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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

Monday 13 June 2022

2.30 pm

Prayers—read by the Lord Bishop of Southwark.

Introduction: The Lord Bishop of Southwell and Nottingham

2.36 pm

Paul Gavin, Lord Bishop of Southwell and Nottingham, was introduced and took the oath, supported by the Bishop of Birmingham and the Bishop of Southwark, and signed an undertaking to abide by the Code of Conduct.

Bain & Company: Public Sector Contracts

Question

2.40 pm

Asked by ***Lord Hain***

To ask Her Majesty's Government what steps they will take to ban Bain & Co from securing further public sector contracts.

The Minister of State, Cabinet Office (Lord True): My Lords, individual departments and other public sector bodies are responsible for their own decisions in these matters but, at the Prime Minister's request and against the background of Judge Zondo's report, officials at the Cabinet Office are actively reviewing this matter. The review process is nearing completion and the final report and recommendations are expected to go to Ministers within weeks.

Lord Hain (Lab): I thank the Minister for that response but is it not utterly shameful that Ministers are still permitting Bain & Company to bid for multi-million pound government contracts, like those it has won in recent years, when the company has recently been found by a South African judicial inquiry to be guilty of unlawful complicity in corruption under former President Zuma? Surely Ministers must accept an amendment to the Procurement Bill, excluding any company with a record of such illegal behaviour from being awarded British taxpayers' money, or am I going to get another weaselly response like the one in a letter from Jacob Rees-Mogg?

Lord True (Con): My Lords, I pay tribute to the noble Lord for his pursuit of this matter and accept that it is important. The company concerned is not a strategic supplier to the Government and is not currently undertaking any substantial work for them. As I have said, the final report and recommendations in relation to this will come and these matters can obviously be discussed on the Procurement Bill, which covers the grounds for exclusion of bidders from public procurement.

Lord Fox (LD): My Lords, without wishing to bring Committee stage of the Procurement Bill in front of all your Lordships, the Minister knows that Clause 11 of that Bill clearly identifies "maximising public benefit" as one of the things that a contracting authority must have due regard to. Can the Minister perhaps explain how, when a business such as Bain & Company has clearly minimised public benefit to the whole of the South African nation for the benefit of just a few individuals, we can take seriously a Government who put this in writing and yet have continued to maintain a relationship with Bain & Company?

Lord True (Con): My Lords, I just gave the House the current position as far as the company is concerned. As long-standing friends of South Africa, the Government will continue to engage South African authorities, business and civil society on a shared agenda of security, economic and social issues, including in the light of the final conclusions of the Zondo report. As I have said, that report is coming within weeks; we will also obviously carefully consider any implications for action in the United Kingdom.

Lord Watts (Lab): My Lords, the Minister has not answered the question. Why would the Government want to have any relationship with an organisation that has been committing fraud and corruption in other countries?

Lord True (Con): My Lords, there is a further Zondo commission report to be issued, I believe, later this month and there are grounds for due process. We have engaged with the company, as was set out in a letter from my right honourable friend Mr Rees-Mogg. I can repeat only that the review, about which I have told the House, will issue shortly and, based on a finding of facts, will obviously have recommendations for the Government.

Baroness Smith of Basildon (Lab): My Lords, my noble friend Lord Hain's question shows up deficiencies in the Procurement Bill as published. Schedule 6 to that Bill outlines the criteria under which a supplier must be added to the debarment list and cannot be awarded public sector contracts—my noble friend gave an example. Can I draw the Minister's attention to Schedule 7, which provides for discretion in order to add a supplier to that list? There is really wide scope for discretionary disbarment, even on the grounds of national security, and a lack of clarity as to why it is discretionary and what criteria will be deployed in making that judgment. I listened to the Minister's response to my noble friend and do not think it really addressed the question as fully as we would like. Given the importance of this issue and the fact that we have the Procurement Bill coming up, can the Minister commit now to publishing additional guidance, which would at least inform its Committee debates, on what considerations will be taken into account where such disbarment is to be discretionary?

Lord True (Con): My Lords, there are two aspects there. I have answered on the progress so far of the Cabinet Office review of the case following the Zondo commission. As far as the Procurement Bill is concerned, we will of course be discussing these things in Committee and later. In the Bill, we are expanding the scope of misconduct that can lead to exclusion; we are also

[LORD TRUE]
increasing the time period within which misconduct can lead to exclusion, bringing subsidiary companies into scope of inclusion and making the rules clearer so that contracting authorities can undertake exclusions with more confidence. I look forward to engaging with the noble Baroness opposite and her colleagues in the course of the Bill, and I will seek to address the questions that she has raised as we go forward.

Baroness Kramer (LD): My Lords, unless I have badly understood, which is quite possible, Bain & Co came close to purchasing Liverpool Victoria Financial Services—the bid was finally rejected last December. What powers would the regulators have had, with their oversight of Bain & Co's behaviour in other countries, to intervene in that potential purchase?

Lord True (Con): My Lords, I am not familiar with the specific case that the noble Baroness raises. I will seek information and write to her in response.

Viscount Waverley (CB): My Lords, the last question leads on to a point that I would like to ask the Minister about. The St Petersburg International Economic Forum is taking place in mid-June, and a large number of these management consultants are going to be attending it, from one office or another—maybe it will be from their Moscow office. Does it need consideration that these organisations are not being helpful in the grand scheme of things, when the Government have a clear policy on such matters?

Lord True (Con): I note what the noble Viscount says, but the Cabinet Office review into this specific company will conclude within weeks. We will have discussions on this in the Procurement Bill, and your Lordships will be able to explore these matters at greater length then. Obviously, I am concerned by any suggestion of corruption and misconduct, and we are widening in the Bill the scope of misconduct which can lead to exclusion.

Lord Browne of Ladyton (Lab): My Lords, the Minister sought in part to assure us, saying that Bain & Company—I think I quote him properly—are not doing any substantial business with the Government. What does "substantial" mean in those circumstances, and were any of these insubstantial contracts agreed after the judicial inquiry in South Africa reported?

Lord True (Con): My Lords, I am advised that there is not a current contract with central government. If I am incorrect, I will correct that. I am aware of one live contract that Bain has with an NHS trust, which has a contract value of approximately £2 million.

Lord Hain (Lab): My Lords, I am sorry to pursue this again after the noble Lord's replies to me and to others, but I remind him that this company, under former President Zuma's direct instructions, effectively denuded the South African Revenue Service of its capacity to raise taxes, especially from President Zuma's friends and cronies. This was a complicity in corruption which is inexcusable. It is not good enough to say that a review awaits the final report of the Zondo commission. The Zondo commission's report earlier this year specifically indicted Bain—I doubt it will have anything more to say about it—and referred the company for prosecution. Surely the Government should not have anything to do with it, otherwise all our words about money laundering and anti-corruption abroad and so on, and our legislation here to try to combat it, will mean nothing, when we are paying taxpayers' money to companies like this one, as we did only a couple of years ago.

Lord True (Con): My Lords, we are not paying taxpayers' money to this specific company. I have said to the noble Lord that I greatly respect the way in which he has been pursuing this; it has been dogged. I am not here to defend actions that took place under the Zuma Government. We are obviously concerned; and we respect the great nation of South Africa. As I said earlier, we will work with it and draw conclusions in our relations both with South Africa and in the UK on this matter.

Food Security

Question

2.50 pm

Tabled by ***The Lord Bishop of St Albans***

To ask Her Majesty's Government what assessment they have made of the effects on food security of allowing corporations to purchase arable land to offset their carbon emissions; and what plans they have to limit the amount of arable land that can be used for this purpose.

The Lord Bishop of Southwark: My Lords, I beg leave to ask the Question in the name of the right reverend Prelate the Bishop of St Albans, who has been unavoidably detained in his diocese and sends his apologies.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I declare my farming interests as set out in the register. This Government are committed to safeguarding food security, as highlighted by the food strategy published today. I am very conscious of the issue raised, and we already have several protections in place, such as requirements for public consultations on any large new woodland as part of environmental impact assessments. I am also working closely with Her Majesty's Treasury and BEIS to develop robust standards for green finance investments, and will set out the next steps in the forthcoming months.

The Lord Bishop of Southwark: My Lords, does the Minister agree that industrial-scale tree planting by large investment companies which purchase arable land may create what are called ecological dead zones and generate more carbon emissions if insufficient attention is given to biodiversity, according to the John Muir Trust? If so, how will Her Majesty's Government ensure that such companies are subject to proper biodiversity requirements so that they may prove to be responsible stewards of the land?

Lord Benyon (Con): Yes, I agree with the right reverend Prelate that the wrong kind of trees planted in the wrong place under the wrong management style

will be a loss for both the environment and the social element we want in our countryside. That is why there are very clear rules under the woodland carbon code which corporates would have to abide by, and why the Forestry Commission, if applying through grant aid schemes, will require standards to be maintained. For example, planting will not be permitted on deep peat; it will be concentrated on poor land.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, it is a nonsense to allow private companies to acquire vast hectares of arable land, often removing generations of farming families, in order to offset their carbon emissions and carry on with business as usual. British farmers are essential to the country's ability to produce food. Does the Minister agree that importing food which is not produced to the same high animal welfare standards as we enjoy in the UK, to replace that which we might have grown ourselves, is a backwards step?

Lord Benyon (Con): I suggest that we look at this as the glass half full: there are plenty of examples where private sector finance can be a massive boost towards the environment by working with farmers and seeing tree planting on poor-quality land, for example. Some 57% of agricultural produce is produced on 33% of agricultural land. This shows that, if we favour the productive land to produce food—every single farm has corners of it that can be planted with trees or for other ecological benefits—this will benefit the farmer and is in accordance with the food production targets and ambitions of this Government. It can work; we want to root out the bad behaviour which the noble Baroness rightly points out.

The Earl of Kinnoull (CB): My Lords, I declare my interests as set out in the register. The Minister has rightly referenced the importance of a good balance between vital food production, carbon capture and other environmental things. It is a very difficult issue, and I wonder whether he can confirm that the devolved Administrations and the UK Government are discussing these things at the new Inter Ministerial Group for Environment, Food and Rural Affairs.

Lord Benyon (Con): I absolutely assure the noble Earl that we are working closely with our devolved colleagues on this, because the environment clearly does not respect boundaries. We want to make sure that our policies are very closely aligned with them. The issue is perhaps more pertinent in Scotland and Wales, where we have seen some of the concerns which have led to this title of a "wild west" in how private sector finance is applied. We want the highest standards applied. There are good examples right across the United Kingdom and we want to make sure that the tweaks and the measures that we impose favour those who are showing virtue rather than those who are not.

Lord Lansley (Con): My Lords, I declare an interest as I live quite close to Newmarket, where an exceptionally large solar farm is proposed on high-quality farmland. I wonder whether my noble friend will say, in light of the food strategy today and the desire for greater food security, what steps the Government are taking to ensure that the desirable use of solar farms and renewables is not prejudicial to our environment or indeed our food security?

Lord Benyon (Con): I am well aware of this case in Suffolk and the concerns of local people about loss of good agricultural land. The food strategy published today sets out the ambition to maintain our high levels of food security and production. Those sorts of developments need to be seen in the context of that ambition, and very strict rules relate to both planning and the use of the best agricultural land. That may well apply in the case that my noble friend refers to.

Lord Rooker (Lab): With about 7 billion trees, I think, we are one of the least forested countries in Europe, and there is a case for more trees—the right trees in the right place. I cannot understand why there is not a complete ban on using food-producing land for solar farms, when all the flat roofs of the warehouses and factories in this country could be used for that. There would be more space available; it is a given that it does not take good agricultural food-producing land.

Lord Benyon (Con): There are many grants that people can source, even at a household level, to acquire and install solar panels on roofs, and the noble Lord is entirely right to point that out. He is also right that we need more trees. We have very ambitious targets of planting 30,000 hectares of additional trees every year by the end of this Parliament. That can be achieved without impacting our food security, and there are many areas of renewable energy production that can be done in accordance with food production as well.

Baroness Bennett of Manor Castle (GP): I am sure the Minister is aware of figures from 2019 showing that corporations already own 18% of England, together with oligarchs and City bankers owning 17% and the aristocracy and the gentry owning 30%, all of that adding up to less than 1% of the population owning more than half of the land. Does the Minister agree that for food security to allow new small farmers and food growers to enter and start small businesses, we need to democratise land ownership?

Lord Benyon (Con): The most beneficial way to encourage people into farming at all levels is through a system of let land and tenure. It is very often those corporations and those individuals that the noble Baroness mentions that provide the only entry for people who do not have access to capital to purchase a farm. We want as broad activity as possible in agricultural production, and that means encouraging new and younger people to enter farming through the tenancy system.

Baroness Jones of Whitchurch (Lab): My Lords, in response to the question from the noble Baroness, Lady Bakewell, on a similar issue last Wednesday, the Minister said:

[Baroness Jones of Whitchurch]
"we are taking action to make sure that private sector investment in our natural environment is done properly, with the proper social underpinning."—[*Official Report*, 8/6/22; col. 1151.]
Can he explain how this "social underpinning" is going to work? Will local people have the right to veto a large-scale private sector land grab, an example of which we have already been hearing about?

Lord Benyon (Con): Under the Forestry Commission's rules, there is a local consultation process that proposed tree planters are required to go through. Also, the woodland carbon code is very clear, as is the UK peatland code. We also want to make sure that corporations that are investing in this kind of mitigation are publicly accessible through the UK Land Carbon Registry, so anybody can see what is being done in their neighbourhood. We want to make sure that, with these so-called environmental, social and governance measures, the middle word is used and is fundamental—w want to make sure that these schemes are socially acceptable, as well as environmentally acceptable.

Lord Lancaster of Kimbolton (Con): The most pressing food security issue facing the United Kingdom at the moment is the inability of Ukraine to export its grain to the West. I ask my noble friend: what assessment have the Government made as to the challenge that this will present us and the West? Also, how do the Government intend to mitigate this problem?

Lord Benyon (Con): It is having an enormous effect on the global cost of agricultural production. The Government are working internationally with organisations such as the World Bank, which has invested $180 billion in trying to make sure that the countries that are going to be deprived of grain as a result of the Ukraine war are supported. In this country, we are largely self-sufficient in grain, and what we do import comes from countries such as Canada. But my noble friend is entirely right to point this out to make sure that we are working with the international community: first of all, to get the grain out of Ukraine; and, secondly, to support the countries that are going to be affected, in a devastating way, by the shortages that arise from this crisis.

Fuel Poverty
Question

3.01 pm

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

To ask Her Majesty's Government what assessment they have made of the numbers of households in fuel poverty; and what steps they are taking to address this.

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

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, in our latest official projection, there would be an estimated 3.03 million households in England in fuel poverty in 2022, according to the low-income, low-energy efficiency definition. The *Sustainable Warmth* strategy, published in February 2021, details our approach to tackling fuel poverty in England. Energy efficiency remains the best way to tackle fuel poverty in the long term, reducing the amount of energy required to heat a home and contributing to lower energy bills and of course, carbon emissions.

Baroness McIntosh of Pickering (Con): I thank my noble friend for that Answer. The figure used by the NEA is 6.5 million households in fuel poverty. Of course, that figure would have been substantially higher had it not been for the generous measures given by the Government in late May of this year. Does my noble friend recognise that there is now another type of fuel poverty, and that is the fact that it is costing £100 to fill the tank of an average family car? In those circumstances, does he accept it is causing real hardship in rural areas, and particularly for carers travelling between their clients? Will the Government, as a matter of urgency, reduce the VAT of 20% on fuel and the 57% fuel duty and make sure that is passed on to the forecourts?

Lord Callanan (Con): I totally understand the points that my noble friend is making, and the Chancellor has, of course, already reduced fuel duty. Domestic fuels, such as gas and electricity, are already subject to the reduced rate of 5% VAT. Going further, I would not guarantee that prices would fall, given that most of the price rises are driven by a number of factors that can be seen worldwide. The other problem is that cutting VAT would also be a tax cut for everyone, including wealthier people in society.

Lord Teverson (LD): My Lords, among the most vulnerable groups are park home owners—some 85,000 of them—whose energy supply is often controlled by landlords. These are often, I regret to say, rogue landlords. How will the Minister guarantee that those park home residents will be able to take advantage of the Government's rebate schemes and the various other things to alleviate energy prices over the next few months?

Lord Callanan (Con): The noble Lord makes a very good point, and that is one of the aspects we are looking at—indirect suppliers through the consultations that we are holding on the various support schemes. I also point out that park home owners are already benefiting from a number of our energy-efficiency improvements, and there have some excellent examples of retrofitting park homes that have been carried out under schemes such as the local authority delivery energy efficiency scheme.

Lord Winston (Lab): My Lords, does the Minister think it rather peculiar that old people like myself get 200 quid a year for fuel, which is really not needed? Should there be a way of means testing the amount of money that is given to people like me?

Lord Callanan (Con): It is very generous of the noble Lord to offer to give it up, but of course the point he makes is valid. It is a combination of the expense

and bureaucracy of means-testing schemes as against the universality principle, but the vast majority of support schemes, of course, are means tested and focused on those in receipt of benefits and on the lowest incomes, and that also applies to all our energy efficiency schemes.

Lord Howell of Guildford (Con): My Lords, I declare energy interests as in the register. Does my noble friend accept that by far the largest driver behind these hideous energy and fuel prices, with more apparently to come, which are really damaging and frightening millions of households, would be tackled if there could be far more oil and gas pumped into short-term world markets to bring down the price of oil, petrol, gas and electricity very quickly indeed? Some of us would really like to see evidence of more co-ordinated vigour and diplomacy in international markets in driving down these prices. Something can be done. Could we see more effort in that direction, please?

Lord Callanan (Con): My noble friend makes a very good point. There is a lot of diplomatic action going on with organisations such as OPEC, precisely in the terms that he alludes to. We are also, of course, attempting to produce as much oil and gas as we can from our existing British North Sea fields as well.

Baroness Warwick of Undercliffe (Lab): My Lords, I declare an interest as chair of the National Housing Federation. Some 150,000 housing association residents currently have their heating and hot water delivered via communal or district heat networks. Can the Minister confirm that the Government will make the £400 energy grant available to residents on heat networks, who have seen some of the largest fuel price increases in the country?

Lord Callanan (Con): The noble Baroness makes a very good point. Heat networks are another of the difficult areas we need to address as part of the consultation we are doing. I also point out that we are, of course, taking powers to regulate heat networks, which are currently unregulated, in the forthcoming energy Bill, because it is an area that we need to expand in this country and there is no protection for those residents currently on heat networks, either in housing associations or in the private sector.

Lord Fox (LD): My Lords, the Minister knows that, in fact, as he stated, very little of our gas, for example, comes from the world market, yet it is the world market price for gas that is driving up the cost of fuel and energy, in terms of electricity, for our citizens. Is there not a case for reviewing how the basket of electricity is costed, so that it actually reflects the cost of generation more effectively in this country, rather than it being driven by the highest marginal cost of gas?

Lord Callanan (Con): The noble Lord is partially right. Of course, 40% of our gas supplies come from our own domestic production. We get quite a bit from the world market through Norway and quite a bit from LNG as well, so we are, of course, subject to world market fluctuations. But there is a lot of validity in the points that he has made.

Lord Lennie (Lab): My Lords, the government figures are out of date. The chairman of NEA is right: 6.2 million households is nearer the figure than the 3.2 million that the Minister referred to. The pressures of doubling fuel prices on top of this trend will continue to worry householders across the country. In 2015, the Government estimated it would take until 2030—another eight years from now—to end fuel poverty, but on current figures it will take more than 60 years. What new measures are the Government proposing to ensure they get back on track to meet their original deadline of zero fuel poverty by 2030?

Lord Callanan (Con): The figures that the noble Lord quotes are, of course, using different metrics. There is a big debate about which is the appropriate metric to use, but we can all accept, whatever metric we use, that this a very difficult time and people are suffering. The best route to end fuel poverty is through energy-efficiency measures, and that is why we are spending £6.6 billion this year in precisely targeting energy-efficiency measures—home improvements, retrofits—towards those in society on the lowest incomes, but of course we will need to do more.

Baroness Jones of Moulsecoomb (GP): My Lords, the Government's windfall tax was clearly very good, because it helped householders pay their bills, but at the same time that money went into profits for the oil and gas companies. The Minister talks about sustainable homes, retrofit and so on, but actually the Government are not putting enough into this, and I wonder whether government policy is influenced by the fact that the Conservative Party gets donations from the oil and gas sector.

Lord Callanan (Con): The windfall tax is taking profits off the oil and gas industry, as the noble Baroness refers to, but as I just mentioned in a previous answer—

Baroness Jones of Moulsecoomb (GP): It is not enough.

Lord Callanan (Con): The noble Baroness says that this is not enough, but of course, we also need many of those companies to continue to invest both in North Sea production and in renewable production. If we are going to move to the totally renewable power system that I am sure the noble Baroness wants to see, as I do, we need tens of billions of pounds of investment, often from the same companies; you cannot spend the same pot of money twice. We are spending £6.6 billon this year on home efficiency measures, and there is a huge amount of work going on behind the scenes on retrofitting and home insulation measures, and through ECO, the local authority delivery scheme and the home upgrade grant. So, a lot of work is going on in this space.

Lord Sikka (Lab): My Lords, the cost of producing oil and gas has not changed substantially, but the selling price has. The refiners' profits from petrol are up by 366%, and from diesel by 648%. May I urge the Minister to commission an inquiry into profiteering, and to introduce price controls to protect people from it?

Lord Callanan (Con): The noble Lord needs to look at our past experience of price controls to see how ineffective they are. I am sure the Chancellor will want to bear in mind any examples of profiteering the noble Lord refers to. All tax matters are of course kept under close review.

Baroness Fookes (Con): My Lords, is there any universally accepted definition of fuel poverty and if so, what is it?

Lord Callanan (Con): My noble friend makes a good point, and actually, no, there is not. There is a definition that I refer to, and definitions are used concerning the percentage of someone's disposable income that is spent on fuel. There was a big debate about the different metrics to use, but whatever metric we do use, nobody can disagree with the fact that it is a difficult time for everyone at the moment, and the Government need to do all they can to help.

Sewel Convention

Question

3.12 pm

Asked by ***Baroness Wilcox of Newport***

To ask Her Majesty's Government what assessment they have made of the number of occasions that legislative consent has been rejected by the devolved legislatures since December 2019; whether they still intend to abide by the Sewel Convention; and if so, what steps they are taking to ensure that consent is secured to legislation in future.

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): The UK Government have legislated without consent on 11 occasions since December 2019, most of which relate to our exit from the European Union. These were not decisions that we took lightly, but we considered them necessary to implement the referendum result in exceptional circumstances. We are fully committed to the Sewel convention and will of course continue to seek legislative consent, take on board views and work with the devolved Administrations on future Bills.

Baroness Wilcox of Newport (Lab): I am glad that the Minister noted that the Government fully support the Sewel convention, because Minister for the Economy, Vaughan Gething, confirmed in writing last week to the UK Government that the Welsh Government are unable to endorse the approach the UK Government are taking on the shared prosperity fund. They will not deploy their own resources to implement UK Government programmes in Wales, as they have been doing with EU funding for 22 years; they consider them to be flawed and undermining of the devolution settlement. Does the Minister therefore agree with me that last week's latest development is a further significant undermining of the Sewel convention?

Lord Greenhalgh (Con): Unsurprisingly, I do not agree with that. We will of course continue to seek legislative consent, take on board views and work with the devolved Administrations, but the legislative consent process did not change and never was intended to change the sovereignty of this Parliament.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, earlier today, talking with some of his senior colleagues, I commended the Minister for his great ability to straight-bat my consistent questions about improper spending by the Scottish Government. However, will the Minister and the Government now consider drawing up contingency plans to make sure that when that expenditure goes beyond the pale, they are able to take some action?

Lord Greenhalgh (Con): My Lords, I always consider the interventions of the noble Lord to be consistent, and to require a straight bat. We do understand when it is a reserved matter and when it is a devolved matter, and we will obviously look very carefully at how the Scottish Government spend their money.

Lord Griffiths of Burry Port (Lab): My Lords, as part of promises made during the debate about leaving the European Union, an assurance was given to Wales that it would not suffer one penny less in terms of the money that had come from Brussels when it fell to the British Government to supply that money, but I am constantly bemused by the fact that this simply has not happened and is not happening. Although the Minister's reply to my noble friend's Question was perhaps what it ought to be, she quoted a Minister in the Senedd who said something quite contradictory. There is a difference of view that I think this House would benefit by understanding in greater depth.

Lord Greenhalgh (Con): My Lords, it is important that we get the Sewel convention to work, and that is why it is one of two items on the agenda for the upcoming inter-ministerial steering committee. We have had a working group on the Sewel convention. I cited the figures in response to another question; considerable sums are going through the UK shared prosperity fund, and it is important that we use those funds for the benefit of all four nations.

Viscount Waverley (CB): My Lords, the European Union has a system of gauging GDP within rural areas, called Objective 1. Do we have anything equivalent and if so, what is it?

Lord Greenhalgh (Con): My Lords, I always appreciate the breadth of questions you can get on a Question that concerns the Sewel convention. I am not aware that we use something similar to that EU measurement, but I note that the EU has its own approach to the funding formula.

Lord Hain (Lab): With respect to the Minister, there is a massive gap between his warm words on this matter and the views of Welsh Ministers in the Senedd about his Government's stance, which is continuously undermining the Welsh Government—and I guess other Governments—over the devolution settlement by not properly consulting them and not making the term "consent" real, because they do not wish to consent to a lot of government legislation. I do not

think that the inter-governmental machinery is working properly, either. It should be chaired by the Prime Minister, who should listen to Welsh Ministers and the First Minister properly instead of treating them with derision.

Lord Greenhalgh (Con): I do not recognise that the Sewel convention is as broken down as that, in the sense that 47 legislative consent Motions for 23 Acts in the first Session and 28 legislative consent Motions in the second Session were secured and passed by the devolved legislatures. This is new machinery that obviously takes time to bed in, but I know that my right honourable friend the Secretary of State has met on countless occasions—there have been 440 ministerial meetings—and the Prime Minister has met four times with the First Minister of Scotland and the Welsh leader, so those meetings are taking place. I ask noble Lords to give this machinery a chance.

Lord Howell of Guildford (Con): Could this constant dilemma of the edges of devolved powers in ever-changing circumstances be in any way handled better by strengthening the common framework processes, which have been successful so far in taking the difficulty out of some of these difficult areas?

Lord Greenhalgh (Con): I thank my noble friend for raising common frameworks, which I know this House has spent quite a bit of time working on and refining. I am sure that they provide a guideline on how we should engage with the devolved Administrations and will help to strengthen the union as a consequence.

Lord Lansley (Con): My noble friend will be aware that treaty making is a reserved power to the United Kingdom Government, but the scope of the treaties into which we are now entering, particularly trade treaties, often impinges directly upon devolved powers and the devolved Administrations. When reporting under CRaG, Ministers have told the International Agreements Committee when they have consulted the devolved Administrations but they have not consistently told us what the DAs have told Ministers would be their objectives and what they are looking for. Will my noble friend help Ministers to ensure that their explanatory memorandum under CRaG covers this?

Lord Greenhalgh (Con): I am sure that we need to get the explanatory memoranda right. In addition, the Government recognise that we need to engage early so that legislatures and Administrations have as much time as possible to consider these matters before they are signed, in the case of treaties, or become Acts, if they are Bills. Of course, I take my noble friend's point on board.

Lord Cormack (Con): Does my noble friend agree that there is a very real difference between informing and consulting? Is he confident that we are properly consulting and not just informing?

Lord Greenhalgh (Con): It is for each Minister to respond on whether they are informing or consulting. Certainly, in areas where I have had ministerial responsibility, we have learned an awful lot from the devolved Administrations, particularly in matters related to building safety and other areas. It is a two-way conversation where we can often learn as much from the devolved Administrations as they can from us. It is about sharing expertise.

School (Reform of Pupil Selection) Bill [HL]

First Reading

3.20 pm

Baroness Blower (Lab): My Lords, I declare that I am a patron of Comprehensive Future.

A Bill to prohibit state-funded schools from admitting students wholly or partially on the basis of criteria relating to ability or aptitude; and for connected purposes.

The Bill was introduced by Baroness Blower, read a first time and ordered to be printed.

Protection of Whistleblowing Bill [HL]

First Reading

3.21 pm

A Bill to establish an Office of the Whistleblower to protect whistleblowers and whistleblowing and to uphold the public interest in relation to whistleblowing; to create offences relating to the treatment of whistleblowers and the handling of whistleblowing cases; to repeal the Public Interest Disclosure Act 1998; and for connected purposes.

The Bill was introduced by Baroness Kramer, read a first time and ordered to be printed.

Schools Bill [HL]

Committee (2nd Day)

3.22 pm

Relevant documents: 2nd Report from the Delegated Powers Committee and 1st Report from the Constitution Committee

Clause 2: Academy standards: relationship with contractual agreements

Amendment 30

Moved by ***Baroness Barran***

30: Clause 2, page 3, line 35, leave out subsection (6)

Member's explanatory statement

This amendment removes clause 2(6), bringing the treatment of secure 16 to 19 Academies under that clause in line with that of other Academies. This means that if an Academy standard applies to secure 16 to 19 Academies, this can trump any corresponding contractual provisions.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I turn first to the government amendments in my name. The majority of these represent technical amendments

[Baroness Barran]
to deliver the policy as intended, extend consultation requirements to existing measures and otherwise clarify the intent of the Bill.

Baroness Chapman of Darlington (Lab): I apologise, but I want to intervene on the Minister before she gets too much into her stride. I want to put on record the disappointment from these Benches that these amendments, which we do not consider to be simply technical or minor, are grouped together. It is a shame, because we would have liked to debate them separately. Can the Minister bear that in mind as we come to Report?

Baroness Barran (Con): Of course, we will take that into consideration. I was not aware of the noble Baroness's concerns. To echo that, there are two measures which are more substantial, which relate to secure schools and a prohibition order as part of our enhanced suite of powers to tackle unregistered schools.

I turn first to Amendments 30, 42 and 76, relating to secure schools and their particular context. Secure schools place education at the centre of the response to supporting children in custody, to reduce reoffending and improve children's life chances. They will be established as both secure children's homes and secure 16 to 19 academies using the academies framework as a basis for opening.

Secure schools' funding agreements require unique provisions that reflect their context. Clause 2(6) was drafted to ensure that future new academy standards would not invalidate those unique provisions. We have now confirmed that primary legislation is not required to achieve that because new standards can be selectively applied within the standards themselves. Amendment 30 therefore removes Clause 2(6) as unnecessary to the functioning of the Bill.

Turning to government Amendment 42, Clause 8 requires the Secretary of State to provide seven years' notice if they wish to terminate funding for an academy to ensure continuity for all year groups. Because children will generally spend fewer than two years in a secure school, Amendment 42 will modify Clause 8 to reduce the termination notice period from seven to two years for secure schools.

Amendment 76 introduces provision for secure schools covering payment termination notices as well as local impact considerations and consultation requirements. On payment termination notices, it amends the Academies Act 2010 to make it consistent with Amendment 42. Section 2 of the 2010 Act places a requirement on the Secretary of State to give seven years' notice before ceasing payments to an academy. For the reasons I set out when discussing Amendment 42, this amendment will modify the Act to reduce this notice period to two years. Existing consultation requirements for academies include the requirement that the Secretary of State consider the impact of new academies on existing schools in the area. Given that the secure school will not be recruiting from the local area in the same way as local schools, we seek to disapply this requirement to secure schools.

The Academies Act also requires providers to consult relevant persons, such as local residents, on whether an academy arrangement should be entered into. Our view is that there will be a wide and complex range of views on the location of a secure school that the Government will wish to engage with. A "yes or no" consultation on a secure school is less likely to promote this engagement and, instead, the consultation will focus on how the secure school will work with local partners.

I acknowledge that Amendments 76A and 76B have been tabled to Amendment 76 in my name, and I shall respond to the comments from the noble Lord, Lord German, in my closing remarks.

Amendment 40 relates to academy trust standards. Clause 7 allows the Secretary of State to replace an entire trust board with a board of interim trustees. The amendment makes specific provision for the Secretary of State to consult the relevant religious body where the trust includes academies designated as having a religious character. It takes account of the fact that religious bodies have a particular interest in the governance of academies with a religious character, as reflected in those academies' articles of association. Where the Secretary of State intends to appoint an interim trustee board, the religious authority will rightly wish to be assured that arrangements are in place to safeguard academies' religious character. The amendment will ensure that religious bodies are able to make representations before any decision is made to appoint an interim trustee board.

I now turn to the five amendments relating to termination provisions for academy agreements and master agreements. Amendments 43 to 46 and 48 in my name relate to the termination procedure to be followed where a 16 to 19 academy is judged by Ofsted as not providing an adequate quality of education or training, or if the Secretary of State is of the view that boarding accommodation at an academy does not meet the required standards. The effect of these amendments is to apply the termination procedure which applies when an academy is judged inadequate by Ofsted, and it ensures consistency of approach. It also replicates the termination procedure currently provided for in funding agreements in these circumstances.

Amendment 47 expands Clause 11 so that it applies to academy agreements as well as master agreements in the case of a change of control of the trust or an insolvency event occurring. This means that the termination power will apply to a single-academy trust as well as a multi-academy trust. This is a corrective amendment to ensure that the legislation accurately replicates provisions in existing funding agreements.

3.30 pm

I turn to Amendments 148 and 153. It is a criminal offence to conduct an unregistered, independent educational institution. Those who are responsible for these unregistered settings may knowingly expose the children in their care to a risk of harm and could be a safeguarding risk. Since 2016, fewer than 20 people have been convicted of this offence, but other measures in the Schools Bill should make it easier to identify and prosecute such people. This measure tackles what we have identified to be a risk in our current regulatory regime. There is insufficient practical impediment to those who have been prosecuted for running an

unregistered school restarting their operations immediately and, again, exposing children to risk. These amendments tackle that weakness.

Those in receipt of one of these orders will be restricted from a wide range of activities, if these are necessary, to reduce the risk of harm to children. The intent is to make it easier to target and bring prosecutions against those who, through their previous behaviour, have demonstrated themselves willing to expose children to a risk of harm. Any application of these orders will be proportionate to the threat posed. The intent is to prevent reoffending and someone reopening a previously identified illegal school.

Amendment 155 makes it clear that the teacher misconduct measure applies to independent educational institutions that are not schools. Independent educational institutions that are schools are already caught by existing legislation.

Amendment 151 corrects a consequential amendment. It amends Section 125(1)(b) of the Education and Skills Act 2008, which deals with appeal rights against decisions of the Secretary of State to refuse an application for a material change. Without it, Section 125(1)(b) would continue to refer to decisions under Section 104(1) of the 2008 Act as being appealable. However, with the changes made by paragraph 6(2) of Schedule 5 to the Bill, refusals to grant a material change approval will now be made under Section 104, not Section 104(1).

Finally—your Lordships will be pleased to hear—I turn to the exclusion provision in Amendment 96, which seeks to make consequential amendments to Section 494 of the Education Act 1996. That section currently applies only in the case of maintained schools. This amendment will mean that funding transfers between local authorities, where a pupil is excluded from a school in one local authority area and admitted to a new school in a different area, apply in relation to both maintained schools and academies.

These amendments relate to Clause 41, which gives the Secretary of State the ability to make arrangements for in-year adjustments to schools' funding allocations where pupils are permanently excluded, and will ensure that funding can follow excluded pupils where they move between schools in different local authorities. This amendment will ensure that these arrangements can operate properly in relation to academies under the new funding system that we are establishing in the Bill. I beg to move.

Baroness Garden of Frognal (LD): My Lords, I rise to introduce Amendments 76A and 76B, tabled by my noble friend Lord German, who is currently on a working visit to the Gambia and so is unable to be here. These amend government Amendment 76, which the Minister has already referred to.

We on these Benches support the proposal to create secure schools and academies. Youth custody, by its very nature, means that those within them are the most vulnerable and challenging young people. I once taught in a secure school and was struck by the care and hard work of all the teachers, committed to improving the life chances of some very damaged and occasionally violent young people. It was quite a scary commitment. That is why Charlie Taylor, in his review, proposed secure schools as a major way of dealing with the problems of the youth custody system.

However, we are concerned that local authorities have been ruled out of the objective of finding the best provision possible for these most challenging and vulnerable young people. There is a legal route open to local authorities to make a bid for running a secure academy, but such a bid would run counter to the Government's policy. Yes, you can legally apply to run a secure school, but it is not government policy to accept your bid.

In his 2016 review, Charlie Taylor made two very clear points which are of relevance to this piece of legislation. The first was:

"Children who are incarcerated must receive the highest quality education from outstanding professionals to repair the damage caused by a lack of engagement and patchy attendance."

The second was:

"Rather than seeking to import education into youth prisons, schools must be created for detained children which bring together other essential services, and in which are then overlaid the necessary security arrangements."

The Taylor report pointed out the absolute importance of integration, not only of education but of a wide variety of services within the work of these schools. Health, social care, and services providing reintegration following custody are required within the school and not external to it. These are services that local authorities currently provide. Following the logic of local authority statutory provisions, particularly those on the duty to safeguard and promote the welfare of their children and the need for a new form of integration, there is much that local authorities can offer.

The then Minister, the noble Lord, Lord Wolfson, said in January:

"I accept that the Government's policy remains that academy trusts are not local authority-influenced companies and that our position on secure schools is to mirror academies' procedures. However, I can confirm that, when considering the market of providers of future secure schools, my department will assess in detail the potential role of local authorities in running this new form of provision … local authorities have a long-established role in children's social care and the provision of secure accommodation for children and young people. In particular, the secure children's homes legal framework may present a more straightforward route than the 16-19 academies framework for the expansion of local authority involvement in the provision of secure accommodation. However, I reiterate that there is no legal bar here."—[*Official Report*, 10/1/22; cols. 825-26.]

It is against this strange backdrop of legal rights and government policy going in different directions that I look at government Amendment 76. It states that

"where the educational institution … is to be a 16-19 Academy"

and not that all secure schools are to be academies. Can the Minister confirm that the legal position on local authority involvement in secure schools has not altered since the Government's statement to this House in January?

Engagement with local authorities in the work of secure schools or academies has always been seen as essential and welcome, so it is very concerning that proposed new subsection (2A) in Amendment 76 rules out consultation with local government or anyone else and makes consultation with local government only a

[Baroness Garden of Frognal]
possibility—and this for a part of our democratic structure which has been stated to have great value by the Justice Minister, speaking in the Chamber in January.

Restricting consultation with a local partner who has the statutory role for the provision of some services in relation to secure schools seems quite a bizarre approach. The words in the government amendment are quite clear: it will be a consultation on how the proposer of the secure academy should co-operate with local partners, and those are the local partners who the proposer of the secure academy thinks it appropriate to consult. There is therefore no duty for them to consult the local government of the area.

I would value an explanation of the ban outlined in proposed new subsection (2A)(a). I recognise that the siting of a secure academy is potentially controversial, so it appears that the rationale for the first part of the government amendment is to avoid normal planning requirements. If that is the case, I remind the Government of their failed policy to cut out local residents' engagement when housing, building height extensions and other developments were proposed. Some government Ministers even suggested that this policy led to the Liberal Democrats winning the Chesham and Amersham by-election—oh joy.

These amendments seek to provide clarity. Although I recognise the difficulties of planning and siting a secure school as a principle—at the one in which I taught, local residents were extremely unhappy that they had these great thugs being taught near them—the Government should not ride roughshod over the rights given to local people through their local authorities. These amendments seek to recognise the importance of local government, in both the services it can provide and the representation of local interests that is part of its democratic mandate. I hope the Minister can clarify the Government's intentions in respect of these matters, and as underlined in our amendments, as they affect secure schools or academies.

This is way above my pay grade, but I have been in the Minister's position before. I humbly suggest, given the formidable opposition on her own Benches to the Bill, which threatens to undermine that of the opposition—we are doing our best, for goodness' sake, but when it comes from the Conservative Benches it is quite difficult to match it—that she goes back to the department to put a stop on this Bill. We currently have three more days in Committee. I suggest they could be put to much better use than tearing the Bill apart.

Lord Baker of Dorking (Con): My Lords, the amendments my noble friend has tabled really show how interconnected all the Bill's clauses are. You cannot envisage one without the other; they are interdependent. It is very difficult to move an amendment to any one clause that does not affect other clauses.

I said last week that I would try to find out from our legal advisers the extent to which the Bill may threaten the charitable status of all schools. I had a letter this morning from our advisers, Stone King, one of the leading education law firms. I will read it to the Minister so that she and the officials can reflect on it:

"The Bill sees, accordingly, a material shift from a contract-based system to one which is statutorily controlled."

At the moment, the relationships between schools and the Secretary of State are as a contract: it is an agreement, and both sides can change it. It is subject to contract law. The Bill would change that to statutory control.

The letter continues:

"It also introduces much more stringent termination powers which include not only existing termination rights, but also the ability for the Secretary of State to flood the board of an academy trust."

The Secretary of State has never had that power in the past, ever since 1870. This is a fundamental change—a major shift of authority from local authorities to Whitehall. Local authorities were responsible for closures in the past, but then they had checks and balances: before a closure could be decided on, they would have to check with the local community, local councillors and parents. There are now no such balances.

The letter continues:

"It was considered that such flooding rights were incompatible with the independence of an academy trust as a charitable company and that a contractual breach should lead to a contractual remedy—not to seek to control … the academy trust itself."

This matter has been dealt with by the Charity Commission in the past, so I ask the Minister to reflect on, or find out from her officials, what the exact position is. The position was that, before 2010, the Charity Commission was very concerned about the independence of schools, so it made them all statutory charities. That gave them certain very clear rights. The letter states:

"The Charity Commission had doubts, in the late 2000s, about the charitable status of academies given the controls which could be exercised then by the Department for Education and Skills … This led to the provisions of the Academies Act 2010 which made academy trusts charitable"—

all the schools in our country today are statutory charities. The letter continues:

"It would be very hard to see how the Commission would be at all comfortable with these additional restrictions, and it would be interesting to understand whether there has been any dialogue between the DfE and the Charity Commission".

If the Minister says that there has not been, I intend to write to the chairman of the Charity Commission tomorrow.

3.45 pm

This is important because, as the letter continues:

"A further point arises with regard to HMRC, and whether HMRC would be willing to continue to afford charitable tax breaks to academy trusts in circumstances where they are so very tightly controlled that their charitable status is in doubt. We wonder whether this point has been considered, and whether the views of HMRC have been sought on this point. Clearly, the removal of charitable tax breaks would have a significant and detrimental impact"

on all schools.

