order. However, I would like to ask my noble friend the Minister a question which is of the second order but is likely to become increasingly important. She will recall that one of the reasons that the totalitarian regimes started to collapse in the late 1980s and early 1990s was because their blood-soaked dictators were unable to keep the truth from their populations. Things have changed in the last few years. There may be censorship in Russia but, with the growth of the digital economy, there simply are not enough secret policemen to monitor the web. Part of the decline of Russia as an economy is that the amount of material out there in Russian has diminished. While the views of what is happening can come through from western sources in English and other European languages, they are not coming through in Russian. Will my noble friend see that the United States and our European allies look at trying to get as much information out there in basic Russian? It is certainly my view that the Russian people are a noble and a great people, and they have a right to know what is the new barbarity being done in their name.

Baroness Goldie (Con): I entirely agree with my noble friend. One of the great frustrations of this whole tragedy has been the stranglehold that President Putin has placed on the dissemination of information in Russia. It is a stranglehold. Outlets have been closed down and criminal law has been invoked to threaten people who share information or appear to be disloyal to the state. My noble friend is correct that trying to reinform the Russian people with the correct version of what is happening is clearly an important and desirable objective. He makes a good point about language. One of the challenges has been not so much the language but just finding a conduit to get the information through. There are some signs that sadly because of these appalling tragedies that have been befalling Russian military personnel, their families now are aware of that. Their families are hurt, sad and in many cases maybe angry and frustrated and not understanding why this has happened and why they have had their own family members sacrificed. There is the possibility that more information will begin to spread through Russia. My noble friend makes an important point and I will certainly bear it in mind.

Lord Scriven (LD): My Lords, my noble friend Lady Smith asked a question at the start that the Minister did not answer. Are the comments of Liz Truss, the Foreign Secretary, on providing fighter jets to Ukraine the official policy of Her Majesty's Government? If not, why is she making such statements which, in such a sensitive situation, could have very dangerous consequences?

Baroness Goldie (Con): I apologise; I endeavoured to respond to the question from the noble Baroness, Lady Smith. The Foreign Secretary has expressed a view and of course is perfectly entitled to have it. My role as a Defence Minister is to explain how we in the MoD are working with our NATO partners and our allies and how we are trying to co-ordinate delivery. At the end of it all, as I said earlier, in conjunction with Ukraine we are trying to work out and supply not just what it needs but to do so when it needs it. Part of that is reflected in the response that I was able to give in explaining to the House that we can now confirm that Brimstone will be provided. That is something that the Ukrainians specifically wanted because of its capacity.

Lord Browne of Ladyton (Lab): One of the things that the Ukrainians really do need is the capability to clear up the incredible amount of unexploded ordinance, some of which has been seeded deliberately by the Russians as they remove themselves from around Kyiv. We should be proud of the Halo Trust, which has gone back to Ukraine and has over 40 locally employed people who have been doing that work, even during some of the dreadful violence that has been going on. I know the Government are supporting them. Apart from anything else, the trust needs funding to pay the people who work for it and who do this dangerous, difficult but much-needed work.

The second thing the trust needs is an appreciation by the Ukrainian Government of the importance of certain senior people avoiding national conscription to other jobs. It might be helpful if our Government, in conjunction with the Halo Trust, argued that the Ukrainian Government should allow these key people to this work. They are experts who have been doing it for eight years in that country, in the most dangerous of conditions, supported by this organisation. Can the noble Baroness, perhaps on their behalf, make some of these arguments?

Baroness Goldie (Con): I am indebted to the noble Lord for a perceptive contribution. He is quite right that that has emerged as an issue in the area; indeed, it was referred to in the other place. My right honourable friend the Secretary of State, Ben Wallace, said that we were looking at it to see what we could do to help. I will take those comments back to my department and will see whether we can produce something more positive.

Lord McDonald of Salford (CB): My Lords, we have seen the shortcomings of diplomatic efforts focused on the person of President Putin. We can hope that after his re-election, President Macron will recalibrate. However, contacts with the Russian authorities are important through conflict, so could the Minister please tell your Lordships' House what the main channel is now for contact between Her Majesty's Government and Moscow?

Baroness Goldie (Con): In respect of diplomatic channels, that question is probably better responded to by my noble friend Lord Ahmad. However, it is very difficult to sustain normal diplomatic relations with a country where such appalling things have been happening, at the instigation of that country. There has to be a proper acknowledgement by the UK and other countries that may feel similarly minded that we are appalled by what President Putin is doing, and it is therefore very difficult to maintain a diplomatic relationship. What I would say is that the Russian embassy remains open in London and the UK embassy remains open in Moscow. On a defence level, we endeavour to maintain some kind of dialogue with the Ministry of Defence in Russia because that is for the purposes of risk and escalation management and trying to support broader HMG efforts to ensure an internationally accepted negotiated settlement of the Ukraine conflict. We will continue to make efforts to maintain these communication channels but that is a two-way process, and I have to make it clear that the parameters of that discourse are obviously pretty narrow; they are defence related.

House adjourned at 9.29 pm.

Grand Committee

Wednesday 27 April 2022

Arrangement of Business

Announcement

4.15 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells ring and resume after a few minutes.

Gambling Harm (Social and Economic Impact of the Gambling Industry Committee Report)

Motion to Take Note

4.15 pm

Moved by ***Lord Grade of Yarmouth***

That the Grand Committee takes note of the Report from the Select Committee on the Social and Economic Impact of the Gambling Industry *Gambling Harm—Time for Action* (Session 2019–21, HL Paper 79).

Lord Grade of Yarmouth (Con): My Lords, it is now three years since, out of the blue, I was appointed chairman of the Select Committee on the Social and Economic Impact of the Gambling Industry. Being chairman of this committee taught me a number of things. The first was how Members of your Lordships' House, of all parties and none, can come together as a committee to pool their diverse knowledge and experience and produce a unanimous report on such a complex, contentious and important subject—a matter of life and death. I am immensely grateful to all the most diligent members of the committee who worked with me on this inquiry. The second thing that I learned was the importance of the large volume of written and oral evidence that we received from all interested parties in the sector, which we were able to evaluate and on which our report is, I hope, securely based. The third thing that I discovered as our inquiry progressed was how urgent is the need for action—a matter to which I shall return.

I start by making clear what the committee did not do: we did not recommend preventing gambling. For those who enjoy it, we recommended nothing to make it less enjoyable. Everyone spends money on things that they enjoy, such as travel, sport, the arts and other things, and, if people wish to spend their money on gambling, that is their prerogative. But "affordability is absolutely key"—that was said to us in evidence by the then CEO of one of the largest gambling operators. The problems start the moment someone begins to spend on gambling more than they might otherwise happily and safely spend on any other leisure activity. As we heard time and time again in evidence, once the problems start they escalate until, in too many cases, they get out of hand and what was once an enjoyable leisure activity becomes an addiction.

As with so many addictions, things can deteriorate disastrously and quickly but with gambling, unlike other addictions, this can happen unknown to even the closest family and friends. The committee held an informal meeting with the families of gamblers who had taken their own lives and heard heart-rending stories of how they discovered only after the deaths of their loved ones that their husbands, sons or brothers had been gambling far beyond their means. We also took formal evidence on this, and I pay particular tribute to Charles and Liz Ritchie, whose son Jack took his own life at the age of 24. They have set up a charity, Gambling with Lives, so that other parents and relations in the same situation can join with them to promote reform of the law and regulations and improve the treatment available to problem gamblers.

What is the size of the problem? As I said, our inquiry was entirely evidence-based, as it should be. Although some of the evidence is conflicting, the best estimate is that some 0.7% of the adult population—about 340,000 people—are problem gamblers. Some 55,000 of those are schoolchildren aged 11 to 16. In excess of 2 million family and friends are affected by harm to physical and mental health, loss of savings and homes, loss of jobs, criminal activity, family breakdown and sometimes, tragically, ultimately death.

When we said in our report that, on average, one problem gambler committed suicide every day, a fact-checking organisation wrote to take issue with us. It said that the annual figure was only 250—as if that was acceptable. In fact, our evidence was that between 250 and 650 people commit suicide every year. Since we reported, a survey by Public Health England has estimated that there are 409 suicides associated with problem gambling each year in England alone. Since our committee was set up three years ago, not less than a thousand young men—it is almost invariably young men—will have taken their own lives, and this will continue for as long as nothing is done.

Who, then, should be taking action to ensure that no one gambles more than they can afford? All of us, of course, but principally the industry, the Gambling Commission and, ultimately, the Government. First, on the industry, it will take every opportunity to tell you that problem gamblers are only a small number compared to the many who enjoy an innocent flutter. It will not be so keen to tell you that although only a small proportion gamble excessively, the profit from those gamblers is out of all proportion to their number. The greater the problem, the higher the profit.

The industry's story—in particular the story of the Betting and Gaming Council, the trade body—is that it recognises the problem but that much has already been done on a voluntary basis. The industry accepts that more needs to be done but says that it is making a major contribution to research and treatment, while working with the Gambling Commission and the Government to change law and practice so that problem gambling can be reduced. The industry welcomes the Government's review of the Gambling Act, which will give it another opportunity to argue that a few small changes—preferably on a voluntary basis—are all that is needed. I call this approach "confess and avoid".

[Lord Grade of Yarmouth]

Nobody, problem gambler or not, can place a bet unless an operator is prepared to accept that gamble. The operators are ultimately in control. They have an immense amount of data about their customers, especially those gambling online, which is where most gambling happens these days. They know how much their customers spend, their spending patterns and the time they spend gambling. They know who spends three hours gambling at night and who gambles heavily immediately after payday. They can access detailed information on a customer's financial situation from bank statements, proof of income and credit checks. They know whether a customer has previously self-excluded or tried to do so, and whether a customer has more than one account with them or with other operators. They know the transaction history and risk indicators. They already have to do money-laundering checks. They could be using all their information to make sure that they accept bets only from those who can afford it. If in doubt, they should refuse the bet. Since they will not do this voluntarily, the rules must be changed to force them to do so.

One obstacle that the sector has repeatedly thrown up is the issue of data protection. It points out, correctly, that most problem gamblers have accounts with more than one operator; it says that no single operator can deal with affordability issues if it does not have the whole picture. Operators told us in evidence that they could not share the information they have with other operators. We put this to the Information Commissioner's Office, and the ICO told us categorically that data protection legislation does not prevent gambling operators sharing the personal data of vulnerable users. That was two years ago.

Since then, there have been tripartite conversations between the industry, the ICO and the Gambling Commission to formulate ways in which data can be processed, exchanged and used. The ICO is there in an advisory capacity, and it is not for it to take the initiative. The industry has no incentive to advance matters. The Gambling Commission, which should be taking matters forward, seems to detect no great need for urgency. That is why the exchange of data is still very partial and very patchy.

I harbour a faint hope that, when my noble friend the Minister replies to this debate, he will tell us what the Government have in mind as a solution to this crucial issue. I fear, however, that your Lordships will be told in reply to this and many other questions that we will raise that we must wait even longer for the White Paper, when all will be revealed.

I can already confidently identify one major failing in the White Paper: its title. The whole exercise is labelled a review of the Gambling Act 2005. It is nice and catchy to say and a good soundbite that the Act is an analogue law in a digital age. That is true, but the full truth is much more nuanced. Although in 2005 the smartphone—in this context, a betting shop in every teenager's pocket—was in its infancy, the Act had flexibility built into it. It is indeed a law passed in a largely analogue age, but it was already able to cope with most digital developments. It is not the Act itself that is at fault; the fault lies with those who have failed to use the powers already enshrined in it.

The Act gives the Gambling Commission almost total control of licensing conditions and codes of practice. The commission has always had the power needed to enforce them, with the ultimate sanction of suspension or removal of an operator's licence. By amending the licence conditions as developments occurred, it could have kept pace with them. It could have dealt with most of the affordability issues that I have mentioned. To be fair, it has tightened the rules on the age and identity checks that operators must do before allowing someone to gamble online. It has also banned the use of credit cards for betting—at last. But so much more could have been done. So many lives might have been saved. The Government need to address the lack of accountability of the gambling regulator.

Among the many recommendations that the committee made, the Gambling Commission could have established a system for testing all new games against a series of harm indicators, including their addictiveness and whether they will appeal to children, and not approving a game that scores too highly on the harm indicators. It could have introduced equalisation of speed of play and spin, so that no game can be played quicker online than in a physical casino, betting shop or bingo hall. It could have required the licensing of affiliates. It could have prohibited bet-to-view and other inducements. It could have required every operator that has been notified of an individual's self-exclusion not to send them any communications during the period of self-exclusion and thereafter to do so only if the individual removes the self-exclusion. All of this would have led to a significant reduction in problem gambling—and it still could, if action is taken now.

There are inevitably changes—just a handful—that need primary legislation. One of these is the setting up of a statutory gambling ombudsman service to settle disputes between gambling operators and gamblers. This is not a matter for the regulator. It is right that the Gambling Commission should adjudicate on breaches of licence conditions, such as when Sky Betting & Gaming distributed a promotional offer of "Bet £5, get 100 free spins" to 41,395 self-excluded customers and a quarter of a million customers who had unsubscribed from the operator's marketing emails. However, where a punter has lost money or been otherwise affected by the failures of an industry giant, it is right that there should be an ombudsman to adjudicate, similar to the Financial Ombudsman Service.

It would also take primary legislation to create a duty of care owed by operators to their customers. To be clear, I am not just referring to operators being careful of the interests of their customers; I am talking about a duty, the breach of which could give rise to proceedings brought by a customer against an operator for breach of statutory duty. But, I repeat, the changes that need primary legislation are very few.

I conclude with a little history. It was in 1999 that Ministers of the Labour Government first considered reviewing and liberalising the law on gambling. The Budd review reported in 2001, a draft Bill was published in November 2003 and it was sent to a pre-legislative Joint Committee, which reported in April 2004. The Bill received Royal Assent in April 2005 but did not come into force until September 2007—eight years after reform was first proposed.

Fast forward 20 years: the Government promised a review of the Gambling Act in their manifesto before the 2019 election, as did the other major parties. The consultation paper was not issued until a year later. The consultation closed in March 2021, more than a year ago. A White Paper was promised by the end of that year; we are now promised it next month. If primary legislation is needed, it will be lucky to get a slot next Session but might be passed by the end of this Parliament in 2024. If, as in the case of the 2005 Act, we have to wait another two years before it is brought into force, that takes us to 2026—seven years after the first undertakings for reform. Given the gambling-related suicide rates, that cannot be acceptable.

If, in replying to this debate, the Minister tells the Grand Committee that reform of the Gambling Act itself needs to wait for an opportunity for primary legislation, that will of course be true, since the Act can be amended only by further primary legislation, but if my noble friend tells us that other gambling reform must also wait, I shall be deeply disappointed—as, I am sure, all the members of my committee will be. As I have tried to explain, so much could be done—indeed, could already have been done—by Ministers, but mostly by the Gambling Commission with the powers that it already has. The title of the committee's report was *Time for Action*. That was two years ago. Meanwhile, today, like every other day, a young problem gambler may already have taken his own life. I beg to move.

4.31 pm

Lord Layard (Lab): My Lords, I had the honour of being a member of this committee. It was beautifully chaired by the noble Lord, Lord Grade, and had a brilliant secretary. It is an outstanding report.

I will talk about the problem of addiction. As we know, there are many forms of addiction—tobacco, alcohol, drugs and gambling—which are all very serious. Gambling is as serious as the others. The numbers addicted to gambling are, in fact, very similar to the numbers addicted to drugs and alcohol. Each affects roughly 1% of the population, yet we treat these addictions completely differently. It is quite extraordinary when you look at it.

On tobacco, for example, we ban all advertising and the NHS spends billions on treating the consequences of tobacco consumption. On drugs, we ban their consumption totally. On drug and alcohol dependence, we spend more than £1 billion each on treating those who suffer from them. What about gambling? Regulation is pretty minimal, as the noble Lord, Lord Grade, pointed out, and we provide almost no treatment to the victims. This all has to change.

I will focus on just two issues: the regulation of gambling advertising and marketing, and the treatment services for those addicted to gambling. Until the 2005 Act, most advertising of gambling was banned. Quite simply, that is the position that we need to re-establish. Nearly half of all children aged 11 to 16 report that they see gambling advertisements at least once a week. No wonder the rate of problem gambling is higher in that age group than in any other. Is this not an incredible fact about our society? It is illegal to gamble under 16, yet people aged 11 to 16 have the highest rate of addiction. That is also, of course, extremely serious for their future. As a committee, we met many gambling addicts, who almost invariably said that they had got hooked before the age of 18. At least a third of all gamblers say that it was advertising that brought them in and there is other good evidence that advertising directly causes more people to gamble.

Surely we should be banning the advertising of gambling, and with it the sponsorship of sports by the gambling industry, which is another form of advertising. The only exceptions could be horseracing and other similar sports, which children do not watch. The ban should also cover all forms of direct online marketing.

This is not a draconian approach, compared with what is done with other forms of addictive behaviour and substances. In fact, the YouGov poll says that two-thirds of the British population want gambling advertising banned. So why can we not have that? It simply means going back to where we were before 2005.

Since 2005, of course, a massively profitable industry has developed, with a yield of £14 billion in 2019. But 60% of those profits come from 5% of gamblers—the 5% who are either addicts or at risk. We have to protect people from getting hooked, and that means protecting them from advertising.

