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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

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

House of Lords

Wednesday 29 June 2022

3 pm

Prayers—read by the Lord Bishop of Guildford.

Schools: Citizenship Education
Question

3.06 pm

Asked by ***Lord Harries of Pentregarth***

To ask Her Majesty's Government what assessment they have made of the teaching of citizenship education in schools.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, citizenship education is considered as part of Ofsted school inspections. In addition, Ofsted plans to undertake a review of personal development in schools in England. The review, which will include consideration of citizenship education, will involve analysis of inspection evidence, and culminate in the publication of a national report on personal development later this year. This will be similar to reviews that Ofsted has published for other subjects.

Lord Harries of Pentregarth (CB): I thank the Minister for that reply. The report *The Ties that Bind*, from the Select Committee chaired by the noble Lord, Lord Hodgson of Astley Abbotts, made a number of recommendations on citizens' education. Recommendation 16 said:

"The Government has allowed citizenship education in England to degrade to a parlous state. The decline of the subject must be addressed in its totality as a matter of urgency."

In their response to that recommendation, the Government simply indicated what is in the subject and what schools may do, but said absolutely nothing about what the Government would do, so I very much hope there will be not only a report but some action after that report.

Baroness Barran (Con): The Government share the noble and right reverend Lord's aspiration, and the aspiration of the committee to which he refers. We want our children to leave school with the knowledge, skills and values that prepare them to be active citizens, and good citizenship education obviously can help to achieve that. We look forward to the report and acting on it when we receive it.

Baroness Warwick of Undercliffe (Lab): My Lords, will the Minister accept one of the specific recommendations of *The Ties that Bind* and reinstate bursaries for citizenship teachers for the 2023-24 academic year? Will she further consider keeping these bursaries in place until there are sufficient numbers to ensure that there is at least one trained specialist in every secondary school?

Baroness Barran (Con): The noble Baroness will be aware that we are continuing to focus our bursaries on English baccalaureate subjects, particularly those experiencing teacher shortages, to secure as many applicants as possible in areas where schools will devote most of the teaching time. Citizenship trainee teachers are eligible for a tuition fee loan and a maintenance loan to support them.

Baroness Garden of Frognal (LD): My Lords, if we wish our young people to emerge from school with skills for life, citizenship education is surely essential. Following on from the previous question, what progress are the Government making in recruiting citizenship teachers, who are in very short supply?

Baroness Barran (Con): The noble Baroness will know that, currently, the data does not allow us to identify that specifically in relation to initial teacher training. We have got the data on the number of citizenship teachers, which has been broadly stable over the last five years. I point out to the House that the number of children doing citizenship as a GCSE last summer was up by 10%.

Baroness Manzoor (Con): My Lords, the Government's schools White Paper does not address citizenship directly. Can my noble friend the Minister say exactly how the Government are intending to address this?

Baroness Barran (Con): I thank my noble friend for her question. She is right that the schools White Paper focused very much on our literacy and numeracy ambitions: that by 2030 90% of primary school children will reach the required standard in reading, writing and maths, and the average GCSE grade will rise from 4.5 to 5 in English and maths. Those subjects are absolutely critical for children being able to engage in citizenship in all its different forms. Our focus on a broad and balanced curriculum will also support that.

Lord Blunkett (Lab): I wonder whether the Minister, who, with the Minister of State, has a sympathetic ear on this subject, can tell me why the department is supporting Ofsted in its belief that personal development and active citizenship and citizen education are one and the same, when they clearly are not?

Baroness Barran (Con): The understanding is that citizenship education is an important part of schools' accountability for their pupils' spiritual, moral, social and cultural education. I do not think there is a suggestion that it is equivalent to personal development, but it is a critical part of personal development.

Baroness Butler-Sloss (CB): Slavery has become one of the really important issues which is discussed generally. I am hoping that the Government might encourage schools to cover slavery. If they do, would they please include modern slavery, which is rife, and not just the slavery of the past?

Baroness Barran (Con): The noble and learned Baroness makes a really important point. I think she will also recognise that schools will have different ways of teaching their pupils and getting them to understand important issues such as slavery and, sadly, modern slavery.

Lord Cormack (Con): My Lords, there was a suggestion a few years ago in your Lordships' House that all young people, as they left school, should go through a citizenship ceremony similar to that which those who take up British citizenship go through. This idea had a very favourable reception but seems to have disappeared. Is it something that my noble friend can put back on the agenda?

Baroness Barran (Con): I am not aware that that is being considered. However, the Government's commitment to the National Citizen Service, which works with tens of thousands of children and hundreds of educational settings across the country to provide not just opportunities for children and young people but a recognition of their contribution to society, remains unstinting.

Baroness Meacher (CB): PSHE is not currently a compulsory subject in education. As the Minister rightly said, PSHE is a part of citizenship. Does the Minister agree that it would be extremely helpful to have citizenship, including PSHE, as a compulsory subject in schools? Surely that is as important as any other compulsory subject in education so that all children are prepared for adult life in this country.

Baroness Barran (Con): My Lords, I am not sure that I completely followed the noble Baroness's question. RSHE is already a requirement in secondary school. If I may, I will come back to the noble Baroness and clarify.

Baroness Chapman of Darlington (Lab): The schools White Paper mentions citizenship once, there is no bursary, the Government do not collect the data on initial teacher training in citizenship, and Ofsted does not consider it in the same way as other curriculum subjects. Can the Minister understand why noble Lords are concerned that the Government are not giving citizenship the focus that it needs?

Baroness Barran (Con): I understand that the context of the society in which we currently live, and of some of the issues around the world, make citizenship and that really strong grounding in our values as a nation incredibly important. On the noble Baroness's specific points, evidence of citizenship education is considered at every inspection; whereas, if it were part of a national curriculum subject inspection, it would not be inspected in quite the same way. I point the House to the reforms that we have made to professional qualifications for teachers, particularly in relation to leadership, where there is a renewed emphasis on building a strong school ethos, leading in terms of behaviour and culture, and building character.

Lord Suri (Con): My Lords, citizenship education is vital to the development of skills and understanding to nurture pupils to play a responsible role in society, and for their own betterment in real situations. Citizenship became a statutory national curriculum subject in England in 2002; 20 years on, how have the Government improved the national curriculum to deal with an evolving society?

Baroness Barran (Con): I thank my noble friend for his question. The curriculum content in relation to citizenship covers democracy, politics, Parliament and voting, as well as human rights, justice, media literacy, the law and the economy. Increasingly, the curriculum has a wider focus on environmental issues and the responsibility of all of us, as citizens, to care for the environment.

Extradition Act 2003

Question

3.17 pm

Asked by ***Lord Moylan***

To ask Her Majesty's Government what plans they have to amend the Extradition Act 2003 to remove the list of Part 1 countries which can demand extraditions showing no evidence of any prima facie case to answer.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government have no plans to make extradition requests from EU countries subject to the prima facie case requirement. Under the EU-UK Trade and Cooperation Agreement, we have robust and streamlined extradition arrangements with part 1 countries. These safeguard the individual and the process, and they enshrine key domestic legislative protections not previously contained in the European arrest warrant framework decision.

Lord Moylan (Con): My Lords, will my noble friend confirm that those arrangements with EU countries, otherwise known as part 1 countries, are no longer fully reciprocated? For example, Germany no longer offers the same facilities in return. Will she confirm that our arrangement with the United States is wholly unbalanced: it does not treat us in the same way that we treat it? Why do we hold justice so cheap that we are willing to send our people abroad without prima facie evidence of a case, when other civilised countries sensibly and properly refuse to do the same in reverse?

Baroness Williams of Trafford (Con): My noble friend asks a number of questions. On his last, it is not the case that we send people abroad without prima facie evidence; the countries that we do not require prima facie evidence from are EU countries that have signed up to the convention on extradition. Part 2 countries include the US and the Five Eyes trusted partners.

Lord Paddick (LD): My Lords, a review of the United Kingdom's extradition arrangements, presented to the Home Secretary on 30 September 2011, said:

"We have concluded that the prima facie case requirement should not be re-introduced in relation to category 1 territories."

Has anything changed since then to make such a conclusion invalid?

Baroness Williams of Trafford (Con): No, it has not. In fact, two reviews were presented, both from your Lordships' House: the Baker review and the one by the noble Lord, Lord Inglewood.

Lord Bellingham (Con): My Lords, further to the Question asked by my noble friend Lord Moylan, can the Minister come back again to the point about the need for total equivalence and reciprocity with all countries? Can the Minister also tell the House whether there will be a further parliamentary review of the Extradition Act and the extradition treaty with the US?

Baroness Williams of Trafford (Con): My noble friend will know that we regularly review legislation and, as I have just said to the noble Lord, Lord Paddick, there were reviews in both 2011 and 2015 into our arrangements. I say to him and the House that a prima facie requirement has not existed for over 30 years for any other Part 1 countries—namely, the EU member states—or the Part 2 European Convention on Extradition countries. For the Five Eyes countries in Part 2, it has not existed for nearly 20 years.

Lord Coaker (Lab): My Lords, I thank the Minister for answering what is a really important Question and for confirming, as I understand it, that the Government have no plans to amend the Extradition Act 2003. Can the Minister say a little more about what impact leaving the European arrest warrant has had on the numbers of criminals either extradited or subject to possible extradition in the last 18 months—or, indeed, in the months and years to come?

Baroness Williams of Trafford (Con): The noble Lord will of course know that 2021, last year, was far from business as usual, given the context of the pandemic, which impacted both the courts and international travel on both sides. As anticipated, the calendar year figures for 2021, which are now out, show a reduction in volumes in relation to arrests in the UK on incoming extradition warrants from the EU, surrenders from the UK to the EU, and outgoing requests made by the UK. However, if noble Lords look at the financial year figures, which run for an extra three months until March of this year, it reveals an improving picture: the total number of arrests on incoming warrants from the EU was directly comparable to the previous financial year, and surrenders on incoming warrants were, in fact, up by 30%.

Baroness Wheatcroft (CB): My Lords, following on from earlier questions, can the Minister confirm that it is still the case that people who are claimed to be guilty of crimes committed in this country can be extradited to the United States under the unbalanced extradition law we have with them at the moment? Does the Minister feel that this is a correct way to treat UK citizens when the US Government take the line that wire fraud is involved? It is a faulty concept.

Baroness Williams of Trafford (Con): I say to the noble Baroness that we have in fact refused far more extradition cases to the US than they have to us by quite a large margin.

Lord Watts (Lab): When we left the European Union, our relations with Germany stopped. Have we negotiated anything as a replacement?

Baroness Williams of Trafford (Con): The noble Lord goes quite nicely back to one of my noble friend Lord Moylan's questions about Germany. Germany is not alone in not extraditing its own nationals, but we have processes in place which completely adjust to that fact—it is nothing new and nothing unusual now.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, is there any person in the United Kingdom who is exempt from the extradition provisions?

Baroness Williams of Trafford (Con): I know where the noble Lord is leading. I will not comment on that; I will get him an answer in writing to that.

Lord Foulkes of Cumnock (Lab Co-op): In writing?

Baroness Williams of Trafford (Con): Yes.

Trades Union Congress: Levelling Up

Question

3.24 pm

Asked by ***Lord Balfe***

To ask Her Majesty's Government when the Prime Minister last met with representatives of the Trades Union Congress to discuss how trade unionists can work with the Government to level up the economy and build back better.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the Prime Minister last had a meeting with the Trades Union Congress last December. The Department for Business, Energy and Industrial Strategy works with trade unions, and positive relationships are essential to developing and delivering our policies. During the pandemic, engaging with the unions was important to our work supporting jobs and keeping workers safe. Continued engagement will support the Government's ambitious levelling-up agenda.

Lord Balfe (Con): I thank the Minister for his reply. As he will know, of the 6 million-plus trade unionists, a third vote for the Conservative Party. Indeed, the Labour Party has recently told its members not to go near picket lines, so it has made its position pretty clear. Can the Minister say whether he would consider—since the basic values of many trade unionists are at least small "c" conservative—that it is now opportune for us to make a pitch to them to show that this Government represent many of their core values? We should encourage them to work with us, because we occasionally will go on a picket line.

Lord Callanan (Con): I will take that as a statement from my noble friend himself rather than the Front Bench. The Labour Party may indeed have told its members not to sit on picket lines, but it did not make any difference at the end of the day. My noble friend makes a serious point of course. Our policies, with record low levels of unemployment and the highest ever minimum wage, are good for workers and we should be proud to say so.

Lord Woodley (Lab): My Lords, it seems to me that the premise at the heart of this Question is the wrong way round. The Government should be supporting those 6 million trade unionists in this country who are really struggling to survive the cost of living crisis that is before us. They should not be undermining them by allowing bad bosses to break strikes with agency workers while, at the same time, the shareholders and directors are cleaning up. Does the Minister understand that the best way to build back better is to empower workers and trade unions so that they can hold unscrupulous employers to account?

Lord Callanan (Con): I am sorry to tell the noble Lord that I just do not share this outdated methodology that, on the one hand, you have workers and, on the other, you have bosses. We are all working together for the good of the country. The thing about the trade unions in this country is that they are now a minority profession: only 13% of workers in the private sector and only half of those in the public sector are in trade unions. The reality is that they do not represent anybody.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the noble Lord, Lord Jones of Cheltenham, will make a virtual contribution.

Lord Jones of Cheltenham (LD) [V]: [*Inaudible*]—responsibility for good industrial relations, which are of course vital for a successful economy. On the subject of levelling up, would the Minister have a word with the boss of Sainsbury's, whose annual salary has trebled to £3.9 million while he denies a living wage to many of his hard-working employees?

Lord Callanan (Con): Believe it or not, the pay levels in Sainsbury's are nothing to do with the Government—it is a private sector company. If people like the service provided by Sainsbury's, they will go to that supermarket; if they do not, they will go to others.

Lord Lennie (Lab): My Lords, in 2019, across the UK as a whole, one in five jobs were paid less than the real living wage. This figure excludes the self-employed, half of whom earn significantly less than the living wage. For levelling up to have meaning, the TUC has set out recommendations in a report snappily called *Levelling Up at Work*. Does the Minister agree that it is time that the Government stop fighting the trade unions and work with them to secure jobs across the UK, have decent pay levels and help families overcome the cost of living crisis in this fifth-largest economy in the world?

Lord Callanan (Con): Of course we want to work with all employee representatives who are prepared to be constructive and who want to see a positive way forward for the country that does not hold the travelling public to ransom. No doubt the noble Lord will also be delighted to know that we raised the minimum wage again in April and put another £1,000 in the pocket of the lowest-paid workers.

The Lord Bishop of St Albans: My Lords, the Government are to be congratulated on raising the minimum wage and I thank them for what they have done. There is, however, a really serious point here. As we are facing a serious range of strikes across many industries, the worry is that those people in positions of leadership and authority are not necessarily giving a lead. The question is: how can politicians and business leaders show that they are sharing in the big challenges, the financial challenges, that are coming up? Importantly, although modest rises among those in leadership will not make a huge difference to the overall financial package, it will send out a really strong signal that we are all in this together.

Lord Callanan (Con): I am grateful that the right reverend Prelate recognises the increase in the minimum wage, which is good for so many of the lowest paid workers. It is important for those at the top of businesses to take a lead: they want to take their employees with them and to provide a good service to their customers, and all employers should bear that in mind.

Lord Tugendhat (Con): My Lords, the Minister is of course quite right when he says that the trade unions are not as powerful as they were during the last period of inflation, but they are still a very important element in the economy, and if the Government are to be seen to be tackling the cost of living crisis effectively, they really need to be able to show that they are seeking the opinions, advice and support of all sections of the community, and that includes the trade unions.

Lord Callanan (Con): My ministerial colleague, the Minister for Small Business, regularly meets with the trade unions. Another meeting is planned, I believe, in the next few weeks. So yes, of course it is important to gauge the opinion of trade unions, but I did not use the word "powerful"; I said they were a minority interest. I repeat: only 13% of workers in the private sector, the most productive sector of the economy, are now in trade unions.

Viscount Stansgate (Lab): My Lords, since the Minister says that relations between the Government and the TUC are positive, why does the Prime Minister not direct the Transport Secretary to convene a meeting between the rail unions and the rail employers in order to bring about a settlement to the railway dispute?

Lord Callanan (Con): Because the responsibility for sitting down belongs to the employers—in this case, Network Rail and the train operating companies—and the trade unions. My understanding from listening to Network Rail is that it has set out a very positive agenda. At the end of the day, the taxpayer supported the railways to the tune of £16 billion over the last few years: that is £160,000 for every rail employee in this country. The taxpayer has been very generous; it is about time the unions reciprocated.

Lord Sikka (Lab): My Lords, last week the Chancellor met with oil and gas company directors to hear their concerns about energy policy. With that in mind, will the Minister explain why the Transport Secretary has not met the RMT? Which law prevents him doing so?

Lord Callanan (Con): If the RMT were prepared to seek a more constructive relationship and to provide a service to the travelling public, maybe the Transport Secretary would be prepared to meet it.

Lord Wallace of Saltaire (LD): My Lords, the Government are currently adding a large number of amendments to the procurement Bill already before this House. Have they thought that in the large number of procurement contracts they sign with private business, they could perhaps add, under the definition of "public benefit", that companies that pay their chief executives vastly more than the average for their workers could have a black mark against gaining contracts from the Government? I am thinking in particular of some of the consultancies and auditing companies that have quite excessive salaries at the top.

Lord Callanan (Con): I fear that I am not familiar with the provisions in the procurement Bill. It is not a Bill that I am responsible for, but I will certainly have a look at the point the noble Lord makes.

Lord Monks (Lab): My Lords, I think the noble Lord, Lord Balfe, might find that his voting figures are a bit shaky after last week's by-election results. Why are the Government messing around with more antiunion legislation at a time when they are also lifting the cap on bonuses, doing absolutely nothing about inflation in boardrooms and in some parts of financial services, and ignoring their own experience of working closely with unions on the furlough scheme, which worked very well and was very successful? That experience should provide a blueprint for tackling the cost of living crisis, so will the Government make an effort, a proper effort, to find common ground in the current very difficult circumstances, instead of stoking conflict with the unions?

Lord Callanan (Con): Nobody is stoking conflict with the unions. I do not know what antiunion legislation the noble Lord is referring to, but if he means the minimum strike guarantee, that was a manifesto commitment. I would have thought he would be in favour of a service being provided to the travelling public to enable other ordinary men and women to go to work when they want to do so.

Rail Dispute: Michael Ford QC

Question

3.34 pm

Asked by ***Lord Harris of Haringey***

To ask Her Majesty's Government what assessment they have made of the legal opinion from Michael Ford QC on the legal powers of the Secretary of State for Transport in respect of the rail dispute.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, we have noted the advice from Michael Ford QC. Train operators are required to agree how they manage industrial relations risk, including risks from industrial action, through their contracts with the department. Before incurring costs such as pay increases or changes to terms and conditions, the Secretary of State needs to be satisfied that these are affordable and in the long-term interests of the taxpayer, and take steps to protect the public purse.

Lord Harris of Haringey (Lab): My Lords, I am grateful to the noble Baroness for that reply, as she clearly accepts the legal advice obtained by the Trades Union Congress on this point. However, it gives the lie to statements made by successive Ministers—including her noble friend in the answers he just gave. Where there is responsibility, the Government dodge it; where there is law, they tend to ignore it and mislead the public and Parliament. What is the concern of the Government in this dispute other than petty party-political manoeuvring? When will they take serious action? What is their strategy for resolving this in the interests of rail users and, ultimately, the country? So far, we have seen no sign of that, despite the clear legal obligations and responsibilities placed on the Transport Secretary.

Baroness Vere of Norbiton (Con): There were many questions there, to which I will try to respond. The real prize in all this, for both rail passengers and rail freight, is long-term transformation to a modern and efficient seven-day railway, where services align with demand and adapt to current patterns of travelling and rail freight, from the perspectives of both location and time. The Government absolutely want the employers to be able to reach an agreement with the RMT. We are clear that it is for the industry to conduct the day-to-day negotiations with the RMT in this dispute. Under the Labour Government of some time ago, there were strikes by both firefighters and postal workers; they took exactly the same approach and asked the employers to negotiate with the unions.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, can the Minister tell us who owns Network Rail?

Baroness Vere of Norbiton (Con): The Government, and therefore the taxpayer.

The Lord Speaker (Lord McFall of Alcluith): The noble Baroness, Lady Brinton, will now contribute remotely.

Baroness Brinton (LD) [V]: My Lords, over 30,000 passenger-facing rail staff have completed the disability training required by the Office of Rail and Road. As a wheelchair user, travelling by rail is noticeably safer as a result of the excellent assistance train staff provide. The Government want to allow the use of agency workers in place of striking station and train staff. If agency staff have not completed the regulator's required safety assistance training, would that breach the public sector equality duty? Would disabled passengers be safe in such circumstances?

Baroness Vere of Norbiton (Con): I can reassure the noble Baroness; there seems to be some misconception that the Government plan to recruit lots of agency staff who have no training whatever for the task they are being asked to perform. That will not be the case at all. We have very safe and increasingly accessible railways, and we will continue to do so. If we ask any staff to do anything beyond their normal role, they will of course receive the appropriate training.

Lord Tunnicliffe (Lab): My Lords, I thank the noble Baroness for pre-empting some of my questions by agreeing with Michael Ford QC. In his opinion, he says:

"Train operators are not free to agree terms and conditions with their employees without the involvement of the SoS."

However, being a bit apprehensive about lawyers—because all too often you just get another lawyer—I went to the essence of the powers, which is found in the national rail contracts. I looked at the one with South Western Railway. On page 38 of its 522 pages, in paragraph 5.2 of chapter 2.2—the section on industrial action—it states:

"The Operator and the Secretary of State shall use reasonable endeavours to agree how the relevant Industrial Action shall be handled, bearing in mind the Dispute Handling Policy, provided however that the Operator's handling of such Industrial Action will be subject always to the Secretary of State's direction".

This is not a limp-handed agreement, but a very powerful one. Before I researched it, I did not know that the department essentially indemnifies the losses to train operating companies during industrial disputes. The way it enforces this agreement is by withdrawing such support. Does the noble Baroness agree that the Secretary of State can, and indeed must, involve himself in this dispute? Given that he has absolute discretion over the terms of the dispute, this is a dispute between the Secretary of State and the rail unions. Should he not embrace that responsibility and sort it out?

Baroness Vere of Norbiton (Con): That is an awful lot of questions about who meets who, and why. Let me explain exactly why the current negotiations are set out in the way that they are. The RMT asked that negotiations be conducted at a national level. The Rail Delivery Group has the mandate to conduct the negotiations. The talks are therefore at the Rail Industry Recovery Group level. The industry has bent over backwards to negotiate in a way that the RMT demands, and will continue to do so. The industry is offering daily talks and Ministers receive daily updates.

Lord Bellingham (Con): My Lords, is the Minister aware that, during the last Labour Government, there were disputes with the rail unions, and former Labour Secretaries of State did not negotiate directly and very much left negotiations to Railtrack, and then Network Rail?

Baroness Vere of Norbiton (Con): I was not immediately aware of that, but it highlights what I have said also about the firefighters and the postal workers. It is normal for the employer to negotiate with the union. The Government should not be sitting at the table, and the RMT boss does not want us there.

Baroness Randerson (LD): My Lords, without signals, the trains cannot run, and it takes over a year to train a signaller. Does the Minister accept that it is therefore an empty threat, and one designed to raise the temperature of the situation, when the Government say they are going to legislate to allow agency workers to take over railway jobs? It will not allow the railways to run unless there are signallers available.

Baroness Vere of Norbiton (Con): As I have already said, there would be no question of the Government or the industry putting anybody who was not fully trained into a role at short notice. It is simply not going to happen.

On the question of signalling, noble Lords may have noticed that the Government have just announced at £1 billion investment in digital signalling for the east coast main line—I just wanted to highlight some positive news.

Lord Grocott (Lab): The Minister said that the dispute is between the trade union and the employers, and it is nothing whatever to do with the Government. In answer to my noble friend Lord Foulkes, who asked who owns Railtrack, which is a party to the dispute, she said that it is the Government who own Railtrack. I just wonder how she sorts that one out.

Baroness Vere of Norbiton (Con): I did not say what the noble Lord has just said I said. I said that the negotiations are between the employer and the union. I set out very clearly how and at what level those negotiations are taking place nationally. On the one hand, there are a set of negotiations with the Rail Delivery Group, which represents the train operating companies, and there are also negotiations going on with Network Rail, particularly around the reforms to transform—the important reforms that we need in order to have the modern and efficient railway that our country deserves.

Baroness Foster of Oxton (Con): My Lords—

Baroness McIntosh of Hudnall (Lab): My Lords—

Lord Ashton of Hyde (Con): My Lords, I do not think that two noble Lords can stand up at once. It is the Conservatives' turn.

Baroness Foster of Oxton (Con): Thank you. My Lords, does my noble friend the Minister agree that these rail disputes are less about terms and conditions, and more about party politics?

Baroness Vere of Norbiton (Con): The truth of the matter is that the negotiations that are happening, and have been offered daily, are about many different things. Sometimes things get narrowly conflated, or get very heated, but at the heart of all this is the fact that we must get a modern and efficient railway. The Government have that at the front of their mind and give the mandate to the employers—that is absolutely clear—and I hope that this will be resolved as soon as possible.

Schools Bill [HL]

Order of Consideration Motion

3.45 pm

Moved by ***Baroness Barran***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 3, Schedule 1, Clauses 4 to 7, Schedule 2, Clauses 8 to 45, Schedule 3, Clauses 46 to 52, Schedule 4, Clause 53 to 64, Schedule 5, Clauses 65 to 71, Title.

Motion agreed.

Local Government (Exclusion of Non-commercial Considerations) (England) Order 2022

Local Authority and Combined Authority Elections (Nomination of Candidates) (Amendment) (England) Regulations 2022

Motions to Approve

3.45 pm

Moved by ***Lord Greenhalgh***

That the draft Order and Regulations laid before the House on 25 May and 6 June be approved.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 28 June.

Motions agreed.

Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2022

Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022

Motions to Approve

3.46 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That the draft Regulations laid before the House on 6 and 7 June be approved.

Relevant document: 5th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 28 June.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, on behalf of my noble friend Lord Benyon, I beg to move the Motions standing in his name on the Order Paper en bloc.

Motions agreed.

Product Security and Telecommunications Infrastructure Bill

Committee (2nd Day)

3.47 pm

Relevant document: 4th Report from the Delegated Powers Committee

Clause 60: Upgrading and sharing of apparatus installed before 29 December 2003

Amendments 17A and 17B not moved.

Amendment 18

Moved by ***Baroness Stowell of Beeston***

18: Clause 60, page 45, line 22, at end insert—

"(5) In paragraph 74 (power to fly lines), after sub-paragraph (4) insert—

"(5) References in this paragraph to installing lines include carrying out works to install, maintain and keep such lines and other reasonably associated apparatus.""

Baroness Stowell of Beeston (Con): My Lords, if my noble friend Lady Harding is not in the Chamber—I was not expecting to do this—I will move the amendment on her behalf. I look to other noble Lords whose names are on this amendment to introduce it more comprehensively than I can. I just want to get this debate going, because I know that there is broad support across the Chamber for Amendment 18. Noble Lords may remember that I expressed my support on this matter when it was referred to at Second Reading, because it is of benefit to all telecoms operators. With that, I beg to move.

Baroness Harding of Winscombe (Con): My Lords, I apologise. I rise to speak to Amendment 18 in my name, and I thank my noble friend Lord Vaizey, the noble Baroness, Lady Merron, and the noble Lord, Lord Fox, for putting their names to it. I apologise—I am slightly breathless, as the noble Lord, Lord Fox, gave us a little bit of disinformation about today's Order Paper.

Lord Fox (LD): I beg your Lordships' pardon—the moving of the Statement on the Metropolitan Police was not communicated to several of us.

Baroness Harding of Winscombe (Con): Many apologies. I also thank my noble friend Lady Stowell, who I was not expecting to see, but who has been extremely helpful already this afternoon. I promise I will be brief. The aim of this amendment is to address an issue that other noble Lords and I raised on Second Reading: ensuring that the Bill enables the sharing of pre-2017 poles on private land without requiring an additional wayleave, just as it does for ducts on private land. This may sound very detailed—it is—but will substantially speed up the rollout of full-fibre broadband, on which we are all agreed.

There are an estimated 1 million-plus telegraph poles on private land. Access to them is particularly important in accelerating fibre rollout in rural England and urban Scotland. As with ducts, these poles are regulated under Ofcom's PIA mechanism. That means that any operator is able to access those poles, so extending the provision to pre-2017 poles on private land would allow all operators to speed up their rollout equally. Without this, operators will have to dig up streets or put up new poles, which will slow down the rollout in the very parts of the country that suffer some of the slowest broadband speeds, based on copper.

There is clear consensus across the industry that the Bill needs to make this possible. I understand that the Digital Infrastructure Minister recently received a letter from all the major operators and trade bodies, asking that this issue be resolved and clearly stating the public benefit that doing so would bring. There is cross-party support for the amendment, and at Second Reading my noble friend the Minister was clear that he was keen to look into the matter very closely. However, as drafted,

[Baroness Harding of Winscombe]
the Bill does not actually solve the problem. There is no explicit right in the Bill to access the pole or install equipment on it. My amendment is relatively simple and seeks to set that straight. It is limited in scope.

By extending the rights granted under the existing paragraph 74 of the code, these powers would be a code right and therefore apply equally to all operators. That is a really important principle in maintaining the Government's pro-competition policy. By explicitly including the right to carry out

"works to install, maintain and keep such lines and other reasonably associated apparatus",

this amendment ensures that there is a right for limited works only and apparatus that is associated only with flying lines between poles. It will not allow large, unsightly or unassociated apparatus to be put on the poles, so there would be very limited visual impact. In fact, it is important to remember that technology is getting smaller all the time; a number of these telegraph poles already have equipment on them, so this would most probably reduce the visual impact rather than increase it.

This amendment also protects the rights of landowners. It grants limited additional rights for operators on how they use the poles. It does not give operators additional rights to get to the pole in people's back gardens. Landowners would still need to give their consent—that could be a simple verbal agreement—to allow an engineer to enter the property. This amendment does not intend to change that.

With over 1 million poles on private land today, this small and straightforward amendment would significantly increase the rollout of full fibre, on which we all agree. I ask my noble friend to tell us that he agrees that the Bill must be amended to do this. I am not precious about the specific wording or the exact amendment. I understand that DCMS lawyers have some concerns about whether the wording achieves our aim of going up the pole and putting the necessary equipment on it, but I have not seen any alternative proposals. I hope my noble friend will take this amendment in the constructive way in which it is intended. If he has concerns about the specific wording, I hope we will be able to work together between Committee and Report to bring back an amendment that delivers the outcome that I believe we all agree on.

Lord Vaizey of Didcot (Con): My Lords, a cup of tea lies gently cooling in the tea room, unpaid for as I sprinted to move my amendment—and failed to arrive in time. It would never do for me to blame the Liberal Democrats for the mess that I find myself in; I take entire responsibility for not following with due care the moving of the Statement on the Metropolitan Police. Although the finely crafted Amendments 17A and 17B will not be debated, I have the chance to address at least some of the issues they raise in my response to my noble friend Lady Harding's excellent exposition of Amendment 18.

We are talking about the ability to upgrade telecoms infrastructure. It is worth taking a step back to think about what the Bill is about in its focus on telecoms infrastructure and reform of the Electronic Communications Code. As I pointed out at Second Reading, when I was a Minister I had the opportunity to change the Electronic Communications Code, and I freely admit that I did so after extensive representations from infrastructure providers of all kinds who made the point that the rents that they were being charged by landowners, both in the countryside and on buildings, were extremely high and were affecting their ability to invest in infrastructure. The time had come to redress the balance so that the rents charged were proportionate to the investment being made in infrastructure. However, in the Bill we are trying to revise it further so that the infrastructure can be upgraded much more easily. We find ourselves in a slightly invidious position where, every time a telecoms provider wants to upgrade the existing infrastructure, in theory it has to start all over again on how it negotiates the rents.

Amendment 18, and, had they been moved, Amendments 17A and 17B, address essentially the same issue, which is existing infrastructure and the ability to upgrade it with as little fuss as possible. All of us in this House know that telecoms infrastructure is constantly being modernised and changed. Indeed, sometimes political issues come into play: for example, the decision to remove Huawei from our telecoms infrastructure will require a great deal of changes to existing infrastructure.

It is quite clear that all the infrastructure providers and indeed the Government support some kind of amendment that will allow infrastructure providers to upgrade infrastructure on telegraph poles. That is without dispute. The question we face is whether we can craft a suitable amendment that balances the rights of landowners and infrastructure providers to allow that to happen as smoothly as possible. What I find strange is the fact that multi-dwelling units do not attract the same support. However, I think I understand why telegraph poles are uncontroversial and multi-dwelling units controversial. That is because of a perceived monopoly of Openreach in multi-dwelling units but not telegraph poles. As my noble friend pointed out, telegraph poles fall under the public interest infrastructure access regulations, which means that a telegraph pole that is, as it were, owned by Openreach but on somebody's land can still be accessed by a competitor, whereas a multi-dwelling unit cannot be accessed where Openreach has its infrastructure.

