Vol. 824
No. 51

Wednesday
12 October 2022

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
Non-afl	Non-affiliated
PC	Plaid Cymru
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 12 October 2022

3 pm

Prayers—read by the Lord Bishop of Coventry.

Oaths and Affirmations

3.06 pm

Several noble Lords took the oath.

Health Taxes

Question

3.09 pm

Asked by ***Lord Brooke of Alverthorpe***

To ask His Majesty's Government what plans they have to extend the use of health taxes in the wider fiscal system.

Viscount Younger of Leckie (Con): My Lords, given both the historically high tax burden and the cost of living pressures facing families, the Government have no current plans to extend the use of health taxes. Nevertheless, having a fit and healthy population is essential for a thriving economy and we remain committed to doing everything we can to help people live healthier lives, including by investing in sports and nutrition education to give children the very best start.

Lord Brooke of Alverthorpe (Lab): My Lords, as you would expect, I am rather disappointed with that reply, although it is not unexpected. I hope the Government are prepared to review their position on this. In 30 years, we have had 14 different strategies on health, yet we now have more obesity, more diabetes and more health problems related to overeating and overdrinking. The two factors that have had the biggest impact on behavioural change are, first, on smoking, the increase in price introduced by my party, which the Tories opposed. That was the biggest factor that changed attitudes. Secondly, I commend the Government for their work on the special levy on soft drinks introduced in 2019. There are rumours that it is to be abandoned, so will the Minister confirm that they will not abandon it? As it takes time to work these issues through, would he agree to meet with Imperial College to look at the work that has been done on taxation and how it can be brought into being without increasing the cost of living greatly?

Viscount Younger of Leckie (Con): There were a number of questions there. Tackling obesity is a major priority for this Government and we are taking up a mixture of issues. We continue to invest in supporting public health and tackling obesity. This includes a £200 million a year programme to continue the holidays, activities and food programme. To come back to the noble Lord's points, the soft drinks levy has had an effect. Some 44% of drinks now have a reduced sugar level and that is feeding through to 36,000 individuals being less likely to become obese.

Baroness Boycott (CB): May I begin by drawing the Government's attention to the food strategy published by President Biden about 10 days ago? It is a brilliant document which will, I hope, be enacted into law. Yesterday morning, on the "Today" show, at exactly 7.55 am, Thérèse Coffey said, in response to a question on why the Government are withdrawing restrictions on two for one offers at supermarkets because of the cost of living crisis, "We have a more positive approach to obesity than two for one". Could the Minister explain what that is?

Viscount Younger of Leckie (Con): As I said, there are a number of initiatives to tackle obesity. Of course, I am aware of three for two or two for one offers. As we know, restrictions on these were due to come into force on 1 October 2022 and there are some extremely good reasons why they have been delayed.

Lord Young of Cookham (Con): Further to the question from the noble Lord, Lord Brooke, is my noble friend aware of the independent Khan review into smoking, commissioned by Sajid Javid and published in June? It recommended a polluter pays levy on tobacco companies to fund the policies necessary to enable the Government to hit their own target of a smoke-free Britain by 2030. Can my noble friend assure me that the Treasury is giving serious consideration to that recommendation?

Viscount Younger of Leckie (Con): I thank my noble friend. His question allows me to bring in an answer to a question raised by the noble Lord, Lord Brooke, as well. Over the past decade, the Government have made significant steps towards making England smoke free by 2030. We have continued to provide funding to local authorities and stop-smoking services via the public health grant. We have also provided additional resources as part of the NHS long-term plan. To answer my noble friend's question, the Government are carefully considering the recommendation set out in the independent Khan review.

Lord Rooker (Lab): Is the Minister aware that in the decade following 2010 life expectancy in the UK stalled for the first time in 120 years? When does he expect people to be able to start living a bit longer?

Viscount Younger of Leckie (Con): It is a continuing initiative and a continuing battle to fight obesity. It is a really important issue and a cross-government initiative. I mentioned already the holiday, activities and food programme, but also bring in education, as this is also a matter of educating parents. All in all, we need to continue to do our very best to lower levels of obesity not just in adults but particularly in children.

Lord McColl of Dulwich (Con): My Lords, does the Minister agree that if the 40 million people in this country who are obese and overweight put fewer calories into their mouths, the NHS would save £27 billion?

[Lord McColl of Dulwich]
Could the Department of Health have a slogan: "Slim your waist and slim your wallet: put fewer calories into your mouth"?

Viscount Younger of Leckie (Con): My Lords, I am very aware that the latest estimate of the annual cost to the NHS in the UK of obesity-related ill health is around £6.5 billion—that is the 2021 figure. I add that physical activity and a healthy diet both have important roles to play in supporting people to improve and maintain healthy lifestyles. However, for those who are overweight or obese, eating and drinking less is one of the most important factors.

Baroness Whitaker (Lab): My Lords—

Baroness Brinton (LD): My Lords, I am grateful to the noble Baroness. The Treasury said last week that it will not be changing or reviewing the three-year public spending settlement. However, last Friday, the NHS chief finance officer said that that will result in a further £20 billion of efficiency savings as a result of the increased costs that the NHS is having to pay following inflation, and two-thirds of the new integrated commissioning services started by this Government on 1 July are already in deficit because of inflation. How will the NHS will cope with pressures on top of the existing pressures it has with the backlog of cases?

Viscount Younger of Leckie (Con): The Government are very much aware of the pressures that the NHS is facing. I think we will have to wait until 31 October for the fiscal plan to understand exactly how expenditure will work out in line with the OBR forecast and in line with how we intend to roll out our growth programme. However, I reassure the noble Baroness that the NHS is vital; there are a lot of pressures and issues to tackle.

Baroness Whitaker (Lab): My apologies to the noble Baroness. Following on from her question, is the problem still that the Treasury, when measuring the cost-efficiency of sensible policies such as the tax on sugar, does not offset expenditure in one department against gains made in another—in this case the Department of Health and the NHS? Can the noble Viscount tell the House whether that is still the Treasury's practice?

Viscount Younger of Leckie (Con): I am unable to confirm that. However, I can confirm—I think this is common knowledge—that a review on efficiency is under way and, as I said to the noble Baroness, Lady Brinton, we will have to wait a couple of weeks or so to see how this will pan out.

Lord Hamilton of Epsom (Con): Does my noble friend share my concern that many people in the NHS do not keep their appointments? Has the NHS considered having an appointment fee, which of course could be repayable if the appointment was kept?

Viscount Younger of Leckie (Con): I feel certain that that has been considered but I am afraid I am none the wiser as to whether it might be taken forward. Again, I will write to my noble friend if I have any update on that initiative.

Baroness McIntosh of Hudnall (Lab): My Lords, I have been listening very carefully to the Minister's answers. I wonder whether he recalls the question from the noble Baroness, Lady Boycott. In his answer he referred to "extremely good reasons" for the delay to the implementation of the previous arrangements about buy one, get one free. Can he tell us what those extremely good reasons are? I hoped he would have done so by now.

Viscount Younger of Leckie (Con): That is a fair point from the noble Baroness. How long does she have? But if I may answer that very briefly, obviously, we are aware of the pressures that people are under, particularly those in the lower economic groups, so we felt it was right to effect a delay for a year.

Lord McLoughlin (Con): My Lords, is it not a fact that the Government can send messages out to food manufacturers? They warn us of the dire consequences of increasing prices but, if they are told that there is going to be a tax, they often find ways of avoiding it and lowering the calorific content of some of these foods.

Viscount Younger of Leckie (Con): That is right. It is why the Government continue to work with industry to help deliver healthier foods and to encourage healthier eating. We want to ensure that we have a system in place to deliver healthy and affordable food for all, which also takes account of our great agricultural sector.

Energy Supplies

Question

3.19 pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask His Majesty's Government what assessment they have made of the impact of (1) increased fracking and oil and gas extraction on energy costs for consumers, and (2) the time frame required for such supplies to come on stream in comparison with renewable energy capacity.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, measuring the impact of any specific gas project or energy costs for consumers is inherently complex. The UK is not isolated from international markets. Shale gas can also support energy security. Renewable energy sources have a wide range of development timeframes. The process of extracting onshore shale gas can be relatively rapid and scalable but will always depend on specific development factors.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for his reply; I will not call it an Answer. I am sure that he is extremely embarrassed by his Government's ditching of one of their election promises not to frack any more. I would like a yes or no answer to a question. If local people—and perhaps even the local council—are against fracking in their area, as for

example is the Tory-led council in East Riding, will the Government accept that and allow no fracking in their area?

Lord Callanan (Con): The Prime Minister and the Secretary of State have said that local support for fracking projects is very important. It is one of the factors that we will take into account.

Lord Lilley (Con): My Lords, more than a million shale wells have been drilled in North America and elsewhere. There is no record of a single building having been shaken down by the occasional microtremors, nor of a single person being poisoned by allegedly contaminated aquifers. Is not the scaremongering of the anti-frackers as bad as that of the anti-vaxxers? Should it not be treated similarly?

Lord Callanan (Con): The noble Lord makes an important point. A number of scare stories have been circulating, although I would gently point out that many parts of America are much less densely populated than many parts of the UK.

Lord Teverson (LD): My Lords, it is well understood that fracking will take some time to develop, and it is more expensive than many renewables. As an alternative, solar is renewable, a lot cheaper and can be implemented much more quickly. Can the Government guarantee that they will not restrict further the rollout of solar in the country during the next couple of years?

Lord Callanan (Con): Not only can I guarantee that but we will be expanding renewables production. We need to do both. We need to roll out renewables, which have a good track record. They are relatively cheap, but they are intermittent—it is no good telling people that they can keep their lights on for only 60% of the time. The real watchword is that we need diversity of supply. We need more renewables; we need gas; we need nuclear; we need biomass production—we need all of them.

Baroness Hayman (CB): My Lords, I declare my interests. I welcome the Government's movement on the planning regime for onshore wind. I also endorse the need to change the illogical charging regime for electricity generation which was announced today. How will the Government ensure that funding for research and investment in renewables is maintained, given the effective windfall tax on renewables that is being introduced, when the detrimental effect on investment in research on oil and gas was the reason for not having a windfall tax on those industries?

Lord Callanan (Con): I agree with the first part of the question from the noble Baroness, but we do have a windfall tax on oil and gas producers: the energy price profits levy was announced earlier in the year. We do not propose a windfall tax on renewables. I welcome her support for increased supplies of wind energy.

Lord Watts (Lab): My Lords, does the Minister's previous answer mean that the suggestion that the local people will have a say is meaningless, because the Government will overrule them?

Lord Callanan (Con): No, that is not what I said—if the noble Lord would care to consult *Hansard*. I said that local support is extremely important. It is one of the factors that we will be looking to see demonstrated before any hydraulic fracturing licences are issued.

Baroness Foster of Oxton (Con): My Lords, as a former Member of the European Parliament for North West England, and for many months in this House, even before the invasion of Ukraine, I have been a vocal supporter of the reintroduction of shale gas extraction in the Bowland fields in Lancashire. The protesters at the time generally were not those who lived there, but people who came from outside. We are also now aware of the fearmongering propaganda against fracking across Europe and the UK, which emanated from Russia. Can my noble friend the Minister reassure this House that the process will go ahead?

Lord Callanan (Con): I know that my noble friend has been a long-standing supporter of fracking. There are a lot of steps to go through. There could be potential for large amounts of shale gas. We do not yet know. Local planning will still need to happen, the licences will need to be issued, the Secretary of State will want to be reassured that it is still safe in operation et cetera, but it is certainly a potential that we are looking at.

Lord Wigley (PC): My Lords, I am sure that the Minister is aware that the Government of Wales have banned fracking, not just on the question of environmental impact in the conventional sense but because of the uncertainty of the underground workings in many of the coalfields and other mineral areas of Wales. In those circumstances, in the context of the possibility of fracking in west Cheshire and the Wirral, and the uncertainty about many of the underground tunnels in the industrial area of Flintshire, can he ensure that there is close co-operation and discussion with the Government of Wales before any consent is given on the eastern side of the border?

Lord Callanan (Con): The Welsh Government are of course responsible for policies, planning et cetera in Wales, and the British Government are responsible for that in England.

Baroness Liddell of Coatdyke (Lab): My Lords, many of the issues that we are discussing today could be covered in the Energy Bill. What has happened to it?

Lord Callanan (Con): Well, we have had some extensive debates, as the noble Baroness knows. We had an excellent Second Reading and two days in Committee. I am sure that we will want to look at when that returns to the House.

Lord Walney (CB): My Lords, do the Government accept that public and community support for fracking projects and others such as onshore wind could be greatly increased if it was made easier—perhaps even mandated—for companies to share the revenue directly with local consumers in the environment of the projects where they are either fracked or where the wind turbines go up?

Lord Callanan (Con): The noble Lord speaks a great deal of sense. They are eminently sensible suggestions and of course local communities will want to feel the benefit of any procedures that they consent to in their areas.

Baroness McIntosh of Pickering (Con): My Lords, following up that point, does my noble friend agree that energy from waste is very much the way forward, and will he ensure that any benefits go to the local community from electricity generated from waste?

Lord Callanan (Con): I am happy to agree with my noble friend that energy from waste is an excellent production technique. There are many successful energy-from-waste projects; it is another technology that will make a contribution to our energy supply.

Baroness Sheehan (LD): My Lords, a short while ago in the Commons, the Prime Minister stated that fracking would go ahead only where there was community support, and the Minister has just corroborated that. Can he categorically state that community support will be gauged neither by the fracking companies themselves, of which there is a rumour, nor by Jacob Rees-Mogg's department, given the debacle of his consultation on imperial measurements, in which "no" was not an option?

Lord Callanan (Con): I am happy to hear from the noble Baroness the great news that the Prime Minister agrees with me and has said the same thing, which is always good for a Minister to hear. However, the reality is that the issuing of hydraulic fracturing consents is a matter for BEIS and the Secretary of State for BEIS.

Lord McNicol of West Kilbride (Lab): My Lords, as many speakers have alluded to, there is little evidence to suggest that fracking is the answer to the current energy crisis. However, reducing our collective energy demand would improve energy security and lower prices. Why was the Government-led campaign to encourage household energy savings scrapped?

Lord Callanan (Con): If I can just correct the noble Lord: fracking is not the only answer; it is one of the potential answers to energy security. As I said earlier, we need a diverse range of supply. I remind the House that while we have our own domestic supplies of gas, we still import a considerable amount of very carbon-intensive LNG. If fracking gas—shale gas—can replace some of that, then that is a net carbon saving.

With regard to information, the Government will continue to promote all our energy efficiency schemes. We will continue to provide information to consumers on ways that energy can be saved and, more importantly, on how they can reduce their bills. There is one pre-eminent technology that everybody should do, which is to turn down the flow temperature of your condensing boiler: you will end up with the same temperature, the boiler will run much more efficiently, and you will save 8% to 10% on your gas bills.

Children in Care

Question

3.30 pm

Asked by ***Lord Laming***

To ask His Majesty's Government what assessment they have made of the quality of life of children in care.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, we want to improve children and young people's lives and outcomes, to strengthen families and to realise the benefits of establishing firm and loving foundations early in life. It was for this reason that we asked Josh MacAlister to review the children's social care system, engaging directly with those with experience of care. This, with other reviews, has provided a comprehensive assessment, and we are committed to publishing an ambitious and detailed implementation strategy later this year.

Lord Laming (CB): My Lords, I am grateful. The noble Baroness has vast experience and well understands that children do not come into care unless they have had an awful start to their young lives. It is for that reason that the state has to intervene and be a good parent to these children. Recent reports indicate that some of these children are having numerous placements in their young lives, which often entails a change to a different school, therefore reinforcing the instability in their lives. Are the Government willing to look at why these children are having these multiple placements and what can be done to improve the quality of their lives in care?

Baroness Barran (Con): The Government absolutely agree with the noble Lord about the importance of stability. There is clear evidence of a link between changes in care placements and a decrease in outcomes at key stage 4. Seven out of 10 children in care have one placement a year, although the noble Lord is right to focus on the three in 10 who have multiple placements. We are using data to inform our policy, and next month will publish our stability index. I would be delighted to meet with the noble Lord and other noble Lords who are interested in this important issue, to go through that data.

Baroness Warwick of Undercliffe (Lab): My Lords, the latest Department for Education figures indicate that only 13% of care leavers actually go on to higher education. That figure has not changed in five years. Many universities are already improving their offers to care leavers, but the figures have remained stubbornly low. Can the Minister tell us what the main barriers are, and what the Government are doing to improve these vital opportunities for care leavers?

Baroness Barran (Con): The noble Baroness raises a very important point, and she will be aware that, sadly, some of those figures are mirrored during a child in care's educational experience. We are working very hard with virtual school heads to support children

in the care system throughout their education, and we have support for them beyond. The noble Baroness will be aware that over half of these children have a SEND diagnosis, which also has an impact, obviously, on higher education.

Lord Lexden (Con): What support are the Government giving to charities like the Royal National Children's SpringBoard Foundation in their efforts to secure places in both state and independent boarding schools for looked-after children who would benefit from such places? Is it not the case that these places cost less than local authority childcare and greatly enhance the academic prospects of the pupils concerned?

Baroness Barran (Con): The department is grateful for the work that the Royal National Children's SpringBoard Foundation does and works closely with it. My noble friend makes a good point. A child in care obviously faces a wide range of challenges starting from their early childhood, as the noble Lord, Lord Laming, pointed out. Therefore, the role of the local authority in supporting children in all those aspects is critical.

The Lord Bishop of Worcester: My Lords, the quality of life of children in care is clearly a matter of grave concern, but I wonder whether the Minister is aware of the Children's Society latest *The Good Childhood Report*, which suggests deep concern about the continuing decline in the well-being of children generally. As expected, the current cost of living crisis is having a significant effect on families: 85% of parents and carers, the report suggests, are very concerned about the future. The Children's Society report suggests ways forward. Is the Minister aware of them? Faster rollout of mental health support, a permanent boost to social security lifelines and extended help with school lunches are among them. Will the Minister comment on that?

Baroness Barran (Con): As a department, we look at all those options, but on the one hand we need to recognise the extraordinary challenges children faced particularly through Covid—particularly teenagers while their schools were closed—but we also need to acknowledge that we are in an economy with more opportunity and more job opportunities than ever before. I think we need to be empathetic to their experience but also optimistic for their futures.

Lord Storey (LD): The Minister will be aware that, over the past decade, an increasing number of children and young people have been put in placements outside their home area—there has been something like a 28% increase. Just imagine the trauma and mental anguish that that causes. We find that very vulnerable children often go missing. It is important that children relate to their area. Rather than more words, what can we practically do to ensure that this practice ceases?

Baroness Barran (Con): I think more money rather than more words. We have supported local authorities to meet their statutory duties through capital investment totalling £259 million, which will allow them to maintain and expand capacity in their areas.

Baroness Pitkeathley (Lab): My Lords, most children in the care system live with foster parents, to whom we owe a great debt of gratitude for their dedication, but many foster parents report that they are not given sufficient information about the background of these children, many of whom have had traumatic experiences, as the noble Lord, Lord Laming, pointed out. Confidentiality is often given as the reason for this, but does the Minister agree that, if foster parents are going to deal adequately with the behavioural problems that may arise, they need to be as fully informed as possible about the background of these children?

Baroness Barran (Con): The noble Baroness makes a very good point. If it would help to meet some foster parents to understand those issues better, I would be delighted to do so.

Baroness Bennett of Manor Castle (GP): My Lords, the Welsh Government have opened a consultation on eliminating profit-making residential and fostering provision for children in care. The Welsh Minister responsible said that

> "Children … have told us that they do not want to be cared for by privately owned organisations that make a profit from their experience".

Are the Government considering something similar for England, and have they asked children in care how they feel about profit being made from their experience?

Baroness Barran (Con): The Government share the concerns that the noble Baroness raises about some providers making excessive profits, but I am sure she is aware that neither the care review nor the Competition and Markets Authority report has recommended banning for-profit provision.

Baroness Lister of Burtersett (Lab): My Lords, taking up the point made by the right reverend Prelate, what steps are the Government taking to reduce child poverty to prevent children having to be looked after?

Baroness Barran (Con): I think we have to be careful about too much of a causal link between poverty and a child being taken into care, although I accept that poverty puts a great deal of strain on a family. The Government have taken a wide range of measures, from support with household energy bills and others that the noble Baroness will be aware of, to support families under pressure.

Baroness Chapman of Darlington (Lab): Just this week, it has been reported that a vulnerable young person in crisis with multiple complex needs was held in a hospital for months on end instead of an appropriate secure children's home because there simply are not enough secure places. Do the Government believe they are doing enough for looked-after children with complex needs?

Baroness Barran (Con): I think that we are doing as much as we can, but we absolutely acknowledge the issue. Following the different independent reviews that have been commissioned, we are considering the issues in the round at the moment and will come back, I am confident, with a very strong response.

Baroness Butler-Sloss (CB): My Lords, I am a patron of a secure unit down in Exeter. One of its main concerns is a lack of funding to get sufficient staff and sufficient training. What will the strategy do about that?

Baroness Barran (Con): I cannot anticipate exactly what the strategy will do, as the noble and learned Baroness is aware. The cost of a child or young person being in a secure unit is extremely high, and we will be looking at the detail of how we can make sure that recruitment needs are addressed.

Iran: Women's Rights

Question

3.41 pm

Asked by ***Lord Purvis of Tweed***

To ask His Majesty's Government what assessment they have made of recent events in Iran and the impact of those events on women's rights in that country.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, the death of Mahsa Amini in Iran is a shocking reminder of the repression faced by women in Iran. I am sure I join all noble Lords in commending the bravery of ordinary Iranians seeking to exercise their right to peaceful assembly and freedom of expression in the face of appalling police violence. We urge Iran to listen to its people, exercise restraint, lift internet restrictions, release unfairly detained protesters and ensure women can play an equal role in society. The position of the United Kingdom Government is clear: through our words, our sanctions and indeed our work with international partners we will hold Iran to account.

Lord Purvis of Tweed (LD): My Lords, I agree with the Minister. The bravery of the women of Iran, especially the very young women, is highly inspiring. Does the Minister agree that this is the wrong time for the World Service to be closing its Persia radio service? It is a technology which is highly relied on in times of difficulty. As the Minister said, with digital repression, moving to a wholly digital platform will not offer the kind of support that this service does. The Government put forward emergency funding for Ukraine for the World Service in the spring, so will they step in? If the difficulties in Iran escalate then we may be in a position where we have to offer safe refuge for women in Iran. Will the Government start preparations now for a resettlement scheme, so we do not repeat the errors of previous schemes with delays in having them up and running?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Lord about the important role the BBC plays both in Iran and elsewhere in the world. Although it is operationally and editorially independent from the Government, we recognise that the BBC World Service plays a very important role. The FCDO is providing the BBC World Service with over £94 million annually for the next three years, supporting services in 12 languages. Of course, I hear very carefully what the noble Lord has said. BBC Persia itself and the journalists have suffered great suppression. We have spoken out very clearly and loudly against that suppression as well.

Lord Lamont of Lerwick (Con): My Lords, I support what the noble Lord, Lord Purvis, has said about rights for women and declare my interests as in the register. When the Minister next meets a counterpart from Iran, will he point out to them that even Saudi Arabia is liberalising dress restrictions and has confined the religious police to barracks, and that Iran is in danger of becoming more restrictive even than Saudi Arabia? Will he not agree that, if the president of Iran wants it to be believed that wearing the hijab is a personal choice, he should not insist that western journalists interviewing him in New York wear the hijab?

Lord Ahmad of Wimbledon (Con): I agree with my noble friend but I would go further. It is not the president of Iran; Islam states that it is a woman's choice. It is the religion that gives women the choice. We cannot have coercive practices. It is a woman's choice as to whether she wears the hijab, the niqab, or no hijab or niqab at all. That is what should prevail in Iran and elsewhere.

Baroness Symons of Vernham Dean (Lab): My Lords, in his initial Answer the Minister said that the Government would hold the Government of Iran to account for their treatment of women. How does he propose that the British Government do so?

Lord Ahmad of Wimbledon (Con): I have great regard and respect for the noble Baroness, who has played an important role on women's rights across the world, including in Iran. Specifically on this point, only yesterday we sanctioned further individuals, particularly those in the morality police. We are working in conjunction with our key partners, including the United States and the European Union, because acting together we can not just limit Iran but restrict it and show it that we mean business in this sense.