I raise this now only because this is such a fundamental point. It is saying that the 18 clauses could challenge the charitable status of a school, in which case it would lose the tax breaks. I ask the Minister and the officials just to take all this on board. When she winds up, perhaps she will be able to tell me whether the Charity Commission has approved the proposals in the Bill.

The Lord Bishop of Bristol: My Lords, I speak in place of my colleague, the right reverend Prelate the Bishop of Durham, who unfortunately cannot be present today. I declare his interest as chair of the National Society.

I rise briefly to welcome Amendment 40 in this group, which offers real clarity on the issue. We welcome the recognition it shows that the religious body must be involved in giving an interim trustee notice to the proprietor of an academy school with a religious character. We are grateful for the Minister's continued work on this and hope this might provide a little encouragement at this point.

Lord Knight of Weymouth (Lab): My Lords, I have a lot of sympathy with the intervention from the Front Bench by my noble friend Lady Chapman around the unfortunate nature of the grouping of these amendments. I understand that there are reasons why technically the Government might want to bring forward amendments, and I accept that some poor drafting is being corrected by some of these amendments, but it is tricky. For example, there is no explanatory statement on Amendment 96, so without delving back into legislation it is difficult to prepare a view in advance or to understand anything to do with what the Government were proposing. That is really unfortunate.

Government Amendment 148 introduces a new criminal offence that is imprisonable, and with powers of entry for inspectors, by a technical amendment in Committee. These are quite big things. Given the explanation the Minister has given, I think I probably agree with the amendment, but at this stage it is difficult to form a considered view. When this Committee gets to considering independent educational institutions, which that amendment relates to, I hope we can be reminded by the Minister that we have already had some discussion of this new criminal offence around repeated operation of unregistered educational institutions.

There is a policy question around whether two years is the right notice period for secure 16-to-19 academies, as opposed to seven years, but I think the Minister has probably given a good enough answer.

I mostly rose following what the noble Lord, Lord Baker, had to say, which in a way felt a little outside the scope of these amendments, but I can see that there is a government amendment here on terminating an academy agreement and another about essentially including single-academy trusts in termination, so I think it is in the spirit of this group for the noble Lord, Lord Baker, to have mentioned this important issue about the independence of trustees. I am sure that most of your Lordships are trustees of some charity or other, or multiple charities, and so do not need reminding that pretty much the only thing you are asked to do as a trustee, first and foremost, is to put the charitable aims first, above anything else. There are then various other good governance and financial probity things you do, but the charitable aims are everything.

As academy trustees, we now find that we have a funding agreement with government, we are subject to direction from government, and we are now subject to being able to be removed by government, all within a statutory framework; the sense that there may be any kind of independence for trustees in that context, and that they are more than agents of the state, will be very difficult to sustain.

Should it not be appropriate for the Minister to reply instantly to what the noble Lord, Lord Baker, has said, it will be important for us to see some legal advice from government that the charitable status of academy trusts will not be threatened by the further encroachment of the Secretary of State in the operation of these organisations.

Lord Hunt of Kings Heath (Lab): My Lords, following on from the comments of my friend the noble Lord, Lord Baker, the difficulty seems to be that we are discussing these matters in a vacuum. It will be very interesting to hear the Minister's response to the point that the noble Lord raised. As I said on the first day in Committee, the Minister said at Second Reading that she was launching a review to

"establish the appropriate model and options for how best to regulate the English schools system".—[*Official Report*, 23/5/22; col. 740.]

The question I put to her is this: how on earth can we deal with the substantive issues raised by the noble Lord, Lord Baker, if we simply do not know how these schools will be regulated in the future? If ever there were a case for pausing a Bill, this is it.

Lord Agnew of Oulton (Con): My Lords, I will make a couple of observations. First, I strongly agree with the noble Baroness, Lady Chapman, and the noble Lord, Lord Knight, about the grouping of the amendments today; it is so random as to be almost impossible to fathom or follow. I give the benefit of the doubt to whoever arranges these groups, but if the aim is to throw sand in our faces and make the job far harder then there will be trouble when we get to the voting stage.

I turn to a couple of specific amendments. On Amendment 30, my noble friend the Minister admits that this power exists already. The Academies Act has been in place for some 10 or 12 years; why are officials just working this out only now? How many other parts of the Bill have that issue? I think the answer is that a great many do.

Amendment 43 wants powers to terminate agreements with trusts, but, again, there is already the power to remove a school from a poorly performing trust on an Ofsted judgment of special measures. There have been plans and talk about extending that to what is called RRI—that is, two successive RI judgments. Why is that not being done? This does not need legislation as far as I am aware.

To sum up the points made by the noble Baroness, Lady Garden, and the noble Lord, Lord Hunt, we are discussing this in a most extraordinary vacuum. There has been no consultation on the Bill and we have had no sight of regulatory review, yet we are plunged into these incredibly technical, idiosyncratic clauses. All of us share the concern to improve children's educational outcomes. That is why I maintain my position to seek to remove most of these clauses, so that the Government can step back and rethink.

Baroness Berridge (Con): My Lords, I want to raise a point probably connected to the comments of my noble friend Lord Baker, which may help my noble friend the Minister. I raised on the first day in Committee the consideration of the legal vehicle that we are dealing with here, which is potentially affected when you move from the bilateral to the unilateral, and any implications for not just charitable status but the role of charity trustees, as well as that of company directors, as in most cases these are charitable companies. I know that my noble friend intends to write to me, but it may be that the comments that follow from that have a connected purpose to what my noble friend Lord Baker has said in relation to any effects on the charitable purpose as well as the vehicle. We are dealing with a legal entity, and the implications for that need to be fully considered in the change from a bilateral contract to the unilateral situation that my noble friend proposes.

Lord Nash (Con): My Lords, I declare my interests as a chair of an academy trust and as a trustee of the Education Policy Institute.

I shall give a little background on trustees and their role and recruitment. When I became an academies Minister in 2013, it was clear that the very good initiative started by the noble Lord, Lord Adonis—who I see is not in his place—to find academy sponsors, such as myself and my noble friends Lord Agnew and Lord Baker, had been put very much on the back burner by officials in the rush to academise; it took a very long time to warm these people up and it was a long process. I said I did not care how long it took to warm these people up; we must have this process. I did not care if we got chucked out of government and the Labour Party came back in and used all the people that we had found—good luck; it is a very noble purpose.

As it happened, we did not find too many nutters like myself and my noble friend Lord Agnew who were prepared to go from a standing start to being full academy sponsors in one move, but we found hundreds, if not now thousands, of people who were prepared to go on the boards of multi-academy trusts as non-executive directors, pro bono, to serve a very good public purpose. I wonder how many we would have found if they knew they could be chucked out by the DfE at its whim.

Lord Addington (LD): My Lords, it is really something for me to say that I agree with most of the noble Lords opposite on this. It is a very odd Bill and a very odd process that we are going through today.

One question that comes to mind when we look at all these amendments is this: could the Minister give us a rough idea where the Minister's power to make a decision without consultation has been increased or decreased? If there is anywhere that that power has been decreased, I would be very glad to hear about it. But if it is only the case that "We will make something without going through a consultation process", surely that shows up one of the major flaws in the Bill.

Baroness Chapman of Darlington (Lab): I echo the comments that have been made in support of my earlier intervention. It seems extraordinary that we are grouping these amendments together. I have not been in this House for too long but my understanding is that this is quite unusual.

One example is government Amendment 148, introducing the new offence. One of the jobs I have had was shadow Justice Minister, and I know that something like this would have been subject to a lengthy debate in and of itself were it part of a Bill that the justice team was proposing. I refer noble Lords to paragraph 1(3)(a) of new Schedule A1, as introduced by Amendment 148, about new childcare and behaviour orders. I think these are a very good idea; if you are found to have been running an illegal school, there should be restrictions on what you are able to do in future. We are not arguing with the principle of that, but paragraph 1(3) of the new schedule says:

> "An education and childcare behaviour order is an order which, for the purpose mentioned in sub-paragraph (2) … requires the defendant to do anything specified in the order".

I cannot find anywhere—perhaps the Minister could direct me, because it is not impossible that I have missed it—an example of what is specified in the order. That is a very broad definition that gives courts enormous freedom. I would like to understand better what Ministers have in mind for courts to be able to do. That is just one example of where this really does not fit with some of the other issues that we have just been debating regarding secure academies and charitable purposes.

I would like a commitment from the Minister that, should there be further government amendments that are not minor or technical—there is no way that you could describe this amendment as either—she will ensure that they are tabled in a timely manner and in a way that facilitates consideration in your Lordships' House. I feel that we are not sufficiently able to do our job as well as we would like today, given the way that this has been done.

I echo the comments from the noble Baroness, Lady Garden, about secure schools, from my noble friend Lord Knight about the independence of trustees, and from the noble Baroness, Lady Berridge, on charitable purposes.

To be positive towards the Minister, I very much welcome the tone of the comments that she made at the end of our deliberations last Wednesday, when she said she would reflect and listen very hard to what the House was telling her. I wonder if there is anything she can say today, before we embark on subsequent groups of amendments, that we would find useful about how far she has got with those deliberations.

4 pm

Baroness Barran (Con): My Lords, I thank your Lordships for your contributions. I confess to being puzzled about the concerns on groupings, because those were agreed through the usual channels. Colleagues will obviously have heard the concerns expressed today, but we did go through the normal process and were not aware of some of the points raised.

Lord Hunt of Kings Heath (Lab): My Lords, with the greatest respect, I say that the Government put those amendments into one group. Only movers of amendments can remove amendments from them so,

as far as ordinary Members of the House of Lords are concerned, we were presented with a fait accompli about which we could do nothing.

Baroness Barran (Con): As the noble Lord heard me say, this was agreed through the usual channels where we could have discussed that, had serious concerns been raised. The point has been heard loud and clear but I wanted to give the context. A number of points have been raised which I will aim to address, but I start by thanking the right reverend Prelate the Bishop of Bristol for her support on Amendment 40.

I turn to Amendments 76A and 76B tabled by the noble Lord, Lord German, and presented today by the noble Baroness, Lady Garden, in relation to Amendment 76 in my name on secure schools. Regarding Amendment 76A, the Government remain open to considering any objection to the opening of a secure school. We expect that if the question were framed in this way, however, most local concerns about opening a secure school would focus on its custodial nature. These concerns may very well be valid. However, the secure school provider is not realistically able to address issues with the fundamental character of the school. Instead of consulting on whether a secure school should open, we propose that the provider must consult on how it should work with local partners. That, we hope, should ensure that the consultation is focused on issues that the provider is empowered to address.

Connected to this, Amendment 76B, which proposes to include local government in the consultation requirement, would not result in any material change. This is because the secure school provider must consult on how it will work with local partners, and the definition of local partners that we have used already includes any person

"whose functions are functions of a public nature",

as set out in Section 6 of the Human Rights Act 1998. The noble Baroness asked if there were any changes in relation to planning. There is clearly no intention to evade planning regulations. She also asked whether the position of the local authority had changed. Of course, more broadly, the position of local authorities will change, given that we intend to give them powers to set up multi-academy trusts, which they have not historically been able to do.

The noble Baroness, Lady Chapman, raised concerns about the potential scope of the proposed education and childcare behaviour orders, while welcoming the principle behind them. I reassure her that while these orders have been designed to be broad in scope, their use will be focused. The court can exercise discretion to impose an order only if it considers it appropriate to do so, and it would be appropriate only for the purposes of protecting children from the risk of harm arising from a defendant re-committing an offence of conducting an unregistered independent educational institution.

We intend for these orders to prohibit activities taking place only in specified settings at specified times of the week, rather than them being a sweeping power. In sentencing, the courts must do so proportionately, so it is not our intention that these orders should prohibit someone working in a setting that is already subject to another regulatory regime. Other regulatory bodies, such as the Teaching Regulation Agency, may wish to take action against those found guilty of conducting an unregistered school but these orders are not designed to interfere with that work. Their aim is to prevent the behaviour which has led to some being prosecuted for conducting an unregistered school, not to interfere with someone's activity beyond that.

Baroness Chapman of Darlington (Lab): I am grateful; that is helpful. Does the Minister intend to publish any guidance or examples? At the moment there is nothing, as drafted, to say whether these orders will be about someone's professional ability to engage in running an illegal school or if it will impinge in other areas of their life and their contact with children. There is nothing to give us any guidance about this at the moment.

Baroness Barran (Con): I undertake that we will provide guidance—in inverted commas—whether that is formal guidance or setting out examples in a letter as the noble Baroness suggests. I will need to check with colleagues as to the most appropriate way to do that. I am happy to undertake that we will provide a full explanation, as she rightly requests.

My noble friend Lord Baker, the noble Lord, Lord Knight, and others, questioned whether the measures in the Bill would affect an academy trust's charitable status. I am pleased to confirm that the Government have engaged with the Charity Commission about the intervention powers, including the termination provisions in the Bill. There are currently no concerns about the interaction of these powers with the independence of charities. My noble friend Lady Berridge raised a very pertinent point again. I reassure her that her letter is in preparation as I stand here.

Through the schools White Paper, the Government set out their vision to deliver real action and level up education, supporting children, empowering teachers and school leaders and enabling parents. This Bill and these amendments help deliver that vision by underpinning it with legislation focused on improving the systems and standards of schools. I commend the amendments in my name and ask the noble Baroness, Lady Garden, not to move the amendments in the name of the noble Lord, Lord German.

Amendment 30 agreed.

Clause 2, as amended, agreed.

Clause 3: Academies: power to apply or disapply education legislation

Amendment 31

Moved by ***Lord Addington***

31: Clause 3, page 4, line 2, leave out subsection (1)

Lord Addington (LD): My Lords, when we come back to this, we come back to our old friend the Delegated Powers and Regulatory Reform Committee and its second report of the 2022-23 Session. The report is all about the Bill and the things that are wrong with it. Primarily, this amendment is inspired by the last paragraph, which states that

[Lord Addington]

"The Henry VIII power in clause 3(1) is too wide and should be removed from the face of the Bill".

That is as damming an indictment to any piece of legislation as I have seen in three and a half decades here; it says that the Government have this horribly wrong. Nobody thinks that this is the right way to go about things.

The title of the clause—"Academies: power to apply or disapply education legislation"—is an incredibly wide starting point. Could the Minister give us a little more clarity and justification about why the Government think something like this is needed? We have not got much else on this first part of the Bill. We cannot really disagree with the Government because we are disagreeing with assumptions about things that might happen. That is where we start from. If the Minister—I wish her the best of British on this one—can convince us that we have got this wrong and there is nothing to worry about with it, then half of us can go home.

I hope—because hope empowers more than expectation—that we will get some reply here. I am calling to leave out Clause 3(1), but you could take a knife to any part of this and it would improve the Bill. The whole thing probably should go and, indeed, if someone were to ask me and it were the appropriate time, I would be voting for that to happen. However, I give the Minister one chance here to finally say why we need Clause 3—or any bits of it. I could jump up and down, make longer speeches and read out the report to noble Lords, but I think that this is enough. I beg to move.

The Lord Bishop of Bristol: My Lords, I rise to speak in place of my noble colleague the right reverend Prelate the Bishop of Durham, who cannot be here today, to his Amendment 33 and to declare his interest as chair of the National Society, and also to speak against Amendment 34A.

Amendment 33 to Clause 3

"ensures that the religious designation of church schools could not be removed by secondary legislation."

The Church of England provides 4,700 schools, so we take seriously our vision that we are deeply Christian and serving the common good. This vision is for the whole community but is built on the firm foundation of the character of our church schools, which is central to that vision. I again pay tribute to the Minister for the way that her department has valued this character and worked with us to ensure that it is safeguarded in this legislation. We believe that this amendment strengthens that intention and provides a further safeguard.

A necessarily broad approach is undertaken in this Bill in applying legislation for maintained schools to academies through amending regulations. While we can appreciate the need to do this, it is unusual to see primary legislation which enables power to be applied or disapplied by secondary legislation. This short amendment would ensure that the "religious designation" of

"schools could not be removed by secondary legislation."

I appreciate that Clause 3(3) provides for the protection of the status of an academy "with a religious character" by prohibiting regulations for

"arrangements for collective worship and the provision of religious education".

However, these are just some of the outworkings of the religious character of a school, and we believe that this additional safeguard is necessary to safeguard the very designation of its character. It would be inappropriate to allow secondary legislation to have such impact on the designation of character of so many schools. This is a significant issue for our schools, and I will be listening with interest to any assurances on this topic that the Minister can provide.

I want also to speak against Amendment 34A. While I support this amendment in principle, as drafted it does not include stakeholders in the list of relevant bodies for consultation. Church schools are not included, but they represent a third of the sector and therefore should be included in the consultation.

Baroness Wilcox of Newport (Lab): We see that this group concerns the Secretary of State's power to make regulations for any education legislation to apply to academies. Thus, some may see this as redressing the balance between academies and the maintained sector.

I am speaking to our amendments, beginning with Amendment 34A, which prevents the Secretary of State using these

"powers to apply or disapply education legislation"

until they have been consulted on with

"headteachers, governors, academies, and pupils".

I will pick up the right reverend Prelate the Bishop of Bristol's point, which could be a useful addition, so I thank her for raising it with us. Of course, consultation is the key to good governance and, if there is a sense of imposition from a distant central source, then legislation will never be as good as it could be or implemented in the way it should be.

Furthermore, our Amendment 35 removes the Secretary of State's power to apply legislation

"relating to further education colleges to academies"

by removing "further education" from "the definition of 'educational institution'". As it stands, these clauses signal a further power grab, empowering a future Secretary of State unilaterally to remove religious designation from a faith school, as noted in the right reverend Prelate the Bishop of Durham's Amendment 33.

4.15 pm

In line with previous approaches, the Bill is silent on what education legislation they would like academies to be subject to. Despite the Minister's attempts to reassure the House, we continue to be unclear why the Secretary of State is taking these powers. If the Government listed which Acts they are considering, we would be able to have a debate. That is why so much of what we are hearing has a déjà vu aspect to it. We are struggling to find areas of discussion and scrutiny because there is so little evidence of this in this wafer-thin Bill. Where is the legislation, for example, on teachers' pay, which does not currently apply to academies? National terms and conditions should be a prerequisite for the profession, so that teachers can once again have the security of moving between schools and sectors without a serious dilution of rights, as noted by my noble friend Lady Blower in last week's Committee debate. As it stands, these powers are not

justified and should be amended. I will say no more because, as the noble Lord, Lord Addington, noted, there is very little else to say.

Baroness Bennett of Manor Castle (GP): My Lords, I am slightly confused about the order of this but I thought it was really important that we heard the noble Baroness, Lady Wilcox, introduce the amendments. I want very briefly to speak for the Green group and to agree entirely with the noble Lord, Lord Addington, on the desire to throw all these provisions out. I also very much want to commend the noble Baronesses, Lady Chapman and Lady Wilcox, for attempting to clarify and improve the Bill. In particular, Amendment 34A is terribly important.

In our debate last week, I highlighted the amazing lack of the words "parents", "pupils" and "communities" in the Bill. I really commend the noble Baronesses for putting consultation with pupils in here—a principle that needs to run right through the Bill. We do not want the Secretary of State to have the power to make these decisions but if that were by some miracle to stay in the Bill, it is really important that we have consultation measures. The fact that pupils are included in this consultation is a really good principle to build into the Bill.

Lord Baker of Dorking (Con): My Lords, I think Amendment 35 allows us to discuss Clause 3 standing part of the Bill, and I would like to say something about that. This is an important Bill.

Baroness Penn (Con): My Lords, Clause 3 stand part was debated on our first day of Committee.

Lord Baker of Dorking (Con): I do not believe that Clause 3 was passed on the first day—

Baroness Penn (Con): My Lords, Clause 3 was not passed. It is possible for the noble Lord to de-group and discuss Clause 3 stand part, but it is not part of the group of amendments we are discussing currently.

Lord Baker of Dorking (Con): My Lords—

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I wonder whether I might assist the noble Lord and the Committee. I just want to make it clear, purely procedurally, that Clause 3 stand part will be put as a Question once this group of amendments has been discussed. It has not yet been put as a Question; however, it was discussed, as the noble Baroness, Lady Penn, just said, as part of an earlier group on the first day in Committee.

Lord Baker of Dorking (Con): I thought that in fact, with great respect, in the earlier debate we debated Clauses 1 and 4, which are no longer there. Amendment 35 states specifically that:

"The above-named Lords give notice of their intention to oppose the Question that Clause 3 stand part of the Bill."

Baroness Penn (Con): My Lords, it may be the Marshalled List that is causing confusion. We have Amendment 35 on the Marshalled List, which we are discussing in this group, and then we reach Clause 3 stand part, which is separate to that. As I said, we debated it in a group on the previous day but as the Deputy Chairman said, we have not put the Question on that yet. I believe we will come to that after this group.

Lord Addington (LD): My Lords, it might be helpful to point out that my amendment was inspired by the Delegated Powers and Regulatory Reform Committee report, which talks about Clause 3 and its relevance.

Baroness Barran (Con): My Lords, I shall now speak to the group of amendments relating to Clause 3, ahead of the question being put on whether Clause 3 stands part of the Bill.

First, I shall speak to Amendment 31. In response to the noble Lord, Lord Addington, I begin by reassuring the Committee again that I have fully heard the concerns that have been expressed about the Henry VIII power conferred on the Secretary of State by Clause 3, including those, importantly, from the Delegated Powers and Regulatory Reform Committee. We are carefully reflecting on what noble Lords have said today on the matter, as well as on the report from the committee. Any use of the power in Clause 3 would be exercised by the affirmative procedure and, as we will cover in relation to Amendment 34, the Government will consult on any new regulations.

Academy trusts are already subject to many of the same requirements as maintained schools, set out in numerous pieces of primary legislation. We want to consolidate these requirements on trusts as much as possible into the academy standards regulations. This will be a gradual process, and we want to work with trusts on the implementation of the standards at a pace which is right for them. As we move towards a school system in which all schools are academies within strong trusts, we want to ensure that the legal framework is fit for purpose, including by removing requirements should they prove excessively onerous or unnecessary. Clause 3 enables the Secretary of State to make these adjustments, subject to the affirmative procedure, and to be responsive to the changing needs of the system.

Viscount Eccles (Con): I do not know whether it is the Committee's problem, but it is my problem, as I do not understand how this enormous tidying-up process, if it should be called that, has any connection with improving the education of our children. We need some fundamental explanation as to what is perhaps marginally wrong, if I have heard right, and of why this has any real prospect of making any real improvement.

Baroness Barran (Con): My noble friend is right—the thing we should principally be concerned about is improving the education of our children. I will be more than happy to meet my noble friend or any other noble Lord who wants to go through some more of the work that we are doing in relation to that, as was set out initially in the schools White Paper. As I said in the introduction to one of the groups on day one of Committee, this Bill needs to be seen in the context of the wider work that the department is doing and that Ministers are leading in relation to a commitment to improving outcomes for our children, which my noble friend absolutely rightly says should be pre-eminent.

Baroness Morris of Yardley (Lab): The Minister said at the start of her summing up—and it was about the 20th time she had said it—that she had heard the concerns of Members, would reflect on them and would come back. To be honest, unless she gives us some indication as to when she is going to come back and what she is going to say, we are going to have this at every turn. The noble Viscount who has just spoken is right. My noble friend asked about this with the first amendment—and, since the statement at the end of the first day in Committee, I am sure that she has reflected on the views of the House. What conclusions did she come to? Is she able to tell us now? If not, when will she be able to tell us? Then we could perhaps use the time available to us much more constructively.

Baroness Barran (Con): Tempting as it is to take power into my hands and give the noble Baroness the answer straightaway, she knows very well that this is something we need to agree more broadly within the department. As soon as that is done, of course I look forward—that is an understatement—to updating the House.

Baroness Wilcox of Newport (Lab): Before the Minister sits down, I just ask a simple question: when?

Baroness Barran (Con): I must explain to the Committee that I am not able to give a firm date on that today, but as soon as I am able to, I will update the House.

Baroness Blower (Lab): In the debate last week, I was delighted to commend the wisdom and clarity of the noble Viscount, Lord Eccles. If it is impossible for the Minister to say anything more about how this process is going to proceed, she may find herself with requests for any number of meetings with the noble Viscount, but also with any number of people from these Benches, because how we are proceeding does not really seem to be comprehensible or explicable. If we are actually interested in improving things for children and young people through the education system, there is something different we should be doing.

Baroness Barran (Con): I apologise to the noble Baroness. I do not think there is much I can add beyond what I have already said, which is to underline that as soon as I can clarify further, I will.

Turning to Amendment 33, I thank the right reverend Prelate the Bishop of Bristol for moving this amendment on behalf of the right reverend Prelate the Bishop of Durham. As she knows, the Government are a strong supporter of schools provided by the Church of England and by other religious bodies. We believe strongly that they bring great richness and diversity to our school system. That is why we have included measures in the Bill to ensure that statutory protections are in place for academy schools with a religious character, to ensure that their unique powers and freedoms are appropriately safeguarded. The power to designate a school with a religious character is already enshrined in existing legislation. I give a clear commitment that the Government will not use the powers in Clause 3 to affect the designation of academy schools with a religious character.

I appreciate that the right revered Prelate's concern extends beyond the intentions and commitments of this Government. However, we are committed to ensuring that schools with a religious character remain an important element of our school system in the future. I offer my reassurance that we will give further consideration to ensuring that the powers in Clause 3 could not be used to undermine this.

On Amendment 34A, in the name of the noble Baroness, Lady Wilcox, I am willing to make a commitment on the Floor of the House to your Lordships that the Government will always undertake a full consultation with representatives from the sector prior to any regulations being laid which exercise the power in Clause 3. Those regulations will also be subject to the affirmative procedure.

On Amendment 35, in the names of the noble Baronesses, Lady Chapman and Lady Wilcox, by removing further education institutions from the scope of this power, we would lose the ability to make these adjustments in relation to 16 to 19 academies, with the possibility that we could introduce complexity to the regulatory framework rather than streamlining it. On that basis, I ask the noble Lord to withdraw his amendment and other noble Lords not to press theirs.

Lord Addington (LD): My Lords, really, this is something of a hangover from day one—something I think the noble Baroness, understandably, would best like forgotten. I am still not clear why, when Clause 3 has been so heavily condemned, we are not saying, "Let's get rid of it and try something else." The undertaking the Minister has just given about consultation is welcome, but we should not need it, because we should know what we are getting into: it should have been discussed in Parliament, in detail, going through the full process. Also, an undertaking to consult comes back to the old point: I am sure this Minister will stand by it—she is an honourable person, as she has shown in her conduct over this—but we do not know who is coming next; we do not know who is giving the orders next.

4.30 pm

I refer noble Lords to my earlier comments that it is not this Secretary of State but the nasty one round the corner. This is why we have things in legislation that we can discuss and refer back to. Clause 3 in this Bill removes that safeguard and means that we do not actually know what we are doing. It also gives an awful lot of power to anybody who takes on that position.

If we are to continue in this way, the sittings of this House and indeed Parliament as a whole are going to get a lot shorter, because there will not be much to do. If it is all going to be by regulation, which they do not want us to vote against—I know I am repeating myself, but why not?—what else can we do? There will be a series of negative Motions, as I think the noble Lord, Lord Hunt, pointed out, to which the Government will say, "Oh well, never mind" and

move on. We have got to get something more solid down here about what the Government's intentions are. At the moment, we are in the position of not knowing whether we disagree with them or not. We suspect it, but we do not know, and we do not know what is coming next time.

When the Minister goes back to her department—and I think the noble Baroness, Lady Penn, going back to the Chief Whip may be even more applicable here—will she make sure that they know just how unsatisfactory we are finding this? Otherwise, we are just going to have a bit of a carve-up on Report, and then we will be accused of being unconstitutional, and then we can chase each other round the Houses, and then everybody remembers that the Bill is a Lords starter. I hope, if we are not going to be wasting our time, that we actually do have something solid that removes Clauses 1 and 3 from the Bill and replaces them with something sensible.

Having said that, observing the convention that we do not deal with these things now but on Report, I beg leave to withdraw the amendment.

Amendment 31 withdrawn.

Amendments 32 to 35 not moved.

Debate on whether Clause 3 should stand part of the Bill.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I remind the Committee that this Question was debated in the first group of amendments on day 1 in Committee. The Question is that Clause 3 stand part of the Bill.

Lord Baker of Dorking (Con): May I speak to this?

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): You may.

Lord Baker of Dorking (Con): I was reminded earlier by the Minister that there was a debate on Clause 3—I remember it very vividly—on the previous day. In fact, that was when the noble and learned Lord, Lord Judge, who is the Convenor of the Cross Benches, said it was outrageous and should be deleted from the Bill, but I do not remember an actual Motion being mentioned on Clause 3. I do not see Clause 3 mentioned in any of the amendments from 1 to 35. Clauses 1 and 2 were, and Clauses 1 and 4 were dealt with on Wednesday.

Lord Hunt of Kings Heath (Lab): My Lords, with the greatest respect to the noble Lord—I very much agree with the thrust of what he has said—I actually did have a Clause 3 stand part notice, to which the noble Lord signed his name, so I think we did debate it. Our problem is that we want to debate it again, and when we come to the fifth group, we shall want to debate it again and again and again.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): Does the noble Lord wish to continue to discuss Clause 3 stand part?

Lord Baker of Dorking (Con): I would like to. Clauses 1 and 3 are crucial parts of the Bill, and Clause 3 extends the power of the Secretary of State quite considerably. If I could draw attention to Clause 3, this allows the Secretary of State to apply or disapply education legislation almost at will, because the whole relationship between the Secretary of State and the school has now been changed. It has moved from a contract relationship, which we now have, where both sides can argue—and eventually, if necessary, go to law—to one of statutory imposition by the Secretary of State. That is why Clause 3 is very central; it is as important as Clause 1. That is why the noble and learned Lord on the Cross Benches spoke against it.

Obviously, I will not divide the House in Committee, but if the Government still come back with these sorts of clauses on Report—which I think they hope to take in July—my noble friends Lord Agnew and Lord Nash and I will table all these amendments again and will seek the opinion of the House on them, because this is essentially a constitutional Bill. That is what this comes down to. The power of the Secretary of State is being enhanced in a way that has not happened since 1870, and that has not been done with consultation or any sort of examination.

I am amazed, with the success that my noble friends Lord Agnew and Lord Nash had in dealing with failing schools, that I was at the receiving end—I had to defend my UTCs and all the rest of it, so I saw how well they worked. Actually, they were quite reasonable people to deal with. Some things we agreed on, some we did not, but at least I had a legal status. In fact, the Government changed their view only when I threatened them with a judicial review, because my trust could afford to pay for that. Then they changed their view, and I think as a matter of revenge the department has said, "Well, we'll now take such powers that we'll be able to use them willy-nilly, and make them completely our powers and not resistant to judicial review or anything." This was only because my charity could afford go to judicial review, whereas an individual school that is threatened with closure under this Bill would not have the ability to do that, nor would a governing body take the Secretary of State to judicial review. This is really a sort of revenge act by the department for losing out against me in order to give it quite incredible statutory powers. I really do not think the House should accept this, but, of course, I will not divide the House today.

Lord Adonis (Lab): Since the noble Lord has raised the issue of Clause 3 standing part of the Bill, I wonder whether I might add a few remarks in the form of a question to the Minister. Unusually, the debates on this Bill in your Lordships' House appear to be attracting the attention of the media, which very rarely happens, because people have suddenly noticed that these are extremely wide-ranging powers that have the potential to transform the whole educational landscape in England. One of the commentaries I read said that the person most frequently mentioned in the debates on this Bill so far has been Henry VIII. He has been much more frequently mentioned than the Secretary of State or any of us who are former Ministers, and so he appears to have been the principal author of this Bill. I think the remarks that the noble and learned Lord, Lord Judge, made last week are what the media are latching on to.

[Lord Adonis]

In trying to understand the Bill, I have a question for the Minister. My understanding of Clause 3(1) is that it would give the Government the power to override any existing admissions arrangements for an academy by ministerial direction. This is quite significant, because, as those of us who have laboured in this territory know, there are 101 varieties of non-selective admissions, and in respect of academies there are different forms of banding and inner and outer catchment areas—all these things—which are hugely important to the relationship between the school and its community which are usually brokered. I know that some people think that academies operate in a vacuum, but they do not; these arrangements have generally been very intensely negotiated, including with local authorities, to see that there is fairness between schools and so on.

My reading of this clause is that it will give the Government the power to override all the funding agreements in respect of admissions, in a way that may be very ill-thought through, just because a particular Minister or Secretary of State takes against one form of banding and wants a different form of non-selective admissions. This would completely subvert arrangements which, for very good reason, have been entered into between sponsors, multi-academy trusts and previous Ministers and would effectively override the whole contractual basis on which sponsors have taken responsibility for the management of schools. That is my reading of Clause 3(1). I know that there are ongoing discussions, which I have not been party to, but could the Minister confirm that this would give the Government the power to override any existing admissions arrangements set out in a funding agreement? If that is the case, I think Henry VIII has made a dramatic reappearance in the affairs of the Committee this afternoon.

Baroness Barran (Con): I thank your Lordships. I will keep my remarks extremely brief, because we covered many of the points raised this afternoon when we debated this clause on the first day of Committee. If I may, I will write to the noble Lord on his question regarding admissions arrangements and set that out in detail. I ask my noble friend if he will consider withdrawing his remarks about the department taking revenge. It does not take revenge on anybody or anything. It works to serve Ministers to the best of their ability.

Clause 3 agreed.

Schedule 1: Application of maintained school legislation to Academies

Amendment 35A

Moved by ***Lord Knight of Weymouth***

35A: Schedule 1, page 88, line 28, at end insert—

"33A In section 88(1)(a) of the School Standards and Framework Act 1998, after "in relation to" insert "an Academy or"."

Member's explanatory statement

This is to make academies subject to the guidance from local authorities on admissions.

Lord Knight of Weymouth (Lab): My Lords, Schedule 1 applies the maintained school legislation to academies, as set out in the controversial Clause 3 that we have just been discussing. My amendment seeks to make academies subject to guidance from local authorities on admissions, so that they are the same as maintained schools. Here I probably part company with some of my new allies on the Benches opposite in my vision for academies, but so be it.

The starting point for me in thinking about this is my vision for local authorities in respect of the provision of education and schooling. I see the fundamental role of local authorities as safeguarding children's interests in the area in which they have jurisdiction, rather than the interests of the schools that they might run. If we are going to move to every school becoming part of a strong multi-academy trust, as is the direction of travel and the Government's intent, then they will not be operating schools. It is important to avoid that conflict of interest.

When my noble friend Lord Adonis first began the academies programme, as I recall, the arguments I was making in his defence in the other place concerned the notion that, in some cases, there are local authorities which are operating—and have been operating for generations—schools that are failing. There was a fundamental problem for them in calling out their own failure, which is part of why I am very nervous about the direction of travel, with the Secretary of State running all the schools in the country. The Secretary of State might ultimately become nervous about calling out the failures of all the schools they are responsible for.

If the local authority is to become the guardian of the interests of the children in its area, it is right that it should become accountable for fair local admissions for parents. In an environment where every school is an academy, every academy school should be subject to guidance from the local authority on admissions. My noble friend Lord Adonis just talked about the 101 varieties of admission arrangements. Nerdy people like me might understand them, but this is a real problem for parents, particularly parents of year 6 children.

Year 6 begins with parents starting to get their head around what school their child will go into year 7 at. They then have to grapple with banded admissions over here, some kind of attainment test over there, schools that are not that popular where you can get in if you just put them on the list, and schools that are popular and that attempt some kind of fair admissions. Then there are schools that have some faith-based admissions, and there is then the question of whether you have to go to church, the synagogue, the temple or whatever on a regular basis to be allowed into those schools; in some cases you might and in some you might not. It is deeply confusing for parents. I like the idea that they would hold their local council representatives responsible for making that process somewhat easier. I see that my noble friend wants to say something.

Lord Grocott (Lab): I am itching to say something, because what I am hearing my noble friend describe is that the best system we can envisage for the management of our schools is for them to be locally managed with a

common admission policy across a group of schools in an area. That is the system that has been slowly dismantled, it has to be said, by the development of academies.

4.45 pm

Lord Knight of Weymouth (Lab): That is where I part company with my noble friend, in that I am relatively comfortable with others managing the schools, but with that management being accountable to local authorities and part of that accountability being managing the admissions process for all the schools in their area.

Another problem I see in a minority of cases of those schools that are their own admissions authority is that they are trying to find ways to choose pupils: rather than parents choosing schools, it is schools choosing parents. That is strongly related to accountability. Accountability for public funding and for delivery of school services is really important and I do not want to dilute that in any way, but the danger is that we end up with schools trying to ensure that a standardised pupil comes in who their whole curriculum and way of operating fits, so that they have the best chance of success.

In that respect, I commend to your Lordships a book by Todd Rose, an academic at Harvard, called *The End of Average*, which begins with a great story of the US Air Force when it first introduced fast jets. They kept crashing and the air force did not understand why. It worked out that the reason was that they were all designed for a standard dimension of pilot, so the controls were in slightly awkward places and the split-second timing required for fast jets meant that a lot of them crashed. That is why we now have adjustable seats in our cars, so that we can adjust to the different dimensions of people. The danger I see is that, thanks to our system of accountability, we have that problem of standardisation, with schools trying to admit pupils of standard dimensions, so to speak.

I point your Lordships to a problem I have seen in the London Borough of Lambeth, where a multi-academy trust, the board of which I chair, has a secondary school academy called City Heights. We were approached earlier in this school year about reducing the pupil allocated number for City Heights. It was not a unilateral conversation: the local authority approached all the secondary schools in the area, because the predicted demand for school places was coming down and it needed to reduce the provision of school places across the borough. All the secondary schools agreed verbally, informally, that they would reduce their PAN proportionately to accommodate that reduction. What happened when, finally, the proposals were formalised and agreed? Two of those schools, which happen to be two of the more popular schools—two academy schools—increased their PAN so that they could get more money in and continue their story of success, but at the expense of all the other schools which had played ball and tried to do the right thing with the local authority. That kind of practice needs to be sorted out, and this is an opportunity to do so.

We see some problems about fair in-year access, where pupils need to get admitted into schools in-year. We see some social selection by schools that are their own admissions authorities: things such as very subtle boundary changes, where it is hard to spot what they have done, but they happen to have cut out a social housing estate or done something else that just makes it a little easier to select the standard pupil that they are designed for. There might be elaborate religious criteria, as I mentioned. There might be talk in their prospectus of these great school trips that everyone will be expected to contribute a load of money to. That is part of the social selection that can be the practice of admissions authorities that bothers me.

This amendment would lead to fairer admissions, provide more local compatibility with the 101 varieties of admissions arrangements going on within a local authority area, particularly primary feeders, and restore confidence among parents in our admission system where that small minority of schools which abuse it and try to choose parents are undermining that confidence and we need to put it right.

This group has a number of other amendments in it; I will not attempt to speak to them all. I am supportive of my noble friend Lord Hunt's amendment on grammar schools. I will not anticipate his comments but, when thinking about what he might say, I was reminded of a wonderful passage in an interesting, really great book written by Tim Brighouse and Mick Waters, *About Our Schools*—it is a huge tome of a thing but I commend it to your Lordships—about some of the early private hospitals. They had criteria around what patients they would select, in essence, to make their job easier: if you could admit only patients who were not that sick, you would be a really successful hospital. Similarly, if you admit only pupils who are already pretty bright, your job is really straightforward, but it leaves the rest of the schools with a real problem that you then have pick up with the majority.

Lord Hunt of Kings Heath (Lab): My Lords, the Clause 28 stand part notice is in my name. Because it is about grammar schools, I think it is right to have it in this group, in talking about admissions policies.

I very much empathised with my noble friend Lord Knight when he spoke about the traumas of year 6 for not only the children who have to take SATs but the parents who have to choose—or attempt to choose—a secondary school for their children. It was also interesting to hear about the parallel between private hospitals choosing their patients and schools choosing their pupils. Often, the difference between health and education is that, in the main, our best hospitals are based in urban areas, with some of the poorest people, serving them. In a sense, I am not sure that education has ever quite been able to pull off the support that the health service has often given to the poorest and most deprived people, imperfect though that may be.

Clause 28 is concerned with grammar schools and academies but it has prompted me to ask the Minister a wider question: what is the Government's general policy in relation to grammar schools? We know that, in 2016, the then Prime Minister, Theresa May, said that she wanted to allow for an expansion in grammar schools. It was in the 2017 manifesto but nothing appeared in the Queen's Speech; more recently, the Government have said that they do not want to see an expansion in the grammar school system. However,

[Lord Hunt of Kings Heath]
rumours and briefings often come out saying that, actually, the Government would like to see a change in policy.

We have already seen a number of so-called satellite grammar schools open or get under way. Basically, this is a back-door way of expanding the grammar school system. Satellite schools bear the same name as the host grammar school. They are often located several miles away. Eventually, of course, it will lead to two separate schools being established. We know that the county council in Kent seems determined to expand its selective schools despite all the evidence showing that the Kent system is a poor one in terms of overall outcomes for the whole of the student population. Grammar schools in Kent do nothing more than attain the results that you would expect if you selected for high attainment—hence my noble friend Lord Knight's comment about schools choosing their pupils.

As Comprehensive Future has stated:

"What is there to stop any grammar school from creating a whole chain of satellites stretching from Northumberland to Land's End?"

This is not an academic argument because there have been suggestions that the Bill could be amended by Conservative MPs when it goes to the Commons. The *Evening Standard* has reported that the Government refused to rule out lifting the current ban on new grammar schools, while the *Telegraph* has reported that the Government are open to expanding academic selection. Indeed, Chris Philp MP was quoted as referring to his plans to amend the Schools Bill to support new grammars. Can the Minister clarify the Government's exact position?

I am afraid that I am old enough to have experienced the wretched old grammar/secondary modern system, and the 11-plus, which condemned so many children to be classified as failures at the age of 11 and to be sent to schools with fewer resources and less ambition. That is why the move to a comprehensive system was so popular. It is interesting that the movement started in some of the shire counties. I lived in Oxford, and Oxfordshire and Leicestershire were determined to get rid of grammar schools in the 1950s and 1960s because they did not want all their children to be branded as failures at the age of 11. In 1953 and 1957, Leicestershire started to experiment with comprehensive education, expanding it throughout the whole county in 1969. Oxfordshire started in 1955 and 1957, subsequently expanding throughout the whole county as well.

Why did parents support this? It is very simple. Those arguing for grammar schools present only the image of children passing the 11-plus and going to grammar schools, and their subsequent achievements. They do not refer to the large number of children—around 70% in Kent—who are told aged 11 that they are failures and then attend underresourced secondary moderns. There is plenty of research to show that in those areas with a grammar school system, achievement is lower. Look no further than Kent and Buckinghamshire. Grammar school systems continually and consistently undermine educational achievement. According to the DfE, in 2019, the GCSE pass rate was 11 points below the national average in Kent and five points below average in Buckinghamshire.