I ask the Minister again to take a step back and think about the purpose of the Bill and what he and his colleagues are trying to achieve in terms of the £5 billion subsidy to support the upgrading of infrastructure to full fibre, particularly in rural areas. As I said on Second Reading, this is all about planning, not about technology. It is trying to remove as far as possible all the obstacles that exist when it comes to planning. The Minister must ask himself: what is the reality on the ground? It is that Openreach is indeed present in many premises where its competitors are not. There are something like 1.5 million multi-dwelling units in this country that are at risk of not being upgraded because people cannot get access. Openreach tells me that there are something like 620,000 flats to which it has not been able to gain access and 165,000 flats where it has had no response from landlords at all for six months. Those flats will be left out if we do not consider the position of multi-dwelling units. That is not the subject of this amendment but I posit that it is exactly a parallel case.

4 pm

I find the position of altnets—the alternative networks and competitors to Openreach—difficult to understand. I know many of them pretty well. I have worked with some of them, such as Hyperoptic, and I know CityFibre and Community Fibre. Anyone who lives in London knows that these altnets are already investing in areas where Openreach is present because they know it is a potentially lucrative area for them. They are likely to continue to invest in multi-dwelling units where Openreach is already present, and they are likely, in years to come, to benefit from any amendments that allow them to upgrade their apparatus with the minimum interference and fuss, yet they are standing in the way because they perceive that, if they can put an obstacle in front of Openreach, they can somehow benefit commercially. In doing that, I respectfully submit, they are damaging the overall project, which is to bring full fibre to as many residences as possible in the United Kingdom. Frankly, they will not be the ones going to small multi-dwelling units in small, rural towns up and down the country to upgrade or install apparatus; Openreach will be doing that.

Anyone who says that there is a wealth of difference between giving the same powers to an operator to go in to upgrade infrastructure to a multi-dwelling unit and powers to upgrade a pole is wrong. We should be looking at this in the round to make it as simple as possible.

Lord Fox (LD): I want to again apologise to the noble Lord, Lord Vaizey, for causing him not to be here—and I will of course pick up the cost of his cup of tea.

He brought up the changed landscape of altnets, and we need to remind ourselves as we talk through the amendments that the old picture, as we looked at the telecoms market as it was—the copper world of a huge company and nothing much else—has passed. The fibre sector is a different sort of market. The fixed and full-fibre network infrastructure supplied by the independents, the altnets, reaches about 11.5 million premises with, at the end of 2022, an estimated 1.5 million live connections. That is separate to Openreach and Virgin, so there really is a big change in that market supply, to which I think the noble Lord was alluding. Had the noble Lord finished, by the way, or did he give way to me?

Lord Vaizey of Didcot (Con): I was giving way to an excellent intervention to save me from the poor quality of my speech.

Lord Fox: I am sorry; I suddenly saw the look on your face and thought you were finished.

Lord Vaizey of Didcot (Con): The whole Committee stage debate has already become surreal, and we are only about 20 minutes into it.

If I can take noble Lords back to the tea room, where I was this morning, we were discussing the lack of intervention in debates in the House of Lords, which is apparently seen as a Commons trait and discouraged in your Lordship's House. In fact, I was told by a very senior chair of a committee—who is in the Chamber—that on no account was one to take an intervention at Committee stage. But I felt that as the noble Lord, Lord Fox, had already transgressed so badly in detaining two eminent Conservative Peers in the tea room, I would simply allow him to continue to flout convention and break the rules. I also felt that my speech was going so badly that, just as I used to do in the other place, giving way at an opportune moment to gather one's thoughts was sensible.

Baroness Stowell of Beeston (Con): I am very grateful to my noble friend for giving way. I shall make just two points to him and the rest of the Committee. Of course it is permissible—indeed, it is encouraged—for us to engage in interventions during debate, but they should be brief and to the point. I take this opportunity to also remind my noble friend that his amendments have not been moved and we are in danger of debating his amendments, instead of the amendment which another noble friend moved—or indeed, which I moved on her behalf, and she then expanded on my introduction.

Lord Vaizey of Didcot (Con): I take the comments from the chair of my own committee in good heart. Clearly, I am on a learning curve in a very public way.

I simply reiterate that this Bill is about making planning as simple as possible, balancing the interests of landowners and infrastructure providers. The mood of this House is that we support Amendment 18, to allow the upgrade of telegraph poles. We understand that the Government will also support such an amendment if it is appropriately drafted. We look forward to the Minister's comments on why this is a sensible way forward.

I merely add as an aside that the purpose of the Government's funding and broadband rollout is to bring broadband to as many premises as possible. We all know from our own experience where the altnets are going. Quite understandably, they want a return on their investment, so they are going to cities and laying fibres in areas where Openreach is already present, where they know that they can get a return. There will be many other areas of the country where, understandably, they will not be able to afford to put in infrastructure. For the Government simply to turn their back on thinking hard about how to upgrade the many multi-dwelling units in different parts of the country simply because it is perceived to be an Openreach problem and not a problem for all telecoms providers is a missed opportunity.

The Earl of Lytton (CB): My Lords, I cannot follow the amusement factor of the noble Lord, Lord Vaizey. As this is my first contribution on the Bill, due to force of circumstances, not least because on our first day in Committee I could not attend due to disruption on the rail system, I declare my interest as a chartered surveyor—still practising, just—with about 47 years' experience in the public and private sectors. I hope that I can bring some of that to the debate.

As I understood it, in addition to being able to attach things to existing telephone poles, Amendment 18 would provide a right to create new overhead facilities of one sort or another. As a person who, from time to time,

[The Earl of Lytton]
has occupied heritage property, I have a particular aversion to overheard telephone lines and to generations of cables being stuck to the outside of buildings—new ones are added but nobody ever removes the old ones. That is the first point that I would question.

The second point goes beyond this amendment but begins to address some of the points mentioned by the noble Lord, Lord Vaizey, on the use of existing facilities. These might be underground ducts. There is a bit of a problem when you get to blocks of flats, because there is a cut-off point at which the rights of, for instance, BT or Openreach end, at which point the wayleave or easement does not pertain. When you get into blocks of flats, there are other criteria. There are many instances of cables being run up, willy-nilly, through communal service risers, with firestopping material being removed and not put back correctly, and so on. No building manager in a block of flats will willingly allow someone from Openreach, who comes with a quite different set of instructions for what they are doing, to just get in there, willy-nilly, as of right. There must be safeguards somewhere along the line.

Further explanation is needed on other things. On numerous occasions I have come across situations where overhead cables have been put underground, perhaps because they were in the way or because it was convenient for visual or other reasons. But you then find that there is no easement or wayleave in relation to the underground bit—the easement or wayleave stops at the last pole, where it goes into the ground. That has certain disadvantages because every time somebody from Openreach wants to do some reconnection or give somebody a better service, they have no drawings of the underground system. I am told that this is an issue where new developments take place and the roads and common areas do not get adopted; they are retained not by the developer but are passed on to some management entity. We have all heard of the fleecehold, where the maintenance of that common realm is then jacked up and recharged through a rent charge.

I absolutely take the point that is being made, but if I am correct a raft of other issues needs to be resolved, including powers to take possession and use of things that are not currently within the existing wayleave horizon. I just flag up the difficulties associated with that.

Lord Fox (LD): My Lords, I remind the noble Earl that Amendment 44 deals explicitly with the safety issues. He might want to reconfigure those points when we get there.

Taking the point from the noble Baroness, Lady Stowell, that we are focusing on Amendment 18, I will not seek to embellish the comprehensive and excellent speech from the noble Baroness, Lady Harding, but we should remind ourselves that the Bill allows for the sharing of historic wayleaves to share BT infrastructure under private land. It does not currently explicitly allow operators to use telegraph pole infrastructure on private land above ground. For places such as Herefordshire, where I come from, pole access is absolutely central to the rollout of fibre and a huge proportion of those poles sit on private land, so this matters quite a lot. I think 50% of premises in Scotland are connected by poles on private land.

As we have heard, the Bill as drafted would allow operators to use existing ducts to reach the base of such a pole, while existing provisions in the code allow for the flying of lines between poles, but no explicit right exists to access the pole itself or place apparatus such as small boxes—in practice, smaller than what is already there—on it. This amendment seeks to remove any ambiguity and make sure that what we believe to be the Government's objective is fully written into the Bill, and that is why I am a co-signatory.

Viscount Stansgate (Lab): My Lords, I will take advantage of the flexibility of debate outlined by the former Leader of the House to say that, although we are debating the amendment moved by the noble Baroness, Lady Harding, I for one would be interested to know whether the amendments that were to be debated, but for this very unfortunate cup of tea, will be moved on Report. It would help my fuller understanding of how debate on the Bill might progress.

Baroness Stowell of Beeston (Con): I can respond to that, since that question is being put to me. There is nothing procedurally to prevent my noble friend tabling an amendment on Report that would cover the same issues.

Lord Vaizey of Didcot (Con): I will take advantage of the flexibility in the Chamber to say that, notwithstanding the intervention of a cup of tea, my amendment will be moved on Report.

Lord Clement-Jones (LD): My Lords, following that very provocative statement from the noble Lord, Lord Vaizey, I will not go into great detail about Amendments 17A and 17B because they have not been moved, although by a side wind the noble Lord mentioned MDUs and various other aspects. All I can say is that if they are moved on Report they will be very firmly opposed from these Benches. There are many reasons for that, which I will not go into, but we look forward to the debate on Report. In the meantime, we will keep our powder dry.

The noble Baroness, Lady Harding, made an extremely good case for her Amendment 18, as has my noble friend. I do not think that the noble Earl, Lord Lytton, is a great fan of poles, but we will just have to live with that. Amendments such as this would ensure that an explicit right exists to access the pole itself or place apparatus on it. That amendment is supported by all operators. It is good that we have one amendment that is almost unanimously supported by the operators.

4.15 pm

For example, CityFibre says:

"Extending the wayleave sharing rights to both ducts and poles for fixed networks will have a huge impact, particularly in urban Scotland and rural England where there is a much higher proportion of poles situated on private land".

It estimates that 1 million such poles exist across the UK. That is an impressive number. On the other side of the equation, Openreach, which we do not always agree with, estimates that 1 billion metres of fibre are currently laid over poles in the UK.

We fully support this amendment and if the Minister cannot agree to it, as the noble Baroness, Lady Harding, says, we look forward to him tabling the necessary amendment on Report. After all, this amendment would achieve a consistent application of paragraph 17 of the ECC by extending permissions to reasonably associated apparatus without the risk of also including the apparatus within the premises, which is the bone of contention on the earlier amendments.

Baroness Merron (Lab): My Lords, I was very pleased to put my name to the amendment tabled by the noble Baroness, Lady Harding. As she says, this is simple, limited in scope and extremely practical. It is a clarification of and an improvement to this aspect of the Bill, which works for all parties. I hope the Minister will agree, even if what we end up with is not the exact wording that we start with today.

As the noble Baroness, Lady Harding, explained, poles, like ducts, are regulated under Ofcom's PIA mechanism, so extending this provision to pre-2017 poles on private land would allow all operators to speed up their rollout equally. That is the essence of what we are talking about in the Bill: extending provision and allowing fair access. This amendment will greatly assist us, not least because if the reforms in the Bill do not work properly we will see more streets being dug up, which is never popular, and in this case might perhaps require the installation of new poles—again, something we could do without.

I hope that when the Bill is amended we will drastically contain the time, cost and disruption caused by the rollout. Although people want to see the rollout, the practical effects in communities create unwelcome disruption. This amendment is needed to confirm that sharing pre-2017 poles on private land needs to be included in the Bill. It will speed up the deliver of rollout and it is welcomed by all across the industry.

I shall briefly refer to the comments by the noble Lord, Lord Vaizey. I do not want at this stage to dwell on the amendments we did not have the benefit of discussing properly, but perhaps the noble Lord can look forward to Amendment 48, which we have tabled. It takes a different tack from the noble Lord's amendments and puts the onus on government and the industry to find a way forward. I hope that when we get to that amendment the Minister will be open to detailed, cross-party discussion before Report on how we resolve the issue that we were not able to attend to earlier in the debate. I support this amendment and hope the Minister will feel similarly.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I think the whole House is grateful to its former Leader, my noble friend Lady Stowell, for moving Amendment 18 and keeping us on the right procedural track. Amendment 18, spoken to by my noble friends Lady Harding of Winscombe and Lord Vaizey of Didcot, the noble Lord, Lord Fox, and the noble Baroness, Lady Merron, who signed it, concerns rights to upgrade and share telegraph poles.

Clauses 59 and 60 will help to optimise use of the UK's extensive duct networks through greater upgrading and sharing, but ducts and cables under land do not represent our entire digital network, as noble Lords have reminded us today. Telecommunications lines flown over land play a substantial role too. These lines are dependent on the telegraph poles that support them. Over 1 million such poles are installed across the UK, as noble Lords have noted, providing coverage and connectivity to entire communities, particularly in rural parts of England such as Herefordshire, as the noble Lord, Lord Fox, will know, and urban areas of Scotland.

Since the Bill's introduction, the Government have been called on to introduce measures to facilitate the upgrading and sharing of poles. We understand that there are substantial public benefits in coverage, connectivity and consumer choice, so we welcome the attention that this amendment has drawn to the significance of poles and lines in network delivery, but as I anticipated at Second Reading, we have concerns as to whether the amendment would deliver material change.

I take on board fully my noble friend Lady Harding of Winscombe's point about the constructive spirit in which the amendments are brought forward and agree that we must look beyond the drafting of this specific amendment, but as the noble Earl, Lord Lytton, says, this is a legally complex matter. For example, it is not clear whether this amendment would permit pole sharing or allow operators to carry out works beyond those needed for a line to be flown. That might exclude upgrade works that would allow a pole to be used for fibre rather than copper lines.

It is important to note that paragraph 74, to which this amendment refers, deals with land adjacent to or in the vicinity of that on which poles are situated. We need to think about works that might involve the land on which that pole is placed. The Government are looking closely at ways to optimise the use of telegraph poles, but we must ensure that if changes are made in this area, they not only deliver public benefits but include sufficient protections for individuals with poles situated on their land. We will continue to look closely at this issue, but I am not able to accept this amendment today. I repeat the assurance I made at Second Reading that we are actively looking at this issue, and we will continue to consider it ahead of Report.

In response to some general points about requests from the industry, we certainly agree that operators should be able to obtain the rights they need to install and maintain the apparatus needed for robust network coverage throughout the UK. The department undertakes regular engagement with the industry and, if we receive compelling evidence that the Bill can be improved, we are happy to consider whether there is a good case for going further. When doing so, however, the Government will always consider the effect that any potential changes could have on landowners.

My noble friend Lord Vaizey inventively asked why telegraph poles were less contentious than multiple dwelling units, the subject of the amendments lost to today's debate. We must also bear in mind that a good regulatory framework encourages competition and investment, which are both crucial in delivering consumer choice and supporting deployment to hard-to-reach areas. Measures beneficial to one operator may not

[Lord Parkinson of Whitley Bay]
always encourage the market competition needed to deliver better outcomes for customers. Indeed, it is important to stress that there is no consensus from the industry on this issue. In fact, many operators have opposed the proposal on the grounds that it would create an unfair advantage for operators that already have equipment inside buildings, and so could potentially have anti-competitive effects.

Lord Vaizey of Didcot (Con): Now that I am in the swing of things, does my noble friend genuinely believe that outside the main metropolitan areas there is genuine competition between telecoms providers? Is it his view that he should support measures from the competitors of Openreach to prevent the rollout of broadband in rural areas, simply to protect their interests in the main metropolitan areas?

Lord Parkinson of Whitley Bay (Con): As I am explaining, we think that the views from other operators point out that my noble friend's amendment, which was not moved, would create an unfair advantage for operators who already have equipment; that would itself be anti-competitive. Given that the amendment was not put and, as I hope he has heard, would have been resisted in any case—certainly from the Liberal Democrat Benches—perhaps it may be best if he and I discuss it over a cup of tea, which he can add to his tab, between now and Report. I hope that he will not feel it necessary to bring these amendments back on Report.

On Amendment 18 regarding telegraph poles, while reassuring noble Lords that we will continue to look at this actively, I hope that my noble friend Lady Harding —or my noble friend Lady Stowell, who moved it—will be happy to withdraw that amendment for now.

Baroness Harding of Winscombe (Con): I rise, somewhat hesitantly, having consulted the oracle that is the former Leader of this House, to respond. I thank my noble friend for that response. As a brief aside, I am pleased to hear his conviction and belief in competition before we come back on Report, if we do, to the amendments that have not been debated.

I am cautiously optimistic that we will find a solution to this. I was slightly worried when I heard my noble friend say "if" we bring something back, rather than when. I would feel considerably more optimistic about solving this problem if I had heard him say "when". I would also feel a bit more optimistic if I had heard him say that he and the department will be considering alternatives, rather than observing and watching. We have been observing and watching since Second Reading, and the department has proposed no alternatives to my amendment. I look forward to some more active discussions about alternatives to the amendment but, on that basis, I am happy to withdraw it.

Amendment 18 withdrawn.

Clause 60 agreed.

Amendment 19

Moved by ***Lord Bassam of Brighton***

19: After Clause 60, insert the following new Clause—

"Requirement for operators to notify emergency service sites prior to upgrading or sharing apparatus

(1) The electronic communications code is amended as follows.

(2) In paragraph 17, in sub-paragraph (1), for the words "sub-paragraphs (2) and (3)" substitute "sub-paragraphs (2), (3) and (4A)".

(3) After sub-paragraph (4) insert—

"(4A) The third condition is that, where a site is provided by an emergency service, before the beginning of the period of 21 days, ending with the day on which the main operator begins to upgrade the electronic communications apparatus or (as the case may be) share its use, the main operator provides written notice to the site provider.""

Member's explanatory statement

This new Clause would require operators with agreements under the code that are not subsisting agreements to provide written notice to site providers that are an emergency service in advance of apparatus being upgraded or shared. This would allow relevant emergency services to plan around service outages or other forms of disruption.

Lord Bassam of Brighton (Lab): My Lords, I speak on behalf of my noble friend Lady Merron, who has tabled this amendment. The proposed new clause in Amendment 19 would

"require operators with agreements under the code that are not subsisting agreements to provide written notice to site providers that are an emergency service in advance of apparatus being upgraded or shared".

This would obviously allow "relevant emergency services" to plan better around things such as

"service outages or other forms of disruption."

We have tabled this amendment because some hospitals have reported instances where telecoms engineers have arrived to inspect or upgrade equipment, having provided little or no notice of their visit or the need to turn broadband and other data connections off for its duration. As I am sure the Minister will be aware, this amendment was tabled in the Commons and, at that point, the Government insisted that the clarification was unnecessary. The Minister, Julia Lopez, said that paragraph 17 rights authorise a visit only where there is no adverse impact, which probably brings us back to earlier debates.

For visits that go beyond paragraph 17 rights, the Government insist that operators need to obtain permission in advance or potentially face legal repercussions. However, hospitals and other emergency services have far more important things to do than pursue complaints and court orders while they are running important services. The Minister also claimed that introducing this clarification

"would undermine the policy intention of the rights".—[*Official Report*, Commons, Product Security and Telecommunications Infrastructure Bill Committee, 22/3/22; col. 121.]

Perhaps the Minister can outline exactly how.

4.30 pm

Should we take from this that the Government's policy is to prioritise operator rights over the ability of hospitals, police or fire or ambulance services to have reliable access to crucial IT systems? The current drafting of the amendment, I willingly confess, might not be the best way of achieving this important protection for emergency service sites, but I hope we can find a way to mutually agree. The number of cases may

even be low, but unexpected switch-offs could—I am sure the Minister would accept—have quite disastrous impacts and effects on the way in which services operate.

This is an amendment moved with a good spirit behind it and I think there is some need for clarification. I hope the Minister will give this a positive response because it certainly needs one.

I do not have any comments on the clauses stand part, because I am not quite sure exactly what is motivating them, but I shall be interested to hear what the proposers have to say. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to speak to the amendments in my name and that of the noble Earl, Lord Devon. I thank him for his support. We are having a short debate on why Clauses 66 and 72 should stand part of this Bill. I will briefly take each in turn.

As the noble Lord set out in moving Amendment 19 from the other Benches, the problem we are dealing with is getting on to land where people have possibly not had notification that their land is going to be entered. It also raises the possible cost of applying to the court in such circumstances, which begs the question: if, eventually, those who own the land are made aware, would the alternative dispute resolution procedure apply? I am not sure which of my noble friends is replying, but if my noble friend Lord Sharpe could kindly take that and give me a response, I would be most grateful.

The powers that we are allowing to the department and the Government in Clauses 66 and 72 are very wide ranging. Will Parliament have the right to scrutinise these regulations and at what stage? Do the Government intend that the regulations will be widely consulted on? At what stage would we have the right to scrutinise regulations under both clauses, as the devil will be in their detail?

Regarding Clause 66, I am most grateful to the noble Earl, Lord Lytton, for sharing the briefing we received from the Central Association of Agricultural Valuers, which has been extremely helpful in helping us prepare for today's debate. In relation to Clause 66 and the issue of unresponsive occupiers, it sets out:

"Understanding the point of this Clause, it should require the operator to have taken particular efforts to establish direct contact with the proposed grantor rather than allow this to be a convenient route to impose on off-lying land by the use of a succession of notices."

It hopes that discretion is provided to the court by new paragraph 27ZE of the code inserted by Clause 66. That would allow it to regulate the use of this power appropriately and recognise what might be particular personal circumstances. It refers in particular to the 2020 case of EE v Cooper and notes that the tribunal felt that it had to deny an operator's application for "interim rights" when it pleaded an unresponsive occupier, as it considered that the operator needed to show that

"far more had been done to contact the occupier than has been done in this case, where there has not even been an attempt to knock on the respondents' door".

It appreciates the compensation provisions set out in new paragraph 27ZG of the code.

In sum, I felt that it was necessary to ask why it is right that Clauses 66 and 72 should form part of the Bill primarily because we are granting the Government extensive powers that are not set out in the Bill, so we should reserve the right to consider them when they are set out in regulations. I would like confirmation that that is the case. Even more substantially and significantly, I am concerned about the lengths that an operator will be forced to go to before it is deemed to call an occupier an "unresponsive occupier". I look forward to my noble friend the Minister's response.

The Earl of Devon (CB): My Lords, I will speak briefly in support of the two proposals from the noble Baroness, Lady McIntosh, to which I have added my name, that Clauses 66 and 72 do not stand part of the Bill. As I noted at Second Reading, I am a landlord to a telecommunications mast, granted by my father under the 1954 Act. The renewal of this has been complicated considerably by the 2017 reforms and the huge uncertainty that has followed.

Just last week, the Supreme Court ruled on a group of three cases involving the last set of amendments to the Electronic Communications Code. The lead case was Cornerstone Telecommunications v Compton Beauchamp. The court ruled that, among other things, a landlord under a "subsisting agreement" is entitled to insist on renewal under the 1954 Act and the operator cannot insist on a code renewal by application to the Upper Tribunal. It seems ironic timing that, just as the highest court in the land has finally got to grips with those 2017 amendments and provided a little clarity, we are seeking to make yet further changes and further confuse the issue.

Since Second Reading, I have been in contact with a number of groups representing site owners, and all have reported incidents of unprecedented dispute and considerably challenging renewals. As I said at Second Reading, this cannot have been the intention of the 2017 amendments and should not be the result of this legislation either, which is why I put my name to the proposals that Clauses 66 and 72 do not stand part.

I think that we all agreed at Second Reading that we wish Project Gigabit to succeed, and my intention is to ensure that landlords and site owners are encouraged to grant leases to telecoms masts and other infrastructure. The recent soundings of the market suggest that this is not currently the case and that the granting of new leases has slowed considerably since the 2017 amendments and the decrease in rents and increase in disputes that have resulted.

On these clauses, the draconian access provisions for unresponsive occupiers and the rights of network providers in relation to infrastructure are simply too broad and uncertain and, as the noble Baroness, Lady McIntosh, stated, they will serve only to discourage the granting of leases for further network infrastructure. I do not think that that is in anyone's interest.

Specifically on Clause 72, the noble Baroness, Lady McIntosh, raised the regulations. I note that new subsection (7) says:

"Before making regulations under subsection (1) the Secretary of State must consult … OFCOM"

and

"such other persons as the Secretary of State considers appropriate."

[The Earl of Devon]
In responding, can the Minister clarify who that would be, because surely representatives of the site providers should be consulted? We should get an opportunity to understand exactly what these regulations will entail; otherwise, we seem to be providing Ofcom carte blanche to do whatever it likes. As we have seen, whatever it likes has not resulted in a satisfactory outcome for connectivity.

Lord Clement-Jones (LD): My Lords, I want to mainly talk about Amendment 19 put forward by the noble Lord, Lord Bassam. Before doing so, I say that I have some considerable sympathy for the noble Baroness, Lady McIntosh, and the noble Earl, Lord Devon, because one of the themes we are very much going to come to with the coming amendments is this steady shift in the bargaining power away from site providers towards the operators over a period of years, which started in 2017 and culminates in the current Bill. We had a number of debates on unresponsive occupiers when we last debated this on the then Telecommunications Infrastructure (Leasehold Property) Bill. As the noble Earl said, it is ironic that the cornerstone case has decided what it has, yet here we are changing the legislation away from that decision. I hope the Minister will be able to answer some of the questions that have been put to him.

On these Benches, we support Amendment 19. As the noble Lord, Lord Bassam, said, it would mandate operators with agreements under the code that are not subsisting agreements—namely, agreements that came into force before the code was agreed—to give advanced notice to sites that provide and deliver emergency services, such as hospitals, fire stations and ambulance stations. It is clearly important for providers of emergency services to be given advance notice of when work is going to be undertaken, so that they can take appropriate action to ensure that they are not affected.

The noble Lord, Lord Bassam, mentioned the Minister's response in the Commons; she prayed in aid the rights under paragraph 17 of the ECC,

"which authorise only activity that will have no more than a minimal adverse impact on the appearance of the apparatus".

However, this takes no account of the fact that, while the works may involve minimal adverse impact, it may actually involve disconnection at the time of installation. The Minister said that she was,

"not aware of any instances in which an operator has relied on its paragraph 17 rights to carry out upgrading and sharing activities that have gone beyond the scope of what that paragraph allows".—[*Official Report,* Commons, Product Security and Telecommunications Infrastructure Bill Committee, 22/3/22; col. 120.]

However, that is not the right question. The right question is: what kind of resilience and risk planning do the emergency services have in those circumstances? If they do not know that there is a risk of disconnection, how can they plan for it? This seems an extremely sensible amendment which will allow the emergency services to have notice and to be able to plan for circumstances when they may be disconnected.

Lord Vaizey of Didcot (Con): My Lords, this is an interesting debate on these proposals, which are potentially linked and will develop into a theme which perhaps redresses the balance.

When commenting on the amendment to notify emergency services, it must be acknowledged—by those of us who regard our telecom infrastructure providers as providing an extremely important service to the country, doing difficult, tedious and time-consuming work with private investment—that they do not always get it right. I again remember—this will become a theme of my speeches—that, in my time as Minister, one would have local authorities refusing to give permission to broadband providers to put in place infrastructure because of the mess they had left behind from their previous work. The most notorious and, I thought, slightly irritating resistance came from Kensington and Chelsea Council, which did not like the design of the green cabinets—perhaps it wanted them designed by David Linley or someone like that. Both the noble Earl, Lord Lytton, and this emergency services amendment highlight the fact that, too often, when infrastructure providers are allowed in to upgrade their apparatus, they do not take account of the knock-on effects of their work, either by not taking into account building safety regulations or by not notifying the occupiers that there might be disruption. The amendment is well placed to raise these points and for this House to remind infrastructure providers that they must continue to improve on this.

What I find interesting, from the perspective of landowners, is the balance between wanting, obviously, a reasonable rent for the disruption and visual intrusion that telecoms equipment can bring when it is placed on one's land—certainly one's property rights should be sacrosanct and no one should be allowed simply to arrive without notice and put infrastructure where they please—and the point about bringing huge benefit to a local community where one's land is situated, and indeed to one's own operations when infrastructure provides the connectivity. I can never get my head around that.

4.45 pm

When we introduced the mobile infrastructure plan—the forerunner of the shared rural network—I found it completely bizarre that there were communities that had no mobile coverage at all, yet the local population literally rose up, sometimes putting concrete blocks in the way to prevent telecoms operators putting in a mast that would have given them the essential coverage for which they had been campaigning for so many years. Again, the theme of the Bill and of the revision of the code is about balancing those rights, but weighing on those scales is the immeasurable improvement that good mobile and fibre coverage can bring to a rural community.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords who have spoken in the short debate on this group, particularly the noble Lord, Lord Bassam, for introducing Amendment 19, also signed by the noble Baroness, Lady Merron, and the noble Lord, Lord Clement-Jones. The amendment proposes the introduction of a 21-day notice requirement for operators who want to exercise code rights where apparatus is situated on, under or over a site provided by an emergency service provider. It is of course important that emergency service providers are aware of work on their sites which may have an impact on their day-to-day

activities, as all noble Lords have noted. In this context, it is crucial to look at the scope of the paragraph 17 rights. They authorise activity that will have

"no more than a minimal adverse impact"

on the appearance of the apparatus, and impose

"no additional burden on the other party to the agreement."

Given the limited activities that paragraph 17 permits, we do not consider a notice regime necessary. To put one in place would undermine the policy intention of these rights, which is to enable limited upgrading and sharing works to be carried out quickly and efficiently. Operators may need to upgrade and share apparatus that will have a greater impact on a site provider than paragraph 17 permits. We think that they should be able to do so but, in those circumstances, they must obtain the site provider's agreement or seek to have the required rights imposed by the tribunal.

In contrast, the paragraph 17 conditions exclude activities that would impose an additional burden on a site provider. Activities that disrupted a site provider's day-to-day business, or created new health and safety risks, would be unlikely to satisfy this requirement. I am not aware of any instances where an operator exercising their rights under paragraph 17 has caused any issue in relation to an emergency service site. I note, however, that the noble Lord, Lord Bassam, mentioned one example and I am very happy to discuss that further; perhaps we could join the group cup of tea.

Lord Clement-Jones (LD): My Lords, the Minister is making exactly the same case as the Commons Minister, Julia Lopez, made on this there. What about the circumstances that I mentioned, where you might be within paragraph 17, but where it may involve minimal adverse damage but nevertheless involves switching off the service for a period, however short or long that may be? Surely that is something that the emergency services involved on site should have notice of.

Lord Sharpe of Epsom (Con): My Lords, I think that they should have notice, but the point is that the paragraph 17 conditions exclude activities that would impose an additional burden on a site provider, as I have just said, and activities that disrupted their day-to-day business or create new health and safety risks would not satisfy the requirement. I honestly think that answers the point.

I think that I have answered most of the questions; I will obviously check *Hansard* and, if I have not, I will come back. In the meantime, I hope that the noble Lord, Lord Bassam, is prepared to withdraw this amendment.

I move on to Clause 66, as probed by my noble friend, Lady McIntosh of Pickering, with the support of the noble Earl, Lord Devon. It creates a bespoke process for the court to impose an agreement where an operator needs a person, to whom I shall refer as "the landowner", to confer or be bound by code rights and that person fails to respond to repeated requests for such rights.

The provisions require an operator to have sent an initial request notice and two warning notices, followed by a final notice, to the landowner. There must be a period of 14 days between the giving of each notice, meaning that the landowner will have been given a minimum of 56 days in which to respond to the operator. For the landowner to fall out of scope of Part 4ZA, all that is required of them is to respond to any of the above notices in writing before the operator applies to the court. If granted, a Part 4ZA order will impose an agreement on the landowner and operator. The terms of that agreement are to be specified in regulations made following stakeholder consultation.

My noble friend asked about situations where landowners are non-responsive. If they are unwilling to engage, for example, in alternative dispute resolution processes, it will remain open to the operator to apply to a court under Part 4 of the code to seek an order to impose an agreement granting code rights. These provisions impose a six-year maximum time limit on the period for which rights conferred under a Part 4ZA order may last. I emphasise this detail because it forms an important part of the Bill's safeguards on landowners' property rights. This clause provides a much-needed process that will play a large part in ensuring that homes and businesses benefit from the national gigabit broadband upgrade and are not left behind. I therefore commend Clause 66.

Baroness McIntosh of Pickering (Con): I think both the noble Earl, Lord Devon, and I asked whom, following court rulings in this regard, but also in terms of regulations, do the Government or the department intend to consult? Will they ensure that the occupiers are on that list? It is not clear from the drafting of the Bill that they will be included.

Lord Sharpe of Epsom (Con): If my noble friend will permit, I will come to the points she raises on consultation shortly.

Clause 72 will allow the Secretary of State to amend the Communications (Access to Infrastructure) Regulations 2016. Sharing infrastructure in the concentration of gigabit-capable networks can greatly reduce the cost and increase the pace of deploying networks, and can reduce the need to dig up streets, preventing unnecessary disruption to the local population and reducing carbon emissions. The 2016 regulations enable sharing of information about access to physical infrastructure across the utility, transport and communications sectors. They also include the right to access that infrastructure on fair and reasonable commercial terms and conditions. The Government published our response to the call for evidence on a review of these regulations last year. We set out that there may be some areas where they could be made easier to use and to understand.