Lord Suri (Con): Events on women's rights in Iran are not acceptable to anyone in the world. Iran should learn the lesson that women have equal rights with men. Guru Nanak, the founder of Sikhism, reminded the world five and a half centuries ago that women are to be not degraded by men but looked upon as those who give birth to all, men and women, kings and the poor.

Lord Ahmad of Wimbledon (Con): My Lords, I agree with my noble friend. Indeed, all the major faiths put women at their heart. The first person in Islam to accept the Prophet Muhammad's mission was a woman. He was working for her. She employed him. She proposed to him. In Christianity—my children go to Catholic school—mother Mary has an esteemed and respected status. In all religions and faiths, women are central, pivotal guides and figures. All people around the world, if they claim to follow a particular religion or faith, should live up to that living example of their own scriptures.

Baroness Coussins (CB): My Lords, with teenage girls being beaten to death in the streets for protesting, I press the Minister to agree that now is not the right time for the World Service to scrap its Persian radio service. Digital services are all very well, but if internet access is blocked or restricted, as in Iran, the radio can be a lifeline. Can the Minister say what the Government can do about the disturbing increase in harassment by the Iranian authorities of the families in Iran of London-based BBC Persian staff?

Lord Ahmad of Wimbledon (Con): I have already alluded to the noble Baroness's second point; we have called that out specifically. I have heard very clearly from both the noble Lord, Lord Purvis, and the noble Baroness about its importance, and I assure your Lordships' House, as the Minister now responsible for our relationship with Iran, that this is something I will take back. I will update the House accordingly.

Lord Collins of Highbury (Lab): My Lords, the Minister mentioned the sanctions against the morality police, and I welcome them. He said he was liaising with other countries. Can he tell us how many other countries have adopted exactly the same policy? On his point about faith groups, and following on from the FoRB conference, what are we doing to amplify the voices he mentioned to ensure that we isolate radicals? It is not simply faith groups that are articulating these sorts of practices. Amplify those voices.

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord knows that I totally agree with him. I often hear that we need to give women a voice. For God's sake, if I may say so in this place, we are living in 2022; women have a voice. They have a clear and pivotal role to play in every society and country. When women are central to any society or country, it prospers. It is not me saying this; the evidence suggests so. The noble Lord is right: whether it is freedom of faith, of religion or of belief, we must ensure that all voices stand up and that women play the pivotal, progressive and necessary role that the world needs. Whether it is conflict resolution or society's progress, women must be at the heart and soul of every country.

Lord Palmer of Childs Hill (LD): My Lords, the Revolutionary Guard's violent oppression against dissidents inside Iran has long extended beyond Iran's borders. This summer's attempted murder of Sir Salman Rushdie, last year's attempted kidnapping of Iranian women's rights activist Masih Alinejad and numerous foiled plots are only the tip of the iceberg. The Revolutionary Guard represents a present danger to anyone the Iranian regime believes is a threat. Does the Minister agree that now is the time to proscribe the Revolutionary Guard to protect civilians outside Iran as well as those within Iran?

Lord Ahmad of Wimbledon (Con): I agree with the noble Lord about the destabilising activities of the IRGC. Under our sanctions policy, about 78 sanctions on Iran are in place, including those restricting the destabilising activities of the Revolutionary Guard. I note what the noble Lord says about proscription, but he knows that I cannot give him that assurance at this time. We keep all issues such as proscribing organisations on the table. I will reflect on the noble Lord's comments, and I am sure that others will as well.

Baroness Gohir (CB): My Lords, I commend the bravery and resilience of the Iranian women, and I commend the men who are standing shoulder to shoulder with them. I welcome the Government's sanctions on the morality police, but will they really be effective? How many of them will travel to the UK or hold assets here? Could we extend these sanctions to more senior political figures, and to other sectors—for example, by working with sporting bodies to ban Iranian athletes and sporting teams from competing in international competitions? Would that be more impactful?

Lord Ahmad of Wimbledon (Con): My Lords, I first welcome the noble Baroness. I have not yet had an opportunity to answer a question from her, so I welcome her to this House. I also welcome her insights on this matter and other issues. She raised the important issue of alignment, which the noble Lord, Lord Collins, also mentioned. We are working with the United States and other key partners, including the European Union, on sanctions policy—when we act together, it is more effective. The noble Baroness raised a number of other areas where we can perhaps also act. I cannot speculate, but we will keep all options under consideration.

Business of the House

Motion on Standing Orders

3.51 pm

Moved by ***Lord True***

That, in the event of the Health and Social Care Levy (Repeal) Bill having been brought from the House of Commons, Standing Order 44 (*No two stages of a Bill to be taken on one day*) be dispensed with on Monday 17 October to allow the Bill to be taken through all its remaining stages that day.

Motion agreed.

House of Lords Commission

International Agreements Committee

Committee of Selection

Built Environment Committee

Membership Motions

3.51 pm

Moved by ***The Senior Deputy Speaker***

House of Lords Commission

That Lord True be appointed a member of the Select Committee, in place of Baroness Evans of Bowes Park.

International Agreements Committee

That Lord Grimstone of Boscobel be appointed a member of the Select Committee.

Committee of Selection

That Lord True and Baroness Williams of Trafford be appointed members of the Select Committee, in place of Baroness Evans of Bowes Park and Lord Ashton of Hyde.

Built Environment Committee

That Baroness Eaton be appointed a member of the Select Committee, in place of Baroness Neville-Rolfe; and that Lord Moylan be appointed chair of the Select Committee.

Motions agreed.

Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 2) Regulations 2022

Motion to Approve

3.51 pm

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

That the draft Regulations laid before the House on 11 July be approved.

Considered in Grand Committee on 11 October. Relevant document: 11th Report from the Secondary Legislation Scrutiny Committee.

Motion agreed.

Warm Home Discount (Scotland) Regulations 2022

Motion to Approve

3.52 pm

Moved by ***The Earl of Courtown***

That the draft Regulations laid before the House on 29 June be approved.

Considered in Grand Committee on 11 October. Relevant document: 9th Report from the Secondary Legislation Scrutiny Committee.

Motion agreed.

Ukraine

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 11 October.

"Russia's continuing assault on Ukraine is an unprovoked and premeditated attack against a sovereign democratic state and it continues to threaten global security. This week, my right honourable friend the Secretary of State for Defence is meeting with Defence Ministers in Brussels to discuss further support for Ukraine, and later today my right honourable friend the Prime Minister will be speaking to members of the G7.

I can assure the House that the UK and our allies remain steadfast and united in our support for Ukraine. As previously set out to the House, Defence is playing a central role in the UK's response to the Russian invasion, providing £2.3 billion-worth of military support and leading in the international response.

We were the first European country to provide lethal aid to Ukraine. To date, we have sent more than 10,000 anti-tank missiles, multiple-launch rocket systems, more than 200 armoured vehicles, more than 120 logistics vehicles, six Stormer vehicles fitted with Starstreak launchers and hundreds of missiles, as well as maritime Brimstone missiles. In addition, we have supplied almost 100,000 rounds of artillery ammunition, nearly 3 million rounds of small arms ammunition, 2,600 anti-structure munitions and 4.5 tonnes of plastic explosive.

Defence is also providing basic training to Ukrainian soldiers in the UK. To date, we have trained over 6,000 Ukrainian recruits in the UK, and we continually review and adjust the course to meet their requirements. Defence will continue to respond decisively to Ukraine's requests and the equipment is playing a crucial role in stalling the Russian advance and supporting our Ukrainian friends.

President Putin's comments on nuclear are irresponsible. No other country is talking about nuclear use. We do not see this as a nuclear crisis."

3.52 pm

Lord Coaker (Lab): My Lords, I stress once again our full support for the Government's actions to support Ukraine against Russia's illegal invasion. Yesterday, the Secretary-General of NATO made it clear that the recent missile attacks on many Ukrainian cities, including Kyiv, killing and injuring many innocent civilians, including children in their playgrounds, represent a significant escalation of the conflict. Can the Minister update the Chamber on the further provision of more anti-missile and anti-air capability, as requested by the Ukrainians? Can she also say how quickly that can be provided to enable the Ukrainians to deal with more attacks of this nature?

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): I thank the noble Lord for the tenor of his remarks, which is greatly appreciated. I think we all agree that what we witnessed from Russia in Ukraine was absolutely barbaric; it was brutalism, it was unforgivable, it was completely unacceptable, and indeed it constitutes a commission of war crimes. As the noble Lord will be aware, the UK has been very supportive and selective in the equipment that it has been offering. For example, we have found that artillery has played a huge part in this conflict, and we have supplied that. As he identified, air defence systems are extremely important. Monday's attack shows that we were absolutely right to make bolstering Ukraine's air defences a priority for UK military support. We are liaising on a daily basis with the Ukrainian Government, and we continue to respond to the requests to supply more defence and military equipment. I will be crystal clear to your Lordships: the MoD is utterly resolved to continue that support.

Baroness Smith of Newnham (LD): My Lords, from these Benches, I also associate myself with the comments made from the Opposition Front Bench that we strongly support the Government's response to support Ukraine from the outset of the conflict six months ago. In his response yesterday, Minister Shelbrooke gave a list of the commitments that the MoD has already made. The noble Baroness has just reiterated the MoD's commitment to continue giving as much support as possible to Ukraine. While that is welcome, we need some reassurance that the MoD has enough ammunition and other supplies—either available or coming on stream—so that these commitments can actually be delivered. Can the Minister reassure us of that?

Baroness Goldie (Con): That is an important question about an issue which I know occupies the thoughts of many. I reassure the House that the Ministry of Defence continually manages and analyses our stock of weapons and munitions against commitments and threats, while reviewing industrial capacity and supply chains both domestically and internationally. These considerations have informed both the numbers of munitions granted in kind to the armed forces of Ukraine and their avenues of supply. We remain fully engaged with industry allies and partners, and, as I said earlier, the MoD is utterly resolved to continue with this important support in kind.

Lord Cormack (Con): My Lords, very sadly, it is highly likely that the barbaric—as my noble friend rightly said—treatment that has been meted out in Ukraine this week could lead to more refugees and more refuges for refugees. I am told—I hope this is wrong—that there is currently no Minister specifically answerable for refugee issues in either House, following the sad departure of my noble friend Lord Harrington. Can my noble friend clarify this?

Baroness Goldie (Con): It is certainly somewhat outwith my ministerial responsibility. I understand that there is an overall responsibility falling on the Home Office, and I am sure that the Government will clarify specifically how they wish to address these issues. I am aware that very positive work has been going on already in relation to the Homes for Ukraine initiative in this country, which has been very successful, and we are very conscious of continuing to support it beyond the six-month period.

Lord McDonald of Salford (CB): My Lords, as we contemplate the possible escalation of the conflict in Ukraine, the West is strikingly united. However, the key external player is China. Can the Minister inform your Lordships' House about contacts with Beijing to ensure that the Chinese are also conveying the necessary messages to Moscow?

Baroness Goldie (Con): As the noble Lord will be aware, the whole thrust of what the UK has been engaged in has been partly unilateral with Ukraine and partly multilateral and bilateral in conjunction with our partners and allies—that is very much a western response. I quite agree with him: China could have a very important role of influence to play. We maintain diplomatic relations with China, and I am certain that, through the usual conduits, representations will be made.

Baroness Blackstone (Lab): My Lords, can the Minister tell the House what efforts the Government are making to support those—Ukrainian prosecutors in particular, as well as international efforts—who are now part of the big effort to try to prosecute, document and investigate the war crimes committed by Russian forces?

Baroness Goldie (Con): From a fairly early stage, we volunteered our support for, and co-operation with, the International Criminal Court, which is the pivot for driving forward both the investigation of the commission of crimes and the gathering of the evidence that will be necessary if these crimes are to be successfully prosecuted. We have provided advice and expertise, and we continue to do that. We are in constant communication with the International Criminal Court, and we want to play our full part in supporting the multinational initiative to bring war criminals to justice.

Lord Wallace of Saltaire (LD): My Lords, the destruction of towns, cities and villages across Ukraine, as we all know, is continuing and the damage to the Ukrainian economy is getting worse. Therefore, the cost of sustaining Ukraine and rebuilding afterwards will be very considerable. I have just returned from a conference in a European Union state where there was much discussion of how we manage the very large long-term effort to support and rebuild Ukraine on a multilateral basis, through the European Union, the European Investment Bank, the European Bank for Reconstruction and Development and a number of other multilateral institutions. Can the Government assure us that not only will they play their full part in that multilateral effort but that the visceral hatred of many Ministers for anything to do with the European Union will not get in the way of making sure we do so?

Baroness Goldie (Con): I was finding myself largely in sympathy with the noble Lord's remarks until that point. To be clear, I have never displayed any visceral hatred of or towards the EU, and many of my colleagues are in exactly the same position. The EU has been a very important presence in the multinational response to Russia's illegal war in Ukraine. I think we all recognise the fundamental values of respect for law, democracy and sovereignty of a country. That conjunction of resolve and will, including the EU's approach and support in all this, has been extremely important. Rebuilding Ukraine will be a huge challenge, but I think every state and the EU will want to play their part.

The Lord Bishop of Coventry: My Lords, I look forward to the forthcoming public vote at the United Nations General Assembly condemning Russian annexation of the four Ukrainian territories and, I understand, calling for a negotiated settlement. That will pass easily but, despite these recent indiscriminate attacks, as the Secretary-General described them, it looks likely that there will be a large number of abstentions from the majority of the developing world. Can the Minister say why so many countries remain non-aligned and what steps are being taken to address their concerns? In that context, would she accept that, with so many developing countries feeling the impact of the war, the Government should not look to balance their own books by cutting the aid budget further?

Baroness Goldie (Con): Although I am sympathetic to the tone of the right reverend Prelate's questions, they are all outwith my ministerial responsibility. However, I hear what he is saying and am sure that those with influence in these matters will be listening carefully to him.

Lord Brownlow of Shurlock Row (Con): My Lords, I welcome everything that my noble friend has said. With this awful illegal war dragging on and potential escalation, have the Government made an assessment of Ukraine fatigue setting in in the public mood and mainstream media in this country?

Baroness Goldie (Con): All the evidence suggests that the country beginning to experience depleted morale and to pose questions about the morality and wisdom of this illegal war is Russia and the advisers surrounding Putin. The morale of the Ukrainian people under the extraordinary leadership of President Zelensky is very clear to me; I think we are universal in our admiration for it. He really is a figurehead who inspires, motivates, encourages and reassures. Our job, along with our other allies and partners, is to stand absolutely shoulder to shoulder in supporting him and his people and ensure that their morale, which shows no sign of flagging, remains high.

Electronic Trade Documents Bill [HL]

First Reading

4.03 pm

A Bill to make provision about electronic trade documents; and for connected purposes.

The Bill was introduced by the Lord Privy Seal, read a first time and ordered to be printed.

Health and Social Care Levy (Repeal) Bill

First Reading

4.04 pm

The Bill was brought from the Commons, endorsed as a money Bill, and read a first time.

Product Security and Telecommunications Infrastructure Bill

Report

4.05 pm

Relevant documents: 4th and 8th Report from the Delegated Powers Committee

Clause 1: Power to specify security requirements

Amendment 1

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

1: Clause 1, page 1, line 17, at end insert—

"(2A) Regulations under this section must, among other things, include security requirements that—

(a) prohibit the setting of universal default passwords and the ability to set weak or easily guessable passwords;

(b) require the production and maintenance by manufacturers of regular publicly-available reports of security vulnerabilities;

(c) ensure the provision of information to the consumer, before the contract for the sale or supply of a relevant connectable product is made, detailing the minimum length of time for which the consumer will receive software or other relevant updates for that product;

(d) introduce appropriate minimum periods for the provision of security updates and support, taking into account factors including the reasonable expectations of consumers, the type and purpose of the connectable products concerned and any other relevant considerations.

(2B) Regulations under this section must include provision that all security requirements specified in accordance with this Act are included as essential requirements in statutory conformity assessments and marking procedures under the Radio Equipment Regulations 2017 (S.I. 2017/1206), and in any other such assessments and procedures applicable to relevant connectable products."

Member's explanatory statement

This amendment expressly sets out on the face of the Bill security requirements, which this bill seeks to establish through future regulations, providing specific legal guidance regarding the individual security requirements and obligations on relevant parties.

Lord Clement-Jones (LD): My Lords, in moving Amendment 1, I shall speak also to Amendment 13. My noble friend Lord Fox will speak to Amendment 3 in the same group. First, I warmly welcome the noble Lord, Lord Kamall, to his new role in DCMS and join others in that welcome. I am sure he has already found the company of those who speak on DCMS matters very congenial, but he will also note that there are a number of all-purpose vehicles here, so he has probably met quite a number of us already.

In Committee, we called for the three security requirements to be set out expressly in Part 1 of the Bill. At the moment they are promised in secondary legislation without any draft being available, as is, I am afraid, the Government's consistently bad habit. Customers need absolute clarity on the support period that manufacturers will offer so that they are able to make more informed purchasing decisions. I cannot understand why the Minister's predecessor insisted in Committee that the minimum security requirements should be stated in secondary, not primary, legislation. He said it was important that technology regulation enables the Government to respond to changes in threat and technology and to the regulatory landscape; surely, these are security principles which should endure.

As for mandating minimum security updates for periods for connectable products, the Minister said that there is no consensus among industry experts on how long security updates ought to last. This is foggy thinking—how can the Government not have taken a view? Contrast the approach of the European Union, which has recently published its own equivalent Cyber Resilience Act. Crucially, the EU has imposed a five-year mandatory minimum period in which products must receive security updates. A rigid five-year period is not necessarily desirable, but the commitment to set out in legislation a mandated period in which products receive security support is very welcome. Before Third Reading the Government really should undertake to look closely at the EU proposals and tighten up the Bill. Why should EU consumers get a better deal than UK ones?

As regards Amendment 13, on computer misuse, the noble Lord, Lord Arbuthnot, introduced this amendment in Committee and this one is exactly the same. Under regulations that will be introduced following the passage of the Bill, manufacturers will be required to provide a public point of contact to report vulnerabilities. However, without a statutory defence in the Computer Misuse Act, it is clear that cybersecurity researchers can still face spurious legal action for reporting a vulnerability to a company which can decide on a whim to ignore its vulnerability disclosure policy—a practice known as "liability dumping". Amendment 13 seeks to ensure that cybersecurity professionals who act in the public interest in relation to testing relevant connectable products can defend themselves from prosecution by the state and from unjust civil litigation.

In Committee, the noble Lord, Lord Parkinson, seemed to say conflicting things. He said that the key thing is to set professional standards to measure the competence and capability of security testers, and that that is why the Government set up the UK Cyber Security Council last year. On the one hand, he said:

"We should be encouraging this rather than creating a route to allow people to sidestep these important issues."

On the other, he said that the Government are listening to the concerns expressed by the CyberUp campaign and that the Home Secretary had announced a review of the Computer Misuse Act. The Minister said:

"The evidence which is being submitted to the review is being assessed and considered carefully by the Home Office."—[*Official Report*, 21/6/22; col. 212.]

Are the Government positive or negative on this? What approach are they taking? We are past the summer now, in any event. Is there any prospect of change to the Act? I beg to move.

Lord Fox (LD): My Lords, I too welcome the Minister to his new role. I think DCMS will be at least as busy as his previous engagements, so we look forward to seeing him on his feet at the Dispatch Box quite a lot.

The unifying feature of these three amendments, which in policy terms are different, is that we are seeking some clarity. So, I support my noble friend in Amendments 1 and 13, and I rise to speak to Amendment 3 in my name. Given that online marketplaces represent the single most popular point of sale for connected products, these platforms should have responsibilities for the security of the products they are selling. That is what we are seeking clarity on today. If online marketplaces are not held responsible under the Bill, these insecure products will continue to be sold and, in all likelihood, their sale would become more prolific.

One of the last things the noble Lord, Lord Parkinson, did as Minister was to dispatch a letter to me in response to queries such as this raised in Committee about the status of online marketplaces—the fear being that channels such as listings platforms and auction sites such as eBay, Amazon Marketplace and AliExpress might present a loophole. The problem is the lack of clear definition for the various players that are part of the internet value chain and the fact that these players have different degrees of insight or control over what is happening online.

As the Minister will see from his predecessor's letter, dated 21 September 2022, the department's stated position for online marketplaces is that,

"businesses need to comply with the security requirements of the product security regime in relation to all new consumer connectable products offered to customers in the UK, including those sold through online marketplaces".

I would appreciate it if the Minister could confirm this from the Dispatch Box. It is paramount that online marketplaces are given this obligation in the Bill to ensure this security, regardless of whether the seller is a third party. It would help very much if the Minister set out what the Government's definition of an online marketplace is.

How does the Minister's department plan to deal with the retailers, which are far away, possibly with their real identity obscured on the online marketplaces? Will the department go to the online marketplace first and how will that process be marshalled? In other words, when a customer has a problem, who do they contact?

Lord Bassam of Brighton (Lab): My Lords, before I make any comments on this group, I join noble Lords in welcoming the noble Lord to his new position on the Front Bench. I think this Bill is a gentle introduction, and this afternoon will probably give voice to that sentiment. I do welcome him. We have been delighted by the general response we have had from the department on the Bill and the open way in which the noble Lord's predecessor approached things. I am sure the noble Lord will continue very much in that vein.

This amendment was resisted when we were discussing these matters in Committee, on the basis that minimum requirements will swiftly be set out in regulations. Regulations are not always swift in coming, so perhaps it would be useful for the Minister to remind us how quick that will be. Is he in a position today to commit to a timescale for the full details to be brought forward? This is, after all, an important piece of protective legislation, as noble Lords around the House today have made clear, and, given that it is about protecting customers and consumers, it is important that we have some assurance on that point.

The questions that our noble friends on the Lib Dem Benches have asked are very important ones and they require to be answered. Although the Minister will no doubt resist these amendments, it would help us if we had some further reassurance, perhaps before we get to Third Reading. However, we are grateful for the written assurances that the Minister's predecessor offered in relation to online marketplaces, and we hope that the current provisions will prove effective. I ask the Minister to outline how the Government would amend those provisions should that need arise in future. The noble Lord, Lord Parkinson, was always willing to provide us with some written responses, and that would probably suffice for us for today's debate and deliberations. I look forward to hearing what the Minister has to say on this.

4.15 pm

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Kamall) (Con): My Lords, I thank those noble Lords who gave

[Lord Kamall]
me a warm welcome—and indeed those who did not. Many noble Lords will know me from my work in the previous department. In the case of the noble Baroness, Lady Merron, who was one of the first to welcome me, it is just a continuation; we seem to be inextricably linked in some way.

I pay tribute to my predecessor, my noble friend Lord Parkinson, for his work as the DCMS Minister. He was widely praised and I think people appreciated his engagement. Those who have engaged with me on previous legislation know that I tend to have a very open policy as well. I am happy to have as many meetings as we need and to facilitate meetings with officials, so please have no fear about asking for those meetings; I will be happy to do that as much as possible.

I turn to Amendment 1, from the noble Lords, Lord Clement-Jones and Lord Fox. I thank them for retabling this amendment, which first appeared in Committee. I also thank them and other noble Lords for meeting me before today.

We think that the threat landscape is ever-changing. Security requirements that are appropriate today could change and differ in the future. Setting that out in primary legislation would limit our ability to respond to threats in the future, impose barriers to innovation and leave unnecessary regulation still on the statute book or unnecessarily complicate the regulatory framework. The vast complexity of the connectable technology landscape means that the definitions used in our security requirements need to be carefully nuanced and readily updatable to avoid imposing unnecessary or inappropriate burdens on industry as those technologies develop. For example, we set out in our 2020 call for reviews that we do not currently consider it appropriate for our intended passport requirements to apply to API queues. Connectable products may be able to access a large number of API interfaces, many of which do not have a material impact on the security of the product. Compelling the Government to extend this password requirement to all APIs key to the product, as this amendment would entail, is exactly the sort of unnecessary industry burden that we are trying to avoid while making sure that we stick to setting out the requirements in regulations.

The Government are unwavering in our commitment to bringing forward security requirements that ban universal default and easily-guessable passwords, mandate the publication of a vulnerability disclosure policy and mandate transparency concerning security update provision. My officials have been working diligently to develop regulations that realise that commitment, and we hope to engage on the regulations in draft by the end of the year. Something that I often to say to my officials, whichever department I have been in, is that there are two phrases that I do not like to see: "in due course" and "at pace". I like to give an indicative timeframe, so I hope the timeframe of "by the end of the year" gives some assurance.