Then, when people are hooked, we must provide help. As the chairman said, roughly one gambler a day dies through suicide. This is a major public health problem. Yet of all addicts, only 2% to 3% get any form of treatment. This compares with 30% of those with drug and alcohol problems. There are good treatments for gambling disorders and the NHS should be providing them. As we know, 15 clinics have been promised, which should open as soon as possible, but rapidly after that we need there to be a comparable number.

There is a good model of how to organise all this in the NHS's so-called Improving Access to Psychological Therapies—IAPT—programme for depression and anxiety disorders. In remarkable contrast to the speed of the Government's gambling proposals, this set up nearly 100 services within its first three years. How can we tolerate just 15 clinics being proposed over an unspecified period? It is not good enough.

This problem must not get muddled up with the levy issue, because it is a duty of the NHS to treat health problems, and we know there is going to be a problem over the levy—its method of disbursement, and so on. The Government should be mandating the NHS in its annual mandate to rapidly expand the number of clinics for gambling disorder.

We know that this is not a marginal problem. The noble Lord, Lord Grade, referred to 340,000 addicts, including 55,000 aged under 16, but, of course, in addition to those numbers, their families and colleagues are affected, the community is affected and crime increases. It is estimated that altogether some 2 million people in our community are affected by this problem. The main point I am trying to make is: let us think about gambling addiction as a problem as serious as tobacco, drugs and alcohol.

I believe that we have a Minister who understands the issues and I really hope that his department can produce a White Paper which matches the scale of the problem.

4.39 pm

Lord Bourne of Aberystwyth (Con): My Lords, it is a great pleasure to follow the noble Lord, Lord Layard, and I found myself in much agreement with what he was saying. I pay tribute to the committee and particularly the chairman, my noble friend Lord Grade of Yarmouth, for the work it has done and the very balanced, erudite and compelling report it produced, *Gambling Harm—Time for Action*.

There is a widespread if not universal view that more action is needed, and urgently. Although I accept that there is a balance to be struck between the leisure aspect of gambling and the protection of the public, particularly vulnerable members of the public—we have heard the truly chilling statistics about young children problem gamblers—the scales at present are heavily weighted in favour of the betting industry, in broad terms. There is a need for action and the public health dimension needs accentuating more. I have the greatest respect for the Minister but DCMS and the Gambling Commission have been slow to act. They need to do much more, and much more quickly.

There is a need to protect the vulnerable much more. The committee heard clearly about the problems of debt, homelessness and relationship breakdown, career and work problems, and particularly the problems of depression and suicide, which should cause us all to stop and think. The betting industry makes considerable profits; I note what the noble Lord, Lord Layard, said about distinguishing the levy from the need for the NHS to step forward, but a 1% levy on the betting industry would generate £140 million per annum, which would help to fund some of the organisations doing such great work at present. But they could do far more and, on the "polluter pays" principle, I see no problem with saying that the betting industry should pay towards the treatment of addiction services so that we can improve them to the extent of having first-class services, which is what we really need.

As I say, the Gambling Commission and DCMS could be doing more. We need not to wait for legislation but to act urgently now. The fines and penalties are not sufficient in their impact on large corporations, as I think the committee found, and there is a need for increased powers for the Gambling Commission. It may be that that needs to wait for legislation, but I am not convinced that it does. I thank the LGA for its briefing on this, as local authorities need additional powers to stop clusters of betting shops in communities, and those would be very welcome.

Perhaps I may say something about the fast-changing nature of the gambling industry, which is why urgent and forward-looking action is needed. During the pandemic, we obviously saw a slowdown in relation to casinos and betting shops—indeed, a shutdown of them. That was temporary but meanwhile there has been a large growth in online gambling, which continues. It was of course happening before the pandemic started; between 2015-16 and 2018-19, online gambling grew by 18%. There has been a massive and continued growth online during the pandemic, as would be expected, and that continues with home working. That presents problems, particularly with the young who, as we have seen, tend to be more vulnerable. Action is therefore needed to stop the exacerbation of harm that we see in that area.

The Government and the Gambling Commission need to act decisively here and I very much agree with the noble Lord, Lord Layard, in relation to advertising. It contributes to and exacerbates the harm, and urgent action is needed on that. The Government need to extend the remit of the Gambling Commission to act to prevent future harm. As my noble friend Lord Grade said, the sharing of information on affordability problems and that exchange of data is crucial. Too often, in all areas, the excuse given is of the GDPR. I sit on the Select Committee on Public Services and we have heard the same thing: "We're restricted on the exchange of information between government departments by the GDPR"—nonsense. This is not the case, or if it is it needs changing swiftly to ensure that the reason for the legislation is to protect personal freedom and data. It is not to stop the greater good that we need to step forward to do.

There is a need for urgent action and we should not wait for legislation. I look forward to hearing what the Minister has to say on that but it really is the time for excuses to end. The time for action is now.

4.44 pm

The Lord Bishop of St Albans: My Lords, I too served on the Select Committee and am grateful for the contributions of so many people, as we worked away at this subject and took evidence over an extended period. I also declare my interest as a vice-president of the LGA.

I became involved in this area long before the Select Committee started its work because, in my day job, a family came to see me and simply broke down as they told me the story of their son's addiction and how he eventually took his own life. It was the most extraordinary and transformative hour, for me, as I listened to the sheer, raw pain of a family that had been destroyed—and to this day is still destroyed. They have not gone public; they still feel a mixture of deep hurt and shame because of what has gone on. They have not been able to rebuild their lives.

At the end of that hour, I found myself rather lamely trying to make a few comforting comments. Then I came to the House and put down a series of Questions over two or three weeks to find out about the nature of the problem, because I knew nothing about this. Much to my surprise, my inbox was filled with people contacting me to say, "Can we come and talk to you to tell you our story? Do you know what this has done to our family? My cousin's son has just died". Another family had lost their home. I was absolutely shocked by what I heard.

I hear the arguments that many people enjoy gambling. Our committee decided that we are not prohibitionists and do not want to stop people gambling, but there is an underbelly to this that simply has not been seen. Even on the Select Committee, some were shocked by the testimonies we heard of what is going on. It is a very different story from the wall-to-wall adverts of groups of people happily shouting and being joyful; it is actually one of lives being destroyed.

I will highlight and comment on three areas. So far, I feel the response of Her Majesty's Government has been deeply disappointing. It does not take account of the depth and scale of the problem, and the Gambling

Commission has not been much better. Often, the commission has acted because there has been a head of steam and a number of people have been raising issues. Rather than taking a proactive stance, shaping this industry and people's response to it, it is rather lamely following behind. There are some notable exceptions in one or two things it has done, but that is my general point.

Recommendations 54 to 63 are about the statutory smart levy for research, education and treatment, and the need for it to be independently funded. This is fundamental to what we are doing and arguing for. If we are not able to provide independent funding, virtually no respectable researcher or university department will be taken seriously in today's world. This really matters. We need to ensure that we make a division between the money coming from the industry and the way it is bounded and then distributed. As has been pointed out, the powers to introduce a statutory smart levy already exist within Section 123 of the 2005 Act. It would produce significantly more money for us to undertake the research that is currently funded by a cash-strapped NHS. As one person summed up the problem, the gambling industry has brilliantly privatised the profits and nationalised the costs: taxpayers are paying to treat the problems created by these gambling companies.

I shall say a brief word on affordability checks. It is self-evident that limiting how much an individual can deposit, based on their income, will inevitably reduce the overall harm caused. The important thing is that affordability checks have to be meaningful, not symbolic. It would in reality be no good to set the affordable limit before checks are required at £300 when, particularly at a time of rising costs, that £300 might be crucial to feeding, housing or clothing a family. I know the committee's report never committed to any specific affordability mechanism, although my opinion is that the £100 per month soft cap proposed by the Social Market Foundation represents a sensible, evidence-based solution that would enable the majority of gamblers to continue "having a flutter"—to co-opt the industry's language—while protecting the most vulnerable from harm.

I also want to say something on advertising and the social normalising of gambling through its very close association with—some would say hijacking of—sport. The number of adverts that you see when you watch, say, a soccer match, is striking. It is so much so that, as the Committee knows, groups of passionate soccer fans are now campaigning against them and a number of important clubs have taken a principled stand of not taking any money from the gambling industry. I salute them for what they are doing and point out that they are managing to fund their clubs without relying on the gambling industry. The argument at the moment is that if this money were not available, the whole edifice of professional football would collapse. That was the argument about tobacco a few years ago: that if football did not have the advertising revenue from tobacco, it would all collapse. It did not. Football found new ways to fund what it was doing.

On advertising, the prime recommendation is to try to end the association between sport and gambling. As has already been said, we know that something between 55,000 and 62,000 children are diagnosed with some sort of gambling problem when in law they should not be able to gamble at all, so goodness knows how many are gambling if that number are diagnosed with it. I think ending it is in the industry's best interests. I now know three families who have decided that they do not want their young children to watch some Prime matches because they feel their children are being groomed—they use that language—and given a message which they strongly disagree with. I agree with that point.

When I was young and watched football matches, I did so because I found excitement in watching the sport, with the two teams competing. Watching a soccer match nowadays with one of my young relatives, I thought he was texting somebody but I discovered that he was placing bets on it throughout. His understanding is that you get your pleasure not by watching the sport but by betting on it. Is that not a brilliant move by the industry? It is very clever how it has changed.

There is a fundamental issue here. The independent economic research by NERA shows that the worries of the industry that it will not be able to fund itself are dubious when you look at the facts. We provided that research for those who need it. If the principle underlying the Government's gambling reform is a public health approach, they simply cannot continue to allow gambling to dominate every facet of sport and to promote an industry that was previously merely accepted, rather than being the norm. I am proud to have been part of this Select Committee. I am dismayed to feel there is a complacency, and I urge Her Majesty's Government to look seriously at this empirical data and take some radical steps quickly to try to stem this serious social problem we face, even if it is not quite an epidemic of suicides. I hope we will see some action on this before too long.

4.55 pm

Lord Butler of Brockwell (CB): My Lords, I declare my interest as a vice-chair of Peers for Gambling Reform. I, too, was a member of the House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry, which was so excellently chaired by the noble Lord, Lord Grade, and supported by a splendid secretariat, as has been said.

I found membership of this Select Committee a sobering experience. As we have heard, gambling is a very big industry and it brings enjoyment to many people. but there is another side of the picture. The committee heard how addictive gambling causes homelessness, loss of employment, imprisonment, depression, alcohol dependency and, most seriously, suicide. When we take into account the figures for problem gambling, particularly among young people, as quoted by the noble Lord, Lord Grade, it is clear that this is a really serious problem in our society. All political parties have acknowledged that by committing themselves to addressing it—and that now needs to take place. But effective action to prevent the excesses, while allowing the pleasure to continue, needs joined-up thinking across government.

I and the Select Committee feared that my old department, the Treasury, would be one of the things that would drag the anchor on reform of this problem.

[Lord Butler of Brockwell]
We thought the Treasury would be inhibited by fear of killing the goose that lays the golden egg, in the form of contributions to the Exchequer each year. But this is to look at only one side of the account. It is not just about the yield from the revenue, but, even if it were, Peers for Gambling Reform commissioned NERA Economic Consulting, as the right reverend Prelate said, to assess the economic effects of the reforms that the Select Committee recommended. NERA's report is well worth reading. It assessed, first, that the industry's profits are easily robust enough to exceed the effects of a mandatory levy, which could fund education and treatment of those addicted.

On the Exchequer side of the account, NERA's report assessed not only that there would be a net gain to the Exchequer on the revenue side, but that this would be all the greater when one takes into account savings in the amount that the Government currently spend on dealing with the effects of gambling, primarily through healthcare costs. This really is a problem that can be addressed only by looking across the range of departments. In addition, by diverting some of the expenditure by the public in the form of problem gambling to other sectors that are more labour-intensive, there could be a net gain of some 30,000 jobs to the economy. So it is not simply an Exchequer matter; this is an issue where there are gains to the economy as a whole—

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): If the noble Lord will forgive me, I am afraid that we are about to have a vote. We will take a small moment to press our buttons and then reconvene in a moment. I apologise to the noble Lord; he was mid-flow.

4.59 pm

Sitting suspended for a Division in the House.

5.02 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, we would normally delay for 10 minutes for a vote, but I suspect your Lordships have all pressed your buttons already. We might be able to continue if the Committee does not mind occasional interruptions by the jingling Bells. Shall we do that? Lord Butler, do you wish to continue?

Lord Butler of Brockwell (CB): My Lords, before the interruption I was saying that this is not just an issue for the Exchequer. There are gains for the economy as a whole if expenditure by the public in the form of problem gambling is reduced and diverted to other sectors which are more labour-intensive. The gambling industry itself is not very labour-intensive and the expenditure of those sorts of sums will generate more employment elsewhere. NERA has assessed that there could be a net gain to the economy of as many as 30,000 jobs and up to £400 million in employee earnings, which of course in itself would generate revenue to the Exchequer.

The coming publication of the White Paper is a once-in-a-generation opportunity to address deep-seated social issues. By addressing the harms of addictive gambling, the Government's review has a chance to bring about not only a major social reform but one which is economically viable and fiscally advantageous.

5.04 pm

Lord Kirkham (Con): We live in a world that is hungry for data, where every business, charity, NGO and government department is eager to gather more and more information about our health, habits, motivation, interests and desires. Whether we like it or not, every journey we make is tracked by CCTV, and every keystroke we make on a laptop, tablet or smartphone can be analysed so that we can be ever more effectively targeted by marketeers. I am sure we are all familiar with the eerie way that typing the name of a place, product or service into a search engine immediately leads to our being swamped with ads for that very thing.

As a lifelong professional retailer of scale eager to grow my business, I quickly recognised the value and importance of data and communications in fulfilling my corporate ambitions. The more I could learn about a prospective customer and their needs and aspirations, the better I could target and personalise my communications to persuade and encourage them to do business with my company. It worked for me then, and it is working for the gambling industry now, but with several key differences. To the best of my knowledge, no one has ever become addicted to buying sofas—and we certainly tried hard—I never attempted to sell our products specifically to children, and I was working in the age before the smartphone became universal.

Now nearly every adult, young person and very many children in this country carry around a device that allows them to play games, have fun and gamble around the clock, and provides constant feedback on what they enjoy. This gives unscrupulous operators in the gambling industry the perfect opportunity to identify an individual's weakness and exploit them—accentuating the thrill of risk taking, the adrenaline rush and the chance of winning money, and giving them every possible encouragement to gamble irresponsibly to the maximum. The speed of change facilitated by advancements in technology has been stellar. Regulations, legislation and implementations have clearly been left far behind, and they now desperately need to catch up and become relevant to fit the digital era.

I am no puritan; I have never been strongly against gambling as a legitimate source of entertainment. Social gambling can add interest, enjoyment and spice to sporting events, and it has become a cultural norm, but we still must take care. Giant oaks from tiny acorns grow, and the current proliferation of the compulsive behaviour of dangerously addictive gambling, particularly among young people looking for a buzz and easy money—including those under 16 whose participation is already illegal—is an evil that we just cannot allow to continue. It is a rich seam for the gaming operators to mine, but, as we have heard, it is literally destroying lives. It creates financial hardship, emotional pain, and social, job and relationship problems, and poses a major health and suicide risk. It has progressed to a magnitude and extent that I believe are not generally recognised and acknowledged. Having spent many years working with young people through the Duke of Edinburgh's Award and Outward Bound

to help them build their confidence, maximise their potential and realise their ambitions, I find it heartbreaking that so many young people are now at risk of being blighted by gambling addiction and gambling to excess, with lives even being lost because of it, as we have heard.

Gambling is not going anywhere. It has been around for ever, and it is here to stay; of that I think we can be assured. More than half the nation's adults are regular gamblers. While most people do not develop a gambling problem, it can be a nightmare of epic proportions for those who do—at a massive cost to the gambler, their family and society at large, appealing as it does to those from all walks of life. It is a big money business and, consequently, it wields power and influence and can easily succumb to the temptation to compromise values and standards in the race for big profits.

We need to inform and regularly remind the public of the true magnitude of the problem, and urgently add gambling education to the national curriculum to make young people aware of its risks as clearly as we teach them about the dangers of drink and drugs and the importance of safe sex. Gambling is a bigger problem among teens than it is in adults, and research by the Mayo Clinic indicates—perhaps unsurprisingly—that gambling during childhood and teenage years increases the risk of developing compulsive gambling tendencies. Addressing this must be our priority. More widely, we need to look at ways of achieving a change in public attitudes to addictive gambling in the same way that we have successfully persuaded the overwhelming majority of the public that drink-driving is socially unacceptable, that it is irresponsible to get into a car without wearing a seatbelt, and that cigarette smoking is passé.

In the short term, we need urgent action by the Government to enforce the existing law that makes gambling by children illegal, and for the Gambling Commission to make much more use of its existing powers to mitigate the encouragement of problem gamblers spending more than they can afford. The Government have a manifesto commitment and a moral responsibility to invest in making gambling safe and honest, with strong and substantial protection for the most vulnerable.

This report is substantial, comprehensive, wide-ranging and most impressive. The process to start implementation is crucial and pressing. It should begin right now, with particular focus on online gambling, protecting the young specifically; stricter operator control; tighter statutory regulations on both gambling advertising and the promotion of inducements—the noble Lord, Lord Layard, went further and suggested a total gambling advertising ban; and the introduction of regular and hard-hitting education and information campaigns. It would be irresponsible in the extreme to add further delay.