In addition, we said we would legislate to allow future changes to the regulations via secondary legislation rather than relying on primary legislation. That legislation would be subject to further consultation with Ofcom and other appropriate parties. To expand on that a little, Clause 72 makes clear that

"the Secretary of State must consult … OFCOM; … such other persons as the Secretary of State considers appropriate"

before making such regulations. I cannot conceive of a set of circumstances where the landowner would not be one of the other persons that the Secretary of State considers appropriate—obviously, if I have that wrong

[Lord Sharpe of Epsom]
I will write to noble Lords. In addition, any regulations made using this power will still be scrutinised as part of the affirmative resolution procedure. Clause 72 therefore grants to the Secretary of State a narrow power to make provision, through regulations, conferring rights on network providers in relation to infrastructure for the purpose of developing communications networks. These provisions include the power to amend, revoke or replace the 2016 regulations.

Finally, my noble friend Lord Vaizey raised some useful points about operator behaviour, which I think we may discuss in more detail in later amendments in group 6 on the Ofcom code of practice. I will leave it till then to address those, if that is acceptable.

Lord Bassam of Brighton (Lab): My Lords, I am somewhat reluctant to let this go, I must confess. The emergency services in this country have a very difficult job to do, and I think they require better treatment than this.

I am not satisfied with the noble Lord's explanation. I can envisage a time when an engineer turns up on the basic premise that the task they have to complete is smallish, but it turns out to be a rather larger problem—a bit like when you get a plumber in and they suddenly discover that there is something more fundamentally wrong with your boiler than the dial not working properly, and that it needs repressurising and a part needs to be brought up. This is a practical consideration, as it could cause considerable disruption to a service.

I was thinking of something that recently happened quite close to where I live. The road immediately in front of the local fire station was dug up; I cannot believe that the highways authority was not in contact with the fire station concerned, but I am not entirely sure that it was. I know that the people working in the fire station were put out for the period of time in which their ability freely to come and go in an emergency situation was seriously impacted.

For the purposes of Committee, I will withdraw this amendment, but the Government need to give this further thought. These behaviours can be highly disruptive. They can impact quite adversely on people's personal security and safety; obviously, we want to make sure that there is a reasonably sensible way for providers to exercise their rights to repair, renew and so on, but we need to get the balance right and the Government need to think about this again. I beg leave to withdraw Amendment 19.

Amendment 19 withdrawn.

Clause 61: Rent under tenancies conferring code rights: England and Wales

Amendment 20

Moved by ***The Earl of Lytton***

20: Clause 61, page 46, leave out lines 6 and 7 and insert—

"(a) having regard to the terms of the agreement (other than those relating to the payment of consideration), that the holding might reasonably be expected to be let in the open market by a willing lessor,"

Member's explanatory statement

This amendment, along with the amendment to page 47, line 36 in the name of the Earl of Lytton, would ensure that the value of a consideration imposed by the court should take into account the land's value if it were used for the provision or use of an electronic communications network (and other uses), if the consideration is governed by the Landlord and Tenant Act 1954 or the Business Tenancies (Northern Ireland) Order 1996. The disregards for assignment and sharing, brought in in 2017, would however be preserved.

The Earl of Lytton (CB): My Lords, in moving this amendment I will also speak to the other amendments in my name in this group. I must first admit that I am a landowner, although I have not had any telecoms masts since 2017, when I sold a farm not very far from an area known to the noble Earl, Lord Devon—the uplands of Exmoor—on which I had three masts. One was a conventional commercial telecoms mast, one was an Airwave emergency services mast and the other was a community Airband mast under construction. I see this across the spectrum of what is necessary, what delivers something to the community—and to me—and is therefore of value and part of the incentive, and what fundamentally does none of the above.

The one that did none of the above was the commercial operator. I was encouraged to give consent on a piece of land because it had trees on it; an upland area was needed and the national park did not want the mast stuck in the middle of a piece of open moorland. That was fair enough, as the idea was that this would improve mobile communications in the area. It did nothing of the sort. Having set off with hope in one's heart that that would happen, it was something of a delusion. Indeed, I used to have to walk up to the middle of a 30-acre field to pick up mobile phone signal from a different network—probably from south Wales on the other side of the Bristol Channel.

I thank a number of noble Lords from across the House who have been very helpful in formulating my views, as well as a number of external consultants whom I have spoken to. I thank the Protect and Connect campaign for its input and Jeremy Moody of the CAAV, which has already been mentioned, for his invaluable assistance. I also acknowledge the efforts and briefings of Speed Up Britain, although I do not agree with its explanations relating to site value or on matters of fairness and balance. I also ought to say that I am an ordinary subscribing member of the CLA, although I have not communicated with it directly on this Bill. So much for the declarations of interest and so forth.

For all the training and experience one has as a valuer—I am a registered valuer with the RICS—it is acknowledged to be an art, not a science. It is based on many constructs, including market sentiment, risk and a host of other internal and external factors, from which the valuer is seeking to interpret an end-result. They are interpreting what the market is doing and trying to codify and make sense of what is happening in what are sometimes quite random situations.

5 pm

In other words, it is the market that leads the process, regardless of how valuation theorists may try to analyse it. It is very important to bear that in mind.

One of the greatest influences on markets is government activity and the resultant expectation. It is a pity that government does not always seek the advice of its own internal expertise or, for that matter, that of independent bodies. Legislative history is sadly littered with the skeletons of failed initiatives.

One of the greatest impediments of government is the periodic belief in a limitless ability to control and direct markets, when, in fact, markets that function well are usually those that have the least interference and the greatest commitment by government to their operational proficiency. But like everything else, markets are overwhelmingly a voluntary undertaking. We all have choices. The Government intervene for reasons of overriding public interest, and traditionally for the benefit of public agencies, but this has morphed more recently because we now have private utility companies, and the working assumption here is that the big telecoms companies want to have the rights—particularly certain rights of compulsion—that have been accrued by the utility companies. However, I fear they wish to acquire them shorn of many of the protections of compulsory purchase in the Land Compensation Act, and other statutory provisions.

We have had a relatively free market in telecoms mast sites for about the last 30 years, up to 2017. Then the Government changed all that, and I admit that I had not anticipated the outcome of that change. The noble Earl, Lord Devon, explained to us, and we also heard on the first day in Committee, the results of that: namely, that market sentiment among site owners has to a material degree collapsed and there is a sense of disengagement. That can be measured by the number of deals concluded, and by the fact that disputes have escalated sharply in a manner never experienced in the pre-2017 period. If you look at who is taking who to a tribunal, you will see that it is seemingly driven by site operators taking cases as a means, one supposes, of driving home their version of a bargain.

The balloon has gone up, in that mast site operators and network operators are seen as having resorted to a slightly crafty inversion of law and practice. I think it is regrettable that there is a sentiment that suggests that site owners are a type of greedy usurer. I am unconvinced by this business of site rentals being too high. In many instances, it is no more than one would expect to pay for a handful of lock-up garages in a suburban location or a relatively smallish area of open storage land. The aggressive tactics that have been complained about arose because people can get away with it, and it is no longer seen as a good sector for the lessor. If you want good relationships, you do not resort to such tactics, particularly if you wish them to be long-term.

Lord Vaizey of Didcot (Con): Is the noble Lord aware of the American import of site aggregators—companies which, I think, finance the Protect and Connect campaign? I should say I used to work for Speed Up Britain, so goose for the gander and all that. This American import of site aggregators is effectively buying up sites on land, and then negotiating with the mobile operators to extract valuable rents and increase the value of their companies.

The Earl of Lytton (CB): I am indeed. I believe that one of the firms is based in San Diego, in California. One cannot help supposing—I think this is the sentiment in the market—that the driving down of rental figures has been part and parcel of what is actually a very substantial land deal to sell a package based on the profit rent that can be derived. But the crucial thing here is that there does not appear to be any reason why these aggregators—or for that matter the site companies or mast companies—should pass on any of the savings to the network operator and make it cheaper or more competitive for those of us who actually use the service. That is one area where there is a significant disconnect. These things are noted by those who are acting for owners or by the owners themselves.

The intention really is to get some sort of fairness. I understand that, and do not dispute the question of getting a fair balance. However, I am worried that this is beginning to put things into the hands of commercial entities—the aggregators are no different—that may be benefiting from code rights but do not necessarily have the code obligations to deliver for society. I wonder whether these entities are going to end up doing some sort of site-squatting operation, where they tie up as many of the sites as they possibly can, rather in the same fashion as residential property developers might option up bits of land on the outskirts of villages. That would worry me, because it would mean that a cadre of middlemen would effectively be holding things to ransom. I will get on to why that matters in valuation terms in a minute.

The land valuation solution espoused by the communications code and strengthened in this Bill, in terms of having changed from market value to something that looks and feels a bit like existing use value, is, I am afraid to say, the philosophical equivalent of two cans of beans connected by a bit of slack string. It is a very unsophisticated approach for dealing with the land issue which underpins the whole of what we are talking about in the rollout of better 4G and of 5G—both of which I support for the reasons I made clear earlier.

I will move to an overview of the amendments. Amendments 20 and 22 to 27 aim to address the issues of valuation, pure and simple, which is one of the most significant concerns with the Electronic Communications Code. Under the changes the code made in 2017 was the introduction of the no-network valuation methodology for valuing land, which allowed site providers to recover only the raw value of the land rather than receiving a market price. A new line was inserted into the code so that, when setting a site value, the court was prevented from taking into account a site's potential use for the provision of an electronic communications network. This is notwithstanding that the Electronic Communications Code itself has a reference to market value at paragraphs 24(1) and (2) and sets out in sub-paragraph (2) the criteria—which I understand, as somebody dealing with valuations in terms of the standard RICS specification; the wording is familiar—but then inserts at sub-paragraph (3) a provision relating to the court's jurisdiction which negates this.

[The Earl of Lytton]

Market value has an internationally recognised definition: it is the price one might reasonably expect in an arm's-length transaction, following proper marketing, between a willing buyer and willing seller, in which the participants act

"knowledgeably, prudently and without compulsion".

To include this definition in one part of the code but then to say in the bit that immediately follows that the court must disregard significant parts of it is, in linguistic and market terms—even if not in valuation practice statements—simply incoherent. There is no conceivable middle ground here. It is one thing or the other: remove one leg of the definition and the entire proposition unravels. Effectively, we are left with existing use value, which is not a useful or defined metric so much as a state and condition of land, normally only ever used in taxation and accounting for certain local authority assets.

At the same time, another change was made to the code's valuation provisions to ensure that site owners could not charge ransom rents. Any valuation must assume that there is another site available to operators so that there is no monopoly in land provision around any site. This change was recommended to the Government by the Law Commission. It is quite an important one. It may be that legal minds can conceive of free markets in which the economics of supply and demand are simultaneously applied and negated, but you cannot then leave the free market to sort it out. It does not happen. It cannot happen, because you have just trashed the open market system.

I thank the Minister for the online meeting we had before Committee. Some mechanism for pegging rents, which I meant to mention, or else some other surrogate comparator, seems to me to be necessary. In the Rent Acts, when there was rent control and security of tenure, there was a person called the rent officer who was supposed to fix the rents on the basis that it was devoid of scarcity. To a degree, that worked. However, as the situation arose, the market, following the introduction of the Rent Acts in 1965, effectively imploded and collapsed. The law can state that one thing means another—that "chair" shall mean "table" and vice versa—but no lawyer in the land is going to alter their respective functional characteristics, nor in the real world of furniture sales will a buyer looking for a traditional chair be satisfied with getting a table instead. So we really need to sort it out.

In the other place, the Minister recognised that rent reductions have been much greater than expected—I do not know whether he admitted that this was the fault of aggressive behaviour by operators. This affects a wide variety of small businesses and others that we heard about at Second Reading and in the previous Committee debate. On the situation today, it seems to me that the Bill will make it easier to go to court while preserving the same valuation regime. As the Law Society said, this appears to be addressing the symptoms rather than the causes.

Plus, it skews the negotiations. If you make it easier for somebody to go to court and that becomes the default, what happens? The more powerful economic party rules it over the less powerful. You do not get equality before the law; you depart even further from a fair market position. Although provisions exist for alternative dispute resolution, there is in fact little or no compulsion for operators to use this, so they default to more costly alternatives, which are of course naturally seen as preferable to anybody aggressive and well-funded. The whole question of ADR can always be sidestepped on the basis that some point of law is at stake or the lessor has jibbed at the "take it or leave it" proposal put to them. It is very easy to avoid ADR in the majority of circumstances.

The Government said they were not going to revisit the valuation regime introduced in the 2017 reforms, but the Bill actually expands the no-network valuation regime into approximately 15,000 agreements governed by the Landlord and Tenant Act 1954 and the Business Tenancies (Northern Ireland) Order 1996. This will allow existing contractual agreements entered into in good faith to be dramatically changed. Bear in mind that rent is merely the financial end-product of a deal involving many covenants, conditions, undertakings and other criteria. The filleting out of consideration on the one hand from compensation on the other, demanding as it does the quantification of many interrelated, non-priced elements, is, I am afraid to say, a very suspect practice.

5.15 pm

The Minister may say that these amendments are outside the scope of the Bill but I do not believe they are, because of Clauses 61 and 62, which contain the very same no-network valuation clauses first included in the code. In any event, were they out of scope, I think it unlikely that the clerks in your Lordships' Public Bill Office would have accepted them without demur. However, whether they are or are not within the intended scope of the government proposals, and the laws of unforeseen consequences apart, I re-emphasise that they have a material bearing on the immutable world of market economics that prevails notwithstanding. Therefore, we in this House are entitled to question the measures for which the likely outcomes will be anything other—and appear to be unfolding as anything other—than those originally claimed by the Government.

I make it clear that my amendments would not return us to the situation before 2017. However, I am trying to introduce some stability and certainty here and to provide a real and meaningful incentive for better practice and some sort of collaboration, because I fear that collaboration has been the sufferer in all this.

On Amendments 20, 22 and 23, the goal here is simply to reverse the imposition of the no-network valuation regime while retaining the Law Commission's recommendation to stop ransom rents. The idea is to ensure that site providers will receive a rent closer to the market rent, while ensuring that operators cannot be slowed down by excessive rent demands. The amendments would encourage consensual deal-making, ensure that operators receive significant reductions under court-imposed agreements compared with the old code, and provide a fairer settlement for site owners who are today accepting significant burdens on their land for now very little return. One has to say that many of them are asking, "Why would anybody bother with this?" It is not just those who are already in the system, but those who might be in the system in future for sites not yet operational or indeed identified.

Therefore, Amendments 20 and 22 together stop the no-network valuation regime being extended to telecoms sites governed by the Landlord and Tenant Act 1954. The Landlord and Tenant Act provision is delivered by Amendment 20, and the Business Tenancies (Northern Ireland) Order 1996 provision is delivered by Amendment 22. That would prevent the no-network valuation regime forcing down rents. The amendment retains the carve-out that obliges the court to disregard the site's potential use for assignment, upgrading and sharing, in turn ensuring that operators still receive significant rent reductions or rent benefit under a court-proposed agreement.

Amendment 23 would remove the no-network valuation scheme that was inserted in the code in 2017 by ensuring that when proposing an agreement under the terms of paragraph 23, the courts would take into account the site's land value as if it were used for the provision of an electronic communications network. At the end of the day, to have no regard to the proposed use of a piece of land is contrary to how land is transacted in the real world, whether it is a piece of garden land, industrial land or anything else. This would ensure that we would no longer see egregious examples of operators using their code rights to drive down rents. As I say, the amendment would give effect to the Law Commission's original recommendation and take us somewhere near to the construct—I recommend it to the Minister—of fair value, which again has a definition in which equity and the proper balance between competing interests come into play.

Amendments 24 and 27 are predicated on a no-network valuation—

Baroness Stowell of Beeston (Con): I am so sorry to interrupt the noble Earl, who is clearly giving us a sense of this important and wide-ranging matter. However, he will know that the Member introducing a group of amendments is asked to stick to 20 minutes maximum—and we are now over 22 minutes.

The Earl of Lytton (CB): My Lords, I have a group of amendments here, all of them covering very technical bits and pieces and, rather than trying to deal with one at a time, disaggregate them and give an individual explanation for each, I felt it would be helpful for the Committee if I put them in context and dealt with in this way. I assure the noble Baroness that I shall be as speedy as I can, but I crave the Committee's indulgence in that respect, and I should like to continue with what will be my principal contribution on the Bill.

I was talking about the question of fair value and had got to Amendment 24. This amendment would ensure that, where a site agreement is first renewed using part 5 of the code, the courts are unable to impose a rent reduction of more than 40% on the rents that fall under the existing consideration. This would ensure that the Government's original expectation that rates would fall by no more than a maximum of 40% was delivered by legislation, and would prevent what I described to the Minister as the cliff edge that has occurred in the arrangements. Subsequent renewals under the code would then be made on a no-network valuation. It would also enable consideration of the effects of the policy on rollout and upgrade of sites and whether the objectives were being met.

Amendment 25 would require the Secretary of State to publish guidelines on the level of factors influencing the expected value of the imposed considerations. This would ensure some clarity about the Government's expected policy. Amendment 26 would phase in the application of a newly fixed rental consideration imposed by the courts. The intention would be for the new consideration to become payable only, if it was a reduction, after 24 months from the date of the court order. Prior to that point, the operator would continue to pay the previous rent. Amendment 27 is similar to Amendment 26. This amendment would create a tiered phase-in period for the application of a new consideration imposed by the court.

The amendments fall under two options. The first tries, as far as possible, to remedy the effects that have occurred under the 2017 code. The second lot gives a sort of halfway house to build in what the Government say they are trying to do but, at the same time, ameliorate the effects with the same long-term result. I apologise for dealing with this at length. I beg to move.

Lord Clement-Jones (LD): My Lords, on these Benches, we support the amendments introduced by the noble Earl, Lord Lytton, with his expertise both as a valuer and surveyor and as a site provider. I well understand why he has taken the trouble to take us through the amendments in the way he has, because they lie absolutely at the core of the Bill, of the relationship between site providers and operators over a long period, and of Protect and Connect's campaign. It is quite reasonable to unpack the valuation system that has been in place and explain in some detail his proposals by way of the amendments for a new valuation system, or at least an alternative way to deal with the current one.

I start by quoting the Central Association of Agricultural Valuers:

> "The tragedy of the 2017 Code is that, far from encouraging collaboration over sites assisting roll-out, some leading operators have made heavy handed, confrontational and attritional use of the powers and privileges they were given by it, very largely to reduce the cost of renewing existing agreements rather than winning new ones or make themselves attractive as tenants. The irony is that, as reported to November's RICS Telecoms Conference, even if rents may now be much reduced, the overall cost of securing a site has doubled and timescales lengthened."

That seems very paradoxical. This refers to the fact that, as the noble Earl said, under changes made to the code in 2017, a no-scheme or no-network valuation methodology for valuing land was introduced. As he also explained, this allowed site providers to recover only the raw value of their land, rather than receiving a market price. It did this by inserting a new line into the code that, when setting the value of a site, prevents courts from taking into account a site's potential use for the provision or use of an electronic communications network.

At the same time, as the noble Earl has also explained, another change was made to the code's valuation provisions to ensure that site owners cannot charge ransom rents. Any valuation must assume that there is another site available to operators so there is no monopoly in land provision around any site. As he also mentioned, this was recommended to the Government by the Law Commission. Operators have been able to use these changes to drive down the rents that they pay to site

[Lord Clement-Jones]
providers, often to peppercorn rents. In 2017, the Government said that they expected that rent reductions should be no more than an absolute maximum of 40%, and that has been cited at Second Reading and on many other occasions. However, we know from data cited by the operators that reductions have at best averaged at 63%, a huge sum for many of the people who rent their land to be used for telecoms infrastructure, and in many cases, as we have also heard, reductions have been much higher—in the region of 90%.

The Minister will be aware of the Protect & Connect campaign, and many Members around the House will have had communication with it. It cites the Fox Lane Sports & Social Club, which had a mast on its land for 12 years owned first by Orange and now by EE. The club was getting £7,800 a year but it has now been told that it will get only £794 a year from 2023. Billericay Rugby Football Club had a mast for over 20 years and allowed Vodafone—now Cornerstone—to attach infrastructure to the mast. It paid the volunteer-run club £8,500 a year. However, with the changes to the code, EE says that it will cut the rent by more than 90% to £750 a year. There are many such case histories worth looking into. The evidence is there.

Lord Vaizey of Didcot (Con): Surely the noble Lord agrees that a mast on a community sports building, although it provides a generous rent, should not be regarded as some kind of lottery win. I return to my point that the benefit of that mast—the connectivity it gives to not only the sports club but the community around it—is to be considered, as well as the vast rent that was charged until the code revision.

Lord Clement-Jones (LD): My Lords, I cannot believe that the noble Lord believes that it is reasonable to reduce the rent by 90%. There may be community benefits. However, I will come on to whether the consumer has had the benefit of these reductions, which is a very important point, and to the point about aggregators versus mast operators, which seems to be the battle of the behemoths. That is not a very happy situation but, in a sense, one caused by the changes that have been made to the ECC.

Protect and Connect estimates that providers have lost more than £200 million a year in income, including £60.5 million of lost local authority income, £44 million of lost agricultural rural site-owner income and, as the noble Earl, Lord Lytton, says, the Government's legislation expands the no-scheme valuation regime into approximately 15,000 agreements governed by the Landlord and Tenant Act 1954 and the Business Tenancies (Northern Ireland) Order 1996. This would allow operators to ignore contractual agreements entered into in good faith, leading to more incomes being dramatically reduced.

I come on to the question of consumers. The noble Lord, Lord Vaizey, talked about the aggregators but my noble friend Lord Fox and I have brought up throughout the passage of the Bill the question of what is in the interests of the consumer. The benefit appears not to be coming down to the consumer. In fact, a great deal of money is being made in other parts of the forest. The *Times* yesterday reported that Digital 9 Infrastructure has bought 48% of Arqiva Group Ltd from the Canada Pension Plan Investment Board, using £300 million in cash and a loan note. Clearly there is money to be made, but is any benefit flowing through to the consumer? If the site providers are being heavily reduced in income, that is clearly not going through to the consumer.

5.30 pm

As the noble Earl, Lord Lytton, said, Amendments 20, 22 and 23 would reverse the imposition of a "no scheme" valuation regime while retaining the Law Commission's recommendation to stop ransom rents. Infinitely reasonably, the noble Earl has put forward an alternative in the form of Amendments 24 to 27, which are predicated on the "no scheme" valuation regime effectively remaining in place. We agree that this is not the best solution, but as he said, the changes serve to illustrate that a Government who really wanted to strike a balance between different interests could find a way of doing so. As he said, we need stability and certainty, and they are not there at present. It is certainly not facilitating speedy rollout, whatever the operators might say. I hope the Government will very carefully consider these very reasonable amendments.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate the noble Earl, Lord Lytton, on his Amendments 20 and 22 to 27. I am delighted to support them. I hope the Government will look favourably on them for the reasons he gave so eloquently.

I will briefly address the reasons why I have asked whether Clauses 61 and 62 should stand part of the Bill. In my view, it would be better if they were not part of it. As has been said, we seek a balance with the Bill, but, as I see it, the balance is shifting further away from the occupiers in favour of the operators. I have no particular interest in this other than as a consumer, although for a period I was the co-owner with my brother of two fields in the Pennines on which a mast was placed, so I presume I would have been in receipt of a modest fee for that infrastructure to be in place. Sadly, my brother bought me out and I no longer can claim that benefit or disbenefit.

My concerns are reflected in the amendments so ably spoken to by the noble Earl. The Bill proposes to change the way that land is valued so that it can be applied retrospectively to the renewal of some sites that were in existence prior to 2017. Secondly, the Bill includes provisions for an alternative dispute resolution mechanism, which I support, although, as I stated earlier, operators should not feel the need to engage with this mechanism if their resources marginalise the opportunity for a fair and equitable resolution for many landowners who simply do not have the confidence or means to contest them.

I will make a general point not dissimilar to that made by my noble friend Lord Vaizey and the noble Earl, Lord Devon, on the previous group. All of us who live predominantly in the countryside are providing a service for the rest of the community, especially those who live in country districts, by hosting on the land infrastructure owned by the occupier. That has to be recognised, and that is why I have great difficulty,

considering the way the code has been applied since 2017 and under the terms of the Act, with the fact that the code will be applied more strictly.

I want to add a comment that my noble friend Lord Parkinson is familiar with, because I wrote to him about it. I am most grateful to him for his reply. Why can civilian use not be made of the emergency services network? He is aware that a number of masts have been placed and erected across North Yorkshire, particularly in the hills and the moors, where we have a very poor mobile phone frequency and very poor connectivity with broadband and wi-fi. If there is any possibility of us piggybacking on the emergency services masts for civilian use, that would be to the huge benefit of the wider community.

I go back to the time in 1997 when I was first elected to the other place as the Member for the Vale of York. We had a situation where the emergency services and the police could not be reached, which is why the emergency masts were put in place at some considerable expense to the taxpayer. I am sure there can be no security aspects that could not be dealt with to allow us to use them. I appreciate that that is a separate point.

I entirely agreed with the noble Earl, Lord Devon, when at Second Reading he set out, as did I, that we are moving to the situation which existed before 2017, with a regrettable consequence of potentially fewer landowners and occupiers permitting the infrastructure to be placed, or to continue to be placed, on their land.

I have given notice of my intention to oppose the question that Clause 61 stands part of the Bill, which gives operators the ability to calculate rent based on land value rather than market value when renewing tenancies to host digital infrastructure on private land. I think that is fairly self-explanatory. I have given notice of my intention to oppose the question that Clause 62 stand part of the Bill, as it gives operators the ability to calculate rent based on land value rather than market value when renewing tenancies to host digital infrastructure on private land in Northern Ireland.

The noble Lord, Lord Clement-Jones, quoted the useful briefing we have had from the Central Association of Agricultural Valuers, or CAAV. It states quite specifically that its understanding in relation to the renewal of business tenancies conferring code rights in Clauses 61 and 62 was that:

"The changes here were not understood to be part of the consultation",

which we have heard about.

"The Government was understood to have made it clear in the 2021 consultation that it did not intend to revisit the valuation framework. Indeed, the government's response to the consultation stated: … 'the government does not intend to revisit the statutory valuation framework. This issue was therefore not within the scope of the consultation.'"

If that is indeed the case, I regret that we have perhaps not heard all that we should have heard from occupiers and landowners in regard to these provisions.

In relation to Clause 61, the CAAV concludes that

"Lord Lytton's proposed amendments to both clauses would also in principle retain the market value basis for these first renewals but disregard the operator's qualified Code powers to upgrade and share apparatus. If these clauses are retained, we support these amendments."

I share the reasoning behind that, which is why I support those amendments. With those few remarks, I look forward to hearing what my noble friend makes of my proposals to delete Clauses 60 and 61.

Lord Northbrook (Con): My Lords, I apologise for not being able to take part at Second Reading and in the first day of Committee. Like the noble Earl, Lord Devon, we all want Project Gigabit to succeed. I support my noble friend Lady McIntosh and the noble Earl, Lord Devon, in their proposals to delete Clauses 61 and 62. If they do not find favour, I would support cross-party Amendments 20 and 22.

I must first declare an interest as an NFU member and the landlord of two telecom masts. One rent review has already taken place. The original offer was a 95% rent reduction. I could probably have got rid of the mast, but as it borders the M3 I did not think that it was in the public interest. Having negotiated for 21 months, I got the reduction down to only 73%, but my legal fees in doing that exceeded my first year's new rent, and it was quite stressful.

That is quite unimportant compared with the huge loss of income to community projects, clubs, churches, social clubs, hill farmers and others. As other noble Lords have mentioned, the organisation Protect and Connect, set up last year to give a voice to property owners in rural and urban communities who rent their land for mobile phone masts, has highlighted this real problem for these categories of landlords.

It is not just individual landowners who are affected. I quote a March 2022 cutting from the *Daily Express*, "Mobile masts firms branded 'Goliath bullies'":

"Thousands of churches, charities, hospitals and sports clubs face reductions in mast rents—and a social club popular with pensioners has had rent slashed from £3,500 to around £550 a year, an 85 per cent cut."

The *Daily Mail* online said:

"Hundreds of sports clubs, farmers, charities, churches … and community groups with mobile phone masts on their property … have seen a drop in rents of … 90 per cent".

In January 2022, the *Sun* said that thousands of churches, charities and social clubs face a cut of up to 90%. The headline in the *Edinburgh Evening News* was: "Edinburgh pastor fears for church's future after 'bullyish' EE slashes mast rent by 96 per cent". In *Property Week* it was: "Telecoms Bill set to enforce huge rent cuts for landlords".

For these reasons, I believe that the amendments I have mentioned give a fairer outcome to the balance between landlords and tenants. As noble Lords have already heard, it is not only me who believes this. The respected Centre for Business & Economic Research has calculated that the 2017 reforms have not delivered a faster 5G rollout. As the noble Lord, Lord Clement-Jones, stated, providers have lost £200 million of income, including £60 million of lost local authority income and £44.2 million of lost agricultural or rural site income.

The Government's proposed reforms would cause rents to fall by a further 41% from their post-2017 levels. On a 10-year basis, this is equivalent to a cut in local authority funding of £645 million and a cut to sports centres, social hubs and hospitality of £158 million.

[Lord Northbrook]

The CEBR says that site rental was not unfair before 2017 and that mobile operators have not used savings to invest in communications networks; nor do rent costs impact their profitability materially.

The noble Earl, Lord Devon, emphasised at Second Reading that a "broad array of stakeholders" oppose this legislation,

"from the NFU and CLA, to the CAAV, the BPF and the Law Society … By these provisions, the Government will be intervening in long-standing existing leases, freely negotiated between willing participants, to dramatically decrease rental values, often years after the fact."—[*Official Report*, 6/6/22; cols. 1053-54.]

It is another blow to farmers' diversified income and, in my experience, will further delay mast development. I will not want to go through 21 months of tortuous negotiation again for a new mast, particularly having just heard about the access issues in Clause 66. That is why I support a fairer method of rent calculation, as proposed in the amendments.

I am disappointed that a Conservative Government reject an amendment on market value and wish to proceed with extending the unfair 2017 Act to the Landlord and Tenant Act 1954 and the Business Tenancies (Northern Ireland) Order 1996.

The Earl of Devon (CB): My Lords, I support the amendments from the noble Earl, Lord Lytton, and much appreciate his extensive exposition of them. I have also put my name to the stand part notices from the noble Baroness, Lady McIntosh.

I am grateful to the noble Lord, Lord Parkinson, for meeting me and the noble Earl, Lord Lytton, since Second Reading. I note from that discussion that DCMS was largely unaware of the impact of the 2017 amendments on the negotiation of lease renewals. I wonder whether that is, as the noble Baroness, Lady McIntosh, indicated, because no consultation was undertaken on them. It really is important for such considerable and important amendments to be consulted on.

I also noted earlier, in response to Amendment 18, as proposed by the noble Baroness, Lady Harding, that the noble Lord, Lord Parkinson, resisted it on the basis that he wanted to ensure sufficient protection for those with poles on their land. If this were the Government's justification for resisting Amendment 18, why do they not have the same concern of providing sufficient protection for those with masts on their land, which are so considerably more impactful and damaging? Can the Government explain why they refused to consult on this?

5.45 pm

I am not a valuer, as the noble Earl, Lord Lytton, is; I am a litigator and will therefore defer to him on the wonderful art of valuation and agree that the markets should be left to their own devices. The Government's intervention only bogs down market forces and, as a litigator, I agree entirely that market intervention by government has only handed the aggregators and their lawyers more work and more benefit.

I also reiterate that our focus here should be on increasing connectivity. Why would a landowner let a stretch of land to a mast operator when the rent recovered would simply be equivalent to the value of the land when undeveloped or from its existing use? That is a poorly defined concept but also, in this brave new world of ecosystem services, all of that undeveloped land now has potential to provide biodiversity net gain and to earn ELMS payments et cetera. It would appear that none of that development in the use and potential value of land will be baked into these rental negotiations. Can the Minister, in responding to these amendments, explain how payments for biodiversity, water retention et cetera will be baked into the negotiations under these new provisions?

Lord Vaizey of Didcot (Con): My Lords, having followed this debate quite closely, I thought I would make a brief intervention. I want simply to put the case for the operators, since they have been hammered pretty much from all sides—surprisingly, from the Liberal Democrat Benches as well; they have now rediscovered their landed gentry roots and gone in to bat for them.

It strikes me that the mobile operators, in particular, are not charities. Much as it is a good thing that they were able to pay generous rents to local community rugby clubs, and much as I would not wish to stand in the way of such clubs receiving generous rents, those operators are commercial organisations. It is important to emphasise that the country benefits, as they have paid enormous amounts of money for the radio spectrum that they use. Famously, they massively overpaid for 3G but certainly paid substantial amounts for 4G and for the 5G spectrum that is now being rolled out. All that goes into the Treasury coffers and no doubt finds its way to various rugby clubs as well.