Claims that grammar schools give a foot up the ladder for poorer children have, again, been debunked comprehensively. Research by the Institute for Fiscal Studies shows that in the remaining grammar schools, the percentage of pupils from poor backgrounds is lower than ever: 2.7% are entitled to free meals, against 16% nationally. Once the pupil intake of grammar schools is taken into account, based on factors such as chronic poverty, ethnicity, home language, special educational needs and age in year group, Durham University analysis shows that grammar schools are no more or less effective than other schools.

Finally, the poorest children in Kent and Medway have a less than 10% chance of getting into grammar schools, while for children in the very richest neighbourhoods, it is over 50%—schools choosing their own pupils. I want the Minister to say that there is no intention of changing the policy with any amendments that any Conservative MP might seek to move in the Commons, although whether the Bill reaches the Commons is a question that we are all interested in. Assuming that it does eventually reach the Commons, I hope that the Government will say today that they will have no truck with that.

Lord Shipley (LD): My Lords, my name is attached to Amendments 78 and, with my noble friend Lord Storey, Amendment 162.

Amendment 78 deals with the issue that we were discussing earlier about the provision of school places by academies. It says that the Secretary of State must, within six months of the Act being passed, make regulations which provide local authorities in England with the power to direct academies within their area to admit students or expand school places. An example of why that could be important would be a new housing development of some significance which alters the balance of pupil numbers in a particular geographical area. Broadly speaking, our amendment is very similar to that of the noble Lord, Lord Knight. He uses "guidance"; we use "direction". It is also similar to Amendment 160, which will be spoken to shortly.

The problem is simply that councils have a statutory duty to ensure there is a local school place for every child who needs one, but they currently do not have the power to direct academy trusts to expand school places or to admit pupils. This amendment would introduce a new backstop power for local authorities to direct trusts to admit children as a safety net.

5 pm

I understand that the Government have committed to consult on a new statutory framework for pupil movement, which might introduce a new backstop power for local authorities to direct trusts to admit children as that final safety net, with a right for the trust to appeal to the schools adjudicator. I seek the Minister's confirmation that that is what the Government are planning. However, councils' ability to meet local demand will be increasingly undermined as more schools convert from local authority maintained schools to academies, so we need to ensure that the backstop power is introduced as soon as possible to give local authorities the power to deliver their duty in school place planning. I regard these as essential powers for

local authorities. Parents and guardians would be incredibly surprised if they discovered that local authorities did not have those powers, which, of course, are currently limited, as I explained.

Briefly, Amendment 162 takes us wider than just the admissions function. It prescribes a list of functions that a local authority should be responsible for managing for all state-funded schools in the authority's area. The first is what we have just been talking about: that every child "has a school place". In addition, we need to co-ordinate

"the provision of education to children who are at risk of exclusion from school"

and

"the provision of support to children with special educational needs or disabilities".

We also need a local authority

"to act as the admissions authority for all state-funded schools in the local authority area, including by managing in-year admissions … to manage the appeals process against individual admissions decisions … to prevent pupils from being removed from the pupil roll of a school unlawfully … to monitor the performance of schools; and … to monitor how schools engage with their local community."

That all seems common sense, and it is what the general public would expect for their local area.

There are two overriding reasons why it is essential to define local authority powers and responsibilities. Local authorities are, after all, the locally elected democratic body to which parents and the public will turn if there are difficulties, but secondly, they are the place where the co-ordination and integration of provision in schools can be undertaken. We will talk later about multi-academy trusts and whether they can be geographically widely spread across the country, with all the problems we can foresee if that is a developing trend. With these two amendments, I seek the Minister's assurances that the role of local authorities will be properly embedded in the schools system.

Lord Lucas (Con): My Lords, I too have an amendment in this group, but first, in response to the noble Lord, Lord Knight, I very much share his vision of taking local authorities to the point where they are advocates for parents. If we look back to the old days, that role was missing; they were advocates for schools, not parents. I remember local authorities that would pull a bad teacher out of a school and deliberately put him in another one because they were there to look after the teachers, not the parents. The logic of the direction we are going in is to have local authorities as the parents' advocate and therefore, as the noble Lord, Lord Shipley, said, to have some power in this—to have the ability to really shift rocks where they are in the way of parents.

My Amendment 58A is, like this grouping, an odd collection of bits and pieces. We have largely dealt with proposed new subsection 1 in earlier debates, but I have a real problem with the way academies handle admissions data at the moment. What used to be a coherent local authority booklet on how you could get into one school or another has now been reduced to a collection of "For information, apply to school" notices. There is no coherence. It gets really difficult and time consuming for a parent to get to understand what schools they might have access to, and that is really destructive to the power of parental choice and the point of having lots of different schools and admissions systems in the first place.

You absolutely ought to empower parents to make the best choice for their child. That ought to be the centre of the admissions system; it is not. I have failed to shift the DfE on this on many occasions. It is ridiculous. All schools have to do is, on a reasonable timescale, provide the local authority with their admissions data in a standard format—it has to exist in that format anyway, because there is a common system of handling admissions—and then allow the local authority to publish it.

The Bill is an opportunity to bring some sense back into the admissions data system and to remember why it is there, the point of parents choosing schools and the good that we used to argue came from doing that, rather than allowing this continued pointless, profitless inertia in the DfE to get in the way of parents' interests. I appeal to my noble friend to pick up on this issue again but to do so from the point of view of doing best by children and parents.

Academies also need to get better at providing standardised information to parents, so that it gets easy for parents to compare one school with another. Destinations of children, examination results and the level of literacy and numeracy in the school are elements which it ought to be possible for a parent to look at in detail, beyond the Government's performance tables. It ought to be easy. You do not need to make it easy for the sharp-elbowed middle classes; they do it anyway. They have the time and do the work. We want to make it easy for every parent, and that requires not asking parents to do the work, because a lot of parents do not have the time to get to the point where they really understand what is going on. We have to provide things in a standard way, so it is really important that we get the data and that there is an up-to-date Ofsted report—and ideally one for the multi-academy trust, where there is one, too—because that sort of data is easily comparable and digestible by any parent who is really putting their mind to it, which should be the point of those reports.

In a system where we have a lot of academies rather than local authority schools, I think we need to come back to a system that really centres its thinking on parents, how they make the choices and how they negotiate their relationships with schools, and to reinvent the local authority as a strong friend of parents in that context.

Lord Grocott (Lab): My Lords, I welcome the fact that we are discussing admissions policy. It is not the principal object of the comments that I want to make but it is certainly at the heart of the unfairness of the system that operates in many parts of the country. I was shocked at the number of different admissions systems referred to by my noble friend Lord Adonis. As soon as you depart—as, I am afraid, we did quite a while ago now—from a common admissions system for the whole of a local authority area, you depart from a situation whereby there could be no question of schools poaching pupils by varying the system. The only way to get fairness across the system, with schools working together co-operatively and the whole community being served, is through a common admissions system, not sundry random ones.

[Lord Grocott]

We have all heard comments—not just anecdotal ones—about the questions sometimes asked when selecting pupils for schools. I have even heard questions asked about whether there is a suitable room at home in which a pupil can conduct their homework—an outrageous kind of selection policy—or whether, at 11, it can be guaranteed that the pupil will stay on until the sixth form, and other selective admissions questions.

Anyway, that is not my main purpose. What I really want to say in connection with this group of amendments is, essentially, "hear, hear" to what my noble friend Lord Hunt said. I find it very depressing that, after so many years, we are still debating the merits of grammar schools. I much prefer to couch the debate not in relation to those merits but to the merits of saying to an 11 year-old—indeed to the majority of 11 year-olds in a particular area—"You have failed." We hear lots about the alleged advantages of going to a grammar school, but I have not read many books—I would like to have references to them if they exist—on the wonders of failing the 11-plus and the advantages that come from it.

For most people, if not everyone, of my generation and probably a good few who are younger, there was no option; we all took the 11-plus. Over half a century ago in my case, in an average road in an average part of Britain such as I lived in, we all played football and cricket together and then, some of us had passed and some had failed. To this day, I do not know why; it was random. They were the same people who played football, who I went to the pub with when I was a bit older, and who I played with in a rock group—that was a long time ago—about the same time as the Beatles, although they were more successful.

Some of us had passed and some had failed. If anyone thinks, well, they should just get over it, I can tell the Committee that, 50 years on, many people who failed the 11-plus never really got over it. It was a life-changing circumstance, a life-changing occurrence at the age of 11, which I find indefensible. It has got better in many ways as educationalists of all parties have got rid of grammar schools in many areas but, in areas where it persists, it has, if anything, got worse.

At least when I took the 11-plus there was no intensive coaching of 10 and 11-year-olds to try to get us through, but the nightmare reported by parents in Kent is that this is now the prerequisite; that is what you have to do. I do not want to get too anecdotal about this but I even know of parents who, due to a promotion, wanted to move their family to Kent but were initially dissuaded from doing so—they did it eventually—because they did not want to put their seven, eight or nine year-olds, as they were at the time, through the trauma of having to take the 11-plus. Again, in a family near me with four children, the three eldest passed and the fourth failed; we can just imagine what it does to a family when that kind of thing happens.

5.15 pm

I just find it depressing that we even need to discuss this, but I ask the same question that my noble friend did. If the Minister can reassure us that there is no intention to expand and develop the grammar school system, which for so long has been demonstrated to be unsatisfactory and unfair, then that is a status quo that I do not find acceptable but is at least better than the situation getting worse. Really, I blame all parties, including mine, for the fact that this iniquitous system was not removed from our educational structure a long time ago. It would be wonderful, although this will not happen, if the Minister were able to stand up and say that it was a bad system and that the Government were keen to see it removed.

The Lord Bishop of Bristol: My Lords, I shall speak against Amendment 35A in the name of the noble Lord, Lord Knight. The amendment—for obvious reasons, given what he has said today—does not account for voluntary, aided and foundation schools. This is not a recent provision; they have always acted as their own admission authorities as maintained schools. As set out in the School Admissions Code, academies with a religious designation must also consult the diocese and the board of education and have regard to the advice of the diocese.

Baroness Morris of Yardley (Lab): My Lords, I support the thrust of the arguments from the noble Lords who have led this debate. I shall make one or two points that perhaps have not yet come out strongly. The freedom to set their own admissions arrangements was given to academies when they first started. To be honest, I think that was a huge mistake. In local areas, it caused terrible animosity between the academies and the other maintained schools. That is part of the rift and the bad feeling that exist in many communities. I do not know many schools that, in setting their own admissions criteria, have sought to prioritise the poorest and most challenging children, those who have been excluded from more schools than anyone else, those without supportive parents and those without a room to work in at home—that is not how choosing your own admissions criteria actually works.

This is not the schools' fault but, in terms of judging schools by how well they do academically, our whole system incentivises schools to have admissions criteria that get those children who are most likely to do well academically. If we were to change the accountability mechanisms so that we had as our most important accountability measure how much you can do for the poorest 5% of children in your city, we would have a different system, but that is not the way it runs.

However, I also blame schools. I was a teacher for 18 years. At the heart of it, I have always believed that the job of a professional teacher is to teach the children who end up in front of you on any given day—not to pick and choose; not to reject and throw away; not to say, "It's easier to teach you than you", but to do your best with the skills you have with the children in front of you. I taught in a school that was very challenging, and as a teacher the greatest rewards come from the progress you make with the children who are furthest behind when you start—but that is not the way the system works. There have been too many examples of academies that have used their ability to have their own admissions arrangements to select the children, or the parents, that will put them highest in the accountability stakes.

If you are a school that is undersubscribed, this argument does not matter to you. If you cannot get enough kids through the door for your published admissions number, then none of this matters. It matters only if you are a school that is oversubscribed, because only when it gets to oversubscription do the criteria for admissions come into effect. So think that through: if you are a school that is undersubscribed and not attracting children, so not getting the money, you have to take whoever no one else wants. Therefore, you do not improve, you do not get as many children, you do not get the money and again, you do not improve. That is the cycle that happens: undersubscribed schools do not attract children and therefore find it very difficult to improve.

Looking back, when the academies started under the Labour Government they were addressing the needs of those schools in the most challenging areas. In truth, what happened was that if you gave them a new building, a new head and a committed sponsor, they still did not have a cross-section of students coming through their doors. The idea at that stage, in giving them some power over admissions arrangements, was to try to get a better social mix. I can sort of see that, but it has gone way out of kilter with how it should be. In 2010, the minute the vision was that every school should become an academy, that just did not make sense.

I say to my noble friend Lord Hunt that where schools differ from hospitals is that who you treat in one hospital does not usually have an impact on the neighbouring hospital or another in the outer ring of the city. But schools are interrelated: who you choose to admit has an effect on every other school in your locality as it is an interrelated business, so it is very important that we do not have schools competing with each other in any geographical area for the bright kids. It has to work across such an area, for two reasons.

First, successful schools will always manage to attract children who, quite frankly, are easier to get the high results with—I would not say they are easier to teach. That has an effect on other schools and creates that bad feeling, so it is interrelated. The way you choose to admit pupils has an effect on other schools in your locality. I do not mind what they do, whether they band or have feeder schools, or measure it in yards from the school. What I do mind is that all schools in a local authority area ought to do the same. If you want a social mix, you can band right across the local authority area. I am not sure I like that but I do not have a problem with it because the behaviour of one school will not badly affect the performance of another.

In Birmingham, however, the minute you let over 400 schools set their own admissions arrangements there was chaos. It meant that they do not match each other. Some people of a faith with a child of a certain ability live in a place where they cannot get them into their local school because they do not live close enough, or into a faith school because they are not of the right faith. Neither does their child have the right ability to get selected in the banding arrangements, so where do they go? They go to the school that still has places left. That is not choice, but it happens in areas where there are a lot of schools that are allowed to have separate admission arrangements.

In supporting very much the amendments put forward, my plea is that it has to make sense across a geographical area. That means you cannot allow schools within the same area to have different admissions arrangements from other schools within it. I think the local authority should manage that, and that there is nothing wrong in all the schools getting together with a local authority, the parents and the primary schools to decide what those criteria should be within a national framework set down by government. But at some point they have to come to an agreement, because education is about a social as well as an academic experience. Your social experience is, in part, the children who are around you in your school—and that matters.

To be honest, that is why parents go to so much effort to exercise choice over where they want their child to go. It is not just for the academic experience but for the social experience—again, it is different with a hospital. That social experience will be right for all children, or as good as we can make it for them, only if we have some camaraderie within a geographical area so that people sit down with the same admissions arrangements. Having done that, teachers should do what they do: get on with teaching the children in front of them, not spending time on trying to get a different bunch of children in their classrooms because they think it gives them a better chance of success.

Baroness Berridge (Con): My Lords, I have a quick comment. I am grateful to the noble Lord, Lord Hunt, for his history lesson. During the period he mentioned, Rutland had the unfortunate experience of being part of Leicestershire. Had grammar schools still existed then, I can only look back and wonder what my own education—with no money for tutoring—would have been if the local school in the market town had been left as a secondary modern.

I have a specific question on the point made by the noble Lord, Lord Shipley, about the backstop power, which I was surprised to see included in, I think, the White Paper. What is the timing of that? At the moment, we know that some boroughs are under extraordinary pressure. When we nationally decide, for instance, to admit tens of thousands of families from Hong Kong—which is a great policy—we create extraordinary influxes of children into particular areas. I was just reading a *Manchester Evening News* article about the pressures Trafford Council is under at the moment, having had an extraordinary influx of Hong Kong Chinese families into the area. This has unusual ripples in Trafford, where there are grammar schools within the borough.

What would the timing of this be? At the moment, we have local authorities which cannot have any effect on admissions, particularly in those secondary schools that are academies. There is a proposal for a backstop power. This was also before we admitted tens of thousands of Ukrainian families into this country. If in the consultation it is decided not to have the backstop power—I recognise the view from those in the academies sector on local authorities' admission policies—is there not a case for some emergency power in a situation when tens of thousands of families come into an area? You need different admissions arrangements because you have to think about the cohesion of the area

[Baroness Berridge]
locally. If you have an influx of families, families who have lived in an area for many years find that they cannot get their children into the schools they want. There are also the unpredictable ripples of selection in an area. Can my noble friend the Minister outline the timing of this, because there are boroughs under pressure today?

Lord Addington (LD): My Lords, can the Minister clarify how special educational needs fits into this picture? I know the Government are currently looking at this area, but it is one that has led to the growth of legal firms to fight a way through the system. It is a failing system. I remind the Committee of my interests in special educational needs, and dyslexia in particular. With dyslexics, for instance, we are discovering that something like 80% of those on that spectrum are not identified within the school system. There is capacity here for a group that exists but we know is not even being spotted. Should we not have some capacity for dealing with the people with these sorts of problems, because we know they are going to come across? This also applies to all the spectrum of non-obvious conditions and hidden difficulties.

If the Minister cannot reply now, when we are looking at this, could she write to us about what the Government's thinking on this sector is at the moment? It is yet another element when it comes to choosing a school or a school's willingness to take on a pupil. We know there are people fighting this. As I said, if ever there was a definition of failure, it is that you need lawyers to get your rights. That has to be the classic case. Can the Minister give us an idea of the Government's thinking about admissions? If you cannot get into a school because it has set criteria, regardless of any formal test or examination, it will change how things work. It will be very interesting to hear what the Minister says about government thinking on this, because it is another factor that will affect this whole process.

Baroness Blower (Lab): My Lords, I will briefly enter this debate on Amendment 35A and the question of whether Clause 28 should stand part. There is a so-called route to school improvement that my noble friend Lady Morris mentioned: you change your intake. It is relatively quick and it is not painless at all for the school, but because of the way our systems work it can be done. But it is immoral and socially unjust. It is not the right way to do things.

The fact that, in a debate, we can even talk about "children whom no one else wants"—which I put in inverted commas, as my noble friend Lady Morris did—is frankly quite appalling, and that is why I am enthusiastic about this Clause 28 stand part debate. My noble friends Lords Hunt and Lord Grocott made excellent speeches, which I hope they will redeploy if we ever get a Second Reading of the Private Member's Bill I introduced this morning, because they made all the relevant points. I will not repeat them, except to say that the comprehensive principle is essentially about levelling up, because if you have schools choosing parents and children, you have selection for some and rejection for others. Frankly, no education system ought to reject significant numbers of children; they should just not do it.

5.30 pm

The fact is that, for large numbers of children—whether the areas in which they live have grammar schools or have all the difficulties outlined by my noble friend Lord Knight in terms of how the transfer between year 6 and year 7 works—year 6 is blighted for those children, their parents and carers and often, frankly, for their wider family members who are also worrying about where their niece, nephew or whoever else might end up. This is a year when these children, who are at the top of their primary school, ought to be developing their leadership skills in an age-appropriate way and ought to be looking to the next phase of their education and thinking about how exciting it is going to be. However, what they are actually doing is worrying: of course, they are worrying about SATs, but they are also worrying about where they are going to end up. The idea that some of them end up in one school and some end up in another—sometimes on the basis of admissions arrangements which are completely inexplicable to parents—is an absolutely terrible thing. If we really want education to work for all children and to be the service that can do the best by all children and young people, we certainly need to have reassurance from the Minister about no expansion of grammar schools, but we also need to ensure that we have genuinely fair admissions arrangements for all children, wherever they are.

Lord Triesman (Lab): My Lords, I rise to speak to Amendment 169. I express my gratitude to both Ministers on the Government Front Bench for a very helpful conversation. In the course of what they will say, they may well be able to allay some of the anxieties that I have expressed about the position of adopted children in the past. I greatly appreciated that, and want my appreciation recorded.

Amendment 169 is not about the big issues on admission which we have been discussing, although I completely associate myself—if I can pick just one of my noble colleagues—with my noble friend Lady Morris about geographic and local coherence in the arrangements we make. This amendment may appear to be a small and detailed matter by comparison, but I can assure the Committee that it is of the first importance to the small number of people who are impacted by it. Amendment 169 addresses the difference in educational access and assistance experienced by children adopted from care internationally, contrasted with those who are adopted from care in the United Kingdom, and the impact of these differences on their education and life prospects.

I declare an interest as the proud father of a quite exceptional adopted daughter who became part of our family on the third day of her life and is a great blessing. When I first spoke about this matter in the House, she was 10; she is now 13 and, until the discussion I had today, it appeared to me that nothing had moved forward in those three years of her life. However, I think that we will hear something rather more different today.

Adopted children face many challenges which are well documented. Many have special needs, some far greater than others, and, in many cases, because some spend years in care before finding a loving family

home, they experience many of these difficulties to a very great extent. The care they experience is of very mixed quality, especially abroad, and they carry that experience alongside the fundamental experience of loss of attachment throughout their lives. There are multiple studies in the leading peer-reviewed journal, *Adoption & Fostering*, which most Members of the House will feel establishes the facts beyond dispute. The impact on these children has also been largely experienced by children from particular countries: China, India, Thailand, Ethiopia, Guatemala and some from Russia. As your Lordships will easily detect, the impact of discrimination has therefore been far greater on children of colour.

The scheme of intercountry adoption is regulated by the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993. It was ratified by this country, among the then 24 EU members, and it says that all children adopted from care overseas should have the same rights as those in the receiving countries. There was nothing at all unwilling about our participation, and I note that David Cameron was in the forefront of making all kinds of adoption, here and abroad, easier. I hope that in the course of this discussion, we will hear about changes being made to the School Admissions Code, so that it will require local authorities and other admissions bodies to give the same top priority for pupil places to children adopted from state care in this country.

In case it is not well understood, although I suspect that it will be, I add that most of the children who are adopted from overseas, once they are adopted, come here and become United Kingdom citizens. The question on their parents' minds will be, "Why on earth would they have worse prospects than comparable United Kingdom citizens?". It is acknowledged that this would be discrimination between kids adopted here and overseas, and it would violate the 2010 Equality Act which states in terms that there must be no discrimination in school admissions based on country of origin.

The data is strong. While I will not delay the Committee for long, it is always worth trying to use an occasion like this to underpin why the changes are necessary. Some 94% of peer-reviewed papers show adoption to be correlated with lower academic attainment and related behaviour problems. This is clear among very young children and gets clearer with age—it is most acute among teenagers. Of the issues faced by children, trauma around attachment and anxiety about the loss of attachment are absolutely distinct and significant in all the research. Some 80% of adopted children express profound confusion and anxiety at school; two-thirds report that they are bullied. Neither they nor their parents feel, in an overwhelming proportion of cases, that they have had an equal chance. To underline the point as thoroughly as I can: adopted children are 20 times more likely to be excluded than their classmates. In the first three years of primary school, they are 16 times more likely to be excluded. None of these data are spurious; they all meet high levels of statistical significance and confidence.

I was very grateful to hear what the noble Lord, Lord Lucas, said a while ago about the role of parents, because I feel that I am talking about the same thing. It is inevitable in these circumstances—and I believe quite rightly—that parents have the central role. It is not a mainstream role for national or local government for obvious reasons, but I know first-hand that parents pay the closest attention to the attributes in the pool of school options in front of them. Parents are the ones who interact with the schools and local authority. I promise you that, as a parent, you come to know which schools are most attuned to social and emotional trauma issues, can sponsor and encourage executive functioning for your child, know about providing sensory diets to regulate behaviour and grasp the implications of neurological divergence. You form self-help groups of parents grappling with these issues where you learn a lot and enjoy a lot of support. You get to know—because you have to—where there is specific training and knowledge of attachment trauma and where the head teacher and specialist staff really know what they are doing, as distinct from knowing what they should be doing. It is the way in which you choose the mission-critical path for your child and it does not rely then on good luck in admissions. It is parent engagement and decision-making at its clearest.

Many schools are excellent at many other things, but they are not all necessarily excellent at everything and may not be excellent at this vital thing which I am describing, which could determine whether your child joins that absurdly high number of kids who get excluded or bullied, underachieve or are profoundly miserable. It matters not one whit to you whether your child was adopted from here or abroad.

I look forward to what the Minister will be able to say but, having commented on the Ministers in this House, I say that much of the running on this was made by Nick Gibb when he was Schools Minister. He told local authorities in December 2017 that they should include children adopted overseas for priority admission to schools identified by their parents to give the kids the best chance. Unfortunately, a significant number of local authorities would not take that advice from the Minister for Schools, which I think was very sad. But we are now in a position where we have a ministerial team that will, and I sincerely welcome that. I also welcome that there will be further thought on the pupil premium plus, which is also very significant for this group of students, and hope there will be further comment on that.

It turns out that we did not need, as I thought for some years we did, primary legislation to achieve the things that I think can be described by Ministers today. I welcome that for a very straightforward reason that is not all that much to do with personal experience, although of course that does bear on me. I welcome it because kids get one chance, and kids who have difficulties need all the help they can to take that chance. It is up to us to give it to them.

Lord Nash (Con): My Lords, I support the noble Lord, Lord Triesman, in this amendment. I have great respect for people who adopt. I personally support a wonderful organisation called Hope and Homes for Children, which has closed many orphanages in eastern European countries and allowed the children to be effectively adopted—it is not quite the terminology that most of these countries use. I took the Children

[LORD NASH]
and Families Act through your Lordships' House, which was very substantially about improving adoption arrangements. I remember the noble Lord raising this point with me when I was a Minister. It seemed a no-brainer then and it seems to be so now, and I very much hope that my noble friend the Minister will support him in making this amendment.

I would also like to speak briefly on the point about academies fixing their admissions arrangements to their advantage, which has been mentioned. As a rule, this is unfair. There are some schools—schools of different types, actually—which have rather complicated admissions arrangements and one sometimes wonders whether they are deliberately complicated. But, as I say, I think it is unfair on the vast majority of academies and multi-academy trusts.

Baroness Chapman of Darlington (Lab): It is pleasure to follow the recent speakers, particularly my noble friend Lord Triesman. That was an exceptional speech and his personal experience really gave us food for thought. I echo what the noble Lord opposite said about people who take that life-changing decision for themselves and their families to adopt. I too am looking forward to what the Minister has to say in response.

I would also like to support my noble friend Lord Hunt and others in their desire for the Government to commit to the existing position on no new grammar schools. We understand that the Prime Minister is in generous mood with his Back-Benchers at the moment, and it would be a real shame for a change to the current rules to be made in that context. We are concerned about that, given some of the comments referenced by others, and want to make sure that it does not happen.

5.45 pm

I shall just reflect on what the noble Lord opposite said about academies having the finger unfairly pointed at them. We understand that in many areas, through choice, academies co-operate very well with local authorities as the admissions authority. They share admissions arrangements and it is done in a way that we would like to see done everywhere and accepted and understood. In our Amendment 160 we are clear that local authorities should be the admissions authority, and amendments have been tabled by others. In particular, in his introduction to this group, my noble friend Lord Knight made the case extremely well. We think that local authorities should have the responsibility because they have the responsibility for the well-being of the children in their areas. This is not just about making sure that every child has a school place; it is about making sure that the way that the system works is fair to children and their parents.

Local authorities can fulfil the honest broker role very successfully. We know that parents often feel insufficient agency, shall we say, and are tempted into gaming the system. As the noble Lord, Lord Lucas, said, sometimes that is done on some very questionable information or perhaps an out-of-date reputation of a particular school. We would be interested in supporting there being more information that is relevant to making that decision, rather than some of the marketing that parents see from year 5 onwards.

We have reports every year of schools giving out supplementary forms, asking for personal details or encouraging, in subtle ways, contributions to the school or using very subjective tests that are deeply concerning. On the surface, they can be explicable in some way, but we know what is really going on. It would be good if the Minister could let us know how widespread she assesses these practices to be.

Local authorities have a good understanding of the educational landscape in their areas. Obviously, they have responsibility for place planning and that is a vital function, but so too is ensuring that children are admitted to school fairly. In our amendment I have made special reference to looked-after children. Noble Lords will know that, in most cases, looked-after children are in the system due to abuse or neglect. They are more likely to have mental health problems, more likely to have additional needs, and less likely to do well at school. Some 35% of care leavers are not in education, employment or training, compared to 11% of the general population. Local authorities have an existing duty to promote educational achievement of looked-after children, and one of Josh MacAlister's five missions is to secure a quality education for looked-after children. But we know that they currently are less likely to go to a good or outstanding school; the Children's Commissioner is very clear and is challenging the Government on that.

We note the inadequacy to date of the Government's response to MacAlister. I know it is relatively early days, but so far we have just had a letter and an opportunity to discuss a Statement. We really want to see more, and I would be grateful if the Minister could commit to writing to us on her assessment of the current situation in relation to looked-after children. We know that there is a substantial legal framework around all this and that guidance does exist, yet we still find outcomes to be as poor as they are. What is her assessment of the current situation? Can she bring us up to date on the Government's intention to support this group of people in particular? Having said all that, I just want to get on the record our concerns about children who have experience of the care system. We particularly want to see the Government clarifying and making the good practice that happens—we know that it does, with local authorities being the lead organisation for admissions in some places—the norm across the country.

Just finally, we have had to shoehorn this discussion into the Bill because it does not seem to say anything about admissions beyond the Secretary of State being able to have a power to make orders about them. This has been a most worthwhile, enlightening and enriching debate, and it would be good if the Government could be a bit more forthcoming about what they plan to do.

Baroness Penn (Con): My Lords, Amendments 35A, 78, 160 and 162 in the names of the noble Lords, Lord Knight, Lord Shipley and Lord Storey, and the noble Baroness, Lady Chapman, seek to clarify the strategic role of the local authority in education, particularly on admissions. I welcome the opportunity

to restate that this Government believe that local authorities should remain at the heart of the education system, as the noble Lord, Lord Knight, said, championing all children, particularly the most vulnerable.

Through existing legislation, local authorities are already responsible for ensuring that every child in their area has a school place; for co-ordinating applications for the main round of school places; for identifying children and young people in their area who have special educational needs or disabilities; and for working with other agencies to ensure that support is available. As we move to a fully trust-led system, local authorities will retain these roles, continuing to ensure there are enough school places and to play a central role in fair admissions, particularly for the most vulnerable. We plan to increase the levers that local authorities have to help them deliver these duties, while maintaining trust autonomy.

Like my noble friend Lord Nash, I must disagree with some of the sentiments expressed by some of the Committee on trust autonomy with regard to admissions. The best MATs and academies have a strong record of admitting pupils from disadvantaged backgrounds and achieving excellent outcomes. My noble friend the Minister will happily write to the Committee to set out more detail on this issue.

The noble Lord, Lord Addington, asked about how special educational needs will fit into the picture. In the SEND and alternative provision Green Paper, we proposed new powers to convene partners as part of a statutory framework for pupil movement, including for excluded children. To respond to the question from the noble Lord, Lord Shipley, we will also include consultation on a power for local authorities to direct trusts to admit individual children in limited circumstances. Consultation is ongoing on these proposals. In the schools White Paper, we proposed further strengthening local authority levers to deliver their duties with a new power to object to the schools adjudicator when a trust's planned admission numbers threaten school place sufficiency and requiring local authorities to co-ordinate in-year applications. We will consult on these measures; it is important that we listen to the outcomes of that consultation. My noble friend Lady Berridge asked about the timing of that. Given the scale and complexity of the admissions system, it is important to get these decisions right, so we are working currently with the stakeholders to refine our proposals. We will consult in due course and seek a further legislative opportunity where needed.

I also agree with the noble Lord, Lord Knight, and others that close working between trusts and local authorities on these duties is essential. Through the proposed powers in Clause 1, we will create a new collaborative standard, which will require trusts to collaborate with local authorities and encourage better co-operation. Amendments 160 and 162, however, propose making the local authority the admission authority for all schools. This would prevent school leaders making decisions that are most appropriate to their community, including, as we heard from the right reverend Prelate the Bishop of Bristol, for voluntary aided schools, which have had long-standing control over their own admissions.

The proposal in Amendment 78 to allow a local authority to direct a physical expansion of any school would be very difficult to achieve, because in many cases neither the local authority nor the Secretary of State has control over a school's land. Our White Paper proposal instead allows trusts to continue to determine how many places they will offer but gives local authorities an additional power to ensure that they can still meet their sufficiency duty.

Amendment 58A from my noble friend Lord Lucas rightly emphasises the importance of parents having access to the information that they need to support their children's schooling and of schools having good links with their parent body. However, we do not believe that this amendment is necessary because existing regulations, which academies are required to follow via their funding agreements, already require academy schools to provide a range of information to parents on aspects such as exam performance, Ofsted outcomes and admission arrangements. Furthermore, the department's governance handbook is clear that schools and academy trusts should have in place mechanisms to engage with parents and the broader community, and that should be able to demonstrate how those views have influenced their decision-making. These provisions will transfer to the academy standards in future.

Amendment 160, in the name of the noble Baroness, Lady Chapman, is rightly concerned with the best interests of looked-after children, some of the most vulnerable in our society. That is why the School Admissions Code already requires all schools to give the highest priority in their admissions criteria to looked-after and previously looked-after children. To respond to Amendment 169 in the name of the noble Lord, Lord Triesman, I am pleased to confirm that the admissions code was updated last year to require admissions authorities to provide children adopted from state care outside England equal highest priority for admission with those who are looked after and previously looked after by a local authority in England. That change is now in force. I join him in paying tribute to my right honourable friend Nick Gibb, the previous Schools Minister, but also noble Lords in this Chamber—the noble Baroness, Lady Walmsley, and the noble Lords, Lord Russell, Lord Watson and Lord Storey, as well as my noble friends Lord Agnew and Lord Nash, who, along with the noble Lord, Lord Triesman, have shown a commitment to advocating for this group of children. The Committee has my commitment that those children will continue to be prioritised in admissions criteria. As the noble Lord, Lord Triesman, noted, the Government are looking at including them in the school census from the 2022-23 academic year to gather the data that we need when we look at extending the pupil premium plus to that group of children too.

Finally, I turn to the amendment of the noble Lord, Lord Hunt, which seeks to remove Clause 28 from the Bill. As we have heard, grammar schools have a long history within the education system and, where they exist, they are popular and oversubscribed. However, they are concerned about surrendering their independence to a MAT if it does not share their views on selection by ability. Clause 28 will put the status of academy

[Baroness Penn]
grammar schools on to a legislative footing by designating them as grammar schools in the same way as local authority-maintained grammar schools are designated as grammar schools. The Bill will not enable the opening of new grammar schools. These changes, at their heart, are about regularising, within legislation, the status of grammar schools.

Baroness Chapman of Darlington (Lab): We completely accept that the Bill as it stands does not legislate for new grammar schools, but is it the Government's position that, should such an amendment be forthcoming in the other place, they would oppose it?

Baroness Penn (Con): The Bill does not provide for that, and it is not government policy to open further grammar schools. It is about regularising their status within the legislation, and the provision makes sure that only a parental ballot can trigger an end to selection, whether that grammar school is a local authority-maintained grammar school or an academy grammar school. It will remove one of the main perceived barriers to them joining a MAT, while retaining the right of parents to choose whether they should continue to select by ability. I therefore hope that the noble Lord, Lord Knight, will feel able to withdraw his amendment and that other noble Lords will not move theirs when they are reached.

Lord Lucas (Con): My Lords, might I just drop in before the noble Lord, Lord Knight? My noble friend is not right in saying that academies currently provide all the data required on admissions. I have written to the Minister and demonstrated many examples of where this information is not provided. Yes, you can go to the school and ask for it, and it may be somewhere on the school website, in an irregular place, but it is absolutely not given to local authorities in a way that makes it easy for the local authority to publish a booklet that gives parents complete information on the admissions structure in their demesnes. This hurts parents a lot. As editor of the *Good Schools Guide*, I know how much this disadvantages parents who do not have the time and experience to crack the code of 20 different schools and find out how to get the information and how it all knits together. It really gets in the way. If my noble friend would be willing to grant me a conversation with officials on that, I should be most grateful.

6 pm

Baroness Penn (Con): I will happily arrange that conversation. There are two points I would make to my noble friend. The first is that the information is publicly available, albeit maybe not in the format that he thinks is most usable. The second comes back to the new collaborative standard requiring trusts to work collaboratively with local authorities, which will encourage better co-operation. I hope that will be a positive move in his eyes.

Lord Knight of Weymouth (Lab): My Lords, I am grateful that we have been able to have an hour and 20 minutes to discuss admissions. Given that the Government's policy is that all schools should become academies, it is an uncertain area and it is really important that we have taken a bit of time to debate it.

I am delighted that my noble friend Lord Triesman already has a victory under his belt. I think my noble friend Lord Hunt is pretty close to a victory: we noted the words that the Bill as it currently stands will not enable the opening of new grammar schools and that it is not government policy for new grammar schools to be created without a parental ballot. Let us just hope that this government policy remains sound as the Bill proceeds through both Houses. There were some really powerful speeches, as ever, from my noble friend Lady Morris in particular, my noble friends Lord Triesman and Lady Blower—those are just the ones around me—and others.

I say to the right reverend Prelate the Bishop of Bristol that it was not my intention at all to interfere with the admission arrangements for voluntary aided schools. I am scarred from my time as Schools Minister from a moment when we heard the shadow Secretary of State, a young David Cameron, say that we might want to loosen up admission arrangements for faith schools. So the then Secretary of State, Alan Johnson, and myself announced that maybe that was a good idea and we then had priests preaching against us on Sunday and MPs in the Division Lobbies beating us up, saying, "We are going to lose the next election if you go ahead with this" and we performed a very delicate U-turn. I really did not want to go anywhere near interfering with the admission arrangements of voluntary aided schools.

I say to my noble friend Lord Grocott, in connection to his comment about the 11-plus, that my dad was one of four sons in Kettering who all took the 11-plus. He passed; his youngest brother, Hugh, passed; the middle two brothers failed. The two who passed joined the professions, one as an accountant, the other as a banker; the two middle ones took much lower-skilled work and both emigrated, one to Canada and one to Australia. Those two remained close; the two who passed the 11-plus remained close; but in my view, the 11-plus created a schism in our family, and that is part of my very deep opposition to selection and grammar schools.

My noble friend Lady Morris talked about the chaos of admissions, and that undoubtedly advantages middle-class parents. They can navigate the criteria; they can navigate what order to put schools in—what is your second or third choice, but you will only get looked at if it is your first choice, and you have to be quite sophisticated to work out the order you put things down. Then there are appeals. When I was an MP, I occasionally had constituents who came to see me wanting help with an admissions appeal in the summer, and they were never the more disadvantaged constituents in my area; they were only ever the more articulate ones. We really need to get this right if we want a school system that deals with entrenched disadvantage.

Having listened carefully to what the Minister had to say from the Dispatch Box, I will be pleased if, subject to the conversation we are having about Clauses 1 to 18, we get to a point where she introduces a

collaboration standard. I would welcome that. I encourage the Government to go further and show us what their vision is for local authorities across the piece. She came close to that in some of her comments, but I would like to see, in the context of schooling, the Government's vision for the role of local authorities, MATs, individual schools, and the Secretary of State. Publish that so that we can all see it before Report and can then make our judgment about whether they have it right. That would really help us, and then we might have some agreement about the future of admissions for all our schools. I am happy to withdraw my amendment.

Amendment 35A withdrawn.

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): I remind noble Lords that if Amendment 35B is agreed to, I cannot call Amendment 36 for reason of pre-emption.

Amendment 35B

Moved by ***Lord Knight of Weymouth***

35B: Schedule 1, page 88, line 33, leave out paragraph 35 and insert—

"35 In section 127 (guidance), in subsection (2)(b), at the end insert ", including Academies"."

Member's explanatory statement

The effect is to require academies to employ qualified teachers and to be subject to the Secretary of State guidance on teacher pay and conditions that applies to maintained schools.

Lord Knight of Weymouth (Lab): I find myself leading on a whole series of groups: it is slightly challenging, jumping around. This one is about teachers, qualified teacher status and teachers' pay. It amends Schedule 1, which is about the use of other education legislation, as set out in Clause 3. This would require academies to employ qualified teachers and be subject to Secretary of State guidance on teachers' pay and conditions as they apply to maintained schools currently. Again, this goes very much to the question: if every school is going to be an academy, what is our vision for teachers, for teaching and for teachers' pay and conditions?

We know from the evidence—it is really well documented—that good schools are good because they have high teacher quality, and teaching and learning are well led. In a way, it is like Governments—great Ministers well led by the Prime Minister; that is what a good Government might look like one day. If we agree with that evidence around teacher quality, and if we believe in the Government's reforms of initial teacher training, the early careers framework and national professional qualifications, then we must think that the Government's emphasis on all that is important and will raise quality. I have some arguments about the reforms of initial teacher training, but the Government are consistent in saying that the reason they want to reform initial teacher training, the reason they want to introduce the early careers framework and have done so, and the reason they have the series of professional qualifications is to raise teacher quality. They must believe in the qualification of teachers to have all that.

In the context of all schools becoming academies, I think parents would be really surprised if they found that this then meant that all schools were no longer subject to having to employ qualified teachers. It would be quite a surprise if that was in the newspapers or wherever it is they get their news. Parents expect their children to be taught by qualified teachers, and mostly that is the case. The vast majority of academies want to employ qualified teachers and do so, so I do not really understand why we would not translate, as we move maintained schools into becoming academies, the requirement that they should employ qualified teachers as well. Of course it is also true that maintained schools can employ unqualified teachers as instructors, so they still have that get-out if they really need it. Indeed, a very long time ago, I worked as an instructor at a sixth-form college in Basingstoke. For me, it is tricky, and I would be interested in any argument that came from others as to why we would not want qualified teachers in our schools.

Then I would argue, as I have sought to do with this amendment by replacing the get-out—on employing qualified teachers—with saying that academies should abide by national pay and conditions, that we should have a coherent labour market for all our teachers, the largest single profession in the world. A coherent labour market for them, working in publicly funded schools, would mean a consistent arrangement for pay and conditions so that they can plan their own careers and are not trapped in a single MAT employer that would have its own career structure and pay structure for them. They would be able to move about and develop their career and professional expertise on the basis of something that is predictable around the country.

For me, this is a no-brainer. I devote a huge amount of my time, pro-bono, to the academies movement, but this is something we need to get right. We should have a very clear policy of having qualified teachers, based on national pay and conditions. I beg to move.

Baroness Blower (Lab): I imagine it will come as no surprise that I support my noble friend Lord Knight. It seems to me that high teacher quality is obviously a critical issue in making sure that we have a well-functioning and successful education system. One of the problems by which we have been beset is that there is no coherence at the moment to the way pay and conditions work across the country—that is, across England.