That is why we do not believe the amendment is necessary, and I hope the noble Lords will consider withdrawing it. On top of that, I am willing to have meetings in future to clarify anything that noble Lords feel has not been clarified.

I turn to Amendment 3, tabled by the same double act of the noble Lords, Lord Fox and Lord Clement-Jones; I think this is going to be a recurring theme in my time as the Minister here. The proposed amendment aims to define online marketplaces as "distributors" for the purposes of the Bill. I assure noble Lords that the Government are on the side of the consumer. That is why the Bill requires all—I repeat, all—UK consumer connectable products to be secure, including those sold via online marketplaces. The Bill will ensure that where online marketplaces manufacture, import or sell products, they bear responsibility for the security of those products. Where this does not happen, I assure noble Lords that they should make no mistake: the regulator will act promptly to address serious risk from insecure products, and work closely with online marketplaces to ensure effective remedy.

We recognise that as well as bringing benefits to consumers e-commerce brings challenges—the double-edged sword of technology. This is one of the reasons why the Government are reviewing the product safety framework. We will publish a consultation later this year—once again, not "in due course" but later this year—with detailed proposals on tackling the availability of unsafe and non-compliant products sold online. Consumers need clarity and better protection, and this will be a priority for our work in this space.

I hope that the ambition of this Bill, its enforcement plan and the outline of further policy engagement will provide some confidence for noble Lords not to press Amendment 3.

Lord Fox (LD): In reference to the consultation, does the Minister include product safety and product security in the term "unsafe"?

Lord Kamall: We understand that they are two different things, but I am happy to clarify and come back to the noble Lord—I hope to do so before we come to future amendments.

Amendment 3 aims to define what a "distributor" is for the purposes of the PSTI Bill. The Bill requires all UK consumer connectable products to be secure. Where it does not happen, the regulator will act promptly. For e-commerce, given the double-edged sword of technology, reviewing that framework is important. I hope the ambition of the Bill encourages noble Lords to consider not pressing the amendment, but once again I am happy to engage further for clarification and to address any outstanding concerns.

Let me turn to Amendment 13. The Government are listening to and considering concerns that the Computer Misuse Act is constraining activity that would enhance the UK's cybersecurity. We understand that if you want to test cybersecurity you have to be able to test its breaking point. We are trying to strike the right balance between providing suitable reassurances for well-meaning individuals who want to identify vulnerabilities and not allowing malicious actors to access devices without consent. There are risks here. It is very nuanced, and the Government do not want to rush into legislative change without clear evidence to justify any such change to existing law. As the noble Lord, Lord Clement-Jones, said, the Home Office has

been conducting a review of the Act since 2021, and the proposals for statutory defences have been an integral part of this review. I can confirm that a response that sets out how the Government plan to proceed should be published in the coming weeks, and an update will be provided to this House.

I hope that this will provide sufficient assurances on these three amendments, and the noble Lords will consider withdrawing and not pressing their amendments. I repeat the offer of continued engagement and meetings for clarification and to reassure noble Lords.

Lord Clement-Jones (LD): My Lords, I thank the Minister for those three sets of assurances. I should have thanked him too for meeting with us prior to today.

I am interested in the Minister's change of language in the department: we have got "by the end of the year" and "in the coming weeks" rather than "in due course". I think we are making some progress, which is very helpful.

I notice too his unwavering commitment—that was very firm—to publish the regulations by the end of the year. It is grossly unsatisfactory not to have the secondary legislation in draft when the primary legislation contains virtually nothing of the real meat. I am afraid that this Bill is not alone in that respect; it is one of the common complaints that we have whenever legislation comes forward.

As regards the online marketplaces, I am grateful for those assurances, which are accepted and are very much in line with the letter. The new consultation on a new set of regulations about unsafe products is interesting, and I hope the Minister will clarify and give us further and better particulars, and more specifics about what that actually involves.

As regards the Computer Misuse Act—I notice the noble Lord, Lord Arbuthnot, is in his place—it is satisfactory that the Home Office is going to divulge what it really thinks about this. We wait with trepidation for what it is going to say on the subject, given some of the negative responses that Ministers have given previously. We can wait and look forward to that. In the meantime, I beg leave to withdraw Amendment 1.

Amendment 1 withdrawn.

Clause 3: Power to deem compliance with security requirements

Amendment 2

Moved by ***Lord Kamall***

2: Clause 3, page 3, line 12, leave out "negative" and insert "affirmative"

Member's explanatory statement

This amendment applies the affirmative resolution procedure to regulations under Clause 3.

Lord Kamall (Con): My Lords, I turn now to Amendments 2, 4 and 5, which seek to implement recommendations set out in the Delegated Powers and Regulatory Reform Committee's report. I once again thank the committee for its efforts in scrutinising the Bill.

Amendment 2 will ensure that regulations exercising the power in Clause 3 to deem compliance with security requirements will be subject to the affirmative resolution procedure. Amendments 4 and 5 focus on the power in Clause 9 to exempt manufacturers from needing to draw up a statement of compliance. This will also now be subject to the affirmative resolution procedure.

The powers in these clauses are vital to enabling the Government to take swift action to minimise unnecessary industry burdens, including for small and micro businesses, as the technological and regulatory landscapes change. However, I agree that, considering the necessary breadth of these powers, the affirmative resolution procedure provides a more appropriate degree of parliamentary consideration. The Government accept the recommendations in paragraphs 7 and 11 of the committee's report.

I turn now to Amendments 6 to 12 and Amendment 14, on the enforcing functions. Once again, the Government agree with the recommendations of the committee that Parliament should have the opportunity to scrutinise any decision by the Secretary of State to authorise a person to exercise an enforcement function. These amendments implement that recommendation and will ensure that the Secretary of State is able to authorise another person to exercise an enforcement function only by making regulations subject to the affirmative resolution procedure.

On enforcement, I shall update the House on the progress of appointing an enforcement authority for Part 1 of the Bill. After extensive engagement with suitable bodies and consideration of the existing regulatory landscape, I can confirm our intention to appoint the Office for Product Safety and Standards, or OPSS, as the regime's regulator. The OPSS oversees product safety legislation and will enforce cybersecurity requirements for electric vehicle smart charge points. We are confident that it has the expertise and capacity needed to effectively enforce this regime. The OPSS is part of the Department for Business, Energy and Industrial Strategy, so it will not be necessary to exercise the power in Clause 27, given the Carltona doctrine. However, should the threat landscape require other persons to exercise enforcement functions in the future, we will exercise this power as necessary.

I turn now to Amendment 15, which removes Clause 57 from the Bill. Clause 57 was intended to address difficulties that had arisen following Upper Tribunal and Court of Appeal decisions on the meaning of "occupier" in paragraph 9 of the Electronic Communications Code. Paragraph 9 provides that only an occupier of the land can confer code rights. The courts' interpretation of this meant that an operator already in occupation of the land was treated as the occupier for the purposes of paragraph 9.

However, an operator in this situation clearly could not enter into an agreement with itself. The interpretation resulted in some operators with apparatus on land who were unable to renew their agreement using an existing statutory process being stuck, without a process through which they could acquire new rights under the code. In addition, it meant that any operator in

[Lord Kamall]
occupation of land was unable to seek additional code rights not referred to in their existing agreement in a new, separate agreement while the existing agreement was running its course.

The aim of Clause 57 was to provide a solution to these issues. It was drafted to ensure that all operators in exclusive occupation of the land, who could not make use of a statutory renewal route, could still obtain code rights. It would also assist operators in occupation of land with an existing, ongoing agreement. Where such operators needed additional code rights not already referred to in their current agreement, Clause 57 provided a mechanism to obtain such rights.

As I am sure many noble Lords will be aware, since your Lordships last considered this Bill, the Supreme Court ruled on this issue and overturned the relevant decisions of the Upper Tribunal and Court of Appeal. The Supreme Court held that, for the purposes of paragraph 9 of the code, an operator's occupation of land is to be disregarded where that operator is seeking code rights in relation to that land.

In practice, this means that where an operator is not able to make use of a statutory route to renew any type of expired or existing agreement, it will be able to seek new code rights. It also means that, where an operator requires additional code rights during the existing term of its agreement, it will be able to seek them. The effect of the judgment is therefore broad and comprehensive; the Government consider that it will ensure that any operator, whatever the nature of its agreement, will have a means through which it can seek new or additional code rights, as the case may be. As a result, the Government no longer consider it necessary to retain Clause 57 in the Bill. Its removal will, in light of the Supreme Court judgment, ensure clarity and certainty for all users of the code. I beg to move Amendment 2.

4.30 pm

Lord Fox (LD): My Lords, Amendments 2, 4 to 12 and 14 very much reflect amendments that I tabled in Committee, and in that regard, I am very pleased to see them reappearing with the Minister's name on them.

The Minister was mercifully spared one of my longer speeches in Committee where the full set of concerns raised by the Delegated Powers and Regulatory Reform Committee was discussed. For that, he may be truly grateful. We are pleased that these amendments have come back, but I am disappointed that the Minister feels that the Government still need the breadth of powers claimed in Clauses 11, 18, 19, 24 and 25. These are justified, as usual, by the need for flexibility. However, if our working during the Covid crisis showed nothing else, it demonstrated that Parliament could move swiftly and that we were not an impediment to flexible action. I am sure that in his former role the Minister saw us demonstrate that across the Floor many times in dealing with statutory instruments quickly and clearly. It seems that departments have grown very accustomed to using primary legislation to create generously for themselves the ability to act in wide-ranging ways without further or significant recourse to Parliament, and we have to spend an awful lot of time reining that back.

Without sounding too churlish given that the Minister has conceded on a number of things, I think this is a generally avoidable process. I feel sure that the people drafting legislation and the Ministers know what the DPRRC will say about this almost continuous stream of legislation that seems to take power from Parliament, yet each time we do the same dance between the department, the draft, the DPRRC and your Lordships. This is an avoidable process. That said, I thank the Minister for retabling the amendments.

The removal of Clause 57 via Amendment 15 is of course very sensible given the judgment of the Supreme Court, and we support that.

I am pleased that the Minister has clarified which body will be dealing with this in terms of empowerment. On the OPSS, the Minister talked about capacity. This is a big new job for that body, and it needs not just the capacity that it has but future resources. Can the Minister assure your Lordships' House that that body will have the resources to be able to do what is a really big job? If you look at what is going out on the internet-enabled markets, this is a huge job. Can that body be assured that it will get the resources it needs to ensure that consumers' security is not jeopardised?

Lord Bassam of Brighton (Lab): My Lords, I am reflecting on the points that the noble Lord, Lord Fox, made about statutory instruments. I guess that I have heard those arguments over much of the 25 years that I have been here, and I have a lot of sympathy with them. I had less sympathy when we were in government, but I have more sympathy now.

I too am pleased to see these amendments, which in part reflect the debate we had in Committee and the amendments that were moved by our colleagues on the Liberal Democrat Benches. They in turn were of course a reflection of the comments made by the Delegated Powers and Regulatory Reform Committee, and for that reason we welcome their tabling. It ill behoves any Government to ignore the wise words of the DPRRC. Not all the amendments are in response to its report—Amendments 15 to 17 are not—but they are a sensible response and reaction. We would expect the Government to do no less.

As our colleagues on the Lib Dem Benches have said, the removal of Clause 57 comes as the result of the recent Supreme Court ruling on the same topic. We are aware that operators have very much welcomed the clarity offered by that ruling. We welcome the DCMS withdrawing the clause. If it had not, we would have been left in a very confused position.

We welcome these amendments. We are pleased to see the Government being responsive. We are grateful that they have reflected on our earlier debates. With that, we offer our support for these amendments.

Lord Kamall (Con): I thank noble Lords who have spoken in this debate. The noble Lord, Lord Fox, asked about the OPSS. When we considered the options, we looked at who had the potential capacity and who could bridge the gap in knowledge as quickly as possible.

The vast majority of products in scope of the Bill, such as mobile smart lightbulbs, wearables, kitchen appliances—the internet of things—are also in scope

of the product safety legislation. Given that the OPSS has already introduced the Electric Vehicles (Smart Charge Points) Regulations 2021, which impose some security requirements in relation to these products, based on the same international standard that we felt most appropriate, the OPSS's published strategy aims to bring these product regulations together to protect people and to enable responsible business to thrive. We feel it is effective and we intend to give it the resources it needs.

The noble Lord, Lord Fox, said that he was disappointed. I heard this a number of times when I was Health Minister in your Lordships' House. I completely understand. The noble Lord, Lord Bassam, said he was less sympathetic when he was in government. I am sympathetic being in government. I am happy to try to push as much as we can. The noble Baroness, Lady Merron, asks me to remember that point, so no doubt it will be used against me one day. This is the nature of parliamentary democracy. I beg to move.

Amendment 2 agreed.

Clause 7: Relevant persons

Amendment 3 not moved.

Clause 9: Statements of compliance

Amendments 4 and 5

Moved by ***Lord Kamall***

4: Clause 9, page 7, line 5, at end insert—

"(8A) Regulations under subsection (7) are subject to the affirmative resolution procedure."

Member's explanatory statement

This amendment applies the affirmative resolution procedure to regulations under subsection (7) of Clause 9.

5: Clause 9, page 7, line 6, at beginning insert "Other"

Member's explanatory statement

This amendment is consequential on the other Government amendment to Clause 9.

Amendments 4 and 5 agreed.

Clause 27: Delegation of enforcement functions

Amendments 6 to 12

Moved by ***Lord Kamall***

6: Clause 27, page 17, line 9, leave out from "may" to "person" in line 10 and insert "by regulations authorise any"

Member's explanatory statement

This amendment has the effect that the power of the Secretary of State to delegate enforcement functions is to be exercised by regulations.

7: Clause 27, page 17, line 12, leave out "An agreement" and insert "Regulations"

Member's explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

8: Clause 27, page 17, line 14, leave out from beginning to "not" in line 16 and insert "Regulations under this section do"

Member's explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

9: Clause 27, page 17, line 17, leave out "agreement relates" and insert "regulations relate"

Member's explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

10: Clause 27, page 17, line 18, leave out subsection (4)

Member's explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

11: Clause 27, page 17, line 24, leave out "in accordance with" and insert "by regulations under"

Member's explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

12: Clause 27, page 17, line 26, at end insert—

"(7) Regulations under this section are subject to the affirmative resolution procedure."

Member's explanatory statement

This amendment follows on from the first Government amendment to Clause 27 and applies the affirmative resolution procedure to regulations under that Clause.

Amendments 6 to 12 agreed.

Amendment 13 not moved.

Clause 56: Meaning of other expressions used in Part 1

Amendment 14

Moved by ***Lord Kamall***

14: Clause 56, page 39, line 29, leave out "an agreement" and insert "regulations"

Member's explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

Amendment 14 agreed.

Clause 57: Persons able to confer code rights on operators in exclusive occupation

Amendment 15

Moved by ***Lord Kamall***

15: Clause 57, leave out Clause 57

Member's explanatory statement

This amendment removes Clause 57.

Amendment 15 agreed.

Clause 58: Rights under the electronic communications code to share apparatus

Amendments 16 and 17

Moved by ***Lord Kamall***

16: Clause 58, page 41, leave out lines 28 and 29 and insert—

"(4) In paragraph 9 (conferral of code rights)—

(a) the existing wording becomes sub-paragraph (1), and

(b) after that sub-paragraph insert—"

Member's explanatory statement

This amendment is consequential on the Government amendment to leave out Clause 57.

17: Clause 58, page 41, line 30, leave out "In a case" and insert "But in a case"

Member's explanatory statement

This amendment is consequential on the Government amendment to leave out Clause 57.

Amendments 16 and 17 agreed.

Amendment 18

Moved by ***Lord Harlech***

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

"Power to fly lines from apparatus kept by another operator

(1) Paragraph 74 of the electronic communications code (power to fly lines) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(1) This paragraph applies where an operator ("the main operator") keeps electronic communications apparatus on or over any land for the purposes of the main operator's network."

(3) In sub-paragraph (2)—

(a) before "operator" insert "main", and

(b) in paragraph (a), after "apparatus" insert "mentioned in sub- paragraph (1)".

(4) After sub-paragraph (2) insert—

"(2A) With the agreement of the main operator, another operator has the right, for the statutory purposes, to install and keep lines which—

(a) pass over other land adjacent to, or in the vicinity of, the land on or over which the apparatus mentioned in sub- paragraph (1) is kept,

(b) are connected to that apparatus, and

(c) are not, at any point where they pass over the other land, less than three metres above the ground or within two metres of any building over which they pass."

(5) In sub-paragraph (3)—

(a) for "Sub-paragraph (2) does" substitute "Sub-paragraphs (2) and (2A) do", and

(b) in paragraph (a), for "sub-paragraph (2)" substitute "either of those sub-paragraphs".

(6) After sub-paragraph (3) insert—

"(3A) The main operator has the right to upgrade, or carry out works to, the apparatus mentioned in sub-paragraph (1) for the purposes of, or in connection with—

(a) the exercise by the main operator of the right conferred by sub-paragraph (2), or

(b) the exercise by another operator of the right conferred by sub-paragraph (2A).

(3B) With the agreement of the main operator, another operator has the right to upgrade, or carry out works to, the apparatus mentioned in sub-paragraph (1) for the purposes of, or in connection with, the exercise by the other operator of the right conferred by sub-paragraph (2A).

(3C) Sub-paragraphs (3A) and (3B) do not authorise an operator to upgrade, or carry out works to, the apparatus mentioned in sub- paragraph (1) if the upgrade or works would—

(a) have more than a minimal adverse impact on the appearance of the apparatus,

(b) have more than a minimal adverse impact on the land on or over which the apparatus is kept, or

(c) cause loss, damage or expense to any person with an interest in the land on or over which the apparatus is kept.

(3D) An operator may not enter the land on or over which the apparatus mentioned in sub-paragraph (1) is kept for the purpose of exercising a right conferred by this paragraph without the agreement of the occupier of the land."

(7) In paragraph 77 (when and by whom a right to object under Part 12 of the code can be exercised), in sub-paragraph (3), for "paragraph 74" substitute "paragraph 74(2) or (2A)"."

Member's explanatory statement

This amendment confers rights on an operator to fly lines over a person's land from another operator's apparatus, and enables either operator to upgrade or carry out works to such apparatus for the purpose of exercising a right under paragraph 74 of the code.

Lord Harlech (Con): My Lords, before I begin to speak to this group, I declare my interest as a land and business owner in Wales with various wayleaves.

In Committee, several of your Lordships expressed support for an amendment to facilitate the more effective use of telegraph poles situated on private land. My noble friend Lord Parkinson of Whitley Bay explained that the Government were looking into this. Subsequent discussions with stakeholders clarified the significant benefits to which changes in this area can lead and the barriers that currently prevent apparatus such as telegraph poles being used to their best effect.

I also thank my noble friend Lady Harding, whose insightful contributions have been of great assistance. Based on these discussions, I am pleased to bring forward Amendment 18 to improve the existing regime which regulates overhead networks contained in Part 11 of the code.

Before turning to the amendment itself, I will explain how Part 11 operates. Part 11 confers rights on operators to keep apparatus on or over land. I will refer to them as main operators. The apparatus with which this part is concerned is typically telegraph poles.

The rights conferred by Part 11 permit these main operators to install and keep lines connected to their poles, which may also pass over neighbouring land. These rights are automatic but subject to specific height restrictions, a notice requirement and a right to object in certain circumstances. However, while the Part 11 regime allows a main operator to fly lines from these poles, it does not permit them to upgrade or carry out works to the poles that may be needed to deliver gigabit-capable connections—for example, running cable wire from the base of the pole to the top. Similarly, the regime does not permit operators other than the main operator to fly their own lines from the poles, creating an obstacle to apparatus sharing.

Amendment 18 is designed to address both gaps. It extends the right in paragraph 74 of the Electronic Communications Code to install and keep lines to operators other than the main operator, provided that the main operator consents to this, subject to the same height restrictions, notice requirement and right to object already in place for the main operator. Sharing the use of these poles will not only speed up the pace of deployment but reduce the need for additional installations and their associated impacts. In addition, the amendment will confer new rights on either operator to upgrade or carry out any other works to the pole so that the lines flown from them can deliver gigabit-capable connections.

Among other things, this change will ensure that, as my noble friend Lady Harding raised at Second Reading, the benefits of other rights that we are introducing to permit greater sharing of underground ducts will extend to overhead networks, by allowing upgraded fibre from such ducts to be rolled up the pole and subsequently strung between the poles to deliver gigabit connections.

The new rights will be subject to specific conditions, intended to protect the interests of individuals affected by them. First, exercise of these rights cannot have more than a minimal adverse impact on the appearance of the pole. Secondly, exercise of these rights cannot have more than a minimal adverse impact on the land on which the pole is kept. Thirdly, these rights cannot be used to carry out works that will cause loss, damage or expense to any person with an interest in the land on which the pole is kept.

In addition to the above, operators entering land on which a pole is kept, to exercise any Part 11 right, must have the occupier's permission. This does not need to be a written agreement, but it is important that operators obtain consent before entering private land, a point raised by my noble friend Lady Harding in Committee. For main operators, access rights may already be in place but, where they are not and where other operators wish to exercise their new rights, permission to enter the land must be obtained. I beg to move.

Baroness Harding of Winscombe (Con): My Lords, I declare a new interest as an adviser on the telecoms market to Octopus Ventures. I congratulate my noble friend Lord Harlech on his new role and welcome my noble friend Lord Kamall to a small, select club of people with a shared passion for healthcare and telegraph poles. One can find a number of us in the Chamber today. I thank both my noble friends, and the staff in DCMS, for the extremely constructive way that they have approached this Bill and thank my noble friend Lord Parkinson of Whitley Bay, the predecessor of my noble friend Lord Kamall, for his excellent work on this Bill and more broadly on the DCMS brief.

I am encouraged by this amendment and very grateful for it. It addresses the specific issue that I and others raised in Committee. With that, I also thank my noble friends Lord Vaizey and Lady Stowell, the noble Lords, Lord Fox and Lord Clement-Jones, and the noble Baroness, Lady Merron, for their work. This might be a small and technical amendment, but it has been a real team effort.

I have two clarifying questions. As we discussed in Committee, the devil is in the detail of this, and we share the same goal of being able to lay the fibre cable up the telegraph pole and from one pole to another. Perhaps your Lordships will humour my two very specific questions. First, the amendment gives operators the right to share the existing pole infrastructure

"with the agreement of the main operator."

Can the Minister explain what proof of permission from a main operator an operator wishing to avail themselves of these provisions will be required to secure? Also, how easy will it be for them to do so? For example, will the normal provisions of PIA be an acceptable route to do that?

4.45 pm

Secondly, the amendment makes it clear—rightly, in my view—that the occupier would still need to grant their consent before works on the pole commence. However, I do not think that any of us want to create extra layers of bureaucracy in doing that. Therefore, could my noble friend explain what proof of consent will be needed for an operator to access land to access their paragraph 74 rights? Would, for example, verbal agreement be sufficient? Subject to hearing my noble friend's response on those two questions, I am pleased with this amendment.

Lord Clement-Jones (LD): My Lords, I too welcome the noble Lord, Lord Harlech, to the salt mines. He knows little yet of how much work is involved in being a Whip; that is all that I can say. I would also like to echo what the noble Baroness, Lady Harding, said about the noble Lord, Lord Parkinson, and his service as DCMS Minister. We all appreciated that very much.

I congratulate the noble Baroness, Lady Harding, who made a very powerful case for her amendment in Committee. I thank the Government for having agreed to that. CityFibre said, in its original briefing, before we had Committee, that this would make a huge impact, particularly in rural areas and in urban Scotland. I have just come back from the US and have seen, in some rural areas such as New Hampshire, the impact of being able to put these superfast fibre-optic cables on telegraph poles. It is really an effective way of delivering superfast broadband to those areas. CityFibre estimated that 1 million such poles exist across the UK, so we are not talking about a small issue.

Finally, the noble Baroness, Lady Harding, as ever, put her finger on the key issues in this particular new clause, about what constitutes agreement between operator and main operator, and operator and landowner. The more clarity that the noble Lord can give us, the better we will be.