It is also a mistake to believe that the mobile phone companies in this country are particularly profitable. As I understand it, their margins are pretty low at between 1% and 2%. I always joke that that is entirely the fault of my noble friend Lady Harding, because of course it was TalkTalk that, as a company, got the British consumer used to paying low prices for mobile phones. The large cost of a monthly mobile phone bill often relates to the cost of the smartphone that the consumer is determined to have. I emphasise again to your Lordships that there is a balance to be struck between charging a reasonable rent and the benefits one gets—

Lord Northbrook (Con): I am sorry to interrupt the noble Lord, Lord Vaizey, but Vodafone's figures to March 2021 showed a pre-tax profit of £3.7 billion. That seems to be a reasonably profitable company.

Lord Vaizey of Didcot (Con): We ought to remember that Vodafone is a global company and a great British success story. I congratulate the noble Lord, Lord Northbrook, on reading out the successful efforts of the Protect and Connect PR campaign in picking individual stories that appear to show rapacious mobile operators riding roughshod over small community organisations.

The key point is that, if you put a mobile mast in a rural area, it is not going to be a significant generator of revenue for you as a company because it will be used by only a few people. If the market is left entirely

to its own devices, most of the masts—as with most of the fibre that is going into the ground—will go into our main metropolitan areas. That is why if you walk down Oxford Street, you will see a mast pretty much every 10 or 15 metres because that is where the revenue is generated. If one insists on charging very high rents in rural areas, we will slow down the connectivity and build-up of rural networks. I simply want to make the point that mobile operators do not exist, much as one would wish them to, to supplement the income of community sports clubs, much as I love and admire the work that they do.

The Earl of Lytton (CB): In saying that mobile operators are very large and substantial companies, does the noble Lord accept that only part of what they do fulfils the same sort of social benefit commonly associated with a traditional utility company? A very large amount of what they do and propose to do is the selling of very large amounts of bulk data for all sorts of commercial purposes, not least streaming information to parts of the entertainment business. Why is the claim made that they should be treated in the same way as a utility, when a data centre, battery storage facility or even a wind or solar farm would not qualify in the same way? I put it to him that some of the arguments put forward, and which appear to have influenced government, do not stand up to scrutiny.

Lord Vaizey of Didcot (Con): I do not want to be sidetracked into a debate on the classification of wind or solar farms, but I would describe mobile phones as an essential utility. The noble Earl himself pointed out what pleasure he got from having an emergency services Airwave mast on his land and how important that is. Rural connectivity is becoming absolutely essential, which is why the Government have put £5 billion into supporting the shared rural network.

My noble friend Lord Northbrook spoke about his row about the mast on the M3. What he should also have pointed out about the reduction in rents perhaps reducing the opportunities for farmers to diversify is that it is a complete red herring. The opportunities for farmers to diversify are provided by giving better mobile connectivity. Anyone who knows Jeremy Clarkson and has watched his incredible programme "Clarkson's Farm"—maybe he is one of the 50 rumoured Peers who will be coming into this House shortly and will give us the benefit of his views personally—will know that what is really holding back diversification are small, conservative, small-minded district councils that will not give planning permission for much needed restaurants, car parks and farm shops.

Lord Fox (LD): My Lords, I shall not enter the zero-sum game debate we appear to be having. However, the really salient point I ask your Lordships, particularly the Minister, to focus on is the one made by the noble Earl, Lord Devon: if there is no financial incentive to landowners to take masts, there will not be masts and we need those masts. Whatever happens, the formula has to deliver an incentive to the landowners. The evidence is clear; that incentive is vanishing to the point where it ceases to be viable. That is the point your Lordships should focus on in this debate, and the one I hope the Minister brings to bear in his response.

Baroness Harding of Winscombe (Con): My Lords, may I make one additional comment? Despite my noble friend Lord Vaizey thinking I am personally responsible for mobile investment and pricing, I should like to put on the record that TalkTalk did not do anything to mobile pricing; it is a fixed-line broadband provider, not a mobile provider.

Regardless, I should like to make a serious point about competition. The noble Earl made the point that we should believe in a free market, which I definitely do. I firmly believe that competition will get to the right answer, but completely unfettered, unregulated infrastructure markets do not drive competition—they drive the opposite. That is one reason I am really concerned about the multi-dwelling unit amendment that we did not debate, because that risks the absence of competition.

In the same way, I support my noble friend Lord Vaizey because if we do not have a regulated approach to the valuation, we will find not the domination of big mobile companies but the monopoly control of individual landowners, particularly when there is already a mobile mast on their site, as they have a complete monopoly control of that site. It is important that we find a balance because there is power on both sides of this relationship. Big is not always the most powerful. I say that having learned that myself at TalkTalk. I support the comments of my noble friend Lord Vaizey. This is not as one-sided as this debate has perhaps felt.

Baroness Merron (Lab): My Lords, the issue of valuation, as we have heard clearly today, generates one of the most significant ranges of concerns. Noble Lords have been extremely helpful in unpacking the issues, whichever side they may be on in this debate. I will focus on Amendment 21, which I am pleased to have tabled. It seeks to guide courts in relation to the appropriate reduction in rents paid by operators to landowners. The amendment seeks to ensure consistency with the Government's previous indication that losses would be confined to something in the order of 40% maximum. I will confine my comments to that point.

When the Government reformed the code in 2017, Ministers indicated that, although landowners would lose out overall, they could expect to receive some 60% of the sum to which they had become accustomed. As we have heard in this debate, losing 40% of proceeds, despite exactly the same access rights being granted to operators, is quite a situation to contend with. As discussed at Second Reading, cases have been cited where reductions reached some 90%.

I am aware that the campaign group Speed Up Britain has objected to the quoted figure of 90%, citing industry figures that show an average rental reduction of 63%. However, even that is substantially higher than the 40% promised by the Government, which has led to many churches, village halls, sports clubs, farmers and even hospitals scratching their heads, trying to make sense of the situation.

We all know that we need the infrastructure; that was made clear by the noble Earl, Lord Devon. We want that infrastructure quickly, but we also want an appropriate balance of the rights and responsibilities of both telecoms operators and landowners. It is not a

[Baroness Merron]
convincing argument that lower rents automatically mean higher investment in infrastructure. I am sure that is a discussion we will return to during the eighth group for debate today.

Our Amendment 21 is but one suggestion and the noble Earl, Lord Lytton, has brought forward a number of his own. I am grateful to the noble Earl for bringing his expertise to bear in addressing these issues. I certainly hope the Minister will engage in his usual considerate way with all the propositions put before the Committee. I also appreciate the amendments brought forward by the noble Baroness, Lady McIntosh, who is also seeking to ensure fairness and balance between the parties.

So I hope the Minister will address a point that he made at Second Reading and that is relevant today. He suggested that rent reductions were likely to be compensated for—not directly but as a matter of degree—by funds allocated under other DCMS schemes. It would be helpful if he could provide the figures to back that up; I realise that that requires considerable detail, so he could perhaps respond not today but subsequently, in writing.

The list of case studies grows day by day and, given this, many people are asking why the Government did not stand by their original commitment to a maximum reduction of 40%. I hope that the Minister will consider the amendments and respond to that question.

6 pm

Lord Parkinson of Whitley Bay (Con): My Lords, as we expected, we have had a lively and somewhat polarised debate on this group, which goes to the heart of quite a lot of what the Bill seeks to do. A number of amendments in it relate to the valuation regime, and they all seek to do slightly different things. I will certainly try to address all of them, although not in numerical order.

However, it might be helpful if I first set out some details about the current position. In England and Wales, agreements can be renewed in two different statutory ways: one is contained in part 5 of the code and the other is in the Landlord and Tenant Act 1954. The position in Northern Ireland is similar: agreements can be renewed using either part 5 or the Business Tenancies (Northern Ireland) Order 1996.

The main difference between the procedures at present is that they have different frameworks against which the financial terms of a renewal agreement are calculated. In the code, the consideration paid to a landowner is calculated on a no-network basis, as was helpfully explained by the noble Earl, Lord Lytton. But this framework does not currently apply to agreements renewed under the 1954 Act or the 1996 order, where rents are calculated on a different basis. The Government do not believe that maintaining this difference is right.

Clauses 61 and 62 will ensure that the approach taken to rent calculation for renewals under the 1954 Act or the 1996 order is consistent with the approach in the code. This means that the same approach will be applied throughout the United Kingdom, reducing disparities in deployment costs in different jurisdictions which could otherwise contribute to a digital divide.

Before turning to the specific amendments, I will pick up a few points raised by noble Lords. The noble Earl, Lord Lytton, mentioned the Central Association of Agricultural Valuers—CAAV—with which DCMS has engaged closely, both in developing the 2017 reforms and in our subsequent discussions regarding their implementation. We welcome the CAAV's input on these and the wider initiatives aimed at embedding better working practices in the negotiation and completion of code agreements. I am grateful to the noble Earl for sending on further points from the CAAV; these were rather lengthy and detailed, and I do not think that it would be helpful, or do them justice, to discuss them in detail today, but I would be happy to write to him on those matters and copy other noble Lords in.

I welcome the noble Earl's comments on the code valuation framework and ordinary market valuation principles, and I bow to his expertise in this field. I confirm that DCMS engaged closely with the Royal Institution of Chartered Surveyors in developing the 2017 reforms to the code. In 2019, it produced a specific guidance note for surveyors working in this field, and I understand that this makes clear the relationship between the code valuation framework and the red book global standards of valuation.

The noble Earl referred to independent infrastructure providers, which have a key role to play in the delivery of robust and resilient networks. They invest substantially in the deployment of new apparatus, which can then be shared by multiple operators, expanding coverage and extending choice for consumers. Their role was lauded during the passage of the 2017 reforms, both in another place and in your Lordships' House, where the noble Lord, Lord Foster of Bath, referred to them having

"some of the most productive telecommunications facilities in the country".— [*Official Report*, 31/1/17; col. 1181.]

So I was a little surprised to hear concerns expressed today about the possible disadvantages of this important part of the sector, but I would certainly be happy to discuss those concerns further if noble Lords would like to.

On whether independent infrastructure providers are passing on savings, we are not aware of situations where such providers who have secured new arrangements following the 2017 reforms have failed to pass on any decrease in costs to operators using their installations. It must be remembered that many independent infrastructure sites will still be subject to pre-2017 agreements and, as such, there may not yet be any consequential savings to pass on.

It has been suggested, including by my noble friend Lord Vaizey in his intervention on the noble Earl, Lord Lytton, that the code creates the potential for intermediaries to acquire sites cheaply, using the code valuation framework, and then to charge operators excessive sums to use them. It is important to note that, if such an intermediary has not installed apparatus on the land but is the occupier of the land for the purpose of the code, it would be open to a code operator to seek code rights to do so from that party. However, if the intermediary invests in infrastructure on the land, we think it right that they can agree

commercial terms for the use of it with the operators. Naturally, if competitive terms are not offered, operators will go elsewhere.

My noble friend Lord Northbrook and the noble Lord, Lord Clement-Jones, referred to the report by the Centre for Economics and Business Research. I am conscious that we have much to cover, so I do not intend to discuss this in detail, but I will say that, generally, DCMS is aware of it and its findings. We note that it was commissioned by the Protect and Connect campaign, and our understanding is that it focused primarily on the valuation regime, rather than providing a broader view of how the code is working in practice, which is what DCMS aims to do in its engagement with interested parties and through the consultation that has informed the development of the Bill.

Turning to the amendments, I will first address those tabled by the noble Earl, Lord Lytton, the noble Lords, Lord Clement-Jones and Lord Thurlow, and my noble friend Lady McIntosh of Pickering, which relate to paragraph 24 of the code. These go to the crux of the argument regarding the valuation framework. Before the 2017 reforms, the amount of rent payable reflected the value of the site to the operator. Site providers were therefore potentially able to charge an operator thousands of pounds a year to house apparatus on small pieces of land that were otherwise of low or nominal value.

The 2017 reforms were intended to rebalance the relationship: operators would pay a fair rent that reflected the true value of the land, and site providers would remain able to receive additional sums to cover any loss or damage incurred as a result of the operator exercising code rights, or that may be incurred in future, including professional fees. To address a point made by my noble friend Lady McIntosh, those payments should take into account any alternative uses that the land may have and any losses that may be incurred, among other things.

As we have said throughout, and even following the helpful conversations that I have had with a number of noble Lords so far on the Bill, we continue to believe that this balance is right to ensure the cost-effective and efficient delivery of robust digital services. As was noted today, these are becoming ever more necessary in our daily lives, as was thrown into sharp relief during the pandemic.

In his admirably pithy contribution, the noble Lord, Lord Fox, asked whether we believe that incentives still exist for site providers and landowners to enter into agreements. We think that they do. We have been told that the amounts offered by some operators are now so drastically reduced that landowners are less willing to let their land be used, but we maintain that the 2017 valuation provisions created the right balance between the public need for digital communications and landowner rights. We were aware that the valuation framework would result in reductions to rental payments but, in our view, prices being paid for rights to install communications apparatus before 2017 were too high. With digital communications becoming increasingly important, that needed to be addressed.

The code still makes separate provision for landowners to recover compensation for loss or damages. We think that, taken together, the provisions on consideration and compensation mean that landowners should receive a fair payment for allowing their land to be used, despite the fact that overall amounts will normally be lower than they were before the 2017 reforms—but we believe that the incentive remains.

Amendment 23 seeks to amend the valuation framework, moving away from the no-network approach that was introduced in 2017. The amendment appears to us to be a retrograde step, taking the market away from the clear approach established by the 2017 reforms and moving back towards the status quo ante. This could reintroduce some of the problems that were addressed by those reforms, including a return of payments that were unfairly too high, and leave us with a dual approach to valuation on the renewal of agreements, potentially causing confusion for operators, site providers and courts. The Government, therefore, cannot accept this amendment.

Amendments 26 and 27 both relate to agreements renewed under Part 5 of the code. Amendment 26 seeks to phase in rent reductions in these cases through a two-year grace period during which site providers would continue to receive consideration at the previous level. Amendment 27 looks to introduce a tiered phase-in period that would last for three years. The code valuation framework was introduced in 2017 and there has been much publicity on how this has affected payments to landowners for hosting telecommunications apparatus on their land. I believe it has been relatively clear to interested parties for a substantial period that the market has changed significantly, and that, in most cases, reductions in rental payments are to be expected. For this reason, the Government do not think that it is necessary for additional time periods to be given, when the effect will be to increase operational costs and to slow down the rollout of 4G and 5G coverage that the population rightly wants and expects.

Amendment 25 would require the Secretary of State to issue guidance on how paragraph 24 of the code should be interpreted and the maximum permitted reduction in consideration. Statutory guidance can certainly play an important part in ensuring legislative measures achieve their intended aims, but this must be considered on a case-by-case basis. We have concluded that guidance in this area would not be appropriate; code agreements cover a hugely diverse range of circumstances, and the code sets out a clear framework approved by Parliament, which establishes valuation principles which can be applied across different scenarios. We think it is right that, when disputes arise, further interpretation of these principles should rest with the courts. Indeed, the courts have been doing this since the reforms were introduced in 2017 and a body of case law is now well established. We believe that introducing statutory guidance on valuation at this stage would undermine the progress that has been made in that respect, introducing uncertainty and confusion, not least because the status of the proposed guidance from the Secretary of State, and the degree of influence it would have on the courts, is unclear.

[Lord Parkinson of Whitley Bay]

Instead, we consider it much better for a court to be able fully to consider all the circumstances of a particular given case and all the relevant evidence before it, and then to act in accordance with the statutory framework set by Parliament. For the same reason, we do not think a statutory cap on rent reductions is appropriate; this would fetter the parties and, ultimately, the courts from proper consideration of all the relevant circumstances. It is also important perhaps to consider non-legislative action that can be taken to promote better relationships: as well as the steps taken in this legislation, there are non-legislative steps the Government are taking to ensure that the code works well in practice. For example, the department's Barrier Busting Task Force is holding monthly workshops with a broad range of groups with an interest in the code. Those workshops are attended by network operators, landowner representative groups and local authority representatives, as well as professionals and surveyors. The workshops aim to encourage greater collaboration in relation to code negotiations and agreements through identifying and implementing better ways of working. They touch on key issues which parties have raised with us; for example, stakeholders are currently working to agree on standard template wording for common clauses within code agreements.

Amendments 20 and 22 seek to disapply much of the valuation framework to agreements renewed under the 1954 Act and the 1996 order. The Government cannot accept those amendments, as they serve only to entrench the inconsistencies in the different renewal frameworks, which I mentioned at the outset. Were Amendments 20 and 22 to be accepted, some landowners would receive higher rental payments for longer. However, this would allow network costs to remain unacceptably high, penalising swathes of consumers and businesses who may face price increases for digital services, or may have to wait longer for the high-quality, reliable connections they need.

6.15 pm

Amendment 24 deals with pre-2017 agreements renewed under Part 5 of the code when they expire and seeks to cap any reduction in the subsequent rent imposed by a court at 40%. That is also what Amendment 21, tabled by the noble Baroness, Lady Merron, and the noble Lord, Lord Bassam of Brighton, would do. Generally, the Government's preference is for parties to have the ability freely to negotiate the amount payable for rights to install and keep apparatus on land. We have, therefore, specifically resisted arbitrarily limiting the amount of rent or consideration which is payable under these agreements. We think that the current scheme makes it clear that what is an appropriate amount may vary significantly from case to case, depending on the circumstances in play. Even where parties are unable to agree this figure consensually and a court imposes financial terms, the court has discretion to reach its own conclusions within the framework set out by the code, rather than being impeded by statutory rent controls. If the financial terms of these agreements were controlled in this way, we would have a regime that did not take into account the broader range of relevant circumstances which the court is able to consider. I suspect that this is something that site providers, operators and, indeed, noble Lords would all be keen to avoid.

As the noble Baroness and the noble Lord, Lord Clement-Jones, said, the amendment is based on the claim that the Government committed in 2017 that rent reductions under the code valuation framework would be no more than 40%. That has been promoted as a fact by lobby groups which wish to reverse the 2017 reforms. In reality, the Government made it clear in 2017 that the potential impact of those reforms was difficult to predict, given the essentially consensual nature of the market. Independent analysis referred to in the impact assessment which accompanied the 2017 legislation estimated that reductions could be in the region of 40%. However, this was by no means a government commitment, or even a target reduction, as has sometimes been suggested. If the amount by which rents can reduce on renewal is capped in the way proposed by this amendment, a dual market would potentially be created, with landowners hosting apparatus before 2017 able to seek higher sums than entirely new site providers. One can easily imagine operators vacating existing sites to seek new ones, purely to secure lower rents, with the consequential risks of disruption to services or reduced coverage while new sites are established.

The noble Baroness, Lady Merron, asked me to set out a bit more about the other sources of funding for community groups, youth groups, sports clubs and others which have benefited in recent years from rent, and I am happy to give her some non-exhaustive examples. Through the Youth Investment Fund, over the next three years, we will be constructing or refurbishing up to 300 youth facilities in parts of England which require levelling up, thereby extending opportunity for the next generation. To kick-start that programme, an additional £10 million will be spent this year in key levelling-up areas. In relation to sports clubs, the Government very much agree that sports and physical activity are crucial for our mental and physical health. We have provided an unprecedented £1 billion of financial support to such organisations during the pandemic. Since 2015, Sport England has allocated more than £1.5 billion to nearly 5,000 organisations across the UK. Furthermore, in the recent spending review, we announced £205 million to build or transform up to 8,000 state-of-the-art community football pitches and multi-use sports facilities across the UK. Earlier this month, we announced £30 million for PE teacher training and to open up school facilities to provide access to the wider community. That was in addition to a £30 million package to renovate 4,500 park tennis courts across the country.

My noble friend Lord Northbrook cited some case studies which, as with my noble friend Lord Vaizey, I suspect were prompted by the Protect and Connect campaign. It would not be appropriate for me to comment on ongoing negotiations or on the specific terms of an agreement that has been negotiated between two parties. However, what I would say in general is that rent is often only one part of any overall financial terms agreed. It is not unusual—indeed, it has been the department's experience—that case studies citing rent reductions may present a somewhat partial picture. Regarding behaviour during negotiations and the

respective bargaining positions of the parties, the Government have recognised site provider concerns and are introducing measures to encourage greater collaboration.

I have spoken at some length on valuation, but I want also to say a few words on the state of the market at the moment, which a number of noble Lords alluded to. It has been said repeatedly that the 2017 reforms have stalled the market, making landowners unwilling to enter into new or renewed agreements and reducing the pace of deployment. We expected an initial slowdown when the code valuation framework was introduced and while the market adapted, but we think that it is too simplistic to attribute changes in the market since 2017 solely to the valuation framework. The reforms in 2017 also made it easier for operators to share equipment, which will have reduced the demand for new mast sites to be built. The Covid-19 pandemic is also likely to have had an impact on the number of new sites commissioned, as telecommunications operators faced the challenges of unprecedented demand.

As we have heard in some of the contributions today, noble Lords have been contacted by a number of lobby groups and organisations that want to reverse the changes that were made to valuation. I know that the picture painted by some of those groups is of a market that is broken, stalled or in need of assistance and of a landscape full of litigation between operators and site providers with barely any consensual deals being agreed. I have to say that the information received by my officials from interested parties on both sides of the fence—operators and site providers—is remarkably different. They are told of a market that has settled down, where relations between operators and site providers are much improved and where consensual deals are the norm. As has been the case so far on the Bill, I am always happy to hear from noble Lords with examples to the contrary. We believe that the measures in this Bill will build on the situation that we are hearing about from interested parties—

Lord Northbrook (Con): I am sorry to interrupt the Minister. Would he be able to produce any written evidence of these improved relationships between landlords and operators for the Committee?

Lord Parkinson of Whitley Bay (Con): My letter that was sent just before Committee outlined some of the engagement that the department has had and listed some of the groups with which we have spoken. That goes some way towards that, but I will certainly see whether there is anything further that I am able to share with noble Lords in addition to that table, which was appended to the letter I sent yesterday.

As I say, we believe that the measures in the Bill will address the complex areas that have led to protracted litigation and emphasise the value of collaborative relationships between operators and site providers. I therefore invite noble Lords to withdraw or not to press their amendments in this group.

The Earl of Lytton (CB): My Lords, I thank the Minister for that detailed reply. I will obviously not try to cover everything he said, but just touch on one or two points.

The Minister referred to the RICS, and it is true that the RICS produced a guidance note in relation to code changes. It was of course produced in the light of those changes, rather than in an attempt to influence them, and it points out the strong likelihood of very low rents resulting from those changes. Of course, being a guidance note, it does not predict or advise on what the market outcomes are likely to be in practice. I have not had a moment to check, but it is my belief that the manual of valuation and appraisal—otherwise known as the Red Book—produced by the RICS and Institute of Revenues, Rating and Valuation, has made the valuation of mast sites an exception to the market value criteria within the Red Book. It is, if you like, a derogation from that market value principle.

I go back to the point that I made: you cannot have market value in the terms that I described it and the internationally recognised specification and then say that you disregard it and the matter gets to court. So what does that mean? You go to court because you can get it disregarded. Is that the way that the world functions? I am sorry, but I just do not get it—this is an oxymoron of a principle.

That apart, there still remains the fact that reducing rents to around about £750 or so per annum—if that is indeed what will happen, because all these things are hemmed in by confidentiality clauses so that the information does not get out, thus preventing any sort of transparency that would give rise to a market in those terms—calls into question the existence of willing participants, regardless of the valuation assumptions to the contrary. You can make all the assumptions you like, but the market will tell you what it is going to do. If you have people who are disengaged, then that is it.

The Minister is in denial that the market is moving towards, or is effectively at, a point at which it is bust. I hope that he will be able to produce some statistics to back what he says. While he says that, on one hand, the comments from organisations such as the CAAV may be regarded as apocryphal, I have difficulty in understanding that what he says his department is receiving is of any better or worse quality than that. We are in a land of the unknown, with people saying one thing and meaning another. We are effectively relying on a lack of evidence. That really is not good enough.

If we are getting to a stage where the market is not functioning, what then? How long will the Government wait before they decide that something needs to be done? And what will they do—more compulsion, more work for the law courts and legal profession, more time spent getting these masts in place and rolled out? I do not see it. I would really love to know what the greater vision is. The Minister referred to "greater collaboration"; I am sorry, but I do not see it. I see anything other than greater collaboration coming out of this. It takes two to tango—the old business about taking a horse to water may well apply.

I will not press these amendments and will withdraw them at this juncture; they can be resisted, but the real world outside will continue notwithstanding. It does not matter what sort of bubble you live in and what sort of vision you create—whether the commercial vision of code operators or the vision of what is happening

[The Earl of Lytton]
from the point of view of the department that wishes to defend the policy that it has had in place since 2017—the situation on the ground will work out the way that it will work out. There is no changing that any more than one can change the basic DNA of transactional analysis in property markets. I beg leave to withdraw Amendment 20.

Amendment 20 withdrawn.

Amendment 21 not moved.

Clause 61 agreed.

Clause 62: Rent under tenancies conferring code rights: Northern Ireland

Amendment 22 not moved.

Clause 62 agreed.

Amendments 23 to 27 not moved.

Clause 63: Compensation relating to code rights: England and Wales

Debate on whether Clause 63 should stand part of the Bill.

Baroness McIntosh of Pickering (Con): My Lords, I will speak to the stand part notice in my name, on which I am delighted to have the support of the noble Earl, Lord Devon, opposing that Clause 63 should stand part of the Bill.

The new sections inserted by Clauses 63 and 64 make provision for all code agreements, when renewed by court order, including those made prior to 2017, to be made on land valuation terms consistent with the 2017 code. The new sections will apply to England and Wales or to Northern Ireland only. These measures, I understand, were a response to the consequence of the 2017 ECC reforms on the treatment of certain expired code agreements that are up for renewal, as had been set out in the previous consultation.

Again, Clauses 61 to 63 expand the agreements covered by the Digital Economy Act 2017 to extend to areas previously exempted from the renewal procedures of the 2017 Act, specifically those covered by Business Tenancies (Northern Ireland) Order 1996 and the Landlord and Tenant Act 1954. The clauses also insert the valuation provisions of the code directly into the older legislation so that consideration of compensation for site owners under these agreements is calculated in a similar way to that under the code, as we have heard, leading to lower rents.

6.30 pm

I should like to strengthen the earlier argument of my noble friend Lord Parkinson by producing evidence that the rates are not being reduced. I have a copy of a letter from as recently as April this year from a member of the NFU to the NFU in, I understand, the north-east of England, from which I quote:

"Having ongoing first-hand experience of a Code renewal, I strongly support the NFU's effort to oppose certain changes put forward by the recent Product Security and Telecommunications Infrastructure (PSTI) Bill—to advocate for a greater balance of power between landowners and operators, and for the topic of land valuation to be urgently reviewed. Otherwise the PSTI Bill, which is effectively a cranking up of rights for operators but without a review of how telecoms sites are now valued, will simply serve to harm the market further as it weakens the already limited protections that site providers have under the existing legislation."

I think that directly shows that even as recently as two or three months ago, a member of the NFU lamented the fact that rents are, as my noble friend Lord Northbrook said, radically reduced to a level not previously anticipated, I believe, by the Government, to the Minister's certain admission. I therefore press my noble friend, as I believe Clause 63 goes to the heart of the change imposed since 2017 and how radical the reduction will be. I understand that the tribunal to which the application for the order will be made will now be an upper-tier tribunal—I should like that confirmed—but new subsection (2) states:

"The court may order the tenant to pay compensation to the landlord for any damage or loss that has been sustained or will be sustained by the landlord as a result of the exercise of any of the code rights conferred by the new tenancy."

I just want to be clear about precisely what the extent of that compensation will be. Can we assume that it will be radically less than was previously the case? Does the Minister accept that, rather than increase the ability for faster speeds—greater connectivity for broadband and wi-fi, and a better signal for mobile connections—it will have the perverse effect of achieving the complete opposite? I press my noble friend on what exactly the extent of the compensation will be. In the event that the compensation is radically reduced to that previously intended, do my noble friend and his department envisage revisiting this clause at a later stage?

Lord Clement-Jones (LD): My Lords, I shall speak to Amendments 28, 29, 30, 31, 32, 33 and 34. This may well be another part of the Bill where we have differing views about the balance to be struck between site providers and operators, and whether the Bill's provisions will actually hamper the rollout of 1-gigabit connectivity.

In the consultation response that accompanies the Bill, the Government stated explicitly that agreements could not be changed by court order during the course of a contract, but changing the definition of a person able to grant code rights to an operator is likely to allow the cancellation or modification of agreements that were agreed in good faith and still have years to run and impact every single relationship between site owners and operators. This is because of the changes made by Clause 67, which do not limit an application to a situation where the existing agreement has expired. Telecoms companies, the operators, will now be able to choose which method of renewal or modification they wish to use. Moreover, site owners are unable to remove operators from their land if negotiations break down. Given this, it is likely that operators will seek to review all contracts they have on their books, allowing for retrospective application of the changes.

Site owners and operators should have certainty of contract. If an agreement has been reached, the terms of this should be settled and respected until the end of the agreement. If they are to be changed, it should be

by mutual consent and commercial negotiation rather than by this type of intervention. Rents should be changed only from the point at which courts have made a decision, respecting existing contracts. Site providers are routinely being taken to court by operators to reduce the prices they pay, using, as we have heard, the changes made in 2017 that inserted a no-scheme or no-network valuation methodology into the code. This tactic is used to drive down rents to the lowest possible level.

The Bill gives operators sweeping new powers, which would mean that when the parties to an expired agreement are unable to agree on the terms of any renewal agreement, operators can seek modified terms to code agreements on an interim basis, including reducing the level of rent they pay. This change is likely to lead to a substantial number of claims by operators as a matter of course, regardless of the state of negotiations in individual cases. If an operator is able to fast track a no-scheme reduction, there is little incentive to reach a consensual deal at a potentially higher level. What is more, when a case does get to court and a renewal agreement is subsequently imposed, the court will be able to retrospectively backdate any new financial terms of that code agreement to the date that an initial notice was made, not the date of a court judgment. Some of these notices could have been served years ago, leading to sudden, huge repayments from site providers to operators. This retrospective application of court-ordered rent reductions cuts against legal norms and a common understanding of fairness.

Many site providers already face severe financial pressure as a result of the 2017 reforms, as we have heard. This could lead to unnecessary financial difficulties or even bankruptcies, given the huge disparity between the market-based rent they have been receiving and the rent obtained through the courts. These amendments, however, are not intended to prevent courts imposing rent reductions in line with the workings of the code. In all situations, operators would still be able to obtain savings on rent payments. These are merely trying to ensure that these savings are not imposed retrospectively on contracts entered into in good faith by site providers.

Amendments 28, 29 and 32 to 34 aim to address in its entirety the issue of backdated payments made on the basis of interim orders. Amendment 28 would prevent courts retrospectively imposing rent reductions made on the basis of no-scheme valuation. Amendment 29 would mirror the impact of Amendment 28 of removing the risk of backdated payments being imposed on site providers by ensuring that operators are unable to seek interim orders simply to agree a lower rent. Amendment 34 is intended to apply to sites governed by the Landlord and Tenant Act 1954.

Amendment 30 would ensure that where interim orders are made and a consideration is imposed on the basis of the code, the retrospective application of the reduction in rent achieved does not automatically go back to the time at which the initial notice was made. Instead, it would go back to that point or a maximum of 12 months, whichever is the shorter.

Finally, Amendment 31 would ensure that where interim orders are made and a consideration is imposed on the basis of the code, the cumulative total of the retrospective application of the reduction in rent achieved is limited to £1,000.

These amendments are all designed, as I mentioned in opening, to redress the balance and make sure that this kind of retrospectivity is not taken advantage of by the operators against the site providers. I hope they commend themselves to the Committee.

The Earl of Devon (CB): My Lords, I rise briefly to support the noble Baroness, Lady McIntosh, once more, and the noble Lord, Lord Clement-Jones. I note in response to the Minister on the last group of amendments that I am not parroting the words of lobby groups; I am reporting personal experience to your Lordships, and that of people personally known to me. I am not a mouthpiece of some body.

On the prevalence of litigation, the Minister pointed out in his last summation that it may be for the courts to provide definition. The Supreme Court ruled on three separate cases last week; clearly, there is far too much of this renewal debate going on in the courts system—that is coming from a litigator. The Supreme Court should not be ruling on three cases in one go. It should be possible to handle this in the marketplace, as the noble Earl, Lord Lytton, said. It is indicative of a broken system.

I reiterate in the context of this further valuation group a question I posed before that has not yet had an answer. Given that landowners have such a plethora of tradeable ecosystem services to provide from their landscape, why on earth would they commit these days to a telecoms lease, with all the nefarious impacts of these amendments—the access rights that have been given and the heavy burden of renewal requirements—when they have so many other options to consider? I would like an answer to that point.

The Earl of Lytton (CB): My Lords, I support Amendments 28, 30, 31 and 34, to which I have added my name. I also express my support for the clause stand part amendment spoken to by the noble Baroness, Lady McIntosh. I have very little to add to the reasons the noble Lord, Lord Clement-Jones, so ably set out. The outcome of the Electronic Communications Code 2017, especially its retrospectivity, as he outlined, is to destabilise relationships. There is no question about that. These commercial relationships are important, as I set out earlier, because they relate to the rollout, consistency and security of site provision for these masts on which 4G and 5G will ultimately rest.