Gambling is a compulsive behaviour, a process addiction that is chronic and progressive and can start off from the lightest touch: making a casual, recreational wager, simply buying a lottery ticket or scratchcard, or even having a flutter on the Grand National. I do not think we should make it easy for the young to be lured into gambling. Let us not make the gateway to gambling tempting and attractive, spurred by loosely restricted, heavyweight, focused marketing.

Gambling has brought pressure on society for generations, but now technological advances have allowed new, highly addictive games to be developed and made personalised communication easy and gambling convenient and accessible from almost anywhere at any time, allowing problem gamblers to wager and place bets at all hours of day or night, exacerbating the problem and fuelling its growth. The time is long overdue to mitigate this chronic scourge of society. Problem gamblers are gambling not only with money but with their lives. We should not. It is time for action.

5.12 pm

Viscount Colville of Culross (CB): My Lords, I add my praise for the insight and care with which the Select Committee has put together this report. It quotes the Government's evidence that 0.7% of the adult population of this country are problem gamblers. However, much of this information is self-reported and it is inevitably an underestimation.

I find more convincing a report from HSBC, which investigated the accounts of 1.5 million of its customers to look at their actual gambling spend compared with their disposable income. It concluded that 2% of customers, classed as "Very Concerning", spend more than 60% of their disposable income on gambling, and 8% spend more than 20% on gambling; these were classed as "Concerning". These figures not only show the need for the banking industry to become the first responder for these vulnerable customers but emphasise many of the report's recommendations.

I will focus my speech on the exponential growth in online gambling and the increasing gamblification of online gaming, which is affecting users as young as three. As the noble Lords, Lord Bourne and Lord Kirkham, said, we have seen a huge increase in online gambling, available 24/7 on all sorts of devices, including mobile phones. Researchers' anxiety is that the fastest growing of these apps are not regulated by the Gambling Commission.

There has been a big increase in what are called social casino apps, which fly below the radar. These include simulated casino games, roulette and slot machines. All involve the original chips or plays being paid for with money, but the rewards are not in money but in tokens that can be used only in the game. One of the most successful is 777 Slots, which allows users to make fast, repetitive slot plays online. The players are nudged into continuing to play and put down stakes, using a software program carefully crafted to excite and engross them. The operators make massive amounts of money, of course, but the apps do not qualify as gambling because, as the Gambling Commission points out in the report, under UK legislation the definition of gambling is that the prize includes "money or money's worth". If it does not, it is not gambling. Surely, with the growth of these social casino apps that fall outside this definition, there is potential to cause addiction. The definition has to be changed to create an important extension to the Gambling Commission's remit.

Nowhere is the revision of the definition of gambling more important than in the world of online gaming. Many researchers talk of the gamblification of the gaming world. In the last decade, it has changed out of all recognition. A decade ago, video games were products

[Viscount Colville of Culross]
to be bought and taken home to be played on a console; now they are given away free as online sales platforms. They lure players into spending more and more money on buying additional benefits in the game to enhance their chances of performing better. Recent studies online show the skilful design techniques that keep players in the game, spending ever greater amounts of money.

This is also happening in the new generation of virtual reality games that are coming through the metaverse, but nothing has attracted as much attention as the loot boxes, which are so worrying because they are accessible to children, especially young males under 18. There is little information about the money being made by the operators, although Juniper Research estimates that the worldwide market is worth $30 billion annually. Young players can buy in-game features that allow them to either spend real-world money or take a stake on in-game items for the chance of winning something of unknown value.

I have read the evidence given to the committee by Dr Zendle—he is the expert on loot boxes—and I have spoken to him at length. He says that loot boxes are similar to gambling in many ways; they provide a powerful gateway for many young people to train as gamblers. They encourage spending, often excessive spending. More importantly, Dr Zendle confirms that, in all his studies, there is a link between problem gambling and spending on loot boxes. His finding is that young people who spend money on loot boxes are more than 10 times as likely to become problem gamblers as those who do not. This rings alarm bells in the report and it should among all of us.

Two Select Committees have already recommended extending the Gambling Act to cover loot boxes and bring them into scope but, in reply to this committee's report, the Government pointed out that the call for evidence on this issue closed in November 2020. There have been over 30,000 responses. Last summer, the Minister in the other place announced that the government response would come in months. Now we are told that the response will come two years after the consultation has closed—a shockingly long time on this important issue.

I understand that the Government do not want to impose unnecessary regulation on the booming gaming industry, but there are now so many studies and reports to show that loot boxes look and feel like gambling that they should wait no longer. They should urgently ensure that they are regulated under Section 6 of the Gambling Act, as soon as possible.

I ask the Government to look at the bigger picture online as the gambling and gaming worlds collide. They need to take deeper preventive action to deal with problem gambling, particularly among the youngest users. I ask the Minister whether he could look at some of the provisions in the Online Safety Bill, which he will be shepherding through this House. Its duty of care provisions compel larger platforms to take into account the protection of users from harm, both legal and illegal, within the algorithms and software programs which moderate and disseminate content.

This should be the best model for the future of online gaming and gambling. The Gambling Commission's remote technical standards specify that games should not include features to encourage players to chase losses, nor continue playing when they want to exit the game. Clearly the level of problem gambling in this country means that this is not working effectively. I urge the Minister to consider imposing a duty of care on operators that is baked into the design of games. That would go a long way to alleviating many people's concerns and, more importantly, would future-proof the technology against the dramatic and unforeseen changes that are coming down the line.

5.18 pm

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Viscount, Lord Colville. I agree with everything he said on both loot boxes and unconventional games that are currently not classified as gambling. I will not repeat any of it, but I agree with pretty much everything he said on those issues.

I declare my membership of Peers for Gambling Reform. I am also a vice-president of the LGA and the NALC.

I begin, as I think everyone has, by welcoming this important report and the clear and powerful introduction from the noble Lord, Lord Grade. As everyone has noted, this was published two years ago and yet we are here today. Often, when we talk about reports, we say that things have moved on, but none of the issues covered by this report has got any better in the last two years.

Those are two lost years during which, as we have discussed, so many individuals and families have suffered so much, but communities have also suffered. I want to focus on those communities—the place-based damage which is highlighted in the report—but the Government's response is sadly lacking in acknowledgement of the damage done to communities; it acknowledges the individual but not the community damage.

When we think about what has moved on since then, the focus in the past few months has been the cost of living crisis. We have heard a lot of talk about gambling as a leisure activity, an optional thing, so one might expect that the gambling industry would be seeing a big collapse when there are reports out just today that more than 2 million meals have been handed out at food banks in the past year and almost one in 10 parents expects to go to a food bank in the next three months. You might think, "Well, people won't have money for gambling."

However, we need to think about what gambling is for very many people. It is not a pleasure or a leisure activity; it is a tax on desperation, on people's desire for some kind of hope. They cannot see anything improving in their day-to-day life, with their zero-hours contract, gig economy job, low wages and costs going up and up. In that moment when you put down a bet, you think, "This could really make a difference, things could change." You know that the chances of that happening are vanishingly small, but you really need that moment of hope. It is a very human need to think, "Suddenly things could be much better for me." That is a tax on the state of our society.

I agree with many things that the right reverend Prelate the Bishop of St Albans said in his powerful speech, but the report powerfully highlights the link

between sport and gambling. We have seen a perversion of sport: it has become a vehicle for gambling. We talk about gambling being a leisure activity. How many other leisure activities have effectively been denied to people? We think about sport. We might hope that people might have watched that Premier League football game and then gone out to the local football pitch, had a kickaround and tried to recreate the brilliant free kick they had just seen, but, very likely, that local football pitch has been privatised and now has a significant charge for access to it. So many other leisure alternatives have been closed off.

Again, picking up on what the right reverend Prelate said, paragraph 524 of the report is worth highlighting. It is the report of a carefully considered, evidence-based Select Committee investigation. It says:

"Gambling operators should no longer be allowed to advertise on the shirts of sports teams or any other part of their kit. There should be no gambling advertising in or near any sports grounds or sports venues, including sports programmes."

That is the carefully considered recommendation of a committee of your Lordships' House. The right reverend Prelate's comparison with tobacco is interesting. There was a huge row and expressions of concern when tobacco was banned from such advertising, and from all the advertising, but no one would go back now. We have in view the idea of zero tobacco: think of what social progress that is.

The Gambling Commission's chief executive Andrew Rhodes gave a speech this month which pointed out that the gross yield for the gambling industry equates to taking £450 a second off customers in the UK. That is a lot of money. He made a very interesting comparison. He said that the industry is worth some £14 billion, which is roughly the same size as the agriculture industry. Elsewhere in your Lordships' House, we are rightly having lots of debates about food security. We have an industry that is the same size as the industry feeding us, but it is the gambling industry.

When I was putting this speech together, I thought, "I'm going to come out here sounding like a real radical by saying, 'Let's shape our society according to what kind of society we'd like to have'". But I had some unexpected support earlier from the noble Lord, Lord Butler, who in our previous debates has identified himself as a Treasury man. We heard the Treasury man say, "We want to think about and shape the size of gambling in our economy, and how we might better allocate the resources to see that capital used to create more and better jobs". I thank him for that support; I was very pleased to hear it.

Coming to the point of not just the broader issue of the general economy, in paragraph 112 this report clearly focuses on how the damage done by the industry is not evenly spread across the country. Go down to Chelsea, or up to some of the posh bits of Manchester, and you will not find very much sign of the gambling industry. The report cites evidence that

"'more than half of the nation's 6,000 bookies are in the UK's most deprived areas', and that 56% of all the big four's betting shops are … in the top 30% most deprived areas in England".

I put it to the Minister that if we are, as I believe, to expect a levelling-up Bill in the Queen's Speech then action to address gambling, particularly place-based gambling, should surely be in that Bill.

Looking at the time I have spoken already, I am not going to go through this report in great detail, but I want to go back to the Local Government Association and highlight a couple of points made in the detailed briefing that it released on this debate. If people have not looked at that, I really urge them to do so because it very much addresses how concerned our local authorities are about their lack of powers, or inadequate powers, to deal with this place-based situation. Although we often focus on what is happening on the internet, a lot of this damage is still very place-based. The Local Government Association is calling for more flexible powers for councils to determine the number and location of local gambling premises in their area, and the levelling-up Bill might very well help with that.

I have focused mostly on area-based issues but also want briefly to address problem gambling and the need for treatment for gambling addiction. Again, the Local Government Association is calling for the mandatory levy. We saw this on big tobacco, and the "polluter pays" principle has become a big thing, given Grenfell and the Building Safety Bill that we were debating yesterday. Surely, we need "big bet" to pay its way for the damage that it is causing.

My final thought is that, as I think the right reverend Prelate and several other speakers referred to, we saw a huge change to and growth in gambling after 2005. That was a result of policy choices and decisions made by government that gave us the position we have today. Very often we are told, "Oh, we can't regulate or control—we can't create new rules. That's restrictive and anti-liberty". But choices were made that allowed the situation we have today, and they allowed the industry to operate at vast profit without paying taxes or for the damage it is causing. It is not a case of acting or not acting; we have acted and created where we are now. We can act to create a different kind of model for society.

5.29 pm

Lord Smith of Hindhead (Con): My Lords, it was an honour to serve on the Select Committee under the chairmanship of the noble Lord, Lord Grade. I thank him for his leadership, and I thank the staff who supported the committee and our witnesses, as well as colleagues who together produced a report which I believe is both balanced and considered. I declare my interests as a member of this committee and my other related interests as set out in the register.

Having become so used in recent months to a speaking time of just three minutes—and, in one case, two—I hardly knew what to do with myself when I learned that today we would have an advisory speaking time of five to six minutes. However, as the subject of gambling is so wide-ranging, I shall endeavour to stick to just a couple of topics.

As we are aware, a great deal has changed since 2005 in the way we gamble, socialise and spend our leisure time and money. The internet is the biggest catalyst in this change, with 24-hour access to online gambling in our pockets. The review our committee undertook was overdue and I hope our findings and recommendations will provide a measured framework for responsible and safe gambling while, at the same

[Lord Smith of Hindhead]
time, protecting the individual rights of those who enjoy gambling. As we said in our report, our aim was to make recommendations which

"will make gambling safer for all, but no less enjoyable for those who do participate safely."

I hope our recommendation that triennial reviews should be reinstated will be given serious consideration. This is an efficient way to officially and systematically evaluate the gambling industry, the social landscape and key players such as the Gambling Commission, GambleAware and others. Can my noble friend the Minister clarify this point?

I clearly recall the look of panic, followed by temporary blankness, when I asked the then CEO of GambleAware what GambleAware does. The additional funding it had recently received seemed to have increased the size of its offices and admin staff, yet it was still unable to confirm its funding of, for example, GamCare, one of the excellent providers of help for people with gambling problems, for more than 12 months.

My question is whether GambleAware remains fit for purpose—whatever that purpose is—and, importantly, whether the funding of GambleAware is to be removed from voluntary industry donations and provided instead by the new, often mentioned levy. If that is the case, I ask my noble friend the Minister whether the Government are considering any alternatives to a statutory levy to fund research, education and treatment. Critically, do the Government recognise the disproportionate impact that a one-size-fits-all rate might have on land-based operators, which carry fixed costs and support large numbers of local jobs in their venues, compared with online operators?

If a statutory levy is being considered, will it apply to the National Lottery? Your Lordships will be aware that I have often set out my views on how the National Lottery has moved so far away from its original objectives that it is really now a gambling operator, albeit one governed by a separate Act. With the number of draw-based players declining and more of Camelot's record profits being made via scratchcards and online instant win games, that would appear to be the case.

However, the mixed message continues when one considers that a person who plays just the six draw-based games each week, excluding scratchcards and online games, would spend £1,092 each year—and would be considered as being socially responsible as well as supporting good causes and, of course, Team GB. By contrast, a person who wishes to spend the same amount of money in a casino or betting on sports should, in the view of some experts, have to undergo an affordability check and might be regarded by others as some sort of social degenerate.

Camelot has recently been fined £3.15 million for mistakenly telling 20,000 players that they did not have winning tickets and sending marketing material to 65,400 people with potential gambling addictions. Noble Lords will not be surprised that I welcomed the Gambling Commission's decision not to renew Camelot's licence to operate the National Lottery beyond 2024, but I urge the new operator not to fall into the same trap as the Ontario Teachers' Pension Plan did of "Dream Big Play Small".

Finally, I hope that a happier balance between those who enjoy gambling and those who are rightly concerned about gambling harm can be achieved. Significant strides have already been taken by the industry to make gambling safer. Yes, it is an important industry in terms of tax yield and employment but a shared view that more can always be done without spoiling the enjoyment for the overwhelming majority who enjoy the occasional flutter is a target we should all collectively hope to achieve.

5.35 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I congratulate the noble Lord, Lord Grade of Yarmouth, on setting out the case for gambling reform so eloquently. I regret that I was not a member of his Select Committee. I declare my interests as a vice-president of the LGA and a vice-chair of Peers for Gambling Reform.

The report *Gambling Harm—Time for Action* covers many aspects, including personal and economic. It made more than 50 recommendations to alleviate the problems associated with gambling harm, including bringing loot boxes in video games within the scope of the Gambling Act 2005. Children are particularly targeted via these, as the noble Viscount, Lord Colville, alluded to. Gambling can take place in many ways: at a racecourse, at a sporting event, online, at a casino or in a betting shop—there are myriad ways to do it.

District and unitary licensing authorities have a statutory role in regulating local gambling premises. Licensing and planning teams do their best to prevent gambling-related harms occurring on premises. This may include identifying specific local gambling risks. Currently, councils do not have the power to prevent new gambling premises opening. These could be sited close to schools, treatment centres or housing estates, thus leading to a situation where several gambling outlets may be close together, making it very difficult for those with addictions to avoid the temptation to gamble beyond their means. It is therefore important that councils are given powers over the possible location of gambling outlets in their areas in order to prevent clustering. This would help reduce the risks to the vulnerable. Are the Government prepared to consider this?

There is a difference between gambling in betting shops, online gambling and the gambling that takes place at a racecourse. Being shut indoors with a computer or mobile phone and continually betting online because you have an addiction that is ruling your life is a miserable existence. But the gambling that takes place in the open air at a racecourse needs a more nuanced approach. The business models that apply to off-course and on-course gambling should be acknowledged and dealt with differently. In both instances, the identification of problem gamblers should be simplified, and effective measures should be taken to ensure that those addicted cannot gamble beyond their means.

Running up thousands of pounds' worth of debt is deeply depressing, and help should be readily available to those affected. Gambling can be fun—many enjoy the occasional flutter—but it can also become an overwhelming addiction that ruins lives. It is important that gambling harms are clearly understood and that

education, prevention and treatment programmes are sufficiently well funded to be accessible and effective. The isolation caused by the pandemic and the current cost of living crisis, coupled with a significant move to online gambling, are putting an increased number of people at risk of becoming entrapped by gambling.

The introduction of a mandatory 1% levy on gross gaming yield for the gambling industry, to help to fund a significant expansion of gambling treatment services, is essential. During the passage of the Environment Act, the phrase "the polluter pays" was frequently used. It is appropriate to use the same phrase in relation to a levy on the gambling industry.