Baroness Merron (Lab): My Lords, first I also welcome the Minister to his place—long may he continue to be as helpful to your Lordships' House as he is being today. We welcome this government amendment, in the name of the noble Lord, Lord Kamall, whom again I would like to welcome to his new place on the Front Bench. Again, let us look forward to many other sensible government amendments in response to the points that have been raised. I also thank and pay tribute to the efforts of the noble Lord, Lord Parkinson, who helped get us to this stage.

This is very much an issue, as noble Lords will be aware, that attracted cross-industry support, as well as support from all across the House. I pay tribute to the noble Baroness, Lady Harding, for leading the team. In view of her comments about the select group of us who have an interest in health and telegraph poles, perhaps that is an opportunity for an All-Party Parliamentary Group of some select membership.

This amendment does strike the right balance between speeding up fibre rollout and protecting the rights of landowners when upgrading and sharing pre-2017 poles on private land. It is consistent with the amendment that the noble Baroness, Lady Harding, put forward

[Baroness Merron]
earlier, which we were very pleased to sign up to when it was tabled at Committee stage. So I do welcome this very much from the Government. I do wonder why, given the considerable cross-party consensus in both Houses, it took so long to bring it before us, but we are here today. I too would welcome the clarity about whether verbal agreement from a landowner is indeed sufficient for operators to then undertake necessary works, but with that, this government amendment is one that finds great favour on these Benches.

Lord Harlech (Con): I thank noble Lords for the opportunity to clarify these points and for their welcome to the Front Bench. If the House could indulge me a little, I have spoken several times in previous debates about the need for better rural connectivity and better broadband, so it is a great pleasure to actually take part in this debate.

In response to my noble friend Lady Harding's question about proof of permission from a main operator to an additional operator, these new provisions are intended to optimise the use of existing telegraph poles. They explicitly recognise the value for UK connectivity in different operators being able to upgrade and fly wires from each other's poles as quickly and efficiently as possible. The provision does not require a second operator to secure the main operator's permission in any particular form. In other words, formality requirements that apply to an agreement under Part 2 of the code do not apply here. We expect the sector to make sensible, efficient administrative arrangements to make clear that the required permission is held. For example, Ofcom's duct and pole access remedy, which Openreach fulfils through its physical infrastructure access products, requires Openreach to grant other operators access to its ducts and poles. Operators may consider that they can satisfy the condition for the permission of the main operator for paragraph 74 purposes through their usual procedures for securing access through PIA.

I welcome the opportunity to point out that we expect a similarly pragmatic approach to be adopted in relation to new rights relating to underground networks, introduced through Clauses 59 and 60, which are also intended to facilitate faster and more efficient upgrading and sharing. For example, it may be sensible when granting permission for a second operator to share the use of ducts and poles for the main operator to authorise the second operator to carry out the appropriate fixing of notices on its behalf.

Turning to proof of consent, the provision makes clear that the formalities needed for a Part 2 code agreement will not be needed for an operator to secure permission to access land in order to exercise its paragraph 74 rights. A verbal agreement can therefore satisfy the condition, but of course individual operators may wish to have proof of that permission in writing.

Finally, on the occupier giving their consent to a contractor, the occupier of land on which a pole is situated will need to give the operator permission to access the land before the operator exercises its new rights. Industry stakeholders report that obtaining consent to access land to carry out one-off activities can be achieved in significantly less time and at much lower cost than it would take for a formal code agreement to be concluded. Limiting the activities that can be carried out using these rights means there is not the same need for a formal agreement between the operator and the occupier of the land since the terms upon which the rights may be exercised are effectively prescribed by the conditions attached to them. The conditions therefore achieve the dual purpose of protecting the occupier's interests while removing the need for a formal agreement.

Amendment 18 agreed.

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

Amendment 19

Moved by ***The Earl of Devon***

19: Clause 61, page 46, line 14, at end insert—

"(4A) Where the assumptions in subsection (4) cause the market value of a landlord's agreement to decline, the consideration payable under a new tenancy granted by order of the court under this Part may not decline by more than 50% relative to the previous consideration for the period of five years beginning with the day on which the new tenancy is agreed.

(4B) Where subsection (4A) applies, the consideration must be reduced in even increments over the course of five years, from the level of the previous consideration to the level of the new court consideration."

The Earl of Devon (CB): My Lords, in the absence of my noble friend Lord Lytton, I rise to move Amendment 19, to which I added my name somewhat late. I shall speak also to Amendments 20, 21, 22 and 24 in this group to which I added my name too late to appear on the Marshalled List.

The valuation provisions of the Electronic Communications Code as extended in 2017 are not working well. I think we are all agreed on that. The number of disputes coming before the lands tribunal has increased from approximately 40 to more than 120 already this year, and we have no idea how many additional disputes are taking place in county courts. This is because we have no record. The Government have not consulted on this issue before proposing this far-reaching, retrospective legislation. Indeed, the Bill has been introduced based upon a cacophony of anecdote, conjecture and vested misinformation. It seeks to address the issue not by improving the damaging "no scheme" valuation provisions but by extending their application to approximately 15,000 long-established and well-settled 1954 Act leases. This is a mistake, and it will have a chilling effect on the rollout of digital infrastructure which we will regret.

My noble friend Lord Lytton is, as I said, unfortunately committed elsewhere today and we are therefore deprived of his wisdom and subject matter expertise. I am by no means an adequate substitute and refer your Lordships to his excellent contributions in Committee.

I also remind the House of my own interests, and particularly note that while formerly a property barrister I now work as a technology litigator for a firm that represents telecoms companies as well as site owners.

As a Devon resident with poor mobile coverage, I am desperate to see an increase in rural connectivity, with the social and economic benefits that flow therefrom. As a farmer, I am also a site owner of a 1954 Act telecoms lease granted many years ago. This has been bogged down in renewal due entirely to the uncertainties of this legislation. I see this issue therefore from many sides, both personal and professional.

I too welcome the noble Lords, Lord Kamall and Lord Harlech, to their new roles and thank them and the whole Bill team for their time in discussing these issues. It is not ideal to change Ministers half way through the Bill's progress, and I am disappointed that between Committee and Report we have not been provided with information that was requested. Despite no formal consultation, I understand the Government are confident that the valuation issue is now settling down and that the provisions in the Bill are largely welcomed by stakeholders. We have not seen the information relied on to reach these conclusions because it is cloaked in confidentiality.

From recent discussions, it appears that this evidence has largely been provided by the telecoms mast operators. It is no surprise that they approve of Clauses 61 and 62, as these will allow them to decrease rents payable on historic leases by over 90%, which is a huge cost saving; yet they provide no concurrent obligation on them to pass those savings on to phone companies and their consumers. The result will be that infrastructure companies benefit financially while owners see dramatic rent decreases and are discouraged from letting sites for telecoms masts, and consumers see no financial benefit and, more importantly, no increased coverage. There is a risk that only the corporate middlemen, who often take their profits overseas, will benefit. Surely this cannot be the Government's intention.

There are other beneficiaries: the professionals, lawyers and surveyors advising those in dispute. Judges dealing with the Electronic Communications Code have criticised the intensity of these disputes and the Institute of Economic Affairs recently noted that since 2017

"there has been much litigation, apparent ill-will, and consequential delays".

At the 2021 RICS Telecoms Conference it was shown that, while site payments have indeed reduced since 2017, the costs of transacting for sites have more than doubled in that time, meaning that the decrease in site rents has actually resulted in no savings at all for the market.

The 2017 amendments made parties increasingly antagonistic, and the provisions in this Bill will only add to that. The amendments in this group seek to address this. Amendments 20 and 21 from the noble Baroness, Lady McIntosh, seek to remove Clauses 61 and 62 entirely. Given what I have said, this is my preferred solution. Unless and until a proper consultation is undertaken and the impact of the "no scheme" valuation methodology is properly understood, we should not be extending it to 1954 Act leases and undermining long-established landlord and tenant relations. This is government by diktat, riding roughshod over private contractual interests at the behest of undisclosed and well-funded commercial enterprises. It is not in the public interest.

Amendments 19 and 22 propose alternative remedies to ameliorate the problem of dramatic and sudden decreases in rents payable under telecoms leases. As currently drafted, site owners, many of which are community centres, charities, sports clubs, farmers and small businesses, will see a collapse in rental income that could be very damaging. Amendment 19 proposes that this decrease be limited to 50% of the current rent within the first five years, while Amendment 22 requires that the rent is decreased in even increments during that same period. Neither amendment seeks to prevent the "no scheme" valuation methodology that the Government prefer, they simply soften the impacts to protect the interests of the individual landlord. These are modest and, I suggest, sensible proposals and they should be adopted if Clauses 61 and 62 are to remain.

Meanwhile, Amendment 24 seeks to avoid the invidious prospect of backdated rent decreases which may result in landlords having to pay substantial sums back to telecoms mast operators under interim orders applicable to 1954 Act tenancies. As currently drafted, rent decreases take effect from the date the notice is served, not from the date the new lower rent is determined. A contentious lease renewal can take many years to resolve and, as we have heard, the decreases in rent can be more than 90%. This means that a poor landlord may be obliged to pay back many thousands of pounds in rent previously received, which may not be possible if that money has been budgeted for and spent. This could drive small enterprises and individuals into bankruptcy. Is this what the Government intend? Amendment 24 would ensure that this will not happen, and that the newly decreased rent is not backdated but payable from the date of the court order. Backdating the rent only adds insult to injury.

I urge the House to consider and support these important amendments. If the Bill is unamended, no landowner will welcome telecoms infrastructure and our digital rollout will fail. I beg to move.

5 pm

Baroness McIntosh of Pickering (Con): My Lords, I thank the noble Earl, Lord Devon, for moving Amendment 19. I will speak to Amendment 20 in my name and that of the noble Earls, Lord Lytton and Lord Devon, and Amendment 21 in my name and that of the noble Earl, Lord Devon.

At the outset I welcome my noble friends Lord Kamall and Lord Harlech to their new positions. At the same time I thank my noble friend's predecessor, my noble friend Lord Parkinson, for all his efforts and engagement with us at previous stages of the Bill. I wish him well as a Back-Bencher in this place; I think we probably have more fun.

I remind my noble friend Lord Kamall that in his previous life he was well aware of my interests in rural affairs, which colour my approach to the Bill. I would like to see improvements to broadband and mobile phone connectivity in rural areas, but I cannot take the fact that telephone poles and other infrastructure should be taken for granted, as appears to be the case in the Bill. That is my reason for presenting and speaking to Amendments 20 and 21, with the desired

[Baroness McIntosh of Pickering]
effect that they will remove provisions currently in the Bill that give 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 believe that all interested parties, whether the operators, the landowners or those of us who use these infrastructure facilities, must be treated fairly, in the way that the landowners are currently compensated.

I assure my noble friend that good connectivity is key to increased productivity and growth for farms and the rural economy. I hope he will give a commitment today, just as the Prime Minister has said many times since she took her new position that we are signed up to productivity and growth, that this will apply as much to the rural economy, farms and others who have business in rural areas as it does to more industrial areas.

I confess that I am not a landowner or in receipt of a wayleave for a telegraph pole, although not so long ago I received a small payment, shared with my brother, who is now the sole recipient. I hope that these amendments can achieve a better balance between the rights of the operators, the landowners and those who use the infrastructure.

I regret that the 2017 Electronic Communications Code has changed the way in which the new sites are valued from market value to land value. I make a plea to my noble friend that we proceed under the Landlord and Tenant Act 1954 rather than the 2017 code, given that, as I mentioned earlier—and as the noble Earl, Lord Devon, so eloquently described—fewer new sites have been agreed over the last few years in which we have proceeded under the code.

I echo and strongly associate myself with the remarks of the noble Earl, Lord Devon, about this not being part of the original consultation under the Bill. I hope that my noble friend Lord Kamall will confirm that and say why it was not and yet we now have these two clauses in the Bill, because I have never quite understood why that was the case. If you are not going to give the landowners and other interested parties—or stakeholders, as we now call them—the right to comment, I do not see why they should be presented with a fait accompli. But, even more than that, the Law Commission strongly concluded that it was against the introduction of these provisions into the Bill because it thought that they would lead to fewer sites and fewer renewals of sites, which is precisely the position in which we find ourselves today.

Why is this going against the Government's previous stated intention of allowing a transition for existing agreements into the ECC, or the code? It also means that the code valuation method will be applied retrospectively. I understood that we normally do not apply legislation retrospectively in this place, and I would like to understand the reasons for seeking to do so in relation to Clauses 61 and 62.

The Government's own impact assessment of the 2017 reform concluded that rents would drop by 40% over a 20-year period. It was therefore not anticipated that levels would fall by so much and so quickly. However, the noble Earl, Lord Devon, clearly set out that, in some cases, rents have dropped by as much as 90%, which is inexplicable and unacceptable. Clauses 61 and 62 would simply exacerbate the situation and leave some businesses and individuals facing a cliff edge, without any time to adjust in what we understood would be a transition period. I repeat that this was not part of the 2021 consultation, and, in my view, it will no doubt be entirely counterproductive, with the effect of further disruption.

Given that we now know that the 2017 code has resulted in fewer new sites being agreed, due to the much lower rents being paid by operators, I urge the House to remove Clauses 61 and 62. I urge the Government to accept that they should proceed under the previous legislation, the Landlord and Tenant Act 1954. I hope that the House will look favourably on my Amendments 20 and 21.

Lord Cromwell (CB): My Lords, in his opening remarks, the Minister, the noble Lord, Lord Kamall, said that some of us might not welcome him here. I am sure that that is not correct; I am sure that we all welcome him and his colleague, the noble Lord, Lord Harlech. I certainly do.

First, I apologise to the House for not participating in the earlier stages of the Bill due to circumstances elsewhere—but I have read and watched them. Secondly, I should declare that I am an unpaid director of a small farming company that has a single telecoms mast on its premises. Normally, I would not speak on a subject when I have an interest even as modest as this, and I know that a number of other noble Lords have not participated and remained silent for the same reason. However, having seen how one-sided and damaging this part of the Bill is in so many ways, including to the Government's own objectives for rollout, and having seen how resistant the Government have apparently been to efforts to address its faults, I feel that I must speak out critically but constructively. I support all the amendments in this group but, to my mind, Amendments 20 and 21, which would leave out Clauses 61 and 62, are the starting point, with the other amendments seeking to achieve damage limitation.

There are two parties to any agreement on a site: the site owners and those who seek to occupy and operate them. Not only is this Bill crudely unjust in its valuation basis but it is already creating a breakdown of trust and co-operation between the parties. It will create and intensify conflict between them, leading to a delay in rollout—the direct opposite of what the Government intend. We, therefore, need to find a better middle ground between these two parties.

As has already been mentioned, Clauses 61and 62 would have land valued as if it were not to be used for a mast site. This is as bizarre as anything in a Gogol short story. Who would, for example, value a building plot, knowing that it is imminently going to be built on, on the basis that it would never be built on? I am sure that HMRC would never countenance that approach for tax purposes.

Amendments 20 and 21 reflect the need to remove these counterproductive and illogical clauses—but how did we get here? We need to be fair about this: previously, some owners, due to the rules of supply and demand, had a bargaining position that may have enabled rents that are higher than they would otherwise have accepted.

In seeking to accelerate rollout, the Government have decided to rebalance things—so far so good. However, this Bill would swing the pendulum to completely the opposite extreme. It would strip the site owners of their legally long-established property rights—something I find astonishing from a Conservative Government—and deny small enterprises, sports clubs, hospitals and others of a vital source of income. This was raised by Labour at an earlier Bill stage, and I was astonished when the then Minister—so rightly admired in other respects, as many have said—pretty glibly told them in his reply that they should simply seek other sources of income.

These clauses will take a situation where sites were coming forward voluntarily and replace it with one of zero trust—in either the operating companies or the Government—whereby both potential and actual site owners will seek to avoid, and indeed resist, providing sites for this use. It will enable the operating and mast companies to pay peppercorn rents and thereby enrich themselves and their shareholders—with no evidence of trickle down, or even dribble down, to consumers.

When I see all this, combined with powers elsewhere in the Bill for operators to reclaim rents retrospectively from site owners—tearing up existing contracts freely agreed and entered into by professional commercial companies and site owners—I can only gasp in disbelief. So I have been asking myself how on earth we got into this situation and what could explain it. I have been urged by some of my colleagues to be temperate in my remarks, so I will not indulge in conspiracy theories, but we need to focus on encouraging sites to come forward to achieve faster rollout—something which I think we are all agreed on.

Let me therefore offer a valuation solution that is indeed in the middle ground between the past and the extortionate future foreseen in this Bill. There is a tried and tested middle ground that uses a practical and already widely accepted approach used to set rents and values for other commercial sites. I ask the House's indulgence in describing this very briefly and simply with an illustration from another commercial activity: mineral quarrying. Where a quarry operator wants to lease land to set up a processing plant, there is a well-established valuation method whereby the database of local industrial rents is assessed and a percentage of that rent—say 70%—is paid to the site owner. There are clear advantages here. First, land agents and valuers on both sides are well accustomed to such discussions, which can therefore be swift. In the very unlikely event that they do not reach agreement, binding expert determination is available as standard. Secondly, it is based on a well-established dataset that reflects regional differences and will adjust over time to reflect the regional economic context. Thirdly, there are suitably qualified practitioners on hand across the country to carry it out.

Crucially, this would produce a balanced result and would get there using a transparent, objective and logical method. To be clear, the resulting rents would be set below what some site owners currently receive, but not as counterproductively or extortionately low as the unjust free hand that the Bill, as currently drafted, would give commercial operators. I therefore urge the Minister and the Government to think again.

5.15 pm

I appreciate that lobbyists working for the operator companies have been telling the Minister that all is lovely in the garden and urging him to press ahead with the Bill as drafted. One could not expect anything else from them when we reflect on what the operators would gain, but they are offering a wholly unbalanced view. It is not too late for the Government to stand back, reflect and seek a middle ground. It can easily be achieved and would, by enabling swift and more equitable outcomes, address far more effectively the Bill's important objective of encouraging sites to come forward and be negotiated by willing parties within a sensible framework. Failure to grasp this and bulldozing ahead, egged on vociferously by operators seeking enhanced profits for themselves, will achieve precisely the opposite.

Clauses 61 and 62 amount to legalising a land grab by large commercial companies, stripping site owners of both their rights and incomes. This is already devastating trust and co-operation, and these clauses will clog up rather than free up the much-desired rollout. I therefore support these amendments.

Lord Northbrook (Con): My Lords, I declare my interests as a site owner and NFU member. I agree with every word that the noble Lord, Lord Cromwell, has said. I am astonished by this piece of legislation from a Conservative Government.

Amendments 19 and 22 aim to address the issue of valuation, one of the most significant concerns with the code. As other noble Lords have said, the "no scheme" valuation methodology introduced into the code in 2017 prevents courts taking into account sites' potential use as provision for an electronic communications network. This allows operators to drive down the rents they pay to site providers, often by over 90%.

I was involved in negotiations for one of the two masts on my land and was lucky that I had only a 70% reduction. It was not so important for me, but this forces small businesses, sports clubs, community groups and hospitals to accept derisory amounts for the use of their land. It also reduces the motivation for operators to pursue consensual deal-making, in turn slowing down rollout as they can get greater discounts through the courts. As noble Lords have said, it also reduces the incentives for landowners to offer sites for masts in the first place—not an advantageous outcome for the Government's mobile connectivity.

Amendments 20 and 21 are rather more impactful than Amendments 19 and 22, in that they would stop the Government's "no scheme" valuation regime being extended to cover the roughly 15,000 telecoms sites governed by the Landlord and Tenant Act 1954 and the Business Tenancies (Northern Ireland) Order 1996. This would have the effect of ensuring that the rent on these 15,000 sites would continue to be set at market value, as is the case today. Importantly, this would prevent them being subject to the issues that have plagued sites governed by the code ever since the 2017 reforms.

Although I suspect the Minister will be opposed to these amendments, they are fully aligned with the Government's repeated claim that this Bill does not address issues of valuation. How can the Government

[Lord Northbrook]
possibly continue to make that claim if, by their own admission, 15,000 new sites will have their rental value slashed from the moment this legislation comes into force? We are simply trying to ensure that the legislation delivers the Government's stated policy intent. Parties on all sides of the debate have acknowledged the significant challenges created by the 2017 reforms to the code. It is only right that these changes are not imported wholesale into the Landlord and Tenant Act 1954 and the Business Tenancies (Northern Ireland) Order 1996, when there is no evidence whatever that the 2017 reforms have delivered the Government's intentions.

I was very grateful, together with the noble Earl, Lord Devon, to the Minister for the meeting yesterday, but one problem seems to be that information provided by the operators, for confidentiality reasons maybe, has not been disclosed to us even though we have asked for it; that is a very frustrating thing. I am also very sad that His Majesty's Government have paid no attention to influential, independent reports from the IEA and the Centre for Economics and Business Research stating the problems with this legislation. The CEBR report says—

"The government's ECC changes have not delivered a faster 5G rollout, and it is slower than the pre-2017 status quo. The new proposals do not remedy this. But for the 2017 reforms, 8.2m more people would have had 5G coverage by now than currently can access it. This will persist in the long-term: national 5G coverage by 2022 will be worse than if there had been no changes to the ECC at all. The government's proposed changes to the ECC will cost UK GDP £3.5bn by 2022, and fail to bring 5G coverage to where it would have been pre-2017."

The Government want more growth; this legislation does not seem a good way to provide it.

Lord Clement-Jones (LD): My Lords, on these Benches we strongly support these amendments which support changes to the current valuation basis, the flaws in which were so expertly explained by the noble Earl, Lord Lytton, in Committee, and so clearly today by the noble Earl, Lord Devon, the noble Baroness, Lady McIntosh of Pickering, and the noble Lords, Lord Cromwell and Lord Northbrook. As the noble Earl, Lord Devon, has said, the current provisions are a mistake—astonishing from a Conservative Government, as the noble Lord, Lord Cromwell, said—and the motives of many of us were reflected by what the noble Lord, Lord Northbrook, said: that what we are trying to do is to ensure that the ECC delivers the stated policy of the Government. All of us are behind the 1 gigabit policy, as delayed and slow as it may be, but we want it to be delivered. It appears that the Government, as the noble Lord, Lord Northbrook, also said, are completely ignoring the reports of the IEA, the CEBR and others who have pointed out that precisely these changes in valuation in the 2017 changes to the code have not, and those proposed will not, ensured faster rollout than the original valuation methodology.

Under changes to the code made in 2017, a "no scheme" valuation methodology for valuing land was introduced, as we have heard, and this allowed site providers to recover only the raw value of their land, rather than receiving a market price. As the noble Baroness, Lady McIntosh, has highlighted, operators have been able to use the changes made to the ECC to drive down the rents they pay to site providers, often to peppercorn rents. She also highlighted the impact assessment made by the Government which said that rent reductions should be no more than an absolute maximum of 40%. But of course, we know from the data quoted by operators that reductions have at best averaged 63%, a huge sum for many of the people who rent their land for use for telecoms infrastructure, and in many cases as we have heard today, reductions have been much higher—in the region of 90%. As I mentioned in Committee, the Protect and Connect campaign produced some powerful case studies, such as the Fox Lane Sports & Social Club in Leyland, Lancashire, to support this; and we agree that the right solution to get this market moving again is to reinstate a fair valuation mechanism, such as the one envisaged by the Law Commission.

In addition, in principle we entirely support the amendment spoken to today by the noble Baroness, Lady McIntosh, and the noble Earl, Lord Devon, designed to cap cuts to site provider incomes and prevent retrospective lowering of rents. I really do hope that the Government will give these amendments careful consideration, supported as they are by a very strong cross-party coalition—and indeed a country-wide campaign.

Baroness Merron (Lab): My Lords, the issues addressed in this group of amendments have certainly exercised your Lordships' House throughout the course of the Bill and have drawn much attention outside this House as well. I am grateful to the noble Earl, Lord Devon, and the noble Baroness, Lady McIntosh, for introducing their amendments with such clarity. I believe that all the amendments in this group seek to bring fairness, balance and efficiency to the task before us. The noble Lords, Lord Cromwell and Lord Northbrook, also spoke to these points, again with great clarity, in illustrating the challenge before us.

As we have outlined at previous stages, we are sympathetic to the concerns around the changes to the valuation of sites that host telecoms infrastructure. A point I have always found somewhat perplexing—I hope the Minister can assist on this—is that industry itself admits that reductions to rents have on average been far above the 40% promised by government, yet the 40% figure continues to be put before us. I would welcome some insight into that from the Minister.