With a level of, say, £750 per annum—I believe that figure has been much put about—the other provisions of the lease may be the only things of real value left to the provider. The money, relatively speaking, may be a row of beans. If those provisions are set aside, the provider does not even have a reduced rent which the Government or code operators discern as being fair because that is the only use of the land—it completely annihilates the rest of any benefit in the deal. At these levels, that marginal element will be significant. I said earlier that the balloon has gone up; I suspect the message is being received loud and clear.

Lord Northbrook (Con): Does the noble Earl not think it most unusual for commercial contracts to be interfered with in this way? Is it not almost unprecedented to have such retrospective actions on them?

The Earl of Lytton (CB): There have been instances where contracts of all sorts have been interfered with by government—for example, the Landlord and Tenant Act 1954. There have been instances where rent control came in, nearly always for social reasons. I always like to compare the Rent Acts and rent control and security of tenure, which caused the collapse of the private rented sector for about 25 years, and the Landlord and Tenant Act 1954, where the contracts were largely left in place and statutorily continued, but at a market rent and the market was not interfered with. By and large, it worked and investment continued. Contrast and compare those two situations.

6.45 pm

There are instances, but I cannot think of another previous instance where large, successful companies—in which, admittedly, the Government have made a substantial investment and which are not primarily constituted for the purpose of providing an essential good to the public in the same way as gas, water, electricity and drainage, but do provide the bulk of data for ongoing commercial purposes—have had a Government step in to interfere with their arrangements. In these circumstances, the Government have very much done so at their peril, convinced, I fear, by the representations of the big telecom giants.

Lord Northbrook (Con): My Lords, I will briefly support the clause stand part amendment and the amendments in the name of the noble Lord, Lord Clement-Jones. They appear entirely sensible, especially the restricting of rent reductions to the date on which a court order is made, rather than being retrospective. Like the noble Earl, Lord Devon, I am not a lackey of APWireless and have done my own negotiations with my solicitors on my contract, which were far from amicable.

Lord Bassam of Brighton (Lab): My Lords, I shall be very brief. In general, I support the arguments of the noble Lord, Lord Clement-Jones. The arguments on retrospectivity, which the noble Earl, Lord Lytton, addressed, are sound; it surely cannot be right that we have a change that will penalise landlords in the way this does. A reform could lead to a sudden and significant sum of money being owed to telecoms operators by site providers. Some of those who provide sites could even end up in a form of bankruptcy, particularly if courts make a decision that goes back to a point at which the notice was served. Large sums of money will be involved.

Amendment 34, which we have signed, would ensure that interim rent payments could not be backdated to that point, prior to a court order being obtained. That would mitigate the risks of backdated payments causing site providers severe or significant financial difficulties. That is a reasonable and fair principle which should find its way into this legislation. We support the other amendments from the noble Lord, Lord Clement-Jones, in generality as well.

Lord Fox (LD): My Lords, even more briefly, the Minister said in responding to the last group that the Government are clear that the cost of rent is too high and the purpose is to drive it down. In different comments, he stated that he felt these costs will eventually find their way to the consumer—I doubt that, but time will tell. What is the purpose of the retrospectivity and who will benefit? When will I receive my refund on my mobile phone bill for the retrospective repayment of this money? The answer is that I will not, so who will benefit from this and why are the Government causing it to happen?

Lord Sharpe of Epsom (Con): I thank all noble Lords who have spoken to this group, which concerns both compensation and backdated payment. I shall start with the former. One of the main aims of the Bill is to ensure that where an agreement to which the code applies is renewed, there is a consistent approach in calculating the financial aspects and terms of that agreement.

Before I get on to the details, I will answer my noble friend Lady McIntosh, who strayed back into the general valuation principles. I note that my noble friend Lord Parkinson has committed to see what else can be distributed in terms of the evidence that she seeks. I reassure her that we have had extensive engagement with the NFU, but I will write to her with details of that.

The last group dealt with how Clause 61 does what I have just described in England and Wales, through changes to the 1954 Act that replicate the code valuation regime. This means that, when agreements are renewed under the 1954 Act, the new rent will be calculated in the same way as agreements renewed under the code. However, the 1954 Act deals solely with the rent that a landowner should receive from an operator. Under the code, this is not the only sum landowners can receive. The code also allows landowners to receive compensation from an operator. This compensation stands separately to the "rent" or consideration payable, and should cover any loss or damage resulting from the code operator exercising the rights that have been agreed or imposed.

There is no equivalent right to recover compensation within the 1954 Act. Clause 63 therefore inserts provisions into the 1954 Act that reflect the code provisions on compensation. This clause ensures that the amounts that landowners receive in compensation will be calculated in the same way, regardless of which statutory renewal mechanism is used and where in the UK that agreement was entered. Although the compensation provisions we are introducing will directly apply only if a renewal agreement is imposed by the court, it is inevitable that consensual negotiations can—and should—be influenced by the terms that might be imposed in those circumstances. This will influence consensual negotiations for agreements regulated under the 1954 Act, through which the parties can make adequate provision for compensation.

It was always the policy intention that the compensation provisions in the code should inform consensual negotiations for compensation in this way, and the same principle should apply to compensation provisions for the 1954 Act. We therefore want Clause 63 to stand part of the Bill.

Before I get on to the various amendments, I should say that the noble Earl, Lord Devon, referred to case law, on which I will expand a little. The courts have

dealt with various points in connection with the Electronic Communications Code and the Landlord and Tenant Act 1954 and the matters we are discussing, and I do not think it would be necessarily helpful to discuss them in detail. We are happy to write to noble Lords or arrange a meeting if there are particular matters relating to case law that they would find useful to discuss, including in respect of the key judgment that was recently handed down by the Supreme Court, which is being considered carefully by department officials and legal advisers at the moment.

The Earl of Lytton (CB): I ask the Minister to consider what happens if a contract under the 1954 Act contains a provision in relation to not increasing the height of a mast, or to an area where a mast operator is allowed to control the growth of vegetation—trees in particular—but then the operator demands rights to raise the mast, thus presenting a degree of visual intrusion to the farmhouse or whatever it happens to be. In a case I encountered, after 20 years of trying to establish a shelter belt at 1,400 feet up on Exmoor, the contractors for EE demanded to cut a swathe through the middle of this to get line of sight with another mast which was not in contemplation at the time the agreement was entered into. How would such an inconvenience be quantified in market terms? I suggest that there is no way of dealing with those sorts of situations under the code. The operator would simply turn round and say, "You've suffered no mercantile loss, and if your trees blow down we'll give you a contribution towards re-planting them—and you've no right to a view anyway, so tough." Could the Minister explain how he thinks those non-market aspects are going to be dealt with?

Lord Sharpe of Epsom (Con): The noble Earl, Lord Lytton, raises some very specific and technical points, if I may say so. I am afraid I am going to have to write to him.

I turn to Amendments 28 to 33, tabled by the noble Lords, Lord Clement-Jones, Lord Fox and Lord Blunkett, and the noble Earl, Lord Lytton. These seek to amend Clause 67, which relates to interim orders where an agreement is being renewed under part 5 of the code. Paragraph 35 of the code covers situations where an agreement to which part 5 of the code applies has expired or is about to expire, and the parties are unable to agree whether that agreement should be terminated or what the terms of any new agreement should be. In those circumstances, proceedings may be issued so that a court can decide what terms should be imposed.

Such disputes can take time to be determined. The provisions in Clause 67 which amend paragraph 35 of the code enable either party to ask for an interim order in relation to any term of the current agreement. The benefit of this is that specific issues can be dealt with at a much earlier stage of the proceedings. The clause gives the court more flexibility than currently contained in paragraph 35 of the code, enabling it to look at situations where a party needs an urgent change to any term of their agreement. An example of this is where an operator needs amended terms to allow it to upgrade an existing site, to improve capacity and coverage for consumers. It also allows an operator to ask for the financial terms of the agreement to be reviewed at this interim stage. This ensures that the code valuation framework can be applied at an early stage in the proceedings, which may speed up negotiations on other areas in dispute.

It is the financial terms that the court could impose that have prompted the proposed amendments to Clause 67. These amendments seek to restrict an operator's ability to apply for interim financial terms to be imposed, and fetter the discretion of the court when deciding them. The Government think it right that an operator can make an application for interim financial terms to be imposed, irrespective of whether other interim terms are sought. Allowing this to happen means that an operator can benefit from the code valuation framework at an earlier stage. This should give operators more capital to invest in the expansion and upgrade of their digital networks, which is of huge benefit—

Lord Clement-Jones (LD): The Minister is saying that it is retrospective and therefore exactly the effects that I mentioned will take place—that a contract can effectively be torn up.

Lord Sharpe of Epsom (Con): I am about to get on to the various backdating aspects of this, so I hope that will answer some of these more specific questions.

I think I got to this being of huge benefit to both business and consumers. There are concerns about the backdating of the consideration which the court may impose at this interim stage, and that this may cause site providers financial hardship. Clause 67 provides that the court may backdate the interim terms only from the date of the application. It is anticipated that these applications will be dealt with quickly by the courts. The Government intend to make changes that will assist in the resourcing of code disputes, particularly in light of other changes made by the Bill. For example, the Government intend to amend regulations so that, in England and Wales, court proceedings on code disputes can be commenced in either the Upper Tribunal Lands Chamber or the First-tier Tribunal. Currently, proceedings can be commenced only in the former, which has only two regular judges, while the First-tier Tribunal has over 100 who consider a range of property law disputes. This will lend much more flexibility to the Courts & Tribunals Service in its handling of code disputes.

Lord Clement-Jones (LD): My Lords, I am sorry to intervene again, but of course I will not be responding at the end of the group. The Minister is saying that the whole idea is to get these hearings as quick as possible, so that the site provider is prejudiced as quickly as possible, but it all depends on the availability of lawyers by the sound of it, which is a somewhat tenuous argument.

7 pm

Lord Sharpe of Epsom (Con): As my noble friend the Minister has pointed out, lawyers do well whatever happens. I am coming on to expand a little more on the protections for site providers, if the noble Lord will please bear with me.

[Lord Sharpe of Epsom]

The time between the making of the application and it being determined should be relatively short. Officials will be working closely with Ministry of Justice counterparts and members of the judiciary to ensure that the right processes and so on are in place to support this. The landowner will be on notice from the date of the application that some of the amounts received from the operator may have to be repaid at a later date and will be able to plan accordingly. We hope that this will alleviate concerns.

Finally, Clause 67 gives the court discretion as to the date from which the interim order may have effect, providing that the court may provide for the order to have effect from the date of the application for the order. We do not believe there is the need to impose limits on what the court can decide, as it is already able to take into account what the effect would be on the site provider if consideration payments were backdated. Interim applications are usually heard quickly, and therefore the likelihood is that rent will be backdated only for a small amount of time.

The impact is potentially much greater in cases where the agreement is renewed under the 1954 Act, where interim rent can be backdated to the earliest date on which the tenancy could have been terminated where the landlord serves notice, and the earliest date on which the new tenancy could have begun where the tenant serves notice asking for a new tenancy. We have heard from stakeholders that, under the 1954 Act regime, some landowners have faced large claims from operators in respect of overpayment of rent where a lower rent has been backdated. We are listening to those concerns, and we will consider this carefully before the measures in the Bill are brought into force. Should we consider that something specific is required, this can be taken into account when developing any transitional provisions in respect of the Bill.

Lord Clement-Jones (LD): First, is it the case that the Bill will be changed on Report, or are we talking about a new piece of legislation? Secondly, have the Government made any estimate of the number of cases that will now be brought as a result of this change?

Lord Sharpe of Epsom (Con): I am afraid that the answer to both of those questions is that I do not know. It would be remiss of me to anticipate the sorts of concerns we are listening to and the subjects they may raise. I will have to write to the noble Lord on that.

Lord Fox (LD): Sorry to labour the point, but the Minister just introduced the concept of transitional provisions. Where are these transitional provisions made clear? How will we know what they are going to be? Where will they be planned? Are they coming through by statutory instrument, or are they just going to be sprung on us by the department?

Lord Sharpe of Epsom (Con): I read my brief very carefully, and I said "any transitional provisions in respect of the Bill"—I did not say that there will be transitional provisions—after listening to the various concerns I just outlined.

I now turn to Amendment 34 tabled by the noble Lords, Lord Clement-Jones and Lord Fox, the noble Earl, Lord Lytton, and the noble Baroness, Lady Merron. This is an amendment to the 1954 Act which seeks to prevent interim rent being backdated where an agreement is renewed under that statute. As we have discussed when talking about Clauses 61 and 62, it is the Government's intention that the various statutory mechanisms for the renewal of agreements to which the code applies is as consistent as possible, and this amendment would increase inconsistency.

First, the amendment would create inconsistency within the 1954 Act itself. The ability to seek backdated payments of interim rent would be prevented only where the site provider had given notice to the operator under Section 25 of the Act. Where an operator had served notice under Section 26 of the Act, the ability to seek backdated rental payments would remain. Secondly, it would create inconsistency between the 1954 Act and the code. Clause 67 will allow payment of a modified rate of consideration to be backdated to the date of the application, whereas I understand that the noble Lords' intention is to prevent rent from being payable at the backdated interim rent rate. It is difficult to justify such inconsistency.

Finally, the ability to seek an interim rent which is backdated is not a new concept. The parties would have been aware of this when entering into those agreements to which the 1954 Act applies. There is always a risk that the market will have adversely changed between the date on which the agreement was entered into and the time when the agreement is ready for renewal, and that the interim rent will be less than the amount currently paid. I appreciate that this may be exacerbated by the imposition of the code valuation framework on these agreements, but the Government will look at this impact when drafting any transitional provisions.

Absolutely finally, the point made by the noble Lord, Lord Clement-Jones, about picking and choosing, was covered by my noble friend Lord Parkinson on the first day of Committee in relation to Amendment 17, but if there are any outstanding questions on that, we would be very happy to discuss them separately. In answer to the question from the noble Earl, Lord Devon, about general valuations, my noble friend will deal with that in the next group. Under the circumstances, I hope that noble Lords will not press their amendments.

Baroness McIntosh of Pickering (Con): I am most grateful for the debate we have had, and I hope that my noble friend will look warmly on the amendments that were so ably spoken to by the noble Lord, Lord Clement-Jones. I have to say that it was rather amusing, being a lawyer, to hear that this would be a good opportunity for lawyers. I would not have thought that would be something the noble Lord would pass down. I look forward to continuing the debate.

Clause 63 agreed.

Clauses 64 and 65 agreed.

Clause 66 agreed.

Schedule agreed.

Clause 67: Arrangements pending determination of certain applications under code

Amendments 28 to 33 not moved.

Clause 67 agreed.

Amendment 34 not moved.

Clause 68: Use of alternative dispute resolution

Amendment 35

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

35: Clause 68, page 58, line 38, leave out from "must" to "use" in line 39 and insert "attempt to make"

Member's explanatory statement

This amendment would mandate the use of Alternative Dispute Resolution schemes to resolve disagreements before either party could ask for a consideration to be imposed by the court.

Lord Clement-Jones (LD): My Lords, I should just say that it is not my role to make friends among my colleagues in the legal profession; it is to try to get the right result out of the Bill.

I have just one observation on the previous group. It is interesting to note that the Government have some wonderful ways of resisting amendments. They say that it would be inconsistent with the Bill, but they are perfectly capable of passing amendments of their own which are not fully consistent, because that is what exceptions are—they are there because there would otherwise be an injustice.

The site providers are making and have made a very strong case that they need better protection against abuse by operators. Throughout this Bill, we are of course very mindful of the balance between site providers and operators. The Government believe that the provisions of the Bill are putting this in order, but many of us believe that they are putting it in disorder as a result. The Protect and Connect campaign has come up a number of times already during the course of debates on the Bill. It surveyed 116 site owners that host mobile telecoms masts and found that 23% have suffered damage to their property; 35% have had their sites upgraded without permission; 46% have found telecoms companies on their land without warning; and 50% have been threatened with legal action. That does not sound like very good behaviour on the part of the operators. In this context, Clause 68, on the alternative dispute resolution, is of great importance. It sets out the process by which an operator can request rights to land from an occupier, which will now include information about alternative dispute resolution.

The clause however requires operators only to "consider" the use of ADR for resolving disputes with site owners where "reasonably practicable". It also permits courts to take an operator's "unreasonable" refusal to consider ADR into consideration when deciding on remedies during a dispute. The ADR process that the Government are providing is therefore non-binding. Telecoms companies need only show that they have considered it in order to avoid costs.

To address this point, the Government should make ADR compulsory for any dispute and issue guidance about reasonable terms. Properly enforced, it would reduce the operators' reliance on litigation through the courts and encourage better behaviour by both parties. It is important that there is greater onus on the operators to make use of this process, because the terms of the code are so heavily weighted in their favour and their ability to use the courts in general is far greater, befitting their corporate size compared to the average site owner. Given the potential benefits for both parties and the wider public interest, it is difficult to see the case for this process remaining purely advisory.

As regards Ofcom's guidance, Ofcom has long provided guidance on the ECC, but to date it has not provided any real support for site owners experiencing problems. Amendment 39 is intended to force operators to give greater weight to Ofcom's code of practice, which it is currently obliged to prepare under paragraph 103(1) of the ECC. Tribunals would be obliged to take into account an operator's compliance, or lack thereof, when making costs awards. The purpose of this is to render Ofcom's code of practice meaningful, rather than just optional guidance that is all too easily disregarded.

Amendments 40, 41 and 42 aim to address the issue of non-compliance with Ofcom's code of practice. It is right that operators are held to standards in how they treat site providers, including measures such as the provision of information or the conduct of negotiations. However, there is a significant body of evidence that, despite the code of practice, site providers are not being treated fairly or with respect by the operators from whom they rent their land. The solution to the problem of non-compliance with the code of practice is to strengthen these measures, yet Ofcom has failed to invest adequately in this area and the Government have spent too long asking the industry to solve its own problems through stakeholder workshops, rather than showing direct leadership. These amendments will collectively place obligations on both operators and site providers. The intention here is not to place an asymmetrical set of requirements on either party in these negotiations or to these agreements.

Amendment 40 would create an obligation to follow the code of practice. It would create a maximum financial penalty for non-compliance of £1 million and require Ofcom to have regard to prior history of non-compliance when assessing the size of any penalty imposed. This amendment would provide a strong incentive for adherence to the code of practice. Moreover, it would require a previous history of poor behaviour to be taken into account. This means that operators or site providers would not be able to disregard the code of practice just because they think they can pay the fine, and poor behaviour would have increasingly impactful consequences. Amendment 42 requires that Ofcom include in its code of practice guidelines on when operators must pay compensation to those affected by a failure by the operator to adhere to the code of practice.

If the Government are serious about promoting consensus-based agreements and getting this market working again, having clear and enforceable guidance

[LORD CLEMENT-JONES]
on the standards expected by the parties is essential. This is what these amendments try to achieve. I very much hope that the Minister will take all the amendments and their intention on board.

Baroness McIntosh of Pickering (Con): My Lords, I shall speak to Amendments 36, 37, 38 and 39, and the proposal that Clauses 68 and 69 do not stand part of the Bill. I am delighted to have the support of the noble Earl, Lord Devon.

I am slightly stung by something my noble friend the Minister said earlier: that perhaps we are all paying too much heed to lobbyists. I think my noble friend knows me well enough now to know that I am of particular independence of mind. However, when an allegation is made by those seeking to brief us on the Bill that the Bill has swung too heavily against the interests of the landowners—of which I am not one; I have no particular interest in this other than as a consumer, as I said—and too heavily in favour of the operators and networks, that is something that I think he would expect us to explore. It is something we are encouraged to do when we are introduced. The Reading Clerk reads out that we are given a seat, place and voice in the councils, assemblies and Parliaments to enable us so to do. I take those responsibilities very seriously indeed.

7.15 pm

Clause 68, as it stands—this is something that I support, and it seems to be welcomed generally—puts forward a voluntary alternative dispute resolution mechanism to assist in negotiations between operators and site providers. That is generally supported by many of the landowners and farm organisations, such as the CLA and NFU—I am not a member of either. They support the principles, but there is a call for the resolution mechanism to be made mandatory rather than voluntary. Briefly, that is the purpose of the amendments I have put forward with the support of the noble Earl, Lord Devon—Amendments 36, 37 and 38. If those amendments are carried, that would make Clause 68 much more agreeable and acceptable. The use of an alternative dispute resolution mechanism is generally very welcome, but it is not deemed to be working properly if it is not made mandatory.

I urge my noble friend to look favourably on these amendments. If he is not able to adopt them today, perhaps he would come forward with similar amendments on Report. We are all trying to seek a proper balance and ensure that there is an amicable resolution. My noble friend Lord Northbrook said that in his personal experience it was not always amicable; I think he used a different term. What we are hoping to do here is support what the Government are seeking to achieve, so in my view, my noble friend the Minister should look very favourably on that as well.

I turn now to Clause 69, which concerns complaints relating to the conduct of operators. I will quote again from the Central Association of Agricultural Valuers, which says—and this is very forceful:

"It is astonishing that there are no provisions in a regulated sector expecting an operator with a Code licence to have a complaints procedure. While this clause remedies that, it does not do so in any way that gives confidence that matters will be improved. It needs to give much more detail of what the complaints procedure should look like, including frameworks for such matters as compensation for poor behaviour, such as unauthorised access or damage."

My noble friend must appreciate that if damage is incurred during a visit to set up, repair or maintain infrastructure, a complaints procedure must be set up in this regard. Apparently, there are no penalties for breaching the code of practice and perhaps even commercial incentives to do so. At the very least, there should be penalties.

I hope the department and my noble friend will look very favourably on the suggestion in relation to Clause 69, as well as the others I have referred to with the amendments I have spoken to. It will only strengthen the Bill if these small changes are adopted.

The Earl of Lytton (CB): My Lords, I have an amendment in this group but I will also briefly voice my support for the other amendments to which my name has been added. The noble Lord, Lord Clement-Jones, referred to ADR. As I see it, ADR is highly desirable but easily avoidable in the commercial world of disputes. I believe that the application of ADR under the code as it stands is asymmetric in its treatment of site providers as against operators, which is entirely regrettable. Therefore, there ought to be mandatory ADR, and the avoidance of ADR in litigation generally is sufficiently common to make it clear that that needs to be dealt with.

I very much support the comments made by the noble Baroness, Lady McIntosh. She referred to lack of confidence, which goes back to a key theme here. I agree, although I would use the term "overt mistrust" as being much nearer the mark to describe what is happening here.

I have put my name to Amendments 39, 40 and 41. The concern here is that Ofcom is a weak regulator in this field and the entire environment of regulation is not consonant with the changed balance between site providers and operators. That needs to be tightened up.

My Amendment 42A is a "see no evil" removal clause. The idea behind it is to mandate: the operator collating and reporting complaints and actions taken in consequence to Ofcom; that Ofcom has to consider this and have regard to it when dealing with its other functions as regards the operator; and that Ofcom must then publicise annually the outcome of that process. The purpose of this is to demystify this whole question of whether there are complaints and, if so, how many, where they come from and who is to blame for what. Let us get the facts. Let Ofcom, which is supposed to be regulating the sector, deal with the matter. It is one thing that would aid transparency. It was put to me that it might stir Ofcom out of its lethargy; I would not quite use those words myself but the sentiment would probably be well understood across the House. We need tough regulators to deal with quite a difficult emerging situation.

Lord Northbrook (Con): My Lords, briefly, I support the amendments in the name of the noble Lord, Lord Clement-Jones, the noble Baroness, Lady McIntosh, and the noble Earl, Lord Devon, which would make

ADR mandatory, noting the lack of confidence in the current situation and the overt distrust, as mentioned by the noble Earl, Lord Lytton. I hope this process might also speed up the whole 5G rollout.

Lord Fox (LD): My Lords, while we were debating the previous group, the Government seemed to be getting ready to embrace an influx of court cases by going from two judges to 100. The intention of the large number of amendments here is to avoid that eventuality. If the Government Front Bench is not happy with the words, it should be happy with the spirit of driving the alternative dispute resolution process. It would be good to have some acknowledgement from the Government, when we get to their response, that this ADR process will be central to avoiding the sort of things we were talking about in the previous group.

Amendment 39 is intended to force operators to give greater weight to Ofcom's code of practice, which it is currently obliged to prepare under paragraph 103(1) of the ECC. Amendments 40, 41 and 42 aim to address non-compliance with Ofcom's code of practice, and Amendment 44 deals with building safety. That could have been separated out into another group. I will speak specifically just to Amendments 42 and 44, because they are in my name.

Amendment 42 requires that Ofcom include in its code of practice guidelines on when operators must pay compensation to those affected by the operator's failure to adhere to the code of practice. This compensation is limited to 100% of the total value of the contract to which the dispute relates. We do not expect that this would be the standard award and we have intentionally left it to Ofcom to draft guidelines on this issue. In fact, as my noble friend Lord Clement-Jones set out, Amendments 40, 41 and 42 work together with the aim of promoting consensus-based agreements, and to have a market that works effectively and is not stuffed up with disputes—which comes back to my first point.

In a gear change, Amendment 44 focuses on building safety, raised by the noble Earl opposite in the context of a previous group. The amendment would place a duty on network providers to ensure that any work done on communications infrastructure does not compromise building safety. Specifically, we are concerned about the interaction of digital infrastructure installation with the findings of the Hackitt report into building regulations and fire safety, which followed the dreadful Grenfell Tower tragedy.

As the Minister will be aware, in her report on the Grenfell disaster Dame Judith Hackitt recommends that the

"creation, maintenance and handover of relevant information"

should be

"an integral part of the legal responsibilities on Clients, Principal Designers and Principal Contractors undertaking … work on"

high-rise residential blocks. This matters because when a telecoms operator runs internal cabling in blocks, each hole is potentially a breach of a firewall. It seems to us that installation of gigabit-capable cabling is one of the most likely modifications a multi-residence high-rise block could face, and operators need to be obligated to meet safety requirements. If the Bill remains in its current form, digital contractors will have access rights that exceed those of the blue-light services, so where do they sit regarding their obligations to the Building Safety Act and in fulfilling the aims of the Hackitt report?

The purpose of Amendment 44 is to probe where telecoms and broadband contractors sit in the new environment of the Building Safety Act. I understand that, as a consequence of that Act, statutory instruments would be brought forward to compel certain actions from utilities contractors. My understanding is that the Government do not regard digital infrastructure as a pure-play utility function. Therefore, will there be a statutory instrument specifically to target digital infrastructure? In responding to this, the Minister may want to explain what statutory instruments are expected, with reference to which bits of which Act.

Baroness Stowell of Beeston (Con): My Lords, my noble friend the Minister will remember from my remarks at Second Reading that my main concern is about the sense of unfairness that exists between the site owners and the mobile network operators. Because of that, I hope the Government will agree to look at making some changes to the legislation. We will come to the economic impact assessment later this evening. I have some sympathy with the suggestion of a mandatory alternative dispute resolution in the way it is described in Amendment 35. As I say, this is just a general gentle expression of warmth towards that as a way of signalling to people who at the moment feel a sense of some unwillingness on the part of the Government to recognise that there needs to be some change. I look forward to hearing what my noble friend has to say.

7.30 pm

Baroness Merron (Lab): My Lords, the debate on this group raises a number of interesting points, but they are all on the same theme. They are about what happens should disputes arise. No one wants to be in dispute, but when one arises, it is crucial that everybody knows what the rules are and that the resolution creates an environment and practice which means that the same issues do not continually arise. The contributions from noble Lords today have talked a lot about fairness, respect and calling to heel those who need to be called to heel for fairness and respect to occur. It is about getting the balance of rights and responsibilities between the parties right. I hope the Minister will consider the valid points raised by this group.

In particular, it would be helpful to hear how the Minister feels about the present situation, where the operator must only consider the use of the dispute resolution system—and even then, only if it deems it is reasonably practicable to do so. Has that been satisfactory, because this set of amendments clearly suggests not? I was particularly struck by the words of the noble Earl, Lord Lytton, who spoke about such resolution being easily avoidable. That does not give us confidence. I therefore hope that the Minister will reflect on the spirit and intent and, perhaps, come to us with some practical measures to improve the current situation.

Lord Parkinson of Whitley Bay (Con): My Lords, I shall first address points made by the noble Earl, Lord Devon, as well as my noble friends Lord Northbrook

[Lord Parkinson of Whitley Bay]
and Lady McIntosh, about some of the case studies. I certainly agree entirely with the noble Earl, who speaks from personal experience and makes the point that some of the lobby groups which have been vocal on the Bill are painting a very different picture to those directly involved, and with whom we have had extensive discussion. Your Lordships' House benefits from having people such as the noble Earl and my noble friends who can speak from personal experience.

In particular, at Second Reading, the noble Earl showed how he speaks not just as a landowner and the litigator but as a consumer who shares the objective of wanting better connectivity. I am very happy to make absolutely clear that I understand that his point and those of other noble Lords are made in that spirit. I hope he can see that, for my part, we have been willing to listen and continue to be receptive to hearing contrary points; it is just that, in our discussions with the industry, we have had a clear picture painted.

The noble Earl asked a general but important question: why should site providers bother, given the other ways they could use their land? Without wishing to reopen the debate on valuation, we believe that the 2017 provisions created the right balance between the public need for digital communications and landowners' rights. The code makes separate provision for landowners to recover compensation for loss or damages and, taken together, we think the provisions on consideration and compensation mean that landowners can still receive a fair payment for allowing their land to be used.

The new pricing regime is more closely aligned to those for other utilities, such as water, electricity and gas. We do not think it is less attractive than other comparable uses. As I said on a previous group in relation to a point raised by my noble friend Lady McIntosh, landowners should still receive their payments—which, among other things, take into account any alternative uses that the land may have and any loss or damage that may be incurred.

Turning to the amendments in this group, the purpose of Clause 68, as probed by my noble friend Lady McIntosh of Pickering and the noble Earl, Lord Lytton, is to encourage more collaborative discussions between landowners and operators and to ensure that litigation is only used as a last resort. We know that code negotiations can be difficult—my noble friend Lord Northbrook referred to that from his experience—and that, in some cases, landowners have felt pressured to accept any terms offered to avoid the risk of being taken to court. To address this, Clause 68 encourages the use of alternative dispute resolution to minimise the risk of landowners feeling pressured and to facilitate co-operative discussions.

At Second Reading, my noble friend Lady McIntosh suggested that alternative dispute resolution is optional for operators. I hope I can give her and other noble Lords some assurance on this matter, given the requirements for parties to consider use of ADR and for the courts to consider unreasonable refusal to engage in ADR when awarding costs.

ADR not being mandatory is a deliberate feature of this policy. That choice was made for two reasons. First, ADR may not be suitable in certain cases. For example, where a disagreement is based on differing interpretations of the law, this may have to be determined by a court. Mandatory ADR would add cost and time to this process without any benefit. Secondly, where ADR is appropriate, mandatory ADR would compel some parties to participate in a process they do not want to be involved in, making them less inclined to actively engage. This would increase the risk of failure, and the parties would then have to go to court anyway—only adding further time and costs for landowners. The clear majority of groups—including the Country Land and Business Association—opposed compulsory ADR when we consulted them.

I turn to Amendment 39, tabled by the noble Lords, Lord Clement-Jones and Lord Fox, and the noble Earl, Lord Lytton. This amendment would require evidence of a breach of Ofcom's code of practice to be taken into account in ADR judgments. It should be noted that not all forms of ADR have judgments. Mediation is one such alternative. Furthermore, the Ofcom code of practice gives guidance on best practice; it does not set out specific requirements to be adhered to. As such, using the code of practice to underpin or effect decisions made in alternative dispute resolution risks creating further disagreements and disputes, rather than resolving them.

Finally, and most crucially, the amendment would undermine the open and collaborative approach on which successful ADR relies by forcing operators to enter any ADR process on a defensive footing. The outcome would be simply to blunt the effectiveness of alternative dispute resolutions and add to the administrative and cost burden for all parties. It is on this basis that I invite noble Lords not to press their amendments.

I turn to the Ofcom code of practice. We know that, in some cases, landowners are reluctant to enter into code agreements because they are concerned about how the operator or their contractors will behave when they carry out their works. Clause 69 addresses this issue by requiring guidance to be prepared by Ofcom, following consultation, regarding operators' handling of complaints about their conduct. This guidance will be added to Ofcom's code of practice. To complement this, the Government also intend to bring forward secondary legislation—in consultation with Ofcom and others where appropriate—to make regulations to achieve three things: first, to create a requirement on operators to have a complaints procedure in place to handle complaints relating to their conduct; secondly, to set out minimum standards which this process must meet; and, thirdly, to oblige operators to have regard for the Ofcom code of practice when handling complaints.

Amendment 40, tabled by the noble Lords, Lord Clement-Jones, Lord Fox and Lord Blunkett, and the noble Earl, Lord Lytton, would make adherence to Ofcom's code of practice obligatory and make breaches of that code punishable by a fine of £1 million. As I mentioned in relation to Amendment 39, the Ofcom code of practice is intended to set out guidance. Deciding whether a particular course of action is a breach would be very subjective. The code of practice applies to both operators and landowners, and this

amendment does the same. While some operators may have the resources to sustain such fines, very few landowners would.

We all want network rollout to proceed as quickly as possible. However, making compliance with the Ofcom code of practice mandatory and failure to do so subject to a heavy fine means that operators and landowners would be disincentivised from seeking to reach agreements at all. For those who might proceed, one can imagine them doing so as slowly and gingerly as possible to avoid the risk of breaching a code of practice that was never designed to be used in such a way.