Much of the support and prevention work for those suffering from gambling harms is provided by charities outside of the NHS. However, it is often the case that the NHS picks up the cost of dealing with the aftermath of the mental health issues of families affected by gambling-related suicides. The National Gambling Treatment Service, which is funded by GambleAware, provides advice through a helpline and essential treatment for sufferers of gambling disorders—I hear what the noble Lord, Lord Smith of Hindhead, says. Raising awareness is essential, especially for young men, who may regularly gamble at sporting events. It is clear that no one organisation has a catch-all solution but, by working in partnership, more is achieved, much suffering is alleviated and tragic deaths are avoided.

A levy would help pay for extra capacity in health officials, debt advisers and faith leaders to respond to the likely growth in the number of those suffering from gambling harms. Can the Minister say whether the Government are ready to acknowledge the need for a 1% levy on the gambling industry? Raising awareness of gambling harms is essential before young people and children become entrapped. Children are particularly susceptible to online games and television advertising, which draw them in. The stigma associated with gambling harms needs careful handling in order to allow those affected to access the services which will help them.

I am pleased that we are holding this important debate shortly—I hope—before the publication of the gambling White Paper. One crucial reform the committee called for was online gambling affordability checks to ensure that people do not lose more than they can afford. There can be catastrophic consequences for those who gamble beyond their means and for their families, who are often left devastated. I was encouraged to hear that in a speech to the GambleAware conference in December 2021, the Minister responsible for the gambling industry recognised that these checks are key in helping to prevent gambling-related harm. The question now is how they should apply.

The Social Market Foundation published a powerful report in August 2020 which recommended the introduction of a standardised affordability threshold set at losses of £100 per month. At this stage customer due diligence checks should be applied by gambling operators. However, this does not always happen. A study carried out by the University of Liverpool found that 73% of slot players and 85% of non-slot players have a monthly loss of £50 or less. Other studies have similar conclusions, with the PwC report for the Betting and Gaming Council stating that the median spend is up to £75 per month. The proposed soft cap of £100 would allow most gamblers to enjoy a flutter without any major checks. Do the Government agree with the SMF's carefully developed proposals and will they consider setting the affordability threshold at £100 per month?

The Government's review of the gambling White Paper has taken place, but it has not yet been published. Can the Minister give an undertaking that that will take place in the next Session of Parliament and before the Summer Recess? Public Health England estimates the economic cost of gambling harms at £1.27 billion per year. Given this figure, surely there can be no reason not to take action now, especially as many families are suffering as a result of the increased cost of living and energy prices as well as struggling with gambling debts.

5.43 pm

Lord Trevethin and Oaksey (CB): My Lords, it is a great pleasure to follow the noble Baroness. I declare various interests. I was honoured to be on the committee chaired by the noble Lord, Lord Grade. I make a very modest contribution as a vice-chair of Peers for Gambling Reform, which is so ably and vigorously led by the noble Lord, Lord Foster, who will be speaking shortly. I also draw attention to the interests I declared in the committee which might be thought to travel in conflicting directions. I grew up in a horseracing family; I have been surrounded by gamblers all my life; I gamble, usually with enjoyment but almost invariably unprofitably; and I still have family connections with the horseracing world. Those are my amateur interests which might be thought to be relevant. I have a professional connection with gambling problems in that I have acted as a barrister in a number of cases involving very serious allegations against gambling operators. In the course of that work, I have seen alarming evidence of deliberate and, it might be said, even cruel exploitation of gamblers with serious problems, and it is with that in mind that I shall address only one recommendation that the committee has made.

Before I do that, I echo what the noble Baroness just said about the distinction to be drawn between, as she put it, open-air gambling at the races on the one hand and online gambling on the other. Horseracing, which is dear to me and my family and about which the next speaker may well have a bit to say, is part of the fabric of British life. There is a danger, which I am sure the Government will be mindful of, that the necessary reforms in this area might have an unfortunate effect on the horseracing industry. The time to address that will be when we know what the Government's proposals are, but I am aware from contact with the horseracing authority that there are concerns in respect of restrictions on advertising and affordability checks. Horseracing should, within reason, be protected.

Having made that modest plea for horseracing, of which I am fond, I will now briefly speak from a forensic perspective, if I am able to achieve that, about one recommendation that I think is critical. The starting point is to recognise that gambling operators are subject to a considerable conflict of interest when they are asked by the law or the regulator to take steps to protect problem gamblers. The conflict is obvious: the

[Lord Trevethin and Oaksey]
bigger the problem, the more profit the gambling operator makes. I have seen cases in which that problem is vividly brought out. The existence of that problem means that the Government's reforms must recognise that it is completely unrealistic to expect the gambling operators to cleanse their own stables and act properly in future. The necessary standards have to be imposed on the gambling operators, and I suspect that they would accept that. It is almost unfair to expect them to behave entirely properly, given the commercial interests at work.

The recommendation that the committee has made and that I wish to speak to is that the office of a gambling ombudsman be created. I am quite familiar with the work of ombudsmen in my world, the legal world, so I know how they operate. They have very important powers. When a complaint is made to an ombudsman, the ombudsman normally has the power to drill down into the underlying evidence and, in particular, to get the relevant emails—which is where the devil is to be found—if the ombudsman thinks it appropriate to do so.

I am doubtful that effective redress will be available in every case in which a gambler has been unfairly treated by a gambling operator; sometimes it will and sometimes it will not. It will not be obtained in the courts, because the courts are too expensive. It might sometimes be provided by the ombudsman, but the real value of creating an ombudsman is that in cases of abuse and unfair exploitation, where a complaint is made to the ombudsman, the ombudsman can then make a comprehensive and searching inquiry into the underlying facts. That is critical, because it will expose misconduct by the gambling operators. The misconduct can be referred to the Gambling Commission, which I think is beginning to wake up to the scale of the problem that confronts us. The Gambling Commission has the power to impose extremely substantial fines, as it is beginning to do.

That seems to me to be one very effective potential route to a reform of the industry and a mitigation of the harms of which so many of your Lordships have spoken. I am not entirely confident at the moment, but I very much hope the Government's proposals will include that which the committee has suggested in relation to the creation of an ombudsman. We shall see.

5.49 pm

Viscount Astor (Con): My Lords, I welcome this very good report from the Select Committee chaired by my noble friend Lord Grade, which we finally have a chance to debate this afternoon. I will address my remarks primarily to gambling in relation to horseracing, but it is important to start by pointing out what is missing from this report: the huge growth of illegal gaming sites. A PwC report published in February 2021 estimated that there were 260,000 users of these sites, gambling £1.4 billion a year. We know that those numbers have risen since that report, and there are now estimated to be at least half a million people spending over £2 billion a year on illegal sites.

The reason that this is such a serious concern is that problem gamblers barred from legal sites move seamlessly to illegal ones which have absolutely no protections—no player protection, no anti-money laundering, no tax collection and no sporting integrity. What is even more worrying is that the Gambling Commission seems to concern itself only with legal operators and ignores the evidence of the problem of illegal gaming. It may be that the commission does not see its remit extending to illegal operators based either in this country or outside it. If that is the case, its remit should be extended and it should have those necessary powers.

With the rise of internet gambling, the Government have to make a judgment on regulation. Too little, and it does not work; too much, and it will lead to an explosion in the growth of the black market. Too often in the past, as my noble friend said, the Gambling Commission has not used the substantial powers it already has, whether by fines or orders to make bookmakers or gaming companies return bets.

I declare that I own a racecourse—sorry, a racehorse, not a racecourse. I occasionally put a bet on the horse when it runs. It does not win very often, but it did win last year. I ought to also declare that many years ago, on behalf of what was then the Department of National Heritage, I took the Bill which introduced the National Lottery through your Lordships' House. After the Bill became an Act, we were encouraged to buy a lottery ticket, which we all did. There was then a sudden panic, because we had a letter from the Cabinet Secretary—perhaps the noble Lord, Lord Butler—asking us to promise to give the money to charity should we win. My response, which I am not sure ever got back to the Cabinet Office, was that if I won a fiver, I would certainly give the money to charity, but that if I won the jackpot, I would consider my position in Her Majesty's Government very carefully.

Lord Butler of Brockwell (CB): Not guilty, my Lords.

Viscount Astor (Con): I am grateful for the noble Lord's response.

Turning back to the Select Committee report, it thoroughly highlights the difficulty of gambling issues. We need some workable basis of affordability which protects without pushing problem gamblers into the illegal unregulated sector. As I understand it, the remit of affordability was not originally part of the role of the Gambling Commission. If it is to be, the Gambling Commission must improve its understanding of the new technology faced by the punters. I believe that that should be a major part of its role, but it must be up to the Government to bring forward guidelines that have a sensible system for both the commission and the industry to manage affordability, and that process must be subject to parliamentary scrutiny. The guidelines on affordability to be followed by operators having been set out by the Government, the Gambling Commission must be the regulator.

Gaming operators have the technology; they are quite capable of rigorous checking and spotting those who regularly lose significant amounts of money. It should be in their interest to manage affordability, but, as my noble friend said, it is a conundrum that this business faces all the time. We must make sure that the gaming companies have to prove that they are managing the issue of affordability. If not, they should be fined or, as a last resort, have their licences withdrawn by the

Gambling Commission. Indeed, the idea of having an ombudsman to deal with problem gambling is a very good one.

It is important to stress how illegal gaming is spreading throughout the world. For example, in France and Norway, where there are state monopolies for gaming, the black market is now 60% of all money staked, so it is a serious issue. Gambling companies are quick to entice one to have a bet, but I know from talking to those who occasionally bet on horses that if you win three races three days running, they are quick to close your account. They have the technology; we must make sure that they use it and that must be enforced.

Racing is one sport that benefits from a hypothecated tax: the horseracing betting levy. It is based on the gross profits of bookmakers. It provides over £80 million a year to racing and, without the levy support, many racecourses would not be viable. The Horserace Betting Levy Board does a very good job of helping racing. As an aside, I hope that the Government have given up the ludicrous idea a couple of years ago of abolishing the levy board and subsuming it into the Gambling Commission—not a good idea.

As some of your Lordships will know, the levy needs reform because it is based on gross profit. Over recent years, as turnover has increased, gaming companies' gross margins have fallen but they still make the same net profit, so the levy income is under threat of decline. This is a lesson for anybody who promotes a levy or a tax to deal with problem gambling: if there is to be one, it cannot be based on gross margin, it must be based on turnover; otherwise, it is subject to huge fluctuations.

Your Lordships would expect me, as someone who is keen on racing, to say that online games and slot machines are a much more serious problem than betting on horses. That does not mean to say that racing does not have issues; it has problems and we must deal with them. There is a strong argument that there should be an age limit on betting on horseracing. It might be 21, some even argue for 25, but there certainly should be a rise in the age limit for those betting on horseracing either at a racecourse or online.

I hope the Government will not allow themselves to be bullied by the large gaming companies, now capitalised in their billions and focused primarily, I have to say, on the rapidly expanding US market. I am glad that the Select Committee report recognised that bookmakers should still be allowed to sponsor horseracing and greyhound racing; it allows them to give something back to racing, and racing needs their support to have decent prize money.

I should also say that racing is affected by illegal gambling by the loss of media rights income. If you go to a racecourse, you often see a drone flying adjacent to the course relaying pictures to illegal operators at a much faster rate than television, because they operate at a high-spectrum frequency, as opposed to the low spectrum used by terrestrial television. This allows illegal betting not only in this country but offshore and beats the standard bookmaking market, so it is affecting the integrity of racing. It is very difficult to control, because drones can fly higher or slightly further away and their cameras are so good that you cannot stop them.

I believe there is a solution: follow the money. That is my key message to your Lordships. It is a way of dealing not only with drones but with illegal betting, whether in this country or through foreign-based operators. It is a £2 billion problem and growing. We need an amendment to the Gambling Act 2005 so that we can follow the money, trace it and stop it; otherwise, all the hard work to be done to help problem gamblers will be wasted. It is important to note that black market bookmakers target those who are self-excluded from regulated bookmaking sites. They go for those vulnerable people, and that is why it is important.

I hope the Government will look seriously at an amendment to the Gambling Act 2005. If they do not, I have drawn up a Private Member's Bill that I hope to get a chance to propose in the next Session of Parliament that will do the same. I have it in my back pocket and am happy to give a copy to the Minister.

5.59 pm

Baroness Fox of Buckley (Non-Afl): My Lords, it is fascinating to follow the noble Viscount, Lord Astor. I will come back to some of the issues he raised. It is quite a relief, in the midst of frenetic ping-pong, to have a chance to discuss potential legislation changes and to look at something dispassionately and objectively. I appreciate that this has been a slow process for members of the committee, but it is quite nice to take a step back.

I have a few declarations. I do not gamble and have never gambled. I do not own a racecourse. Some close family members and friends have had serious issues with harmful gambling, and I have lived with the grim reality of that. I find the relentless gambling adverts everywhere we go to be tiresome, repetitive, crass and over the top. But it has to be said that even though I feel like I have seen tens of thousands of them, I have never been tempted to gamble. I do not know that we can always draw the inference that, if you see an advert, you will rush out to gamble; that is not quite the way it works.

I also think we need some proportionality and calm assessment of the facts, when considering legislating and regulating. I worry that the issue of gambling brings with it an emotive quality and some negative cultural assumptions about gambling, the portrayal of gamblers as vulnerable and a demonisation of the industry. I was glad to hear so many noble Lords say that they are not puritans—that was a great relief—but the gambling industry employs 119,000 individuals and brings billions of pounds into the Treasury. It is a legitimate industry, but it is treated as something of a pariah. The emphasis today was that it makes huge profits but, as far as I know, that is not yet considered to be completely morally reprehensible. I wish that more British businesses did the same. I sometimes think we can get ourselves into a state of confusion.

For balance, I suggest that gambling is a normal and popular activity, enjoyed by millions of people. For the vast majority, it is not a problem. The perception that problem gambling is on the rise is not based on evidence. Indeed, according to all the evidence and facts, it is statistically stable and has been for some years. We should not encourage misinformation by challenging the figures and facts that we know: 0.7% are problem gamblers.

[Baroness Fox of Buckley]

The narrative we always hear focuses almost exclusively on the potential harms of gambling. As such, it treats everybody who gambles as being at risk. That can end up misleading us about the threat of gambling, creating a climate of fear and leading to some dangerously illiberal policy proposals designed to save people from this sort of evil. I am concerned that a paternalistic framework does not focus just on underage gamblers—I am not talking about children in any way, and completely accept that they need to be protected—but sometimes treats adult gamblers as though they are children. That worries me.

I pick up particularly the demands for affordability tests that we have heard put forward today, referenced and backed up by the noble Baroness, Lady Bakewell, in the Social Market Foundation's affordability proposal that would limit people's maximum spend to £100 a month, across multiple gambling operations. I hope the Government will just throw that idea out. It is notable that, in no other area of life or leisure, is there even discussion of a legislative cap on how individuals spend their own money—as I would hope.

However, if we take it out of the realm of gambling, let us take my friend Mrs Smith, who goes to the shops and decides to treat herself to a dress that she cannot really afford and then goes off for a pricey meal and even treats the family to an extravagance, such as a holiday they cannot afford without getting into debt. With the cost of living crisis, there are all sorts of decisions that will mean that all sorts of people will get into debt and there will be an affordability issue. Are we advocating that the Government put a cap on what people can spend because they cannot afford it?

I noted that the noble Viscount, Lord Colville, made the point that HSBC challenges the statistics because it says, "We've looked at your bank accounts and you're all spending too much on gambling." I hope HSBC does not reveal what I am spending all my money on. It might not be gambling but I am spending too much money on things I should not spend too much money on. Such is life but such is the freedom of an adult in a free society.

Of course, a small minority of gamblers can get into some terrible, escalating problems, with tragic consequences for themselves and their families—as I know too well. Yes, perhaps the gambling industry has historically been negligent in deploying common-sense intervention when alarm bells signal a problem. But we should also recognise that there is a moral dilemma here. A de facto demand that individuals open up their financial details to betting companies, casinos and so on would not, in other contexts, be something we would encourage. We warn people not to share such sensitive data. This is not just the GDPR being used as an excuse. It is legitimate to say to people, "Be careful about letting your personal financial details be harvested by outside agencies." There is a question of privacy, and that matters, yet here we are advocating that we allow big business to use our data to control our behaviour and manage the choices of adult citizens. This sets a dangerous precedent that should at least give us pause about the expansion of corporate control over our data and our choices—or, indeed, the encouragement of state intervention in our spending habits and our individual liberty.

I also want to query any proposed ban on gambling sponsorship of and advertising at sports events. Despite everything, there is no evidence of an increase in problem gambling since gambling advertising was made legal by Tony Blair's Government in 2007. I am concerned that we have become complacent about a soft form of censorship, but this is likely to cause devastating financial damage to a whole swathe of cash-strapped sports clubs.

The right reverend Prelate suggested that sports clubs should just get different sponsors. That suggests that he may not have been part of a small organisation trying to get sponsorship, but I have and, believe me, it is not easy to raise money. Lower-league football clubs face ruin if they are deprived of this revenue. We have heard that it was okay after the banning of tobacco advertising, but actually snooker nearly collapsed as a national sport. Then it was saved. Who saved it? The gambling industry and its sponsorship. While I am glad that horseracing may be protected, and I am sure that is appropriate, I wonder why it has this special measure. I want all sports clubs and all sports to be allowed that sponsorship. I do not think it is damaging.