At Second Reading I probably mentioned that if you are a female teacher, one of the difficulties you have in seeking to move is that you will have no idea what the arrangements are for maternity leave and maternity pay from one employer to another. While I entirely accept the point made by the noble Lord, Lord Nash—who is not in his place at the moment—that multi-academy trusts do seek to have a career structure within themselves, there are many reasons why individual teachers might choose to move, not just within the MAT but to a completely different part of the country. Of course, that might still be part of the same MAT, but that they might choose to move out of the MAT. Being able to have a predictable set of conditions and a predictable pay arrangement is critical.

[Baroness Blower]

One thing that has been noticeable over the years is that pay has become much less predictable because MATs have different arrangements. It is not so possible for teachers to be on permanent contracts and to know, for example, that they are in a position to get a mortgage. I imagine most noble Lords would believe that home ownership is something to which a teacher should reasonably be able to aspire, but in many cases it absolutely is not. A national, coherent set of pay and conditions therefore seems perfectly reasonable. I would add that that should be done on the basis of sectoral collective bargaining, but that is not in the amendment. I just like saying "sectoral collective bargaining" because it is the right way for us to run the system. I note, for example, that in Iceland there is no minimum wage because all wages in all sectors are based on sectoral collective bargaining—and that is not uncommon in other countries, too.

Finally, on the question of QTS, before I came into this House one of the things that I did was to work with colleagues in the European region of Education International, the global union federation for all education unions. The European region does not just cover the EU countries; it takes in a significant geographical area beyond that. When the arrangements came in that meant people could teach in England without QTS, it was a single thing that my colleagues in many other countries—including Scotland—were absolutely astounded should be happening in this country.

6.15 pm

It just beggars belief that we would think it perfectly reasonable for anyone to come in and be a teacher, because it is such a critical job. Now, I have issues with the proposals for initial teacher education and training. I happen to think that we do not focus anything like enough on child development, and there are lots of other problems with how we now train and educate teachers. But the notion that there should not be something called qualified teacher status has really found absolute confusion in the minds of many teachers working in many of the European countries in which I worked. I support the QTS proposal and, specifically, national pay and conditions, and of course pensions for teachers.

Lord Deben (Con): My Lords, I have to say that I once had an aunt who was one of the most successful teachers I have ever come across. She was not properly qualified but was one of those people who came in after the war and could teach boys of 14 to sing in a very poor part of Newport in Monmouthshire. I do not start from any real belief that teacher training is a perfect answer, but I agree with the first part of what the noble Lord, Lord Knight, said. It seems sensible to have a system whereby, in general terms, of course teachers must have professional qualifications. I happen to think that we have to improve those qualifications and I have some sympathy with the reference of noble Baroness, Lady Blower, to the areas in which that ought to happen. That is really important.

If I have said that, however, I have to say too that I am much less happy about the second proposal. I have to say to the noble Baroness, Lady Blower, that I do not know of any other circumstance in which it is thought that you must have predictability about the money you earn. It seems to me perfectly possible to have standards when you go in for jobs, and I do not understand why this is a necessary part of that. Indeed, I noticed that she started with the teacher pay issue, and I want to turn it around; I think the noble Lord, Lord Knight had the right order. The order should be standards and quality and the ability to teach. It is not unreasonable then for there to be different systems in different places to meet different requirements.

That should be the decision of those areas, not a centralised decision dominated by the teachers. I always remember having a discussion with her many years ago, when she had a big poster that said "Putting teachers first". That was the poster and that was the argument, and I want to believe that we put children first. So I start by wanting teachers of the highest standard, but I do not believe that it is necessary to have some kind of national pay structure that does not vary from once place to another. I much prefer the mix I am presenting. I must ask the noble Lord, Lord Knight: if he really cannot ask this Government to have a vision here, I do not know where else they have a vision, so why should they have it here?

Lord Blunkett (Lab): My Lords, I was not going to speak in this debate, but I am minded to say just a few words in agreement with the last phrases that have just been used. This is part of the problem.

We obviously need a highly-qualified, well-trained teaching profession, as we expect in the health service and elsewhere. When we have a basic standard which is adhered to and a career structure that people understand, we can of course then vary that in order to attract teachers to particular areas, such as opportunity areas that the Government have designated at the moment—education action zones, in my time—where golden hellos and golden handcuffs are available to ensure that we get the right teachers in the right place to overcome gross historic inequalities in the quality of education in those areas. I would have thought that we could reach complete unanimity about that.

I do not have an aunt who used to teach me, but I did have my mum, who left school at 14. She was pretty good at correcting my English, which says something about the schooling of today and quite a lot about what she learned up until she was 14. I would not recommend people leaving school at 14; I think I had better make that abundantly clear.

I have a PGCE myself for teaching in further education, and a great deal can be done in the post-16 area to ensure that people are appropriately qualified. I just wanted to make this point: ex-Ministers or present Ministers may eulogise about students acquiring a key body of knowledge—and with that a historic view of how teaching might take place—but it is impossible to ask pupils to acquire it if those teaching them have not acquired it themselves. That is why trashing teacher training through university is a big mistake, because someone has to have that historic foundation and knowledge of pedagogy in order to know how best to develop for the future the best way of teaching in entirely different circumstances to the ones that people might experience in the school they first enter.

I have one small caveat and disagreement with my noble friend Lady Blower. I was involved in battling for years to get a national minimum wage, because collective bargaining in some areas was about differentials and the clash between the craft unions and the general unions—I do not want to go back to those days.

Lord Agnew of Oulton (Con): My Lords, this is an important question, but, again, I would be looking for the output, not the input—in other words, when asking whether teachers should be qualified, it is the quality of the qualification that matters. At the moment, it is a nine-month course without any validation at the end. We have the Teach First initiative, which was pioneered very successfully by Labour, which is six weeks of training. Looking at parts of the economy where we are desperately short of good teachers—take a subject such as computer science, for example—I would say that you could bring those sorts of people into teaching for a couple of years, because they might want to put something back in an initiative similar to Teach First but then go on to a different career.

So, if we are worrying about the quality of teachers, we must be careful that this is not just about some formal qualification. It is about how good they are and, particularly in response to the noble Lord, Lord Blunkett, it is about how good they are at enthusing children in the classroom. I think we have moved into a new and very difficult game post-Covid. Children were learning across screens remotely on and off for two years, and the skills needed to enthuse and engage children in that way have changed, rather than just standing in a classroom. So, I am sceptical, but this is an important point, and I am glad that we have the chance to debate it, because this is exactly what a Schools Bill should be doing.

Lord Nash (Con): I support my noble friend. I say to the noble Lords, Lord Knight and Lord Blunkett, that if a teacher has been teaching in the private sector for 20 years and is well qualified in their subject—through university and through practising it for 20 years—are we really going to make them take a course for nine months, at the end of which there are no exams, so that they are qualified to teach? I think we need to be a little more flexible about this.

Baroness Morris of Yardley (Lab): Just to add to that, I think there are—or there used to be—ways for teachers moving from the independent sector to the state sector which were far less than nine months.

I take the point about a subject like IT. I absolutely agree with the amendment: teaching is a profession, and all the evidence internationally shows that the better qualified the teacher, the better the achievement for students. That is what this is all about. But if the problem is that, in a fast-moving world, there are a set of skills such as IT that people need to come into education to deliver, there needs to be another way of meeting that need and getting those people in rather than saying to the whole of the school system that teachers do not have to have a qualification. This is not being used to get people with specialist IT skills into schools to help children. It is being used by headteachers and schools where they cannot get staff with qualifications in front of children in classrooms, so they go for those without qualifications.

Although I share with the noble Lord, Lord Agnew, the wish to get the latest skills into the classroom without making people do a year-long PGCE, we just need a bit more creative thinking in order to make that happen. It cannot be that we go back to a profession that not only is not a graduate-level profession but is not a qualified profession at all. The message that gives is something that none of us who are committed to the education of children ought to support.

Baroness Wilcox of Newport (Lab): It is a real pleasure to follow my noble friend. She is absolutely right: this is about profession.

My Lords, we asked to de-group this amendment from that of my noble friend Lord Knight, because it is such an important issue and deserves its own debate. Our Amendment 36 would remove the exemption teachers in academies have from needing to have QTS but gives a grace period until September 2024 to give schools and teachers sufficient time to adjust. We felt that this is a sensible way forward. The amendment redresses the opt-out given by former Prime Minister David Cameron and Secretary of State Michael Gove when they removed that need for academies to have QTS in 2012.

Since that time, there has been a decade where children and young people have been taught in academies by unqualified staff. We would assert that in recognition of the preparation teachers have to undergo, the term "teacher" should be reserved solely for use by those with QTS and that a person in training—or indeed, a specialist or person qualified in IT—should have a different designation. This amendment would ensure that, in future, all pupils in every school were taught by a qualified teacher.

When I was looking at the background to the debate today, I looked at what the Sutton Trust had said. It is a research institution that fights for social mobility so that every young person—no matter who their parents are, what school they go to or where they live—has the chance to succeed in life. In its seminal report, *What Makes Great Teaching?*, it said that the quality of the teacher is the most important factor in academic and non-academic attainment. We have heard from other noble Lords previously in Committee about the importance of leadership and a justification of the enormously inflated salaries enjoyed by heads within academy trusts, but the Sutton Trust research firmly places the attainment factor in the hands of the teacher in the classroom. Those of us in your Lordships' House who have had the privilege—indeed, it is a privilege—to work in this profession would no doubt agree.

The research defined effective teaching as that which leads to improved student achievement and focused on six common components that should be considered when assessing teaching quality. First is pedagogical content knowledge. As well as a strong understanding of the material being taught, teachers must also understand the ways students think about the content, be able to evaluate the thinking behind students' own methods and identify their common misconceptions.

[Baroness Wilcox of Newport]

These are all areas covered in training teachers towards QTS. It is not just about having the knowledge and content of the subject itself; you have to have knowledge and understanding of how children learn in order to convey that knowledge. The research further identified the quality of instruction, classroom climate, classroom management—which I was very good at, as your Lordships might guess—teacher beliefs and professional behaviours, all of which impact on the quality of education.

I also looked at research by the University of Oxford's Nuffield College from 2019, which found that pupils are more likely to be taught by unqualified teachers in academies than in maintained schools. It concluded that this widens class-based inequality because schools with more pupils from lower socioeconomic backgrounds tend to hire more teachers without QTS, and that in secondary schools

"this relationship in academies is almost double that in LA-maintained schools, revealing a role for academies in widening class-based inequality in access to qualified teachers"—

which seems like levelling down, rather than levelling up.

6.30 pm

It further found that:

"More than a third of unqualified teachers in primary schools do not have an undergraduate degree and nearly a quarter do not in secondaries … policies that outsource the management of the education system and undermine professional accreditation are degrading the teaching workforce and widening inequality in access to qualified teachers."

Furthermore, the report authors concluded that:

"This has likely undermined the quality of … education because teachers without QTS have less pedagogical training and less subject knowledge than their qualified colleagues."

We believe the Government need to match the ambition of Labour's national excellence programme, our plans and vision for education, whereby we will recruit thousands of new teachers to address vacancies and skill gaps across the profession. We will reform Ofsted to focus on supporting struggling schools and ensure we have the best fully qualified teachers in our schools by providing teachers and head teachers with continuing professional development and leadership skills training. This amendment will begin to address the current failings.

Baroness Barran (Con): My Lords, I shall speak to Amendments 35B and 36, which amend Schedule 1. Schedule 1 extends certain provisions in maintained school legislation which currently apply to academies through funding agreements to academies directly.

I thank the noble Lord, Lord Knight of Weymouth, for Amendment 35B. He is seeking to require academies to employ qualified teachers and to be subject to the Secretary of State's guidance on teacher pay and conditions that applies to maintained schools. However, the provisions in Schedule 1 that the amendment changes relate specifically to special schools and the removal of the power for the Secretary of State to prescribe that special academies employ qualified teachers. The amendment would not have the effect that the noble Lord is seeking to achieve.

However, it is clear that the intended purpose of this amendment and Amendment 36, which is about removing the exemption that academies have for teachers to have qualified teacher status, would provide for a restriction to a core tenet of the academy system, namely that, with the exception of special academies, all academy trusts have the freedom to employ those they believe are suitably qualified to teach in their academies and that all academy trusts can make decisions about pay and conditions of service in their academies.

The academy standards regulations will reflect existing requirements in the funding agreements, including those relating to enrolment in the Teachers' Pension Scheme or the Local Government Pension Scheme. I have heard the fears expressed about a future Government using these regulations to undermine the freedoms that enable academy trusts to collaborate, innovate and organise themselves to deliver the best outcomes for their pupils, and I am carefully reflecting on those concerns.

On teacher pay and conditions, although all academy trusts have the freedom to set their own pay structure and conditions of service for teachers, we believe the vast majority follow some, if not all, of the guidance in the school teachers' pay and conditions document. We believe it is right that academies continue to benefit from this freedom because it allows heads and trust leaders to have the flexibility to respond to their local context to support recruitment and retention of teachers. I am reminded of the phrase used by the noble Lord. I do not want to misquote him, but he spoke very powerfully on the first day of Committee about how important and attractive it was to trust our leaders, and that is exactly where these freedoms fall.

Academy trusts are also allowed the freedom to make their own decisions about who they believe is suitably qualified to teach pupils in their academies. However, most schools, including academies, understand the importance of well-trained teachers and choose to employ teachers who have undertaken initial teacher training and gained qualified teacher status. I agree very much with the sentiment expressed by my noble friend Lord Agnew in relation to the quality of the qualification as opposed to just the qualification in its own right. I am slightly baffled at your Lordships' focus on this, as 96.9% of teachers in academy schools held QTS in November 2021, compared to 97.7% in maintained schools, so there is less than a percentage point difference between the two. The noble Baroness, Lady Morris, seemed to suggest that there are examples where it might be much higher. If that is the case, perhaps she would be very kind and share them with us, so that we can look into that.

The intention behind the amendment is to place additional requirements on academy trusts that would undermine the discretion and flexibility at the front line that fundamental academy freedoms give to heads and MAT leaders. That is not the intention of this Bill. On that basis, I would be grateful if the noble Lord would withdraw Amendment 35B and if the noble Baronesses would not move Amendment 36.

Lord Knight of Weymouth (Lab): My Lords, I am grateful again for this half-hour debate and for the Minister's reply. It is important that we have a vision

for the whole system, now that we are moving to a single system, and perhaps this is something we will continue to reflect on.

I am grateful to the noble Lord, Lord Deben, for his comments. The core of the argument for having a single national pay and conditions arrangement for teaching relates to the difficulty of recruiting people into the profession. It is a critical profession for the future of our country and any society, and we must make sure that we recruit the finest people to be teachers—as one of their careers. These days, we are going to live longer and work longer. I am not saying that you necessarily have to do 40 or 50 years as a teacher, but would it not be great if, for one career, people wanted to be a teacher? It is easier to recruit people if they know that they have a predictable pay progression with a predictable, quality pension at the end of it, as part of their public service—as part of the motivation and the vocation around becoming a teacher.

I hear and respect very much what the noble Lords, Lord Agnew and Lord Nash, say about the output and the nature of the different routes into the profession. There is of course the assessment-only route. People who have been working for 20 years in the private sector or who are coming in from industry could perhaps have some brief training in some of the pedagogic or behaviour management elements that my noble friend on the Front Bench talked about and can then be assessed against the standards that are set around what we require from qualified teachers. They do not have to go through training; they can just be assessed against those standards. One of the things I pioneered when I was working at TES, with the TES Institute, was a route through the assessment-only process.

I am happy to withdraw this amendment. I hope this brief debate has given us cause and a pause to reflect on what kind of system we want for the teaching profession in the context of every school being an academy.

Amendment 35B withdrawn.

Amendment 36 not moved.

Schedule 1 agreed.

Clause 4: Academies: guidance

Amendment 37 not moved.

Clause 4 agreed.

Amendments 38 and 39 not moved.

Clause 5: Power to give compliance directions

Amendment 39A

Moved by ***Lord Knight of Weymouth***

39A: Clause 5, page 5, line 11, leave out "satisfied" and insert "the Chief Inspector has given notice that an inspection of the Academy proprietor's operations and educational provision has identified"

Member's explanatory statement

This amendment, along with the amendment to Clause 6, page 6, line 11, in the name of Lord Knight of Weymouth, is designed to require Ofsted to inspect multi academy trusts and restrict the use of the Secretary of State intervention powers to when an inspection has revealed the need for such powers to be used.

Lord Knight of Weymouth (Lab): My Lords, I rise yet again. This substantial group is about intervention and termination powers. Most of the group is made up of stand part debates on a series of clauses. My amendments are about a level of accountability for the Secretary of State around the use of powers. The clauses we will be thinking about in this group relate to the power for the Secretary of State to give compliance directions, give a notice to improve to an academy provider, impose directors on the trust and then, if none of that works, terminate both the single academy agreements and the master agreements, perhaps after seven years' notice by mutual consent or if the academies are perceived to be failing, if the trust becomes insolvent, after failure to address concerns or after warning notices. That is what the set of clauses that we are about to debate is all about. They are substantial and, in my judgment, overweening, and that is why I have also signed up to the stand part debates in the names of the noble Lords, Lord Agnew, Lord Nash and Lord Baker.

My problem at its heart is the sense that the Secretary of State becomes judge, jury and executioner. The Secretary of State is taking powers, essentially, I think in reality, through a network of regional directors, as they are now called, and officials appointed on a regional basis. They will be monitoring the performance of academies across anything and everything they do and will then be suggesting to academies that do not do what they want that they have this huge range of powers and will make them do as they are told. I am mindful of the discussion we had earlier, what the noble Lord, Lord Baker, said and the advice from Stone King about how that might impinge on the independence of the trustees of multi-academy trusts. I was grateful to hear the Minister's reassurance that the Government have been given legal advice that it will not, but I still have concerns.

My amendments would add in Ofsted, the Office for Standards in Education, and once it has made a judgment about a multi-academy trust—yes, my amendment says that Ofsted should now inspect multi-academy trusts as a whole, not just the individual academies—that can act as a trigger; it is acting as the judge or jury and the Secretary of State can then act as the executioner. An independent party will have been able to have a look at it, and one would assume that Ofsted, in coming up with its framework for how to inspect multi-academy trusts, would be informed by the academy standards that eventually, in one form or another, we think will be in place.

I would anticipate that the MAT inspection would look at the educational quality and safeguarding and governance arrangements and ensure they were sound, and at the trust's compliance with various regulations, including financial. When that judgment is passed, action can be taken. All my amendment seeks to do, whether perfectly or imperfectly, is to introduce that.

In thinking about the stand part debates, of course there are questions about some of these clauses. Clause 6, which provides the power to give notice to improve, as I interpret it, reflects the academy agreement academy

[Lord Knight of Weymouth]
by academy, rather than the master agreement with the whole academy trust. Clause 6(4) includes the phrase "make representations". I should be interested to know to whom—one assumes the Secretary of State. In a world where every one of 25,000 schools is an academy, one assumes that they will not all be failing at once. Let us say that the figure is 1%, if we are generous, which is 250 schools at once making representations. In reality, they will be made not to the Secretary of State but to the regional directors. I should be interested to know how the Minister sees the representations process working, because it is as close to some sense of appeal as we have in the clause. Subsection 5 says that the Secretary of State "may make regulations". Will those regulations be one by one, school by school? Perhaps that gives a little bit of power to Parliament, but I should be interested in some clarification of that.

6.45 pm

Subsection (6) seems pretty wild:

"A notice to improve may … require the proprietor to obtain the Secretary of State's consent for"

almost anything they then do. What is the point of carrying on chairing a trust or being on the trust board if every decision you make is then subject to Secretary of State approval? That seems a bit wild to me.

I am struggling the most with Clause 7, on the powers to appoint or require the appointment of directors. Obviously, I want Ofsted to be the trigger, but I am still concerned about how this will work. For those who are not involved in multi-academy trusts, we have members and members of the trust board, and the members of the MAT appoint the trustees, the members of the trust board. Clause 7(2) proposes that the Secretary of State directs "the proprietor". Is that a direction to the members to use their powers and responsibility, when they meet annually, to reappoint the trustees? Is the proprietor in this context the members, who then appoint the people the Secretary of State chooses, or is it directing the trust board, in which case, it is subverting the role of the members altogether, which feels quite challenging? The only point I could find at which the legislation mentions members is in Clause 7(2)(c), where it refers to

"the proprietor and its members".

That suggests that the reference in paragraph (a) is to the proprietor being the trust board, so it feels to me as if the members are being undermined by this clause, which is problematic.

Then there is the fundamental policy question about remuneration in subsection (5). I am not absolutely against remuneration. I spend many days every month chairing a multi-academy trust board for nothing, and there are times when my family question why I do that, so part of me is sympathetic to the idea of some remuneration, but how will it look in practice? There is the issue of motivating people like me to do this for nothing, who then see this other bunch of people who suddenly start getting paid. Will that not raise the question in my mind and that of other trust board members of whether that is fair and whether they should be paid? A potential financial pressure might be being created there. My more significant worry is that the regional directors will end up having a bunch of usual suspects they go to—they will probably be consultants—who will end up being paid to sit on boards as interim trustees.

Perhaps this is how I satisfy my family: perhaps I will chair the trust board, become a usual suspect and be asked every now and then to sit on an interim board and turn it around, for my sins. Perhaps I will get three, four or five and it might end up being a living; I do not know. I am interested how this will work in practice, because my sense is that we will have quite a number of MATs where these intervention powers may be necessary at different times, and I should like to know how that is likely to play out.

Finally, perhaps the Minister could reflect on the interplay between master agreements and individual academy agreements, which feels quite muddled as I read through this set of clauses. As a MAT, a single problem in one of your academies, if people do not like the cut of your jib, could end up with you having the master agreement taken away and losing the whole thing. All of this feels disproportionate; none of it feels well thought out. It all feels very rushed, as ever with this Bill, and yet again, my plea to the Government is to take some time, do the regulatory review, publish the outcome of the consultation on the review and come back on Report with something informed by the sector and by proper consultation. I beg to move.

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, I remind the Committee that the noble Baroness, Lady Brinton, is taking part remotely. I now invite her to speak.

Baroness Brinton (LD) [V]: My Lords, I start by apologising to noble Lords who have their names against amendments and clause stand part notices in this group. The rules for remote contributions mean that I am always called after the mover of the first amendment in the group; I would have wanted to hear other expert contributions before speaking.

Amendments 39A and 39B in the name of the noble Lord, Lord Knight, make it absolutely plain that the Secretary of State's powers should be used only when an Ofsted inspection has made it clear that there are issues. Amendment 39C in the name of the noble Lord, Lord Mendelsohn, asks for further qualification to inform a Secretary of State's intervention decision on the replacement of directors or trustees, which include those who pose

"a risk to the duty of the institution".

I hope that this would also include those who do not respond to safeguarding concerns. The detail of this comes to the nub of the issue that we have faced in our day and a half of Committee so far: exactly how the Bill will work in practice.

Turning to the 14 clause stand part notices in this group for Clauses 5 to 18, I hope that, after our debates so far in Committee, the Minister is in no doubt about the concern right across the House, including from all the former Education Ministers present, about the first part of the Bill on academies. The noble Lords, Lord Baker, Lord Nash and Lord Agnew, have

made it absolutely plain in our debates today and last week that this Bill, especially this part of it, is not fit for purpose and that it would be sensible to delay until more detail can be provided to Parliament, the education sector and parents.

Normally, when a major change in the structure of our entire education system occurs, there has been broad consultation with the public, schools and the bodies that deliver educational services to education directly. That just has not happened here. It is evident that your Lordships' House remains concerned that this part has not been thought through in the detail needed. All schools that are funded through the public purse becoming academies, bringing virtually all schools under the direction of the Secretary of State, is one such major change.

That brings us to the other conflicting issue to which noble Lords have referred in almost every debate on each grouping: the Henry VIII powers that the Secretary of State will take on in the Bill; again, without wider consultation or understanding of the implications. I want to focus on the latter point for a second. Page 55 of the White Paper, *Opportunity for All: Strong Schools with Great Teachers for Your Child*, sets out the standards, regulation and intervention from the department's perspective. Given the debates we have had, the White Paper is remarkably coy about the powers of the Secretary of State. In fact, according to the schedule on page 55 of the White Paper, the Secretary of State's only role is to sign new funding agreements and amend them "for material changes". Intervening in schools is listed as happening by the regions group, on sufficiency, admissions, safeguarding, attendance and ensuring quality; whereas the Bill appears to give decisions over these powers directly to the Secretary of State. So, what is on the face of the Bill sets out neither a strategic framework nor the detail of how it will work in practice; it also contradicts the White Paper.

This reflects the difficult debate that we are having at the moment. My noble friend Lady Garden of Frognal said during our debate on the first group of amendments that there should be delays in the progress of the Bill until some of these matters are clarified and put out for consultation. Other noble Lords have said the same; they are right. As more and more issues and concerns emerge, grouping by grouping, it is not right to proceed until they are discussed and then consulted on with the wider public.

As the noble Lords, Lord Agnew and Lord Nash, made clear in our debate last Wednesday, the Academies Minister has already had to take a large number of decisions in relation to schools that are not maintained. Some of us argue that this results in a closed and untransparent system that is particularly opaque for parents, their children and their communities when key and serious decisions need to be made about their local school. It now appears that these powers, given to the Secretary of State but with a recommendation presumably to be made by the relevant Academies Minister, will apply to all 20,000 publicly funded schools once the Bill has gone through. How on earth will this work in practice? Also, how will it be publicly accountable to the parents and communities that these academies will serve? Can a junior Minister manage this workload or will the practicalities of it mean that it will be made by invisible and unaccountable civil servants?

In the Clause 3 stand part debate earlier, the Minister said that the Government will always consult the sector, but I did not hear anything about consulting parents and communities on changes to their local schools. I hope that the Minister can provide some answers or a timetable for your Lordships' House as to when our many questions can be answered in detail and then debated properly; otherwise, we must delay the next stage of the Bill until we know and understand more about what the Government are trying to achieve through it.

Lord Baker of Dorking (Con): My Lords, I agree with everything that the noble Baroness said; I congratulate her on saying it.

May I express the hope, which I think is in the interests of many people, that we might finish these clause stand part debates before the dinner hour? Every morning, as I leave my apartment to come to the House of Lords, my wife waves me away with the comment, "Don't speak too much." So I do not expect to elaborate again all the points that the noble Lord, Lord Knight, made. In fact, I do not intend to move my stand part notices for Clauses 8 to 14 at all because they use exactly corresponding words in the funding agreements. Clauses 16 to 18 are exactly the same; I do not intend to move my amendments on them in order to accelerate the movement of the House.

I will say a just few words on Clause 5, which gives the Secretary of State the power to give directions rather than advice. The noble Baroness, Lady Morris, and I did not have that power. I would not seek it. No Minister has had it since 1870. I do not believe that it is right for Ministers to interfere with the actual management of schools at the local level.

Clause 6 gives the Secretary of State the right to get involved in schools' financial matters and the running of schools. Again, I do not believe that that is the right function for the Secretary of State.

Clause 7 is a significant clause because it is the one that allows the Secretary of State to appoint a new board, governor and governing body. Ministers have never had this power. In fact, the noble Lords, Lord Agnew and Lord Nash, operated the whole problem of failing schools very effectively by using funding agreements. I recommend that their practice should continue, and that this measure should not be attempted in the Bill.

That is all I have to say. I hope that we will be able to proceed quite quickly.

Lord Nash (Con): My Lords, I appreciate that my noble friend the Minister is in a difficult position; I am sure that she is reflecting greatly on the points that noble Lords across the House have made. However, as we are here, I will make a few further points. Some of them might be a bit technical; I apologise if that is the case.

On Clauses 5 and 7, I should say at the outset that, as my noble friend Lord Baker said, when I and my noble friend Lord Agnew were Academies Minister—for

[LORD NASH]
a combined period of seven years—neither of us felt at any stage that we did not have enough shots in our locker or enough in our armoury to deal with difficult trusts. We feel that Clauses 1 to 18 are unnecessary, which is why we have joined our noble friend Lord Baker in trying to strike them out.

7 pm

Dealing specifically with Clause 5, which covers the power to give a compliance direction, this can be given if the Secretary of State is satisfied of a breach or likely future breach of any enactment or funding agreement, including a master funding agreement. There is no concept of materiality, which there is in many funding agreements, and no right to make representations. Anyway, it is unnecessary because under contract law, the current regime for academies, if a party breaches or threatens to breach a contract—that is, a funding agreement—the other party can require that party to perform the contract. They can issue a notice requiring them to perform it; if they do not, they can go to court to seek an order requiring performance. The DfE has these powers already, it just needs to use them where necessary.

Also, under the trust handbook, the DfE can already issue a notice to improve. I understand that the DfE says that the compliance direction will allow it to issue notices for minor breaches which may not warrant termination, but Clause 12 then goes on to say that the only consequence of failing to comply with the compliance direction is termination, so this justification is completely invalid. Anyway, as I have said, the department has the ability under contract law to impose what amounts to a compliance notice and to obtain an order for specific performance. Under the handbook, it also has the power to issue a notice to improve. Therefore, again, these powers are unnecessary.

Clause 6, covering notices to improve, can be issued for a breach of a duty under any enactment or under any academy agreement or master agreement. Again, there is no concept of materiality or significant weakness in the proprietor's governance procedures or management. One could ask whether the DfE is competent to make this latter judgment. The only issue should be educational outcomes, as overseen by Ofsted. I will return to the point made about Ofsted by the noble Lord, Lord Knight, in a minute, but in any case, there is already the power to issue a notice to improve in the academy handbook, which the department can update as it goes along. Why is it necessary to legislate for it when we already have a structure which, as my noble friend Lord Agnew said, works perfectly well and the system understands?

I turn to Clause 7, on the power to appoint additional trustees, which the noble Lord, Lord Knight, has been very powerful about and which I referred to earlier. It talks about interim trustees on the face of it, but it is far worse than that. Under paragraph 2(b) of Schedule 2, if interim trustees are appointed, all existing directors cease to be directors automatically. Therefore, the noble Lord, Lord Knight, need not worry about chairing a board with all these paid people on it because he will not be there anyway.

Clauses 8 to 11 are, by the department's own admission, unnecessary because they are already in funding agreements. They are not in all funding agreements and, to the extent that they are not, why should they be imposed on people who have negotiated and signed a contract? The department has not shown a necessity for any of this. It also says that a level playing field will be created in this way, which would be helpful. Well, we have a level playing field in the handbook. The department also says that this level playing field will help schools joining trusts to understand the rules of the game. Well, these rules are very clearly set out in the handbook and the model funding agreement, to which all schools are subject on becoming academies.

Clauses 13 and 14 relate to existing powers. Clause 14 directly corresponds to existing funding agreements but goes wider, dealing with any breach of funding agreements or where the Secretary of State considers the standards of pupil performance unacceptably low. This takes us back to the whole argument about standards.

Regarding Clause 15, under contract law there is, as I said, the right to terminate the master agreement for a breach, so the clause is unnecessary.

Turning lastly to the points raised by the noble Lord, Lord Knight, about Ofsted, as a number of noble Lords have said, we were promised a regulatory review, which is frankly far more important to the sector than tinkering with funding agreements and existing arrangements. That regulatory review would presumably look at how the DfE, regional directors, the ESFA and Ofsted all interact with each other. We might well have a consensus that Ofsted inspects MATs but only, I would say, in relation to the educational outcomes, the outputs and the safeguarding, which, after all, we all should be concerned about. I do not think that it is set up to inspect the organisational structure of the MATs operation in the broader sense. That is also not relevant. If we have the outputs, we have the educational outputs, which is exactly why we need a regulatory review—to discuss these points.

The Lord Bishop of Chichester: My Lords, I speak on behalf of my colleague, the right reverend Prelate the Bishop of Durham, and declare his interest as chair of the National Society.

I speak very briefly against Amendment 39C. It is well intentioned but poorly drafted. Its wording is too broad and too open to interpretation. For example, what would constitute "supportive"? How would "other considerations" be interpreted? As it stands, this amendment is unable to have meaningful impact.

Lord Addington (LD): My Lords, my degree of fellow feeling for the Minister is growing, as it was when the noble Lord, Lord Knight, was talking, because of the amount of nodding and smiling in agreement behind her from her distinguished predecessors in the post—both of whom are true believers in academies—saying that this series of powers is unnecessary. The noble Lord, Lord Nash, has given us a classic example of "Don't make us pass this because you can do it already. You're effectively wasting ink." The fact that it

comes from the Secretary of State and not from another structure merely enhances the problems that there already are on this.

I would be interested to see what the down side of going back would be if we were to go through this. Can the Minister point out what the problem is with having this all in the office of the Secretary of State? Is it going to the Secretary of State themselves and this is some form of punishment for whoever holds the position, for having that amount of power? It is going to concentrate everything and it is already done. What great failings are we addressing? This is not the first Bill where we have thought that something must be done so we do it and then discover that it can already be done somewhere else. The Home Office normally holds the record for this, but if the Department for Education is going into some sort of competitive tendering process on this, I hope that the Minister can tell us how. Possibly it is some sort of Whitehall competition. If there is a problem, can the Minister identify it for us?

I appreciate what the right reverend Prelate has said about Amendment 39C. I was going to ask the Minister whether she could give us some description of what this would mean in practice if it was implemented. I appreciate that there may be problems with it. There are a series of arguments and messages running around the place about certain smaller religious groups that are getting very worried about this. What would be the result here and what is the Government's thinking about how smaller religious schools will fit in?

Lord Baker of Dorking (Con): I understand that the noble Lord, Lord Mendelsohn, will not move Amendment 39C. Is that right?

Lord Addington (LD): My Lords, it is something running through this debate; there has been discussion on it. I hope we can find this out. I assumed that the Minister would have been briefed.

Baroness Chapman of Darlington (Lab): The Government are in a bit of trouble here. I have not previously sat through a debate where there has been no support at all for what the Government are trying to do. I do not see how the Bill can leave this House intact. It is becoming quite urgent for the Minister to share with us the Government's intentions around it. I appreciate that may not be possible today, but on Wednesday we should have some indication of how the Government intend to respond. This is getting repetitive and very frustrating. Deep concerns have come up through this discussion that demonstrate again the failure of the Government to engage with academies, particularly on their approach.

My noble friend Lord Knight makes very sensible suggestions about the appointment of trustees, which highlights the issues around remuneration. We get the impression that the Government have not thought this through sufficiently. He rightly highlights the dangers of a gang of usual suspects taking roles—although he did not rule out being one himself. This makes us all realise, the Bill being as it is, that none of us has the first idea where the Government will take us. This is not a sustainable position for the Government to put the Minister in day after day as we go through Committee.

The Bill is muddled and rushed and has not benefited from the regulatory review. We do not understand the haste. There is no clarity about how all this will work in practice. The noble Baroness, Lady Brinton, summed it up really well. She said there was no strategic framework and no detail, and that it does not reflect the White Paper. I am afraid that is where we find ourselves. Several noble Lords have proposed a delay. It would appear a justifiable proposal at this stage, given everything we have heard. It would be in the Government's interest—perhaps not today but on Wednesday, before we go much further—if we could have some indication about what they are going to do about the fact that they clearly will not have sufficient support to get the Bill through as drafted.

Baroness Barran (Con): I start by acknowledging the noble Baroness's last comments. I will endeavour to come back on the next day of Committee with more clarity on the points she raises.

I thank my noble friends Lord Agnew, Lord Baker and Lord Nash, who have so much experience in this area, for discussing their concerns in respect of Clauses 5 to 18 with me ahead of today's Committee. As we know, the vast majority of academy trusts are well managed and meeting their obligations, but it is right that the Secretary of State should be able to step in where trusts fail to safeguard children's education and public money.

These intervention powers form part of a toolbox of measures enabling the Secretary of State to intervene in trusts in a proportionate way. The powers enable the department to tackle failure at the multi-academy trust level. In response to my noble friends and the noble Lords, Lord Knight and Lord Addington, and the noble Baronesses, Lady Brinton and Lady Chapman, I shall attempt to explain why these powers are necessary, offer some assurance as to how they will be used proportionately, and summarise our plans for building confidence in the department's decision-making processes.

The powers are necessary for two main reasons. First, they will provide a strong platform on which to build a fully trust-led system. Under the current framework the Secretary of State's intervention powers are set out in individual funding agreements, as we have heard. These powers can vary, depending on when the agreement was signed. In the case of a multi-academy trust, there may be several funding agreements with different termination provisions. We believe it is the right time to create a more coherent trust framework under which the Secretary of State's powers can be applied consistently and transparently.

Secondly, the powers will allow the Secretary of State to intervene, where necessary, in a more proportionate way. The current tools are limited and blunt, relying heavily on the power to terminate the funding agreement. For example, Clause 5 will give the Secretary of State a targeted power to act where a trust is failing to fulfil a specific legal duty. This could include, for example, not complying with the new attendance legislation under this Bill or a misuse of funding.

My noble friends have suggested that the Secretary of State could enforce such requirements under common law by taking legal action against the trust for breach

[Baroness Barran]
of contract. I fear that such an approach to enforcement would be costly and burdensome for both the department and trusts. Instead, the Bill provides for a straightforward remedy, while allowing for resolution through legal action as a last resort.

7.15 pm

Through Clause 6, the Bill incorporates into legislation the existing power for the Secretary of State to give a notice to improve to an academy proprietor. This power is currently set out in the *Academy Trust Handbook*, an annexe to the funding agreement. A notice might be issued, for example, where there was weak financial management. This could include where a trust had missed the deadline for approving the budget for the academy financial year or authorised staff compensation payments above delegated limits.

The noble Lord, Lord Knight, asked about representations relating to Clause 6. The existing funding agreement provisions relating to termination provide for trusts to make representations in specific circumstances. In practice, as the noble Lord said, these would be representations to the regional director. This power is intended for intervention at trust level where a trust is not meeting a legal obligation or there are serious weaknesses in governance. The regional directors would of course take account of trust representations before exercising their power.

Thanks to the work of my noble friend Lord Agnew and others, we have in place more robust oversight of financial management and governance in trusts. These measures will place such improvements on a stronger and clearer legal footing. They will also sit within a revised framework which allows for intervention to be escalated, where necessary, without requiring the funding agreement to be terminated, which is the sanction now where a trust fails to comply with a notice to improve.

In particular, Clause 7 allows the Secretary of State to direct a trust to appoint additional directors—for example, to remedy a specific weakness. It also allows the Secretary of State to replace an entire trust board with a board of interim trustees. We heard a number of noble Lords express concerns about this. The Bill also provides for trustees appointed in this way to be remunerated, although our general expectation is that academy trustees will continue to act on a voluntary basis.

Baroness Morris of Yardley (Lab): May I seek some clarification on that point? Will the payment of trustees and the interim executive board be the same for maintained schools? There is a parallel situation there, where a governing body of a maintained school is not strong and an interim executive board is put in place. Are the Government proposing that they be paid as well in the intervening period?

Baroness Barran (Con): I will come back to the noble Baroness on that point. I do not have the answers to hand but I will write to her.

We believe that there will be circumstances where it is right to remunerate trustees who have the particular skills and experience required to tackle the most serious failings in governance and management. These powers offer an alternative to terminating the funding agreement, which could be costly and disruptive to children's education.

We would expect any additional directors and members of interim trust boards to be drawn from our strongest trusts, in line with our aspiration for a trust-led system. If noble Lords have colleagues who are trustees, or are trustees themselves and wish to discuss this further, I am happy to undertake to meet and explore this point.

My noble friends expressed concerns that these powers could be used in a heavy-handed way, such as terminating a trust's master funding agreement on the basis of a single breach. As I have explained, the intention behind these measures is to create a more nuanced framework for intervention which avoids resorting to the threat of termination, while ensuring that weaknesses can be addressed. Any Secretary of State is bound by common-law requirements of proportionality. This means that they would terminate a funding agreement only on the basis of a material breach. Moreover, except in very limited circumstances—for example, where a trust is insolvent—the Secretary of State may terminate a funding agreement only after exhausting other options.

In general, the Bill provides for termination only where a trust has not addressed concerns raised through an earlier intervention, whether a compliance direction, a notice to improve or a termination warning notice. I agree that there should be proper scrutiny of how the Secretary of State, through regional directors, exercises any powers of intervention in academies and trusts. The Government's recent schools White Paper announced a plan for a review of regulation. I assure the Committee and my noble friend behind me that, as part of that review, we will—

Baroness Chapman of Darlington (Lab): Given that the regulatory review seems to be so significant in the Government's considerations and has come up many times, and that we are discussing pausing the Bill—I know the Minister has not yet engaged directly with that—I wonder whether we could have some idea of the timescale on the regulatory review. Should we wish to suggest a pause, we could make sure that it was for sufficient time, but not too much time, to allow us to benefit from the findings of that review.

Baroness Barran (Con): We plan for the review to be launched in the coming weeks. I cannot give the noble Baroness an exact date, but I think I am allowed to say "shortly". I have probably said more than I am allowed to.

I will go back, because this is important. The noble Baroness is right to raise the regulatory review; we see it as very important. As part of that, we will look at how we provide for the scrutiny of how these powers are exercised. Critically, we will do that in a way that wins the confidence of the sector.

I have reflected on my noble friends' concerns, but I believe that, taken together, these clauses create a sound framework for robust but proportionate intervention as we move to a fully trust-led system.

Amendments 39A and 39B in the name of the noble Lord, Lord Knight of Weymouth, envisage a new role for Ofsted in inspecting multi-academy trusts,

and make the decision to issue a compliance direction and a notice to improve contingent on the outcome of such an inspection. Currently, the department relies on a range of evidence from a variety of sources to build up a joined-up picture of each multi-academy trust, to inform decisions about intervention. This includes evidence on finance and governance, as well as Ofsted's school inspection judgments on educational performance.

Through the regulatory review, the department will consider the evolving role of inspection in a fully trust-led system. This will include consideration of how inspection of multi-academy trusts would be co-ordinated with our wider regulatory arrangements, as well as how it would interact with school-level inspection. I hope the noble Lord will agree that it is important that the review runs its course before we make any decisions in this area. He also asked a number of quite specific questions. If I may, I will write in response.

I commend Clauses 5 to 18 standing part of the Bill. I also ask the noble Lord, Lord Knight, to withdraw his amendment.

Lord Lucas (Con): My Lords, the noble Lord, Lord Knight, is right about getting Ofsted into multi-academy trusts. It would make a great difference to how parents are able to interact with the eventual system. Parents need the level of information and reassurance that will come from an Ofsted report, and I hope it would be done in a way that, as others have suggested, is very much focused on the educational aspects, which is where Ofsted's expertise lies.

Lord Knight of Weymouth (Lab): I am grateful for those last comments, and that I do not have to speak for six minutes before I get my food while others discuss the national food strategy.