We understand the importance of getting infrastructure rolled out swiftly to improve the availability of 5G and high-speed broadband and, as I have said, we all understand that a balance has to be struck. The amendments in this group would make a number of changes to the current regime to try to redress the loss of landowner rights. I certainly understand the motivation for these changes but suggest to your Lordships' House that an independent review of the whole system would perhaps offer a more useful way forward. That is something we will return to in a later group of amendments.

Delivery, balance and fairness are key here. I hope that the Minister will take these points on board and find us a way forward, because that is what we are seeking.

Lord Kamall (Con): I start by thanking the noble Earl, Lord Devon, for introducing some of the amendments, as well as my noble friend Lady McIntosh —indeed, I thank all noble Lords who spoke in this debate. It is quite clear that very strong views are held on this subject, which I know was the subject of much debate when my predecessor was in this role. I will try to address the issues specifically. That may take a bit of time but I hope noble Lords will bear with me.

Amendments 20 and 21 would remove Clauses 61 and 62 from the Bill. These clauses will extend the "no network" valuation model contained in paragraph 24 of the code to the Landlord and Tenant Act 1954 and the Business Tenancies (Northern Ireland) Order 1996. My predecessor, my noble friend Lord Parkinson of Whitley Bay, explained in Committee that some agreements to which the code applies are required to be renewed under these pieces of legislation, rather than under Part 5 of the code. When this occurs, the rent is calculated on a market value basis, rather than using the code's "no network" valuation. Clauses 61 and 62 will ensure that, where agreements conferring code rights regulated by either of those statutory frameworks come to an end, the rental terms of any renewal agreement will more closely reflect those that apply to new agreements and those agreements renewed using Part 5 of the code.

Whatever view noble Lords take of the valuation framework, it remains the case that the purpose of Clauses 61 and 62 is to ensure that the same approach applies to all agreements conferring code rights throughout the UK. This will reduce disparities in deployment costs in different jurisdictions which could otherwise contribute to a digital divide.

I am afraid the Government cannot accept the noble Baroness's amendments as they would serve only to entrench the inconsistencies in the different renewal frameworks. In fact, removing Clauses 61 and 62 but leaving Clauses 63 and 64 in place would exacerbate the situation. Clauses 63 and 64 provide that the right to recover compensation contained in paragraph 25 of the code, which is a key element of the overall valuation framework, is also mirrored in the 1954 Act and the 1996 order. Neither the Act nor the order currently makes distinct provision to compensate landowners for loss and damage arising from the exercise of code rights. Compensation for potential loss and damage is normally rolled up in any calculation of market value.

Removing Clauses 61 and 62 while leaving Clauses 63 and 64 in place would enable those landowners to recover additional amounts in compensation, which may have already been accounted for in the amount of rent, as well as higher rents. The Government believe that leaving legislation in place that allows some landowners to receive higher rental payments for longer is fundamentally unfair. It would also mean that network costs remained unacceptably high, penalising swathes of consumers and businesses who may face price increases for digital services or wait longer for the higher-quality reliable connections they want to see, particularly in rural areas, where deployment is frequently simply not cost-effective.

5.30 pm

I turn to Amendments 19 and 22, which seek to reduce the impact of any reduction in rent during the first five years of a tenancy renewed under either the 1954 Act or Part 5 of the code. The aim of the Bill is to ensure that the process of renewing a code agreement is consistent throughout the UK. However, Amendment 19 would apply only in England and Wales, leading to further inconsistency.

The no-network valuation framework was introduced at the end of 2017, as noble Lords have recognised, and the framework's effect on the sums received by landowners has received significant publicity. In a number of instances, especially where an agreement is to be renewed under Part 5 of the code, it will have been clear for some time that the market has significantly changed and that consequently, when a current agreement is renewed, the amount of rent may decrease. Therefore, while the Government are not unsympathetic to site providers in this position, the amendments would keep operational costs higher for longer, which the Government believe—as others have said—could adversely affect the rollout and deprive homes and businesses of access to the latest technologies.

It has been said several times during the passage of the Bill that not only did the Government fail adequately to review the impact of the 2017 reforms before carrying out the consultation that led to the legislation but also that the Government were at fault in not consulting again on the valuation regime introduced through the reforms. The Government strongly disagree with those assertions. DCMS engagement with stakeholders on the impact of the code reforms began shortly after the legislation came into force. A number of meetings were held with stakeholders representing site providers as well as operators. This engagement has continued through the access-to-land workshops that DCMS has hosted for the last 18 months. A wide variety of stakeholders participated in these workshops, including landowner representatives. As well as looking to agree best practice on various issues, the workshops improved relationships across the industry.

DCMS Ministers and officials have listened carefully to the feedback that they have received, and the Government acknowledge that reduced rents received by site providers may have made them less willing to host telecommunications apparatus. However, this was recognised as a probable outcome in 2017. It remains the case that the Government think that the valuation regime is the right one, and the feedback that we have received from stakeholders prior to and during the consultation strongly suggests that measures in the Bill will help to ensure the aim and ambition of the 2017 reforms.

Baroness McIntosh of Pickering (Con): I am following very carefully what my noble friend has said. He just said that responses to the consultation were received. The offending articles were not part of that consultation, so the Government have not actually heard any responses from the interested parties on that point.

On his point about Clauses 63 and 64 remaining part of the Bill, which is why we cannot remove Clauses 61 and 62, my reading of Clause 63 in particular

[Baroness McIntosh of Pickering]
relates to new tenancies. My noble friend has not responded to the points raised by both the noble Earl, Lord Devon, and me about existing agreements that are going to be renewed, rather than new agreements.

There are two points to which I would like the Minister to respond: first, this issue was not part of the consultation so the Government have not received any responses on it. Secondly, what happens to existing agreements being renewed under Clause 63? Are they to be slashed by 90% without any recourse?

Lord Kamall (Con): I thank my noble friend Lady McIntosh for those questions. I will come to them—I am sorry, maybe I am not going as fast as noble Lords would hope me to, but I wanted to consider carefully the various points made by noble Lords, and I still have specific responses to come to. If noble Lords will allow me to talk to Amendment 24, I will come back to the contributions made during the debate.

Amendment 24, tabled by the noble Earl, Lord Lytton, but spoken to by the noble Earl, Lord Devon, looks to prevent interim rent being backdated where an agreement is renewed under the 1954 Act, and is similar to the amendment tabled by the noble Earl in Committee. One of the fundamental aims of the Bill is to ensure that the approach to renewing agreements across part 5 of the code, the 1954 Act and the 1996 order is as consistent as possible. As my noble friend Lord Sharpe said in Committee, this form of amendment serves only to increase inconsistency. It would create inconsistency within the 1954 Act itself, preventing backdated payments of interim rent where a site provider gives notice under Section 25 of the Act, yet would allow interim rent to be backdated where an operator serves notice under Section 26 of the Act.

The ability to backdate rent is not a new concept. It is not being introduced into the 1954 Act by this Bill, nor was it introduced in the 2017 reforms. When parties entered into these agreements, there was always a risk that the market could change between the time it was entered into and the time of its renewal and that the amount of rent could decrease. However, the Government have listened to stakeholders representing the interests of site providers and understand the potential consequences of applying the code valuation framework to the 1954 Act and the 1996 order agreements in relation to backdated interim rent. This is something that is being carefully considered in developing an implementation strategy, including such transitional provisions as may be needed to bring the different provisions of the Bill into force in a timely and responsible manner.

Let me now talk to some of the points made by noble Lords. A number of noble Lords said that the evaluation regime is not fair. The Government see the pricing regime as being closely aligned to utilities such as water, electricity and gas. The Government maintain that this the correct position. Landowners should still receive fair payments that take into account, among other things, alternative uses that the land may have and any losses or damages that may be incurred.

It should be noted that, in many of the examples of unfair rent or large percentage reductions that have been raised by campaign groups, reference is made only to the rental payment itself. These examples fail to take into account any compensation payments which the landowner may have received under the agreement. They may also have failed to take into account any capital payment which the landowner may have received upfront as part of the terms of the agreement. There have been some paid studies of raised examples of poor negotiations or rent reductions. It would not be appropriate for me to comment on ongoing negotiations in specific terms, but the Government say generally that rent is often only one part of the overall financial terms agreed, as I said earlier. As regards 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.

The noble Earl, Lord Devon, and other noble Lords mentioned the reluctance to enter into new agreements. We have been told that the amounts offered by some operators are so drastically reduced that landowners are less willing to come forward and allow their land to be used. However, I have been advised that, so far in 2022, at least 107 agreements have been reached in relation to new sites, with heads of terms agreed on a further 66 sites. This is in addition to 533 renewal agreements which have been concluded this year, along with heads of terms agreed on a further 119 renewals. The Government maintain that the 2017 valuation provision created the right balance, and they are aware that the valuation framework would have resulted in some reductions, as I said earlier.

I think it was the noble Earl, Lord Devon, who talked about middlemen who take profits overseas. The benefits of independent infrastructure provision are globally acknowledged. An Ernst & Young report in February this year, produced by a European-wide infrastructure association, highlighted the many benefits which independent infrastructure providers bring to both the industry and consumers. It talked about sharing towers and costs and enabling cheaper rollout. The report concluded that the scope of independent infrastructure providers overcharging for the use of the infrastructure would be constrained by continued competition between tower companies.

Government policy introduced in the 2017 valuation framework to reflect the public interest in digital infrastructure and encourage investment while driving costs down remained unaltered. That is not to say that we approached our pre-consultation engagement with a closed mind, but that engagement with stakeholders did not indicate that the valuation framework is incapable of delivering both our policy objectives and fairer outcomes for landowners. It did highlight difficulties with communication and negotiations, hindering the framework from working as intended. We hope that the Bill and the non-legislative initiatives we are taking forward will tackle this.

There have been some claims that rents would reduce by more than 40%. In the impact assessments in 2016, the Government specifically said that they did not know what effect the reforms would have on rental payments. There is reference in the impact assessment to independent analysis which predicted a 40% decrease. Some lobby groups have asserted that this figure demonstrates that the Government committed that

rent reductions would be no more than 40%. The Government maintain that this was not a government commitment, but it did appear in the impact assessment and we expected the market to adjust.

As I said, rent is only one element and other variations occur in practice. We understand the various things that have been said by various companies. A number of noble Lords reflected on the CEBR research. The Government have problems with the report from the CEBR. First, the picture the report paints of government policy is incomplete and partial. Secondly, the alternative changes the report proposes do not account for key challenges, which in our view means that they would not deliver the results the CEBR suggests. The report focuses excessively on the prospective interests of landowners and we are trying to get the right balance.

On the Institute of Economic Affairs, I should be very clear and have to declare my interests. I am the former academic and research director of the institute, so I would not wish to comment one way or the other on its report, but I know that it used as its source some of the work from the CEBR's and other reports. My successor, Dr James Forder, is an excellent analyst and economist. Indeed, he is the economics tutor at Balliol College in Oxford—I digress.

I am afraid that, while I completely understand the arguments—I have had conversations with a number of noble Lords and am very grateful to those who have come to meetings and heard the Government's perspective—we cannot accept these amendments. Perhaps in vain, or in aspiration, I ask noble Lords to consider not pressing them.

Lord Cromwell (CB): Before the Minister sits down, I make the point that, in my experience, the rent is the key factor, certainly over a period of time. Frequently no or minor payments are made, and it is simply that an agreement is struck for the rent. Trying to diminish the importance of the rent in the way the Minister has is something I find hard to swallow.

The Minister prays in aid consistency. If the valuation method is unfair, what this Bill does is ensure that a consistent unfairness is imposed, so I find that slightly tautologous. Does the Minister accept, agree and support the idea that a valuation based on a site that is known to be imminently the site of a mast should be done as if there was no mast site?

Lord Kamall (Con): I thank the noble Lord for his question. I am interested in the point he makes about the amount or proportion of rent in the overall agreement. Whatever happens in this debate, I would be very happy to continue that conversation with him and my officials to make sure that we can close any gap in understanding.

The noble Lord will recognise that I have to defend the Government's position as the Minister, so I continue to say that the Government cannot accept these amendments, but we hope, perhaps vainly, that the noble Lords who tabled them will consider not pressing them.

The Earl of Devon (CB): I thank noble Lords for the unified support from across the House. It came from all Benches, it seems, other than perhaps one—and even that Bench seemed to be wavering a little at the end there.

I am surprised that a Conservative Government extolling growth want to undermine property rights and cost the economy billions of dollars. There is no explanation given other than the whispers of these undisclosed stakeholders. The Minister kindly explained that he has been listening and that there have been discussions and workshops, but we simply have not seen what those were and what the stakeholders said. I have to ask where they are holding the stake to convince the Government to persevere despite your Lordships' consistent opposition to these provisions.

I note the Minister's desire for fairness. As the noble Lord, Lord Cromwell, has just noted, it seems that the Government want this provision to be equally unfair to every single site owner across the country.

The Minister also noted that the Government are trying to avoid costs going up. However, as we have seen, and as the RICS report stated, costs have risen exponentially as a result of the 2017 amendments, and here we are, doubling down on those, therefore only to increase costs further.

I think I heard the Minister accept that it will impact landowners' desire to provide sites. I think he also noted that when you enter a lease you do so with the knowledge that the market might change and therefore the rent might change. I do not think that anyone entering a 1954 Act lease in 2015 would have expected that the rent would decrease by over 90% by 2022. I am sorry, but if the Minister suggests that that was a real expectation of the parties, it is simply not true.

5.45 pm

The Minister said that the telecoms companies should be treated like public utilities, which is why this legislation is being passed. If they are being treated like public utilities, can we please regulate them like public utilities and ensure that they do not abuse the position as they currently are doing?

The Minister noted that 107 new mast sites have been agreed this year, and negotiations have opened for 66. Is that the Government's ambition, that we get 100 new masts a year? I am not sure that that will achieve the gigabit rollout that we all need.

Despite that, and in light of the fact that there are amendments to be debated later that may well address the issue of the review of these provisions, I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Amendment 20 not moved.

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

Amendments 21 and 22 not moved.

Amendment 23

Moved by ***Lord Sharpe of Epsom***

23: After Clause 65, insert the following new Clause—

"Refusal of application for code rights on grounds of national security etc

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

(2) After paragraph 27 insert—

"Refusal of application on grounds of national security etc

27ZZA_(1) This paragraph applies where an operator applies to the court for an order under paragraph 20, 26 or 27 which would impose an agreement between the operator and another person.

(2) The court must refuse the application if the Secretary of State gives a certificate to the court certifying that the condition in sub-paragraph (3) is met.

(3) The condition is that the Secretary of State is satisfied that the order applied for by the operator would be likely to prejudice national security, defence or law enforcement.

(4) If the Secretary of State gives a certificate to the court under sub-paragraph (2) the Secretary of State must give a copy of it to the operator and the other person.

(5) In this paragraph, "law enforcement" means the prevention, investigation, detection or prosecution of criminal offences including the safeguarding against and the prevention of threats to public security."

(3) In paragraph 21 (test to be applied by the court in determining whether to make an order under paragraph 20), in sub-paragraph (1), before ", the court may make an order" insert "and paragraph 27ZZA".

(4) In paragraph 26 (power of court to make an order imposing interim code rights), in sub-paragraph (3), at the beginning insert "Subject to paragraph 27ZZA,".

(5) In paragraph 27 (power of court to make an order imposing temporary code rights), in sub-paragraph (2), at the beginning insert "Subject to paragraph 27ZZA,"."

Member's explanatory statement

This amendment provides that a court must refuse an application by an operator for code rights under paragraph 20, 26 or 27 of the code if the Secretary of State gives a certificate that the order applied for would prejudice national security, defence or law enforcement.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, the Government believe that a change to the Electronic Communications Code—the code—is necessary to protect the autonomy and integrity of our national security, law enforcement and defence sites across the UK.

The code allows telecoms operators to ask landowners, government departments, agencies and other public sector bodies, including those with national security, law enforcement and defence equities, for code rights in relation to land and property. Such code rights include the right to carry out surveys as well as the right to install telecommunications equipment. If a consensual agreement cannot be reached, the telecoms operator can seek a court order to impose an agreement that confers the code rights being sought by the operator subject to whatever terms that the courts deem appropriate. This means that a telecoms provider can be granted access to sensitive national security sites without the landowner's consent.

The code works in this way to ensure that operators can deliver coverage and connectivity across the UK at pace, and this is absolutely the right approach to delivering the Government's rollout. However, an extra layer of protection is needed for situations where particularly sensitive sites, such as those with national security, law enforcement and defence equities, are involved. This is needed to protect our national security capabilities and operations and our ability to keep people safe.

There are three types of risk arising from the present position, which our police forces and national security bodies are already grappling with. These are legal, physical security and technical security risks.

In respect of the physical security risk, surveys and the installation and ongoing maintenance of telecommunications equipment could mean access to sensitive sites by non-security cleared personnel, including engineers, site surveyors and others. This poses a risk of compromise to sensitive information and staff who work in these buildings. The police, in particular, often need exclusive rooftop access for operational reasons, especially in cities, and the presence of persons and telecoms equipment on these rooftops can pose a hindrance.

Regarding the technical security risk, the installation of 5G equipment on sensitive government sites would significantly raise communications and information security risks for such sites. Finally, on the legal risk, the current dispute resolutions and court procedures do not allow for closed material proceedings. This means that classified national security concerns cannot be evidenced and may lead to courts granting access to sensitive sites without a full awareness of the risks.

We also need to consider the significant administrative burden of managing those legal risks where national security concerns cannot properly be evidenced, drawing resources away from primary national security work. For example, we have seen a significant increase in survey requests since the 2017 amendment to the code. There have also been increasing threats of litigation when access has been denied for legitimate security reasons.

This amendment, which inserts new paragraph 27ZZA into the code, will confer powers on the Secretary of State to intervene and prevent a court from granting a telecoms operator's request for code rights, including rights to access and install apparatus on site, where granting the request would

"prejudice national security, defence or law enforcement."

This certification will be considered only when all other routes to a mutually consensual solution have been exhausted. This is right and proportionate. It is worth emphasising that it will not provide public sector landowners with national security law enforcement and defence equities with a blanket exemption. It is anticipated that it would be employed only rarely, on a case-by-case basis and in extremis, and that only a small number of sites would be eligible. Nevertheless, we will consider how Parliament can be updated on the use of this power so that it can carry out its scrutiny role effectively.

The Government remain committed to being the landlord of choice for telecoms operators, but we believe that the sensitivity of some of these sites will mean that they will simply not be suitable. The aim of this amendment is to address legitimate national security concerns without undermining the Government's ambitious rollout of gigabit-capable broadband and 5G networks. I beg to move.

The Earl of Devon (CB): My Lords, I will speak briefly. It is wise for the Government to make this amendment, given the dangers that have been identified to national security infrastructure of unfettered telecoms operator access.

This necessary amendment highlights two key issues. First, it highlights the broad powers conferred by the ECC on mast operators to access to public and private property and undertake works on it. It is not just the national security infrastructure that is threatened by the code provisions but private and public interests of many types. Secondly, the fact that the Government have become aware of this important concern only now, in the final stages of the Bill's passage, is a compelling illustration of how totally inadequate the consultation process has been and how essential it is to conduct a proper review, an issue that we will come back to.

Lord Fox (LD): My Lords, the noble Lord, Lord Kamall, has demonstrated a prodigious ability to outsource the responsibility for presenting the government amendments. We welcome the noble Lord, Lord Sharpe, to this Bill.

As the noble Earl, Lord Devon, pointed out, this is late to the party. It is also the first time we have heard the explanation for this Bill, though others may have been lucky in having it. We had a meeting with the noble Lord, Lord Kamall. No one from the Home Office was there to give us the information we have just received, so I am absorbing it for the first time—a relatively unsatisfactory process. That said, this is an important area. I am surprised that the code has somehow been allowed to continue for as long as it has without this issue cropping up. Have there been specific issues which have caused this to happen, or is it still a hypothetical matter that the Government are seeking to deal with?

Everybody can appreciate the problems of sticking a 5G tower on top of GCHQ. No one wants to see it, but I can imagine that the reality is a more subtle set of problems. We on these Benches seek a better sense of the real-life cases which the new clause seeks to stop. The Minister singled out technical risks in particular. Those exist beyond the site itself, on the environs. I am interested to hear from the Minister how the clause deals with a 5G site put adjacent to a security site. What thresholds are the Government going to expect its security services to run when it comes to implementing the clause? It will not just be on the site itself.

I understand that quite a lot of this will be enshrined in a digital toolkit. It would help us all if the process of developing that digital toolkit was one with a collaborative approach. The noble Earl, Lord Devon, also highlighted that this problem of overriding access from the operators extends beyond the security environs. This is not just a security issue; it spreads into other places. Like many other Peers, I received a letter from the fire and rescue service. While this is not a security issue, it falls within the purview of the noble Lord, Lord Sharpe, and the Government should consider it, because it raises the problems of putting network equipment on fire and rescue service land and the fact that it would impede the training and preparation of that service.

This is even later than the Government's amendment, and I recognise that it is not even part of this amendment, but it is a specific concern, and the Minister would do well to undertake to your Lordships' House to talk to the fire and rescue service, to understand their problem and, if necessary, I am sure that we would all tolerate a late insertion at Third Reading. I say this without having spoken to the Opposition, but if it was an issue, I think that we would discuss it.

We understand that national security issues must be taken into consideration. We do not understand how this will work, what the thresholds will be, and what sort of cases it is seeking to avoid. More explanation is required.

Lord Bassam of Brighton (Lab): My Lords, I welcome the noble Lord, Lord Sharpe, to the Dispatch Box on this Bill. We have had to deal with an increasingly large cast of Ministers, but he is a very astute and wise owl and I am sure that he will bring his insights to bear on this. I thank him for the meeting that we were facilitated to have on this issue and thank the officials for their close attention.

We on the Labour Benches entirely understand the need to protect national security and other key sites across the UK. We take the point that we should not allow equipment to be installed in places where it may interfere or enable the interception of sensitive data. However—and it is a big however—it is not desirable to introduce a power such as this at the last substantive stage of a Bill, when the elected House and our own scrutiny committees have already considered the legislation. It is not best practice. I have a bit of sympathy because I too have been a Home Office Minister. In my time I did something like 19 Bills in a two-year period. Home Office officials have a nasty habit of dreaming up late amendments which are absolutely essential for the safety and security of people at the last minute. However, it is not good practice and should not go unremarked on. We hope that the DCMS and the Home Office will acknowledge that and reflect on how this has been brought forward.

We are grateful to Ministers and officials for answering questions over recent days. That has, to a large extent, assured us that this power is not only necessary but is appropriate and will not be widely used. The Minister said "rarely" and "in extremis", two very important guiding phrases to be used. Under this draft, the power is not subject to any formal checks. We hope that the Minister can make commitments again from the Dispatch Box. There are the possible reporting approaches to Parliament, perhaps to an appropriate Select Committee and maybe to the Intelligence and Security Committee, even if these reports are confidential. We would be grateful if the Minister could repeat, for the record, the various other steps to be exhausted before the Secretary of State would resort to this blunt instrument.

The Lib Dems made an interesting suggestion at the end of their contribution on this. I would be very interested to hear if this power will impact on adjacent sites, and whether those adjacent sites might in themselves be a security risk. It is right to draw attention to the needs of fire and rescue services, and the police service, where their services might be interfered with by adjacent-site issues.

[Lord Bassam of Brighton]

It is not desirable, not good practice, and really not right to introduce something like this in your Lordships' House, but we understand why and are happy to support this amendment because of its security implications.

6 pm

Lord Sharpe of Epsom (Con): I thank all noble Lords who have spoken in this brief debate, particularly the noble Lord, Lord Bassam; I do not think I have ever had the words "astute", "wise" and "owl" used in the same sentence about me before, and I am very grateful.

I will get on to the specific points that were raised. The noble Earl, Lord Devon, effectively said, "Isn't this unfair to private landowners?", but generally speaking the Government are in the same position as any other landowner in relation to the code. Indeed, we intend to continue our proactive work with the telecommunications sector to ensure that the public sector property portfolio is utilised, wherever possible, to support our coverage and connectivity aims. I do not believe that this is a question about fairness; it is a question about national security, law enforcement and the defence sites that I referred to earlier.