I listened to a brilliant podcast recently on the potential huge problems all this could cause across sport, with a particular emphasis, actually, on horseracing. It is called "Wright on the Nail", hosted by Chris Wright, and I encourage noble Lords to listen to it. It tackles this assumption that as soon as, for example, football fans see a logo on a football shirt they will rush off and place a bet, as though they are being groomed and are just one punt away from addiction. They just go to watch the sport and they want their sport funded and they see some adverts. But as one snooker fan noted, consumers can benefit from gambling advertising without ever using a product or putting a bet on, although some of them will. He said that

"those of us who actually watch the sport are delighted to have them on board, pouring in the money and keeping the tournaments rolling."

I believe that sport matters and community sports need that support.

Just as we should trust sports fans to cope with the adverts, we should trust the millions who gamble and remember that, for them, spending leisure time at the bookies, at the races, in casinos or playing poker is enjoyable and can involve skill. Yes, there can be escapism. You want to earn some money because you are poor but there is also the thrill of risk taking. It is not all negative. In fact, the thrill of risk taking also fuels big business and entrepreneurial instincts. As gambling writer and poker player Jon Bryan notes:

"Gambling is fun. It has certainly cost me money but I would not change anything about it."

I think this antidote is necessary. I understand the harms but it is not all harmful and it is not harmful for most people.

6.10 pm

Lord Foster of Bath (LD): My Lords, I would normally begin by saying how much I enjoyed the speech of the previous speaker, but I have to say that I fundamentally disagree with quite a lot of what the noble Baroness said—I will touch on that in a few moments.

I declare my interest as the chairman of Peers for Gambling Reform, which has over 150 Members of your Lordships' House and was established to press for the implementation of the recommendations contained in the report of the Select Committee so ably chaired by the noble Lord, Lord Grade, on which I served. I too pay tribute to the excellent clerk, Michael Collon, and his staff. The committee was concerned by some of the information that we were given very early on in our deliberations, when we heard about gambling companies making billions of pounds in profits—and about the CEO of one company getting a pay cheque of nearly £500 million, for example. At the same time, there were over one-third of a million problem gamblers—probably far more, as the noble Viscount, Lord Colville, said—with, staggeringly, 60,000 children also being problem gamblers, 2 million people affected by it and, most tragically of all, more than one gambling-related suicide every day, as the noble Lord, Lord Grade, said.

We concluded that we simply cannot continue as we are with the outdated legislation from 2005, introduced long before the advent of the smartphone. Of course, we reflect that we are no longer just talking about trips to the casino or the betting shop for a flutter on the horses because, with smartphones, everyone has a mini-casino in their pocket. The gambling on offer is largely unrestricted, with no limits on stakes or prizes and with VIP deals from gambling companies offering huge incentives for gamblers to chase their losses and ever more new gambling opportunities regularly coming online. We are bombarded by gambling adverts on TV, around football pitches, on shirts, online and often directly sent to us in emails, pop-ups and so on. This means that we and our children are constantly being exposed to advertisements and incentivised to gamble. No wonder that the noble Lord, Lord True, speaking from the Dispatch Box—although perhaps in a personal capacity—recently said that, as a sports fan, he was

"sick and tired of gambling advertising being thrust down viewers' throats."—[*Official Report*, 27/1/22; col. 446.]

As we have heard, the recommendations of the committee were wide-ranging. But central to all of them was the need to adopt a public health approach to gambling, just as we already do for policies in respect of tobacco, drugs and alcohol, as the noble Lord, Lord Layard, pointed out. This is where I fundamentally disagree with the noble Baroness, Lady Fox. For far too long there has been an assumption—which she expressed—that, if only we could identify and protect those relatively few people who are supposedly vulnerable to gambling, we need not worry about the rest. But, as illustrated and demonstrated by the excellent video made by Gambling with Lives, which supports family members of those who have committed suicide because of gambling, anyone can become addicted. The gambling companies, which, as we have heard, make a high percentage of their profits from problem gamblers, design their offerings and marketing strategies to persuade as many of us as possible to start down that road and, once on it, to continue.

Last month, in a debate on gambling advertising in your Lordships' House, I referred to Annie Ashton's description in the *Guardian* of the predatory actions of gambling companies and of how her husband Luke committed suicide after relapsing into his gambling addiction. She said:

"the pattern of his gambling was obviously harmful. He took advantage of a free bet offer, deposited money, lost money, was immediately advertised another free bet offer, and the cycle would begin again."

Luke found that being "bombarded with ads" on his mobile

"made it a problem that became impossible to escape."

Such examples, and there are many more, illustrate the need for a public health approach.

I am delighted that the gambling Minister Chris Philp says that he agrees, but it requires, as the noble Lord, Lord Layard, said, a co-ordinated effort between several government departments and policymakers from education to health, to DCMS and beyond, but from what I have been able to ascertain there seems to have been little involvement of the Department for Health and Social Care in developing the anticipated White Paper. When he winds up, can the Minister confirm whether that is correct and, if so, why?

The public health approach informed the committee's recommendations. They include, as we have heard, the establishment of a gambling ombudsman and the introduction of affordability checks, to which many noble Lords have already referred. Incidentally, the Gambling Commission just announced that it is going to look at them. I am surprised that the proposals supported by Peers for Gambling Reform have attracted so much criticism from the gambling industry and the noble Baroness, Lady Fox. After all, the majority of gambling companies already do affordability checks, in one form or another. We are arguing for one that is standardised across all gambling companies and independently monitored.

We are not seeking a hard limit on what people can spend, merely a soft check to ensure that they know what they are doing, that they can afford to do it and have decided to do it. Since this is for online gambling only, it would not, as some are concerned it would, apply to on-course betting. So the noble Lord, Lord Trevethin and Oaksey, and the noble Viscount, Lord Astor, need not fear. I point out to him and to others that there is a huge difference between horseracing and online gambling. If you bet at a racecourse—he does not have one, but other people do—there is a huge time gap between placing a bet on one race and on another. In modern online gambling, the rate of play is so frenetic that you can go on and on, chasing your losses. There is a significant difference between the two.

We want a change from the current voluntary levy to a statutory one. I note, as the noble Viscount did, that the statutory levy for horseracing brings in about £80 million. It is worth reflecting that the voluntary levy for other forms of gambling on two-legged animals brings in only £20 million or less. It seems at least reasonable to get the two to be comparable. The report makes clear that this can be done immediately. We have not specified precisely how—a formula could be based on profits, fees or something else—and the point made earlier was that it could be done in such a way that it is less for land-based businesses, which often have products that are less addictive, than for online gambling.

[Lord Foster of Bath]

The object is to raise enough money for research, education and treatment and to raise it compulsorily so that the industry cannot opt out abruptly. It would break the link between giving the money and deciding what should be done with it. We need independence in determining what the research, education and treatment activities should be. I believe that there is lots of support for that from all sorts of communities.

Two other reforms have been referred to: reform of online gambling, not least to introduce stake and prize limits, just as we already have for land-based gambling, and, as we discussed in that earlier debate, limitations that curb gambling marketing. Currently £1.5 billion is spent marketing these products to us, with all sorts of inducements and so on. We believe that there should be a ban on direct marketing, an end to all inducements, such as those free bets, and a phasing out of sports sponsorship. We have suggested—I again suggest that the Minister have a look at the details of this—that there are ways of finding alternative funding for sports clubs, for instance through the introduction of sports rights, which would also begin to address the concerns the noble Viscount expressed in respect of drones.

Many of the recommendations do not need primary legislation, as we have heard, and I am delighted that there has been some movement since the report came out: the banning of credit cards, tighter restrictions in some aspects of gambling advertising and, not least, the establishment of more problem gambling clinics, with more to come.

As we have also heard, some raise the concern that this will have an impact on the Treasury. I am delighted that reference has been made to the NERA report that we commissioned, which demonstrates that not only would there be a reduction in gambling harm but that at the same time there would be huge benefits to the economy, with something like 30,000 additional jobs, more money going into the Treasury and so on, and more money available for research, education and treatment.

I welcome the fact that there has been some movement, but I desperately believe that much more is needed. As has already been said, the report was introduced more than two years ago and it said it was time for action. That action is now long overdue.

Earlier, before I came here, I went to a meeting of GambleAware, which has changed dramatically in the past two or three years. Only today it published a document, and I noticed this paragraph in it:

> "The ongoing impact of the pandemic, a growing cost-of-living crisis and shift to online gambling means there is a potential increased risk of people experiencing gambling harms that remains unseen until an individual reaches a crisis point. Without action now, many more people and families could suffer."

I hope the Government will at last get on with it. Unless they do, there will be more gambling harm and more lives ruined.

6.22 pm

Baroness Merron (Lab): My Lords, this has been an extensive and well-informed debate, and I express my thanks to noble Lords on all sides for their contributions. I have felt privileged to listen to the contributions, particularly those from members of the committee, of course led by the noble Lord, Lord Grade, who I congratulate on securing this debate. I join the other tributes made today, both to his chairmanship of the committee and to the contribution of the many committee members—one of whom, I note, was the Minister before he was the Minister. I hope that even such a short spell on the committee during the course of the inquiry engendered a personal sympathy to many of the extremely sensible and wise points made in the report.

6.23 pm

Sitting suspended for a Division in the House.

6.27 pm

Baroness Merron (Lab): I shall refer to a couple of points made in opening by the noble Lord, Lord Grade. He observed that affordability is key when we are talking about gambling harms. We are in the middle of a perfect storm when we consider affordability. As we heard earlier in the debate, the shift to online gambling, the increased cost of living and the continued financial impact of the pandemic come together to make that perfect storm in which gambling harms can thrive. The other point from the introduction by the noble Lord that I want to pick up is that we are talking about addiction; we are not talking about the pursuit of a simple leisure activity. It is important in this debate that we acknowledge the seriousness of that point.

While there have been some changes to gambling regulation since this report was published more than two years ago, as was observed in the debate, for example in the operation of online slot games, the current piecemeal approach is just not delivering the change that we need, and I am left with a feeling that the Government have just not kept pace with the changes that we observe and with the impact of those changes.

Her Majesty's Government clearly agree with the need for broader reform, and I welcome that. Otherwise, the review of the Gambling Act would not have been launched way back in December 2020. While we appreciate that this is a very complex area, that there must be due process and that it is vital to preserve the general right, of course, to partake in gambling-related activities, it is not acceptable that this review process has taken so long. With each passing day, a significant number of people remain vulnerable to gambling-related harms, while others are being sucked into gambling through a never-ending stream of adverts.

As the noble Viscount, Lord Colville, observed, even the existing definition of gambling has limitations. The Advertising Standards Authority argues that while changes—such as the recent announcement that celebrity endorsement of gambling firms are to be banned—will reduce the appeal of gambling to under-18s, in isolation, this ban will do nothing to reduce the prevalence and general appeal of gambling adverts. I also ask the Minister why it has taken so long to take action to protect the young and to clamp down on what I believe is a very irresponsible move by celebrities to endorse gambling in the way they have. My noble friend Lord Layard referred to the YouGov poll that

said that two-thirds of the public want to see a ban on gambling advertising: that is the public mood and it is not there by accident.

The committee warned in its report that the young are most at risk. That has led campaigners, including Annie Ashton, the widow of a gambling addict who took his own life, to accuse firms of grooming children and young people. The right reverend Prelate reminded us all of the very human face of gambling harms when he spoke about the impact upon him personally of hearing from a family that was bereaved, and the shame, the hurt and the loss that they were feeling. It is the human face as well as the facts that we need to be remembering.

The committee also warned that some gambling operators are using unscrupulous methods to exploit their customers. While operators carry messages around responsible gaming, time after time we all hear of firms not respecting customer self-exclusion requests and/or failing to act when there is clear evidence of problematic behaviour. Last month, 888 UK Ltd was fined some £9.4 million by the Gambling Commission following a series of social-responsibility and money-laundering failings. As the commission noted, 888 was also fined in 2017, which suggests, of course, that current sanctions are insufficient to change behaviour. Just as many responsible gaming initiatives are voluntary, so are the contribution of firms to research into and treatment of gambling-related harms. I think it is right that we should expect more from them.

I am sure the Minister will shortly outline progress towards the opening of 15 specialist gambling clinics by 2023-24, and yes, we welcome a greater emphasis on treatment, but it begs the question of why the Government allowed demand for such services to grow exponentially in the first place. If there is one positive from all this, it is that more people are engaging in what is becoming a national conversation on gambling harm. Increased awareness of the risk of gambling is important, as is enabling people to speak out about their experience without fear of judgment and shame. More clearly needs to be done to make this pastime safer and we very much hope that the eventual publication of the Government's work in this area, which we hope will be earlier than "soon", will show genuine understanding, ambition and drive. Let us hope that, as in the name of this report, the time for action is soon.

6.35 pm

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I thank all the members of your Lordships' Select Committee for the thorough and diligent work which led to the report before us today. I hope that does not sound self-congratulatory given that, as has been noted, I had the privilege of serving on the Select Committee, albeit for a limited period. It gave me a deeper appreciation and understanding and the opportunity to hear directly from not just those working in the industry but those whose lives have been affected by problem gambling. It has informed my thinking and approach to the issue, which we have discussed many times since I have had the privilege of speaking from this position. My time on the committee also means that I can congratulate from personal experience my noble friend Lord Grade on his expert chairing of the committee and thank all the staff and witnesses who contributed to its work, as well as all noble Lords who sat on the committee.

Peers for Gambling Reform has been especially well represented today, as it often is when we discuss this issue, but I know that gambling reform is a priority for many people across your Lordships' House, whether they are a member of that group or not. Indeed, it is a priority for Her Majesty's Government as well, and it is clear that change is needed to respond to risks and capitalise on the opportunities which have emerged in the 17 years since the Gambling Act 2005 was passed.

As my noble friend Lord Grade and others highlighted, many people enjoy gambling and do so without harm, but technology has very clearly transformed where, when and how people gamble as well as what they gamble on. We have heard some powerful examples in today's debate. While it is certainly true that the Act gives broad powers to the regulator, the time is right for the Government to take a wide-ranging look at the evidence for change. That is why we have been carrying out a review across many aspects of the regulatory framework to make sure that our law and regulation are right, particularly for the digital age.

Evidence is an important point and one that has been echoed in many noble Lords' contributions today. Throughout our review we have looked to consider the best available and highest-quality evidence. As part of that, we have looked at the extensive oral and written evidence received and published by your Lordships' Select Committee. We are again grateful to the committee and its clerks for having put together such a wide-ranging evidence base. We have been able to consider it alongside the 16,000 submissions to our call for evidence last year, as well as the hundreds of stakeholder meetings which Ministers and officials have held and other sources.

I now turn to the recommendations in the report. Clearly, many of the more than 50 recommendations are within the scope of the review of the Gambling Act and are being considered through that process. The noble Baroness, Lady Bakewell of Hardington Mandeville, was glad that we are having today's debate shortly before the publication of the White Paper, but unfortunately it means that I will disappoint but not surprise my noble friend Lord Grade when I must say that I cannot pre-empt everything that the review will conclude and the publication of our White Paper, which will be in the coming weeks.

However, the report of your Lordships' Select Committee identified a number of areas for action in which we, working together with the Gambling Commission and others, have made significant progress since it was published. A key priority for the Select Committee was rightly the protection of online gamblers. It was while the committee's report was being finalised that the Government took the important steps of banning the use of credit cards for online gambling and mandating integration with the national online self-exclusion scheme. Self-excluded customers cannot log into their gambling accounts and must not be contacted by operators. If they are, the operators have clearly breached the rules and will face enforcement action by the Gambling Commission.

[Lord Parkinson of Whitley Bay]

A few months after the committee's report, in October 2020, the Gambling Commission brought in significant new rules on VIP schemes to tackle many of the risks identified in the Select Committee's report. There are now tough checks to make sure that customers on such schemes are not being harmed and that they can afford their losses. Personal management licence holders are now individually accountable for the schemes and, as the report recommended, the rules are clear that incentives for relationship management staff should not be based on customer losses. These measures have led to a reported 70% reduction in the number of customers on such schemes, but we are none the less looking at the issue again through our review to ensure the right mitigations are in place.

There was also significant progress last year to make online slot games safer by design, the need for which was underlined by the speech of the noble Viscount, Lord Colville of Culross. Features that make games more intense or that give a player the illusion of control have been banned. These include slam stops, turbo boosts and auto-play. Also banned were losses disguised as wins, which can give players a false idea of their gambling success. As your Lordships' committee recommended, online slots have had their spin speeds equalised with the land-based equivalents in bookmakers, bingo premises and casinos. We are exploring whether further controls are needed through our review.

The committee's report rightly recognised that customer data can be key to protecting online gamblers at risk of harm, and progress has been made here too. Earlier this month, the Gambling Commission announced new measures on customer interaction to make sure that operators use the wealth of data they hold effectively to identify and intervene with people at risk of harm. It is bringing in new requirements on markers of harm, which operators have to monitor, the automatic nature of interventions, and evaluating the impact of customer interactions. These new protections will improve the standard and consistency of how online operators protect their customers, and leave no room for excuses for failure in this regard.