I am pleased to hear that, all being well, on Wednesday the Minister will be able to come and give us a little more information about the Government's intentions, which is really important. It is also helpful that she was able to give us a vague timescale of "in the coming weeks" on the regulatory review. If on Wednesday she was able to give a little more detail on that timescale, I think the whole sector would be really grateful in terms of understanding the sequence of how things are likely to play out on all this.

The Minister talked about the blunt powers in agreements that she is looking to replace with a more nuanced and consistent response through the series of sequences, yet many of us are worried that the nature of the Bill, as written at the moment, will still be heavy-handed. If only all current Secretaries of State paid attention to their common-law responsibility to proportionality, I think we would all be a lot happier in this place.

The issues around paying and governance are issues to reflect on. All those many years ago, when I was Schools Minister responsible for academies, among other things, I commissioned some work around governance but it never really got anywhere. There may well be reasons why we want the ability to bring in people with a much more professional approach who therefore might be paid, but we need a really full debate around that. The people who give of their time voluntarily to be school governors, multi-academy trust trustees, ambassadors for local schools, et cetera, do so willingly, and we have to be really cautious about interfering with that by offering to pay even a few.

We look forward to hearing more on Wednesday. I do not think the Committee is persuaded about these clauses as they stand. I am sure the comments from my Front Bench about what will happen if we do not get a good response are being listened to by Ministers, but I am happy to withdraw my amendment.

Lord Baker of Dorking (Con): My Lords, I thank the Minister for carefully explaining the Government's justification for doing this. She is in a difficult and unenviable position, but I do not think anybody could have handled it better.

What the Government need is time to think about this and to reflect on what is needed. I am fairly clear what they are getting at, and it is a very narrow thing they want to do. I do not think that can be covered by tinkering with the existing 18 clauses, quite frankly. It will mean a redraft and new clauses, so I very much recommend what the noble Baroness, Lady Brinton, said on the screen: we should gain time. That is to say that Report on the Bill should take place in the autumn, not in July. The Government really have to reflect carefully and define their targets more precisely than they have, so that solutions can be given. My three friends and I would be able to help and co-operate with that as much as possible. I very much hope that on Wednesday my noble friend will be able to say that Report will be done in the autumn.

Amendment 39A withdrawn.

Clause 5 agreed.

Clause 6: Power to give notice to improve

Amendment 39B not moved.

Clause 6 agreed.

Clause 7: Powers to appoint or require appointment of directors

Amendment 39C not moved.

Amendment 40

Moved by ***Baroness Barran***

40: Clause 7, page 8, line 7, at end insert—

"(3A) Where the Secretary of State proposes to give an interim trustee notice to the proprietor of one or more Academy schools with a religious character, the Secretary of State must first consult the relevant religious body for each Academy school with a religious character in the proprietor's care."

Member's explanatory statement

This amendment requires the Secretary of State, before giving an interim trustee notice to the proprietor of an Academy school with a religious character, to consult the relevant religious body for the school.

Amendment 40 agreed.

Clause 7, as amended, agreed.

Baroness Penn (Con): My Lords, I beg to move that the House be now resumed—

Lord Hacking (Lab): Before the House is resumed, I draw attention to the clock, which has been stuck for a long time at 10 past three, as indeed, I understand, have all the clocks in the House. Since this is an education Bill and to do with the world of academia, I remind your Lordships of a poem written by Rupert Brooke just before the First World War. It was a nostalgic poem, because he was not very happy living in Germany at the time. He ends the poem:

"Stands the Church clock at ten to three?
And is there honey still for tea?"

House resumed.

Government Food Strategy

Statement

7.31 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made by my right honourable friend the Environment Secretary in another place. The Statement is as follows:

"With permission, I would like to make a Statement on the Government's food strategy. Recent events have been a reminder of the importance of domestic food production. It gives us national resilience. Throughout the pandemic, those working at every stage of the food system, from farming and fishing to manufacturing, distribution and retail, did not let us down. The food industry has shown tremendous commitment and ingenuity in the face of recent international events.

The UK is largely self-sufficient in many products, including wheat, most meats, eggs and some sectors of the vegetable industry. Overall, for the foods that we can produce in the UK, we produce around 74% of what we consume. That has been broadly stable for the past 20 years, and in our food strategy, published today, we are committing to keep it at broadly the same level in future, with the potential to increase it in areas such as seafood and horticulture. For instance, we are exploring policies to incentivise the use of surplus heat and carbon dioxide from industrial processes in a new generation of glasshouses here in the UK producing salad crops such as tomatoes and cucumbers.

With the cost of agricultural commodities linked to global gas prices, we recognise concerns around the cost of food. Through this strategy, we are setting out long-term measures to support a food system that offers access to healthy and sustainable food for all. It will complement the measures that we have already taken to support those struggling to afford food and help them to live healthily, through the Healthy Start scheme, breakfast clubs and the holiday activities and food programme.

The food industry is also present in every part of our country. It is the largest manufacturing sector in the UK—bigger than automotive and aerospace combined. Food manufacturers provide employment opportunities in areas where there might otherwise be deprivation, they offer apprenticeships and opportunity, they invest in research and development and they give local areas a sense of pride and identity. None of our food manufacturers could succeed without the farmers and fishermen who supply them with high-quality produce.

Our fresh produce industry has always required access to seasonal labour, and I am pleased to announce today that we will bring forward another 10,000 visas for the seasonal workers route and expand the scheme to cover poultry. On this side of the House, we are clear that we want people at home and abroad to be lining up to buy British. Our food strategy sets out our intention to consult on ensuring that the public sector sources at least 50% of food locally or produced to higher standards.

There are new challenges to address that will require the characteristic ingenuity of our food industry. As Henry Dimbleby's independent review highlighted, poor diet has led to a growing problem of obesity, particularly among children. Good progress has been made on reformulation in some categories. Industry-backed initiatives such as Veg Power, which conceived the successful Eat Them to Defeat Them campaign, have shown the value of positive advertising to promote vegetable consumption among children. But there is more that must be done in future, with government and industry working in partnership on a shared endeavour to promote healthier diets. The Government accept that they have a role, and new regulations regarding the position of retail displays of foods that are high in salt, fat and sugar will take effect later this year.

One of the key recommendations of the Dimbleby review was the formation of a new data partnership between industry and government, which we will be taking forward. Food manufacturers and retailers have a wealth of data and behavioural insights that can help to identify solutions. This will provide consumers with more information about the food they eat while incentivising industry to produce healthier, more ethical and sustainable food.

Finally, Madam Deputy Speaker, our strategy acknowledges that the food system has a significant impact on the environment. We are therefore taking forward the recommendation of the Dimbleby review for a land use strategy. Our future agriculture policy will seek to financially reward sustainable farming practices, make space for nature within the farmed landscape and help farmers reduce their costs. From precision breeding techniques that reduce the need for pesticides, to tractors fuelled by methane captured from slurry stores, and new feed additives that can significantly reduce methane emissions from ruminants, technological solutions are developing at pace. Our future farming policy will support innovative solutions to the environmental challenges we face.

To conclude, our food strategy will set us on a path to boost food production and ensure that everyone has access to healthy and affordable food, produced in a sustainable way. I commend this Statement to the House."

7.37 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for repeating the Statement this evening. We have waited a very long time for this food

strategy to be published—and what a disappointment it has turned out to be. It has provoked a united response, but for all the wrong reasons. It has been roundly criticised by Henry Dimbleby himself, by farmers, by food campaigners and by environmentalists, for being vague and unambitious. Henry Dimbleby has said that it is not a strategy and has warned that more children will go hungry. Minette Batters has said that the proposal to help farmers increase food production has been "stripped to the bone". The Soil Association has criticised

"a narrow-minded ideology which believes government should not intervene to reshape diets",

and Greenpeace has said that the proposals

"only perpetuate a broken food system".

Sadly, these proposals are a disservice to the excellent, well-researched report produced by Henry Dimbleby, which took a holistic approach to the farm-to-fork journey and its impact on our health. It highlighted the terrible damage that poor farming practices could do to our planet. It called out the complicity of food manufacturers whose drive for profits is pushing highly processed junk food on to the nation in the full knowledge of the ill-health consequences, and it warned of an obesity crisis that would overwhelm our health service if urgent action were not taken. The UK is now the third fattest country in the G7, with almost three in 10 adults obese, while children are going hungry because our school food system is failing so many of them in need.

The Dimbleby report was radical and challenging. As it says:

"Change is never easy. But we cannot build a sustainable, healthy and fair food system by doing business as usual."

It seems, however, that this is exactly the approach the Government are taking. The Dimbleby review consisted of almost 300 pages, yet this response covers barely 10% of it. It has not even responded to the 14 very well-argued recommendations in the report. All the difficult questions have been ducked. Instead, we have a statement of vague intentions and a rehash of existing policies, not a blueprint to tackle the major food issues facing this country.

The Minister's Written Statement talked about the need to work across all government departments to deliver the strategy but, frankly, such cross-departmental working should have been put in place before the White Paper was drafted. Where are the policies that would address the 7.3 million people living in poverty, including 2.6 million children? Where are the policies to make food banks a thing of the past, instead of our facing a 95% increase in food parcels being handed out since 2015? Where are the policies to tackle the rise in adult obesity that is putting our health service under such strain? Why have the Dimbleby plans to improve child nutrition been ignored? Why have the proposals to extend entitlement to free school meals been rejected, despite widespread support from teachers, health workers and campaigners?

We know that food prices are rocketing and the food system is under strain, but this White Paper gets nowhere near addressing the root causes. Costs are dramatically rising for farmers and food producers, putting further pressure on food price inflation, and the closure of the UK's biggest fertiliser plant last week will add to food costs. Meanwhile, crops are rotting in the field and over 40,000 pigs have already been culled because of labour shortages.

So, where are the plans to support British businesses and ensure that British food is affordable? Where are the plans to support our farmers and stop them being undercut by imports with lower animal welfare and environmental standards? Why was the commitment to tackle low-quality imports taken out of the paper at the last minute? What message is that sending to farmers? Instead, we should have a plan to ensure that we buy, sell and grow more of our great British food, entrenching Britain's reputation as a beacon for quality food, high standards and the ethical treatment of animals.

The Dimbleby report was a once-in-a-generation opportunity to reset our food strategy for the future. It tackled the difficult issues, knowing that not everything would be agreed. So, why did the Government not feel able to give the recommendations in that report the detailed response they deserved? Does the Minister recognise that as a result, we have a White Paper that pleases no one, lacks ambition and represents a missed opportunity? I very much look forward to his response on these issues.

Baroness Walmsley (LD): My Lords, there is much to say about this "Let them eat venison" food strategy—although there is not a lot of meat in it. It is full of vague intentions and grand promises such as a school food revolution. It seems to me that when this Government want to hide the fact that they have chickened out of doing something really revolutionary, they call it a revolution. Sadly, they have failed to do justice to Henry Dimbleby's thoughtful, realistic and ambitious national food plan. No wonder he is disappointed that only half his recommendations have found favour with the Government.

Our national food system is broken. If your Lordships do not believe me, ask the NHS workers who are forced to use the food bank set up by the hospital where they work. Ask the person who has three jobs, trying to put food on the table but able to afford only cheap food or ready meals because there is no time left to cook. Ask the doctors who treat the 40% of overweight children and the 64% of overweight adults. Ask the nurses who treated the large number of people with obesity who died of Covid-19 at the height of the pandemic.

Henry Dimbleby recommended a food system to make people well, not one that would make them sick, while at the same time protecting the environment. Yet what do we have in response? Twenty-seven pages that ignore evidence-based measures such as introducing a sugar and salt tax, an idea that the soft drinks industry levy has shown to be an effective way of incentivising manufacturers to reformulate and reduce sugar in order to avoid the tax. Tonnes of sugar have been cut from the diets of children and teenagers, while people drink just as many soft drinks and the industry has not suffered at all. However, despite that success, the amount of sugar the average person eats is continuing to rise because of the increase in consumption of junk foods laced with sugar, salt and other appetite stimulants. So why will the Government not follow the sugar tax idea

[Baroness Walmsley]
with other foods? Can the Minister say who has been lobbying the Government to ditch this recommendation? Is it the same people who succeeded in persuading the Government to delay the implementation of the ban on TV and online advertising and volume promotions of HFSS foods before the ink was dry on the Health and Care Act?

The price of food is rising but there is no evidence that a salt and sugar tax would increase it. I spoke yesterday to someone in the food industry who was convinced that it would encourage reductions in salt, and particularly in sugar, without price rises. If the Government want to reduce taxes, perhaps they should start with the inflated amounts of VAT that are flowing into their coffers from our fuel and energy purchases; that would help families directly.

During the passage of the Health and Care Act, there was a great deal of talk about what the new integrated care systems could do to address the health inequalities crisis. We know that obesity is more common among poorer people, yet this so-called strategy will do nothing to help them afford healthy food. We are told that a healthy diet would cost five times what the poorest families can afford, but the sugar and salt tax could pay for some of the measures that Dimbleby proposed to balance things out. Extending the Healthy Start programme and eligibility for free school meals and the holiday activity and food scheme would help to get fruit and vegetables into the diets of poor families, yet there are no proposals about that. Why not?

The Government talk about willpower, information and education for consumers, yet we have had health education in school for years, as well as food labelling. It has not worked. When the soft drinks levy was introduced, Liz Truss objected, saying that people should be free to choose. However, the problem is that people are not free to choose healthy food because they cannot afford it; they can only afford cheap calories. In some housing estates, almost the whole row of shops consists of junk food outlets. Where is the choice there? It is a matter not of will power but of affordability and availability.

The Government have a responsibility here. I was amazed to read in the White Paper that the cost of food is not a matter for government. Does the Minister really believe that? Of course it is, when people are getting sick, putting pressure on the NHS and costing the taxpayer a lot of money. I do not expect this Government to care about poor people losing years of life because of poor diet, but I would have thought they would understand the economic case for ensuring a healthy and productive population. Achieving the Government's own ambition of five extra years of healthy life by 2030 is nowhere near on track, especially in the lower demographic groups.

Neither is there anything concrete in the White Paper to help farmers produce good food more efficiently, while protecting the environment. Farmers are already up in arms about what they are being asked to do without extra support, and worried about competition from large farms in Australia and New Zealand. Subsidies have been cut by 20% and the Government are still not clear about the details of the environmental land management payments.

Your Lordships' Science and Technology Select Committee, in its report on nature-based solutions to net zero, said that farmers need a free and independent expert advice service to help them improve their productivity while improving biodiversity, but all we have is an alphabet soup of schemes and funds—and nowhere in the food strategy could I see the word "soil". Another of Dimbleby's recommendations that is notable for its absence is that we should aim to eat at least 30% less meat, given that 85% of our agricultural land is used to feed animals. Apart from the ridiculous "Let them eat venison" proposal, I see nothing practical to achieve that.

We are offered more research on things that we already know and more reviews about things that do not need reviewing—nothing but delay and equivocation. What a missed opportunity.

Lord Benyon (Con): I am grateful to the two Front-Bench spokesmen for their responses, but I wonder whether they have read the same report as I have. On food poverty, the first point that I would make is that I hope the noble Baroness does not really believe what she just said about poor people, because I find it extraordinary to assume that people like myself do not care about people on low incomes. That was a very direct statement and one that, in time, I hope she might recant.

A great many families are suffering at the moment for a variety of reasons but principally because of other constraints on household incomes, particularly in terms of energy. It is for that reason that the Chancellor recently announced £15 billion of support for households and continued other measures right across the concerns that households have about their incomes. Food is a significant part of household expenditure, though it is actually lower in this country than in many others and has stayed stable, at around 16%. It is creeping up, which is a matter of genuine concern for people on all sides of this House. We want to do what we can to help those families tackle these problems.

The noble Baroness, Lady Jones, mentioned free school meals and eligibility. The threshold must be set somewhere. We believe that the level we have selected, which enables more children to benefit while remaining affordable and deliverable for schools, is the right one. For a typical family on universal credit, the current £7,400 earned income threshold, depending on exact circumstances, equates to an annual household income of between £18,000 and £24,000 when benefits are taken into account. To be effective, welfare benefits should encourage people to take up work while supporting them to do so. We need to avoid creating a cliff-edge disincentive whereby people cannot afford to take up work, which is what a significant increase in the scope and funding of free school meals is likely to do. However, from 24 March this year we have made permanent the extension of free school meals eligibility to include some children from groups who have no recourse to public funds.

The noble Baroness asked about crops rotting in the fields. We work very closely with the industry on the demand for seasonal workers. For that reason, we have increased the number of seasonal workers visas, by 10,000, to 40,000. She will be aware that a large proportion of our seasonal workers came from Ukraine, and that is why we have spread out the countries where we are offering these visas to fill that gap. Let us be frank: many of those people are remaining to fight or have other reasons as they deal with that tragedy in their country.

The noble Baroness talked about trade. I would just add that we are keeping to our pledge that we will maintain animal welfare and environmental standards on the imports that we receive under trade deals.

The unsexy thing to talk about in this place is data, but data actually matters and the food industry has access to a large amount of data. By working with the food industry and through the food data transparency partnership, we are giving consumers the information they need to make more sustainable and ethical, and healthier, choices. We are talking to the industry about expanding animal welfare labelling to help consumers, but it is important that people have that data on what they are eating, where it comes from and what it contains.

On dealing with unhealthy foods, which were rightly pointed out in the Henry Dimbleby report, the Government are taking forward a variety of policies. For example, we have seen the amount of sugar in cereals and yoghurts reduced by 13% since we brought in changes there, while the addition of calorie counts on menus is making choice better for people. Later this year, we are also bringing in a ban on poor quality foods being available at checkouts.

The noble Baroness for the Liberal Democrats made a point about subsidies being cut; no subsidies have been cut. The support system for agriculture is ring-fenced at £2.5 billion to the end of this Parliament. That is a commitment that was given and will continue to be given. We are developing a range of supports encouraging farmers to be innovative and to tackle the ardent ambition that more quality food should be produced from home.

Finally, on the noble Baroness's point about soils, I could bore this House for weeks about what we are doing on soils. She only has to look at our soils standard in the sustainable farming incentive to see how important soils are in trying to reconnect some in agriculture, who have lost that connection with the soil, to produce healthy food and make ecosystems and the environment function as two sides of the same coin with food production.

7.56 pm

Lord Deben (Con): I wonder whether I could first apologise to the Minister because I do not think this is his report. I do not think he wrote it or, indeed, that he does not misunderstand that it is not actually a food strategy. That is contrary to the standards which we would expect of any business. As chairman of the Climate Change Committee, I think it does not actually address any of the issues which we have put down as necessary for Defra to address on food. As a member of the food sector council, which is a government board, I have to say it does not address many of Henry Dimbleby's very good proposals. It is a collection of vague promises and partial answers, but it does not address the fundamental issues. It therefore is not a strategy, which is what we needed. We have waited over a year for a strategy, and we have not got one.

As chairman of the Climate Change Committee, I really want to know: what is the answer to the fact that we cannot expect farmers to do what we want if we have trade agreements which mean that they are competed with by people who do not have to meet those standards? What about what we have to do, for example, on the restoration of peatlands? We are going so slowly that we will get nowhere near the necessary figures by 2035. What about the question we have raised about reducing the amount of meat that we eat while eating better meat? What about answering those questions? They are not here.

I do not think this is Defra's fault, but it is a government fault. These things have been removed one by one, because the Government will not face up to the fact that these are difficult questions that need to be addressed. This so-called strategy does not address them.

Lord Benyon (Con): I am sorry that my noble friend does not feel that this hits the button. I hope that, as we take it forward, he will see that we are serious about ensuring that we reflect on what Henry Dimbleby produced in his two excellent reports—for the first time linking the food we eat and the health of our nation with how it is produced, and how we avoid the huge and extremely regrettable percentage of the food we produce that we waste.

As my noble friend knows, the Government are committed, because it is the law, to reaching net zero by 2050. We published our *Net Zero Strategy* last year, which sets the UK on a clear path to achieving that. The food strategy supports the delivery of a net-zero strategy, for example by making clear our commitment to publishing a land-use framework. This will play a critical role in setting out how we can best use land to meet net-zero and biodiversity targets, as well as helping our farmers adapt to climate change.

I hear what my noble friend says about peatlands. I was in the Peak District National park last week looking at extraordinary levels of peat restoration, which will gladden his heart and perhaps make him feel that, working together with land managers, we are going to get to the target his committee sets.

Baroness Young of Old Scone (Lab): My Lords, I was going to raise a question about the land use strategy, which I welcome—a small crumb of thanks, if I may put it into this pudding of a strategy. However, I cannot ask that question because I am so appalled by how awful the strategy is. When I was chief executive of Diabetes UK, we worked endlessly with the supermarket sector on any information that it gathers in profusion. It became abundantly clear to me that that was a tiny part of tackling the epidemic of poor health in this country, which is killing the health service. Diabetes is now the biggest cause of premature death, from heart attacks to strokes. It causes blindness.

[Baroness Young of Old Scone]
People's legs fall off. A shedload of things are draining the resources of the National Health Service as a result of obesity, which is simply solved if people can access the right food at the right price. I do not believe that this strategy will do that.

I will ask my question on the land use strategy, nevertheless. I am very grateful that we are going to have one. I am worried that we should not just focus on climate change, biodiversity, the environment and agriculture because there are other things that land is important for, such as the built environment, infrastructure, energy generation, flood risk management, health and mental health. How will these other objectives be taken into account in preparing the land use strategy—for which I am very grateful, with my small crumb of thanks?

Lord Benyon (Con): I am very grateful to the noble Baroness for her support, but I understand that that support is conditional on it being a good land use strategy that reflects the wider uses of land in a property-owning democracy, which is what we are. You cannot order farmers and land managers to use their land a certain way. You can regulate them in certain ways and you can control them through the planning system but, most of all, you can incentivise them.

It is not only the Government who are doing that. I was talking to a dairy farmer the other day who told me that he was way ahead of the Government in getting to net zero, not because the Government were telling him to do it, but because to continue to sell his milk to a particular buyer he had to get to net zero. That made him make land use decisions that were in the public good. There is a lot happening, but it does need pulling together in a clear, coherent strategy and I hope, working with people on all sides of this House, we will get a land use strategy that will be fit for the decades to come as we tackle the huge challenges we face.

Baroness Finlay of Llandaff (CB): My Lords, this strategy has chapters on levelling up and trends in diet and obesity. However—here I declare my role as chair of the Commission on Alcohol Harm—it says absolutely nothing about alcohol. Yet alcohol is highly obesogenic; one glass of wine is equivalent to two Jaffa cakes. When we look at levelling up, we know that there is a much higher rate of alcohol-related mortality in the north-east of England. It is more than 20% higher than in the south-east of England. Alcohol is associated with 45% of all violent crime and 39% of domestic violence. Every day there are about 80 alcohol-related deaths and every year there are about 6,000 alcohol-specific deaths. Given the high source of calories in alcohol products across the board, why has alcohol been completely omitted from a strategy that talks about obesity and levelling up, when it is a cause of levelling down and ongoing obesity?

Lord Benyon (Con): The noble Baroness eloquently identifies a very serious societal problem, but to say that the Government are not addressing it because it is not specifically mentioned is not the case. The Department of Health and Social Care, working with other departments, has a very clear view about how we can help reduce the problem she identifies. She is right to say that it affects more challenged communities much worse than others. We are working across government and working with local government, education and in a variety of other different ways to tackle it. We will always be open to her expertise and knowledge in trying to make sure that those are felt right across government.

Baroness Bennett of Manor Castle (GP): My Lords, does the Minister really think that this is a strategy about healthy meals or healthy profits for a few multinational companies? The first paragraph of the executive summary says:

"The food and drink industry"

is the biggest "manufacturing industry" and creates

"£120 billion of value for the economy every year".

Does the Minister think that food is something you manufacture or something you grow and produce in the natural environment? You have to get to paragraph 7 on the second page before health or sustainability are mentioned. It is described as a government food strategy. Would it not be better described as a corporate strategy to produce profits? Why does it not focus on healthy local fruits and vegetables? The noble Baroness, Lady Finlay, said that alcohol is not mentioned, but it does get mentioned once. The very first product mentioned is Scotch whisky. It then goes on to mention

"Worcestershire sauce, the Melton Mowbray Pork Pie … Cornish Clotted Cream"—

all lovely treats, I am sure. But where is the food to healthily feed people? Why, when we are talking about fruit and vegetables, do we focus on tomatoes and lettuces? Where are the root vegetables, the apples, pears, nuts and pulses, and the things we can do to help give people healthy stable food grown here in the UK?

Lord Benyon (Con): On her last point, I refer the noble Baroness to the points we make about expanding horticulture and our investment in new technologies to produce sustainable fruit, vegetables and leafy greens from a variety of different new sources, not only vertical farming. The noble Baroness shakes her head, but it is in there.

On the other point about the food industry, every job is liberating and household-supporting, which is fundamental to a family. That is the point we are making. This is not some corporatist point; it is about the individuals working in these businesses. Every single parliamentary constituency in the country, with the exception of Westminster, has a food processing or manufacturing company. They are agents for levelling up. They give people apprenticeships, skills and an income. They pay taxes, which build hospitals and schools—we need to be reminded of that occasionally.

Viscount Waverley (CB): My Lords, getting food to market is also a factor.

"Reducing barriers and bureaucracy following Brexit"

is crucial and contained in the report. That will be most welcome to many. However, a food strategy must include a well thought-through freight and logistics

programme. I understand that there is a White Paper to be distributed on Wednesday. We all look forward to that and we will be scrutinising it with great care in the months to come.

I am co-chair of the parliamentary group on the future of UK freight and logistics, which has the sole objective of receiving submissions from all regions of the United Kingdom, including Scotland, Wales, Northern Ireland and the individual regions of England. As an example, the east of England could, with good reason, be said to be the breadbasket of fruit and vegetables in this country, but it expresses concerns about logistics, with roads in particular requiring a well thought-through upgrade programme. What can the Minister offer so that freight can operate on a much-needed, efficient distribution network within our United Kingdom?

Lord Benyon (Con): The noble Viscount raises a really important point: our food industry and food distribution network is one of the 13 items listed in our critical national infrastructure. It was shocking, in 2010, when we came into government to find that there was no national infrastructure database and no drawing together of all the important points, including the ones made by the noble Viscount. I am sure that it is not right yet; we have to connect up where we need things to be in this country with the best and most sustainable means of getting there. This will continue to mean that we will have to move things on roads. Hopefully, we will move things in a much more environmentally friendly way in years to come, but there are alternatives as well. We should be building for the future to fit in with our net-zero ambitions.

Lord Grantchester (Lab): I declare my interests as set out in the register. It is to be welcomed that the Government recognise the importance of food, but the strategy should be more dynamic. There are widespread problems throughout the food system which Henry Dimbleby has done well to identify and express in his report, but they have not been dealt with adequately by the Government. There is great anxiety from the widespread uncertainty engendered by government policy across many areas.

I will concentrate on one area for integration across government—quality food—and say that farmers are very good at responding to opportunities, once co-ordinated into quality marketing schemes. How is the Minister's department working with farmers, growers, processors and the food chain to ensure that domestic initiatives—such as quality branding, product of designated origin schemes and other marketing schemes—are better integrated with the Department for International Trade to develop export opportunities in food and trade deals, where deals are not to be focused merely on opening up the UK to imports? Will Defra set up a new taskforce to build on this integration, reducing emissions and adapting to climate change? These are both key challenges for sustainability.

Lord Benyon (Con): The noble Lord is absolutely right. We need to ensure that we are not only feeding ourselves, and maintaining the dependability of what we grow ourselves, but looking at markets abroad. There are a number of shining examples of our export potential, including exports of quality food from these shores. I hope that, in the years to come, we can see exports—not just to the European Union but to the rest of the world—benefitting from a new trading environment where farmers can benefit as a result. I am not sure that it requires a new taskforce to be set up, because I consider that taskforce to be the Department for Environment, Food and Rural Affairs working with the Department for International Trade. However, I am open to any ideas that will oil the wheels of export potential for our farmers and growers.

Baroness Stroud (Con): My Lords, the strategy rightly points out that the Government have a role in addressing health inequalities. The concern I want to raise with my noble friend the Minister is regional health disparities. We know that the levelling-up agenda is committed to addressing these regional health disparities, but we also know that a 65 year-old in, say, Kensington and Chelsea lives for a further 24 years, while someone in Manchester may live only for another 18 years. In Halton, 78% of the population are experiencing obesity, but in south-west London, the figure is only 42%. These are real health disparities that we were hoping the Government's food strategy would have a part in addressing. We are led to believe that a number of recommendations have been removed from the report. Can my noble friend the Minister outline why he is still convinced that this strategy will address such health disparities?

Lord Benyon (Con): To my noble friend I say that the Government have stated in their policy that they wish to see life expectancy rise across the population. However, she is absolutely right to point out that there are some areas where the life expectancy, and indeed other health outcomes, are vastly different. It is not just in the report that we are looking at the health of the nation; it is in the whole Government's levelling-up agenda. I sit on a committee with Ministers from other departments who are absorbed by these issues and want to see a change so that the life expectancy, as well as the life opportunities, of people in deprived areas are addressed. If we are not getting that message across, we must do better, because it is an absolutely key ambition for this Government. We want to see the inequalities that have existed for too many decades change in fast time on our watch.

Baroness Bennett of Manor Castle (GP): My Lords, I will follow up on a point made by the noble Baroness, Lady Walmsley, who referred to the Government's attachment to the word "revolution". The strategy offers £5 million to deliver a "school cooking revolution". I believe that there are about 24,000 schools in England; with a rough bit of maths, that is about £200 per school. Is that how the Government plan to deliver a revolution in school cooking?

Lord Benyon (Con): Leading on from the last question, it might be more important that those lessons in supporting young people in making the right diet choices are targeted at the places where there is evidence of the worst food choices being made. That is not a preachy way of doing it. We want to deal with the problem where it exists, recognising that there are very

[Lord Benyon]
serious health issues around the diet choices that people make. Without pointing fingers or doing this in a way that has not worked in the past, and looking to a different way of approaching it, tackling the problem in schools is really important.

Schools Bill [HL]

Committee (2nd Day) (Continued)

8.17 pm

Amendment 41

Moved by ***Lord Shipley***

41: After Clause 7, insert the following new Clause—

"Geographical spread of multi-academy trusts

(1) The Secretary of State must not—

(a) enter into an Academy agreement with a proprietor to fund a new Academy school, or

(b) authorise the transfer of an existing Academy school to another proprietor,

unless the condition in subsection (2) is met.

(2) The condition is that the Secretary of State is satisfied that the geographical spread of the Academy schools that would be in the care of that proprietor is appropriate, having regard to, amongst other things—

(a) the number of schools that would be in the care of that proprietor;

(b) the number of pupils registered at each school that would be in the care of that proprietor;

(c) whether the schools in the care of that proprietor predominantly would comprise primary schools; and

(d) whether the schools in the care of that proprietor predominantly would comprise secondary schools."

Member's explanatory statement

This amendment is aimed at ensuring that schools within a multi-academy trust must be within a similar geographical area rather than spread across the country.

Lord Shipley (LD): My Lords, in moving Amendment 41 in my name and that of my noble friend Lord Storey, I will speak also to Amendments 77, 79A and 95. Amendment 41 is aimed at ensuring that schools within a multi-academy trust must be within a similar geographical area rather than spread across the country.

It is important for the close working of schools across neighbourhoods. I recall the noble Lord, Lord Nash, saying on the first day of Committee that one of the advantages of multi-academy trusts as opposed to maintained schools was that they enabled the speedy movement of teaching staff from one academy to another. But, of course, if the academies are located right across the country, it makes it very difficult indeed for that kind of movement of staff actually to happen. The issue is one of accountability and transparency. It is much easier for parents and local communities if multi-academy trusts are located reasonably close to each other, as occurs now, for example, with co-operative trusts.

The amendment talks in terms of the Secretary of State having to be certain

"that the geographical spread of the Academy schools that would be in the care of that proprietor is appropriate".

It is things such as the number of schools in the care of that proprietor and whether the number of pupils registered at each school is such that the total number is felt to be appropriate. Then, of course, there is whether a majority of the schools would be primary schools or secondary schools. Clearly, there has been a tendency for academies to be concentrated in the secondary sector. My question to the Minister is: what is the overall structure planned in terms of the geographical spread of multi-academy trusts and what limitations might be placed on that?

Amendment 77 requires the Secretary of State to report on the powers of autonomy available to academies and to assess whether such autonomy should be available to maintained schools. The issue is one of a level playing field. Why can academies have much greater powers than maintained schools may be able to have; for example, on issues such as the ability to set term dates, admissions criteria, the ability to depart from the national curriculum and staffing arrangements? The question that we are posing to the Minister is why similar powers of autonomy do not lie with the maintained schools sector. Of course, the date by which the Government would like all maintained schools to have transferred to academy status is still eight years from now, so I think the point is relevant.

Amendment 79A relates to the problem that college groups that sponsor multi-academy trusts have. They face technical barriers that impede them from operating an optimal service. This amendment is intended to enable colleges, academies and multi-academy trusts to work together in a more coherent, efficient and effective manner. I suspect that the Minister may well be aware of the problem but the barriers that exist can include DfE rules that make it harder for an academy and a college to jointly appoint senior staff or rules requiring the academy to put every contract out to tender, even those involving joint services with their partner college. As an example, it can make it harder for colleges and academies jointly to secure IT services. Technical solutions should be possible to solve these problems and enable colleges to offer much more joined-up local processes.

That takes me to Amendment 95, which relates to the need to increase transparency regarding multi-academy trust funding arrangements and expenditure. An example was quoted to me last week of a worry that rural schools have about their budgets being cut when they are part of multi-academy trust and money that was available in the local area being reduced without explanation because the multi-academy trust operates as a single financial unit. The amendment says:

"The proprietor of a Multi Academy Trust must annually publish information setting out the quantum of funding they have reallocated from schools' budgets within their Trust and for what purpose."

In other words, there is an annual agreed budget. It is about what changes were made, who lost money and, perhaps, who gained money—and, of course, if the multi-academy trust is operating right across the country as a whole, those geographical differences become very important.

The amendment aims to increase the transparency of multi-academy trust funding arrangements and expenditure. At present, a multi-academy trust can reallocate an uncapped proportion of funding from schools' budgets within the multi-academy trust, with no requirement at all for transparency. That appears to undermine the national formula objective to achieve greater transparency. It is one thing to support multi-academy trusts having a degree of flexibility over budgets, but the lack of public transparency over their expenditure should be addressed. I beg to move.

Baroness Blower (Lab): My Lords, I shall speak briefly to Amendments 50 and 55. Amendment 50 seeks to protect the interests and encourage the involvement of all parties in a school community. It clearly makes sense that the Bill should provide for a procedure for the circumstances in which an individual academy seeks to withdraw from a MAT. The local governing body of such an academy may have very good reason, as outlined in the amendment, why such a step might be considered. Further, consistent with other amendments to this Bill, the amendment specifies that consultation on a proposed change must take place with the parties, including "parents and staff". Two further elements to this are that the reason for seeking to withdraw, including the benefits that might accrue to children's education should such withdrawal occur, and a timetable and financial framework for the activity, must be in evidence during the consultation. This is a coherent proposal that provides for the establishment of a clear procedure that is not burdensome or over-elaborate, in order to address a set of circumstances that may well occur.

On Amendment 55, clearly, there are many parents who choose schools with a religious character, whatever that may be. However, equally, there are parents and carers who would seek to avoid institutions of a religious character, believing that for them education should be in institutions with a secular ethos. Nothing in this amendment is designed to undermine, or otherwise interfere with, existing arrangements. However, given the intention that all schools should be part of a MAT by 2030, there should be a requirement that schools that have hitherto enjoyed a secular ethos should be required to consult widely before considering an application to a MAT with a religious character. Such consultation should be carried out in a timely fashion and deal with how joining a religious-character MAT would affect the existing school's ethos.

Baroness Bennett of Manor Castle (GP): My Lords, this group of amendments was powerfully and effectively introduced by the noble Lord, Lord Shipley, and the noble Baroness, Lady Blower. I just note that I have attached my name to Amendments 41, 50, 55 and 95. I shall briefly make some comments on a couple of them.

On Amendment 41, the geographical spread is absolutely crucial. It ties in with a point that I made on our first day in Committee—the idea of a school being a part of a community, a civic institution. It might be that we have a chain of coffee shops scattered around the nation, and people may like to go into a coffee shop that they are familiar with and are used to going into on their local round, so when they go somewhere else, they go to that coffee shop. But a school is not like that; it is not, or should not be, a commercial operation; it is not something that you skip around to, around the country—it is at the heart of a community. That geographical spread issue really needs addressing.

On Amendment 50, the noble Baroness, Lady Blower, set out what is clearly an unarguable argument. The world is not set in stone: communities change and groups of students change. A new industry may open up in a particular community, and that community may become very interested in a whole different area of study and focus—but then it is still signed up with an academy that has an entirely different focus, ethos and approach. The idea that all this could be set in aspic, permanently, really does not make any sense.

I shall pick up on a point that the Minister made on one of the earlier groups, when talking about how the Secretary of State needed the powers to intervene against a failing MAT. A MAT might work really well for some of its members but utterly fail to meet the needs of others; the idea that they are all going to work perfectly in perpetuity does not add up.

On Amendment 55, since this the first time I have spoken in a relevant debate I feel I should probably make a declaration of interest, if you like, of Green Party policy: we do not believe that any religious institution should be running state-funded schools. That statement of principle is where I am coming from. The noble Baroness, Lady Blower, made the very important point that people, communities and families have to be consulted before they find themselves forced into something that may very much not be what they want for themselves and their children.

8.30 pm

Finally, I come to Amendment 95. Again, the noble Lord, Lord Shipley, has done a great job with this, but we are talking about transparency. If you have this lump of money, where is that money being directed? If we have a geographical spread—even if we do not—we know how money is often allocated in organisations: the way organisational structures work is that they often depend on personal relationships and emotion, not on explicit measures of need, so it is really important that people can actually see how the money, if it is given to one MAT, is spread around the members of that MAT.

The Lord Bishop of Chichester: My Lords, I shall speak on behalf of my colleague, the right reverend Prelate the Bishop of Durham, and declare his interest as chair of the National Society. I shall speak against Amendments 50 and 55. Amendment 50's proposal to give power to local governing bodies to withdraw from a MAT may inadvertently trigger fragmentation of MATs that are growing, an erosion of strong MATs that are reliant on academies within the MAT for sustainability and, as a result, wider instability in the system. The proposal does not reflect the company structure of the MAT or the remit of a local governing body as a committee of the board. Where there are concerns about the quality of provision, or the ability of a school to flourish and grow, these things should be discussed at a strategic level with the relevant

[The Lord Bishop of Chichester]
regional director and, where appropriate, religious authority, so that together we can shape and develop an educational landscape that works effectively across communities of schools.

The language used in Amendment 55 is unhelpful. It should be noted that church academy trusts are based on church model articles which have a religious object, but that does not make them religious trusts. Church model articles provide a commitment to supporting the individual ethos of the school, whether it is a designated school or not. The requirement for additional consultation would add an unnecessary level of bureaucracy.

Lord Knight of Weymouth (Lab): My Lords, I shall speak principally to the amendment in my name, Amendment 79B, about regional boards. This is part of my ongoing quest—our ongoing quest, as a Committee—to stimulate thinking on what an all-academy school system might look like in practice, and flush out a few thoughts to inform the Minister's reflections as she seeks to improve the Bill as it goes through its journey in Parliament. In particular, what I am interested in in this amendment is the accountability of MATs.

One of the main criticisms I have of academies generally and, to some extent, multi-academy trusts, is that they are insufficiently accountable. We have heard that in the context of this debate now. I am also interested in the accountability of the Secretary of State, particularly if they take on a lot of powers through the Bill. The most appropriate body, or set of bodies, to hold the academy system to account are local authorities, because they are locally elected and have that legitimacy of election—he said, speaking in the House of Lords. Currently, the system has advisory boards for what, up until just after I tabled this amendment, were called regional schools commissioners; they are now regional directors. My sense is that the system does not actually regard the current RSC advisory board that highly. They are elected by the CEOs of MATs in the region and they elect some of their number to serve and advise the regional schools commissioner in her or his job.

I think we can do better than the current construction, so I am not giving up on a structure that already exists. If you can make something that already exists work, that can often be quite a helpful way forward. It is important to focus accountability at a regional level, rather than at a local authority level. We have local authorities of various sizes, from Rutland to Birmingham—in terms of the number of schools; I am sure there are local authorities with larger geographical sizes than Birmingham. But that we might want a set of local authorities within a region covering multi-academy trusts, given their catchments and the geography that they are drawing on, seems to make sense to me.

I am suggesting that the local authorities within a region form the majority of such advisory boards that now would have a statutory basis; and that they would be required to publish an annual report, so that they would be reporting on the way that the powers had been used by the Secretary of State in that region, and by the regional director. It was notable that the Minister, in response to the previous group, confirmed that in practice some of these functions will be performed by regional directors. This is an attempt to make those civil servants accountable for some of the decisions they are making in the name of the Secretary of State. In essence, it is the accountability of transparency that I am after—that, by asking those boards to publish and make publicly available an annual report, we can all see how the powers are being used and how the needs of the children in that area are working, and how local authorities would function as the voice of parents and pupils in their areas.

As I think the noble Baroness, Lady Bennett, was just talking about, in the end this is rooted in the importance of schools as part of a community. I do not think anyone in this House, from the Government Benches through to this side, disagrees with that. It is important that the community is reflected in the work of an academy, that the community as a whole is there to attract and retain teachers, that the school understands how to engage parents on the basis of the parents in that community, that it is able to develop engaging learning by making it relevant to that community, and that it is able to adjust the curriculum according to what is going to create the relevance to its community. That is my suggestion, and it is merely a probing amendment to see if anyone thinks it is a good idea.

There are just a couple of amendments tabled by the noble Lord, Lord Shipley, that I would comment on. Amendment 41 talks about a "similar geographical area". I chair a multi-academy trust that is national and works across a bunch of regions, which by and large works pretty well, and some of the other national trusts work pretty well. The overall direction of travel of policy from the Government and elsewhere is that a more regional, localised approach is probably on balance better, but we are where we are with those large national trusts. We need to understand what is a viable footprint within a region to have a good relationship with a local authority, with its duties to SEND, and with its duties to children generally. If those national trusts have a mere smattering of a presence in a region, it might be as well for them to between them work out how to be more focused on a geographical basis. But if they already have a substantive footprint, and a substantive relationship with the local authorities, I do not think that it should be disrupted. The noble Lord, Lord Shipley, might want to think about that.