All three noble Lords who spoke have queried why this is being introduced at such a late stage. As the noble Lord, Lord Bassam, knows, and for the record, I agree with him: it is certainly not ideal. But before seeking to introduce this exemption, we have rigorously pursued non-legislative solutions to the identified risks, given the Government's commitment to roll out gigabit-capable broadband and the 5G networks at speed. However, we have concluded that there remain certain situations where non-legislative options cannot be relied on to address our fundamental security risk concerns. This amendment will address that: it provides a mechanism to preserve national security objectives where necessary. But I reiterate the point: I understand where he is coming from on that particular subject.

The noble Lord, Lord Fox, asked if I was able to give some indicative examples of where a Secretary of State may deem it appropriate to issue one of these certificates. I am happy to do so: the power is, as I said earlier, limited in scope, and will be applied on a case-by-case basis. Certification will be considered only when all other routes to a mutually consensual solution have been exhausted, and a telecoms operator applies to the court for the rights to be imposed. That is the last resort or, as I described it yesterday, a red card option. New Scotland Yard, for example, has received repeated requests from operators to access its main building, and operators have threatened litigation. This is an example where we would consider using this power, but other obvious examples include agency headquarters, if an operator were to approach them.

The required threshold will be considered only when all other routes to the mutually consensual solution have been exhausted, as I have just said. The newly restructured cross-government digital infrastructure toolkit will remain the primary route for determining the outcome of survey and installation requests from telecom operators. The working group supporting the implementation of the toolkit will provide a platform for regular engagement with operators. The group will also provide support to operators in assessing a site's suitability, including a consideration of national security risks and any mitigations therein. I assure noble Lords that certification will be applied for by the Government only when it is considered necessary, and there are no other options or routes to a mutually agreed solution: for example, if the working group advises that a site is unsuitable for survey and installation based on national security grounds which cannot be mitigated, but the operator still commences court proceedings. Even then, certification will not be applied automatically. The Secretary of State will still need to make a final decision on whether a certificate of exemption is appropriate.

The noble Lord, Lord Fox, raised a very good point about digital proximity; I suppose that is the right way to put it. I am not going to get involved in that debate here. As I am sure he will appreciate, there are significant national security concerns about it, and it strays into a number of other areas. Perhaps that is a subject we can pick up in the future, because it will obviously have major implications. Finally, he also asked me about previous Home Office involvement—I remind him that I have been in post for only a week, so could not really help on that one—and the fire service. We have seen the representations of the fire service, but have carefully balanced the risk so as to not undermine legitimate national security risks. We will, of course, continue to engage.

Amendment 23 agreed.

Amendment 24 withdrawn.

Clause 68: Use of alternative dispute resolution

Amendment 25

Moved by ***Baroness McIntosh of Pickering***

25: Clause 68, page 58, line 38, leave out from "must" to "one" in line 39 and insert "use"

Member's explanatory statement

This amendment is to ensure that operators engage in the alternative dispute resolution process by making it mandatory.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful for the opportunity to raise what is quite a difficult situation in Amendments 25, 26, and 27. What I seek to address here is the fact that while it is welcome that there is an alternative dispute resolution process, it would be preferable that this was mandatory. I would also like to raise other issues, such as the imbalance between the funds available to operators bringing such a case and to landowners, who may be of quite modest means and modest size in being able to defend against such actions.

I welcome the inclusion in the Bill of an alternative dispute resolution mechanism. Could my noble friend the Minister take this opportunity to explain why it is merely optional for operators to use it, given—as I referred to a moment ago—the disparity in resources between operators and landowners in many cases? Is he not concerned that the incentive to use such an alternative dispute resolution mechanism for operators is low, given that they have the resources to take potentially multiple landowners to tribunal? Also, while

the overall market for new sites for masts has slowed down, some small landowners have been unable to afford the cost of being taken to a tribunal to seek to defend their property rights. They have essentially been forced to agree to host mobile apparatus on unfavourable terms.

I propose Amendments 25, 26 and 27 to make it mandatory for telecoms operators to engage with an alternative dispute resolution mechanism before threatening to take a landowner to court for an agreement to be imposed. I beg to move.

The Earl of Devon (CB): My Lords, I strongly support these amendments, to which I have added my name. As I have said, I am a litigator, and it is a tremendous help to get parties together in some form of alternative dispute resolution before a matter is litigated. Compelling ADR as step 1 in an escalating dispute is common, and indeed is often to be found within contractual obligations themselves, particularly between parties of disparate size and resource. Given all that has been said about the fractious and broken market, and the huge number of disputes that are occurring, the more that can be done to head these off before litigation costs escalate, the better.

I was referred to a decision this morning of the Lands Tribunal where a lease negotiation had been settled at the door of court: the decision focused only on the issue of costs. The tribunal awarded £5,000 in costs, but the total bill was over £100,000. Litigation costs can be huge and, as the noble Baroness, Lady McIntosh, has indicated, that can keep small site owners out of litigation: they have to just roll over. ADR can occur in the form of mediation, arbitration or simply expert determination on a specific technical or legal issue in contention. It is key to greasing the wheels of these challenging transactions and, given the difference in size and resource between site owners and telecoms operators, it would be most helpful.

Lord Cromwell (CB): My Lords, I was in two minds about these amendments, but I will support them in the final analysis. ADR is of course a good thing if it avoids lengthy and costly court proceedings. My concern is that it can also become a token activity, backed by the threat of subsequent court action to intimidate site owners, reflected in the inequality of arms between the parties, which others have already referred to.

I would greatly prefer an outcome where disputes can be resolved between the parties, and perhaps their respective agents, where the balance of negotiation is fair. I made a proposal in my earlier remarks on this, to which I have received no response.

The Bill, as drafted, sets site owners and operators needlessly on a collision path. No disputes will be resolved; they will simply be won by brutal compulsion that will lead to delay and protracted proceedings. If the Bill goes ahead as is, ADR should be mandatory as a first step in at least seeking some resolution. I therefore support the amendments in this group.

Lord Clement-Jones (LD): The view of these Benches is that throughout the passage of the Bill it has been clear that a strong case has been made for better protection for landowners against the power of telecoms operators. However, the ADR process that the Government are providing under Clause 68 is non-binding. Telecoms companies need to show only that they have considered it to avoid costs. This will not make them engage with the spirit of the process, and we expect telecoms companies to take matters to court as quickly as possible instead, with all the consequences that entails of costs on both sides.

As the noble Baroness, Lady McIntosh, stated, to address this the Government should make ADR compulsory for any dispute and issue guidance about reasonable terms. Properly enforced, we believe it would reduce operators' reliance on litigation through the courts, which sometimes takes the rather oppressive form of threats, and encourage better behaviour by both parties. Given the potential benefits to both parties and the wider public interest, it is difficult to see the case for this process remaining advisory. In principle, we very much support Amendments 25, 26 and 27, so well advocated by the noble Baroness, Lady McIntosh, the noble Lord, Lord Cromwell, and the noble Earl, Lord Devon.

Lord Bassam of Brighton (Lab): My Lords, this has been an interesting short debate. It was an interesting debate in Committee and I congratulate the noble Baroness on retabling her amendments. I do so because I am not completely convinced by the Government's arguments here. There are real concerns from some that the tribunal system favours operators due to the experience and size of their legal teams. They are very powerful organisations and we should not overlook that. The legal system is there to protect all from overweening power. I understand that the ADR system is intended to prevent cases going to tribunal and court, with all the costs that come with that, and, given the timescales involved, there is clearly a benefit to reaching agreements under an alternative framework. However, if it is voluntary, where is the incentive for its use?

I shall ask one final question; I think this is the most important point. If ADR as a voluntary means of dispute resolution does not work, what will the Government do? Will they step in again and reconsider this issue? Will they give careful consideration to making it mandatory, because then it would have a more powerful effect?

I do not think this issue will go away. I do not find the Government's arguments entirely compelling and the noble Baroness has made a very good case. I look forward to hearing what the Minister has to say.

Lord Kamall (Con): I thank my noble friend Lady McIntosh for this amendment and for explaining making ADR—alternative dispute resolution—compulsory so eloquently. Where there is disagreement, it is always good if there can be a mechanism, but we have to remember that ADR is not one sort of ADR. There are many different types, which I shall go into.

I shall reiterate the Government's position of not supporting the approach and supply more information that I hope will convince your Lordships that these amendments are not only unnecessary but could be

[Lord Kamall]
actively counterproductive. As my noble friend Lord Parkinson mentioned in Committee, ADR not being mandatory is a deliberate policy choice, made for the following reasons. First, where ADR is appropriate, mandatory ADR would compel some parties to participate in a process in which they do not want to be involved, which would make them less inclined to engage actively. This would increase the risk of failure and the parties would then have to go to court anyway. It would serve only to add an additional layer of time and cost to landowners.

On this point, I return to my noble friend Lord Parkinson's previous comments highlighting the counter-productive incentives that mandatory ADR risks creating. There are many types of ADR with different formats, timescales and costs. For example, mediation and arbitration are both types of ADR. In a situation where mandatory ADR has forced a party into ADR against its will, the party may seek an inappropriate form of ADR to frustrate the process and force the matter to proceed to court. This would result in the parties incurring additional time and costs for no practical benefit.

6.15 pm

Secondly, some forms of ADR, such as judge-led mediation or judge-led early neutral revaluation, both of which I understand are offered by the land tribunal, are available to parties only once proceedings have been issued. Therefore, making ADR mandatory before proceedings have been issued would prevent parties engaging with these types of ADR.

Finally, ADR may not be suitable in certain cases. For example, where a disagreement is based on different interpretations of the law, this would have to be determined by a court. Mandatory ADR would add cost and time to this process without any real benefit.

On this point, I should draw your Lordships' attention to Section 119 of the Communications Act 2003. This creates a power for Ofcom to give assistance to parties, excluding operators, in relation to proceedings under the code. In particular, this power highlights that such assistance may be given on the ground that the case raises a question of principle. This power further demonstrates the potential for cases to arise that are based on a question of principle and need to be determined by a court. In such a scenario, mandatory ADR would do little to resolve the point in dispute. In addition, this power should, I hope, help reassure the noble Lord, Lord Clement-Jones, who in Committee argued that operators' ability to use the courts in general is far greater, befitting their corporate size. Section 119 shows that measures are already in place to redress any such imbalance, and the provisions encouraging the use of ADR will, without further amendment, help this by reducing the need for cases to proceed to court.

When analysing responses to the public consultation, the department found that a clear majority of groups that gave views on compulsory ADR opposed it. Among the responders was the Royal Institution of Chartered Surveyors which noble Lords will acknowledge is expert in this field. Indeed, it is devising an ADR process of its own for use in code disputes. It advised that the optimal outcome is agreement reached through consensus. Leaving control of the process to the parties will assist in building trust in the system and thereby enhance potential take-up. I hope this additional detail will persuade some noble Lords that this amendment will achieve the opposite of its intended effect, disincentivising participation in ADR and potentially increasing the cost for site providers for little or no benefit.

Perhaps I should repeat that Clause 68 sets out the two new requirements on both parties and one new requirement for courts. First, when a notice is sent requesting rights under the Electronic Communications Code, the notice must inform the landowner of the availability of ADR and that, if parties are unable to agree, they may proceed with ADR. Secondly, operators must consider using ADR before applying to the courts in cases where an agreement cannot be reached. If the matter relates to the renewal of an agreement which has expired or is about to expire, either party must consider ADR before applying to the court. Finally, when awarding costs, the court is required to take into account any unreasonable refusal to engage in ADR by either party.

It is for these reasons that the Government maintain their opposition to mandatory ADR. I hope my noble friend will withdraw her amendment.

Baroness McIntosh of Pickering (Con): My Lords, I thank the noble Earl, Lord Devon, and the Benches opposite for their support for these amendments. I have to confess that I am disappointed by both the tone and the content of my noble friend's reply. I think it goes to the heart of earlier groups where we, I think successfully, set out across the House the fact that there is a serious imbalance in the relations between the parties concerned, which will only become worse, given that the operators are going to have even more means and resources at their disposal.

I hope my noble friend will accept that, even where there is permissive procedural provision to achieve a change in behaviour, it will probably be only through mandatory—or, in the word of the Liberal Democrats opposite, compulsory—arrangements that we shall see a change. I think I have made the point as forcefully as I possibly can. I do not see that my noble friend is going to agree to these amendments, but I hope that he and his department will consider this going forward. I beg to leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendments 26 and 27 not moved.

Amendment 28

Moved by ***Baroness Merron***

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

"Independent review of 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 appoint an independent person to undertake a review of the effect of—

(a) the electronic communications code, and

(b) the Telecommunications Infrastructure (Leasehold Property) Act 2021,

on the deployment of 1 gigabit per second broadband and other forms of telecommunications infrastructure.

(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 revisions to the electronic communications code have secured progress towards His Majesty's Government's targets relating to telecommunications infrastructure,

(b) the balance of rights and responsibilities of landowners and telecommunications operators, and

(c) the impact of this Act on the level of competition in the telecommunications sector.

(3) The independent person may make recommendations to the Secretary of State on matters including (but not limited to)—

(a) potential further revisions to the electronic communications code,

(b) potential amendments to—

(i) legislation, or

(ii) guidance,

relating to the valuation of land used to host telecommunications infrastructure, and

(c) the potential benefits of imposing a requirement for telecommunications operators to report annually to OFCOM on their investment in new infrastructure.

(4) Upon receipt of the report from the independent person, the Secretary of State must—

(a) publish the report,

(b) prepare a response to the report, and

(c) lay a copy of the report and response before Parliament."

Member's explanatory statement

This amendment would require the Secretary of State to appoint an independent person to conduct a review of recent changes to telecommunications infrastructure legislation and policy. This review would consider what further changes may be required to ensure regulation in this field delivers new infrastructure in a way that also preserves competition in the sector.

Baroness Merron (Lab): My Lords, I am pleased to speak to Amendment 28, which we have tabled in an attempt to find a constructive way forward to perhaps the greatest area of discussion throughout this Bill which has not yet been resolved—how we bring together the balance, the fairness and the efficiency that we all say we are looking for. This amendment is an attempt to amalgamate various others that were debated at Committee stage. I am very grateful to colleagues across your Lordships' House who have worked with us on the draft or have indicated their support for this approach. In particular, I thank the noble Lord, Lord Fox, for adding his name, and, of course, my noble friend Lord Bassam.

Since taking office, the new Prime Minister has made a lot of her commitment to rolling out high-speed broadband and 5G. We welcome that commitment and would like to see it come into reality, particularly as, regrettably, the former Prime Minister repeatedly watered down the targets. We want to see modern infrastructure installed and want that to happen quickly, but we also want the system to be fair—to operators, yes, but also to the landowners who host equipment and consumers who are in the midst of a cost of living crisis.

The Government, we understand, will say—and I hope the Minister will not be going down this road—that a review as proposed in this amendment would only slow things down. Let me deal with that. This amendment does not prevent any of the Bill's provisions coming into force. The Government, we understand, are also minded to say that they are confident in their approach in this area and therefore no review is necessary. If that is the case, I suggest that an independent review would give their policies a clean bill of health. However, I suspect an independent review would conclude that all is not as well as has been presented, and its recommendations could therefore be a very helpful resource for the new Secretary of State and the Government.

We see no reason why the Government could not simply accept this amendment and get on with appointing somebody independent to lead a review. If the Government are not willing to do that, we will be minded to test the opinion of the House. I beg to move.

The Earl of Devon (CB): My Lords, I added my name to this amendment at the last minute and I am very pleased to support it. From my earlier contribution, the House will be aware of my concerns about the lack of consultation prior to the passage of this Bill. The contributions of many noble Lords and the Ministers' responses have only increased those concerns. I did not push for a vote on the prior amendments regarding valuation and ADR because I believe those issues will properly be considered in the context of this independent review.

The Government have suggested in discussions that a review will unduly impact the market and slow the rollout of digital infrastructure. This is not possible. We have established that the market is already broken and the costs of transacting telecoms sites have more than doubled since 2017, as reported in the RICS conference, and the number of cases before the lands tribunal has more than tripled. The ECC is not working and expanding its broken application to historic 1954 Act leases will only increase the challenges. A review is urgently required, and I urge that this be voted on.

Lord Northbrook (Con): My Lords, I speak in support of this amendment. The noble Baroness has rightly underlined the importance of ensuring that the code is actually having the impact the Government tell us it is having.

This legislation is controversial because it proposes to erode property rights in the public interest. For this to be a viable proposition for a Government who support individual rights and freedoms, it must be absolutely clear that the public benefits considerably outweigh the private cost and the resulting redistribution is as fair and equitable as it can be. Any such policy must therefore be based on robust evidence.

A recent contentious legal ruling in a case brought by Vodafone has underlined that the Electronic Communications Code does not reach this bar. As a brief summary, the legal judgment has created significant real-world issues for the ability of landowners to develop sites, damaging local economic growth but also disincentivising site owners from agreeing to host telecoms sites at all. This risks stalling the rollout of new

[LORD NORTHBROOK]
telecoms sites, putting in jeopardy the Government's ambitious 5G targets. The judge said that this ruling identified a "potentially important structural defect" in the code. I am aware that this case has been brought to the attention of the Government, but they have chosen not to act. Issues such as this illustrate precisely why the review proposed by this amendment is vital.

Lord Blunkett (Lab): My Lords, I would have made a very similar speech to the noble Lord. As he has made my speech for me, I will not keep the House any longer, other than to say that when the big guy is versus the small guy it is beholden on us to support the small guy.

Baroness Stowell of Beeston (Con): My Lords, just because it is my first opportunity to do so, I congratulate my noble friend on his new role and welcome the noble Lord, Lord Harlech, to his place on the Front Bench.

I do not contribute to this debate with any enthusiasm because, having made my points at all previous stages of this Bill through your Lordships' House, it disappoints me that we are here where we are. I will repeat some of my points briefly. Like everybody else, I think it is important to emphasise that I, too, wholly endorse fast and full rollout of high-quality broadband to all parts of the UK.

As has been said already by others, my concern is really on behalf of the site owners. It is important for us to keep in mind, particularly if we have not been following this Bill closely, that when we talk about site owners this is not just about wealthy landowners but a whole range of different smallholdings and community property and that sort of thing. A whole manner of different people are involved. They were told that the 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 their part, because there is insufficient evidence to demonstrate how the new code is working. They are expected to engage in negotiations with commercial entities on trust while fearing their loss is at someone else's gain. We have heard the extent of this in other groups earlier this evening.

As I have said before, the benefit of rollout relies on the willingness of site holders to participate; when we rely on people to succeed, they deserve to be heard and listened to. When their concerns are about fairness, they cannot be ignored. I am concerned about not causing any delay to rollout, but the arguments and evidence we have heard today is that ignoring the concerns of site owners is doing just that.

In Committee, I said I would support an amendment—it was Amendment 50 in Committee—that simply required the mobile network operators to report annually and transparently to Ofcom on a range of performance measures, including their overall investment into mobile networks alongside a range of other things. This amendment, ably moved by the noble Baroness, Lady Merron, goes much further and includes a review, as we have heard, and the potential for the type of reporting requirement I have just described to be an outcome of it.

In my view, the Government have to move from their current position if they are to bring all site owners on side—and we need them on side to get the rollout. In the absence of any willingness on the Government's part while the Bill is in Parliament, the case for Parliament imposing this independent review is compelling. That said, I hope my noble friend will have given the points made in this debate full consideration, and I will listen carefully to what he has to say.

Lord Fox (LD): My Lords, I congratulate the noble Baroness, Lady Merron, on her presentation of this amendment. It is an elegant composite of the discussions we had in Committee, and that is why I was very happy to put my name to it. We have heard some compelling speeches and I suggest to the Minister that they have come from 360 degrees in this Chamber, which generally indicates a klaxon for any government Minister. This really is an issue.

6.30 pm

In Committee my noble friend Lord Clement-Jones highlighted that we are in a sort of loop with telecoms legislation. There are continual consultations and changes going on, because we do not get this right. The Government have to be clear that this is not right. We have to find a way of getting it to the right place.

Looking forward, I am sure that one of the arguments the Government will counter with is that somehow this will create a hiatus in progress. The noble Earl, Lord Devon, refuted that clearly. It would not create a hiatus if landowners and landlords were getting the right money and the right deal. That is what is creating and will create a hiatus in this process.

The second part of the amendment seeks to map progress against targets. It would be good for the Minister to undertake to publish what the target is. In her conference speech we heard the new Prime Minister highlight this as an important issue and one of her engines of growth. We have heard all sorts of targets and seen all sorts of revisions of the targets. Can the Minister—either at the Dispatch Box, or I would be amenable to him writing to us and putting that letter in the Library—set out the current gigabit installation target, the date for reaching that target and the current planned government investment in delivering that target? This review process will be able to measure this legislation and this progress against those targets.

Given the current Prime Minister's emphasis on this rollout and the commitment that I am sure we shall hear from the Minister, I am sure the Government will welcome this amendment, accept it and take it on board. It obviously reflects the mood of your Lordships' House. If by some chance the Minister decides not to and the noble Baroness, Lady Merron, and colleagues decide to push this to a vote, I can assure your Lordships' House that we on these Benches will support it.

Lord Kamall (Con): I thank noble Lords from all 360 degrees of the House for their contributions to this debate. Before I answer the specific points, I will address some of the points about relationships being broken, as it were, between landowners and operators.

A number of non-legislative steps are taking place to make sure this code works well in practice. For example, the department's—wait for the name—Barrier Busting Task Force holds monthly workshops with a broad range of stakeholder groups with an interest in the code. These workshops are attended by network operators and landowner representative groups such as the NFU, the Central Association of Agricultural Valuers and the Country Land and Business Association, as well as local authority representatives, legal professionals and surveyors. The workshops aim to encourage greater co-operation and collaboration in relation to the code negotiations and agreements through identifying and implementing better ways of working. The workshops touch on key issues, many of which have been raised by noble Lords. For example, stakeholders are currently working to agree on a standard template wording for common clauses within code agreements and have agreed a pilot communications framework that sets out how both operators and landowners could approach negotiations.

Perhaps one of the most significant developments to come from these workshops—my officials call it exciting—is that a number of stakeholders, including representatives from the CLA, the CAAV and the NFU, alongside operators and infrastructure providers, have come together to form the national connectivity alliance. This alliance will bring together stakeholders from across the industry to discuss issues of mutual interest, improve co-operation and collaboration and, hopefully, share best practice. The Government welcome this development and wish it every success when it launches in November. I use that as an example to address some of the concerns and suggestions in this House that somehow relationships have broken down between landowners and operators.

While having 360-degree support, Amendment 28 would make the changes to the code in 2021 and 2017 subject to specific and independent review. As with similar amendments, I wholly appreciate the House's determination to ensure that the Government are held accountable for this legislation and for providing updates on progress towards their coverage and connectivity targets, which are at the heart of the Bill, but the Government see three important difficulties with this amendment, which I hope noble Lords will consider.

First, and this is a key concern, having another review of the code on the immediate horizon will not help a market that is starting to settle. Officials have been gathering data throughout the passage of the Bill, and the number of code agreements already concluded this year is extremely positive. I know that noble Lords are keen to see that data—

Lord Fox (LD): I realise that this is taking some time, but on a number of occasions the Minister has talked about the market "starting to settle". Can he describe what settling a market is and what data he is using to make that assertion?

Lord Kamall (Con): The noble Lord makes a reasonable point. I know that noble Lords are keen to see the data, but all that I can do at the moment is undertake to make it available as soon as possible—I did not say "in due course", by the way. We believe that the prospect of another review will, quite simply, create chaos in the market—I know that noble Lords disagree with that. Site providers would inevitably, and not unreasonably, draw out negotiations as long as possible, in the hope that the "no scheme" valuation regime would be scrapped. It is important to consider that.

Secondly, the amendment seeks to impose a duty to assess, in isolation, the impact of this legislation and the previous reforms made to the code on digital connectivity and on stakeholder relationships. The Government question how feasible it is to quantify the extent to which such progress is attributable to a single piece of legislation, and we all know that the market to which these provisions apply is dynamic. By the time such a review has been commissioned, the research carried out and the findings reported on, the market is likely to have moved on significantly, rendering that report obsolete. In 1996, I wrote a bestseller on EU telecommunications policy—I am sure you have all heard of it—and, by the time it was published, it was already out of date. That shows how quickly this market develops. Funding such a report therefore cannot provide good value to the taxpayer, and the amount could be better spent helping the Government reach their ambitious connectivity targets, to which I will come in a moment. But remember: the report would probably be obsolete by the time it is published.