Amendment 41, tabled by the noble Lords, Lord Clement-Jones and Lord Fox, and the noble Earl, Lord Lytton, and Amendment 42, tabled by the noble Lord, Lord Fox, set certain requirements regarding complaints handling, such as time limits for responding and compensation payable. As I noted earlier, Clause 69 will require Ofcom to amend its code of practice to include guidance on complaints handling. The Government also intend to make regulations to set out minimum standards for operators' complaints processes. Both of these could feasibly include elements similar to those proposed in the amendments, and both will be developed through consultation. The Government firmly believe that this is the best way to encourage all parts of the sector to welcome and comply with the new procedure.

Also related to the code of practice is Amendment 42A, tabled by the noble Earl, Lord Lytton. Currently, for a private organisation to seek and exercise rights under the Electronic Communications Code, it must be the subject of a direction from Ofcom that the code applies to it. The first part of the noble Earl's Amendment 42A would require Ofcom to reconsider each operator's status as an operator for these purposes every five years, taking into consideration, among other things, complaints made against it for breaches of the code of practice. His amendment would make an operator's rights to install, maintain and upgrade infrastructure potentially subject to adherence to a code of practice which, as I described just now, would serve only to disincentivise operators from extending their networks swiftly.

The second part of his amendment concerns obligations for operators to report to Ofcom about complaints that they receive, and for Ofcom to publish an annual summary of these reports. These are also the sorts of matters that will be considered when the Government make their regulations to set minimum standards for operators' codes of practice, and when Ofcom amends its own code of practice.

Amendment 44, tabled by the noble Lords, Lord Fox and Lord Clement-Jones, concerns building safety. The importance of building safety is self-evident, and the Government are committed to doing everything possible to ensure that it is maintained at all times. None the less, the amendment is unnecessary since the code already contains ample protections to ensure that building safety is maintained. Paragraph 23(5) of the code requires that when a court imposes an agreement under part 4, that agreement must include terms for ensuring that the least possible loss and damage is caused in exercise of the rights. Such terms will provide significant building safety protections.

Paragraph 99 of the code makes it clear that the code does not authorise the contravention of laws passed before the code came into force. This means that legislation that was in place before the code came into force, including that on building safety, would not be superseded by measures in the code. Regulation 10 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 requires that if an operator receives a report that its apparatus is in a dangerous state, it shall investigate and, if necessary, make the apparatus safe. Therefore, together these provisions already provide robust protections to ensure that building safety is maintained.

The noble Lord, Lord Fox, rightly mentioned Dame Judith Hackitt's report, which places great importance on the clarity and simplicity of systems to ensure building safety. The Government believe that this amendment would add further unnecessary complexity to the robust protections that already exist in this area. Therefore, Amendment 44 is not needed.

7.45 pm

Lord Fox (LD): As I explained earlier, it is a probing amendment designed not to go into legislation but to get an answer, and the answer was not forthcoming.

First, the code is designed to comply with building safety that has come before it. The Building Safety Act is subsequent to the code so in this respect, that is not a helpful answer. Secondly, there are specific statutory instruments, as a result of the Building Safety Act, which deal with utilities. I asked a very clear question: will the Government be considering this function of digital infrastructure to be a utility? Also, will there be statutory instruments as a result of that Act which cover this issue, or does it need to be covered in another way? It is not covered in the answer the Minister has just given, so this must be specifically opted into the process that the Building Safety Act has ushered in as a result of the Hackitt review.

Lord Parkinson of Whitley Bay (Con): The Building Safety Act received Royal Assent on 28 April, as the noble Lord knows. It will strengthen oversight and protections for residents in high-rise buildings, it will give a greater say to residents of tall buildings and it will toughen sanctions against those who threaten their safety. Its focus will help owners to manage their buildings in a better way while giving the housebuilding industry the clear and proportionate framework it needs to deliver more and better-quality homes.

Building regulations to be made under the new powers inserted by that Act will provide for more stringent requirements, separate from the Electronic Communications Code, regarding building work on high-rise buildings. People undertaking such work as employees or contractors of companies, including network operators, will have duties to ensure that their work complies with all the relevant building regulations. That will include the provision of information as part of the golden thread which will be handed over to accountable persons on completion of the building work.

I note also that the building regulations already include requirements to install infrastructure to support high-speed electronic communications networks in new

[Lord Parkinson of Whitley Bay]
buildings. DCMS has consulted on plans further to amend the building regulations to mandate gigabit-ready infrastructure and gigabit-capable connections to new homes. When such work is carried out it is required to meet all relevant requirements of the building regulations, include those for fire safety, so we do think that this is provided for already. I understand that it is a probing amendment; none the less—

Lord Fox (LD): Without labouring the point tonight, the Minister can perhaps pander to my curiosity and come back with the specific statutory instruments that are expected to implement this. As I understand it, statutory instruments were laid and then withdrawn, and I do not think that they included digital infrastructure in the initial wording. I have a specific concern that there is a slight falling between the cracks. Perhaps the Minister can reassure me with some specifics in a letter.

Lord Parkinson of Whitley Bay (Con): I am very happy to consult my colleagues at the Department for Levelling Up, Housing and Communities and to provide the letter the noble Lord requires. I invite him now to withdraw his probing amendment, and other noble Lords not to move theirs.

Baroness McIntosh of Pickering (Con): Did I hear my noble friend correctly regarding the Country Land and Business Association? If so, I can put his mind at rest. It is most definitely in favour of the alternative dispute resolution being made mandatory. He should be aware of a briefing that was sent to us at a much earlier stage. This dates back to January, so I hope it is not still the case:

"Throughout the Government's consultation on the Bill, the Department of Digital, Culture, Media and Sport has repeatedly refused to meet with our organisations",

including the CLA and others,

"to hear the views of our members. The Bill was subsequently published without any economic impact assessment."

I am slightly concerned that my noble friend appears to be unaware of something as fundamental as the difference between a mandatory and a voluntary ADR, and I wanted to correct him on that.

Lord Parkinson of Whitley Bay (Con): I am sorry to disagree with my noble friend, but the CLA's response to the consultation opposed compulsory ADR. I would be very happy to speak to her and triple check that with officials afterwards, but we clearly have different understandings of its position. I would be happy to speak to her afterwards to make sure that we can clarify that.

Lord Clement-Jones (LD): My Lords, we clearly have some clearing up to do between Committee and Report on who said what and who supports what. I too was quite surprised to hear that the CLA would be opposed to compulsory ADR in these circumstances.

I thank noble Lords for their support for the amendments and the Minister for his very detailed reply. I do not think there is any dispute between us. We all want greater connectivity and to see 1-gigabit rollout. The whole question is whether we want greater trust—the word that I think the noble Earl, Lord Lytton, used. Quite frankly, across the Committee there is a view, on the valuation questions, on retrospectivity in the previous group and on the lack of compulsory ADR, that this will lead to more disputes. The Government seem to be going down this track where they plan for there to be more disputes so that more tribunals can be brought into effect and more lawyers will be employed, no doubt with rejoicing in various parts of the City. Everything in these amendments was designed to minimise the number of disputes, and to make sure that we had compulsory ADR and that Ofcom's code actually bites.

It was very disappointing to hear what the Minister had to say. I hope that, between Committee and Report, he will reflect on some of the points made in this respect and that we can check to see whether landowners are unanimous on this, because using ADR as a filter would be a perfectly acceptable way of doing things. Once certain aspects are established as a matter of law then a dispute can of course be referred, but a mediator can, by agreement of the parties, refer it to a court to be determined. There is no impediment to using ADR as that initial filter, which would mean that there would be many fewer disputes. We would actually have faster rollout as a result and the Bill's purposes would be entirely achieved.

I am sure that this will be a candidate for Report as well. In the meantime, I beg leave to withdraw the amendment.

Amendment 35 withdrawn.

Amendments 36 to 39 not moved.

Clause 68 agreed.

Amendment 40 not moved.

Clause 69: Complaints relating to the conduct of operators

Amendments 41 and 42 not moved.

Clause 69 agreed.

Amendment 42A

Tabled by ***The Earl of Lytton***

42A: After Clause 69, insert the following new Clause—

"Reporting process for complaints

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

(2) In section 106 (application of the electronic communications code), after subsection (6) insert—

"(6A) A direction has effect for five years, after which any renewal must take into account—

(a) the extent to which the operator has complied with the terms of the direction,

(b) the number and nature of complaints made against the operator for breaches of the OFCOM code of practice reported under paragraph 103 of the electronic communications code,

(c) such other matters as OFCOM deems appropriate in determining whether that operator should benefit from a renewal of that direction, including the general conduct and ethical performance of the operator."

(3) In the electronic communications code, after paragraph 103 insert—

"103A_(1) Each operator must report to OFCOM all complaints made to it in respect of alleged breaches of the code of practice under paragraph 103 in sufficient detail to make clear the nature of the complaint.

(2) The report must contain an account of the actions taken by the operator in response to those complaints.

(3) Reports must be made in each calendar year before 31 January following the end of the reference year or such other annually recurring date as may be determined by OFCOM in any given instance and to like effect.

(4) OFCOM must publish an annual summary no later than six months following the end of the reference year setting out the performance in terms of—

(a) complaints received,

(b) actions taken, and

(c) directions considered but not made,

in pursuance of the reports from operators.""

Member's explanatory statement

The purpose of this amendment is to ensure that instances of poor behaviour insofar as they exist have a properly formulated reporting process and would thus serve to provide a factual basis; to make Ofcom the relevant repository of the complaints regime; and to ensure that Ofcom draws on this as part of its regulatory functions as well as publishing the relevant information.

The Earl of Lytton (CB): My Lords, I shall be very brief. I was rather disappointed with the Minister's response on Ofcom. This looks like minimal regulation—guidance only, no teeth. It is asymmetric with the rights and duties that will now be exercised against site providers. It is effective open season for coercive tactics. There is no government willingness to consider principles of balance or equity. The message that goes out on that will come home to roost later if the Government do not reconsider.

Amendment 42A not moved.

Clauses 70 to 72 agreed.

House resumed. Committee to begin again not before 9.05 pm.

Agricultural Fertiliser and Feed: Rising Costs

Question for Short Debate

7.55 pm

Asked by ***Lord Redesdale***

To ask Her Majesty's Government what steps they are taking to combat the rising cost of agricultural fertiliser and feed.

Lord Redesdale (LD): My Lords, I thank all noble Lords taking part in this short debate. I declare an interest: I own two tenanted upland farms. When I mentioned to one of the tenant farmers that I was bringing forward this debate, I had a conversation that lasted considerably longer than the debate will take. That is the issue we have with many farmers: discussing the price of feed, lamb or anything else takes quite a long time, because a lot of them are gambling on whether the costs meet the return on investment. Indeed, what I found worrying from talking to a number of farmers was that many of them are looking at whether the economic model they have been working from works in a period of such rising costs, which of course affect other people. An issue that they raised, which I have not heard them raise before, was carbon off-sets for trees and moving away from farming as a viable alternative because of the uncertainty that many farmers feel at the moment.

This debate is an opportunity for the Government to give any indication they have about how they are looking to deal with certain issues around the rise in fertiliser costs. I agree that this subject is not at the top of everyone's priority list, although it came up frequently on the doorstep at the recent by-election in Tiverton and Honiton. I very much hope the Minister, like me, will welcome the excellent new MP for Tiverton and Honiton to the other place—or, then again, perhaps not.

We are of course in the midst of a cost of living crisis. The Government will face a large number of debates from many sectors about how to deal with issues raised by the cost of energy. From looking at the figures, one can see that the rise in the cost of energy has exceeded that of the 1970s, which led to an economic depression. The fallout from that rise will be seen throughout the sectors. The food sector is particularly vulnerable through fertiliser and other costs.

I shall set out the cost of fertiliser at the moment. According to the Agriculture and Horticulture Development Board's latest market update, covering May 2021 to May 2022, the cost of ammonium nitrate produced in the UK has risen by 152%, imported ammonium nitrate by 171%, potash by 165% and phosphates by around 120%. This has a major knock-on effect, because fertilisers are used not only for cereal crops but mostly in this country for the production of feedstock for animals. This will lead to an increase in the cost of meat generally for consumers. Focusing on one foodstuff—the nation's favourite, chicken—I thought it interesting that Steve Murrells, the chief executive of the Co-op, said that it is quite likely that the price of chicken will be the same as the beef going forward because of the cost of feed, but also the energy costs of heating chicken farms and pens, and of cooling chicken sheds.

Of course, that has to be put into context. We have had a period of extremely low food costs in this country, which has been of benefit to all, and a chicken still costs less than a pint of beer, as has been pointed out in the press recently. However, the recent rise will be noticed by many consumers and will probably move people away from some of the eating habits they have at the moment.

This raises a question that the Government might have to look at. In the past, as prices have risen rapidly, supermarkets have often pushed the cost on to producers, rather than consumers, but with such rapid rises I do not believe that that situation can be upheld. I think there will be question marks over contracts between supermarkets and producers, especially in areas such as milk. I wonder whether Defra sees that it has a role in any of the discussions that are taking place.

[Lord Redesdale]

Rising food costs will lead farmers to look carefully at their options. They could raise the price of their produce. However, there is a question mark about that. I have seen a number of farmers who, with such rapid rises, cannot predict whether the prices they think they can charge will meet production costs. Farmers could also consider switching crops. According to Farming Online, there has been a recent move away from certain crops to legumes and peas. The benefit is that they fix nitrogen in the soil. Most legumes and peas are exported, so that would perhaps be an issue for the food security of the country. Farmers could avoid using fertiliser at all, but that would lead to a 20% crop reduction, and while there are other, more sustainable fertilisers produced on farms, looking at the availability and feasibility of that method, it is more beneficial for smaller holdings than for large ones. Farmers could avoid planting crops altogether if they do not believe that the return is going to match the investment, and that will have an effect on prices, as the amount of food produced will reduce.

While asking the Government, as often is the case, for a short-term solution, I am not sure they have anything in place at the moment. The Minister might say there will be intervention on fertiliser prices, but I doubt it. However, the Government need to look at a longer-term plan for a fertiliser strategy. I know Defra has been looking at the use of land in its recent review of agricultural policy, but there are two main issues on fertilisers that need looking at. The first is climate change. This was raised by the IPCC and the Climate Change Committee this morning as an issue that, if not addressed, will mean that we will break our carbon target quite badly.

Fertilisers are a major emitter of CO_2 in their production and use. Ammonia production accounts for 1.8% of global CO_2 emissions. It also consumes between 3% and 5% of global natural gas production totals. Virtually all the ammonia produced today is made using the Haber-Bosch cycle. Natural methane gas is used to produce hydrogen, releasing 6 tonnes of CO_2 for every 1.1 ton of hydrogen, and then this hydrogen is reacted with atmospheric nitrogen to produce ammonia.

There is a ray of hope in this area, which is the work being done in Australia by Monash University. The noble Baroness, Lady Worthington, brought this to my attention recently. It is working on a way of producing ammonia without using natural gas but using electrolysis powered by energy from wind. I would like to pass that information to the Minister and his department, because it is an area where we could vastly reduce the amount of emissions from ammonia.

In my last 15 seconds, I shall finish on the other area, which is security of supply. The Government may not be looking to subsidise fertilisers, but are they taking steps to secure a reliable supply? Ammonia is reliant on natural gas and there is a real risk that there will be a shortage of gas on the continent. The largest producers of ammonia locally are Ukraine, Germany, Poland and the Netherlands, and the second largest producer in the world is Russia. With the shortage of gas next winter, is there a real risk that we might run out of fertiliser?

The Deputy Speaker (Baroness Finlay of Llandaff) (CB): My Lords, the noble Lord, Lord Campbell-Savours, is taking part remotely. I invite the noble Lord to speak.

8.06 pm

Lord Campbell-Savours (Lab) [V]: My Lords, the best way to combat

"the rising cost of … fertiliser and feed"

is to end a war which I have opposed since before it began. An early settlement, which I have argued in detail over nine contributions in debates, would have saved thousands of lives, billions in cash and enabled a post-pandemic economic revival, with an early restoration of the international economy, particularly in the area of agriculture.

These days I have limited knowledge of agriculture, although in the early 1990s I had shadow ministerial responsibilities for agriculture in the Commons. With market stability in mind and on the advice of cattle breeders, I promoted a national cattle identification scheme. Following a five-year campaign, in 1997 the Labour Government rewarded my efforts with the establishment of the British Cattle Movement Service in my Workington constituency, which at its peak hired 1,200 people. With efficiency savings and developments in technology, its workforce of 578 helps maintain stability in the market. The crisis in Ukraine is undermining that stability across the world. Price stability is critical in agricultural markets.

My work on the BCMS helped foster my long-term interest in the fortunes of Cumbria's farming community, to which I have turned for comment on this debate. In the words of one farmer, "It's breaking my heart. An extra £3,000 a month in cattle feed costs, fertiliser up from £300 to £800 a tonne, and when they say you can spread more manure, they forget we are already doing that. My red diesel price doubled from 60p to 120p a litre. My electricity bill has gone from £24,000 to £70,000 a year. My extended credit terms have ended. Suppliers of feed and other agricultural inputs demand 28-day settlements. Yes, the milk price has risen to an all-time high, but it doesn't cover my additional costs".

Add to that testimony the increase in tariffs, reduced fertiliser supply internationally, banking restrictions, the international energy crisis, poor harvests and drought, export bans and other controls, and you have a crisis spiralling out of control. Then add to that a period of hyperinflation, with unimaginable potential consequences: starvation in the third world, certainly in rural Africa; millions in the advanced economies driven into not only fuel poverty but real poverty; millions cutting back on food and children suffering worldwide. You will then get the picture.

This is far too high a price to pay, yet we all know the war will end up in a costly compromise. Yes, there will be a peace of sorts, but historians will judge it all with a more critical eye. A brutalised Russian people appear unaware of the atrocities being carried out in their name by a desperate, brutal Putin leadership and a military establishment that is out of control and fearful of defeat. We need cool heads to think through an alternative strategy. We need a military build-up so that we can negotiate from a position of strength and avoid an escalating war.

Farmers throughout Europe are paying a very heavy price indeed for the failure of leadership in the civilised world. I suspect that all they want is an early end to the war and the return of stability. A settlement cannot be left to the Government of Ukraine; their agenda is not necessarily ours. Putin will not be there for ever. Our mistake has been to underestimate the potential for reform in a modernising Russia earlier this century. It is still not too late, but it will never happen while Europe lacks vision and sees the resolution of the conflict on the proxy battlefield and not in the conference room.

8.10 pm

The Earl of Devon (CB): My Lords, I am grateful to the noble Lord, Lord Redesdale, for securing this important debate. I note my interests as a Devon farmer and a lawyer working for a firm with an agricultural law practice.

The noble Lord, Lord Campbell-Savours, highlighted the humanitarian catastrophe unleashed by Russia's invasion of Ukraine, from the devastation on the ground to the blockade of the Black Sea, which has held hostage so much of the world's wheat, sunflowers and other key food commodities on which so many rely. As we focus our attentions on the unprecedented impact of these events on our own food and farming sectors, let us not forget the unimaginable suffering that will be experienced by the Middle East and north Africa over the coming months and years. The Government have my support in urgently seeking to unlock routes to market for Ukraine's produce.

I turn specifically to the impact on UK fertiliser costs. The numbers are stark, as we have heard, with fertiliser prices increasing fourfold or more. I am aware that the Government have taken preliminary steps to address these costs, but ammonium nitrate has gone from £200 to £800 a tonne, and I understand that the cost of gas suggests it may reach £1,000 a tonne soon.

At the same time, domestic fertiliser production has plummeted as one of only two fertiliser factories in the UK has shut. I was totally unaware of the fragility of our domestic fertiliser production, and I ask the Minister to explain what steps the Government will take to ensure that domestic production recovers and that we establish better resilience and variety of production in the years ahead. It seems highly risky to allow a single company to control all domestic fertiliser production, and it suggests a severe market failure in a strategically crucial agricultural input. Will the Government undertake to monitor this and ensure it can never happen again?

Given that fertiliser cost and supply are likely to remain tight for months, if not years, and that the cost of imported animal feeds will also remain prohibitive, what steps are the Government considering to promote domestic production of alternatives? We have already heard about legumes, such as peas and beans, which are well suited to the UK climate. They are an excellent alternative to soya, they are flowering plants that support biodiversity, they fit well into a combinable rotation and, crucially, they are not dependent on nitrogen fertiliser.

I understand that Northern Ireland has run a protein crops payment pilot in recent years. Will the Government consider expanding this across the UK in response to the fertiliser and feed cost crisis, or perhaps as part of ELMS or the sustainable farming initiative?

Talking of sustainable farming, I went back to Professor Dieter Helm's work, *Green and Prosperous Land: A Blueprint for Rescuing the British Countryside*, which I bought in 2019 when we began to consider the Agriculture Bill. His was the seminal work that inspired the agricultural and environmental revolution that we are currently undertaking. In his chapter on food production and self-sufficiency, the professor notes the farming industry's concerns that farming is about food production and food security first, and then about nature. Dismissing this, he noted:

> "Food security is largely an empty slogan of lobbyists. It should not be taken seriously."

How times have changed. Following the hard Brexit, the pandemic, escalating climatic catastrophe and now the war in Ukraine, the world has turned on its head. Food security, famine and the migration and misery they cause are now top of the agenda.

I have been a keen proponent of the environmental and biodiversity agenda in recent years but have always sounded a word of caution, particularly given the excessive demands being placed on our island's limited reserves of natural capital. Many of us called for longer to complete the agricultural transition from BPS to ELMS, citing the considerable stresses that would be placed on the fragile farming community. Those requests were rebuffed, with the Government confident that seven years would be sufficient. With fertiliser and feed prices now at unprecedented and wholly unsustainable levels, are the Government giving any further thought to the timing of our agricultural transition?

Noble Lords will recall plenty of debate over the merits of rewilding and the concept of sparing productive land for nature, rather than sharing it. Given the crisis in food production, will the Minister finally confirm that government policy favours the sharing of land and will not support the wanton destruction of productive and essential farmland in pursuit of expensive dreams of an impractical prehistoric wilderness that never truly existed?

Does the Minister agree that environmental benefit will be achieved not by condemning farmers and punishing them but by ensuring their operations remain profitable and productive, while improving environmental and biodiversity outcomes through agri-environmental schemes and agritech solutions? Our academic research institutions are leading the world in these two sectors, and we need to support them better.

I am looking for some silver lining. This crisis may present an opportunity to fast forward the development of environmentally friendly alternatives to existing production methods. Of particular significance is the need to find natural, organic alternatives to the polluting and energy-hungry application of nitrogen fertilisers. For instance, what steps are the Government taking to encourage the development and application of seaweed-based fertilisers? Seaweed is rich in nitrogen, potassium phosphate and magnesium. Given our extensive coastline, surely this is an area ripe for expansion.

Likewise, our green and pleasant land delivers one thing, grass, better than almost anywhere else on earth. Given the cost inflation and the environmental degradation inherent in soya-based animal feeds, will the

[The Earl of Devon]
Minister endeavour to provide better support to the pasture-fed meat and dairy industry? Of particular concern in Devon is the ongoing uncertainty regarding the farming rules for water, which remain opaque and unclear. Their uncertain and punitive enforcement is preventing the application of much-needed organic matter to Devon's pastures.

Finally, conscious once more of the terrifying hunger that will result from the war in Ukraine, are the Government making any efforts to ensure that UK farming produce is available to assist those hungry and in need around the world?

8.17 pm

Lord Northbrook (Con): My Lords, I declare interests as an arable farmer and NFU member.

The war in Ukraine has brought home the importance and fragility of food security for the UK. As an island nation, being able to grow enough food to feed a substantial proportion of our population is a key measure of food security and national resilience. I had not anticipated the Ukraine crisis when I moved an amendment to the Agriculture Bill asking for government support for the domestic production of food and agricultural products. This was voted against by my own party and Labour. I had no great foresight in having been ahead of the game on this issue, as it already seemed to be a pressing matter even before the war.

I will focus my remarks on the fertiliser situation. As already stated, the latest figures from the Agriculture and Horticulture Development Board show that fertiliser prices have more than doubled since May 2021 and imported fertiliser prices are up by 171%.

Fertiliser is a key input related to crop yields. A severe tightening of supply will lead to a reduction in the output of commodities. Gas, the main input in producing fertiliser, and ammonium nitrate play major roles in successful crop growth. Gas prices have increased fourfold over the last year and ammonium nitrate prices have also increased fourfold since January 2021. As a result, fertiliser is in tight supply for 2022, with impacts expected to become more serious next year. The significant increase in cost and reduced physical availability of this key input will likely reduce the crop yield from UK farms in the coming years.

The Government are helping the situation but can do more. I welcome the consultation on reducing ammonia emissions from solid urea fertilisers admitting that a full ban is unfeasible. I am also pleased that the Government made an agreement for one UK fertiliser plant at Billingham to be reopened after both had closed. However, on 8 June CF Fertilisers announced that it intends to close its fertiliser plant in Ince, Cheshire. There were only two plants overall in the UK, so this is a serious problem.

The NFU recommends that the Government and industry help farm businesses to plan for next year's crop by publishing fertiliser prices. At the moment, I hear from my tenant farmer that they will publish them only daily, due to volatility. The NFU suggests the publishing of a gas fertiliser index; it also recommends mandatory food resilience impact assessments for new regulations or policy. How can the Government help in this regard, and does the Minister agree with the NFU's proposals?

I welcome the advance payment of this year's BPS, which will help farmers' cashflow. I also welcome the recent announcement of some measures to try to support the agriculture industry, including the formation of a market monitoring core group and steps to assist farmers with the availability of fertilisers. The NFU acknowledges parliamentary support for these changes.

What is not helpful are remarks, maybe taken out of context, alleged to have been said by the Minister from the other place. These were that "there is no shortage of organic matter to replace all the manufactured fertiliser we currently use in the UK". Mike Neaverson, a potato farmer from Lincolnshire, wrote in *Farmers Weekly* in April:

> "Using Defra's own documents—and ignoring its rules about … spreading it—we can deduce that to replace all the UK's manufactured nitrogen with manures would require, for example, an extra 2.5 billion laying hens, or 10 million dairy cows. Taking a hybrid of both, this would mean that every man, woman and child in the UK"

would have to have

> "an 18-egg omelette, washed down with five pints of whole milk"

every day of the year. Neaverson continued:

> "We could eliminate all of our manufactured nitrogen tomorrow but … it would reduce our yields very significantly, to be replaced by imports."

The Government could take a leaf out of the assistance programme of the US Department of Agriculture, USDA. In March this year, it announced that it would support additional fertiliser production for American farmers to address rising costs. USDA will make available $250 million through a new grant programme this summer to support independent, innovative and sustainable American fertiliser production to supply American farmers. Additionally, to address growing competition issues, USDA will launch a public inquiry seeking information regarding seeds and agricultural inputs, fertiliser and retail markets. The new programme will support fertiliser production that is independent—outside the dominant fertiliser suppliers—increasing competition in a concentrated market. It will support fertiliser made in America, produced by domestic companies in the United States, reducing the reliance on potentially unstable or inconsistent foreign supplies.

One idea I would put to the Minister is assistance for smaller farms in buying fertiliser. The problem comes when banks refuse to increase overdraft facilities to help farmers with this. They then have to decide whether to use less to keep within their banking limits, while facing the uncertainty as to whether crop prices will hold up. Some sort of Covid-type loans would be an important idea here. Will the Minister give this some thought?

Finally, the Government need to wake up to the fact that they are losing support in rural areas, as evidenced by the Tiverton result. Not taking farmers for granted would be a good way to start addressing this, and careful awareness of the fertiliser problem is a hugely important issue. Does the Minister agree?

8.23 pm

Lord Carrington (CB): My Lords, I declare my interest as a farmer, as set out in the register. I too welcome this timely debate, as farm input prices have risen by between 25% and 30%, depending on the farming sector, whereas the price index for UK agricultural products has risen by around 12%. I want to concentrate on the sharp rise in fertiliser prices, which other noble Lords have already underlined, as this has the largest impact on the cost of animal feed and, ultimately, the food we eat. There are many types of fertiliser but, basically, we are talking about nitrogen, for which there are very few effective substitutes, particularly in the short term.

Nitrogen is the essential multiplier of growth in all our major crops. To give a clear example of its importance to food production, let us take the dairy industry. In January 2018, the cost of 1 tonne of fertiliser was covered by the production of 900 litres of milk. In March 2022, the cost of 1 tonne of fertiliser required the production of 2,280 litres of milk. On dairy farms, 82% of crops and grass receive a dressing of artificial nitrogen fertiliser. Certainly, dairy farmers produce plenty of organic manures which help crop nutritional needs with potassium and phosphate, but this manure contains a mere fraction of the nitrogen needed to optimise crop quality and growth.

Alternatives to nitrogen fertiliser are already used by most dairy farmers in the shape of legumes, nitrogen-fixing plants, herbal leys, compost et cetera but they are not as effective. Saving costs by reducing artificials results in reduced forage production, an increased cost of bought-in food and lower milk output. With lower milk yields and rising input costs other than fertiliser, dairy farmers will experience lower margins and questions on the viability of their businesses. Without increased milk prices to reflect this, we will experience a reduced dairy sector and the offshoring of production. The AHDB estimates a 2% reduction in producers and a 1.6% reduction in herd size in the year to April 2022.

Turning to arable farmers, the outlook for the current harvest—weather permitting—looks good, with input costs less affected by the fertiliser hike and a high market price for their crops. For the 2023 harvest, the outlook is less clear but probably okay as although fertiliser prices are likely to remain elevated, output prices will probably remain firm. However, with rising input costs, the gross margin is likely to be substantially lower, resulting in farmers reducing fertiliser and other inputs, with the consequence of lower production and, probably, increased imports. For harvest 2024, the outlook is too opaque for any farmer to make any decision on cropping, stocking rates or other investment.

The simplest answer to protecting our domestic farming industry is either to pass the necessary rise in food costs on to consumers or for the Government to subsidise farmers. Neither option is likely to be wholly desirable, although the argument for a rise in food prices becomes more telling by the day. Government actions to date have been helpful. The acceleration of the payment of BPS money is good, while changes in the farming rules for water and urea applications are all welcome, together with various generous grants for technological improvements, slurry storage and processing, but none of these will move the dial in the current situation. As with the pig industry, speedy and targeted support should be introduced to other sectors when in difficulty. The call by the NFU for greater transparency in the fertiliser market must be correct and is, I hope, being looked at by the market monitoring core group.

We need to support the neediest people in our country in the purchase of their food, among other necessities, but surely we need to address the power of supermarkets and processors in the pricing of food so that growers get a fair deal and those who can pay for food pay the right price. The GCA covers the supermarkets, but no such mechanism exists for processors and growers. There have been increasing complaints of unfair practices in the supply chain. I would be interested to hear from the Minister how market monitoring and any necessary intervention can be strengthened using the powers under the new Agriculture Act.

With the rise in global input costs, we need to ensure that our producers are paid a fair price by the market and not squeezed. With other countries experiencing similar issues, we need to maintain sustainable domestic food production. This means the continued use of artificial fertiliser while alternatives are explored and developed.

8.29 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I congratulate my noble friend Lord Redesdale on securing this important debate and on his excellent introduction. The cost of agricultural fertiliser and feed has rocketed in the last three months, and it is not difficult to see why this has happened.

First, wholesale gas prices have risen by 284% in 12 months—a phenomenal increase. The use of gas is a critical component of fertiliser production, contributing 90% of the cost. Currently, the UK produces only 40% of its fertiliser requirements. There were two fertiliser plants, one of which has now closed. The second is owned by the same company, CF Fertiliser. There is, therefore, no competition in the UK market in terms of our own fertiliser production. This is a critically important industry for the agriculture sector. What are the Government doing to ensure that the remaining plant remains open and operational? The noble Earl, Lord Devon, and the noble Lord, Lord Northbrook, have referred to this.

Secondly, the war in Ukraine is having a dramatic effect on the UK. Ukraine was a crucial supplier of sunflower oil and wheat, the supply and price of which have been affected. The shortage of sunflower oil does not adversely affect the British housewife, but it is a vital ingredient in sunflower meal for animal feed. In 2019, Russia was the world's biggest exporter of wheat and Ukraine the fourth biggest. The conflict is hitting hard and is not likely to be resolved quickly. AHDB figures show that UK pelleted wheat feed prices rose by 60% in the 12 months to May this year. Our farmers accommodating or budgeting for this into the future is unsustainable.

The other side of this equation is the effect on countries in north Africa and the Middle East which rely heavily on grain from Ukraine. We are aware of severe food shortages in Eritrea, Kenya, Somalia and

[Baroness Bakewell of Hardington Mandeville] Sudan—countries which may face starvation as a direct result of the Russian invasion. It is therefore imperative that the Government do not allow our own production of climate-friendly food to drop, but put in place measures to ensure that neither escalating energy prices nor fertiliser shortages affects crop yields where this can be avoided.