Amendment 95 is about reporting on funding. Some multi-academy trusts do something called GAG pooling, which is nothing about keeping people quiet; rather, it is pooling the general academies grant to then distribute money across the map where it is deemed to be needed. As an example, I was in a meeting today to discuss an academy in Walsall that is the last one in the E-ACT group that is struggling. We put a considerable amount more funding into school improvement in that case than it would get through its general academies grant. It is that redistribution of wealth—to use an old-fashioned phrase that we like on this side of the Chamber—that is at the heart of the flexibility that the noble Lord, Lord Shipley, is questioning. I think he is basically saying that it is fine but that we should have some transparency about this. I am not afraid of transparency, and if the Government choose to move to get more

transparency about things, so much the better. We have to publish in our annual report quite a detailed amount of financial information, and that is all publicly available. I hear criticism that more information should be easily available on an academy-by-academy basis. I do not think any of us should be afraid of transparency if that is what people would like.

Lord Davies of Brixton (Lab): My Lords, I have two points. My tendency is to support Amendment 41 but, after hearing what my noble friend just said about the direction of travel, maybe that is sufficient. I find the idea of widely dispersed academies problematic. In the White Paper that came before the Bill, in paragraph 131 on the size of trusts, the Government say:

"we will limit the proportion of schools in a local area that can be run by an individual trust."

This is a genuine question: how does that fit together with the debate we have just had?

My second point relates to Amendment 55. I heard what my noble friend Lady Blower said, raising the issues of parents being faced with a decision about which they have not been consulted. We sort of had an answer from the right reverend Prelate the Bishop of Chichester, speaking on behalf of the right reverend Prelate the Bishop of Durham, but the Church needs to take a more understanding approach to this issue. We have a case in point: a group of parents were faced with the reality of their school being moved from an academy into a multi-academy trust with a Christian ethos. In principle I am against Church schools, but that is not the point here. The point here is whether those parents should have some input before that decision is reached. I find it impossible to believe that someone would argue in principle against consulting parents about this major change in the way that their school is run.

Baroness Wilcox of Newport (Lab): My Lords, this is a wide group of amendments. I shall speak first to Amendment 49, which says that, within a year, the Secretary of State must consult on whether the Bill is adequate enough a mechanism to enable schools to either de-academise or leave their trust. Once a school joins a MAT, it is trapped. We need to empower schools to leave failing MATs or those it has irreconcilable differences with. Where else in society would it be impossible to get out of an unsatisfactory agreement? No other organisation would be tied in this way to a compulsory contract with no get-out clause.

In our Amendment 94, we ask that the Secretary of State must report yearly on the financial health of academies, including any measures necessary to address disparities, especially over financial reserves, and that academies must state their intentions for the use of reserves over £250,000. Too many academies are sitting on reserves of millions of pounds. Notwithstanding the points made by my noble friend Lord Knight about reallocation and GAG—I had not heard that acronym before, but I will not forget it now—we need to encourage academies to be transparent about this. If they are saving for a huge capital project and can justify it, it is an acceptable way forward, but these institutions cannot be cash cows. Money needs to be invested for pupil benefit.

8.45 pm

When I was cabinet member for education at Newport City Council, we set up a fair but far-reaching review of school balances to ensure that such practices could not continue. It was justifiable carrying over from one financial year to another for specific projects, but this needed to be accompanied by ongoing reviews by the financial team with the head teacher and chair of governors. It was my first opportunity as poacher turned gamekeeper—boy, did I enjoy interrogating those head teachers. We did not want to stifle innovation and capital projects—indeed, I could not be prouder of the new schools we built, constructed in partnership with the Welsh Government's 21st century schools project—but we carefully monitored balances and reserves and we audited in order for pupils to be at the centre of school spending commitments.

On Amendment 157, within a year, the Secretary of State must consult on the merits of the functions of the Education and Skills Funding Agency and regional schools commissioners—they are called something else now—being combined and given to one entity. Duplication of services has always been a poor feature of bureaucracy and this amendment would go some way to avoiding the issue. Managing the finances and performance of schools is not well joined up. The ESFA, commissioners, LAs and Ofsted all have a role. This needs to change if schools are to be well run.

With Amendment 159, schools must maintain a digital record for pupils, updated quarterly, which may include an assessment of grades, effort, behaviour and any work experience completed. Parents need more information—and information that is relevant to them. Paper reports can easily be lost. All information needs to be centralised so that parents can track progress. Many, if not most, schools in the maintained sector have moved to online systems. If anything came out of the pandemic, it was a shift to online recording of student attainment and parental access to the whole spectrum of teaching and learning resources for their child. Notwithstanding that, I put in a cautionary note. I had a discussion with my noble friend Lord Knight earlier today about the confidential use of data and not selling data to commercial companies.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I will now respond to this group of amendments, which relates principally to the academy legal framework. Amendment 41, proposed by the noble Lords, Lord Storey and Lord Shipley, pertains to the geographical spread of multi-academy trusts. I share the noble Lords' view that this is an important matter.

The Government's published guidance on building strong academy trusts states:

"When considering whether to grow, an academy trust will need to consider the geographical fit of schools".

Many trusts operate successfully only in their local area, but others spread their expertise beyond local boundaries, as we heard from the noble Lord, Lord Knight, establishing clusters across England. This amendment risks restricting this sort of innovation, which can enable effective school support and improvements in

[Baroness Barran]
performance, with clear accountability and strong governance. If I understood rightly, the noble Lord, Lord Knight, suggested that it was an either/or choice between regional clusters and national MATs. I do not think it is either/or; it can absolutely be both/and.

The noble Lord, Lord Davies of Brixton, asked why we would not have only one MAT in an area—for example, having a single multi-academy trust in one local authority area. We believe that there should be parental choice. MATs will have different styles. There is obviously a particular risk profile if all schools in an area are in the same MAT. We think it makes for a healthier ecosystem if there are several MATs in an area. I have certainly seen examples in local authority areas where a number of MATs are collaborating extremely constructively to address some of the entrenched issues that they find in those areas.

Amendment 49 from the noble Baronesses, Lady Chapman and Lady Wilcox, and Amendment 50 from the noble Baronesses, Lady Blower and Lady Bennett, and the noble Lord, Lord Hunt, relate to an individual academy leaving its multi-academy trust. As we stated in the schools White Paper, we will consult on the exceptional circumstances in which a good school could request that the regulator agrees to the school moving to a stronger trust, but we do not want to pre-empt the outcome of that consultation by legislating now, not least as we expect the process to be administrative rather than legislative. I thank the right reverend Prelate the Bishop of Chichester for his reflections on the risks of destabilising the system through schools moving from one trust to another. I gently reflect back to the noble Baronesses who spoke on this that it is important that this measure works for the individual school, which both of them pointed out, but it also needs to work for the multi-academy trust, which I did not hear either of them refer to directly.

I turn to Amendment 55. I thank the noble Baroness, Lady Blower, for her amendment relating to academies without a religious character joining a MAT with a majority of or all academies with a religious character. The process by which an academy joins another trust is a matter for agreement between the two trusts and is subject to the approval of the Secretary of State in the person of the regional director. When considering any application for a stand-alone academy to join a trust, the regional director will consider what stakeholder engagement has taken place and take account of views expressed. It is neither necessary nor appropriate to provide specific consultation requirements in legislation. I again thank the right reverend Prelate for his clarification about church model articles.

I also thank the noble Lords, Lord Storey and Lord Shipley, and the noble Baroness, Lady Garden of Frognal, for Amendment 77. As the noble Lords pointed out, academy autonomy is a core principle of the academies programme. For the past decade, such powers and freedoms have been available uniquely to academies, providing them with greater freedom and flexibility in how they operate and promoting innovation and diversity in the system. As set out in the schools White Paper, our intention is that by 2030, all children will benefit from being taught in a strong multi-academy trust or with plans to form one. Therefore, all schools will be able to benefit from academy status and its associated autonomy in the near term.

Amendment 79A concerns the relationship between further education colleges and multi-academy trusts. Further education providers and academies are different types of organisation founded on different legal frameworks. Although that prevents them joining as a single legal entity, FE providers are still able to play a valuable role supporting academies, and this includes forming a multi-academy trust and sitting on academy trust boards. We are committed to considering what more we can do to minimise any existing barriers when further education providers work alongside academies, and we have established a working group with a group of FE providers to explore this in more detail.

Amendment 94, in the name of the noble Baronesses, Lady Chapman and Lady Wilcox, and Amendment 95, in the name of the noble Lord, Lord Shipley and the noble Baroness, Lady Bennett, relate to financial reporting in academy trusts. The Government hold academies to account for their financial health through the academy trust, which is the accountable body that signs the funding agreement with the Secretary of State. The department publishes a full report and consolidated accounts for the academy sector annually. It is right that academy trusts hold appropriate levels of reserves to enable investment in initiatives that will improve pupils' educational experience, as well as supporting them to meet challenges.

This year, the Department for Education will collect information from trusts holding reserves equal to 20% or more of their overall income to assure us that there are robust plans in place to use them, as the noble Baronesses suggest. There is a split in reserves between what we might call core reserves, investment reserves and those that academies will need if they take on failing schools with low pupil numbers to manage the lag in their funding as those pupil numbers increase, and we need to understand that picture fully.

I really do not recognise the example given by the noble Lord, Lord Shipley, of rural schools feeling that they lose funding. I recognise much more the example that the noble Lord, Lord Knight, gave the Committee. The noble Lord, Lord Shipley, may have a specific example that he would like to share. Often, we see exactly the reverse—that small schools are made sustainable through the MAT.

Lord Shipley (LD): I can clarify that for the Minister. I simply picked up a view that rural schools may feel that they could lose money and that, as a consequence, such a school may feel that it has become less viable. It was a worry about what might happen as opposed to the case if everybody had to become part of a multi-academy trust; that was the concern. If the Minister could allay those fears, that would be helpful.

Baroness Barran (Con): I thank the noble Lord for that. I will endeavour to find some examples that he can share with those who have expressed such concerns of where smaller rural schools have benefited from being

part of a trust with the unattractively named GAG pooling, which the noble Baroness opposite will be dreaming about tonight.

Multi-academy trusts must publish their annual audited accounts online, including details of their objectives, achievements and future plans. They must set out what they have done to promote value for money in support of those objectives as part of their accounts. We currently publish funding allocations for each individual academy. School-level income and expenditure information for schools that form part of a MAT is also available online. If noble Lords are not familiar with that information, it is extremely comprehensive and useful. Parents and others are able to see not only what their child's individual school receives and spends but how this compares to the income and expenditure of other similar schools, whether they are academies or maintained schools. I will put the link to that website in my letter to noble Lords after this debate.

Turning to Amendment 157, tabled by the noble Baroness, Lady Chapman, I am pleased to say that we have launched a new regions group in the Department for Education. It brings together the ESFA and the former regional schools commissioners to address some of the issues that the noble Baroness pointed to. We are confident that this new group will deliver the singular role of scrutiny that is set out in the noble Baroness's amendment.

I thank the noble Lord, Lord Knight, for his Amendment 79B, which proposes a regional schools commissioner advisory board. He will be aware that, as he alluded to, regional directors—formerly regional schools commissioners—are currently supported by their own advisory boards. We believe that it is beneficial that those board members are made up of a mixture of head teachers, trust leaders, trustees and business leaders who bring specific expertise and experience to decisions that directly affect academies, in particular approving academy conversions and matching schools to strong trusts. It is important to note that advisory board meetings are transparent: agendas are already published in advance and records of meetings are published. The noble Lord, Lord Knight, referred to an annual report, but an annual report is already published by region.

9 pm

Last but by no means least, I turn to Amendment 159, tabled by the noble Baronesses, Lady Chapman and Lady Wilcox, opposite me. It requires that academies and maintained schools keep digital records on pupils' grades, effort and behaviour. I am pleased to reassure the noble Baronesses that the Education (Pupil Information) (England) Regulations 2005 state that schools are required to keep and update pupils' educational records. The Government's updated behaviour in schools guidance, due for publication very soon, proposes to strengthen the expectation that schools should have robust systems to record and evaluate behaviour data and that schools should maintain positive relationships with parents.

With that, I conclude this group. I hope that I have provided responses that are sufficiently clear for the noble Lord, Lord Shipley, to feel able to withdraw his Amendment 41 and for other noble Lords not to move theirs.

Lord Shipley (LD): I thank the Minister very much indeed. We have had a very helpful debate. I beg leave to withdraw my amendment.

Amendment 41 withdrawn.

Schedule 2 agreed.

Clause 8: Termination of Academy agreement with seven years' notice

Amendment 42

Moved by ***Baroness Barran***

42: Clause 8, page 8, line 28, at end insert—

"(3) Subsection (2) applies to an Academy agreement in respect of a secure 16 to 19 Academy (see section 1B of the Academies Act 2010) as if the reference to the seventh Academy financial year were a reference to the second Academy financial year."

Member's explanatory statement

This amendment provides for a two-year notice period for terminating an Academy agreement in respect of a secure 16 to 19 Academy (in contrast to the seven-year notice period which applies to other types of Academy).

Amendment 42 agreed.

Clause 8, as amended, agreed.

Clause 9: Termination of Academy agreement where Academy is failing

Amendments 43 to 46

Moved by ***Baroness Barran***

43: Clause 9, page 8, line 29, at end insert—

"(A1) The Secretary of State may by notice terminate an Academy agreement with the proprietor of an Academy if any of subsections (1) to (1B) applies."

Member's explanatory statement

This amendment, and the other amendments to clauses 9 and 14 in Baroness Barran's name, allow the Secretary of State to terminate an Academy agreement without first issuing a termination warning notice in certain cases where the Academy is failing.

44: Clause 9, page 8, line 30, leave out subsection (1) and insert—

"(1) This subsection applies if the Chief Inspector has given a notice in relation to the Academy under section 13(3)(a) of the Education Act 2005 (special measures required to be taken or significant improvement required)."

Member's explanatory statement

See the explanatory statement to the amendment in Baroness Barran's name at page 8, line 29.

45: Clause 9, page 8, line 34, at end insert—

"(1A) This subsection applies if—

(a) the Academy is a 16 to 19 Academy, and

(b) a report made under section 124(3) or 125(3) of the Education and Inspections Act 2006 (inspections of education and training and of further education institutions) states that the Chief Inspector does not consider the education or training inspected at the Academy to be of a quality adequate to meet the reasonable needs of those receiving it.

(1B) This subsection applies if a pupil is provided with board and lodging at the Academy and—

(a) the Chief Inspector has made a notification in relation to the Academy under section 87(4)(c) of the Children Act 1989 (duty to notify Secretary of State of welfare failure in boarding schools), or

(b) the Secretary of State considers that a national minimum standard published under section 87C of that Act (boarding schools: national minimum standards) is not being met in relation to the Academy."

Member's explanatory statement

See the explanatory statement to the amendment in Baroness Barran's name at page 8, line 29.

46: Clause 9, page 8, line 35, leave out subsection (2)

Member's explanatory statement

See the explanatory statement to the amendment in Baroness Barran's name at page 8, line 29.

Amendments 43 to 46 agreed.

Clause 9, as amended, agreed.

Clause 10: Termination of Academy agreement in cases of insolvency

Clause 10 agreed.

Clause 11: Termination of master agreement on change of control or insolvency event

Amendment 47

Moved by ***Baroness Barran***

47: Clause 11, page 9, line 23, leave out "a" and insert "an Academy agreement or"

Member's explanatory statement

This amendment allows the Secretary of State to terminate an Academy agreement as well as a master agreement if there is a change of control or insolvency event (so that an Academy agreement in respect of a single-Academy trust could be terminated on those grounds).

Amendment 47 agreed.

Clause 11, as amended, agreed.

Clause 12: Termination of Academy agreement or master agreement after failure to address concerns

Clause 12 agreed.

Clause 13: Termination of Academy agreement or master agreement after warning notice

Clause 13 agreed.

Clause 14: Termination warning notices: Academy agreements

Amendment 48

Moved by ***Baroness Barran***

48: Clause 14, page 12, line 11, leave out subsections (6) and (7)

Member's explanatory statement

See the explanatory statement to the amendment in Baroness Barran's name at page 8, line 29.

Amendment 48 agreed.

Clause 14, as amended, agreed.

Clause 15: Termination warning notices: master agreements

Clause 15 agreed.

Clause 16: Termination of Academy agreement after termination of master agreement

Clause 16 agreed.

Clause 17: Termination: contractual provisions and other rights

Clause 17 agreed.

Clause 18: Termination: consequential amendments

Clause 18 agreed.

Amendments 49 and 50 not moved.

Clause 19: Requirement to make regulations about governance

Clause 19 agreed.

Clause 20: Power to make regulations about governance

Amendment 51

Moved by ***The Lord Bishop of Chichester***

51: Clause 20, page 14, line 30, at end insert—

"(1A) In the application of this section to the proprietor of a Church of England school, subsection (1) has effect as if the power to make regulations were a requirement to do so."

Member's explanatory statement

This amendment ensures that regulations are made for Church of England schools in minority trusts.

The Lord Bishop of Chichester: My Lords, I speak on behalf my colleague, the right reverend Prelate the Bishop of Durham, on his Amendment 51 and declare his interest as chair of the National Society. We tabled this amendment because, for Church of England schools,

there will be occasions when schools are not in trusts where former voluntary aided schools are in the majority. For us, there needs to be the same consistency of approach in Clause 20, which is of particular importance for Roman Catholic schools, for example, as there is in Clause 19. Clause 19 sets out the requirement that the Secretary of State "must make regulations" concerning multi-academy trusts. However, as things stand, Clause 20 is only a "power" and does not guarantee regulations for trusts that do not meet the baseline voluntary aided numbers outlined in Clause 19.

We must ensure that there are appropriate regulations for all Church of England schools in trusts, so it is crucial that the Secretary of State must, rather than just may, make regulations in the context of the Church of England to provide legislative protection and assurance for any MATs where there are less than 50% voluntary aided schools within the trust. I would further welcome any assurance the Minister can provide that our understanding is correct that Clause 19 describes a baseline over which a trust must have majority articles but does not represent a threshold, and therefore does not prevent MATs that do not have a least 50% voluntary aided schools within the trust operating under majority articles.

Baroness Penn (Con): I thank the right reverend Prelate the Bishop of Chichester for moving this amendment. As he said, the amendment would require the Secretary of State to make regulations under Clause 20, rather than providing the Secretary of State with a power to make regulations.

The Government entirely appreciate that the governance protections in Clause 20 are incredibly important to the Church of England and all other religious denominations. They will provide reassurance to local authority-maintained schools with a religious character that their religious character, which is maintained and developed through their governance arrangements, will continue to be protected once they become academies.

To explain why the current wording in Clause 20 is appropriate, it is useful to compare the clause with Clause 19, as there are some differences. Clause 19 relates to a very specific point regarding members and directors in certain academy trusts. The exact provision that is to be set out in the regulations is stated in the clause. It is therefore appropriate for this clause to provide that the Secretary of State must make these regulations.

In contrast, the regulation-making power in Clause 20 is much wider and the extent to which it is used will be finalised only after consultation. Clause 20 applies to all academy trusts which contain academies with a religious character. It also covers a much wider range of governance matters than the specific point in Clause 19. For example, regulations made under Clause 20 may include who can be appointed into different governance roles and the connection they must have to the relevant religious body. It may also include alterations to the articles of association, the composition of committees and the delegation of responsibilities.

Clause 20 needs to be a power for the Secretary of State to make regulations as the exact scope and content of the regulations will be informed by future consultation. However, to be clear, the Government do not intend to avoid making regulations under Clause 20. Instead, I assure the right reverend Prelate of our absolute commitment that, after consultation, the Government will make regulations under Clause 20 which apply to all academy trusts with an academy school of any religious character.

The regulations made under Clauses 19 and 20 will make clear the circumstances in which certain governance arrangements must be in place. For example, this could be when a trust must ensure that the majority of directors are appointed by the relevant religious body. However, this does not mean that similar arrangements cannot be used in other circumstances. For example, an academy trust in which fewer than half the academies are former voluntary aided Church of England schools can still adopt articles of association in which the majority of directors are appointed by the relevant religious body.

In addition, as stated in the clause, the Secretary of State will consult before the regulations are first made. This consultation will include appropriate stakeholders, including religious bodies. The right reverend Prelate can be reassured that this means we will continue to work constructively with dioceses and other religious bodies to agree the most appropriate governance arrangements for academy trusts comprising different types of academies with a religious character.

I hope this has provided some confidence to the right reverend Prelate that, after appropriate consultation, regulations under Clause 20 will be made. I hope he is therefore able to withdraw the amendment on behalf of his noble friend.

The Lord Bishop of Chichester: I beg leave to withdraw the amendment.

Amendment 51 withdrawn.

Clause 20 agreed.

Clauses 21 and 22 agreed.

Clause 23: Religious education: former foundation or voluntary controlled schools

Amendment 52 not moved.

Clause 23 agreed.

Clause 24 agreed.

Clause 25: Special arrangements for worship and religious education

Amendment 53

Moved by ***Baroness Meacher***

53: Clause 25, page 18, line 20, at end insert—

"(2A) For any pupils who have withdrawn from collective worship in accordance with subsection (1) or subsection (2), the Academy school must provide

an assembly of equal educational worth, which must be principally directed towards furthering the spiritual, moral, social and cultural education of the pupils."

Member's explanatory statement

This requires academies with a religious character to provide pupils with a meaningful alternative to collective worship if they or their parents request that they are withdrawn, so as to ensure that all pupils enjoy the benefits of the full length of the school day, irrespective of religious belief.

Baroness Meacher (CB): My Lords, I will also speak to Amendments 57 and 58. I thank Humanists UK for its excellent briefing and the noble Baroness, Lady Whitaker, and any other Peers who support these amendments.

The context for these amendments is worth noting. Some 62% of people in this country do not identify as Christian, according to the most recent British Social Attitudes survey in, I think, 2022. More than 50% say they are of no religion. In this context, is it really appropriate that all schools in England require pupils to take part in a daily act of Christian worship? Surely not. Also, under the Human Rights Act 1998 and the UN Convention on the Rights of the Child, younger children have the right to freedom of religion or belief. We do not seem to provide that in this country at the moment.

Many parents send their children to a faith school because the school has a good academic reputation or a good reputation for discipline, for example. They may not be people of religion at all. Others find that they have no option but to send their child to a religious school; it is the only nearby school suitable for their child. The law needs to take account of these situations. In reality, many children in faith schools for whom Christian worship has no meaning do not opt out of the collective worship events because they do not wish to attract attention to themselves or to be ostracised by others.

In my view, the lack of any organised alternative activity for these children increases the child's reluctance to draw attention to themselves and opt out. At present, children who have withdrawn from collective worship often just have to sit outside the door—almost like a naughty child—or are left in an empty classroom with nothing to do.

These three amendments would ensure that the needs of all children are met. They are supposed to be not anti-religion but in favour of the needs of all children. Amendment 53 would require faith academies to provide a meaningful alternative assembly for pupils who have withdrawn from collective worship. It is already law in Wales, which apparently is way ahead of England, through the recent Curriculum and Assessment (Wales) Act 2021. This amendment would bring England up to speed with Wales.

9.15 pm

Amendment 57 would replace collective worship in academy schools "without a religious character" with a requirement to hold inclusive assemblies. The UK is the only sovereign state in the world to impose worship in all state schools, including schools without a religious character. That is pretty remarkable; I am quite surprised by that. The majority of parents do not support this, according to the findings of a YouGov poll. Most parents were not aware of the law but, when made aware of it, 60% of parents opposed it being enforced.

Amendment 57 would free up schools to hold assemblies on subjects that parents do want to see covered. A YouGov poll from 2019 found that religious worship came bottom, surprisingly, of a list of 13 possible topics that could be covered in assemblies, with fewer than one third of parents considering it to be appropriate. The topics that parents wanted to be covered in assemblies included, for example, the environment and nature, equality and non-discrimination, physical and mental health and celebration of achievements. The topics could include religious content but not in the form of veneration of a divine being; it would be more like religious discussion, debate about different religions and so on, with more of an educational content.

Very importantly, the amendment would reflect the recommendations from the UN Committee on the Rights of the Child, which has urged the UK to repeal our collective worship laws. In reality, many schools pay little heed to the law and lay on secular assemblies on many different topics without any worship. Amendment 57 would sort out legal uncertainty and bring the UK into line with key international organisations and, indeed, the rest of the world. If there were a demand for acts of worship from some of the children, as there might well be, a school could organise these on a voluntary basis; but this would be entirely separate from the inclusive assembly for all children.

Amendment 58 is slightly different. It would significantly reduce discrimination against teachers applying for a job in a faith-based academy. The law already maintains that faith academies cannot discriminate on grounds of religion during the hiring or promotion of teaching staff unless there is a "genuine occupational requirement". However, the current law is confusing. The English educational law, Section 124AA of the School Standards and Framework Act 1998—sorry to be so tedious—and paragraph 4(d) of Schedule 22 to the Equality Act 2010, appear to allow faith schools to discriminate on the basis of religion or belief for the purposes of appointment, promotion, remuneration or termination of employment of teachers, even where there is not an occupational requirement. The result is that many schools currently do discriminate even where the employment equality directive makes it clear that this is not allowed.

Amendment 58 would remove any ambiguity in the law and make it clear across legislation that discrimination is allowed only where there could be said to be a genuine occupational requirement, or GOR. Again, we have a precedent. This reform was recently introduced in Northern Ireland through the Fair Employment (School Teachers) Act (Northern Ireland) 2022, passed apparently to the sound of applause across the Chamber. The Act attracted wide cross-party support—again, interestingly, to me—from all the religious and non-religious communities, including both the Sinn Féin and the Democratic Unionist parties. There cannot be many policies that get the full support of both those parties. Now it is for the UK to catch up.

Part 1 of the Bill was highly controversial and will continue to be so. I hope that these relatively small amendments will provide some relief for our Minister—they are widely supported and present no political problems at all. The ideal way forward would, of course, be for the Government to adopt these amendments and move them on Report, no doubt with some tidying up of the wording. I look forward very much to having discussions with other noble Lords and the Minister as to the best way forward. I beg to move.

Baroness Whitaker (Lab): My Lords, I support all the amendments in this group. I shall speak to Amendments 53 and 57, to which I have attached my name. As a patron of Humanists UK, I want briefly to emphasise the points made in the clear, comprehensive and persuasive introduction by the noble Baroness, Lady Meacher. Basically, as the arrangements stand for what the Bill calls worship and religious education, there is no recognition of the fact that many parents will have an ethical and moral code that is not based on faith. As the noble Baroness said, current figures suggest that it is actually over half of our population. Why should these parents not have their values recognised and their children enabled to learn them?

I hasten to add that these amendments in no way disparage religious education. It is simply that there are other sets of beliefs, and indeed other religions than Christianity, that have a long and influential tradition, have helped to form our national identity and should not be sidelined in an education worthy of the name.

I will add only that we now live in a diverse society, which I believe the Government welcome. One corollary of that is that we need to develop and strengthen the bonds that unite us in our differences. We will not do this by neglecting the elements of our various faiths and beliefs in the education of our children. To live with each other, we need to understand each other. Within a framework of human rights, we need to learn to respect where our fellow citizens are coming from. I suggest that this is a better way to avoid extremism—from any side—than excluding the traditions that people value. Among those are values that establish a moral code that is not faith-based. These values are no friend to extremism and are a source of rational and compassionate analysis of the issues that confront us, whether they are environmental, democratic or furthering peace and well-being.

I hope the Minister will recognise the educational deprivation that will continue without these amendments, and accept them.

Lord Knight of Weymouth (Lab): My Lords, I am supportive of the last two speeches. One of the things that I suppose I regret about the decline of collective worship is the decline of moments of collective reflection, although I am not of faith. Indeed, I am a humanist, and two years ago I was lucky enough to get married on a deserted heart-shaped island in the Orkneys at a humanist wedding. At that time, and I imagine this is still the case, I was advised by the celebrant that there are more people getting married in humanist ceremonies in Scotland than all the other faiths put together. That is a demonstration of the sense that society is changing, whether we like it or not.

I shall speak to Amendments 54 and 56 in the names of the noble Baronesses, Lady Burt of Solihull and Lady Bakewell, and myself. Amendment 54 would require faith academies to provide an inclusive alternative to faith-based religious education for those who request it. Amendment 54 seeks to mitigate some of the issues caused by compulsory faith-based RE. It would do so by introducing a requirement for faith academies to offer those pupils who withdraw from faith-based RE a new subject called religion and world views education. This new subject would be objective, critical and pluralistic. This alternative would cover both religious perspectives and non-religious perspectives such as humanism.

We have heard from the noble Baroness, Lady Meacher, the stats from the British Social Attitudes survey regarding the number of those now identifying as non-religious, non-Christian and so on. It is particularly high, at 72%, among those in the age bracket 25 to 44—that is, those most likely to have school-age children—yet over one-third of our state-funded schools have a religious ethos, and I respect them. The vast majority of those, 99%, are Christian, and I respect that too. Indeed, in 2020 the Church of England's own Statistics for Mission revealed that the number of places in Church of England schools now outstrips the Church's entire worshipping community.

The DfE's associated memorandum declares that it is not compulsory for a child to attend a school with a religious designation, but of course this ignores the fact that, as we have heard, thousands of parents are effectively having to send their children to faith schools every year because there is no suitable alternative locally. That was definitely the case in my former constituency of South Dorset in the rural areas where many or indeed most of the village schools were Church of England schools. They did a perfectly fine job, but while you could get assistance with transport if you wanted to send your child to a different faith based-school, you certainly could not get such assistance if you wanted to send them to a comprehensive non-faith-based school if that was what in accordance with your views.

It is that kind of discrimination against people who are not of faith which I am keen to try to do something about, when we have the right opportunity to do so in an inclusive way. Amendment 54 provides a remedy. It would mean that children who do not share the religion of the school they attend will have access to an "objective, critical and pluralistic" version of the subject that does not seek to indoctrinate them into one religious perspective.

Amendment 56 would make it explicit that RE outside of faith academies must be inclusive of non-religious worldviews such as humanism, in line with what is already required by case law, and rename the subject accordingly to "religion and worldviews". RE is a statutory subject in all schools. However, recent figures from the National Association of Teachers of Religious Education found that 50% of academies without a religious character, which make up approximately two-thirds of academies, do not

[Lord Knight of Weymouth]
meet their legal requirements to provide the subject as set out in their funding agreements. Although there are a range of reasons for this, it seems plausible to suggest that many schools—as well as pupils and their parents—see the subject as outdated and irrelevant to their lives. This is an opportunity to give the subject a shot in the arm.

I think that is why, when there was a review of the subject by the Commission on Religious Education in 2018, chaired by the Very Reverend Dr John Hall, the Dean of Westminster and former chief education officer for the Church of England, that report recommended the policy of both the RE Council and the National Association of Teachers of Religious Education: that we should do exactly this. It has been properly considered and thought through, and seems a perfectly reasonable adjustment to make, as do the amendments proposed by the noble Baronesses, Lady Meacher and Lady Whitaker.

Finally, I stress that the new "religion and worldviews education" would still reflect the fact that the religious tradition in Great Britain is, in the main, Christian. This is not at all an attempt to whitewash out teaching about religious traditions. Those are really important if we want to have an inclusive society that respects each other's traditions and faiths. However, as I say, this amendment provides a shot in the arm for what I think is a vital subject.

The Lord Bishop of Chichester: My Lords, I speak on behalf of my colleague the right reverend Prelate the Bishop of Durham and declare his interest as chair of the National Society. I speak against Amendments 53, 54 and 56 to 58.

I strongly urge noble Lords not to support the proposal set out in Amendment 53. It is framed as a mandatory requirement. However, it is unclear what would satisfy the definition of "a meaningful alternative" for pupils. Furthermore, it does not consider the resourcing implications in terms of staff and accommodation, depending on the number of pupils opting out.

Amendments 54 and 56 provide no definition of what constitutes such an "objective, critical and pluralistic" education. This would require a much fuller consensus to be achieved about the purpose and content of the RE curriculum, which is not the purpose of the Bill—although I note the helpful observations of the noble Lord, Lord Knight, on the work done by Dr John Hall. There may be some helpful work elsewhere that could be continued from that.

The wording around acts of worship and "religious observance" in Amendment 57 is open to interpretation, which is subjective. It would be very difficult to define or apply it consistently. A prohibition as proposed under this amendment would appear excessive and it is unclear how it would be monitored.

Amendment 58's removal of provisions may conflict with church school trust deeds and governance documents that require certain staff in a church school to have particular attributes as a genuine occupational requirement; for example, fitness and competence to teach religious education because of their religious opinions, attendance at religious worship, and/or willingness to teach in accordance with religious tenets.

9.30 pm

Baroness Meacher (CB): I thank the right reverend Prelate for giving way. I just want to make two points. First, does the right reverend Prelate really feel he should be persuading Ministers not to adopt these amendments when religious communities as well as non-religious communities support them? Secondly, he said that teachers must not be discriminated against if they have a requirement in their job, but the amendment allows for that very clearly. If there is an occupational requirement to have religious knowledge, that teacher will be expected to have religious knowledge, so I am unsure why the right reverend Prelate is arguing those points.

The Lord Bishop of Chichester: The points I am arguing reflect the experience and response, particularly that garnered by the National Society. It is on the basis of that that the rejection of these amendments is built. It presents for us a national picture from the Church of England.

Baroness Fox of Buckley (Non-Afl): My Lords, it is very useful to have the right reverend Prelate raise a religious voice against these amendments and raise some concerns. Maybe I could raise a non-religious voice with some concerns I share against these amendments.

I am particularly worried about Amendments 53 and 57 and the idea of alternative assemblies

"directed towards furthering the spiritual, moral, social and cultural education of the pupils".

I fear this would become a secular version of religion, with all its preaching of things I do not particularly like. It was interesting that the noble Baroness, Lady Meacher, mentioned what is happening in Wales, where I am from. I met some teachers from Wales over the weekend and one talked about how, apparently, the alternative to religion is that we teach environmentalism—the new religion—and made that joke. What would the content of these things be?

While I am not religious and consider myself a humanist, I feel queasy because we have a problem in this country of religious illiteracy. I think we want a secular society that understands religion and shows some regard for religion and its tradition. Religion seeps into the public sphere and a lack of religious literacy can be problematic. We have seen in the last week the issue around the film "The Lady of Heaven", which several major cinema chains have backed off from showing in a really disgraceful instance of artistic censorship. I noted that the reason given for that was that it was offensive to local Muslims, but the film was made by a Muslim filmmaker. At the very least, that could indicate that people panic in the face of religion without necessarily understanding it.

This religious illiteracy is perhaps why I have a preference—if I had to choose between them—for Amendments 54 and 56, which make some attractive points. "Religious and worldviews education" sounds more palatable. If anything, I would say, "Why not for everyone?" The amendment mentions non-religious philosophical convictions to be taught. I think all pupils, including those of religious faiths, would benefit

from reading John Locke's *A Letter Concerning Toleration* and understanding the philosophical roots and importance of religious freedom for a secular society, ironically, and from reading *On Liberty* by John Stuart Mill. This might counter, for example, the shocking events we saw in Batley, where a religious education teacher is still in hiding for his life over the allegation of blaspheming—despite the fact there is no blasphemy law. People seem to feel very queasy about calling this out or saying anything about it in this House, or in politics more generally.

I was glad to see in Amendments 54 and 56 an acknowledgement that Christianity is the predominant religion in Great Britain, because I think people have got a bit queasy about saying that for some reason. It is important to understand that the Christian tradition does not just inform faith or even a moral framework for the country, but has provided centuries of cultural imagery in art and literature. I remember, as an English teacher, standing in front of a group of A-level students and asking, "What might that apple symbolise?" I was met with blank faces because they could not understand what I meant: the apple did not symbolise anything to them. I do not think that it was entirely my poor teaching that did that; when I explained it, it took quite a lot to get there because they were unfamiliar with the symbol. I would like a greater understanding of the traditions, history and philosophy of religion, if anything.

Finally, I worry about some of the comments made that assumed that people of faith or introducing pupils to faith—within faith schools, for example—equals indoctrination. That is the wrong way to see it. I was brought up in a Catholic school but it backfired on them terribly, which made me think that people are not indoctrinated in that way.

It is also wrong to associate religion with extremism per se, or to imagine that the problems of political extremism that we might see in society are to do with religion—goodness knows that there is plenty of secular extremism about. We should also be concerned about a mood of intolerance to Christianity, or even a squeamishness, with people feeling embarrassed by Christianity in this country; I do not think that that is particularly helpful. Although I have some sympathy with two sets of the amendments rather than the others, we should be careful not to demonise religion, religious people or faith in our aspiration to widen education and give more options for non-religious families.

Baroness Whitaker (Lab): I reassure the noble Baroness that Amendments 53 and 57 apply to children who have already opted out of religious worship, as is perfectly legal and has been the custom for some time. Is she reassured by the fact that it is highly likely that John Locke and John Stuart Mill would be taught as part of a moral and ethical basis in any decent education, I would have thought?

Baroness Fox of Buckley (Non-Afl): I am familiar with what is happening in education at the moment, and John Locke and JS Mill are nowhere near it. The point I was suggesting is that, if they were, they should be taught to everyone. Opting out is fine; on other amendments, we are going to go on to talk about parents opting out of different things—that is fine. I was worried about secular assemblies; that filled me with horror. Maybe children could go and listen to some classical music or something that would be more productive. That was my concern on that matter.

Lord Lucas (Con): I have a great deal of sympathy for what the noble Baroness has just said. The phrase that comes to my mind is, "Better the devil you know"—if I am allowed to refer to the Church of England in that way. We know that religion is an immensely powerful and deep force for people. The Church of England is very civilised and easy to get on with; it is part of our community and history. That is the right way, and the right environment, for that part of children's education.

If you are sending your child to a school run by the Church of England or the Catholic Church, for goodness' sake, you know what you are getting. Although I have come out the far side of religion some long time ago, I very happily sent a couple of my children to schools with a strong Church of England ethos, and it did not do them any harm any more than it did me harm to go to church twice a day for 15 years of my life. Religion is not a poisonous thing; it is an enriching thing. When I get to go to a decent wedding, I bellow the hymns with enthusiasm and deep memory. I am sure that a lot that I have experienced enriches my life. We should not look at this as something harmful; it is something that we are, by and large, all used to and live with, and is a positive force in our country and lives. We should celebrate it and not try to shy away from it.

The Lord Bishop of Chichester: My Lords, I am grateful to the noble Baroness, Lady Fox, for her comments. There are two things. I am very aware of the important statement that the Queen made in her Diamond Jubilee about the vocation of the Church of England, which is not to promote itself but to promote faith, the practice of faith and respect for people of faith. The noble Baroness's comments on religious literacy are very timely, particularly if we are taking seriously the education of our young people as they face not only a global issue in which religious literacy is of increasing importance but also, of course, as we prepare them for a pluralistic society here in England, in Britain, where, once again, religious literacy is increasingly important because of the range of places from which people come and the faiths that they bring with them. I greatly value the comments—thank you.

Lord Shipley (LD): My Lords, I will just make a very brief contribution. I have found this a very helpful, thoughtful debate which will merit reading in *Hansard* tomorrow to get some of the finer points.

I want to say a word or two about Amendment 54 and Amendment 56, which my noble friend Lady Burt has signed. It is based on my understanding of what the amendments are saying. As I read them, these amendments are not aimed at diluting the approaches of faith schools or undermining their rights to maintain the faith ethos taught in them. They simply mean that students who opt out of faith-based RE and all students

[Lord Shipley]
at non-religious schools have a more inclusive subject available to them. That is my understanding, so I would be grateful for the Minister's confirmation.

Can I add two questions to the Minister? As I understand it, these amendments would not actually change the legal position but place existing case law into statute. In 2015, in the case of Fox v Secretary of State for Education, the High Court ruled against the DfE and in favour of three humanist parents and their children who challenged the Government's relegation of non-religious world views in the new subject content for GCSE religious studies. The court stated that religious and non-religious world views, such as humanism, must be afforded equal respect in the RE curriculum. I have concluded that the amendments would simply ensure that equal respect becomes a statutory requirement. Does the Minister see it in the same way?

Secondly, can I build on a point made earlier by the noble Baroness, Lady Meacher, in relation to recent legislation in Wales? That has not been particularly debated this evening. Maybe we should look at it in greater detail because I think it is important to consider, and I hope the Minister will be considering it in the context of this Bill. In looking more carefully at that, does the Minister think that there may be a case for legislation in England being similar to that which applies in Wales? Does she think it might be helpful to try to build on it? I am looking forward to a response from the Minister about that because I often get worried about the United Kingdom having key differences on matters of approach in law on matters such as this which seem to me would benefit from a single legal understanding.

That is two legal questions. I acknowledge that the noble Baroness, Lady Fox, pointed out that, in Amendments 54 and 56, the statement is clearly made that the religious traditions in Great Britain are, in the main, Christian. I am glad that, on behalf of my noble friend Lady Burt, who was the first signatory to the second of these amendments, that point has been fully understood.

9.45 pm

Baroness Wilcox of Newport (Lab): I am grateful to the noble Lord, Lord Shipley, for asking those questions about the good things that we are doing in Wales, and to the noble Baroness, Lady Meacher, for raising them initially. RE becomes RVE in Wales this September—religion, values and ethics. There is a great deal to learn from what the devolved nations are doing.

The place of religion and belief in the education system is incredibly complex—the debate this evening has demonstrated that—coming from a time when our society was much less diverse and much more religious than it is now. The amendments are targeted at ensuring that children of no faith do not miss out if they opt out of collective worship. They should not have to sit at the back of the classroom while everyone else is in assembly; they need a meaningful alternative provided for them during this time. These are admirable aims, to ensure that cultural education is balanced and non-exclusionary; in a modern and increasingly secular society, where children are exposed to all kinds of things, particularly in the online sphere, it should be a right that we promote. We should provide an excellent opportunity to discuss a variety of topics and issues. It is important to break down stigmas, and non-religious children in faith schools should not be made to feel left out if they opt out. The Government should think carefully about how to encourage this here. The amendments and the work in Wales are a way forward to do this.

Baroness Penn (Con): My Lords, I thank all noble Lords for this thoughtful debate, as we reach the end of our second day in Committee. The noble Baroness, Lady Meacher, rolls her eyes at me. She may have anticipated that, while I shall not quibble with the wording of her amendments, I shall disappoint her in my response. I also wanted to tell the noble Lord, Lord Knight, that he is making me increasingly jealous of the time that he spends on the Orkney Islands, and the celebrations and reflections that he gets to do there.