Finally, this amendment overlooks the substantial review and reporting mechanisms that are already in place. For example, in relation to progress on gigabit-capable broadband, my noble friend Lord Parkinson referred in Committee to Ofcom's annual *Connected Nations* report, which is updated twice a year and provides a clear assessment of the progress in both fixed and mobile connectivity. The Government also monitor and report regularly on their connectivity commitments, with quarterly updates published by BDUK. The Government will of course carefully consider the implementation of this legislation to understand how it is working in practice. For these reasons, I believe that the proposals in this amendment, while well-intentioned, could be disproportionate and ultimately unhelpful. I have also written about unintended consequences, and we have to be very careful of these here.

I will respond directly to the question of the noble Lord, Lord Fox, about targets. The levelling-up White Paper set out our mission that, by 2030, the UK will have nationwide gigabit-capable broadband and 4G coverage, with 5G coverage for the majority of the population. The Government are developing a wireless infrastructure strategy to set out the strategic framework for that development, and this will be published later this year.

The existing 5G target, which is for the majority of the population to have access to 5G by 2027, has been met five years early, with basic non-standalone 5G. As part of the wireless infrastructure strategy, we are establishing a new ambition for 5G. The shared rural network will see the Government and industry jointly investing over £1 billion to increase 4G mobile coverage throughout the UK to 95% geographic coverage by the end of the programme, underpinned by licence obligations.

[Lord Kamall]

The UK Government's other target for broadband remains to deliver gigabit-capable broadband to at least 85% of premises by 2025 and to reach over 99% by 2030. To achieve the minimum 85% objective, DCMS is stimulating the market to deliver as much as possible—at least 80% by 2025. It has also invested £5 billion as part of Project Gigabit to ensure that the remaining 5% in the UK receive coverage. If I have not answered the questions of the noble Lord, Lord Fox, I commit to write to him—perhaps he could let me know.

I understand that there was a lot of interest, and there have been very well-made points during the debate, but I am afraid that the Government cannot accept this amendment at this stage.

Baroness Merron (Lab): My Lords, it is disappointing that the Minister has not found a way to respond to the very real, informed and evidenced points raised not just today but at previous stages. I am sure that the Minister knows full well that his response just will not do. This amendment seeks to find a constructive way forward—something that the Government have failed to do—and bring together people who previously were apart. It seeks to address the obstacles to the ambitions that the Government say they have, in a way that the Government have failed to do. It also seeks to bring transparency to assist a process. I have heard the Minister, but I am disappointed, and I therefore feel that I must test the opinion of the House.

6.41 pm

Division on Amendment 28

Contents 159; Not-Contents 151.

Amendment 28 agreed.

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Russia (Sanctions) (EU Exit) (Amendment) (No. 11) Regulations 2022

Motion to Approve

6.56 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Regulations laid before the House on 14 July be approved.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I beg to move that the House considers the Russia (Sanctions) (EU Exit) (Amendment) (No. 11) Regulations 2022, and will also speak to the Russia (Sanctions) (EU Exit) (Amendment) (No. 12) Regulations 2022, the Russia (Sanctions) (EU Exit) (Amendment) (No. 13) Regulations 2022, and the Russia (Sanctions) (EU Exit) (Amendment) (No. 14) Regulations 2022.

The instruments before us were laid between 14 and 20 July, under powers provided by the Sanctions and Anti-Money Laundering Act 2018, and make amendments to the Russia (Sanctions) (EU Exit) Regulations 2019. In co-ordination with our allies, the United Kingdom continues to introduce the largest and most severe economic sanctions package that Russia has ever faced. Noble Lords will note that we continue to bring further pressure to bear on Mr Putin and his regime. Since these SIs were introduced, we have made further announcements on UK sanctions in response to Mr Putin's illegal annexation of Ukrainian regions.

On 26 September, the UK sanctioned 29 individuals and organisations related to the temporarily controlled territories of Donetsk, Luhansk and Zaporizhzhia, Russian Government officials, four additional oligarchs and 55 state board executives. On 30 September, the Foreign Secretary announced a new set of sanctions related to services on which Russia depends. Building on previous action, the UK will prevent Russian access to advertising services, architectural services, auditing services, engineering services, IT consultancy and transactional legal advisory services linked to certain commercial activity.

The announcement also included a new ban on the export of nearly 700 goods that are crucial to Russia's industrial and technological capabilities. The UK also sanctioned Elvira Nabiullina, the governor of the Central Bank of the Russian Federation. Nabiullina has been instrumental in the Russian economy throughout the Russian regime's illegal war against Ukraine and in extending the rouble into the Ukrainian territories that are temporarily controlled by Russia. The measures we are debating today further isolate Russia's economy and target key industries supporting Mr Putin's illegal war in Ukraine.

I will first cover the No. 11 regulations, which ban the export of goods and technologies related to the defence, security and maritime sectors. They also prohibit the export of jet fuel, maritime goods and technology, certain energy-related goods, plus sterling and European Union banknotes. In addition, these regulations ban the import of goods such as fertiliser, metals, chemicals and wood, depriving Russia of a key export market. Together, these were worth £585 million last year. A further import ban covers ancillary services related to iron and steel imports.

7 pm

I add one further point: the Joint Committee on Statutory Instruments observed that three provisions in the 10th amendment to the regulations went beyond the powers conferred by the sanctions Act. We resolved this by revoking the 10th amendment and replacing it with the 11th. I express my sincere thanks to the Joint Committee on Statutory Instruments for its continued engagement on these issues, as we introduce further secondary legislation at pace in response to Mr Putin's abhorrent war. My thanks also go to the Opposition Benches—both the Labour and Liberal Democrat Benches—for their strong support during the process through Parliament of these SIs.

I now turn to the No. 12 regulations, which place fresh restrictions on investments and services in Russia. This will hit revenue streams of critical importance to

[Lord Ahmad of Wimbledon]
the Russian economy. The new measures prohibit persons from being involved, directly or indirectly, in the following: acquiring land and entities with a place of business in Russia; establishing joint ventures with persons and entities connected with Russia; and opening representative offices or establishing branches or subsidiaries in Russia. The measures also restrict the provision of investment services related to these activities. There are some exceptions to the provisions to prevent overlap with existing regulations as well as licensing and enforcement powers. This measure implements commitments made in the April G7 leaders' statement to ban new investments in Russia. We have designed this measure to have a similar effect to the equivalent US investment prohibition. This goes further than the equivalent EU prohibition, which prohibits new investments in the Russian energy sector specifically.

The No. 13 regulations widen the definition of scope of activities for which a person can now be designated. We have expanded our definition of destabilising, undermining or threatening Ukraine, and supporting or obtaining a benefit from the Russian regime. This brings into scope many individuals and entities in the Russian Government, their agencies and their armed forces.

These regulations make minor amendments to the definition of

"being involved in obtaining a benefit from or supporting the Government of Russia".

They broaden the interpretation of being "associated with" a designated person to include immediate family members, who often hold assets on their behalf. They also provide an exception from trade sanctions for humanitarian assistance activity delivered in non-government controlled areas of the Donetsk and Luhansk oblasts. Finally, they expand the definition of ownership in relation to ships and aircraft and correct errors and omissions in previous regulations.

The fourth and final set is the No. 14 regulations, which introduce further trade sanctions. They prohibit the export, supply, delivery and making available of a comprehensive list of critical goods, energy-related goods and related ancillary services, for the supply of which Russia had relied on G7 nations. These goods had a combined market value to Russia of £365 million last year.

This instrument also bans the import, acquisition, supply and delivery of Russian coal, entering into force on 10 August. This is on top of prohibitions on the import, acquisition, supply and delivery of Russian oil, which will come into force before the end of this year, and on the import of gold that directly or indirectly originates in Russia, which entered into force on 21 July. Ancillary products and services on coal, oil and gold exported from Russia are also prohibited. A further ban covers the provision of business and management consulting services, public relations and accounting services to persons connected with Russia.

It is also worth noting that SIs 11 and 14 have been developed in alignment with the UK's international partners, which I know is an important point for the noble Lords, Lord Collins and Lord Purvis. I assure them that we continue to work in concert with our allies to assess any potential gaps in our sanctions packages.

These hard-hitting new measures continue to ratchet up the pressure on Russia. I assure noble Lords that we will continue to do so and to work with our allies until Mr Putin ends his illegal, unjustified attack and war on Ukraine. I welcome this opportunity to hear views on these regulations. I beg to move.

Viscount Stansgate (Lab): My Lords, I hope the Minister will allow me briefly to mention the No. 11 regulations. I understand from what he said that they derive in part from discussions at the G7, and I presume that all G7 countries are in the process of putting similar ranges of sanctions in place in their own countries. Part 4 inserted by these very extensive regulations deals with chemicals and equipment—it is a very comprehensive list. Is this list the same as that being applied by other European countries? When I looked at it, I thought it might be derived from the former EU regulation on REACH, which is I think the biggest piece of legislation ever passed by the European Parliament. Are we co-operating on important measures such as this to have the effect that the Minister intends?

Lord Purvis of Tweed (LD): My Lords, the Minister knows that these measures are supported by the Liberal Democrat Benches. As when we have debated previous sanctions, I am grateful for the Minister maintaining contact and keeping us informed. He knows of our strong support for measures which aim to ratchet up the pressure on Vladimir Putin and, as is included in these elements, the wider circle of his support.

We would support moving beyond the regulations to include the United Russia party and wider elements of the Russian regime in this part of the sanctions regime. We support the Government in the extension on state entities but, as the Minister knows well enough, there has been considerable state capture of the Russian economy by the Putin regime over recent years. This means that we should include in our sanctions regime not just the political actors but, increasingly, those in the wider economy. Therefore, the banning of certain exports and the wider inclusion of some state entities is to be welcomed.

I also welcome the work of officials on the impact assessments. They are useful tools to look at what the impact could be on the wider Russian economy. This leads to my first question. We have debated many sanctions but are yet to receive what I have asked for previously: an overall assessment of the net impact of the UK sanctions on the Russian economy and regime. I understand entirely that that document will be sensitive, but we must understand what the impact has been; otherwise, we cannot judge what could well be a situation where, in the long run, we want to move away from the sanctions regime. However, that is premature, as we want to increase the pressure.

That leads to my second question, on implementation. I noted that we have seen the first prosecution in the UK of what is effectively sanctions-busting. Can the Minister indicate whether that is an isolated case or if he is aware of more areas where there are active prosecutions of UK citizens and residents who have been acting against the sanctions regime in the UK? We need to know that these sanctions are being actively policed and implemented. They are pointless unless they are implemented in full.

This leads on to my third question: no doubt the Minister will have noted, as I have when I have been travelling, that the number of Russian nationals who have been using other transport routes through the Gulf—and Istanbul in particular—to access the UK and the European Union seems to have markedly increased since the sanctions regime was put in place. Is the UK monitoring passenger levels of individuals who are coming to the UK? I know that there is live debate on visa access for Russian nationals, both to the UK and to the European Union, but I would like the Minister to reassure me that this is being actively monitored.

Turning to the particular measures, I hope the Minister will forgive me for reflecting on one of the elements in the Explanatory Notes on the No. 11 regulations, but it is connected with yesterday's debate which he and I participated in. On Regulation 7, the Government say:

"Failure to join the international community would undermine the UK's reputation as an upholder of international law, human rights, freedom of expression and democracy."

The debate that we had yesterday is relevant to what we are arguing for here in relation to upholding international law, and I wanted to stress that point.

With regard to the No. 12 regulations, the Minister said that our regime is now going beyond that of the European Union. I wonder if he could say a little more, with regards to energy, on where we have departed from the European Union and have now got a stronger regime. I am not opposing this, of course, but it would be helpful to have a little more information.

With regard to the No. 13 regulations, it is helpful that there is now clarification on shipping; this was raised in previous debates, and I welcome it.

Finally, I have a broader point on which I would like the Minister's reflections. As he will know, the noble Lord, Lord Collins, and I have asked how we are working with our allies to ensure that our sanctions regime is not circumvented by friends and colleagues around the world, especially with regard to Russia accessing the very technologies and goods that we are now banning. The Minister knows well enough that Russia is very active in the wider Gulf, in Africa and in India in sourcing some of the materials that we are now banning. I previously raised the issue of concern with regard to the Indian rupee/rouble swap for purchase of energy. When I raised that question, the Minister said it was premature, but that arrangement is now in place. We are apparently only a fortnight away from signing a free trade agreement with India. At the very same time that we are banning the selling of certain goods to Russia, India seems to be increasing the selling of those goods to Russia. Could the Minister say what work we are doing with our allies to ensure that, whilst we are seeking to limit the sourcing of some of these materials to Russia, our allies are not increasing them? If the Minister could respond to these points, I would be very grateful.

Lord Collins of Highbury (Lab): My Lords, I too would like to start by reiterating the backing of the Opposition for the Government's support for the people of Ukraine, and of course these sanctions are a vital element of that support. I am pleased to see such a wide range of issues being covered in today's measures, which the noble Lord, Lord Purvis, has mentioned. We support these sanctions and measures, but it is only right that this House can scrutinise and understand whether the Government are properly resourcing them. It is one thing having the law; it is another thing to be able to ensure full compliance. I think a lot of my questions will echo those of the noble Lord, Lord Purvis, regarding that question.

In the other place, the Minister Jesse Norman stressed —and I accept this—that

"the first instinct in a war situation is to get sanctions on the books as quickly as possible."

I noticed what the noble Lord said regarding the Joint Committee, and of course we even had amendments to our Standing Orders to ensure that we could get these in place as quickly as possible. I reassure the Minister that the Opposition will do whatever they can to ensure speedy implementation and adoption of these sanctions.

Jesse Norman also argued that the sanctions

"have been effective because the Treasury Committee has reminded us of that, and we have plenty of other evidence that it is the case."

I would echo the point made by the noble Lord, Lord Purvis, that it would be good to have that assessment in a more political context so that we can properly understand it.

7.15 pm

Jesse Norman also acknowledged that

"as the situation evolves so we need to evolve the response, and as the concerns about the humanitarian impact and unfairness evolve, the sanctions picture inevitably becomes not merely more widespread and more expensive, but more complex".—[*Official Report*, Commons, 22/9/22; col. 919]

But, as my honourable friend Stephen Doughty pointed out, Putin and his cronies will seek every single loophole, omission and error that we may make to try and circumvent the objectives of our sanctions. We must not allow him to do that. We have stressed in many previous sanctions debates—the Minister will recall my previous comments on this—that it is critical that we properly resource those units in the FCDO and elsewhere to ensure that they are able not only to draft the appropriate legislation properly but to ensure that we have a proper regime with proper compliance.

In May, James Cleverly—then a Minister, now the Foreign Secretary—told Stephen Doughty that 150 individuals were working full-time in the sanctions taskforce in the FCDO and that the Office of Financial Sanctions Implementation had at least doubled in size. He tried to get further clarity about the resourcing going on, and how this is increasing, particularly with sanctions getting more complex. He was promised a written response, but sadly he did not get that—Jesse Norman did say in the other place that he will ensure that a letter is sent. Jesse Norman also talked about resourcing and referred to

"the increase in the size of OFSI, and that is matched by the seriousness with which this issue is taken across Government."—[*Official Report*, Commons, 22/9/22; col. 920]

I hope that the Minister will tonight be able to perhaps put a bit more meat on this and give us a more detailed response about our capability and capacity.

[Lord Collins of Highbury]
In fact, let me put that a different way. I have full support for the staff in the FCDO—I think we have got some of the best experts, and I certainly admire their commitment and dedication—but capacity is going to be a critical issue that we need to address. What extra financial resources have been given to those bodies? What conversations has the Minister had with the National Crime Agency to ensure the proper enforcement against those who breach the sanctions regime?

In the previous debate, as the noble Lord, Lord Purvis, has said, we have both focused on the circumvention of sanctions, and not only on those issues that the noble Lord, Lord Purvis, has mentioned in terms of India. We have also had in the debate in the Commons the question of steel and how that is being exported to one country and then potentially imported to here, so there are areas that we obviously need to consider.

Also, how much of those resources that were in this country have been able to leak or escape? What assessment have the Government made of where those oligarchs are moving their money to? When I was in a meeting in the City recently, I heard talk about how there was this sudden surge of movement into Istanbul—I do not think that it is just people who are moving there; other issues are occurring, and that was the impression I got from the City. Of course, the press reported today about how Hong Kong is now becoming a key area for resources, both physical and financial. What assessment have the Government made of that?

The noble Lord referred tonight to how we are addressing those gaps and working with our allies to do so. As my honourable friend Stephen Doughty said in the other place, it is crucial that we work with some of the best minds around the world to look at other areas where we can bring pressure to bear. My honourable friend mentioned McFaul, the former US ambassador to Russia, and others, including those from the Ukrainian Government, who have a working group looking at additional ways to expand sanctions and make them tougher. Jesse Norman did not answer my honourable friend's question on this. Apparently, we have no representation on that working group and are not involved in it—perhaps the noble Lord can tell us why that is the case. I hope we will ensure that we have somebody on that group because we need to lead, along with the United States and others, to ensure that we have the toughest, broadest and deepest regime.

Obviously, in the last few weeks we have seen remarkable progress by the Ukrainian forces in the east and south of the country and an incredible counteroffensive. Indeed, the Ukrainians have shown extraordinary courage, strength and ingenuity in the face of Russian aggression, so it is even more important than ever to show our firm resolve to stand behind Ukraine in every way, not only militarily—which we discussed earlier this week—but politically, economically and, of course, diplomatically. One area I know the noble Lord takes really seriously is the crucial element of ensuring that Putin and his cronies face the consequences for their illegal and barbarous actions. The indiscriminate bombing we have seen over the last week is the strongest evidence of why we must do everything to end Putin's aggression, violence and cruelty. Sadly, however, we saw earlier evidence of brutality, not only in the scenes of mass graves and torture but in stories of sexual violence. We have the conference on this coming up fairly shortly. I hope that the noble Lord will do whatever he can to ensure that those victims of sexual violence—those voices and that evidence—are also a feature of our conference on the prevention of sexual violence in conflict.

I will not go on much further; I echo the comments on some of the details of these sanctions. The thrust of our contribution tonight is that it is good that we have and are adapting the sanctions—but let us make sure that we are vigilant in enforcing them in the best way possible.

Lord Ahmad of Wimbledon (Con): My Lords, I thank all three noble Lords for their contributions this evening. I say from the outset to the noble Lords, Lord Purvis and Lord Collins—both will appreciate this, as we are working at speed—on the effectiveness of comparisons with our international partners, that there is information readily available, but there is a sensitivity, if I may put it that way, in publicly sharing information. However, I will be happy to share certain information and briefings with both noble Lords and give them updates on where we are.

Both noble Lords raised the important issue of the effectiveness of co-ordination with our partners, and I know that this is of interest. While I mentioned the issue of energy vis-à-vis our European Union partners, I have always maintained that there will inevitably be a country leading—such as the US or ourselves, or the EU—in certain areas. The important element with respect to the granular detail—I do have the summaries available, which I reflect on quite regularly—is to ensure that where there is a gap, say, from our side, we ask the pointed question as to why that is the case so that we can address it, and vice versa. Actually, that is working very well. I can share some of that information and bring noble Lords up to date on that, specifically outside the Chamber.

Lord Purvis of Tweed (LD): I cannot speak for the noble Lord, Lord Collins, but I say on behalf of my noble friends Lady Kramer and Lord Fox, who take an interest in these issues, that if the Minister wanted to facilitate a private briefing with officials to give an update on the Government's estimate of the impact on the Russian economy, we would be willing to take that. I wanted to make sure that was on the record.

Lord Ahmad of Wimbledon (Con): I can certainly share some of these issues, on the wider and general impact, this evening. However, particularly as we are working in very close alignment with our partners, I shall be certain to provide updates and private briefings in that respect.

I again thank all noble Lords for their strong support. The noble Viscount, Lord Stansgate, raised a question on the reach of SI 11. I confirm to him that we are co-ordinating the lists of goods covered by our export prohibitions with our G7 allies, and we are working very closely on those lists. To summarise, SI 11 covers an export ban on defence and security goods and technology, including products for internal repression;

an export ban on maritime goods and technology; an export ban on additional energy-related goods and oil refining; an export ban on sterling or EU-denominated bank notes; an export ban on jet fuel and fuel additives; an import ban on revenue-generating goods, including metals, wood and chemicals, among others; and a ban on technical assistance, financial services and funds. So the SI is pretty comprehensive.

Lord Collins of Highbury (Lab): On that specific point, Stephen Doughty asked at the other end about goods for internal repression and how we are introducing that ban now, when surely we should have adopted it much earlier, particularly with the invasion of Crimea. Have we been exporting equipment for internal repression before?

Lord Ahmad of Wimbledon (Con): As I said in my opening remarks, there are areas where SIs are already present and there may be a degree of overlap in the application, but what we are seeking to do with all these SIs is to ensure that our regulations are fully comprehensive. It is not that we were in the market to suddenly start exporting items which add to the suppression of domestic populations—I think we have known for a long time the challenges that the people of Russia face. As we evolve, go forward and progress our sanctions, it is important that we are as detailed as we can be. Previous sanctions may have covered aspects of those limitations, but we want to make sure that we are covering every element that we can.

Both noble Lords highlighted how those who are having sanctions imposed on them are looking at innovative pathways to overcome them. We have to be dynamic in responding to that. The noble Lord, Lord Purvis, raised the issue of other partners beyond our key G7 partners, and that is important. I fully accept that there will be issues; different countries have different perspectives, as we can see from looking at votes taking place within multilateral fora, including the one on the sham referenda. It is noticeable—I am being very up front here—that some countries are now not as forward-leaning as they were previously, and it is important that they get a consistent and consolidated sense from both your Lordships' House and the other place of unity and purpose. Of course questions are there, but I cannot emphasise how important it is for them to see this unanimity. There are partners who are looking at this as the war continues with regard to their own domestic challenges as well. Therefore, the more aligned we can be with those partners who have sanctions regimes, the more effective we will be. However, I fully accept that there will be ways and means in which those having sanctions imposed on them will look to circumvent them.

The noble Lord, Lord Collins, asked about the McFaul group. The working group is an independent group of sanctions experts. Government officials have regular contact and close exchanges with the group, but if there are specific points perhaps the noble Lord will raise them with me and I will seek to answer them more specifically.

The noble Lord, Lord Purvis, talked about circumvention, which I have already addressed in part. These regulations seek to close the gaps. I come back to the whole issue of how we work with key partners. I will seek to provide more detail on the specific examples that the noble Lord raised.

7.30 pm

The noble Lord, Lord Purvis, asked about prosecutions that have taken place. Some are active and live. I do not have the exact figures with me today but I will certainly write to the noble Lord in that respect.

There are some other areas that I can share with noble Lords at this time. The noble Lords, Lord Collins and Lord Purvis, asked specifically about the impact of the sanctions regime on Russia itself. Russia's GDP is expected to contract by 3.5% to 8.5% in 2022, compared with a previous pre-invasion forecast of 2.8%. The IMF predicts that the Russian economy will be 16% smaller than pre-invasion trends. More than 1,000 foreign businesses have either left, suspended or reduced operations in Russia since the operation began, and Russia's manufacturing capability has been severely impacted; car production, for example, is down by 90% from pre-war levels. Another example is that Russia's airlines are beginning to—I have an interesting word here—cannibalise aircraft. I think that means adapting from other places. It is a rather innovative and imaginative way of describing the challenges they are facing because of shortages of equipment.

The Ministry of Defence suggests that western sanctions on the export to Russia of components and technology are highly likely also to increase production costs. Mr Putin has already resorted to sending ancient Soviet Union equipment, such as decades-old T-62 tanks, into the conflict with Ukraine.

The noble Lord, Lord Collins, raised the issue of FCDO staffing. I will share some figures with him. In December 2021 there were 48 substantive roles in the sanctions unit, which has now become a directorate. We have doubled the number of officials focused on our response and now have over 100 permanent staff delivering it. This does not include those working across FCDO and its overseas network who cover sanctions as part of their wider role, so there are people who have specialist roles within the sanctions team and others who will be part-working on sanctions and other areas, especially in our network. The Office of Financial Sanctions Implementation has also doubled in size this financial year and continues to grow because it is evolving. I can assure noble Lords that the resourcing remains more than double the 44 full-time employees, so we are looking at 88 to 90 employees in that regard.