My noble friend Lord Grade and others spoke of data sharing between operators, which has great potential within the array of tools that form harm-prevention measures, as online gamblers have an average of three accounts. Significant progress is being made in this area, driven by the Gambling Commission, which has worked with industry and others such as the Information Commissioner's Office. The Betting and Gaming Council is currently leading a pilot, with GAMSTOP as the delivery partner, which has been accepted into the ICO sandbox process for real-world trials. This will make sure that there is close scrutiny from both the data and gambling regulators as the system is developed and refined, and that the system is used only for harm prevention, never for commercial objectives.

A further protection the committee highlighted was transaction blocks offered by financial services firms to customers who do not want to be able to gamble. I am pleased that around 90% of current accounts now offer this service, as do other payment service providers such as PayPal. Many of these have followed the gold standard by including a cooling-off period of at least 48 hours.

Many noble Lords touched on advertising in their speeches. The report made several recommendations on advertising, many of which have been mentioned. This is a complex area, as the contributions from the noble Lord, Lord Layard, and the noble Baroness, Lady Fox of Buckley, perhaps exemplify. Advertising can help reputable companies to differentiate themselves from the black market, the dangers of which were powerfully outlined in the contribution from my noble friend Lord Astor. We deliberately called for evidence on advertising and sponsorship in our review, so that we can look at this area properly. We will set out our conclusions in the White Paper but, as I was pressed on this by the noble Baroness, Lady Merron, I will highlight the recent changes made by the Committee of Advertising Practice, which will help to protect young people from gambling-related harm.

Earlier this month, that committee announced that content with strong appeal to children will be banned from gambling adverts. This responds to research on the topic commissioned by GambleAware, which showed the impact that certain aspects of gambling advertising can have on young people, in particular depictions of the association between football and gambling.

Children's exposure to gambling advertising has declined over recent years but, in the Gambling Commission's survey of 2020, some 58% still said they had seen gambling advertising or sponsorships. The new rules will help mean that, if children do see adverts, these adverts will be less appealing to them. The use of prominent celebrities such as Premier League footballers will be banned, as will the use of influencers associated with youth culture.

This is not the only action we have taken to protect children and young people. A few months after the Select Committee's report and in line with its recommendations, we announced that we would increase the minimum age to participate in the National Lottery to 18. That change came into effect early last year. Through the review of the Act, we are looking at whether other products, such as society lotteries, should have their age limits raised as well. A significant number of operators have already made the change voluntarily.

Additionally, your Lordships' committee made recommendations about education. I am pleased that, shortly after the report's publication, the risks associated with gambling, including the accumulation of debt, were added to the relationships, sex and health education curriculum for all secondary school pupils—reflecting a point raised by my noble friend Lord Kirkham. As the report envisaged, Ofsted has a role here and its school inspection handbook sets out that inspectors will consider the provision of such education as part of a wider judgment of pupils' personal development.

A further recommendation with particular relevance to children was in regard to loot boxes in video games—a point made by the noble Viscount, Lord Colville, and a number of other Peers. We launched a bespoke call for evidence on loot boxes and received more than 30,000 responses, which we are considering carefully. We will publish a response to that soon.

Recommendations about the regulator were prominent in the report and have featured heavily in the debate today. Of course, the Gambling Commission's powers and resources are being thoroughly examined through the review, but I would like to highlight some of the action we have taken. For example, from October last year we increased the fees that the commission charges operators. This is projected to increase its resources by about £5 million per year, or 25%. It will help it to tackle some of the challenges that continual innovation in the gambling sector has presented.

Similarly, like your Lordships' committee, the commission has now formally recognised the value of listening to people with personal experience of gambling-related harms. It has appointed a lived experience advisory panel, which feeds into decision-making and any advice the regulator provides to government.

A key recommendation in the report was that fines issued by the commission should reflect the seriousness of the offence and the size of the offender. I am pleased that since the revamping of its enforcement strategy, the commission has continued to take increasingly robust action against operators that breach the rules. In the last financial year, operators paid more than £20 million in penalty packages as a result of regulatory failures.

I will also touch on the recommendations regarding research, where there is some progress to report. As the committee recognised, and as the right reverend Prelate the Bishop of St Albans and others mentioned, good evidence on gambling participation and the prevalence of harm is essential to informing policy. I am pleased that the commission is making progress with work on a new approach to collecting participation and prevalence data. This will make sure that we have timely, accurate and robust data. It will improve on the current system of gold-standard but infrequent health surveys and the regular telephone surveys by the commission, which use shorter problem gambling screening. A number of key pieces of research have also been published since your Lordships' report, along with the Public Health England evidence review of gambling-related harms, which we have heard cited in our debates on many occasions.

The right reverend Prelate the Bishop of St Albans, my noble friend Lord Bourne of Aberystwyth, the noble Baroness, Lady Bakewell of Hardington Mandeville, and others referred to proposals for a levy on the industry to fund the costs of treatment and research. We called for evidence on the best way to recoup the regulatory and societal costs of gambling. We have also been clear that if the existing system fails to deliver what is needed, we will look at a number of options for change, including a statutory levy. We will set out our conclusions in the White Paper.

The noble Baroness, Lady Bennett of Manor Castle, talked about the place-based impact of problem gambling and the clustering of betting shops in certain parts of the country. Local authorities already have a range of powers under the planning system, and as licensing authorities under the Gambling Act, to grant or reject applications for gambling premises in their areas. We have also been looking at the powers that local authorities and other licensing authorities have in relation to gambling premises licences as part of our review.

My noble friends Lord Smith of Hindhead and Lord Astor spoke about the National Lottery. Since its launch in 1994, it has contributed more than £45 billion to good causes, supporting more than 660,000 projects up and down the UK. National Lottery legislation imposes a duty on the Government and the Gambling Commission to ensure that the interests of all those who participate in the National Lottery are protected. The lottery operator is held to account for doing so and must have controls in place to stop underage players and to prevent excessive play. Evidence from the latest Health Survey for England in 2018 shows that National Lottery games were associated with the lowest rates of problem gambling of all gambling products considered.

The noble Lord, Lord Trevethin and Oaksey, and my noble friend Lord Astor spoke about the horseracing industry, and we are certainly aware of the long and close relationship between horseracing and betting. The main area of concern from the racing industry is in relation to affordability checks. As I said, these are important but must also be proportionate. We are carefully considering the impact of all our proposals.

Finally, the noble Lord, Lord Foster of Bath, asked about the work we are doing with the Department of Health and Social Care in preparing the review of the Gambling Act. We have worked closely with the Department of Health and Social Care and other departments throughout the review to consider the links between gambling policy and their remits. As ever, the White Paper will be agreed across government in the normal way, but I can confirm that the Department of Health and Social Care has been involved in its preparation.

The Government made their formal response to the Select Committee's report in December 2020. None the less, today's debate on its conclusions remains important and timely, especially given that we will publish our White Paper soon. Like the members of your Lordships' Select Committee, many of whom I am pleased to have heard speaking today, I recognise that we in government have an important responsibility to get that reform right. We need to strike the right balance between protecting people from gambling harm and respecting the freedom of adults who gamble as a leisure activity. I also recognise and agree with the sentiment widely expressed today that we must take action as swiftly as possible where we can; clearly, not every reform measure will need primary legislation. Following the publication of the White Paper, we will work with the Gambling Commission, and others as needed, to make the necessary changes as swiftly as we can.

I am sure that we will continue this debate following the publication of the White Paper and on many other occasions, but I am very glad to have had the opportunity to debate this issue again today. I congratulate my noble friend Lord Grade and all the members of the Select Committee on their work in informing this important debate.

6.51 pm

Lord Grade of Yarmouth (Con): My Lords, I have no desire to impair those who are addicted to ping-pong by continuing their withdrawal this afternoon. At the

[Lord Grade of Yarmouth]
risk of sounding like an Oscar winner, I have to thank my agent—no, I thank all those who have taken part, particularly the absolutely brilliant committee, and the brilliant team behind it, which produced this report. On the evidence of what my noble friend the Minister said, I do not think that this report is going to languish on the shelves of government departments like too many other Select Committee reports which leave this great House. I am encouraged by my noble friend's response. To paraphrase the late, great Bernard Levin, a moron in a hurry would get the messages that have emanated from this debate today.

I thank everybody who has taken part. This is a difficult subject, and I am very grateful to the noble Baroness, Lady Fox, for addressing the balance and reminding us of civil liberties and so on in this debate. However, in trying to compare these activities with shopping and other things, we must not forget that gambling can have a toxic side-effect. That is proven over and again, and I do not think anybody in this Room or outside it would wish to deny that fact. We have a duty of care to do what we can to reduce the incidence of harm and addiction.

I am very proud of this report, and I hope that all my colleagues share that feeling. It was unanimous. The task of chairing the committee was not difficult because of the brain power and commitment of all its members. I thank my noble friend the Minister for his reply. I am encouraged, but your Lordships can rest assured that the noble Lord, Lord Foster, and the group that he has put together will be holding the Government's and the Gambling Commission's feet to the fire. We look for immediate action, and we look forward to the White Paper. Again, I thank everybody who has taken part.

Motion agreed.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I propose to allow a few moments for the changeover to take place before I announce the next business.

6.54 pm

Sitting suspended.

Off-Payroll Working (Economic Affairs Committee Report)

Motion to Take Note

6.57 pm

Moved by ***Lord Bridges of Headley***

That the Grand Committee takes note of the Report from the Economic Affairs Committee *Off-payroll working: treating people fairly* (1st Report, Session 2019–21, HL Paper 50).

Lord Bridges of Headley (Con): My Lords, I am delighted to open this debate on the Finance Bill Sub-Committee's report *Off-payroll Working: Treating People Fairly*. I will try to be quick because I gather that we are under a bit of time pressure. Before I go any further, I thank my noble friend Lord Forsyth, who was chair of the Sub-Committee when the inquiry took place, our excellent clerk, Tristan Stubbs, and our advisers, Robina Dyall and Sarah Squires, all of whose input was invaluable.

Onlookers might be surprised that we are debating in 2022 a report written in 2020. They may think that its findings have passed their sell-by date but they would be very wrong, for it anticipated many of the problems that might result from extending the IR35 reforms into the private sector. Our committee concluded that the approach to this issue—that is, off-payroll working—should be certain, simple, supportive of growth, administratively straightforward, enforceable and, above all, fair. We found the current approach lacking on all counts.

In light of Covid, the Government wisely delayed extending the rules to the private sector until April 2021, so the committee recommended that the Government use that time to rethink their approach, learn lessons from the public sector's rollout and address issues that our inquiry unearthed. At the end of last year, we conducted another inquiry into the implementation of the rules, and we wrote to the Financial Secretary with our conclusions, to which she replied. I thank her, her predecessor Jesse Norman, and the Treasury and HMRC officials for all of their co-operation. Therefore, now is a good time to take stock of our report and letter-writing and see where we stand. I will draw on both the report and the letter that we sent to the Financial Secretary.

My first question is on whether businesses and contractors are finding that the new rules are simple, are administratively straightforward and offer certainty. We flagged problems regarding HMRC's tool for checking employment status for tax, CEST, in 2020. Last year, we were told that it was still "not fit for purpose" and did not provide accurate results. The CBI said that, although businesses had found CEST helpful, where HMRC guidance and case law diverge, businesses are left in a position of being told that they can rely on an outcome that would likely differ from that which would be handed down by a court. CEST cannot and should not be a substitute for law. Although it cannot be expected to cater to every scenario, a 20% undetermined rate means that a significant number of people need additional support to identify their status. This support must be improved.

Furthermore, the continued absence of questions on mutuality of obligation within CEST means that many people affected by the off-payroll rules do not have confidence in the accuracy of the results. Only today, we see the lack of clarity on this point highlighted by another current case between HMRC and Atholl House. This uncertainty has contributed to unfair employment practices, blanket bans and decisions. We heard that 21% of freelancers had reported that their client had simply determined all engagements as inside IR35, a blanket assessment. Although the Financial Secretary said it was legitimate for companies to decide against using contractors working through personal service companies, the committee concluded that it is regrettable if such decisions are driven by tax rather than commercial considerations. Tougher compliance action is needed where engagers are effectively evading their obligations under the rules to make individual determinations.

Then there is the issue of appealing against a state of determination. Research from IPSE showed that more than three-quarters of those who disagreed with their status determination challenged the outcome and, of those, 79% reported no change as a result of the challenge. The National Audit Office has said

"there is not a clear legal route to appeal further. If workers believe they have been taxed incorrectly, their recourse is to use HMRC's self-assessment and NIC reclaim routes."

On appeals, HMRC told the Public Accounts Committee:

"If everyone co-operates and there are no challenges, it will take a few months. If it is complex and there are multiple reports, it can take years"—

years, my Lords.

So, in response to my first question, this system is not simple, not easy to administer and does not offer certainty. Let me ask a second question: are these changes supporting growth? Here, I freely admit, it is difficult to disentangle the impact of Covid, Brexit and other macro events. But in the words of one of our witnesses, the UK's reputation as

"an easy place to start up"

businesses has been replaced by a "huge compliance burden" and a "punitive tax regime". That is why research into the impact of the measures must consider changes in the UK's labour market and the broader economy. The committee said that the scope of this research should be more comprehensive and invite input from affected contractors as well as engagers and intermediaries.

Specifically, the actual cost of these changes on business is still unclear. HMRC estimated the one-off administrative cost incurred by business in preparing to operate the off-payroll rules would be £14.4 million, with a negligible ongoing impact. The committee challenged this estimate, as witnesses judged it to be too low. HMRC revisited its estimates and increased that one-off cost to £19.7 million, with an ongoing net saving of £0.3 million. The CBI told us that that £19 million is still an underestimate, and the NAO agreed that HMRC might have underestimated the cost to employers. So, to answer my second question, there is no evidence that this change is supporting growth.

I turn to the question of whether these changes are making the system fairer and whether they are enforceable. For contractors assessed as within the off-payroll rules by an engager, we were told there is likely to be a financial cost, given the difference in employee tax and NIC treatment compared to contractors. We were told that a key issue is employer NICs: how the cost of contributions is allocated between the engager and the contractor.

The CBI and the Federation of Small Businesses explained that people in the more skilled end of the market are more able to ensure costs are paid by the engager. However, for the lower skilled end of the market, it seems many engagers are passing costs on to contractors via reduced rates of pay. It is these lower paid contractors who are falling into the clutches of so-called rogue umbrella companies. In our 2020 report, we warned of the risks presented by umbrella companies and the likelihood that their use would increase when off-payroll rules were extended to the private sector. Look at what has happened: HMRC estimated that 100,000 individuals were working through umbrella companies in 2007-08, but that by 2020-21 this had increased fivefold to at least 500,000. External commentators estimated the figure to be 600,000.

No doubt some of these umbrella companies perform a useful function, but the committee was told there is

"very clear evidence that it"—

IR35—

"has driven up tax avoidance."

Here lies the tragedy and irony of this sorry saga. This whole policy was meant to tackle tax avoidance, yet it seems that it is giving birth to a new cottage industry of tax avoidance.

I have not the time to go into the measures that HMRC is taking to tackle rogue umbrella companies, but the sub-committee was obviously concerned and remains concerned about this and that the off-payroll rules are encouraging the insertion of unnecessary intermediaries into the supply chain, increasing the opportunities for rogue operators. A nagging question is whether HMRC is focused too much on non-compliant contractors and not enough on individuals and others who set up these rogue companies, often offshore. That is why the committee has said that the Government should commit to a date for introducing legislation to create the proposed single enforcement body to regulate umbrella companies.

As I am conscious of time, I shall end with a final question: are these changes, and the entire IR35 edifice, achieving their overall aims and objectives? It was said that these changes would protect the tax base. HMRC assessed that the loss of tax from non-compliance with IR35 could cost £1.3 billion. It now states that improved compliance raises much more—£4.1 billion in 2024-25—so it appears that revenue raising, not simply protecting the tax base, has become the main driver of changes.

The second objective is the word in the title of our report—fairness. Everyone doing the same job should pay the same tax. We agreed with this in principle, but the assessment of what is fair cannot be restricted to just tax; it must also apply to rights. It is unfair to tax individuals as employees while denying them the rights of employees. That is why we recommended that the Government take forward proposals set out in the Taylor review, which considered tax, rights and risk together. Failure to address these issues in the round has created the muddle we are in today. Listen to what the Office of Tax Simplification said way back in 2015. It said that

"the tax system is still in many ways stuck in an out-of-date mindset: of categorising workers as either employees, firmly on the payroll, or self-employed … This made sense in the 1950s and 1960s but the huge growth in freelancing as a way of life (and work) doesn't fit readily into this traditional model."

The need to properly define employment rights for the purposes of both tax and employment is now ever more urgent. Two years on, nothing has been done about this. We are told that the Government will set out more detail in due course—Whitehall speak for "we don't know when". The report's title was *Treating People Fairly*. For a Government who want to level up, they are doing the reverse. They are perpetuating a

[Lord Bridges of Headley]
system that is uncompetitive, complex, burdensome and, above all, unfair. Fundamental change is needed. I beg to move.

7.08 pm

Baroness Noakes (Con): My Lords, my noble friend Lord Bridges has given us a masterly summary of the work of the Finance Bill Sub-Committee on off-payroll working, and I pay tribute to his chairmanship of the sub-committee's latest look at off-payroll working. I agree with everything my noble friend said, in particular on CEST, which is widely regarded outside HMRC as unsatisfactory.