There is another method of producing fertiliser, in the form of green ammonia using CO_2 from renewable resources. This has a minimal impact on the environment and is produced with little waste. In the normal course of events this method of production would be ruled out due to the cost, but with the exponential rise in cost of traditional fertilisers, this could come into its own. We do not have a plant in the UK that is currently capable of producing green ammonia, but there is one in Germany. Green ammonia production makes use of renewable energy sources such as hydro-electricity, solar power or wind turbines, through the Haber-Bosch process. Are the Government having discussions with those producing green ammonia and seriously considering this more environmentally friendly method of producing fertiliser to help our farmers?

The Minister could commit to establishing a gas fertiliser price index to increase transparency in the market, as the NFU has requested. Are the Government considering this? Despite the difficulties being well-trailed, Defra has yet to announce whether it is likely to respond to rising animal feed prices. On 26 May, responding to a Written Question from Daniel Zeichner MP on action to tackle animal feed inflation, Minister Prentis said that she had

"already set out measures to support farmers and growers in England ahead of the coming growing season"

and that the UK was

"largely self-sufficient in cereal production, growing 88% of all the cereals that we need".

The debate this evening demonstrates that this statement is not correct. Not only are we not able to grow sufficient cereals for our needs, but the cost of producing them far outweighs the price paid for the end product. What are the Government now going to do to make a positive contribution to tackling the current crisis?

8.33 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the noble Lord, Lord Redesdale, for initiating this timely and important debate and thank all noble Lords who have contributed. We are all acutely aware that these very specific extra agricultural costs are driving food inflation at a time when the cost of living crisis is already causing widespread hardship. More than 1 million people are already regularly using foodbanks and over 2 million are regularly forced to go without food. The impact of food insecurity at a household level is all too clear. It is a real and pressing issue for millions of people in this country.

The tragedy in Ukraine is more than a story of an illegal invasion and thousands of civilians being murdered at the whim of a Russian tyrant. It has also upset our reliance on international sources of fuel, food, fertiliser and labour, and has laid bare the weaknesses of our global markets. Arguably, given how fundamental food security is to the welfare of our nation, the Government should have had more robust contingency arrangements. Instead, an air of complacency has been allowed to creep in.

While tensions were mounting between Ukraine and Russia last year, the Government's landmark food security report concluded:

"Real wheat prices are expected to decline in the coming years based on large supplies being produced in the Black Sea region".

So, we have to question what the purpose of this report is if it does not factor in the most obvious upcoming risks. Farmers are taking a major hit from the Government's lack of effective contingency planning and reliance on world markets. This is why we have argued for a robust food security policy with a commitment to higher UK food production levels, to give better assurance that in a crisis we can feed the nation.

Meanwhile, as noble Lords have said, our farmers are suffering a double whammy on food and fertiliser costs. Prices for agricultural fertiliser in the last year have doubled, and in some cases trebled. As well as price increases, fertiliser is in short supply, with impacts expected to become more serious in the new crop year for 2023. This will lead to higher food prices and lower yields. That is why it is so frustrating that the Government have allowed the permanent closure of the Ince fertiliser plant to go ahead, leading to a major loss of production as well as 350 jobs lost. Removing a large proportion of the UK's CO_2 supply as a by-product is causing further food production chaos. The owner of the plant, CF Fertilisers, restarted its other operation in Billingham after the Government intervened. Why, therefore, are the Government not intervening on the Ince plant as well?

The fact is that the Government's measures to address fertiliser inflation are too little, too late. Industry round tables, revised guidance and far-off plans to develop less gas-reliant fertilisers will do little to help the farmers struggling right now. We should use this opportunity to implement the growing scientific evidence that shows that farmers could continue to produce high-yield crops with far less artificial fertiliser if they adopted environmentally sustainable practices, such as rotating peas and beans, which we heard about earlier.

Meanwhile, the Ukraine invasion and the humanitarian tragedy are also impacting on feed costs. Ukraine and Russia produce 30% of the world's wheat and 50% of its sunflower oil, seeds and meal exports. This is having a direct impact on the cost of animal feed in the UK: for example, the NFU has warned there will definitely be a turkey shortage at Christmas as a result of wheat prices doubling. Pig farmers have also seen a significant rise in costs, with feed prices now contributing up to 70% of costs. So, for a sector that has been struggling anyway, the outlook for pig farmers is dire.

What are the Government doing about this crisis? Obviously, it is welcome that the payments of the basic payment scheme have been brought forward. This might help with cash flow, but it is money to which farmers were entitled anyway; it is not new money. Other than that, the Government's policy can best be described as "wait and see". In response to a Question

from my honourable friend Daniel Zeichner in the Commons, the Minister, whom the noble Baroness also quoted, said:

> "We continue to keep the market situation under review, by working closely with industry-led groups and key stakeholders to monitor the position on animal feed."

This really is not good enough. This crisis is hitting not only farmers but consumers, as the price of food rockets, and it needs action now. Farmers have no option but to pass on the additional costs, which will fuel further inflation, food shortages and suffering. It should be a national priority to address these issues.

So I hope that, when the Minister responds, he is able to provide greater assurance the Government intend to act on these issues. I look forward to what he has to say.

8.39 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I refer noble Lords to my entry in the register. I congratulate the noble Lord, Lord Redesdale, on securing this debate and the clear passion with which he introduced this subject. I am grateful to other noble Lords for their contributions. The Government are of course more than sympathetic towards and understanding of the plight and costs that farmers face now, as they try to plan for the future.

I hope that the noble Lord will put pressure on his Front Bench to dump the idea of suspending the transition in farming from BPS to the new farming future, because that would precisely help the arable farmers who will see their gross margins double and perhaps even treble in certain areas this year. Suspending it would not help the chicken farmer that he mentioned or small tenant farmers, upland farmers or the family farmers who have grown up around me, and it would perpetuate a system that gives 55% of the money to the largest 10% of the landowners. It is deeply unfair, and now would be completely the wrong time do this.

Agricultural commodities are closely linked to global gas prices, as the noble Baroness, Lady Bakewell, and the noble Lord, Lord Campbell-Savours, pointed out. Farmers are facing increased input costs, including manufactured fertiliser, livestock feed, fuel and energy. Natural gas is a key input in the manufacture of nitrogen-based inorganic fertilisers, which include the two main mineral fertilisers used in Great Britain: ammonium nitrate and urea. A combination of global demand and supply pressures has caused the price of gas to increase dramatically since the end of summer 2021, causing significant issues for both the global and the domestic fertiliser industry. As has been said, the invasion of Ukraine by Russia this year has obviously further disrupted global supply chains.

We want farmers to be able to keep running a viable business and continue producing food. This is right at the top of the Agriculture Act, which requires Secretaries of State today and in the future to have the production of food at the heart of what they do. We recognise that increasing input costs, particularly fertiliser, animal feed, fuel and energy, are creating short-term pressures on cash flow. On 30 March, the Government announced measures to address the cost pressures impacting farmers as a result of the global instability of demand and price increases. I remind the noble Baroness, Lady Jones, that changes to the use of urea fertiliser have been delayed until at least spring 2023—this was one of the many actions that we have taken and will continue to take. When restrictions are introduced, they will include the use of protected or inhibited fertilisers, rather than a complete ban. Farmers will be further supported through new slurry storage grants as of this year, helping to meet the farming rules for water and reducing dependence on artificial fertilisers by storing organic nutrients.

We have published additional details of the sustainable farming incentive, which will help farmers move towards sustainable farming practices over time, supporting them to build the health and fertility of their soil and to reduce soil erosion. This is essential for sustainable food production, helping to bolster food security and the longer-term resilience of the sector.

On 6 May, we agreed to bring forward half of this year's BPS payment as an advance injection of cash to farm businesses in England from the end of this July. I appreciate that many noble Lords on all sides have mentioned that. Payments will also now be paid in two instalments each year for the remainder of the agricultural transition period, to help farmers with their cash flow. Sympathy and understanding are easy; action is what matters and is what this Government are doing.

An industry fertiliser task force—previously known as the fertiliser round table—has been formed, made up of key sector bodies including the National Farmers' Union, the Agricultural Industries Confederation, the Agricultural and Horticultural Development Board, and the Tenant Farmers Association. A lot of work has been done on innovations, much of which has been mentioned in this debate. I make the point that CO_2 is a by-product of fertiliser industries; we need CO_2. One of the measures we took in supporting a factory last year was to sustain the CO_2 which is needed in food production in other sectors, particularly in abattoirs.

The task force has met regularly and continues to work on issues around fertilisers, identifying solutions to better understand the impact of current pressures on farmers. Actions need to be informed by facts, and that is what we are doing. We continue to keep the market situation under review through the UK Agriculture Market Monitoring Group, which monitors UK agricultural markets, including price, supply, inputs, trade and recent developments. We have also increased our engagement with the industry to supplement our analysis with real-time intelligence.

Fertilisers are vital for food production, providing essential plant nutrients, such as nitrogen. It is estimated that approximately 50% of human-edible protein produced globally is a direct result of mineral fertiliser usage. Mineral fertilisers, when used appropriately—tailored to the soil and crop requirement, with correct application timing and techniques—are highly efficient. Organic materials applied to agricultural land, such as livestock manures, biosolids, composts, anaerobic digestates and waste-derived materials are also valuable sources of plant nutrients.

[Lord Benyon]

Data from the 2020 British Survey of Fertiliser Practice suggested that around 65% of Great Britain's farmers used at least some manure, slurry or biosolids. Careful recycling to land allows their nutrient value to be used for the benefit of crops and soil fertility. We are supporting farmers in making more efficient use of these mediums. However, we know that poor application of any fertiliser is bad for the environment. The UK has environmental objectives published in the *Clean Air Strategy*, the 25-year environment plan and the net-zero strategy. These aim to make farming more sustainable and to reduce the polluting effects of fertiliser use by developing further policies. However, I accept that this is the medium and long term; we have a current crisis to deal with.

The current increased cost of fertiliser provides a very strong incentive for farmers to increase their nutrient use efficiency to include every ounce of fertiliser—I have spoken to many who are doing this. Farmers in the UK, concerned about high prices and future supply, did not buy at their usual rates from autumn 2021 through to May 2022, which resulted in delayed or reduced fertiliser application. However, the UK has a highly resilient food supply chain, as demonstrated throughout the Covid-19 pandemic. It is well equipped to deal with situations with the potential to cause disruption.

Every year, yield is heavily affected by the weather—the amount of rain and sunshine that crops receive. It is not yet clear the exact impact on crop yields for the 2022 harvest, but, as has been said, it looks pretty good in many areas—although we must not count our chickens before they are hatched. After a largely dry April, welcome rain was seen in May, so let us hope for the best.

Farmers aim to produce food while also providing themselves with a profit for their livelihood. However, to produce a profit, it is understood that farmers have to reduce crop areas in favour of different land use, sow different crops with lower fertiliser requirements, or choose to apply less fertiliser to get a lower quality yield. Our supply chain providing imports of fertiliser to the UK has remained dynamic in sourcing products. As has been said, CF Fertilisers continues to produce ammonium nitrate fertiliser from its plant in Billingham.

I understand noble Lords' concerns about access to affordable animal feed, particularly in the context of high inflation. For the livestock sector, animal feed is a vital input, with increases in price and problems in availability impacting variable costs and productivity. Cereals and oilseeds make up a significant proportion of animal feeds, most of which are internationally traded commodities. Subsequently, their supply chains are dynamic and responsive to global market developments in price and availability. These developments may be influenced by both the war in Ukraine and additional factors unrelated to the conflict, such as weather conditions and currency fluctuations.

The question of what we are doing to make the UK more self-sufficient in fertilisers was raised. As I have said, it is a global market; the UK sources fertiliser from a wide range of countries and already produces fertilisers such as ammonium nitrate. While global fertiliser prices have risen, we are still producing it here and we are working very closely with the sector to make sure that it is happening.

We must also look at alternatives. The Secretary of State and I have, at different times, visited a company called CCm, which produces such technology. It is an absolute game-changer. CCm produces fertiliser that can be used in the same way as prilled inorganic fertiliser, but it is produced from sewage sludge, potato peelings and so on, and it is an entirely circular economy. I would commend a greater understanding of it, because I think it has great possibilities for the future.

Our dependence on inorganic fertilisers is something that we have to face in the medium term. We have suspended many of the changes on the farming rules for water, which was a point made by the noble Earl, Lord Devon.

On fertiliser market transparency, Defra is working with the AHDB, the AIC and the NFU on how fertiliser price transparency can be improved in order to aid farmers in their decision-making. Defra is also looking to review fairness in the supply chain across the agri-food supply chain business, which was a point raised by the noble Lord, Lord Carrington.

The noble Baroness asked for action now, but she did not in fact say what action she was talking about. I think I have proved that we are taking action. We are aware of the pressures on farmers caused by rising fertiliser and feed costs and we have taken active steps to mitigate these. We continue to work in partnership with key sector bodies, so that any wider impacts on the food supply chain are minimised and to ensure the UK is well equipped to respond to the global forces that continue to drive the supply and price issues that we are facing. We are deeply mindful of this very serious issue for farmers. We are taking action and working with them and the whole supply chain. I hope that I have answered the questions.

Lord Redesdale (LD): The Minister made the assertion that we are against ELMS and for BPS. I can happily say that, after massive pressure, we are quite clear that we are for ELMS, rather than BPS.

Lord Benyon (Con): I am aware that, across this House, there is great support for the environmental land management scheme, but there was a suggestion by his Front Bench in another place that it should be suspended. Now is not the time to do that; now is the time to make the farming industry more secure and more sustainable to withstand these kinds of global impacts, and make it fit to produce food in the future.

Metropolitan Police Service

Statement

8.52 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will repeat a Statement made in the other place by my right honourable friend the Policing Minister, Kit Malthouse:

"With permission, I would like to make a Statement about the Metropolitan Police Service, following the decision yesterday of Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services to place the service in the 'Engage' process, which has been described as a form of special measures.

The public put their trust in the police and have every right to expect the country's largest force to protect them effectively and carry out their duties to the very highest professional standards. They expect them to get the basics right. While very many Metropolitan Police officers do exactly that, it is clear that the service is falling short of these expectations and that public confidence has been severely undermined.

The Government support the action that the inspectorate has taken to escalate the force into special measures and address where it is falling short. The public also elected a mayor to bring governance and accountability in their name, and I now expect the Mayor of London, as the police and crime commissioner, to act swiftly to ensure that he and the force deliver improvements, win back public trust and make London's streets safer. We expect him to provide an urgent update to City Hall explaining how he plans to fix this. Now is not the time for the mayor to distance himself from the Met. He must lean in and share responsibility for a failure of governance and the work needed to put it right.

Over the last three years, this Government have overseen the largest funding boost for policing in a decade, and we are well on the way to recruiting an extra 20,000 police officers nationally, with 2,599 already recruited by the Metropolitan Police, giving it the highest ever number of officers. By contrast, as many Londoners will attest, the mayor has been asleep at the wheel and is letting the city down. Teenage homicides in London were the highest they have ever been last year, and 23% of all knife crime takes place in London, despite it having only 15% of the UK's population. While other forces are making good headway, the mayor has serious questions to answer. He must get a grip.

There are many areas of remarkable expertise and performance in the Met and in many areas the Met is understandably the best in the world, but there have been persistent Met failures on child protection and, earlier this year, following the catalogue of errors found by the independent panel which looked at the investigations into the murder of Daniel Morgan, the inspectorate issued a damning report on the Met's approach to tackling corruption. There have been exchanges of extremely offensive messages between officers and, of course, we had the truly devastating murder of Sarah Everard by a serving officer. It is reported that the inspectorate has raised a number of further concerns in its recent letter to the Metropolitan Police. It makes for sorry reading. The inspectorate reportedly finds that the force is falling far short of national standards for the handling of emergency and non-emergency calls, and there are too many instances of failure to assess vulnerability and repeated victimisation. An estimated 69,000 crimes go unrecorded each year, fewer than half of crimes are recorded within 24 hours and almost no crimes are recorded when victims report anti-social behaviour against them. The inspectorate has also found that victims are not getting enough information or support.

Other concerns are thought to include disjointed public protection governance arrangements; insufficient capacity to meet demand in several functions, including high-risk ones such as public protection; and a persistently large backlog of online child abuse referrals. The inspectorate also highlights an insufficient understanding of the force's training requirements, and I am afraid that this list is not exhaustive. All this has deeply undermined public confidence in the Metropolitan Police Service and we have not heard enough from the mayor about what he plans to do about it. Blaming everyone else will just not do this time.

As I have already said, it is vital that policing gets the basics right and that there is proper accountability for those in charge. Every victim of crime deserves to be treated with dignity, and every investigation and every prosecution must be conducted thoroughly and professionally, in line with the victims' code. Recent reports of strip searches being used on children are deeply concerning and need to be addressed comprehensively. We have a cherished model of policing by consent. The police force is a service—a public service—and the public must have confidence in it. Plainly, things have to change.

The Government are working closely with the policing system to rewire police culture, integrity and performance. Last October, my right honourable friend the Home Secretary announced an independent inquiry to investigate the issues raised by the conviction of Wayne Couzens for the murder of Sarah Everard. In the same month, the Metropolitan Police commissioned the noble Baroness, Lady Casey of Blackstock, to lead an independent and far-reaching review into its culture and standards. We welcome the College of Policing's new national leadership standards, aimed at ensuring continuous professional development. Policing is a very difficult job and demands the highest possible training standards.

The process to recruit a new Metropolitan Police Commissioner is well under way and the Government have made it crystal clear that the successful candidate must deliver major and sustained improvements. The whole country, not just London, needs to know that our biggest police force is getting its act together. The Mayor of London, supported by his deputy mayor for policing and crime—a role that I once had the privilege to hold—is directly responsible for holding the commissioner and the Metropolitan Police to account. The mayor needs to raise his game. He has an awesome responsibility, which he has hitherto neglected. This is not an insurmountable problem but it is extremely serious. Trust has not been shattered beyond repair but it is badly broken and needs strong leadership to fix it. Through the police performance and oversight group, the Government look forward to seeing the Metropolitan Police engage with the inspectorate, produce a comprehensive action plan to sort this out and be held to account by City Hall.

The national system for holding forces to account and monitoring force performance is working well. Sunlight is the best disinfectant and every public service must be held to account. I am grateful to the HMICFRS for its work. It now falls to the Metropolitan Police

[Baroness Williams of Trafford]
and to the Mayor of London to make things right. It is with some personal sadness, given my admiration for so many who work in the Met, that I commend this Statement to the House."

9 pm

Lord Coaker (Lab): My Lords, it is dreadful to have to start another Statement response in this House recognising a victim of male violence against women and girls. All our thoughts are with the family, friends and loved ones of Zara Aleena. It shows again how desperately needed is the action the Government are proposing to tackle violence against women and girls and to identify, stop and prosecute perpetrators.

It is usual to thank the Minister for repeating a Statement to the House. I am of course grateful to her, but I have to raise a concern. The copy of the Statement shared with us at 1.33 pm today, and with Front-Bench colleagues in the other place, was not the same as the Statement delivered by the Minister for Crime and Policing. The Statement delivered, as we have just heard from the Minister, included a number of political gibes, spaced throughout from the very beginning, which had not been included in the shared copy of the text. As the Minister knows, I have the highest regard for her and know that she would not be so discourteous to us, but it cannot be right to share with us a Statement as important as this which excludes some of the things she has had to repeat to noble Lords. It is just not the right way to do things.

It is really disappointing that, on a subject as serious and frankly disturbing as this, the Home Secretary, presumably, and a Home Office Minister—not the noble Baroness—thought it acceptable to provide noble Lords and Parliament with an incomplete copy of the Statement and then, between the time we received it and the time it was delivered, to spend time thinking of a few political digs to add in rather than focusing on what we all must do. We all have our parts to play in acknowledging and repairing the problems that exist.

I am the son of a Metropolitan Police officer of 30 years, so it is really depressing to read the HMICFRS report on the Metropolitan Police and its being placed into special measures. It is also depressing for the tens of thousands of London officers and officers around the country who do their duty and serve with bravery and distinction, including many police officers around this Parliament who protect us. They, alongside victims and the public, are being failed.

Last year we had the report of the Daniel Morgan Independent Panel, following Daniel's murder and the police corruption which prevented justice being served. It found:

"In failing to acknowledge its many failings over the 34 years since the murder of Daniel Morgan, the Metropolitan Police's first objective was to protect itself."

Think about that for a moment, alongside the abduction and murder of Sarah Everard by a serving police officer who used his badge of office to deceive her; the behaviour of officers in the case of sisters Bibaa Henry and Nicole Smallman; the failings of officers in the Stephen Port case; the strip-search of Child Q and other children —how many others have now been reported to the Independent Police Complaints Commission, as we read in the papers that perhaps a further eight have been reported to the Police Ombudsman?—the stop and search of Bianca Williams, with her and her partner being handcuffed and separated from their son as part of their ordeal; and Met officers at Charing Cross station using a WhatsApp group to share racist jokes and joke about raping and beating women.

The list goes on. But it cannot go on; it has to stop. It fails the vast majority of decent police officers as well as the confidence and trust of the public. As Members of both Houses, members of the public and victims' families have been saying for years, all these are symptomatic of deep and disturbing problems in the culture of the Metropolitan Police. When will it change? We also learn from this recent inspection, as the Minister told us, that 999 call response times have not been met, that 69,000 crimes were not even logged and that there is a failure even to tackle anti-social behaviour. Is it any wonder that public trust and confidence are undermined in what should be and is one of our great institutions?

We are in a situation where some people in some communities in London are losing, or have lost, faith in their local police services to protect them. How will the fact that the Met Police has been placed in special measures work to restore their confidence? How will the public be reassured? What is the plan that will be produced? How will it be monitored and reported to us, so we know progress is being made?

With the scale of the cultural change needed, I say regretfully that the Statement the Minister was asked to repeat needs a greater sense of urgency and a greater sense of when changes will happen. The key concrete measures included in the Statement are already announced inquiries, which are welcome but will take time. When will they report? Why will they make a difference when others have not?

The Statement says reports of strip-searches being used on children are,

"deeply concerning and need to be addressed comprehensively"

but what action is being taken to do so? Why has there been a failure so far to bring forward new guidance on strip-searches, which for months we have been calling for? Can the Minister give an update on work to introduce a police duty of candour, which Members of this House voted for as part of the Police, Crime, Sentencing and Courts Act?

Too many victims have been, and are being, let down across the country. There has been a significant increase in the number of cases collapsing because a victim drops out. Why is the victims Bill, which has been promised for years, still only in draft form, and not yet on the statute book?

Can the Minister tell us more about the changes that will be made to training and support for officers? Does she recognise that there is a problem in the ratio of supervising officers to police constables in the Metropolitan Police? There is an issue there with inexperienced officers not having the support and supervision they need, and although the Government are now increasing officer numbers, that does not solve the problem of the loss of thousands of officers with years of experience. How will that be addressed?

Policing in this country depends on public trust; it is policing by consent. That trust has been eroded and will continue to be withdrawn by those who have experienced and witnessed some of the shocking examples of police behaviour that we have discussed today. The Home Secretary has to answer these concerns, speak to victims and drive up standards in policing across the country. This report is yet another wake-up call, and this time it needs to be heard.

Lord Paddick (LD): My Lords, I thank the noble Baroness for repeating the Statement made by another Minister in the other place.

The letter from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services to the Acting Commissioner of the Metropolitan Police, Sir Stephen House, apparently contains a catalogue of failings. These include not only the misogyny, racism and homophobia characterised by the tragic murder of Sarah Everard; the failings in the tragic murders of Bibaa Henry and Nicole Smallman, including the sharing of selfies taken with their dead bodies; the revolting messages shared on a Charing Cross police station WhatsApp group; and the failings in relation to the murders of Anthony Walgate, Gabriel Kovari, Daniel Whitworth and Jack Taylor, written off as self-administered drug overdoses instead of the actions of a serial killer because they were gay men, but also the failings in day-to-day policing.

Besides theses high-profile cases, can the Minister confirm an estimated 69,000 crimes are going unrecorded each year, less than half of crime recorded within 24 hours, and virtually none recorded when anti-social behaviour is reported? If not, why does the Minister not have the content of the HMIC letter? Besides the strip-search of a schoolgirl because it was thought she smelt of cannabis, and the high-profile, controversial stop and searches—such as that of a champion athlete—can the Minister confirm that, in 25% of stop and searches, officers failed to record the grounds for the search in sufficient detail to enable an independent judgment to be made as to whether reasonable grounds existed?

And this Government want to give the police more powers, including those for the police to conduct stop and search without having to have any reasonable grounds. Can the Minister explain why this is, when they cannot be trusted with the powers they already have—powers the police have not even asked for?

In the HMICFRS inspection after the Daniel Morgan report, HMICFRS concluded that the Metropolitan Police's approach to tackling corruption was not fit for purpose. I was a Metropolitan Police officer for over 30 years, and I am appalled by the litany of failings identified by HMICFRS. I am angry that so many honest, decent police officers have been failed by a minority of their colleagues, but mainly by their chief officers who have not addressed these failings.

I do not accept the view that the majority of police officers do not want to do the right thing, but I also do not deny the lived experience of black people and women in particular at the hands of the police. I accept that, without effective leadership which challenges racism, sexism, homophobia and other forms of corruption, it becomes more difficult for good officers to do the right thing. I also accept that, without adequate resources, it is more difficult for decent, honest, hard-working police officers to provide the service they want to provide —the service the public deserve.

The Home Secretary faces a dilemma. The Metropolitan Police Service needs a brave, courageous leader who is prepared to speak out, tell the truth and bring about seismic change in the service—just the sort of person the Home Secretary does not want. It needs someone who is going to make it difficult for her and the Government when they expose the true nature and extent of the Met's shortcomings, and when they speak out when the Home Secretary and the Government fail to give them the backing they need in order to succeed.

Neil Basu, for example, currently the most senior serving Asian officer, has been a champion of diversity and has an outstanding track record, but he failed to be appointed as the new head of the National Crime Agency despite being on a shortlist of two, both of whom were rejected by the Home Secretary. Why?

The last-minute, no-notice political attack on the Mayor of London by the Minister in the other place was disgraceful. If anything, does this not show the ineffectiveness of the system of police and crime commissioners? It should be noted that, of the six forces in special measures, four have Conservative PCCs, and the two others have directly elected mayors.

The Metropolitan Police Service does not need another commissioner who promises not to rock the boat, who goes along with cuts in police resources that impact on operational effectiveness, and who does not stand up to the Home Secretary and the Government. Decent, honest, hard-working police officers deserve better. When will the Government appoint the right person, with the right backing, to turn this appalling situation around?

Lord Berkeley of Knighton (CB): My Lords—

Baroness Williams of Trafford (Con): My Lords, I thank both noble Lords for the points they have made. I join them in deeply regretting the death of Zara Aleena and all the other people they mentioned—far too many —who have been killed and the examples of poor or bad practice within the Metropolitan Police. This underlines the reason we are here today, which is the "engage" process that has been triggered. I think we probably all agree on that. The noble Lord, Lord Coaker, made the point that we all have our part to play, and I totally agree with that.

Both noble Lords also made the point about the Statement given in the House of Commons being different to the one shared beforehand. I listened to my right honourable friend's response, and, basically, the points he made reflected his experience while he was deputy mayor for policing in London. That was the reason he gave; I repeat it here. Clearly, what he said was part of the experience he had.

The noble Lords, Lord Coaker and Lord Paddick, made the point that it is depressing to read the report, and both were absolutely right that so many Metropolitan police officers are excellent—they are. They run into danger as opposed to running away from it. I think

[Baroness Williams of Trafford]
there will be police officers in the Met who are glad that this has happened, because it gives a fresh opportunity to address some of the very serious issues that I have addressed at this Dispatch Box time and again.

Both noble Lords mentioned Child Q in their questions. That was a particularly shocking episode. As both noble Lords probably know, the use of strip-search is covered by Code C of PACE 1984, which sets out the processes that police must follow when using that power. It can be carried out only by police officers of the same sex as the individual being searched. When searching a child, an appropriate adult must be present, unless the child specifically requests otherwise and the appropriate adult agrees. This is set out in the PACE code and must be followed by the police.

Since the publication of the safeguarding report into Child Q, the Met has ensured that officers and staff have a fully refreshed understanding of the policy for conducting a further search, particularly the requirement for an appropriate adult to be present. It has given officers advice around dealing with schools, ensuring that children are treated as children and considering safeguarding for under-18s. It has delivered training on adultification to all front-line officers in the Central East Command Unit, which covers Hackney and Tower Hamlets. It has reviewed the policy for further searches for those under 18 and made changes to ensure that it recognises that in these circumstances a child may be vulnerable to being a victim of exploitation. It has also introduced new measures so that an inspector must now give authority before the search takes place, to ensure there is appropriate oversight. A Merlin report must also be submitted to ensure that the safeguarding of the child is the priority.

The noble Lord, Lord Coaker, talked about the answering of 999 calls. I understand that 70% are answered within 10 seconds, but clearly we could do better. That is probably the answer there. The noble Lord talked about the victims Bill. Pre-legislative scrutiny ends at the end of July, and we expect the Bill to be introduced in September or October.

Both noble Lords talked about a combination of abuse of position, which of course the Angiolini inquiry is dealing with, and corruption, which HMICFRS did an inspection on, on the back of the Daniel Morgan Independent Panel report. The acting commissioner publicly committed to implementing all the 20 recommendations that it made. Most importantly, the noble Baroness, Lady Casey, has done her review into the culture in the police. The noble Lord, Lord Paddick, talked about some of the cultural manifestations, with gay men and black people being treated as somehow less than their white or heterosexual counterparts. I think the noble Baroness will have delved into that. There were also of course the terrible murders committed by Stephen Port. In many ways, those investigations were treated less properly than they should have been.

Both noble Lords asked me about the process for appointing the Met Police chief. Obviously, it is written into law. I cannot comment on individuals who have applied, but the Home Secretary will take into account the comments of the Mayor of London.

The noble Lord, Lord Paddick, asked me about the 69,000 crimes that go unrecorded and said that in 25% of stop and searches the reasons are unrecorded. I cannot confirm or deny that because I do not have the figures before me, but I will write a note to him on that.

9.20 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I sat here listening to the Statement that was read out by the noble Baroness. I know they are not her words, but I found some of the comments about the Mayor of London quite offensive. I could not believe it when my noble friend then said that the Statement had been shared with the Opposition in the other place and those bits had been left out. When Oppositions and Governments work together, common courtesies such as sharing Statements need to be respected. The fact that those comments were left out so that the Front-Bench spokesman did not see them before they were delivered at the Dispatch Box is totally out of order; doing things like that is not the way to operate. There is no reason for that other than making cheap political jibes. It is an awful way to behave. I assume that the Home Secretary had approved that; can the Minister confirm that she had approved the Statement before it was read out in the other place? If she did approve it, it is just awful for a member of the Cabinet to have done that. Let us also remind ourselves that this is the Home Secretary who was found guilty of breaching the Ministerial Code for bullying; we should remember that that is why the Government lost a previous ethics adviser. That is not the way to operate at all. These are serious matters that need serious commitment from the Government and from the Mayor of London to work to get things right, and behaviour like that is totally out of order.

Baroness Williams of Trafford (Con): My Lords, on whether the Home Secretary approved it, I saw the "check against delivery" vision of it, so I cannot comment any further than that. However, when these things happen, instead of the back and forth that we saw a lot of in the Commons, with people blaming each other, I will take the point made by the noble Lord, Lord Coaker, that we need to work together to resolve these things. Every victim, incident and controversial issue that has happened is the rationale for this "Engage" process to have been triggered. In some ways we should be not glad that it has happened but pleased that the process is now in place to stop these sorts of things happening, as they have been all too frequently.

Lord Berkeley of Knighton (CB): My Lords, I apologise to the noble Baroness for jumping the gun earlier. However, perhaps I can compensate for that by building on something that she said which I agree with. Before I say that, I should say that I do not demur from any of the condemnation that we have heard from noble Lords about some of the terrible things that have happened. However, it seems—this is where I agree with the noble Baroness—that we have to as a society consider what we are asking the police to do, and not only the police but the NHS. One thing that we somehow have to get a hold on is the sheer number of

people who are drunk, mentally ill or addicted to drugs, and the amount of time that casualty officers, police officers and even prison officers seem to spend dealing with these things, writing up the reports. Somehow, we almost need a third agency to deal with these people—I have mentioned this before in your Lordships' House and it even found some favour—to allow the police to concentrate on the job they do. When we consider judgment on the behaviour of the police, it is worth pointing out these problems and what we expect of them in those circumstances.

Baroness Williams of Trafford (Con): The noble Lord points to the very good work that the police often do, and to non-policing work that the police often do. He mentioned mental health problems, which the police very often deal with on a Friday and Saturday night, and probably other nights of the week as well. I recall that, some time ago, we made a decision not to put people with mental health problems into custody suites because it is clearly the wrong thing for them, and never to put children into custody suites. He also brought to mind the benefit of a multiagency approach. We all need to work together to tackle these problems so that it is not solely the job of the police.

Baroness Neville-Rolfe (Con): My Lords, we have had some sobering exchanges but, like the previous questioner, I want to go wider. My noble friend knows how much I care about improving effectiveness and value for money. I also have a son in the Met, although I have not been able to talk to him today. However, I know that policing is difficult. I am keen to know from her what is being done in training and guidance to the police—and, indeed, through the multiple legislation that we put through this House—to decrease the huge burden of paperwork and bureaucracy and allow the police to be freed up to do their job properly and professionally.