I turn first to Amendment 53, in the names of the noble Baroness, Lady Meacher and Lady Whitaker. The Government view collective worship as central to life in a school with a religious character. The right to withdrawal from collective worship is also important, as it provides choice for families as to whether or not their children participate. The amendment seeks, where children are withdrawn from collective worship, to provide an alternative assembly aimed at furthering the spiritual, moral, social and cultural—SMSC for short—education of pupils in schools with a religious character. The Government do not believe that the amendment is necessary, as all state-funded schools are already required to ensure the SMSC development of their pupils. Collective worship is one way to promote SMSC education, but there are areas of the curriculum in which schools can meet this requirement, such as religious education, history and citizenship.

On Amendment 54, when children are admitted to a school with a religious designation, their parents are aware of this and expect it to be part of the school's ethos and culture. The Government support the right of such schools to provide religious education that aligns with their religious character. We therefore believe that there is no need for the amendment. I am unaware of significant demand from parents who withdraw their children from religious education to have this replaced by education representative of a wider range of religious and non-religious beliefs. There are many examples of academies with a religious designation taking care to ensure that their provision, to some degree, reflects a diversity of religions. We also expect schools to promote fundamental British values, which includes encouraging mutual respect and tolerance of those with different faiths and beliefs, including non-religious beliefs. While acknowledging that the intention of this amendment is to widen choice in the teaching of RE, we believe that it is unnecessary because RE will likely already include the concept of non-religious world views.

Amendment 56 relates to academy schools without a religious character. Again, the Government believe this amendment is unnecessary because RE may already include the concepts of religious and non-religious belief. On religious belief, academies without a religious

designation must already teach RE, reflecting the fact that the religious traditions in Great Britain are, in the main, Christian, and must take account of the teachings of the other principal religions in Great Britain. On nonreligious belief, this can be covered within RE. There is no obligation for schools to give equal time to the teaching of each religion or the teaching of nonreligious worldviews.

The noble Lord, Lord Shipley, asked me two specific questions. On the point about not giving equal time to nonreligious worldviews, we are talking about the same judgment, but I shall write to him on the specific point, and on the point relating to Wales—although, if I understood him, it might rather reflect the devolved nature of education in Wales rather than a different legal approach. I shall reflect on *Hansard* and make sure I write.

On Amendment 57, collective worship is important in encouraging pupils to reflect on the concept of belief and its role in the traditions and values of this country. The right of withdrawal from collective worship provides families who do not want their children to participate to withdraw from it in whole or in part. As I have set out, there are already plentiful opportunities for schools to further children's spiritual, moral, social and cultural education regardless of religion or belief. This includes holding nonreligious assemblies, so the Government do not believe that this amendment is necessary.

Amendment 58 would repeal specific sections from the Schools Standards and Framework Act 1998. This would have the effect of removing statutory freedoms and protections regarding the recruitment, promotion and remuneration of teachers by reference to their religious practice, belief or knowledge at academies with a religious character. The Government support the freedoms and protections associated with academies with a religious character, including their freedoms to continue to appoint, promote and remunerate their teachers and deal with their employment with reference to the relevant religion or religious denomination. The Government do not intend to change this position for any school with a religious character, including academies. We continue to provide equivalent protections for academies to those available to maintained schools.

As I say, I thought this was an interesting and reflective debate, but I am afraid that the Government do not agree with the amendments tabled by noble Lords. I hope the noble Baroness, Lady Meacher, will withdraw her amendment.

Baroness Meacher (CB): I thank noble Lords who have spoken in support of these amendments and I thank the Minister for her response, although it seemed to me that the departmental response, if I can call it that, did not deal with the inconsistencies and inadequacies in the law, and so on. Never mind, we can come back to that.

I will just say that "Better the devil you know" is fine if you are a Christian, but it is not what the majority of people or the majority of children in this country would want, because the devil they know is something other than Christian worship. It seems to me that the noble Baroness, Lady Fox, agreed with Amendment 57, even though she bent over backwards to say she did not, because of course we are all very happy with religious education and information; what we are talking about here is worship.

Anyway, with those few provisos, I am very grateful to everybody who is here at this late hour, especially our two Ministers, who have been here for a very long time. With that, I beg leave to withdraw the amendment.

Amendment 53 withdrawn.

Amendment 54 not moved.

Clause 25 agreed.

Clauses 26 and 27 agreed.

Amendments 55 to 58 not moved.

Clause 28 agreed.

Amendment 58A not moved.

House resumed.

House adjourned at 9.55 pm.

Grand Committee

Monday 13 June 2022

Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022

Considered in Grand Committee

3.45 pm

Moved by ***Lord Greenhalgh***

That the Grand Committee do consider the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022.

Relevant document: 2nd Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, this statutory instrument was laid before the House on Wednesday 11 May 2022 under Section 150(9) of the Energy Act 2013 and Section 250(6)(f) of the Housing Act 2004, for approval by resolution of each House of Parliament.

In the social housing White Paper, we committed to ensuring that all homes are safe to live in. We are determined to ensure that the reforms set out in the White Paper will drive up standards, making sure people up and down the country have a safe and decent home to live in. The Government are committed to ensuring residents are protected from the risks of fire and carbon monoxide in their homes. After Grenfell, the social housing Green Paper asked whether there should be parity between the private and social rented sectors on safety standards, and an overwhelming majority were in favour.

At the moment, social tenants have less protection than private tenants. That is why, subject to parliamentary approval, we are amending the regulations to bring requirements for social homes in line with private rented homes. Currently, the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 make it mandatory for private landlords to install smoke alarms on every storey of every home they let, and carbon monoxide alarms in every room with a solid-fuel burning appliance, such as a log-burning stove or coal fire. There are no such requirements for social landlords.

The Home Office estimates you are around eight times more likely to die in a fire if you do not have a working smoke alarm in your home, and there are on average 20 recorded deaths from accidental carbon monoxide poisoning each year in England and Wales. Smoke alarms and carbon monoxide alarms save lives and provide reassurance for residents that their homes are safe.

These changes will mean that, for the first time, all social rented homes in England will be required by law to have smoke alarms installed. They will also mean that millions more households are protected from the risks of carbon monoxide, which is undetectable and can cause serious illness or death. The Government's ongoing reforms regarding social housing quality aim to make sure everyone's home is a place of safety, and these changes will give thousands of families and households reassurance that they are receiving the best possible protection.

In November 2020, alongside the White Paper, we launched our consultation on requiring smoke alarms in social housing and introducing new expectations for all landlords for carbon monoxide alarms. The proposals in the consultation to make the legislative changes I am bringing to noble Lords today were supported by a clear majority of respondents to the consultation.

Through this statutory instrument, we will amend the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to replicate the private rented sector provisions to require social landlords to ensure at least one smoke alarm is installed on each storey of their homes where there is a room used as living accommodation. We will amend the regulations to make it mandatory for all landlords, regardless of tenure, to install a carbon monoxide alarm in any room of their properties used as living accommodation where a fixed combustion appliance of any fuel type is present. This does not include gas cookers, which are responsible for fewer incidents of carbon monoxide poisoning than gas boilers.

We will also require all landlords to repair or replace, as soon as they reasonably and practically can, any alarm which is found to be faulty during the period of a tenancy. We will update government guidance documents to make clear requirements on the placement of smoke and carbon monoxide alarms, and the types of alarms landlords will need to install to meet relevant standards.

The instrument will also make changes to the enforcement process by restructuring the process for making and considering representations from landlords when a local housing authority serves a remedial notice. A lengthy delay between regulations being made and taking effect could put lives at risk, and that is why we have decided that 1 October 2022 is an appropriate date for regulations to come into force: landlords have had, and continue to have, time to prepare, and bringing regulations into force in October means tenants can benefit from the security of the changes as soon as possible.

To conclude, these regulations will save lives and make sure everyone's home can be a place of safety, and these changes will give thousands of households reassurance that they are receiving the best possible protection from the risks of fire and carbon monoxide in their home. We are determined to ensure that the reforms set out in the social housing White Paper, like these changes, will drive up standards, making sure people up and down the country have a safe and decent home to live in. I hope noble Lords will join me in supporting the draft regulations and I commend them to the Committee.

Baroness Finlay of Llandaff (CB): My Lords, I thank the Government for bringing these regulations forward—they are absolutely crucial. As the Minister said, most—57%—of the exposure to carbon monoxide occurs in the home. We know that one in eight homes in London has levels of carbon monoxide that exceed the WHO limits, and we know that one in five has at least one faulty gas appliance. With financial stringencies, this will probably get worse because people will not

[Baroness Finlay of Llandaff]
have their appliances serviced. Some 54% of homes in England do not have a carbon monoxide alarm. With that background, and welcoming these regulations, I have a few questions for the Minister—I hope that he will be able to answer them satisfactorily.

First, why are gas cookers excluded? The issue here is the coroner's report that followed 18 deaths that were linked to the Beko cooker scandal, where carbon monoxide was pouring into homes due to a fault with the cookers. The 2017 report *Understanding Carbon Monoxide Risk in Households Vulnerable to Fuel Poverty* found that, while 59% of homes had a gas cooker, only 25% had that cooker serviced annually. In homes in poverty in particular, the gas from the cooker is often incompletely burned. Some ethnic minority groups in our population cook by putting tin foil over the surface of the burners, which promotes incomplete burning.

One of the problems is that children's heads are at the level of the cooker itself, so children standing near a mother who is cooking are probably inhaling higher levels of carbon monoxide than the mother. It may not be enough for them to fall on the floor unconscious, but they may be exposed to chronic low levels of carbon monoxide poisoning. As the Minister rightly said, sub-lethal doses cause pathologies including brain damage, sensory impairment, heart disease, Parkinsonism and low birth-weight babies, which becomes particularly important when the woman is pregnant. They also cause cognitive developmental delays in infants born to mothers exposed during pregnancy, as well as respiratory difficulties. That was my question on gas cookers.

Secondly, why are homeowners generally not protected by the regulations until a new appliance is installed? How will people become alert to the fact that an alarm is faulty? Whose responsibility will it be to chase this up, and what is the prosecution process for a landlord who is negligent in this?

Thirdly, why is the alarm type not mandated? This seems to be a lost opportunity, because rogue landlords will inevitably go for the cheapest alarm available. In Scotland, the type of alarm was determined and it was one that had sealed batteries in it. From experience over the years, we know that, in households where batteries can be removed from alarms, people remove them to use them in their television remote, or wherever. The alarm then fails because the batteries have been taken out and people are not aware of the problem.

Lastly, will the alarms be mandatory for bedrooms? There have been several cases where children have died because carbon monoxide has leaked through the brickwork into the bedroom where they were sleeping—their parents then found them dead from carbon monoxide poisoning. The problem is that, when you are asleep, carbon monoxide just makes you more sleepy, so you certainly would not be woken up by it. Of all the rooms in a house, it is bedrooms where people spend the most time all in one go; they do not go out and move around to get the air circulating. In modern housing, particularly in the winter, people sleep with the bedroom windows closed, so there is even less air circulation. So I hope that the Minister will be able to assure me that bedrooms count as living accommodation and, therefore, that alarms must be also in the bedrooms.

Having said that, I hope the Government will have a good public education campaign to roll out the importance of acting when the alarm goes off, of understanding what the alarm does and what people should do if a tenant feels that their landlord is in breach of the regulations. Understanding the health implications of carbon monoxide poisoning is also important, because, unfortunately, across the healthcare sector generally, until fairly recently—and I think even now—some people are somewhat ignorant of the effects of carbon monoxide poisoning and how the non-specific symptoms can present, suggesting sub-lethal exposure in an ongoing way.

So, with those questions and caveats, I welcome these regulations and would not intend to take any action to stop this proceeding–but I do hope that I will have satisfactory answers that will be on the record to all my questions.

Baroness Pinnock (LD): My Lords, I will start by reminding everyone that I have a registered interest as a member of Kirklees council, which manages social housing that will be affected by these regulations. Much of what the noble Baroness, Lady Finlay, has said is also in my notes—but there are one or two differences.

Broadly, this is an important step forward in making rental homes in both the private and social housing sector safer for tenants. It is a great surprise to me that social housing was omitted from the 2015 regulations, so I am pleased that these regulations are going to put that right. The Office for National Statistics, when I had a look this morning, records that over 100 lives are lost each year from carbon monoxide poisoning. It did not differentiate between domestic and non-domestic deaths; nevertheless, 100 lives are lost from a silent killer, as the noble Baroness, Lady Finlay, has explained. So, requiring the installation and, importantly, the maintenance of alarms will undoubtedly help to save lives.

It is also good to see that the regulations include a requirement for landlords in both rental sectors—private and social housing—to ensure maintenance and respond in a reasonably practicable time. I hate that phrase, because it means something and nothing. I wonder whether the Minister would be able to give us a broad definition of what "reasonably practicable" would look like. No doubt landlords who have a positive relationship with their tenant will respond promptly, but not all landlords are in that category.

Those are all positives, but I have some questions. The first one is about the type of smoke alarm. I am surprised that there is not more being said about the type of alarm that is going to fulfil the regulations. Nine-volt battery alarms, which are the cheapest and therefore most likely to be the ones that some landlords will use to fulfil their obligations, need a battery change every six months—I think it is the National Fire Protection Association that recommends that. There are lots of reasons why that will not happen.

Some homes will think that they are secure but are not. I find it surprising that that has not been more fully explored. The sealed lithium battery models last 10 years; that is a good length of time. I wonder

whether there is anything the Minister can do to give us some comfort that the Government will be recommending or pushing for those to be used.

4 pm

The other thing is that some landlords will say to the tenant, "Here are your smoke alarm and your carbon monoxide alarm"—although you can get the two together—and give them the box, and that is it. I tell you, if they are in a box and that is it, they will go in a cupboard and that will be it. I have some experience of this. As part of the Kirklees warm zone scheme, there was free insulation—which I have mentioned several times—and we also gave to everybody who needed one a free smoke alarm and a free carbon monoxide alarm. From questioning not long afterwards, we discovered that a lot of them were never used—they were put in a cupboard or a drawer in the kitchen and that was it. So the Minister should perhaps think about a requirement that the landlord has to see that they are properly installed; that would be helpful.

I had the same question as the noble Baroness, Lady Finlay, about gas cookers and why they were excluded. But it has been asked and I hope that the Minister will be able to answer it.

Then there is the question of getting access to properties. As with nearly all fire safety issues—gas checks, electrical appliance tests and now this—if a tenant refuses, it is difficult to get access. If you do not get access, you have faulty appliances and faulty fire and smoke alarms and all the good of this regulation is undone. So, again, it would be good to hear from the Minister how that may be overcome.

In 2008, a 10 year-old boy in Huddersfield died as a result of carbon monoxide poisoning. The deadly gas was not in his home—it was seeping through the walls from the terraced house next door. He was asleep and, when his mum went to get him up in the morning, he was dead. There was a faulty boiler in the next-door house, which was a private property. The question that was asked was, "Why are not all properties—especially terraced or semi-detached—required to have alarms?" Failures in one house can affect those living in the adjacent property.

Finally, I have not checked the regulations, but can the Minister tell us whether all new builds are required to have both carbon monoxide and smoke alarms wired in? If not, we are missing a trick.

With those questions, I must say that I totally support the progress that is being made and I look forward to the questions being answered.

Baroness Hayman of Ullock (Lab): My Lords, like other noble Lords who have already spoken, we very much welcome these regulations to make smoke and carbon monoxide alarms mandatory in social housing from 1 October this year. As we near the fifth anniversary of the Grenfell Tower tragedy, we believe that any measures that help resolve the building safety crisis are very welcome.

But we also think that this instrument should form only a small part of a much wider package of measures that we hope to see coming forward from the Government. I will come to the exact provisions of these regulations in a moment—although noble Lords who have already spoken have covered a lot of the points that we had concerns about. But I would like to first ask the Minister: following the publication of the Social Housing (Regulation) Bill, is he able to provide further information about the timetable of this Bill and when the Government are likely to be aiming for Royal Assent, so that those regulations come into force and we can discuss wider provisions to make social housing safer?

Turning to the specific regulations before us today, one of the things that will result will be a new responsibility to install alarms on each floor of a premise, which is really important. The Government are right to include this. It specifically helps larger properties. There is a lot more development of warehouse-type apartments, within which there is an increasing use of mezzanine floors—so I am not sure what constitutes a floor within this regulation. Would it include mezzanines, for example? Would they require an alarm? It would be helpful if the Minister could confirm what the guidance on that would be. I would be interested to hear his response to the noble Baroness, Lady Finlay, about whether it will be compulsory to have alarms in bedrooms, because that is also a very important part of ensuring safety, particularly at night.

I would like to take a quick look at penalties for non-compliance. The regulations allow for a charge of up to £5,000 per breach. I would like to ask the Minister about the fact that, under the Housing Act 2004, civil penalties for landlords go up to £30,000 for breaches. So how did the Government choose an upper limit of £5,000, despite the fact that an absence of these alarms, as we have heard, could lead to somebody dying. In fact, the Minister mentioned in his introduction that these alarms do save lives, so it would be interesting to understand the Government's thinking and how that top level of fine came about. The noble Baroness, Lady Finlay, also asked about the prosecution of rogue landlords, and it would be interesting to know a bit more about that side of things—prosecution, fines, how they will operate and how the Government got to their decisions on that.

I would also like to look very briefly at the process of repairs and replacements of the alarms. This has been raised by other noble Baronesses. In particular, the noble Baroness, Lady Pinnock, referred to the fact that the regulations state that the landlord must act as soon as is "reasonably practicable" when notified that an alarm is not in working order. She said it would be incredibly helpful to know what the definition of "reasonably practicable" is. We know that, in other legislation requiring swift action by landlords, this has not always happened. So what will be that definition and how will it be enforced? Will the Government be offering guidance alongside this to landlords on exactly what the timeframes are? Will there be any circumstances that can excuse meeting those deadlines? What is going to be the structure of managing repairs and doing replacements in good time?

The noble Baroness, Lady Pinnock, also asked some very important questions about batteries and about ensuring alarms are properly installed. This is really good, important legislation, but it has to be practical, and it has to work and operate in the way that it is

[Baroness Hayman of Ullock]
being laid out. If the issues that the noble Baroness, Lady Finlay, raised are not covered, we could find that good intentions are not always being met.

To conclude: these regulations are very much welcomed. I am looking forward to working with the Minister on the Social Housing (Regulation) Bill, which is, hopefully, going to be with us shortly, in order that we can consider other measures to make social housing safer for all occupants. I look forward to the Minister's response to the questions today and to working with him in the future on further safety measures.

Lord Greenhalgh (Con): My Lords, I thank noble Lords for their contributions to this important debate on the draft regulations. I join the noble Baroness, Lady Hayman, in saying that every single measure that can ensure that a tragedy such as Grenfell—the largest structural fire since Piper Alpha and the largest loss of life in a residential fire since the Second World War—never happens again must be welcomed. I thank noble Lords for their support.

I will turn to some of the points raised by noble Baronesses in this debate. The noble Baroness, Lady Finlay, wanted to know whether alarms are mandatory for bedrooms. Yes, there must be a smoke alarm on each storey. Also, I am happy to clarify that the definition of "living accommodation" includes bedrooms.

Baroness Finlay of Llandaff (CB): Sorry—perhaps I may intervene briefly. I should have declared my interest as chair of CORT, the Carbon Monoxide Research Trust, and of the All-Party Parliamentary Carbon Monoxide Group. I was asking about carbon monoxide alarms; the Minister has addressed smoke alarms. We were seeking clarification on whether carbon monoxide alarms are also mandatory in bedrooms.

Lord Greenhalgh (Con): For carbon monoxide, if there is a fixed combustion appliance in the room, which would not include a bedroom if there was no—

Baroness Finlay of Llandaff (CB): Very few bedrooms have gas boilers in them. Can the Minister write to us and follow up on that?

Lord Greenhalgh (Con): I will clarify when it is smoke alarms and when it is carbon monoxide alarms; as I understand it, effectively, there has to be a gas boiler present, which would rule out many bedrooms. However, I will write to the noble Baroness on that point.

The noble Baroness, Lady Hayman, following the lead of the noble Baroness, Lady Pinnock, wanted to know what "reasonably practicable" looks like. My answer is that, essentially, we will recommend that landlords carry out repairs as soon as they are able to. This will depend on such factors as access to the property, which will be set out in guidance.

In response to the noble Baroness, Lady Finlay, on her question about mandation of carbon monoxide alarms in rooms with gas cookers, data shows that gas cookers are responsible for fewer incidents of carbon monoxide poisoning than gas boilers. This may be because domestic gas cookers do not tend to be used continuously for long periods, unlike boilers. For this reason, the Government believe it would not be proportionate to require alarms in rooms with gas cookers as well as rooms with gas boilers.

On the point about public information, we are developing communication to target tenants to make sure that they understand the regulations and the importance of protection from carbon monoxide poisoning. There is some movement on the call for a public information campaign.

The noble Baroness, Lady Pinnock, wanted to know how we reached the implementation period for these new requirements. This relates to the fact that the majority of respondents to the consultation agreed that we should not delay the introduction of new requirements once the regulations are made. A significant delay between the regulations being made and taking effect would put lives at risk. It is a question of getting the right balance between the two. That is why we alighted on 1 October 2022 as the most achievable date.

Both the noble Baronesses, Lady Finlay and Lady Pinnock, wanted to know why we were not specifying the type of alarm. The draft regulations do not stipulate the type of alarm—such as hardwired or battery powered—to be installed. In the case of smoke alarms, we advise landlords to choose ones that are compliant with British Standards, and I am sure that there must be British Standards that have to be complied with for carbon monoxide alarms. We encourage landlords to make an informed decision and choose the best alarms for their properties and tenants, with due regard for their residents' circumstances.

4.15 pm

The noble Baroness, Lady Finlay, wanted to know why we are not mandating for owner occupiers as we are now covering the private rented sector. The intention of extending the regulations is to protect residents in rented homes. Changes to building regulations will extend alarm requirements upon the installation of new and replacement combustion appliances of all fuel types, and this will apply to all tenures, including owner occupiers. It is in the best interests of any owner occupier to keep themselves safe from fire and carbon monoxide poisoning, and we would strongly advise them to install smoke alarms and carbon monoxide alarms. It is important for people to recognise that point.

The noble Baroness, Lady Hayman, raised the issue of how we set the penalty level. That was not a matter for this regulation. The penalty level for non-compliance was set as part of the private rented sector regulations that were passed in 2015, and we consider this limit proportionate and appropriate to match the PRS requirements for parity of standards. So it goes back to the 2015 regulations, if you like.

The noble Baroness, Lady Pinnock, raised the issue of how landlords can gain access to their properties. The regulations are clear that landlords must take all reasonable steps to access properties, including attempting access on multiple occasions. It is not proportionate to mandate that landlords take legal action for access, as alarms have a long life span of six or seven to 10 years.

Baroness Pinnock (LD): Unfortunately, that last bit is not accurate. If the landlord provides a nine-volt battery smoke alarm, that will last only six months. That is at the heart of what I am asking. Some landlords will not make lots of attempts to get in to make sure that the smoke alarms are there and will not see that they are properly fitted, so all this will unravel. If we are having regulations, and I am glad we are, surely there has to be something about a long-lasting solution.

Lord Greenhalgh (Con): The noble Baroness is of course right that that would make sense—I should declare my interest as a private landlord, although these regulations affect social housing. It would make sense to put into guidance something that would enable the quality threshold to be met so that we would not have that eventuality of smoke alarms with a very short battery shelf life becoming the de facto norm when you could come up with solutions such as alarms that are either hardwired or have a long battery life. That point has now been made by several noble Baronesses and I will take it away for my officials who will be drafting these regulations to take on board.

With that, I have done my best to answer noble Lords' questions—and if I have not, I will follow up in writing, as I have already undertaken to do.

Motion agreed.

Police, Crime, Sentencing and Courts Act 2022 (Consequential Provision) Regulations 2022

Considered in Grand Committee

4.20 pm

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

That the Grand Committee do consider the Police, Crime, Sentencing and Courts Act 2022 (Consequential Provision) Regulations 2022.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, these regulations were laid before the House on 11 May. Following the terrorist attack at Fishmongers' Hall—I take this opportunity to remember again the victims of that atrocity—in November 2019, the Home Secretary commissioned the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, to review the Multi Agency Public Protection Arrangements—MAPPA—used to supervise terrorists and terrorism-risk offenders on licence in the community. The Police, Crime, Sentencing and Courts Act 2022, which I shall hereafter refer to as the 2022 Act, established three new powers for counterterrorism policing: a personal search power, a premises search power and an urgent power of arrest. These powers were taken in response to recommendations made by Mr Jonathan Hall QC following his review of MAPPA.

These regulations relate to the new power of personal search, the creation of which was also recommended by the *Fishmongers' Hall Inquests—Prevention of Future Deaths* report. The personal search power has been inserted into the Terrorism Act 2000 as new Section 43C of that Act by the 2022 Act. The new search power commences later this month on 28 June. As set out by the Government during the passage of the 2022 Act, the new search power will apply across the UK, enabling the police to stop and search terrorist and terrorism-connected offenders released on licence who are required to submit to the search by their licence conditions. The officer conducting the stop and search must be satisfied that it is necessary to exercise the power for purposes connected with protecting members of the public from a risk of terrorism.

The Government are clear that sensitive powers of stop and search should be subject to the code of practice setting out the basic principles for their use. Section 47AA of the Terrorism Act 2000 imposes a requirement on the Secretary of State to prepare a code of practice containing guidance about the exercise of search powers that are conferred by that Act. These regulations amend Section 47AA so that it extends to cover the new search power inserted into the Terrorism Act 2000 by the 2022 Act. Subject to Parliament's approval, this consequential amendment will create a requirement for the Secretary of State to prepare a revised code of practice that includes guidance on the exercise of the power conferred by new Section 43C.

In anticipation of Section 47AA being amended, I can confirm that we are already in the process of engaging relevant stakeholders and updating the code of practice to reflect new Section 43C stop and search power. We plan to lay an order this summer alongside the draft revised code of practice for Parliament's consideration and approval. As such, Parliament will have the opportunity to review and debate the revised code and its contents in due course. The regulations being considered today simply relate to the technical and consequential matter of whether to amend Section 47AA of the Terrorism Act 2000 to enable the Government to update the relevant code of practice in the manner that I have outlined. I think it is something the Committee will very much support. I beg to move.

Lord Paddick (LD): My Lords, I thank the Minister for introducing these regulations and I associate myself with her remarks in relation to those affected by the Fishmongers' Hall incident. One of the most important roles of the state is to protect its citizens from terrorism and we support every provision that can be shown to work in practice in helping to prevent and detect terrorism.

This is yet another stop and search power exercisable by the police. Generally, we are against any expansion of police stop and search powers, on the basis that existing powers are sufficient, because an increased use of stop and search does not generally lead to a reduction in crime and because of the negative impact of stop and search on visible minorities. For example, where the police are required to show suspicion, black people are seven times more likely to be stopped and searched; and where no suspicion is required, black people are 18 times more likely to be stopped and searched than white people. In addition, Home Office research shows that, above moderate levels, increasing stop and search has little or no impact in reducing crime.

However, this power—enabling the police to stop and search an offender released on licence for purposes connected with protecting the public from a risk of

[Lord Paddick]
terrorism—appears, on the face of things, to be reasonable and proportionate. We have seen from tragic instances in the recent past, such as the terrorist attack at Fishmongers' Hall in November 2019, that assessing the threat posed by those convicted of terrorism offences is very difficult to determine, and even those who are assessed as no longer a threat to the public and suitable for release under licence can, in reality, pose a threat to the public.

It will mainly be for the Parole Board to determine whether someone should be subject to the new powers as a condition of their licence, but the Explanatory Memorandum, at paragraph 7.2 says, "In most cases" the Parole Board will decide whether somebody should be subject to the new power. Can the Minister explain in what other circumstances someone could be made subject to these stop and search provisions, if that is not made a condition of their licence by the Parole Board?

As the noble Baroness explained, the regulations are not about the power itself—created by the Police, Crime Sentencing and Courts Act 2022 inserting new Section 43C in the Terrorism Act 2000—but are to ensure the requirement on the Secretary of State in Section 47AA of the 2000 Act to prepare a code of practice containing guidance about the exercise of stop and search powers conferred by that Act. That also applies to the new stop and search provision. It seems a bit cart before horse to make the requirement through these regulations and only then to prepare amendments to the code of practice, which will then be laid before Parliament for approval later this year, as the noble Baroness just explained.

All in all, while we support these regulations, in so far as they place a requirement on the Secretary of State to include the new power in the code of practice required by Section 47AA of the Terrorism Act 2000, it seems to be much ado about nothing until we see the revised codes of practice.

Lord Coaker (Lab): My Lords, I thank the noble Lord, Lord Paddick, and I thank the Minister for her clear and precise introduction to these new regulations. I associate myself with her remarks about remembering the victims of the Fishmongers' Hall attack.

We also welcome these recommendations and are grateful to the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, for the review he conducted following the attack. We support these powers, which were added to the PCSC Act. As the noble Baroness knows, we will work with the Government on issues of national security, because there is no difference between any of us in wanting to ensure that our country is safe. So we support this SI which, as the Minister pointed out, is technical and simply ensures that the Secretary of State is required to prepare a code of practice to govern the new stop and search power.

As the noble Lord, Lord Paddick, said, stop and search is an important tool, but is a serious use of the state's power and so it is vital that it is used proportionately and effectively. We welcome that this power is targeted at terrorist offenders who are out on licence; it will be part of their licence conditions. In other words, we are allowing a released terrorist offender, out on licence, to have their person searched, which Mr Hall said was needed. We support that change.

Can the Minister tell us when the code of practice will be published? I think she did, but can she reiterate, for the benefit of the Committee, exactly when the code will be published and laid before Parliament? Is it the case that the power we are debating cannot be used until that code of practice is laid before Parliament and agreed?

Will the code outline the sorts of circumstances under which the power might be used? In other words, what is the precise purpose of such a search conducted under these powers? As the noble Lord, Lord Paddick, raised, what difference is there between the vast majority of offenders who will have their licence agreed to by the Parole Board and some others? It is not clear what is meant by "others" and who will decide who they are.

4.30 pm

The independent reviewer, Mr Hall, pointed out something else—I think this point will benefit the Committee. Section 185 of the Police, Crime, Sentencing and Courts Act provides that this stop and search power may be used

"for purposes connected with protecting members of the public from a risk of terrorism."

Mr Hall pointed out that the purpose of similar stop and search powers in comparable legislation is defined as being

"for the purpose of ascertaining whether the individual is in possession of anything that could be used to threaten or harm any person".

So the Minister will understand that, as Mr Hall has pointed out, there is a clear difference between the language that the Government have used in Section 185 and what they have used in comparable legislation. It would be helpful to the Committee if the Minister could explain whether the code will explain why there is this wider drafting and the difference that it is expected to make to the use of this power. There is an important distinction in the wording of this power compared with previous stop and search powers. It would be helpful for us to understand this.

With those brief comments, I reiterate our support for the Government on this SI and for all those fighting terrorism.

Baroness Williams of Trafford (Con): I thank both noble Lords for their basically supportive and succinct points. On the necessity for the new power, it was recommended by Jonathan Hall QC, as I said, and the Fishmongers' Hall inquest report on the prevention of future deaths also recommended that a new power of personal search be created.

On when the new power will apply if licence conditions are not set by the Parole Board and on who will determine whether to impose them, as with any other licence condition, the decision to impose the licencing condition will be made by the appropriate releasing authority—either the Parole Board or the prison governor—on behalf of the Secretary of State.

The risk management plan will include licence conditions to manage specific identified risks, which will then inform the recommendation of necessary

and proportionate licence conditions for the Parole Board or the releasing prison. But, in both circumstances, the process for recommending licence conditions is the same. The community offender manager will undertake a full risk assessment, taking into account all the relevant information, including from the police, prison and other agencies. This detailed assessment will form the basis of a risk-management plan that will be agreed by the relevant agencies under MAPPA.

The noble Lord, Lord Paddick, is nothing if not absolutely consistent on the disproportionality of the power. We are committed to tackling terrorism in all its forms and the power to conduct a search will apply to any terrorist offender who is subject to the relevant licence condition, regardless of their ethnicity. The legislation is quite clear that such a search cannot be conducted unless a police officer is satisfied that it is necessary for purposes connected with protecting members of the public from a risk of terrorism.

The Home Office published an overarching impact assessment and an equality statement for the Home Office measures in the 2022 Act, setting out that the proposals within the Act are not unlawfully discriminatory within the meaning of the Equality Act 2010, either directly or indirectly.

On when the code of practice will be laid, the Government will lay the revised code of practice before Parliament for its consideration at the earliest opportunity; as I said in my opening speech, it is currently envisaged that this will take place next month. The revised code of practice will make clear the distinct circumstances in which the new stop and search power will be available for use compared to existing stop and search powers.

As regards the breadth compared to other comparable pieces of legislation, the personal search will provide the means for the police to conduct assurance checks. It is envisaged that in the majority of cases this will be to check whether a relevant terrorist offender is in possession of something which could be used to threaten or harm a person: for example, a weapon or a fake suicide belt.

We recognise that there may be limited other scenarios in which a personal search may be necessary for purposes connected with protecting members of the public from a risk of terrorism when the offender may be carrying something which is, on the face of it, far more innocuous. An example of this might be the necessity to conduct a personal search to check whether the offender is in possession of a mobile phone in violation of their licence conditions. This provides a better means of monitoring risk because a contraband phone such as this would be unlikely to meet any definition of something that "could be used to threaten or harm" but, depending on the offender's background, it might be used to contact terrorist networks, enable access to materials useful to preparing an act of terrorism, provide a route for them to radicalise others, or be used to remotely detonate an explosive device.

I hope I have answered the Committee's questions. I emphasise again that the regulations being considered today will not amend the content of the relevant code of practice, and our draft revised code will be laid before Parliament and obviously will be subject to its approval in due course. I commend the regulations to the Committee.

Motion agreed.

Terrorism Act 2000 (Code of Practice for Examining Officers and Review Officers) Order 2022

Considered in Grand Committee

4.38 pm

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

That the Grand Committee do consider the Terrorism Act 2000 (Code of Practice for Examining Officers and Review Officers) Order 2022.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, this instrument would give effect to the draft code of practice which covers the exercise of counterterrorism port examination powers under Schedule 7 to the Terrorism Act 2000. These powers were amended by the Nationality and Borders Act and outline what the code of practice is and its significance to the operation of these powers.

Counterterrorism officers who currently use Schedule 7 port examination powers must do so in accordance with the relevant code of practice. While the code largely reflects the primary legislation, it also includes further procedural guidance for those exercising the powers and additional safeguards for those subject to them.

In passing the Nationality and Borders Act 2022, this House approved amendments to the powers under Schedule 7 which allow officers to examine individuals away from port areas in the following circumstances. First, an individual must either be detained or in custody under relevant provisions of the Immigration Acts. Secondly, the individual must have arrived in the UK by sea and have been apprehended within 24 hours of their arrival. Thirdly, a period of five days, beginning on the day after apprehension, must not have expired.

This will allow officers to examine those who, following their irregular arrival in the UK, have been moved from a port location or have been encountered inland. In short, those who have arrived irregularly by sea will now be subject to the same powers as if they had arrived through conventional means, adding a further protective layer to our existing precautions.

The draft code before us includes changes to cover the exercise of this amended power as well as several other minor changes to clarify language around existing safeguards. The code was subject to public consultation earlier this year and, in response to feedback received, we have clarified officers' responsibility to inform those being examined that the purpose of the examination is not to gather evidence or information on any potential immigration offences. I hope that the Committee will consider the draft code favourably.

The UK and its citizens continue to face the threat of terrorism from those who are intent on harming and dividing us. These provisions within this statutory instrument will support the police in their tireless efforts to keep us safe from these threats. I beg to move.

Lord Paddick (LD): My Lords, I again thank the Minister for explaining this order. Schedule 7, in particular, and Schedule 8 to the Terrorism Act 2000 are controversial in providing powers to the police and other agencies to stop, question, search and if necessary detain anyone who is travelling across the UK border, without reasonable suspicion, to require them to answer questions and be subjected to a search, in order to establish whether or not they appear to be a person who is, or has been, involved in the commission, preparation or instigation of acts of terrorism. The exercise of the power remains controversial, with many being detained and missing flights as a result, for example, with the guidance saying:

"Although the selection of a person for examination is not conditional upon the examining officer having grounds to suspect that person of being engaged in terrorism, the decision to select a person for examination must not be arbitrary."

Despite the guidance giving examples, it remains unclear where the line is between "reasonable suspicion" and "not arbitrary".

However, we debated these powers extensively at the time. While we remain of the view that there needs to be reasonable suspicion, we accept that these regulations are not about either the original power or the new power provided for by the Nationality and Borders Act 2022, but about revising the codes of practice in relation to Schedules 7 and 8 to the Terrorism Act 2000. A change in the use of the powers under Schedules 7 and 8 has been brought about by Nationality and Borders Act 2022 to enable those crossing the English Channel in small boats, who may initially evade detection, to be questioned and detained under Schedules 7 and 8 to the Terrorism Act 2000 away from the border, as the noble Baroness has explained.

As she has also explained, there are safeguards in place. The powers can be exercised only by specially trained and accredited officers; the subject must have been apprehended within 24 hours of arrival on land in the UK, and no longer than five days must have passed since the day of their detention; and they are detained under a provision of the Immigration Acts. The Explanatory Memorandum, at paragraph 7.5, talks about persons detained under paragraph 17(1) of Schedule 2 to the Immigration Act 1972. I could not find an Immigration Act 1972. Do the Government mean paragraph 17(1) of Schedule 2 to the Immigration Act 1971, which refers to a person found on premises where a warrant has been issued to search for people thought to be liable to examination or removal from the UK? Perhaps the Minister can clarify. There is also a safeguard to tell the person detained that the questions put under Schedule 7 about terrorism—as the Minister has explained—are not for the purpose of obtaining evidence or information on immigration offences.

4.45 pm

We welcome the other additional safeguard, unrelated to the Nationality and Borders Act, that clarifies that no procedure exists under Schedule 7 for examining officers to seek or receive authorisation to ask questions which, when answered, may disclose or confirm confidential information in relation to journalistic sources or information subject to legal privilege. I do not think the Minister mentioned that additional safeguard, which we welcome.

We remain of the view the Schedule 7 and Schedule 8 powers are necessary, but we still have concerns that they are being used disproportionately against innocent minorities, particularly Muslims, and that the widening of the use of the powers to areas other than ports and the Northern Ireland border area may add to this disproportionality. Having said that, we understand the purpose behind these regulations and are generally supportive of the fact that they are necessary.

Lord Ponsonby of Shulbrede (Lab): My Lords, we, too, support this statutory instrument. As the Minister said, it gives effect to the draft code of practice. We understand that these changes are being made in response to a recommendation by the Independent Reviewer of Terrorism Legislation, Jonathan Hall. We believe it is important that the proper safeguards are in place, support the order and thank Jonathan Hall for his work.

When speaking to the introduction of these powers during the passage of the Nationality and Borders Bill, the Minister, Lord Sharp, said that

"this is by no means an attempt to treat all migrants arriving in this manner as terrorists, or to stop and examine large numbers of people away from ports and borders. Schedule 7 is not designed and cannot be used as a universal screening mechanism".—[*Official Report*, 10/2/22; col. 1939.]

What safeguards will be put in place to ensure that there is no slide into using these powers more extensively and frequently?

Furthermore, can the Minister clarify whether information given by someone in answer to a Schedule 7 examination, which is strictly counterterrorism powers, will be used for other purposes, for example by an immigration officer? I think the Minister answered that point, but I repeat the question. I also make the point that our staff got in touch with the department to ask this question and others, using the contact details given in the Explanatory Note, and did not receive a response. Usually there is a named civil servant at the bottom of an Explanatory Memorandum, but, in this case, there was a general email to contact. Our staff sent the email at 2.15 pm on Thursday and there was no response.

Although this order relates only to examinations under existing counterterrorism powers, new immigration offences under the Nationality and Borders Act have given rise to an issue about what questions it is appropriate for a person to be asked as part of these examinations. The nature of the questions was looked at as part of the Government's consultation.

As far as those new offences are concerned, I repeat the general point we made during the passage of the Nationality and Borders Bill that we on this side of the Committee are opposed to the Government creating a broad offence of arrival that makes it illegal for people to travel to the UK to seek asylum, regardless of whether they are fleeing a war zone or there is a risk to their life. During the passage of the Nationality and Borders Bill we asked the Government instead to create an offence which captured the actual criminal behaviour that they want to target, such as arriving in breach of a deportation order, rather than an overly broad offence. We believe it is crucial that the Schedule 7 counterterrorism powers are used properly and

proportionately to target terrorism concerns and not as a universal screening mechanism for people to be captured by broad, unrelated measures.

In conclusion, we must not let our fear of terror prevent us responding compassionately to those who need our help. Indeed, many of those arriving on our shores in an irregular manner are fleeing the same terror and violence that these measures are trying to protect our own citizens from. Terrorist organisations that would do us harm are ruthless and opportunistic; they look to utilise situations such as the refugee crisis for their own gain if given the chance. Therefore, we believe it is right that we ensure that our national security legislation is up to date and takes this into account, so that we can minimise the risk posed by irregular crossings of the channel.

Baroness Williams of Trafford (Con): My Lords, I again thank both noble Lords for their very constructive points and in general. I will not repeat some of our debates on the Nationality and Borders Act—it keeps coming up and I think we will be talking about it for some years to come. The noble Lord, Lord Paddick, is absolutely right that it is the Immigration Act 1971, not 1972.

Preventing extension of scope is a very good point. Criteria for exercising the powers away from port have been drawn tightly to ensure that they catch those who have evaded conventional border controls by their irregular arrival; they do not extend more widely. The change reflects the practical consideration arising from the number of people embarking on illegal channel crossings, and it will ensure that those who enter the UK by such means are subject to the same scrutiny and powers as if they had entered the UK by conventional means. I think that avoids the conflation of some of the worries that noble Lords have.

The noble Lord, Lord Paddick, asked about confidential material; absolutely, yes, nothing has changed there. On the safeguards that the noble Lord, Lord Ponsonby, asked about, we are an open democracy, subject to scrutiny on a regular basis. On extension of scope, we will certainly keep an eye on ensuring that the legislation does what it is supposed to do and nothing further.

On the conflation of terrorism and immigration, it is worth reiterating my noble friend Lord Sharpe's point that this is not a back-door method to treat all those who arrive in the UK irregularly as if they were terrorists—I think that reinforces the point I just made to the noble Lord, Lord Paddick.

Motion agreed.

Motor Vehicles (International Circulation) (Amendment) Order 2022

Considered in Grand Committee

4.54 pm

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

That the Grand Committee do consider the Motor Vehicles (International Circulation) (Amendment) Order 2022.