I was a member of the Finance Bill Sub-Committee for its latest update work, though not when the initial off-payroll working report was produced. I did, however, chair the Select Committee of your Lordships' House on Personal Services Companies, which reported in 2014 and was the first time your Lordships' House ventured into this difficult territory. When we prepared the 2014 report, we had a very unsatisfactory engagement with the Treasury, which flatly refused to provide either Ministers or officials to give evidence, and the Treasury response to our report was disappointing, to say the least. I concluded the debate on the report in your Lordships' House by saying that the issues would not go away and that your Lordships' House would return to them, and I am very grateful that the Finance Bill Sub-Committee has enabled the House to do just that. I am also pleased that the Treasury has engaged with the sub-committee this time—though that engagement does not mean, however, that the Government have fully engaged with the issues.

In principle, I support the Treasury's efforts to ensure that tax is not avoided on earnings if they are, in truth, disguised employment; there is a genuine fairness issue here. Work which is identical and carried out in substantially the same circumstances should be taxed in the same way. The problem is that the solutions the Government have used do not achieve fairness in an holistic way, as my noble friend Lord Bridges has said. In particular, the latest set of actions that, in effect, outsource IR35 compliance to employers has produced a new form of unfairness—namely, the creation of a class of zero-rights employees. These are contractors who are not technically employees of the engaging employer but are brought on to the payroll for tax purposes. They pay tax as employees but have no rights as employees to such things as maternity pay, and this is most definitely not fair. The Government have allowed this to happen because they focus on tax yield at the expense of seeing the issues in the round.

It was good when the Government commissioned the Taylor report into modern working practices, but very disappointing that, since the report came out in 2017, it has been consigned to the long grass. The Financial Secretary's latest letter to my noble friend Lord Bridges following the recent Finance Bill Sub-Committee's work confirms that it remains solidly in the long grass.

The Government's sole focus on collecting tax has also resulted in employers pushing workers into the use of umbrella companies, as my noble friend said. This avoids them taking those workers on to their own payrolls. As we heard, there has been a fivefold or sixfold increase in the number in the last 15 years, with 500,000 or 600,000 individuals working through umbrella companies. While there are some well-run and responsible umbrella companies, there are also some very bad ones, and there have been egregious cases of tax avoidance associated with them. Many of the workers in this category are low-paid workers, not the higher paid IT contractors; these are relatively low-level manual workers. These people have a relatively dim understanding of their worker entitlements and rights in any event, but they are pushed into this model. The Government's priorities ought to be to ensure that they have appropriate employment rights and protections, but the Government have been focusing on tax collection and that alone.

The call for evidence last year was a belated attempt by the Government to wake up to the problems in this area, but I am not sure that I have confidence that there will be a good outcome from that. In other instances, employers have either declared that they will not hire contractors or have made blanket decisions that they will put all contractors on to the payroll for IR35 purposes. Some contractors have in turn decided that they will not work for those engagers, and we had evidence that some were now working from outside the UK in order to get away from IR35. The one thing that seems highly likely is that the off-payroll rules themselves have distorted the labour market and may well have diminished the prized flexibility of the UK labour market. The Finance Bill Sub-Committee has urged the Government to undertake research into the impact on the labour market, but I do not have high hopes that the research currently being undertaken will provide definitive answers, based on the Treasury's response to the sub-committee.

The root of the problem is the foundations on which our tax system has been built. The UK taxes income according to its source and we treat income from employment and self-employment differently and, in particular, have made a conscious decision to tax unearned differently again. The tax system positively incentivises people to work on a self-employed basis and to seek to convert earned income into dividend income via service companies. The biggest distortions arise from the choices that have been made in the design of national insurance, including the new health and social care levy. These are taxes in all but name. There is a fairly big difference between the way in which employed versus self-employed people pay national insurance—the gap is three percentage points in the main national insurance rate—but there is a massive difference in employers' national insurance contributions. It is now just over 15%, for which there is no equivalent for the self-employed. Therefore, employment income can attract a tax rate of 18 percentage points higher than self-employment income, and dividend income attracts no national insurance at all.

Last year, the Institute for Fiscal Studies published a study on taxing work and investment across legal forms. The clear finding was that the distinctions between different forms of income involved unproductive work in policing the boundaries. In particular, in relation to IR35 it said that this approach is failing, and will continue to fail, because it cannot overcome the core problem:

"there is no coherent principle underlying the distinction"
between legal forms.

A fundamental reform of the taxation of income, including national insurance, is now long overdue. It is the root cause of the problems with IR35 and the many types of unfairness that IR35 promulgates. I know that there are no easy solutions and that it will take a brave Chancellor to reorient the basics of our tax system, but equally there is no easy answer to the IR35 problem, as the past 20 years have shown. It is time for the Treasury to be bold.

7.17 pm

Lord Desai (Non-Afl): My Lords, I served on this committee. I was specially drafted to serve on it and it was a great experience, because I found it very difficult to understand the problem. I was aware that various people had suddenly declared themselves to be self-employed which I knew to be completely fraudulent, especially when Ken Livingstone, my socialist friend, decided that he could avoid tax by becoming self-employed. I always regarded this particular thing as a problem of fairness. It is quite clear that if you give people half a chance they will invent themselves all sorts of ways of avoiding paying tax. As far as I am concerned, that is a tax avoidance problem.

Obviously, there are different kinds of income. Some are more uncertain than others. It seems to me that the principle is that you treat more uncertain incomes differently from incomes that are more or less certain. All my life I was a lecturer—or a professor, at LSE. My income was known, I had to pay my PAYE and that was that. However, there are people who are actors, musicians or playwrights or whatever and whose income is uncertain, so to some extent I think what we need here is a preliminary anthropological study by the tax authorities into how different people make their money in different ways. You have to have genuine uncertainty of employment to be able to qualify as self-employed. That seems to me to be absolutely standard.

Actually, while I was doing this work, the Equity trade union contacted me and asked if I could give my learned opinion on this matter. I said that I had absolutely no idea how to tackle this problem, because it is not the size of income but its uncertainty that determines the fairness—or unfairness—of the tax system.

I still consider that we should find a way of distinguishing between different incomes, not so much by size but by variability over a period. We should distinguish people who are not sure of employment, such as actors or musicians, who may make a lot of money while they are employed but whose employment is not guaranteed from month to month, from people who have absolutely no reason to think of themselves as self-employed because they are just contracting themselves differently with an employer and have a perfectly well-known and certain contract between them and their employer. So, to the extent that this is a tax avoidance scheme which helps both the employer and employee, it is a very damaging phenomenon, because it makes people doubt the fairness of the tax system.

All I can say about this matter is that I still find it very hard to get to grips with this problem. As and when HMRC, or whoever else, wants to do a different study, they ought to do an empirical study of different kinds of employment and incomes and genuinely establish the variability of employment prospects and income. They are the two aspects in which employed people differ from the self-employed. If we can establish that distinction in some legal way that is guaranteed not to be evaded, I think we can set up this concession that some people can be treated differently for tax purposes.

There are problems with employment rights and all that that involves as well, but I presume that it is the variability of employment and income likely to be earned when you are employed that are the main things. That cannot be dealt with without a proper anthropological survey of what kinds of employment people have. To that extent, as and when anybody wants to do research again, please let them do it properly. I know that there is the Taylor review, but we need something more than that. We need proper anthropological research into what kinds of employment and incomes there are in this economy.

7.23 pm

Lord Balfe (Con): My Lords, I thank the noble Lord, Lord Bridges, for instigating this debate. I did not serve on the committee, and this is not my area of expertise, but I would like to offer a few thoughts. It seems to me that this is a very classic case of when the market works out a solution to or a way around a problem that has been given to it by the Government.

The key thing here, of course, is the figure in the report that the number of individuals working through umbrella companies has increased from 100,000 to 500,000 in the last 15 years. This has clearly happened because it is of value to work for an umbrella company, although the report also makes the point that

"many contractors had been left in an undesirable 'halfway house': they do not enjoy the rights that come with employment, yet they are considered employees for tax purposes. In short, they are 'zero-rights employees'".

This is the problem.

As we come up to a new Queen's Speech, now would be an ideal time for the Treasury to try to get to grips with the whole problem of how you treat people who are earning money from others. The problem is not just as outlined here; it is endemic in society, and I have come across it many times. I wonder whether other noble Lords have—I would be surprised if they have not come across the tradesman who says, "Cash only, of course". I do not know of a single cleaner in the city of Cambridge, where I live, who pays tax. My wife had a very interesting conversation with a Polish cleaner whose child had gone into hospital. She said to the cleaner, who was a very nice lady, "Who do you think is paying for this hospital?" The cleaner said, "The Government", and my wife said, "No, we are, because you are not paying any tax on the money that you get from us". There is this great gap.

One of the things that not just the Government but the country has got to get to grips with is the way in which people are remunerated. I remember when I was an MEP and we had a nanny, and I was advised very firmly by the Labour Party that I should make sure that I paid tax on what we paid the nanny, because the one thing it did not want was a scandal involving an MEP who was hiring a nanny and not paying tax—so

[Lord Balfe]
we paid tax. Most of our friends were absolutely astonished; they just could not believe it, until it was explained to them that it was because the *Daily Mail* might get hold of it and we would be all over the papers.

In this country, we run a system in which the evasion, frankly, of tax is built in and widely accepted. We need to look at this, keep the efficiency of off-payroll payments under review and make sure that the legislation is fair. But we also need to look at the Taylor report, which is what brought me into this, because there are a number of trade union issues that need to be looked at to ensure that workers are being given a fair crack of the whip. This has to be done by legislation: you cannot go around the country saying to individuals, "You must do this", but you could get them to sign a form saying that any payments they have made have been declared to the Revenue. Alternatively, you could get them to sign a simple form for taking tax.

But my view is that, unless we tackle the very basis of the problem, gradually there will be another way around the situation, and another. It will be rather like our garden hose: every spring, when we turn it on, somehow, without any help from us, it seems to have sprung four or five new leaks, which then need binding up—and, by the next spring, you have four or five more. That is what our tax system seems rather like at the moment.

I ask the Minister, who I realise is strongly constricted in what she can say today, at least to say that she will go back to the department and see whether we can have a root-and-branch look at the ways in which remuneration is paid and rights are given to and taken away from people. It is a matter of basic fairness that, if you live in a society, you should pay your taxes and you should all get the same benefits. It should not be possible for employers to get out of giving benefits, in a fiscal way, because it is good for them financially not to give them to the people who are doing the work.

There is a big challenge ahead, a much bigger one than some would like to admit, but one that has been left to lie dormant for probably the last 20 years. This is not a matter of this Government and this Prime Minister; it has not been faced since the Blair Government came to power. It was resolved to make it easy for people to work and move around, and that laxness has been in the system for a long time. I hope the Minister assures us that she will try to make some reforms.

7.30 pm

Baroness Bowles of Berkhamsted (LD): My Lords, I was a member of the Economic Affairs Committee and the sub-committee at the time of this report and I mainly want to address those principles. I agree with the analysis of what has happened since, which has already been brought forward by other members, referring back to the principles. The problem is that IR35 has not worked from the start and, as the noble Lord, Lord Bridges, explained, it is still not working fairly.

A key issue in the IR35 space, as has already been said, is non-compliant umbrella companies. The Financial Secretary to the Treasury told the committee that HMRC recognised umbrella companies as a strategic risk in its compliance plan. Note that "compliance plan", its tax-collecting plan. It is clear that HMRC had only a tax-collection perspective, rather than what might be compared to a consumer or worker protection perspective and fair treatment.

We should not forget that non-compliant umbrella companies brought us the loan charge, effectively scamming people. How HMRC handled that is still among the most egregious injustices of recent times. Its treatment was tantamount to, "It doesn't matter that you were, in effect, swindled; here is your extra tax bill because we cannot find the swindler or the client company, so it is all on you". HMRC caused ruin and suicide by the intransigence of its perspective. That is unforgivable.

When it comes to IR35, and individuals and small businesses in particular, there is a valid comparison with consumer protections when the biggest financial risk to which individuals are being exposed is around their work, how they are paid for it, and when employment law and its benefits are not applicable. But then, you do not get the same kind of protection that you would, for example, if you put that amount of money at risk in a financial service fund.

Against that background, I would like to know more about what the Government are doing to ensure the quality of umbrella companies. With scamming and fleecing active in this area, amplified by the rules on recovering tax, a step change is required. Many more people are looking to umbrella companies to sort out their compliance and IR35 issues, as others have said. It is easy to find the adverts. This morning, I found an umbrella company promising compliance solutions, keeping the same Ltd status and income, and carrying an ERA certification mark. Can it be trusted? Is it right to rely on a private certification organisation anyway? Do the Government endorse that and should there not be more regulatory protection around umbrella companies? They are clearly responsible for the creation of the leaky hose that the noble Lord, Lord Balfe, described.

HMRC has looked only at tax and NI contributions, not at rights, responsibilities, risks or benefits. It rejected a new kind of body, as suggested in the Taylor review, but then created one by carving out an "employee just for tax purposes" that brings manifest unfairness to the individual and condones undermining employment protections. The HMRC approach also seems to miss the whole picture about risk management and particularly how smaller and new businesses get started and grow. They will be caught before they even have lift-off.

Determinations focus on tests, such as the red herring of mutuality of obligation, which is a description—effectively, a definition—that can apply to any contract, whether of employment or not. That is a fact even admitted in HMRC's *Employment Status Manual*. What else does the contract do other than define your mutual obligations to one another, whatever it is about? Other tests such as substitution and not relying on the skill of a particular individual fly in the face of how businesses and reputations are established in the professional field, and certainly discriminate against microbusinesses, start-ups and sole traders.

I am not sure how some businesses are supposed to get started with this hanging over them. I founded my own business from scratch and operated it for 30 years,

but this would have stopped me in my tracks, because I started as a sole trader and, believe it or not, on day one or day 10, or in month three, you might get your first client—and whoops! Oh dear, you are an employee.

Other tests are equally absurd. I can see many reasons why things that are prohibited will become desirable. Of course you want a timetable of when you will function, because you want to know when you can offer services to other potential clients you might raise or because you have other matters you want to attend to. But if you have a fixed timetable, they say you are dancing to an employer's tune. In the real world, there can be other reasons for wanting a more generalised contract. How many of your Lordships have wrestled with some of the rather difficult and complex purchase order systems of many large companies, which make it difficult to keep having a new one for every new project, as HMRC now suggests should be the case? It is much easier and less time-wasting to have an overarching contract that, yes, flexes as you need it to.

I am not surprised by the number of 20% that do not get a decision under CEST, but given HMRC's track record, I have no confidence that an enlightened and sensitive approach will be taken. Indeed, I would not even be surprised if bonuses were paid for allocating a business to employee status and upping returns. In fact, will the Minister find out the true situation on bonuses paid to those who are dealing with allocations and let me know in writing? I recall being given some very wrong answers about this kind of thing and bonuses given by HMRC when we were discussing the loan charge. Given where we are at, as I said, my greatest concerns are for small and developing businesses, which are given new responsibilities to sort out status and yet are the most likely to be in uncertain, developing and changing positions, having fewer resources and where these tests about timing, location and substitution really do not work.

As a final point, will the Minister explain what work has been done on providing exemptions for microbusinesses and start-ups, so as not to apply tests that are inappropriate and clearly discriminatory to the circumstances? For example, could there be a three-year period of consideration before any assessment and determination starts, or exemptions for small turnover that rules out looking at a building-up phase?

Overall, I still consider the Taylor review proposals better, not least as the Government have not avoided the creation of a different body—no matter that it is hybrid and, unfairly, for tax purposes only.

7.39 pm

Lord Tunnicliffe (Lab): My Lords, I first join in the congratulations for the noble Lord, Lord Bridges of Headley, and the rest of the Finance Bill Sub-Committee on their work in this area.

I am surprised at the extent to which I have been impacted by this debate. I knew peripherally that this was a bag of worms; this debate has brought out what an enormous bag of worms it is. The noble Lord, Lord Bridges, criticised CEST and illegal or dodgy umbrella companies. I found myself agreeing with the noble Baroness, Lady Noakes—I get very worried when that happens, but she is absolutely right. She talked about the Taylor report and this conflict between tax and rights, and the word fairness came through. "Fair" is an incredibly complex issue, and the phrase I took from her speech was "no coherent principle". That is the issue; you just cannot do it from one point of view.

The noble Lord, Lord Desai, brought in this concept of uncertainty and the issue of start-ups. The noble Lord, Lord Balfe, said that the whole point is that this has to be root and branch and that it is a big challenge. The words I come back to are that it needs an holistic approach. I will say very little more about the debate, but I somehow pray that this issue will not be allowed to go away. Until it is tackled on an holistic basis, it will generate its own industries, there will be lots of people from all sides making it more and more complicated and there will be more and more laws to patch up little points here and there. Any Government, whatever their general political persuasions, should really be addressing this issue and getting back to that lovely idea of trying to see a coherent principle.

Through the sub-committee's 2020 report and the subsequent February 2022 correspondence with the Treasury, it has held the Government's feet to the fire. It was clearly right to raise the concerns it did. The trends we are seeing with off-payroll working very much reflect the sub-committee's warnings.

When the so-called IR35 system was established under the last Labour Government, it was with the intention of ensuring greater fairness in the tax system. It could not have failed more, could it? I think that was not a political failure but a failure to grasp the complexity of it. There had been a steady increase in the number of employees managing to become contractors and enjoying significant tax benefits as a result. As others have observed, the system was designed to identify so-called disguised employees. These individuals may have been working under the same conditions as an employee but avoided certain tax liabilities by entering a contract through an intermediary, such as a personal service company.