Baroness Williams of Trafford (Con): My noble friend mentions a number of things there, and training is critical to the effective functioning of the police in what they have to deal with. We have talked a lot recently about the training of police to deal with domestic violence issues, which I think has much improved over the past few years. There is complexity. Some bureaucracy is obviously necessary, because if things go wrong, processes have to be followed. On judgments of effectiveness and efficiency, HMICFRS makes those judgments regularly.

Product Security and Telecommunications Infrastructure Bill

Committee (2nd Day) (Continued)

9.27 pm

Amendment 43

Moved by ***Lord Bassam of Brighton***

43: After Clause 72, insert the following new Clause—

"Local authority nominated persons

Within three months beginning with the day on which this Act is passed, the Secretary of State must lay before Parliament a statement outlining the steps Her Majesty's Government intends to take to ensure local authorities—

(a) publish the contact details of an officer designated with responsibility for matters pertaining to the exercising of code rights, and

(b) publish relevant updates to the information provided under paragraph (a) in a timely manner."

Member's explanatory statement

This amendment is to probe whether the Government is taking any steps to ensure local authorities make the contact details of relevant officers publicly available, in order to assist telecommunications operators and other interested parties.

Lord Bassam of Brighton (Lab): My Lords, on behalf of my noble friend Lady Merron, I am moving Amendment 43. This amendment is designed to probe the Government and work out whether they are taking any steps to ensure that local authorities make the contact details of relevant officers publicly available so that telecommunications operators and other interested parties can make relevant inquiries. What stimulated this is the simple fact that telecoms operators have said to us that they regularly encounter difficulties identifying the responsible officer in local authorities. That experience is not universal—some local authorities are very good at making contact details available—but where problems are faced, infrastructure rollout is slowed down considerably. DCMS has acknowledged that different authorities deal with digital infrastructure matters in different ways. This amendment is our way of asking the Minister what steps the Government might consider to ensure greater consistency.

9.30 pm

This is a planning issue in a way; it is one of those things that perennially comes up. It is true to say that local authorities have faced severe financial pressures, meaning that some roles have been cut to part time or merged with others, and with this in mind, we think that the department could usefully look at specific support for roles that champion digital connectivity. If we want to get it right digitally, we must have the right planning infrastructure in place to ensure that the digital infrastructure can follow. I have had some experience of planning issues at different times in my political life, and the idea of having a named person or a named post is one way of addressing that issue.

Amendment 46 deals with the new Subsidy Control Act and whether the Government will establish a streamlined subsidy scheme covering telecommunications infrastructure. Once the appropriate guidance has been brought forward, that Act will police how virtually all public subsidies are awarded, including any money that may be paid by local or regional authorities to facilitate the rollout of infrastructure.

Although the new regime will not require pre-notification of subsidies, individual authorities having to create their own schemes and judge them against the Act's subsidy principles could require significant time and expertise while bringing legal risk, so what are the Government's plans for this? Will they establish a streamlined scheme to support infrastructure rollout, or will we see an inconsistent, piecemeal approach across the country? We know that the Government do

[Lord Bassam of Brighton]
not like inconsistency; we heard that from the Minister earlier. I am looking to be convinced here. I beg to move.

Lord Fox (LD): Incredibly briefly, I will speak to Amendment 46, which I have signed. The Government's aim, Her Majesty's loyal Opposition's aim, and our aim is to speed up the rollout of infrastructure. This amendment as crafted by the noble Baroness, Lady Merron, and the noble Lord, Lord Bassam, which I was pleased to sign, is a very simple measure to help in that objective. If the Government have not already thought of it, they should embrace it. Whether it requires primary legislation or otherwise, an undertaking from the Dispatch Box that this will be done would be a very good way of speeding up infrastructure implementation.

Lord Sharpe of Epsom (Con): My Lords, this was a brief debate. I turn first to Amendment 43. I thank the noble Lord, Lord Bassam, and the noble Baroness, Lady Merron, for raising this important subject.

The Government are committed to delivering policy which helps rollout for everyone, and support the entire telecommunications sector in delivering connectivity. Ensuring that local authorities are ready to facilitate rollout as quickly as possible is a key part of this. It will benefit people across the UK in receiving the best possible service and ensure that all operators are able to compete to provide that service.

Local authorities should have autonomy to serve their communities in the way that they see fit. The difficulties faced by urban communities are likely to be very different from those faced in the highlands, for example. The Government believe that local authorities are best placed to decide how to lead and foster digital rollout in their local area.

Mandating local authorities to designate a particular officer responsible for digital connectivity would be too prescriptive. However, we recognise the considerable benefits of having a dedicated lead on digital infrastructure in local and regional authorities, which is why we strongly recommend this approach in our digital connectivity portal, DCMS's official guidance for local authorities concerning connectivity. The portal provides a huge amount of practical information for local authorities—for instance, on debunking myths around 5G, making assets available for hosting equipment, and the application of the Electronic Communications Code and planning regulations. The digital connectivity portal is a vital enabler for local authorities to facilitate digital infrastructure deployment.

In May last year, the then Minister for Digital Infrastructure also wrote to all chief executives of local authorities to encourage them to appoint a digital champion and to engage with DCMS. I understand that as many as 80 authorities have responded and officials have been able to offer support to them. We have also provided £4 million of funding for the Digital Connectivity Infrastructure Accelerator programme, designed to foster increased collaboration between local authorities and the telecommunications industry. Local authorities can take advantage of these tools and funds to take the steps most appropriate in their area to encourage and facilitate rollout. I hope that gives reassurance on how seriously the Government take local authority engagement, and that the amendments will not be pressed.

If I might anticipate a possible comeback, it sounds like we very much agree with the noble Lord, so to be consistent about my inconsistency, we are not going further and mandating this because the Government seek to balance the national objective of accelerating digital infrastructure rollout with the need to allow local authorities to make the best choices for their communities. Each local authority will have a different approach to its specific local challenges. We feel that further imposition of rules from central government in these spaces risks disrupting environments that are already encouraging investment in infrastructure rollout.

Amendment 46 asks whether the Government intend to introduce a streamlined subsidy scheme for telecommunications infrastructure to reduce administrative burdens on public authorities. To provide some context, the new Subsidy Control Act, which has not yet fully come into force, gives the Government the ability to create streamlined subsidy schemes for all public authorities to use. The streamlined schemes are intended to provide a way of granting subsidies quickly, with little administrative burden, while also providing legal certainty to both the public authority awarding the subsidy and the beneficiary of the subsidy. The Government intend that these should facilitate the award of low-risk and uncontentious subsidies in areas of policy that are strategically important to the United Kingdom. Streamlined subsidy schemes will be considered for categories of subsidy where they will add clarity for public authorities and make the assessment of compliance simpler.

Although the Government currently have no plans to create a streamlined subsidy scheme for the installation of telecommunications infrastructure, we remain committed to delivering and supporting the rollout of such infrastructure as soon as possible. BDUK's Project Gigabit is delivering gigabit-capable broadband across the UK, working closely with public authorities, including the devolved Administrations and local authorities, to help refine procurement boundaries, validate the market's local investment plans and stimulate demand for gigabit vouchers.

The work we have undertaken so far has shown that the model is effective at responding to changing market conditions by refining or combining procurement boundaries to reach efficient scale and secure value for money for public subsidy. DCMS will continue to engage and consider how to support public authorities as best as possible to reduce administrative burdens, including on any considerations on subsidy control or future streamlined subsidy schemes.

I hope that explains why the Government consider that a streamlined subsidy scheme for telecoms infrastructure is not needed at this time. However, this will be kept under review. I ask noble Lords not to press their amendments.

Lord Bassam of Brighton (Lab): My Lords, local government is always a question of discretion and flexibility versus providing a more rigorous approach to getting local authorities to deliver and perform.

I accept the parameters of the argument. There is some merit in central government doing more to encourage local authorities to appoint a specific officer to help manage the rollout of digital. I think we are fairly in agreement on that point; 80 authorities out of 360-odd is not a lot but it is progress. Perhaps the Government could, or should, reinvigorate their drive to get authorities to come up with an identified official, particularly for the planning authorities.

I was very interested in what the Minister had to say about the second amendment. It seems that there is the emergence of a plan. I will read very carefully what the noble Lord had to say in *Hansard* and we will reflect further, but for now, I am more than happy to withdraw our probing amendment.

Amendment 43 withdrawn.

Amendment 44 not moved.

Clauses 73 and 74 agreed.

Amendment 45

Moved by ***Baroness Merron***

45: After Clause 74, insert the following new Clause—

"Review of 2017 revisions to the electronic communications code

(1) Within the period of three months beginning with the day on which this Act is passed, the Secretary of State must undertake a review of the effect of Schedule 1 to the Digital Economy Act 2017 (the electronic communications code).

(2) The review under subsection (1) must, in addition to any other matters the Secretary of State deems appropriate, include consideration of—

(a) the extent to which the 2017 revisions have secured progress towards Her Majesty's Government's targets relating to telecommunications infrastructure,

(b) the impact of the 2017 revisions on rents under tenancies conferring code rights, and

(c) the case for re-evaluating the value of rents under tenancies conferring code rights.

(3) Upon completion of the review under subsection (1), the Secretary of State must lay a copy of the findings before Parliament."

Member's explanatory statement

This amendment would require the Secretary of State to undertake a review of the 2017 revisions to the electronic communications code, with a particular emphasis on the effect(s) of the substantially lower rents paid by operators to landowners hosting telecommunications infrastructure.

Baroness Merron (Lab): My Lords, when the Electronic Communications Code was revised in 2017, the department committed to keeping track of developments and assessing the impact of those changes. I was grateful to the Minister for holding a meeting about the Bill prior to Second Reading, but when I queried the status of that review the response was that the Government had never explicitly committed to making its findings public. This leads me to Amendment 45.

Amendment 45 would require the Secretary of State to undertake a review and lay the findings before Parliament. This could be a new exercise or a matter of pulling together existing information. The amendment calls for a particular focus on issues around rents, but it also includes a request for a judgment on the extent to which the 2017 revisions have accelerated the rollout. This is a theme touched on by the other amendments in this group. I am sure the Government feel that they have a good story to tell, so I invite the Minister to accept the invitation to tell it.

Amendment 48 brings together a number of topics which were lightly touched on earlier today and calls for a comprehensive strategy for resolving issues around landowner rights, competition within the sector and so on. We believe that the department has a number of working groups which are supposed to deal with these issues. It would be helpful if the Minister could tell us when those working groups last met and when they are next due to meet. There is clearly work to be done to speed up the rollout of telecoms infrastructure and to ensure fairness in the system, which has also been a theme throughout the debate today.

We hope that the Government can clearly signpost how they are addressing the various issues raised in these amendments. If not, they are very likely to be revisited on Report. I beg to move.

Lord Clement-Jones (LD): I shall speak to Amendments 47, 49 and 50, and I support the amendments in this group to which the noble Baroness, Lady Merron, has just spoken: Amendments 45 and 48.

As regards Amendment 47, as I said at Second Reading, we all seem to be trapped in a time loop on telecoms, with continual consultations and changes to the ECC and continual retreat by the Government on their 1 gigabit per second broadband rollout pledge. In the Explanatory Notes, we were at 85% by 2025; this now seems to have shifted to 2026. There has been much government bravado in this area, but it is clear that the much-trumpeted £5 billion announced last year for project gigabit, to bring gigabit coverage to the hardest-to-reach areas, has not yet been fully allocated and that barely a penny has been spent.

Then, we have all the access and evaluation amendments to the Electronic Communications Code and the Digital Economy Act 2017. Changes to the ECC were meant to do the trick; then, the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations were heralded as enabling a stronger emphasis on incentivising investment in very high capacity networks, promoting the efficient use of spectrum, ensuring effective consumer protection and engagement and supporting the Government's digital ambitions and plans to deliver nationwide gigabit-capable connectivity.

9.45 pm

Then we had the *Future Telecoms Infrastructure Review*. We had the Telecommunications Infrastructure (Leasehold Property) Act—engraved on all our hearts, I am sure. We argued about the definition of tenants, rights of requiring installation and rights of entry, and had some success. Sadly, we were not able to insert a clause that would have required a review of the Government's progress on rollout. Now we know why. Even while that Bill was going through in 2021, we had *Access to Land: Consultation on Changes to the Electronic Communications Code*. We knew then, from

[Lord Clement-Jones]

the representations made, that the operators were calling for other changes not included in the Telecommunications Infrastructure (Leasehold Property) Act or the consultation. From the schedule the Minister has sent us, we know that he has been an extremely busy bee with yet further discussions and consultations.

I will quote from a couple of recent *Financial Times* pieces demonstrating that, with all these changes, the Government are still not achieving their objectives. The first is headed: "Broadband market inequalities test Westminster's hopes of levelling up: Disparity in access to fast internet sets back rural and poorer areas, data analysis shows". It starts:

"The UK has nearly 5mn houses with more than three choices of ultrafast fibre-optic broadband, while 10mn homes do not have a single option, according to analysis that points to the inequality in internet infrastructure across Britain.

While some parts of the country are benefiting from high internet speeds, others have been left behind, according to research conducted by data group Point Topic with the Financial Times, leading to disparities in people's ability to work, communicate and play."

A more recent *FT* piece from the same correspondent, Anna Gross, is headed: "UK 'altnets' risk digging themselves into a hole: Overbuilding poses threat to business model of fibre broadband groups challenging the big incumbents". It starts:

"Underneath the UK's streets, a billion-pound race is taking place. In many towns and cities, at least three companies are digging to lay broadband fibre cables all targeting the same households, with some areas predicted to have six or seven such lines by the end of the decade.

But only some of them will cross the finishing line … When the dust settles, will there be just two network operators—with Openreach and Virgin Media O2 dominating the landscape—or is there space for a sparky challenger with significant market share stolen from the incumbents?"

Are we now in a wild west for the laying of fibre-optic cable? Will this be like the energy market, with great numbers of companies going bust?

By contrast, INCA, the Independent Networks Cooperative Association, reports in its latest update:

"The 'AltNets' have more than doubled their footprint year on year since 2019"—

I think my noble friend Lord Fox quoted these figures—

"now reaching 5.5m premises and expected to reach 11.5m premises by the end of this year. Investment remains buoyant with an additional £5.7bn committed during 2021 bringing total estimated investment in the independent sector to £17.7bn for the period to 2025."

We have two very different stories there. What contingencies have the Government made? Who will pick up the tab if the former scenario is correct—the poor old consumer? In any event, will rural communities get any service in the end?

What of rural broadband rollout? It appears that DCMS is currently assessing policy options on the means of best addressing the shortfall. I was interested to hear the very pointed question that the noble Baroness, Lady Merron, asked about what working groups were examining some of these issues, following a call for evidence on improving broadband for very hard-to-reach areas. What is the department actually doing? Can we expect more changes to the ECC?

As regards Amendment 49, in the ECC the policy justification for the 2017 reforms was that rent savings by operators would be reinvested in networks, with the then Minister saying that the Government would hold operators' feet to the fire to ensure that they delivered, noting that to

"have real impact, savings must be invested in expanding network infrastructure".—[*Official Report*, 31/1/17; col. 1157.]

and saying that the revised code secured real investment. This was supported by confirmation, in the impact assessment accompanying the reforms to the ECC in 2017, that the Government would review the impact of the policy by June 2022. But this has not been met, despite the Government's future infrastructure review confirming that they were already considering undertaking a formal review of the code reforms to assess their impact in 2019. The Government's decision to introduce new legislation proves that the 2017 reforms have not actually achieved their aims.

Instead of leading to faster and easier deployment, as we have heard today, changes to the rights given to operators under the code have stopped the market working as it should and led to delays in digital rollout, as well as eroding private property rights. This has resulted in small businesses facing demands for rent reductions of over 90%; a spike in mobile network operators bringing protracted litigation; failure by mobile operators to reinvest their savings in mobile infrastructure; and delayed 5G access for up to 9 million people, at a cost of over £6 billion to the UK economy. The Government's legislation and their subsidies now show they know the reforms have failed. That is why they are passing new legislation to revise the code, as well as announcing £500 million in new subsidies for operators through the shared rural network.

In Committee in the other place, the Minister, Julia Lopez, claimed:

"If a review takes place, stakeholders will likely delay entering into agreements to enable the deployment of infrastructure. Only when the review has concluded and it is clear whether further changes are to be made to the code will parties be prepared to make investment or financial commitments".—[*Official Report*, Commons, Product Security and Telecommunications Infrastructure Bill Committee, 22/3/22; col. 122.]

In addition to there being no evidence for this claim, this extraordinary line of reasoning would allow the Government to escape scrutiny and commitments in a wide variety of policy areas, were it applied more broadly. To maintain public faith in policy-making, it is vital that there is an accessible evidence base on which decisions are made. The Government's decisions in this Bill do not meet the standard.

Moreover, I know that Ministers are sceptical about the Centre for Economics and Business Research's report. The noble Lord, Lord Parkinson, has said that it oversimplifies the issue, but I do not believe that the Government have properly addressed some of the issues raised in it. The CEBR is an extremely reputable organisation and although the research was commissioned by Protect and Connect, the Government need to engage in that respect.

Amendment 49 would insert a new clause obliging the Government to commission an independent review of the impact of the legislation and prior reforms within 18 months. The review would assess the legislation's

impact on the rate of additional investment in mobile networks and infrastructure deployment, the costs borne by property owners and the wider benefit or costs of the legislation. It would also oblige the Government to publish a response to the review within 12 weeks of its publication and lay that before Parliament, to ensure parliamentary accountability for the Government's action and to allow debate.

Finally, Amendment 50 would insert a new clause placing obligations on operators to report certain information to Ofcom each year. Operators would have to report on such information as their overall investment in mobile networks, the rent paid to site providers, the number of new mobile sites built within the UK, and upgrades and renewals.

It is the final group in Committee, so where in all this—as my noble friend Lord Fox and I have been asking each time we debate these issues—are the interests of the consumer, especially the rural consumer? How are they being promoted, especially now that market review is only once every five years? That is why we need these reviews in these amendments. We tried in the last Bill to make the Government justify their strategy. Now it is clear that changes to the ECC are not fit for purpose and we will try again to make the Government come clean on their strategy.

Baroness Stowell of Beeston (Con): My Lords, before I comment on this group, I have it on good authority that tomorrow is my noble friend the Minister's birthday, so allow me to be the first to wish him a very happy day. I hope that his evening tomorrow is more enjoyable than this evening.

I want to focus my comments on Amendments 45 and 50. Amendment 45 would, as we have already heard, require the economic impact assessment to be carried out. I understand that it was promised by Ministers in 2017, although I know that my noble friend disputes this, or, rather, has a slight variation on what was promised. Amendment 50 would require reporting by the mobile network operators to achieve much-needed transparency.

By the time I went to add my name to Amendment 50, in the name of the noble Lord, Lord Clement-Jones, it was already fully subscribed, but I will happily add my name to it if he brings it back on Report. As my noble friend the Minister may recall from Second Reading, my concern on behalf of site owners is that they were told that a reduction in rental income would be reinvested by the mobile network operators in delivering the rollout. It seems that there remains a lack of confidence on the part of the site owners—we have heard of this already tonight—because they have insufficient evidence to demonstrate how the new code is working. They are expected to engage in negotiations with commercial entities on trust, while fearing that their loss is someone else's financial gain. Amendment 50 seems the least the Government could agree to when faced with that situation.

I was torn regarding Amendment 45, in the name of the noble Baroness, Lady Merron, on the economic impact assessment, because I am concerned that carrying out a full economic impact assessment could delay rollout. However, I also know that not doing so is fuelling that distrust and sense of unfairness on the part of the site owners. As we have already heard today, the benefit of rollout relies on the willingness of site owners to participate. When we rely on people to succeed, they deserve to be heard and listened to.

My noble friend the Minister said on Second Reading that it is too soon to carry out a full economic impact assessment. I was going to ask whether the Government have any plans to do one at all and, if so, whether he could tell us when, but I was very interested to hear what the noble Baroness, Lady Merron, said about the conversation she had with him before the Bill was introduced. Unfortunately, it was a briefing I was not at. In light of that, if the Government have already done sufficient work to allow them to produce in public an economic impact assessment without delaying anything, that sounds like a sensible way forward. I will be very interested to hear how my noble friend responds to what the noble Baroness, Lady Merron, said.

I clarify that, specifically, I do not support Amendment 48, which the noble Baroness introduced. As I understand it from the Member's explanatory statement, it seems to enshrine what I might call the Openreach monopoly in multi-dwelling units. It would therefore limit competition in the way that we discussed earlier, even though we were not able to get into a full debate because my noble friend Lord Vaizey was not in the Chamber to move his amendments—noble Lords will know what I am talking about. I look forward to the Minister's reply.

10 pm

Lord Northbrook (Con): My Lords, I support this group. I was initially rather astonished by the Minister's lame response at Second Reading that the Government will not make public their investigation into the effect of the Digital Economy Act 2017. Investigating the subject further, I read the respected Centre for Economics and Business Research document on the matter. It says that the Government's electronic communications changes have not delivered a faster 5G rollout, and that it is slower than the pre-2017 status quo. But for the 2017 reforms, it says, 8.2 million more people would have 5G coverage by now than can currently access it. The CEBR says that the proposed changes to the ECC will cost UK GDP £3.5 billion by 2022. Adoption of an alternative code based on Law Society proposals would reverse the losses imposed by the 2017 reforms—so the Government might not want to do this review after all. Could the Minister comment on the CEBR findings?

Amendment 45 particularly appeals, because the review would have to be done quicker than that under Amendment 49, and it is more detailed in subsection (2). Subsections (2)(a), (b) and (c) mention

"the extent to which the 2017 revisions have secured progress towards Her Majesty's Government's targets relating to telecommunications infrastructure … the impact of the 2017 revisions on rents under tenancies conferring code rights, and … the case for re-evaluating the value of rents under tenancies conferring code rights."

I also give my support to Amendment 50.

Lord Fox (LD): My Lords, if there is an abiding theme in this group, it is transparent reporting and then using the data within those reports to make sensible decisions.

[Lord Fox]

Notwithstanding the Minister's special day tomorrow, I am guessing that he is quite a lot younger than me, so he might be able to remember his childhood. I can remember a game that we used to play, of running down hills with our eyes closed. This was tremendous fun, until it stopped—and it usually stopped when you fell over or hit something. The argument advanced by the Government is, "We mustn't do a review. We can't have data because it'll upset the market"—in other words, we cannot open our eyes because it will stop us running down the hill fast enough. That is the nature of what we are doing. In order to make sure that we do not fall over and that we are running in the right direction, we need to have our eyes open. In their different ways, these amendments seek to open our eyes to the effect that the Bill and all of this public and private investment will have on the objective that we all share: putting fibre in every home in this country. Without information, and without transparency in that information, we will not know how fast we are going and in which direction.

I care little about whether the Government accept the words in these amendments, but I do care about a Government who have enough sense to get the information, publish it and then act on it.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I am particularly grateful to my noble friend Lady Stowell for her early birthday wishes. Finishing Committee a day ahead of schedule is a delightful early present. There are still to hours to go before tomorrow, and I hope that we will rise before noble Lords have to sing "Happy Birthday".

Amendments 45, 47 and 49 seek to impose duties on the Government to assess and report on various impacts of the 2017 code reforms and, indeed, of this Bill once brought into force. I certainly appreciate the spirit of these amendments, which are designed to ensure that the Government are held to account; the noble Baroness, Lady Merron, referred to the conversations we had right at the beginning of our discussions on the Bill. Noble Lords will know that there are already ways in which some or all of the effects of these amendments can be achieved. For instance, Ofcom publishes its annual *Connected Nations* report, which it updates a further two times a year; this provides a clear assessment of the progress in both fixed and mobile connectivity. I hope that noble Lords will agree that the independent regulator is well placed to provide information on the progress of gigabit-capable broadband. Moreover, the Government continue to answer questions and provide clarity on all aspects of their work in this area, both in your Lordships' House and in another place.

Amendment 45, tabled by the noble Baroness, Lady Merron, and the noble Lords, Lord Bassam of Brighton and Lord Blunkett, seeks an assessment of the legislation passed in 2017 to update the code, and particularly the impact of changes to the valuation regime. When the 2017 reforms were introduced, we recognised that the market would need time to adapt and settle. We have engaged with interested parties since the reforms came into force to identify any emerging issues. In our view, there is not yet enough evidence for a properly robust and comprehensive analysis to be made of the impacts that the 2017 reforms have had, of which the valuation framework was only one aspect. That is particularly the case given the impact of the Covid-19 pandemic, which has caused major shifts both in the demands on telecommunications operators and on their ways of working. However, in light of the feedback we have received through our engagement and our public consultation, the Government believe that the changes we are making in the Bill are needed to ensure that the 2017 reforms have their intended effect. That is not to say that we think the 2017 reforms failed—much progress has been made; we simply think that more can and must be done to maximise their impact. Making these changes now through the Bill will help to meet the Government's 2025 connectivity target for at least 85% of homes and businesses to have access to gigabit broadband.

The noble Baroness, Lady Merron, asked how often our engagement has taken place. The access to land workshops is one part of it; there are in fact three separate groups which have been going for over a year. They met this month and will meet again in July, so we are undertaking that engagement on a regular basis.

Amendment 47, tabled by the noble Lords, Lord Fox and Lord Clement-Jones, asks the Government to review and report on the impact of Part 2 of the Bill against our gigabit delivery targets. Again, I appreciate that noble Lords will be keen to ensure, as they should, that the Government are on track with their commitments. DCMS currently carries out monitoring, and regular updates are published on a quarterly basis by Building Digital UK. That monitoring and reporting will naturally capture and reflect any accelerations that occur after this Bill comes into force.

The most recent Project Gigabit quarterly update highlighted the progress we are making. This includes reaching a milestone of over 100,000 broadband vouchers issued, worth more than £185 million, with 65,000 claimed to date to support households and businesses with the additional costs of securing gigabit-capable connections; launching two new regional procurements in Norfolk and Suffolk and two local supplier procurements in Cornwall, bringing our total live procurements to 10 and extending gigabit-capable connectivity to up to around 380,000 premises; completing over 20 market engagement exercises across the UK further to inform our future procurement pipeline; and launching as an executive agency of DCMS and publishing our first corporate plan setting out our key strategic objectives for 2022-23 and how Building Digital UK will drive the expansion of gigabit connectivity to all parts of the country.

Lord Fox (LD): Briefly, if it is going so well, why are the Government changing everything? The Minister has just told us how well it is going, and now they are changing everything.

Lord Parkinson of Whitley Bay (Con): From our engagement, to which I have referred, we believe it is going well and progress has been made, but our engagement with stakeholders suggests that the reforms that we are putting forward through this Bill are needed. We are extending that progress following consultation.

Lord Clement-Jones (LD): I am sorry to interrupt the Minister. As he knows, certainty is absolutely crucial for business. What is always created when new legislation supersedes old legislation is uncertainty. What confidence can the Minister possibly have that the impact of this Bill will be beneficial to rollout?

Lord Parkinson of Whitley Bay (Con): With such an accelerating market, thanks to the pro-investment environment that the Government are creating, it is quite challenging to quantify the extent to which progress is attributable to any single piece of legislation in a market that reflects so many factors. That is one reason why we think it would be of limited value.

My noble friend Lord Northbrook asked me to comment on the Centre for Economics and Business Research report on the 2017 reforms. We believe that the CEBR report does not provide a sufficiently rounded picture in its assessment of how the 2017 reforms have affected the pace of telecommunications delivery. The Government, as I have said, acknowledged in 2017 that reductions in payments could make landowners less keen to enter into agreements to host apparatus on their land. We expected an initial slowdown following the implementation of the 2017 reforms while the market adapted to them, but our understanding, informed by our conversations and consultation, is that both new and renewal agreements are now being successfully concluded. For instance, we were informed in January this year that, since 2017, 900 agreements had been renewed and that 83.5% of those agreements were concluded consensually, to give noble Lords some data.

Lord Fox (LD): By extension, is the Minister expecting a slowdown again as the market gets used to these changes? Clearly, the Government expected a slowdown when they made the last set of changes; are they anticipating a similar slowdown this time?

Lord Parkinson of Whitley Bay (Con): These changes build on the changes of 2017, so we do not expect there to be such an impact, because there is not such a change for the market.

We think it is too simplistic to attribute the changes in the market since 2017 solely to the valuation framework. The reforms in 2017 also made it easier for operators to share equipment, which will have reduced the demand for new mast sites to be built. Of course, we all hope that there will not be disruptive effects of a pandemic, as we have seen in the years since 2017.

Amendment 49, tabled by the noble Lords, Lord Clement-Jones and Lord Fox, and the noble Earl, Lord Lytton, asks the Government to conduct an implementation review of the Act after it is brought into force. However, we believe including such a requirement in the legislation is not necessary. The Government will of course monitor the effect of this legislation to understand how it is working in practice. Requiring an assessment at a specific time and which is focused on such specific elements would fetter the Government's ability to judge when a meaningful review of progress can most sensibly be completed and what information it should include. I am happy to reassure my noble friend Lady Stowell that of course we want to monitor the effect of this legislation and to see and understand how it is working in practice.

Amendment 50, tabled by the noble Lords, Lord Clement-Jones and Lord Fox, the noble Earl, Lord Lytton, and the noble Baroness, Lady Merron, seeks to impose duties on telecommunications operators to provide a variety of annual data to Ofcom. It must be remembered that imposing reporting obligations on the industry necessarily diverts resources away from delivering the very targets that the Government have challenged them to deliver and on which noble Lords are rightly pressing us for progress. Any such obligations must therefore be proportionate.

The Communications Act 2003 already gives Ofcom substantial powers to collect and publish data. Procedures are therefore in place to monitor the progress that is being made and to ensure that details of this progress are published. For example, licence obligations for the shared rural network require mobile network operators to report on coverage and the number of new sites built through the programme. Operators also provide Ofcom with information on the geographic availability of coverage to enable consumers to make informed decisions. This is all data that is, or will be, published in Ofcom's *Connected Nations* report.

10.15 pm

The amendment refers to a number of specific reporting requirements, but I will focus now on those relating to the valuation regime. In general, we believe that any obligation to publish details of amounts paid to site providers would be inappropriate. The point has been made repeatedly that we expect agreements between operators and site providers to be reached on a consensual basis wherever possible. Those negotiations will reflect site-specific considerations. Publishing data on average rents paid has the potential to undermine effective negotiations, setting expectations that may be entirely unrealistic given the different circumstances that will inevitably arise. That is why we think it would be unhelpful to introduce an obligation of this nature into the Bill.

I thank the noble Baroness, Lady Merron, and the noble Lord, Lord Bassam of Brighton, for their Amendment 48, which would require the Government to publish a rollout strategy. We agree that the issues highlighted in this amendment are of vital importance to national connectivity, and I welcome the opportunity to discuss some of our ongoing strategic work in these areas.

Telecommunications infrastructure may be divided into two types, wireless and fixed, and I shall begin with the former. The Government are currently developing a wireless infrastructure strategy, which will set out a long-term vision to support the development, deployment and adoption of 5G and future wireless networks, and lay out the Government's aims for the availability of wireless connectivity. This will entail setting a new ambition for the deployment of 5G to ensure that the UK can reap its full benefits. In the spirit of public consultation, development of this strategy included a call for evidence, and we aim to publish the strategy itself later this year. That is not all we are doing on wireless connectivity, and I would be very happy to speak to noble Lords in further detail about it if they would like me to do so.

[Lord Parkinson of Whitley Bay]

I turn to the Government's work on fixed infrastructure. As many noble Lords will know, the 2018 *Future Telecoms Infrastructure Review* set out the Government's strategy to deliver nationwide gigabit-capable broadband as quickly as possible. The review creates a regulatory environment that stimulates competition and investment in the market while busting the barriers to deployment and investing in areas that the market will not reach without subsidy. This strategy has facilitated growth in the number of UK premises that now have access to gigabit-capable broadband, from 8% in July 2019 to more than 68% today.

Aside from this, we are pursuing several other methods to encourage the rollout of fixed infrastructure, which were published in our barrier busting update last year. I hope that gives noble Lords some flavour of the work we are doing and confidence that the Government are taking this work very seriously.

We believe that a further strategy on top of those I have outlined this evening would simply serve to muddle our work, and I hope that the noble Baroness will be content on that basis to withdraw her amendment, and that other noble Lords will not press theirs.

Baroness Merron (Lab): My Lords, I thank the Minister for his response and assure him that I will not be speaking so long as to take him into his birthday—I am sure that is a great disappointment.

This has been a very helpful debate. I have listened closely to the Minister's response and will of course be going through *Hansard* to consider how we might deal with these matters on Report. I am sure the Minister has heard what noble Lords said about the need for transparency and for reporting, not for reporting's sake and not for transparency's sake, but to actually support what we are seeking to do through the Bill.

I understand the point the Minister made about the tension between reporting and getting on with the job, but I do not feel that one needs to be at the expense of the other. In fact, they support each other. That is what we need to consider. Having said that, I will not press these amendments at this stage. I thank the Minister and wish him a happy birthday for tomorrow. I beg leave to withdraw my amendment.

Amendment 45 withdrawn.

Amendments 46 to 50 not moved.

Clauses 75 to 79 agreed.

House resumed.

Bill reported without amendment.

House adjourned at 10.22 pm.