Relevant document: 2nd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these regulations will provide an exemption from paying vehicle excise duty to a specific group of specialist events hauliers in Great Britain. Specialist events hauliers are a small but important subsector of hauliers that transport equipment for touring cultural events. This includes concert tours, art exhibitions and sporting events. They typically undertake a significant number of internal movements, or tour stops, in the UK and the EU. Prior to the end of the EU transition period, UK hauliers operating in the EU were able to undertake unrestricted cross-trade movements—that is, the movement of goods between two other countries—and up to three cabotage movements: the movement of goods within a single country.

Under the EU-UK Trade and Cooperation Agreement, UK hauliers are now restricted to one cabotage and one cross-trade or two cross-trade movements within the EU. As such, specialist event hauliers' business models have been significantly affected. That is why the Government are taking action to support this part of the haulage sector in adapting to the changes via a dual registration measure. Specialist events hauliers which are able to establish an international base in the EU or beyond while maintaining their UK base will be able temporarily to transfer their EU-registered vehicles to their GB operator licence while they operate in GB without the need for paying UK vehicle excise duty.

Dual registration will allow operators that wish to operate in the EU to function as an EU operator, benefiting from single market access rights, and to operate in the UK as GB operators, benefiting from their status as a domestic GB operator, all of this without the need to swap their specialist vehicles in the middle of a tour. Overseas haulage companies that set up a base in GB can also benefit from this approach. The main function of this SI is to provide an exemption from VED for hauliers which wish to utilise the dual registration arrangements. Without this VED exemption, this approach would not be viable.

This change will provide an efficient process when operators switch the vehicles from their EU operator's licence to their GB operator's licence. To utilise the dual registration a number of criteria will need to be met, which are set out fully in the draft statutory instrument. The haulier must be operating under a hire or reward model; the haulier must also establish and maintain an operating base in Great Britain as well as another base abroad, as I mentioned; the vehicle being used must be specifically designed or substantially modified in order to carry the goods needed for cultural tours; the specific goods that the haulier may carry are property, equipment or animals being transported to specific venues or events; and the goods being carried from place to place during a tour should remain unaltered. In line with existing rules on the temporary import of vehicles, the vehicle may be registered in Great Britain for up to a maximum of six months in any given 12-month period.

Unfortunately, there are unavoidable limitations on what is possible here. This is a complex issue for which there are no simple solutions that will meet the needs of all parts of a fairly diverse sector. The proposed

[Baroness Vere of Norbiton]
dual registration measure will go some way to meet the challenges that the sector is facing, but we acknowledge that some specialist event hauliers will be unable to utilise these proposals for a number of reasons. For example, smaller specialist haulage firms or own-account operators may not have the resources needed to set up overseas. Also, an own-account operator's business model would need to change to hire or reward, and in certain circumstances that is not going to be viable.

However, this instrument is of vital importance to a large number of companies operating as specialist events hauliers, and therefore I beg to move.

5 pm

Baroness Randerson (LD): My Lords, I thank the Minister for explaining so clearly how this will work. The Government launched this SI with much fanfare early last month—fanfare and the obligatory swipe at the unacceptable nature of EU bureaucracy that necessitated the SI. That is called Brexit, and those of us who opposed Brexit pointed out that if you do not belong to the club, you cannot benefit from the rules and, unfortunately, that lesson is becoming all too clear. Hence, we have this measure, which is one of a long line of complex, awkward fixes that we have discussed here in this Committee, over the months and years, to try to defray the damage that we are suffering from as a result of no longer being a member of the EU.

Of course, this order is very welcome as far as it goes, but it has taken a long time to get to this point. Since we left the EU, our specialist hauliers have been limited to, I think, three EU stops per tour, and many of them have already established bases in the EU to overcome this, with a resulting loss to the UK economy. It is not as if the firms in this sector did not warn us that this would happen. I was a member of the EU Internal Market Sub-Committee, and back in 2018, we took evidence from an organiser of major exhibitions who predicted exactly these problems.

One of the phrases the Government like to use frequently is "world-beating". Often, it is a sad exaggeration, but in relation to the cultural sector it is very accurate. I would prefer to say "world-leading", but the point is that our soft power through the cultural sector has been immense and is sadly diminished as a result of the constraints on touring in Europe. I have a number of questions for the Minister. It is 18 months since we left the EU. Can she perhaps explain why it has taken this long to get to this important measure? Ideally, it should have come in smoothly and immediately after we left the EU.

Paragraph 7.6 of the Explanatory Memorandum refers to a maximum period of transfer for a vehicle to a British operator licence as being

"six months in a twelve month period."

I understand the concept of "temporary", but why is six months the definition of "temporary"? Why not eight months or any other number of months within 12 months? Is there a legal basis, or is this something that was just added on?

Paragraph 7.4 says:

"This Instrument does not permit transportation of any item of goods for the intention of being sold on (such as merchandise)."

That is actually a very prescriptive limitation. I was part of a music group many years ago touring in Europe, and we took CDs with us. There would not be CDs now, but we also took t-shirts and souvenir programmes to be sold. It would appear that we would not be allowed to do that now. Such items are, very often, marginal. They are just part of giving that little extra edge to the operator. They are an important part of spreading our soft power, getting the name of the group known abroad.

So why is it that they are excluded? It seems it could incur considerable or disproportionate expense to carry them separately—a whole separate vehicle or separate haulage charges in some other way. It does not, to my mind, seem necessary. Was any consideration given to allowing goods of that type to a certain limited amount—maybe limited in total value or limited as a proportion of the total?

The net result of this SI is that some foreign-registered vehicles will be operating in the UK on British operator licences. This in itself presents enforcement challenges, which I am sure the Minister will have gone through, but could she give us some idea of the numbers expected to be affected by this? Is it hundreds, tens or thousands? What estimate has been given? There is a lack of impact assessment once again. The words used are that there is no significant impact on business. I had hoped that there will be a significant impact on business and therefore I am surprised that an assessment was not made.

Of course, I welcome this hope it does the trick, although the Minister has reminded us that it might not work for everyone. Sadly, we have heard of a number of artists who have stopped touring already and, unfortunately, they will not all return as a result of this. We have lost stature as a result of this situation.

Lord Tunnicliffe (Lab): My Lords, I was expecting a very dry debate on this relatively straightforward SI, but one of the joys of this place is that you are allowed to discover fellow Members meeting by meeting. The idea of the noble Baroness, Lady Randerson, leading a life previously as a groupie—though I hope not quite at that level—adds a little excitement to this debate, which it perhaps needs.

I welcome the introduction of this instrument to support British touring overseas. The House is aware that, since the UK left the European Union, companies which tour Europe have faced new obstacles in continuing their work and we all hope that this order will help them overcome this. The Government are right to bring forward these new provisions to allow certain hauliers to operate both in the UK and EU without having to pay vehicle excise duty—in effect, benefitting from the single market access rights.

I will not detain the Committee for long but there are three issues on which I would appreciate clarification. First, can the Minister explain why the measures are coming into force in August rather than earlier, especially given that the industry is particularly busy during the summer season? Secondly, the department has estimated that up to 50 specialist events hauliers, which in total have 1,000 vehicles, may decide to use this measure.

How was this figure calculated and what proportion of specialist events hauliers does it represent? Finally, what steps will the Minister take to make the industry aware of these changes and to monitor their effectiveness? I hope the Minister can provide clarification on these points.

Baroness Vere of Norbiton (Con): My Lords, that was relatively brief and moderately pain-free, but I will certainly answer as many questions as I can—and will write, as I can spot at least two I am feeling a little bit dubious about.

I think it is worth scooping up comments made by the noble Baroness, Lady Randerson, and the noble Lord, Lord Tunnicliffe, about what the timelines for this look like, how we ended up where we are now, why it was not done earlier, et cetera. Eighteen months ago, when we finally left the EU, there were all sorts of other things going on. There were not that many tours going on at the time, but we were aware that there was this potential issue with specialist events hauliers. As noble Lords may be aware, we explicitly requested bespoke arrangements for this sector when we were discussing the TCA, but the EU rejected those proposals so we have had to develop from there. It is the case that we went back and 100% checked with the EU whether it was absolutely sure that it could not think of some way for it to proceed. DfT officials raised that matter at the specialised committee on road transport in November 2021, noting that this sector had been disproportionately affected by the TCA and that this would have knock-on effects on artists affecting future cultural exchange for both sides.

We did not get far on that—I am not going to lie—and therefore realised that we would have to speak to the sector, as we would normally do in these circumstances, to understand exactly how we could help it. We did the consultation in February 2022. I cannot remember exactly how many people responded; I think it was something like 28. It was not a huge number, reflecting the relative size of the sector, which is not massive. After the consultation closed, we had to analyse the responses and shape the final policy position because, as I noted in my opening remarks, this does not help everybody and we wanted to make sure that we could help as quickly as possible. That is a very long-winded way of saying—the noble Lord, Lord Tunnicliffe, looked at his watch there—that the earliest we can get this into force is in August 2022.

However, I have positive news because we have done an interim measure. It is an exceptional administrative process which basically allows what we are proposing in the statutory instrument to happen now. That means that we have managed to safeguard the process over this summer. If differs from dual registration in that no legislative changes are required and it is instead implemented through an administrative arrangement with the Office of the Traffic Commissioner, but we recognise that that is quite temporary and we do not want to continue that arrangement without a firm legal footing. That is where we are with that.

The noble Baroness, Lady Randerson, asked why six months, and I am afraid I do not have the answer. I think there is a broader issue about vehicles coming into the UK in general, in that they can come in for six months before something has to happen. I will write to the noble Baroness because I do not think that is a good enough answer.

The noble Baroness raised an important point about merchandise, which I thought was very interesting. However, the goal of what we are trying to do today is to focus on certain specialised vehicles. The reason we have this problem is that you load your cultural objects or your things relating to your event into your truck, which itself is specialised for transporting specialised equipment. That is why we are very clear that that equipment must not be amended, altered or sold, otherwise it becomes something entirely different. When it comes to merchandise, you do not need a specialist truck to transport CDs, brochures or whatever; they can be transported by any good courier company. I shall see whether I can find anything more about that. The whole point of this order is to focus on these trucks, which are simply not available to meet the needs of the artist or whoever across the EU, and you would not want to change them.

Baroness Randerson (LD): I am grateful to the Minister for giving way. My point is that if you are transporting an orchestra, you have specially adapted pantechnicons full of specialised equipment and instruments—you shove a few boxes of programmes and merchandise in the bottom as you go. Because they would have to send them separately, orchestras will print their programmes in Europe rather than printing them in the UK and taking them, and they will print their t-shirts in Europe rather than in the UK. We are losing business that way. I am making what I think is a simple point: something that is clearly ancillary to the main purpose of the truck should be allowed.

5.15 pm

Baroness Vere of Norbiton (Con): I think the noble Baroness summed it up very well in that last comment: if it is "clearly ancillary" to the main purpose of the truck, other arrangements could well be found. I will write if I can find out anything slightly more positive to ease her mind. Otherwise, I am fairly sure that orchestras will be shoving boxes of brochures under violins anyway, but let us not worry about that right now.

On the impact assessment question from the noble Lord, Lord Tunnicliffe, this SI does not amend or impose requirements on business practice, excluding a tax measure; this is really a tax measure rather than a change in regulation per se. A tax information and impact note has therefore been published by HMRC, as this proposal includes tax policy changes.

The noble Lord, Lord Tunnicliffe, also asked how many people would make use of this. The information we have comes from the industry; we think that there are up to 50 specialist events haulage firms that operate, but we of course do not know quite how many will then go on to make use of this. We do know that three possibly larger specialist haulier firms have already set up within the EU and that more have plans to do so once this regulation is in place. I am afraid that I have no more information than that because we simply do not collect data on that sector specifically.

[Baroness Vere of Norbiton]

We will publish the guidance associated with these regulations by 15 July on GOV.UK. My officials are in contact with the sector and also working alongside the DCMS, which is also very interested in this area. Between the DfT and DCMS, we will be engaging with the industry to make sure that key stakeholders are aware of the implementation date and their options. I will write to the noble Baroness on the number of foreign-registered overseas trucks that we expect in relation to the specialist events sector. I am afraid I can probably tell her now that we will not know that number. In terms of enforcement challenges, I see no difference from other foreign trucks we have in the UK and the enforcement challenges that the DVSA has for those. I beg to move.

Motion agreed.

Contracts for Difference (Allocation) and Electricity Market Reform (General) (Amendment) Regulations 2022

Considered in Grand Committee

5.19 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Contracts for Difference (Allocation) and Electricity Market Reform (General) (Amendment) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, these regulations were laid before the House on 11 May 2022. The contracts for difference scheme is the Government's flagship renewable energy support scheme. It is designed to offer long-term price stabilisation to low-carbon generators, bringing investment forward at a lower cost of capital and therefore at a lower cost to consumers. The scheme has been very successful in driving substantial deployment of renewables at scale in Great Britain and has made it cheaper to deliver low-carbon generation.

CfD applicants with a capacity of 300 megawatts or more are currently required to present a supply chain statement to the Electricity Market Reform Delivery Body as part of their application. A statement is provided if a developer can demonstrate to the Secretary of State's satisfaction that the project is likely to make a material contribution to the development of relevant supply chains. The aim of the policy is to increase productivity, competitiveness and capacity in supply chains, promoting innovation and skills in the low-carbon electricity generating sector.

The current policy approach to CfD delivery and supply chain plans needs to be strengthened. This will also support the move to annual CfD allocation rounds, which the Government announced in February. This will ensure that the scheme continues to operate effectively, encourage low-carbon generation and provide confidence to investors and supply chain companies. It will support the delivery of those renewable technologies identified in the *Net Zero Strategy* and the *British Energy Security Strategy* that are key to decarbonising the power sector, such as offshore wind, onshore wind and solar.

I will take a moment to talk through what these regulations will do. They will make several amendments to the Contracts for Difference (Allocation) Regulations 2014 and the Electricity Market Reform (General) Regulations 2014. The amendments include changes to contracts for difference delivery and supply chain policy in preparation for the fifth allocation round. These amendments will help to bolster supply chain development in preparation for the next CfD allocation round, planned to open in March 2023, delivering on the ambitions set out in the *Net Zero Strategy* and the *British Energy Security Strategy*.

These regulations amend the current non-delivery disincentive exclusion period that applies if a developer fails to sign a CfD contract or the contract is terminated, so that an application cannot be made for the subsequent two applicable allocation rounds. This strengthens the current policy of excluding a site from only one subsequent allocation round. This change will ensure that the NDD exclusion period is aligned with the decision to hold allocation rounds on an annual basis from 2023, ensuring that the NDD remains an adequate incentive to deliver projects.

These regulations also bring alignment with a change introduced to the valuation formula in the CfD allocation framework for allocation round 4. For allocation round 4, the Government introduced changes to the valuation formula to reduce the complexity of the auction and to ensure that the earliest possible date of CfD payments is considered when calculating the impact on the budget. These regulations introduce this technical change, amending the corresponding contracts for difference allocation regulations to reflect the amended formula.

The regulations amend the validity period of a supply chain plan statement so that it is valid for nine, rather than 12, months. This ensures that, in practice, developers continue to submit individual supply chain plans for each CfD allocation round in light of the move to annual auctions. They also amend the requirement to provide a supply chain plan statement so that it applies to all floating offshore wind projects. This allows the Government to support the development of supply chains for the floating offshore wind industry as it approaches significant commercialisation and deployment. We seek to make these amendments now to give certainty to businesses that might be planning to take part in the next CfD scheme, which will open in March 2023.

We are proposing these legislative amendments following a public consultation, which ran from 4 February to 15 March and gave stakeholders the opportunity to scrutinise and test the policy proposals. The consultation generated 41 responses from a range of developers of renewable generating stations, trade associations and bodies, suppliers and public investment bodies. At the same time, officials engaged wider audiences through an online event.

Overall, the policy proposals received wide support. The consultation led to one policy change to the supply chain policy proposals in response to the feedback received. A minor adjustment was made to the proposal to introduce floating offshore wind projects into the

supply chain plan process whereby a bespoke, less burdensome process will be required to account for the smaller size of their projects.

In conclusion, the Government have set out a clear vision for how we will transform the production and use of energy, in a decisive shift away from expensive fossil fuels. These regulations, together with annual CfD allocation rounds, will help support an increase in the pace of deployment of the new renewable electricity generation needed to achieve our ambitions while continuing to consider the likely cost to consumers, energy security, et cetera. Subject to the will of Parliament, we intend that these arrangements will come into force on the day after the regulations are made. I beg to move.

Lord Lilley (Con): My Lords, I will ask some questions, because I do not fully understand all this and these SI debates are often a good opportunity to expand one's knowledge.

First, I would be grateful if the Minister can explain how a shorter life validity of the supply chain plan acts as an incentive, and what it incentivises. What happens after the plan lapses? None of that is obvious to me from the not very helpful Explanatory Memorandum. Are these supply plans published? Can we all see them or are they private documents between the Government and the supplier? Overall, do they help us to estimate what percent of the value added in supply chains is generated within the UK? If so, I would be grateful to know what it is.

Can the Minister also confirm that although the newest offshore fields won the bidding process with low prices, they have not yet activated their contracts so they are able to sell their electricity at the very high prices now prevailing, making what most people might call a windfall profit? That is the sort of thing Governments love to tax but they seem to have got off scot free. I would be grateful to know whether that is the case and to what proportion of wind generation that applies.

I would also like to know what proportion of wind generation comes from the early contracts, which, if I have correctly understood it—that may well not be the case—got a variable price plus a bonus and therefore are getting not merely the current high price but the current high price plus something extra: jolly good for them, but not so good for the consumer. Again, that is something that Governments might like to tax but they do not seem to have done so in this case. I would like to know what proportion of the renewables supply that is. By deduction, that should tell us what proportion of the renewables supply is under CfDs and therefore is not going up with the gas price. It would be very helpful if the Minister could answer that.

If those questions identify an intrinsic problem in the present system, why does this measure not deal with it—unless it does and I have not been able to find it in the not very helpful Explanatory Memorandum? I will be grateful for the Minister's replies.

Lord Teverson (LD): My Lords, I start—partly related to what the noble Lord, Lord Lilley, said—by thanking the Minister profoundly. The last time we had a debate around CfDs, I asked a number of questions about the Low Carbon Contracts Company, which is wholly owned by the Government, and how much money it was making because of the energy price in relation to the strike price on CfDs. The Minister provided a comprehensive reply. Unfortunately, I do not have the numbers from it with me, but I thought it was extremely useful and I thank him for that. There is significant money coming back into the Low Carbon Contracts Company and, therefore, the public sector. Of course, the area that does not is the old ROCs regime, where I presume good profits are being made by those renewable companies that still operate under that system—although those presumably are starting to die out fairly quickly.

5.30 pm

The area I really want to ask about—again, similar to the noble Lord, Lord Lilley—is supply chains. When I first read the Explanatory Memorandum, I assumed that the concern about supply chains was that those that bid can actually deliver and, therefore, need to have a credible supply chain; I assumed the Government were, quite rightly, looking to make sure that, when a contract for renewable energy was awarded, it could be fulfilled. However, when I read it, it did not say it in that way. Nor did the Minister, who seemed to describe the development of the supply chain. I assume that that is about trying to enhance the UK content of the supply chain; I would be interested to understand whether that is the case. I understand that the European Union is not too happy about that—for reasons which I sort of understand. Clearly, there is an important national interest here in terms of our long-term future. I am interested to understand where the Government have got, under the TCA, with the Commission on that discussion and whether they are actually in the processes that exist to discuss that.

I absolutely agree with the proposal to be more punitive if schemes cannot be delivered. Development timescales are still long—we all want to make them shorter while not prejudicing the environmental concerns and so on—but it seems absolutely vital that, once companies are awarded contracts, they deliver on time and we get that energy into the system.

One slightly more general question is around the state of the national grid and its ability to absorb these extra inputs into renewable energy. Certainly in the south-west, where I come from—talking about the solar side and battery storage, in which I have an interest in a company called Aldustria Ltd—there seems to be quite a queue at the moment, and a blockage in terms of access to DNO systems and the national grid. I would be interested to understand what happens there.

My last question is: why is there a discrimination against floating offshore wind regarding the 300 megawatts? Do the Government intend to remove that flaw for ordinary offshore generation as well and, if not, why the difference?

Lord McNicol of West Kilbride (Lab): My Lords, I thank the Minister for his introduction. I similarly had only three questions arising from this SI—two of which the noble Lord, Lord Lilley, asked and the final

[Lord McNicol of West Kilbride]
one has also just been asked. This is a very technical SI, which we support, and I will just pick up on a couple of points.

The instrument will amend the validity period of the supply chain plan statement—one point that the noble Lord, Lord Lilley, raised—so that it is valid for nine months, not 12 months, from the date of notice given by the Secretary of State. However, it goes on to say:

"The Secretary of State will … be able to determine a longer period if in their opinion there is a compelling reason for the period to be longer".

Can the Minister share what he would consider to be "compelling reasons" for why it would be extended past nine months, if we are moving it back from 12 months? The noble Lord, Lord Lilley, touched on the second point about the qualifying of the impact under the new commitments; I will leave the Minister to answer that question.

On the supply chain, Regulation 2(3) amends the requirement to provide a supply chain plan statement so that it applies to all floating offshore wind projects. This was the point just made: the current 300-megawatt threshold generating capacity will continue to apply to all other eligible projects that are not floating offshore wind projects. Have the Government given any consideration to removing this threshold for other projects to encourage SCPs?

Finally, I understand that the consultation on the new supply chain plan questionnaire—the condensed version—closes tomorrow. Do any of the changes that would come under that affect this SI and does closing the consultation after the Grand Committee agrees this SI have any consequences?

Lord Callanan (Con): I thank all the three noble Lords for their contributions. They were raising wider concerns about how the process works; I do not think anybody objected to the SI itself, so I thank Members for their support. The points that were raised demonstrate the need for these regulations—they are technical changes—and the support for introducing them.

As I said at the start of the debate, these changes are essential to ensure that the next CfD allocation round, which will be the first annual one, can best support something we all want to see: an increase in the pace of renewable development and the deployment needed to help us achieve our net-zero ambitions and get the price of electricity down in the longer term. At the same time, they help to achieve our legal net-zero commitments.

My noble friend Lord Lilley was right to point out the need to consider the likely cost to consumers, the impacts on energy security, et cetera. These regulations must be made now, ahead of the next CfD allocation round, which is planned for March next year, as I said, so that the developers have certainty as to the legislative framework for the next round.

Dealing with some of the questions raised, my noble friend Lord Lilley asked me to explain how a shorter validity acts as an incentive and what happens after the supply chain lapses. He also asked whether supply chain plans are published. The answer is that they are. They set out how they will improve the capacity of the supply chain. The noble Lord, Lord Teverson, touched on the reason and I need to be slightly careful here. We are endeavouring to ensure that—how should I put this?—as much of the supply chain as possible is located in the United Kingdom, without breaching our legal obligations, which nobody would want to see us do. We are subject to legal action from the European Commission in the WTO, at the moment.

My noble friend Lord Lilley also asked what the Government are doing to stop CfD generators delaying their start dates so they can benefit from high energy prices. First, the vast majority of operational CfD projects are, happily, paying back into the system, due to the current high energy prices. I set out those figures in a letter to the noble Lord, Lord Teverson. Subject to his agreement, I would be happy to send a copy to my noble friend.

In essence, in April this year, the Low Carbon Contracts Company, which is responsible for administering this system, returned £108.3 million to GB suppliers in respect of payments made by generators since last autumn. However, my noble friend is correct, and the Government are aware of a small number of projects that have delayed their contract start dates to try to benefit from current high wholesale prices. Legally, CfDs are private law contracts between the Low Carbon Contracts Company, the CfD counterparty and generators. The Government are not legally a counterparty to those contracts. However, we have raised the matter with the industry and made it clear that, in our view, this practice is not within the spirit of the scheme, which is intended to deliver benefits to both consumers and developers. While operating on commercial terms, these developers will not receive CfD payments. We are examining possible changes to the scheme to prevent future CfD projects acting in this way. While this practice is regrettable, it is important to remember that CfDs have played a significant role in massively bringing down the cost of offshore wind in recent years.

My noble friend also asked about capacity. The CfD scheme currently supports 16 gigawatts of new capacity, of which 13 gigawatts is offshore wind. Only two projects, totalling 1.4 gigawatts, have delayed their contract start dates in order to sell their electricity on the open market.

Turning to the slightly problematic area which concerns the noble Lord, Lord Teverson, reflecting the concern of the EU that we are breaching WTO rules, my legalistic response to this is that in the supply chain plans we do not require developers to use UK content. The supply chain plans are there to encourage them to invest in creating competitive, capable and efficient supply chains which are, of course, necessary for us to deliver net zero, taking into account our national obligations.

Lord Teverson (LD): May I say to the noble Lord that that is highly commendable?

Lord Callanan (Con): I thank the noble Lord for his comments. The noble Lord also asked why there is discrimination against floating offshore wind in terms of the 300-megawatt capacity. The answer is that this technology is at a key juncture in terms of its deployment,

and we think that certain emerging technologies—such as floating offshore wind—have the potential to play an important role in the future in helping us to meet net zero. Bringing them into the supply chain process now will allow BEIS to support the development of the associated supply chain at an early stage by encouraging the industry to invest in competitive supply chains and—as has happened with offshore wind—to accelerate the cost reduction, by which we are now all benefitting.

There were also a number of technical questions raised by the noble Lord, Lord McNicol. This SI is not affected by the detailed questionnaire that was issued. On his other questions, it may be better if I reply to him in writing, if he will allow me to do so. With that, I commend this draft instrument to the House.

Motion agreed.

Construction Contracts (England) Exclusion Order 2022

Considered in Grand Committee

5.43 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Construction Contracts (England) Exclusion Order 2022.

Lord Callanan: My Lords, I beg to move that the draft Construction Contracts (England) Exclusion Order 2022, which was laid before the House on 11 May 2022, be approved.

These regulations exclude two specific types of construction contract from the provisions of Part 2 of the Housing Grants, Construction and Regeneration Act 1996, often referred to as the construction Act. Both contract types form part of a new procurement delivery model developed by Ofwat, known as direct procurement for customers or DPC, for the finance, design, building, operation and maintenance of high-value water and sewerage infrastructure. Before I set out the details of this exclusion order, it might perhaps be helpful to touch on the legal context for construction contracts.

Specific construction payment and dispute resolution legislation has now been in place for more than 25 years. Part 2 of the Housing Grants, Construction and Regeneration Act 1996 creates a framework for fair and prompt payment through the construction supply chain and a resolution procedure for disputes. The aim is to improve cash flow and provide the right to the quick resolution of disputes through adjudication.

5.45 pm

Generally, the Construction Act requires the legal framework to be implemented through the construction contract. Where a construction contract omits to deal with an issue, or does so in a way that does not meet the requirements of the Act, a fallback provision is required. This is provided for by the scheme for construction contracts—"the scheme"—which is implied in the contract. The Construction Act has always prevented pay-when-paid clauses, which were often used as a way to delay payments to the supply chain. They are clauses whereby party B will not pay party C unless party B itself has been paid by party A.

In addition, a loophole was closed by the Local Democracy, Economic Development and Construction Act 2009 which introduced new Section 110(1A) into the 1996 Act. This provision prevents any term in a contract which makes payment conditional on the performance of an obligation under another contract or a decision by any person as to whether obligations under another contract have been performed. This legal framework has played an important role in improving payment practices in the construction industry.

However, the Construction Act also confers powers on the Secretary of State to disapply the provisions of the Act in limited circumstances. These powers have been used only twice before, for construction contract exclusion orders in 1998 and 2011. In both cases the orders excluded contracts under the private finance initiative. This was due to the unique nature of the contractual design and financing arrangements of the PFI contracts.

It is for the same reason—the distinctive financing arrangements and design of contracts—that this exclusion is sought for two specific contract types under the new infrastructure procurement model known as direct procurement for customers. Direct procurement for customers is based on a regulated water and sewerage provider competitively tendering for a third party—a competitively appointed private sector provider, or CAP—to finance, design, build, operate and maintain an infrastructure asset that would otherwise have been delivered by the incumbent utility provider. The CAP will be likely to be a special purpose vehicle, commonly including a construction company, a funder and a service provider.

The CAP will enter into a series of subcontracts for the design, construction and maintenance of the relevant assets. These contracts are typically drafted to be co-extensive with the main CAP contract, in particular relying on performance of obligations under the contract between the utility provider and the CAP to determine payment to the tier 1 subcontractor. Payment to the CAP by the incumbent water provider is via a unitary charge, which commences only when the asset or part of the asset is capable of operating.

However, the CAP agreement and first-tier subcontracts fall under the definition of a construction contract. Such a classification means that the contracts must include Act-compliant payment processes and adjudication arrangements. If not, the scheme for construction contracts is deemed to apply to the agreement, which would then take precedence. This would adversely affect the structure and operation of these DPC project contracts and would threaten the whole viability of the procurement model.

This draft instrument is limited to the specific DPC procurement model and excludes only two types of construction contract from the provisions of the Construction Act: first, DPC competitively appointed provider—CAP—contracts are excluded from all requirements of Part 2 of the 1996 Act; and, secondly, DPC first-tier subcontracts are excluded from Section 110(1A) of the 1996 Act. This will allow payments to first-tier DPC subcontracts to be conditional

[Lord Callanan]
on obligations being performed in other contracts. All remaining construction contracts through the supply chain of the DPC project, in particular for SMEs, will remain subject to all the provisions of the Construction Act.

Application of this instrument is within England only, as construction is a devolved matter.

Of course, we consulted on this: as part of the development of the statutory instrument we carried out a targeted consultation with relevant construction industry and water sector stakeholders. It was confirmed that the specific contracts would be disproportionately affected by the provisions of Part 2 of the Construction Act. The majority of respondents were in favour of the exclusion, although some concerns were expressed regarding the impact on first-tier contractors.

However, the tier 1 construction subcontractor or its parent company will typically be part of the main CAP. This provides good knowledge of the funding structure, contract terms and risk allocation of this particular procurement model. This means that the contractor is in a good position to assess and price the risk, in contrast to the general position with more traditional construction projects.

So DPC is a competitive delivery model focused on increasing and accelerating investment in improving water and sewerage infrastructure. There is a pipeline of potential projects—

Lord McNicol of West Kilbride (Lab): Oh!

Lord Callanan (Con): Yes—very good. There is a pipeline of potential projects that could adopt this model, and the Government believe that its use will deliver benefits to consumers. Through increasing competition in the delivery of strategic infrastructure, it will ensure that the cost of this infrastructure is market tested and therefore fair for water and sewerage customers. I apologise for the complicated nature of the explanation and I commend this instrument to the House.

Baroness McIntosh of Pickering (Con): I am sure that we are all very grateful to my noble friend for presenting this document. I am sure that he will be aware of the vexed issue of sustainable drainage systems—SUDS—in relation to the provision of water and sewerage services. So I ask very specifically whether the implementation of SUDS will be affected and enhanced by the exclusion in this regulation.

Paragraph 7.3 of the Explanatory Memorandum says:

"The instrument is limited to a specific procurement model for high value infrastructure assets in the regulated water and sewerage sector ... There are two projects under active development and a further 18 strategic water resource schemes are being progressed ... across the next 2-3 price review periods"—

so we are looking at a period of 15 years. As we are told that the significance and the business impact of this is estimated at £54,000, how will this enhance the ability to introduce SUDS and other larger water infrastructure projects if it is such small beer? That is the only issue that I will raise; otherwise, obviously I approve this instrument.

Lord Berkeley (Lab): My Lords, I too am grateful to the Minister for his explanation—I tried to understand most of it. I too am interested in paragraph 7.3, to which the noble Baroness referred, because it comes back to the question of the best way of achieving fair competition when there is going to be a massive new project to provide better services in the water sector. One has to look perhaps at the example of the Thames Tideway tunnel—that probably comes under the category of being large. Whether it will deliver what Thames Water thinks that it will at a price that customers can afford remains to be seen. I do not quite see why these two large projects should be dealt with separately. Could the Minister name them and give us some idea of what they are about and what the risks might be? I will not go into them now, because they could be anything.

The regulator is apparently in charge of all of this and will vet contracts that it seems to me will be to design, construct and operate—why can these not be done by competitive tendering, with the usual construction industry fallbacks if things go wrong? It would be interesting if the Minister could give us more information about not only the two big ones but the 18 strategic water resources ones. How will anyone be able to tell or believe—we hope that we will be able to believe—that the regulator has delivered for the customer as well as for shareholders?

Lord Fox (LD): As the Minister knows, I am no lawyer—perhaps I should have taken a law degree before attempting this statutory instrument. I note that it is not just the European Union that can amass red tape; we seem to be doing it very well on our own, so I am not sure it can refer us to the WTO for competition.

This is a very complex model. I was caught by the idea that we appear to have been progressing without it for a while. In a sense, is this closing a loophole that has been spotted, or does this reflect a trend in how the market is going about delivering these projects? What drove the decision to table this statutory instrument now? In other words, what has caused this to happen now when it clearly could have happened some time before or in future?

In passing, the Minister mentioned benefits to consumers. I think he outlined that there would be some sort of competitive tendering process, and therefore the price of a particular project would go down in cost. I am interested in the very sharp end of the consumer experience—the connection and that kind of thing. I assume that this applies to that as well as to the larger projects. If it does not, how will a new consumer attempting to join the system experience it? As I understand it, at the moment they are given a "take it or leave it" price by the water supplier. Does that continue to be the case? Will there be an opportunity for consumers to drive down the cost to them of an individual connection or is this focusing only on much larger projects?

The other point is how this flows through the supply chain. The Minister mentioned that the tier 1 contractors are potentially liable to be most affected. However, this marks a change right down through the chain to tiers 2, 3 and others. I would be interested to

know how low down their tier structure the department intends to bring suppliers up to speed on how they address their role in this change in the supply chain. Other than that, I think I welcome this and certainly look forward to the Minister's answers.

Lord McNicol of West Kilbride (Lab): My Lords, I again thank the Minister for his introduction to another very technical SI. Until his introduction, the only real question I had was around the consultation. He touched on it at the end of his introduction, but I could not find any of the details of the responses to it online. That is probably me, but could he say a little more about the feedback received as part of the consultation?

Following on from the themes of the general public and who will benefit from this SI, the Minister said there were some concerns and worries from the first-tier subcontractors. I think we all agree that the removal of "pay when paid" was good. I worry a little, if we are bringing back special circumstances which in reality are "pay when paid"—although under slightly different processes in terms of certificates and completions—whether we are opening it up. Is the Minister worried about this at all or is the SI tight enough to prevent "pay when paid" returning to the construction sector?

The final point has been touched on by the noble Lords, Lord Berkeley and Lord Fox, and is about fair competition and the general public. Does the Minister believe there will be any increase in price or unitary charge for the general public in this SI? With that, I will leave my questions.

6 pm

Lord Callanan (Con): I thank noble Lords for their valuable contributions to the debate. Let me start by emphasising, as I did initially, that this exclusion order is very narrow in scope. It is well defined to ensure that it is used only for the intended and very specific contracts that I referred to. These are the two specific construction contracts that are used to deliver the direct procurement for customers model for high-value infrastructure assets in the regulated water and sewerage sector.

Let me also emphasise that the creation of an exclusion under this Act is very much an exception and not the rule. DPC is a competitive delivery model focused on accelerating the delivery of strategic infrastructure in this particular sector. The current absence of an exclusion for these specific contracts threatens the viability of DPC and the very great benefits it could bring to consumers. That position has been confirmed through consultations with appropriate stakeholders. That is the reason the Government have chosen to use the powers conferred on them to make exclusions from the provisions of the construction Act in this particular, limited, isolated case.

I shall now deal with the questions I was asked. First, to my noble friend Lady McIntosh: SUDS are not currently associated with the schemes being developed but may be, in the future, if they are of sufficient size to be required.

The noble Lord, Lord Berkeley, asked for details of the projects. The first project is United Utilities Water's Haweswater aqueduct resilience programme, which I am sure the noble Lord is very familiar with. It is to replace the existing Haweswater aqueduct, which is at risk of failing, which currently transfers water from the Lake District to north-west England, especially Manchester. The second English project is sponsored by Southern Water, and it is to deliver water to the south-east of England. United Utilities Water's Haweswater aqueduct resilience programme, a very large project, will replace parts of the Haweswater aqueduct, which brings water to Cumbria and Lancashire. Southern Water's Hampshire water transfer and water recycling project is required to ensure supplies to the Hampshire region. It is able to meet, apparently, one-in-500-year droughts. That is the second scheme I referred to.

In response to the question asked by the noble Lord, Lord Fox, as I emphasised again, the exclusion order is narrow in scope, and it is well defined to ensure that it is used for these particular, intended contracts only—the two specific construction contracts that are used to deliver the DPC procurement model for high-value infrastructure assets. Those entering into the procurement mechanism will, of course, have full knowledge of the terms including that payments during the construction phase will be made at specified intervals and that payments made through the unitary charge will commence only once the asset is capable of operating. Importantly, alternative dispute resolution mechanisms will also be included within the CAP contracts. All remaining construction contracts through the supply chain of the DPC projects—and, let me emphasise, in particular those appertaining to SMEs—would, of course, remain subject to all the relevant provisions within the construction Act.

In response to the question from the noble Lord, Lord McNicol, this instrument is limited—

Lord Berkeley (Lab): I am grateful to the Minister, but before he moves on, could he explain why the regulator, or the Government, thinks these very large contracts should be treated separately and differently, rather than having several smaller ones, as it may be, where the risk of things going wrong might be lower?

Lord Callanan (Con): As I said, these are specific to a unique procurement model which is being trialled and which we think will be appropriate in the water and sewerage sector. We therefore think it appropriate to exempt these particular, very large contracts to enable the model which effectively, as far as the companies are concerned, delivers the construction, management, maintenance, et cetera of very large construction projects. It is a unique procurement mechanism which we think has the potential to benefit customers in the future, so in this very limited case it was deemed appropriate by the Secretary of State to exempt them from the regulations.

Lord Fox (LD): I shall further demonstrate my confusion on this statutory instrument. I think I heard the Minister say that payment to the tier-one supplier could be delayed until the point at which the service has been delivered, but that payments to those lower down the supply chain would not be delayed. If that is

[LORD FOX]
the case, there is a significant cash flow issue for the tier-one suppliers who are not necessarily robust in cash, as we have seen in other projects. Has the department carried out an impact assessment in cash terms on the tier-one suppliers who would potentially be taking a knock here?

Lord Callanan (Con): In essence, the noble Lord is right. The regulation exemption will apply to the main, overall contract, but the separate contracts that will exist lower down the supply chain with SMEs will still be subject to the provisions of the construction Act. I suppose the answer to the noble Lord's question is ultimately it is for the main supplier to price in the risk. Of course, if it wants to be paid, it needs to deliver on the contract and on the service that it is being contracted to provide. As in all these things, it is about providing the right incentives and fair value for the taxpayer or, in this case, the water bill payer, and for the main contractor to deliver the project as efficiently as possible. Ultimately contracts between the lower-tier levels and smaller SMEs are still subject to the provisions and they will need to be paid in any case.

In response to the question asked by the noble Lord, Lord McNicol, this instrument is limited to a specific procurement model that Ofwat wants to use in the regulated water and sewerage sector. He referred to the consultation. That was held through individual and group meetings with the relevant construction industry and with water sector stakeholders and was undertaken over a two-month period.

I was asked a question on pay when paid.

Lord McNicol of West Kilbride (Lab): I understand when the consultation took place. The bit I could not find when I was reading the statutory instrument was the response to the consultation and whether that has been published on the website or shared at all, because I could not find any information on the consultation. I knew exactly when it was and what happened.

Lord Callanan (Con): It was not published, but I would be happy to send the noble Lord a letter with the details of the consultation in question.

I was asked a question on pay when paid. Again, it is quite technical. DPC first-tier subcontracts are not excluded from Section 113 of the Housing Grants, Construction and Regeneration Act 1996 under this statutory instrument. This means that pay-when-paid clauses are not permitted. Instead, payments will be made according to an agreed schedule for the delivery of the project.

The basis of DPC is to provide better value for money for customers, ultimately, and bills are expected to be lower than they would have been if the schemes were delivered by regulated water companies via the traditional business-as-usual model by which companies' prices are set. The first-tier contractors are expected to be part of the highest-level CAP and they are responsible for funding the delivery of the schemes under those contracts.

I hope that I have been able to satisfy the Committee on the questions that were asked—obviously not.

Lord Fox (LD): I apologise for labouring this point. First, an observation on the Minister's answer to my last question is that, if I were a tier 1 contractor factoring in the risk to my cash flow, it would increase rather than decrease my price, because I would be taking some sort of insurance or loan to finance the flow of cash through my business. So I do not quite get the idea that competitiveness would work in the way the Minister is depicting.

I am struggling with why, and why now. Are there historic issues with delivery that have caused the department and the Government to want to push this model through this statutory instrument? We cannot simply point to the construction Act being there; the construction Act is there, but projects have been going on. What specifically has caused this to happen now? I still do not get that.

Lord Callanan (Con): While Ofwat's regulatory regime has been successful at challenging the performance and efficiency of what are ultimately monopoly companies, in some areas, such as the delivery of major infrastructure projects, we believe that competition can deliver greater benefits for consumers. That is why, with advice from the regulator and the appropriate consultations, we think that these procurement models will deliver better value with a greater competition benefit for consumers—which is why we are introducing them. I hope I have satisfied the noble Lord's question and I therefore commend these draft—

Noble Lords: Oh!

Lord Callanan (Con): Ultimately, of course, previous contracts have delivered and been successful, but we think that a different model, involving more competition, could deliver better value for consumers, which is why we have produced these regulations. I therefore commend them to the Committee.

Lord Berkeley (Lab): I am grateful to the noble Lord again. Following his last comment—

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I think the Minister has now taken his seat.

Lord Berkeley (Lab): The noble Lord mentioned Southern Water as an example of the need for competition, and I am sure he is right about the need for competition—but who is competing? Is Southern Water competing against somebody else or are two contractors that are reporting to Southern Water, as the principal, competing? How does it work?

Lord Callanan (Con): I will write to the noble Lord if my answer is not correct, but my understanding is that Southern Water is the procurer and will be regulated by Ofwat within the overall monopoly structure of the water industry. This is why strict regulation and price controls are imposed on water companies. The idea is that a company will be able to involve competition in selecting contractors for the delivery of particular projects. So the company will be the procurer, albeit under the overall model regulated by Ofwat.

Motion agreed.

Committee adjourned at 6.13 pm.