For many years, the IR35 determination was made by the contractor themselves. Such a determination is based on several factors and can be complicated, inevitably leading to incorrect decisions. The sub-committee flagged in its original report that the Government's own "check employment status for tax" tool may not be fit for purpose. Listening to the debate, clearly it is not. As we have heard, the burden for determining whether IR35 rules apply has gradually shifted from the contractor to the fee payer. This occurred first in the public sector, and those reforms have since been extended to the private sector.

The Government were right to delay the extension by a year, citing the pandemic. We endorsed that decision, as to delay gave businesses and individuals more time to adjust in an already uncertain world. However, in truth, the extra year was already desirable, or even necessary, before the pandemic struck. As the sub-committee noted, there was early evidence that the 2017 public sector reforms were not working as intended. I believe we have now reached a total of five Whitehall departments that have admitted incorrectly classifying contractors. These departments—Work and Pensions, Home Office, Health, Justice, and Environment,

[Lord Tunnicliffe]
Food and Rural Affairs—have had to compensate HMRC for their oversights to the tune of around £250 million.

Part of the problem seems to be the use of blanket declarations, which is a topic covered by the sub-committee, but other forces may have been at play too. For example, it may reflect the simple fact that IR35 has become too complicated. If Whitehall departments cannot correctly apply the rules, what hope is there for others?

Earlier this year, the broadcaster Adrian Chiles won a long-standing legal dispute with HMRC. The authority believed that the IR35 rule should apply to his work for the BBC and ITV between 2012 and 2017, but the tribunal disagreed. What assessment have the Government made of that ruling? Can the Minister comment on how much was spent pursuing the case, given that it ran over several years?

Taken collectively, these events raise the question asked by an increasing number of commentators in the light of the rapidly changing nature of the UK employment market: does the IR35 system continue to serve its original purpose?

Other questions raised by the sub-committee, including how to counter the potential misuse of umbrella companies, are by no means new either. There are genuine fears around the exploitation of workers, particularly those on low incomes, as people seek to avoid tax through rogue umbrella companies and, indeed, former employers seek to avoid tax by forcing low-paid workers into these unsatisfactory conditions. Addressing these questions is therefore increasingly urgent. The sub-committee has pointed to a variety of other possible risks and the Government have at least acknowledged the need to understand them better. In her response to February's correspondence, Lucy Frazer outlined several workstreams which are under way, as well as committing to ensuring that they are conducted expeditiously.

To be fair to the Government, not all the concerns raised in the report and during this afternoon's debate could have been addressed during the 12-month delay from April 2020. However, should not some of this work have been under way well before that decision was taken? IR35 rules came into force in 2000. Our economy clearly functions very differently in 2022. While the tax system has seen some changes, it has not kept pace with the developments and trends in the employment market. It seems that there is consensus around the need for modernisation and simplification and the problem appears to be with the political will to deliver.

Of course we must consider this topic in the context of the Government's continued failure on the Taylor review of modern working practices. As others have noted, employment status for tax purposes and status under employment law have long been separated. The Taylor review made some important recommendations in this area. They include the creation of a special category for those who are neither employees nor genuinely self-employed. These people pay taxes as if they are employees but lack many of the basic employment rights enjoyed by others. It cannot be right for certain workers, often those operating in the gig economy, to remain what the sub-committee labelled zero-rights employees. In some instances the courts have acted to grant new rights to such workers. However, as a rule it should be for the Executive rather than the judiciary to confer adequate protections.

Workers' rights were prioritised in the Conservative Party manifesto, but the Government seem to have forgotten their promises since the election. Addressing some of the loopholes identified by the sub-committee will improve the situation, but so too would bringing forward the long-promised employment Bill. This question may not directly relate to IR35 but, had the Government legislated to improve employment rights, would we have witnessed the recent P&O ferry situation? We await Her Majesty's most gracious Speech in a couple of weeks' time, but if reports are to be believed it will not contain anything on tax reform or employment protections.

The Government want us to believe that everything is under control. However, that is clearly not the case if they are repeatedly unable to deal with pressing issues such as these. We await the findings of HMRC's research but what we really need is a joined-up approach. We must look at these issues in the round and then, crucially, bring forward that long-awaited legislative package. The sub-committee has called for an off-payroll working regime which is simpler, fairer, more straightforward, properly enforceable and provides greater certainty to all involved. Which one of these wishes can the Government possibly disagree with and what exactly is the hold-up when it comes to achieving that?

7.50 pm

Baroness Penn (Con): My Lords, I thank my noble friend Lord Bridges for securing this debate. He is right that it remains a timely debate, because of the recent extension of IR35 to the private sector, which was delayed by a year due to Covid, and with the update provided by the Finance Bill Sub-Committee in its letter to the Financial Secretary, and because, as I will touch on and as has been touched on in the debate, there are live issues with regard to the implementation of IR35. The Government are committed to continuing to learn lessons as we press ahead with its implementation. This matter is not closed but one where we want to continue to learn and improve on how we do things.

The Committee has also shown clearly that there are a number of issues for the Government to consider. There has been a remarkable amount of consensus on that from this debate. The noble Lord, Lord Tunnicliffe, should not be so worried about agreeing with my noble friend Lady Noakes. I may not like it, but she can often be right.

Let me also thank the Finance Bill Sub-Committee for the time it has taken in making its careful analysis of this important policy area, both in 2020 and in its more recent follow-up inquiry.

I am grateful to noble Lords in this select group today for their well-considered points. Noble Lords are right that the issues we are debating are key for workers and businesses, and of course to the UK's financial health. Before I respond to specific points

raised in the debate, it is perhaps worth taking a step back to remind noble Lords of the reasoning behind the introduction of the off-payroll working rules.

As I am sure noble Lords are aware, these rules have been in place for over 20 years. Ultimately, they aim to ensure that people working like employees but through their own limited company are taxed like employees. Initially, it was for workers to decide whether they were working like an employee and in scope of the rules. However, it became clear over time that individual workers were often not best placed to properly assess their own employment status; as a result, there was widespread non-compliance. HMRC estimated that only one in 10 people who should have been paying tax under the off-payroll working rules were paying the right amount, prior to the reforms. In fact, non-compliance was forecast to have cost £430 million in 2015-16.

As a result, the Government brought forward legislation to change who made the decision on whether a worker met the rules and should pay tax like an employee. The reform shifts the responsibility for determining employment status and ensuring the right tax is paid to HMRC from the individual's intermediary to the client, which could be a business or a public sector body. The Government started by implementing these reforms with regard to the public sector in 2017, and then, following significant engagement, extended them last year to medium and large organisations in the private and voluntary sectors, where non-compliance had been forecast to reach £1.3 billion per year by 2023-24 if it had not been addressed.

I stress that these changes simply ensure that the rules that have been in place for the last 20 years are actually followed—and that two people who are doing similar jobs, but through different structures, are not paying very different amounts of tax. It is about ensuring fairness and protecting the tax base. It is not about revenue raising, as has been implied at points in this debate. This is not to ignore the wider points—which I will come on to—about the status of employment with regard to tax and rights, which are two different systems, as all noble Lords have noted. This question has been considered by the Government over some years.

The Government have not changed the way in which the genuinely self-employed are taxed. If someone is running their own business through their own company, these rules will not apply to them. The reform does not create a new tax on contractors or change the principles of tax status in any way. It simply moves responsibility for determining employment status to the party in the labour supply chain that is best placed to take it on: employers who already make these assessments for their regular staff on a routine basis.

So far, the evidence suggests that the reform is successfully achieving its primary objective: to ensure fairness and improve compliance with existing rules. As a consequence, it has resulted in additional tax revenue of £250 million in 2017-18 and £275 million in 2018-19—money that has helped to fund vital public services, as noted by my noble friend Lord Balfe. It is therefore heartening that the Finance Bill Sub-Committee acknowledges that these reforms are helping to reduce non-compliance.

However, I recognise that the sub-committee raised further issues. As noble Lords will be aware, last month the Government set out a comprehensive response to the sub-committee's conclusions and recommendations in its follow-up inquiry into the off-payroll working rules. In that response, we first set out how our engagement work with taxpayers, businesses, agencies and other organisations has been at the heart of our approach to this reform. Indeed, before extending the reform to the private and voluntary sectors, the Government carried out two consultations in 2018 and 2019. We listened closely to stakeholders' feedback on how the legislation was working and introduced changes that provided more certainty to parties in the supply chain. To answer the point from the noble Baroness, Lady Bowles, about an exemption for micro-businesses or start-ups, we decided not to include 1.5 million small businesses in the reform's scope. The Government also carried out a further review of the off-payroll working rules in 2020 and have acted on stakeholder feedback by expanding the consequences for those who provide fraudulent information and introducing anti-avoidance provisions.

The sub-committee welcomed the fact that HMRC has learned some lessons from the public sector reform when rolling it out into the private sector. This additional insight has led to a range of important improvements, including adapting HMRC's education and support to better suit the needs of specific stakeholders and customers. When the rollout of the reform to the private sector was delayed by a year due to Covid-19, we put this extra time to good use by expanding the support offered to taxpayers, businesses and other organisations to help them prepare, and this has continued since the reform's implementation last year.

The noble Lord, Lord Tunnicliffe, made several points about the implementation in the public sector. He talked about the use of blanket declarations being the most significant reason why the public sector got its determinations wrong. The most common error that HMRC identified through its compliance work with public bodies was the understanding of the impacts of substitution clauses in their contracts. HMRC has worked with the Tax Centre of Excellence to improve understanding in this area. HMRC has not seen any evidence of the widespread use of blanket determinations, which is supported by its internal data and external research. In fact, HMRC compliance activity has found that many public bodies did take reasonable care when implementing the rules. None the less, many lessons have been learned from the 2017 reforms, as I have noted, feeding into the approach that we took in the expansion in 2021.

Another issue raised was the Check Employment Status for Tax tool, CEST. HMRC has spent £1.1 million enhancing that tool to help employers, workers and agencies determine their tax status, following feedback. On the point raised by my noble friend Lord Bridges about a tension between case law and the CEST tool, the tool was rigorously tested against known case law and settled cases and is the only status determination tool for which HMRC will stand by the result produced, provided the information inputted is accurate and the tool is used in accordance with the published guidance. However, while we believe we have responded to some

[Baroness Penn]
of these points, as I said to noble Lords, monitoring the impact of the reforms is still very much a priority for the Government. We have commissioned external research into the 2021 reform that will gather further information on the effects of the reform on the way contractors are engaged, rates of pay for contractors, challenges with implementing the rules and the effectiveness of HMRC's support and guidance.

Noble Lords asked whether this research would take into account the changing post-Covid labour market. Indeed, it does ask for information on the reasons for any changes in the use of contractors since March 2021, including Covid. In addition, insights from our evaluation of the 2017 reforms show that the impact is broadly in line with HMRC's expectations so far.

Almost all noble Lords in the debate raised the issue of umbrella companies. We have seen some evidence since 2017 of some contractors changing the way they provide services, moving to the use of other structures. As noble Lords noted, some clients and contractors will reasonably take the view that direct employment on the payroll of the client, an employment agency or an umbrella company is preferable to having contractors work through their own limited companies. This is expected and perfectly acceptable. None the less, we recognise the concerns about the scope for non-compliance in the umbrella company sector. As my noble friend noted, there is no problem where an individual is working with an umbrella company that is compliant with the rules; it simply means that the right tax is being paid and that the individual may be receiving the benefits that come with employment. But we have published guidance for those working for and with umbrella companies and have also recently completed a call for evidence on the umbrella company market. We are analysing the responses to that call for evidence and, at risk of aggravating my noble friend, the Government will respond publicly in due course.

At the same time, the Government are focused on tackling the promotors of tax avoidance schemes. Indeed, we introduced a tough new package of measures at the Autumn Budget which came into force in February this year. These included new powers for HMRC to freeze promoters' assets, so they pay what they owe; steps to deter offshore promoters; and legislation allowing HMRC to shut companies and partnerships that promote these dubious schemes.

I am conscious of time. I think the main point of substance that all noble Lords touched on is the difference between employment status for rights and employment status for tax. Noble Lords are correct: those systems are separate. However, officials across HMRC, the Treasury and BEIS work closely to ensure joined-up thinking on common issues. It is worth emphasising that the current employment status frameworks for both tax and rights work for the majority of individuals and businesses. However, we recognise concerns about employment status, and we are considering options to improve clarity, making it easier for individuals and businesses to understand which rights apply to them. We are working externally and across government on how best to address this in a post-Covid scenario.

The work of the Taylor review is an example of the Government considering this question, and while we are progressing on a number of aspects of that review, it is important not to forget that we have already implemented a wide range of its recommendations. We have delivered non-legislative commitments such as launching a holiday pay awareness campaign. We have passed a raft of secondary legislation to boost workers' rights and deliver the Taylor review recommendations, including by extending the right to a written statement of core terms of employment to all workers and introducing a right for agency workers to receive a key information document when signing with an employment business. I would say that it is right that we do not change the employment law framework until we are sure that any changes will address the needs of businesses and workers in the post-Covid economy. In the meantime, we will continue to take the necessary action to support businesses and protect jobs.

The noble Lord, Lord Tunnicliffe, asked me a specific question about the ruling in the case of Adrian Chiles. While I cannot provide information on specific cases because of taxpayer confidentiality, I should answer his broader point. HMRC has disputed a number of cases regarding television and radio presenters in the courts. Just yesterday, it won two cases in the Court of Appeal, setting down useful principles in such cases. Since April 2019, HMRC has won more than 80% of cases in litigation. Where no other route to resolving issues is possible, it is right that some cases are decided in the courts. In terms of the wider approach, I hope that would be the last place that we want to end up, even though it is necessary in some cases. The noble Baroness, Lady Bowles, asked me a question about bonuses, which I am happy to write to her on—and, indeed, if there any other points that I have not managed to cover.

I reiterate my thanks to all those who have contributed to this debate. I end by emphasising that our changes to the off-payroll working rules have been made with the aim of improving compliance with existing rules and increasing fairness in the tax system. As a consequence, these changes have brought in additional revenue to fund vital public services. However, I reassure noble Lords that we are not complacent. Our approach to these reforms is a collaborative one. Therefore, we look forward to very much continuing the conversation with those affected by these changes, so that we can work together to build a tax system in which everyone pays their fair share.

8.07 pm

Lord Bridges of Headley (Con): My Lords, I thank my noble friend for that response. Indeed, I thank everyone—this little band of us—who has debated this topic. It is rather appropriate that we are meeting in the Moses Room, because I somehow feel that IR35 has become a tablet of stone for the Treasury and HMRC. I fully accept what my noble friend says: there are some sort of scratchings or graffiti on the tablet of stone that have made alterations here and there, but it essentially says that we must not change IR35 in a profound way.

The problem that my noble friend grappled with—I was not expecting her to announce grand changes in tonight's debate—is that, as all of us have outlined, the underlying unfairness of this system remains. Let me remind everyone of what the committee concluded:

"It is unfair that contractors within the rules are treated as employees for tax purposes but do not qualify for employment rights, thus creating a class of 'zero-rights employees'. The Government is replacing one unfairness with another."

That is the fundamental truth that we have to confront and why we have to see change. I fully accept that aspects of the Taylor review are being implemented but that is not enough, and we have to grip this. Indeed, it is even more important that we grip this post Covid because of the need to have a flexible workforce.

I do not want to delay everyone with lots of changes but to make just two points. The noble Lord, Lord Tunnicliffe—he is my noble friend tonight, because we agree on this—said that this policy could not have failed more. I was really struck by that; it is a very interesting point. I accept that the Government made changes to IR35 before implementing it in the private sector, in light of what we saw in the public sector, but let us just understand what has happened in the public sector.

The noble Lord, Lord Tunnicliffe, mentioned the figure of £263 million. That is the amount owed or expected to be owed by government departments for failing to administer the reforms correctly. That is an eye-watering amount of money. What do we already know? HMRC told the Public Accounts Committee in the other place that key personnel in those departments did not understand the contractual framework they were operating in and how they were engaged as the contractor in the labour market. The NAO found that half of all respondents found the reforms difficult to comply with. It also found that

"public bodies have reported incurring additional costs … and challenges in recruiting or retaining contractors … Public bodies we interviewed explained that they had dedicated a lot of ongoing resource to employment status determinations, such as full-time staff, supporting teams and review panels."

This is a problem we are already seeing in the public sector, and we are now beginning to see what it is meaning for the private sector. I am delighted that my noble friend says there will be research on this, because it is well overdue. I make just one point. *Computer Weekly* showed that the number of self-employed is falling fast. It has gone from 130,000, or thereabouts, in 2016-17 to 97,000 in 2020-2021. The impact on the nature and shape of our workforce is quite profound, so we need that research and we need it fast.

As my noble friend Lady Noakes and others pointed out, this is having a real impact not just on professions at the high end of the workforce, the more skilled, but on those who are on low pay, the people who are being hit really hard right now by the cost of living. I very much hope that we will learn those lessons and that the Government will publish that research very quickly. Most of all, I live in hope that something might come along soon—if not in the Queen's Speech, soon thereafter—that will address this fundamental unfairness that must be gripped quickly. I thank noble Lords for taking part in the debate.

Motion agreed.

Committee adjourned at 8.12 pm.