Both noble Lords raised the issue of alignment. Any differences, as I have alluded to, tend to be small and relate to specific items with larger categories of goods depending on the jurisdiction. The reason for the differences is largely to do with the differing but co-ordinating approaches by the UK, the EU and the US. In the early stages of the sanctions regime, as noble Lords will recall, we needed to adapt our own governance procedures. Again, I am grateful to noble Lords for the speed at which we were able to implement that.

To return to the issue of goods for internal repression, as I said earlier, many goods, even before the sanctions regime, were controlled through the export control

[Lord Ahmad of Wimbledon]
licence regime, but there will always be areas where we need to act. I have alluded to the fact that we need to ensure that these issues are as watertight as possible.

The noble Lord, Lord Collins, raised the NCA. The former Prime Minister confirmed that we will set up a dedicated cell in the National Crime Agency for these purposes. I will get an update for the noble Lord on the specific operation of that unit. I know that is an issue that he has raised on number of occasions. There is undoubtedly a lot of work being done in this respect.

The noble Lord, Lord Collins, mentioned the upcoming PSVI conference and the importance of those survivor voices—those currently being suppressed but also those subjected to the worst kind of torture. Earlier this week I and my right honourable friend the Foreign Secretary met the ICC prosecutor, Karim Khan, who was in London, and we had a detailed discussion of his requirements and about how quickly we can start looking at ensuring that those perpetrators of these abhorrent crimes—sexual violence in particular but more broadly, too—can be brought to justice. We stand very closely with the ICC and are fully supportive of the prosecutor and his team on the ground.

In recent weeks, including during the UN General Assembly week, I met the new prosecutor-general from Ukraine, and we identified the specific requirements of the prosecutor-general in-country. I will update noble Lords appropriately on this, but we are working very closely on their exact requirements.

If there are any more specific elements to the questions raised by noble Lords then I will of course write, as I have indicated I will on one or two issues. I end by thanking all three noble Lords who have participated in today's debate. It is important that we stay very much aligned. I remain available to noble Lords to discuss particular issues or areas in more detail.

It is clear that we have seen an escalation by Russia—desperation, if I may put it that way—in the response that we are currently seeing from Mr Putin and the recent attempted annexation of, in effect, three territories is reflective of that response. On the missiles that were recently sent into Kyiv, it is extremely worrying that that was arguably the biggest missile launch on the city of Kyiv since the conflict began. I know Melinda Simmons, our excellent ambassador on the ground. We are looking at standing very firmly with Ukraine in the diplomacy effort that we are making and the defence co-operation that we are extending. We are also ensuring that we are working with international partners when it comes to the economic cost that we can bring on Mr Putin and his friends in Russia itself. I am grateful for noble Lords' strong support and I commend the regulations to the House.

Motion agreed.

Russia (Sanctions) (EU Exit) (Amendment) (No. 12) Regulations 2022

Motion to Approve

7.37 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Regulations laid before the House on 18 July be approved.

Relevant document: 11th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Russia (Sanctions) (EU Exit) (Amendment) (No. 13) Regulations 2022

Motion to Approve

7.37 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Regulations laid before the House on 18 July be approved.

Relevant document: 11th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Russia (Sanctions) (EU Exit) (Amendment) (No. 14) Regulations 2022

Motion to Approve

7.37 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Regulations laid before the House on 20 July be approved.

Relevant document: 11th Report from the Secondary Legislation Scrutiny Committee. Instrument not yet reported by the Joint Committee on Statutory Instruments.

Motion agreed.

House adjourned at 7.38 pm.

Grand Committee

Wednesday 12 October 2022

Arrangement of Business

Announcement

4.15 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, shall we kick off? We are expecting two Divisions in the Chamber, so I will alert the Committee when they are happening and we will suspend proceedings.

Seafarers' Wages Bill [HL]

4.15 pm

Clause 1: Services to which this Act applies

Amendment 1

Moved by ***Lord Hendy***

1: Clause 1, page 1, line 5, at end, insert—

"(1A) This Act also applies to a service for the carriage of persons or goods by ship, with or without vehicles, between—

(a) a place in the United Kingdom and another place in the United Kingdom;

(b) a place in Crown Dependencies and a place in the United Kingdom;

(c) an offshore oil and gas installation on the UK Continental Shelf and a place in the United Kingdom; and

(d) an offshore renewable energy installation within the UK Exclusive Economic Zone and a place in the United Kingdom."

Lord Hendy (Lab): My Lords, I begin by apologising for not being able to be present at Second Reading on 20 July. I am not just sorry to have missed your Lordships' contributions on the Bill; it is a deep personal regret that I did not hear the valedictory speech of Lord Mackay, who was in my view one of the greatest of our Lords Chancellor. Of course, I was able to read the proceedings in *Hansard* and watch them on television. I thank the Minister for her Teams seminar yesterday. Again, I apologise that my equipment failed me and I was able to participate for only the first two minutes.

Naturally, the Bill is to be welcomed but it is a matter of regret that it is confined to the national minimum wage equivalent. This is just one of the nine points in the Government's response to the P&O Ferries calamity on 17 March and, even in that regard, it may not achieve the purpose stated by the Minister in point one of her letter of 31 March, which said that this will ensure that P&O can derive no benefit from the actions it has taken in paying staff less than the minimum wage and it must reverse the decision. The fact is that, even paying the national minimum wage equivalent, P&O will in fact save money over the previous regime.

Apart from the egregious flouting of the law on 17 March, one striking feature of the P&O Ferries saga is that it also threw overboard all the collective agreements that the company had reached with the trade unions over the previous 100 years or so. These contained provisions about, among other things, procedures to achieve changes to terms and conditions, dealing with redundancies, and procedures to resolve disputes. That is why the Minister's ninth point in the letter was so gratefully received: the creation of "minimum wage corridors" and asking unions and operators to agree a common level of seafarer protection on ferry routes. The Bill could have given legislative support to these excellent proposals and I ask the Minister, first, how the Government will achieve them and, secondly, where she and her department have got to in their bilateral discussions.

Noble Lords need not fear—I have just another couple of sentences to say before I introduce the amendments. The Bill could have gone a lot further in re-establishing terms and conditions beyond the minimum hourly rate, including those that were provided for in previous collective agreements, such as training, pensions, rostering, crewing levels, recognition, disputes, and so on. I wonder whether the Minister and the department have any plans for legislative support in that regard.

One other obvious thing the Bill could have done was to stop up the loophole in Section 193 of the Trade Union and Labour Relations (Consolidation) Act, which excludes any penalty to enforce the duty of a ship operator sacking UK workers for redundancy to notify the authorities in the flag state of the vessel. We know this is a loophole because on 19 August this year the Insolvency Service said that a prosecution of P&O Ferries in this regard was not possible. I wonder whether the Minister will be able to say something about filling that lacuna.

With that digression, I turn to the first group of amendments, which concern the territorial scope of the Bill and an aspect of the application of international law. I will speak to my Amendments 1, 15 and 16, while Amendments 5, 23 and 38 deal, respectively, with minimum wage corridors, preventing breaches of maritime law and upholding international agreements to which the UK is party.

I will of course withdraw my first amendment, but it was put in on the footing that I would move an amendment to expand the scope of the Bill from dealing with not just the national minimum wage but the protection of other terms and conditions as well. However, I was advised quite properly by the Public Bill Office that that was not possible within the scope of the Short Title. I am therefore left simply asking the Minister to confirm my understanding that the national minimum wage already applies on vessels working on domestic routes, that those seafarers in the offshore oil and gas maritime supply chain are also covered by the National Minimum Wage (Offshore Employment) (Amendment) Order 2020 and that vessels sailing between the UK and Crown dependencies will be covered either by the Bill or existing legislation.

It is known—or so I am advised by RMT—that Condor Ferries, a low-cost operator contracted by the Governments of Jersey and Guernsey, pays less than the national minimum wage at present. It was not

[Lord Hendy]

paying that national minimum wage up to 2014. Since then, I understand that Condor has denied union access to the Bahamas and Cyprus-registered vessels and therefore it is not known what rates of pay are operable. Presumably we are right in thinking that the Bill will apply to such vessels.

The one area where no protection is offered, as I understand it, even by the Bill is for the supply chain to offshore renewable installations in the exclusive economic zone, because they are not covered by the National Minimum Wage (Offshore Employment) (Amendment) Order 2020. The amendment that I propose should therefore close that loophole, but it may be that the noble Baroness has another way of dealing with that issue. Again, I am advised by RMT that there has been a recent case of a UK-flagged offshore facility utility vessel in the Port of Sunderland, where seafarers were working 12-hour days at a daily rate of €55, which comes to €4.58, or just over £4, an hour. In effect, by moving this amendment I simply ask the Minister to confirm that all those cases will be covered either by existing legislation or by the Bill.

The second of my amendments is Amendment 15, the purpose of which is to expand the phrase "territorial waters" to include

"the UK Continental Shelf and the UK Exclusive Economic Zone",

both of which should be covered. What we are considering is the seafarers working on project vessels, floating hotels and other vessels that can be anchored at sites outside the UK's territorial waters but within the continental shelf and UK economic zone. That is important, because the production of clean energy from offshore renewable sources and the storage of carbon in subsea facilities will see an increase in seafarer employment associated with this work, particularly in the North Sea.

My third amendment in this group is Amendment 16, which would delete Clause 5(3). Its purpose is to discourage operators of vessels from seeking to avoid the obligations under the Bill of providing data relating to the wages of their crew by registering vessels in countries or territories where not so restrictive data protection laws apply. I note that the Bill's impact assessment does not consider the possibility of operators breaching the data protection laws of a flag state. I wonder whether that is because it was not thought to be a significant problem, but it might well become one if there are operators, such as P&O Ferries, that are quite happy to evade British law.

Those are my three amendments in this group. I beg to move.

Baroness Scott of Needham Market (LD): My Lords, I will speak to my Amendment 38. Noble Lords might remember that at Second Reading the noble Lord, Lord Mountevans, and I raised the compatibility of this Bill with international agreements to which the UK is a signatory. Regrettably, the Minister did not address that issue in her reply, nor in her follow-up letters to participating Peers. It is really important that we give this issue an airing today.

There are many long-standing and recognised international conventions, including the United Nations Convention on the Law of the Sea and the international Maritime Labour Convention 2006, to which the UK is a signatory. Earlier this year, the International Labour Organization reached an agreement on minimum levels of wages for seafarers for 2023, 2024 and 2025. This was broadly welcomed by all stakeholders, including social partners. When the National Minimum Wage (Offshore Employment) (Amendment) Order 2020 was published, the department's Explanatory Memorandum made it clear that these conventions precluded the provisions being applied to seafarers from non UK-flagged vessels, yet that is exactly what this legislation will do. I would like the Minister to clarify for the Committee what has changed between the publication of that memorandum in 2020 and today.

The fact of the matter is that, no matter how well-intentioned the legislation—these Benches do support a better deal for seafarers—a measure that appears to be contrary to the long-established norm that port states should not interfere with the internal running of foreign-flagged vessels, provided they conform with internationally agreed conventions, is something we should avoid. All these agreements were developed over many years, and they reflect the complexities of operating in multiple jurisdictions with very different legal systems and with an international workforce, with many nationalities on the same vessel.

These agreements are not really drafted like legislation —nor could they be, because they come from so many legal jurisdictions. They are about intent, and the intent is pretty clear. I hope the Government will think very carefully about whether they wish to risk disrupting these global agreements, or be seen to be thought of as disrupting them, because it would not be in the interests of the UK, or of any other country, for this established order to start to become undermined; nor would it be in the interests of seafarers.

There is a particular issue for the UK. We have enjoyed strong leadership in the maritime sector; that is something we should protect and preserve. The Government's own impact assessment says that there is

"a reputational risk that the UK may be seen to be moving unilaterally on seafarer welfare issues rather than seeking improvements exclusively via multilateral channels."

Does the Minister acknowledge that risk? Can she explain to the Committee what the Government intend to do to mitigate it?

Finally, many noble Lords were struck by the letter from the International Chamber of Shipping, which did not hold back on its concerns about the Bill. Again, I would be interested to hear about persuading not just Members of this House but the wider shipping community that we are still fully on board with these international conventions.

4.30 pm

Lord Mountevans (CB): My Lords, the noble Baroness, Lady Scott, has made the case well. This is from somebody who, I imagine, has not spent her whole life in maritime as I have, so I congratulate her; her points were made well.

We have the IMO close to us here in Parliament. It is just across the way, up the river and on the other bank. We are privileged to have it. If we do not abide by, for example, UNCLOS resolutions and agreements,

it will be damaging to our position. I am sure that many maritime people would agree. It is extremely important that we do not behave irresponsibly here, particularly at a time when Britain is open for business. With all the other splendid slogans we have heard, it is important that we abide by international agreements. These were carefully worked out over a long period involving all parties, so I support the amendment.

I say in passing that I also support Amendment 23 in the name of the noble Lord, Lord Tunnicliffe, which is in the same space but on a more restricted, faute de mieux basis and also holds good in that situation.

Lord Berkeley (Lab): My Lords, I do not have any amendments in this group but I think it is appropriate for me to speak to some of the clause stand part amendments I have tabled. Basically, they result from a discussion during the International Chamber of Shipping's briefing, to which the noble Baroness, Lady Scott, referred, about whether this Bill is compatible with international law.

Last night, I had the pleasure of joining many people from the maritime sector at an event in Greenwich. I must have spoken to more than a dozen experts in the field who questioned why the Government are doing this at all. They said, almost to a person, that the Bill will not deliver what the Government want. I certainly support its purpose—to protect the employment and remuneration of seafarers—but all the experts said to me that it will not do that.

One useful comment has come from Nautilus about the Insolvency Service work on assessing whether P&O had acted in a criminal manner when it did. Basically, the Insolvency Service is not going ahead with the criminal case while the civil investigation is still under way, but what it is really saying is that it does not think this Bill will deliver. This is from a union that represents many seafarers. It is worth quoting the information from the British Ports Association to put on record that it and other associations are not convinced that the Bill is compatible with the international commitments under the UN Convention on the Law of the Sea. If we take this uniliteral action, we risk other people who are possibly less responsible than the UK—I do not know whether that is still the case these days—doing the same thing and providing justification for doing things that adversely affect our ships, our seafarers and everyone else.

I hope the Minister can explain why this is being done at all. I will go into details on some later amendments, but will finish on this matter of principle. Presumably, the Government believe that this is compatible with international law, because Governments should not be breaking the law; I am sure the Minister agrees. But two people said to me last night that, within a few weeks of this Bill receiving Royal Assent—if it does—judicial reviews will start flowing. That is a terrible thing to say at this stage of the debate, and I hope it does not happen.

As a matter of principle, whether the Government think that this Bill complies with international law or not, it would be good to hear the Minister tell us about this and particularly about Articles 21, 38 and 42 of UNCLOS, in which the British Ports Association is particularly interested. I look forward to her comments.

Lord Tunnicliffe (Lab): My Lords, the amendments in this group relate to the territorial scope of the Bill and the vessels to which this legislation applies. Seafarers across the board deserve proper compensation for their work and I welcome the opportunity to consider whether the Bill, in its present form, achieves this. To this end, I hope the Minister will clarify that all workers on the vessels listed in these amendments are already covered. When we landlubbers think of seafarers, we often picture those who directly control vessels, but the definition is incredibly wide and covers everyone from cleaners to the administrative staff on board. I hope the Minister comments on the Government's approach to supporting better wages and conditions for all seafarers.

Amendment 5 in my name is a probing amendment and it is key. It seeks information from the Minister on the state of negotiations, particularly those with France and the Republic of Ireland, on the corridor concept. This Bill, which we support, is one small step towards addressing the issue of seafarers' terms and conditions.

I respect what my noble friend Lord Berkeley just said but, at the end of the day, if these international conventions have achieved utopia for seamen, I would hate to see hell. Wages seem incredibly, unacceptably low in an international world. Perhaps that is not so true in the wider world, but they seem unacceptably low in Europe. I hope the Government put all possible energy into negotiations with other European states to establish these corridors. It sets a precedent for the worldwide consideration that seafarers deserve a better deal than they are getting.

Amendment 23 would prevent the refusal of harbour access where doing so would break international maritime law. In any situation in which harbour access is refused, in framing the appropriate guidance, a Government must have considered the safety and environmental implications of refusal. It moves to the general view that we must work on the international agreements in parallel and seek to ensure, as does the amendment in the name of the noble Baroness, Lady Scott, that the various conventions not only exist but are universally and even-handedly implemented.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I am grateful for the careful consideration of this Bill by all noble Lords. I reiterate what I have already said to noble Lords in private sessions: the Government are listening to concerns and will endeavour to answer in full all the questions raised by your Lordships today. I suspect that some will certainly be in writing, and I may well try to develop on some on some of the things I am able to say today so that we have full information as we head towards Report.

I sense that there are slightly differing views around the Committee, where some people want this to go much further and others are very cautious. Of course, both of those views potentially risk the Bill itself. I therefore just want to make sure that everybody has as much information as I can get out, particularly around the Government's intent with the Bill and why it is drafted as it is. Noble Lords will have heard the previous Secretary of State speak about the nine-point

[Baroness Vere of Norbiton]
plan many times, which was in response to the P&O decision that was made back in March. We recognise that this Bill is narrow in scope and potentially also in effect, as we cannot legislate outside UK territorial waters. It is none the less an important part of the nine-point plan that this sits hand in glove with the other work that we are doing to improve the welfare of seafarers to make sure that their terms and conditions are as good as they can be.

The amendments in this first group cover territorial scope and international law and I will try to address them in turn. Amendment 1 from the noble Lord, Lord Hendy, seeks to probe the application of the Bill in various circumstances. I completely accept the way that he introduced this and that he had intended some separate amendments that were deemed to be out of scope. It is worth making sure that the different groups of seafarers who he identified in his amendment are indeed covered. To look at it in more detail, on proposed new subsection (1A)(a), seafarers working or ordinarily working in the UK, including UK internal or territorial waters if the vessel is not exercising a right to innocent passage, are already entitled to the national minimum wage. That stems from Section 1(2)(b) of the National Minimum Wage Act 1998 and Article 2 of the National Minimum Wage (Offshore Employment) Order 1999. That change is therefore unnecessary, and I think the noble Lord would agree.

On proposed new subsection (1A)(b), voyages to or from the Crown dependencies would already be in scope of this Bill under the service definition in Clause 1. Of course, I recognise at this point that the UK Government can legislate only in the waters of the UK; therefore, it would be a similar circumstance as one would have, for example, with a journey to France.

On proposed new subsection (1A)(c), under Article 2 of the National Minimum Wage (Offshore Employment) Order 1999, a worker working or ordinarily working in connection with the exploration of the seabed or subsoil or the exploitation of natural resources in the UK sector of the continental shelf is treated as if they are working, or ordinarily work, in the UK. Those workers are therefore already entitled to the national minimum wage, so, again subject to the caveat about UK territorial waters, those workers are covered—ditto those who are working on services to offshore renewable energy installations. Again, I note that some of those may be far away from UK territorial waters. I hope that that reassures the noble Lord.

I note the point raised by the noble Lord, Lord Tunnicliffe, that it is not only the people who are in control of the ship. When I think about this, I do not think about the people in control of the ship but of all the other people on board, who do the really important day-to-day tasks that are sometimes forgotten. I accept that this is about making sure that we cover everybody on board, and I am satisfied that we do.

4.45 pm

The important Amendment 5, in the name of the noble Lord, Lord Tunnicliffe, is probing about how we are getting on with the minimum wage equivalent corridors. I am not entirely sure that he necessarily seeks to remove those declarations, because it is the case that any national minimum wage equivalent corridor would have a memorandum of understanding—a bilateral agreement between two nations—but it would need to be put into each nation's domestic legislation to ensure that it could be enforced.

To update the Committee on the national minimum wage corridors, they were, as I noted earlier, introduced by the previous Secretary of State and we are continuing that policy. We are liaising with our near European neighbours to explore these corridors; conversations are progressing. Obviously, I am not able to give a running commentary on how they are going, but we are pursuing that, and as soon as further information becomes available, we will update noble Lords. Nevertheless, in the absence of those corridors, which is currently the case, we are progressing the legislation for your Lordships today. To clarify: we are working with the Governments of Denmark, Belgium, France, Germany, Ireland, Norway, the Netherlands and Spain.

Amendment 15 would expand the territorial application of the Bill. Again, we are bumping up against the fact that we cannot legislate outside our territorial waters. That is why we would seek to reject that change; it is not appropriate for any Government to define wage rates beyond their waters.

Amendment 16, in the name of the noble Lord, Lord Hendy, probes whether a loophole might exist which would prevent the provision of information to ports. It is well spotted and a good challenge. I took it away to make sure that our view was that it would not. The information that we would request from operators under the Bill's provision is not likely to encompass material subject to data protection laws. The material would be in aggregate; it would not be detailed enough to fall under most data protection laws, so we do not believe that that is a significant risk. It is unlikely that an operator would seek to reflag specifically for this purpose. But the UK Government would of course not require anybody to breach the laws of another jurisdiction, so if the noble Lord has any further evidence as to what sort of information might break data protection laws, I would be very happy to see it. At the moment, we believe that we are well within the bounds of what normal and usual information would be.

Amendment 23 seeks to prevent the refusal of harbour access. This is incredibly important. The Government agree that we must not give ports the right to refuse access pursuant to the UK's international obligations. To this end, Clause 9(3) provides for circumstances in which a harbour authority may not refuse access and replicates the conditions under which the United Kingdom permits otherwise prohibited ships from entering United Kingdom ports under the United Kingdom's port state control regulations. We are satisfied that the circumstances provided for comply with our international obligations. This being so, there is no need to add a further broad condition necessitating interpretation of our international obligations, because we believe that we already meet them.

I turn finally on this group to Amendment 38. I am grateful to all noble Lords for their contributions and note the comments from the noble Lord, Lord Berkeley, who was at a maritime party last night, which sounds great fun. He clearly had some interesting conversations. If people want to share their views and thoughts on

this matter with us, we are very much open to receiving them, because this Government do not consider that the Bill proposals interfere with the rights and obligations under international law, in particular the United Nations Convention on the Law of the Sea, or UNCLOS. Therefore, we do not deem it necessary to state as much in the Bill.

Measures taken under the Bill will not interfere with the right of innocent passage so as to breach the obligation reflected in Article 24(1) of UNCLOS. The Bill requirements will apply and be enforced only as a condition of entry to UK ports in which the UK has jurisdiction over visiting ships and where the right of innocent passage does not apply. This harks back to why I am particularly cautious about expanding its scope and looking for ways to make it less well-defined. We have got to a spot in which we think we are meeting our international obligations, so I am cautious not to get us into a situation where that might not be the case. As vessels visiting a port are not then in innocent passage and not merely passing through the territorial sea, the associated restrictions on the exercise of jurisdiction, as set out in UNCLOS, do not apply. That is an important statement, and I would be grateful if noble Lords would reflect on it afterwards and potentially seek the advice of others on why it may not be the case.

The measures that may be taken under the Bill can be applied only to a narrow subset of operations with a close connection to the UK—services on a regular schedule, determined by clear, objective criteria, such as those for the carriage of persons or goods by ship between a place outside the UK and a place in the UK, which will have entered the harbour on at least 120 occasions in the previous year. This goes back to the link to the UK being critical in the framing of the Bill.

The noble Baroness, Lady Scott, read out something from the Explanatory Memorandum that referred to risk. Obviously, as it is in the Explanatory Memorandum, the Government continue to recognise that risk. However, we are fully on board with our international agreements; we play a leading role when it comes to maritime on the world stage. We will continue to do so and to seek better conditions for maritime workers, but we must also respect that shipping is an international industry, which is why the Bill is scoped as it is.

I am grateful for all the contributions to this short debate. As I mentioned, we will study *Hansard* and make sure that we return with further information, as needed.

Lord Hendy (Lab): My Lords, I am grateful to all noble Lords who contributed to the debate and to the noble Baroness for her response, in particular her reassurance that all the seafarers mentioned in my Amendment 1 are covered by the provisions of the Bill. The minimum wage corridors are clearly important and I am grateful to the noble Baroness for her update on the continuing negotiations. Is she able to say whether embedding minimum wage corridors in the legislation of bilateral states is under contemplation? She did not mention one matter: the progress towards collective agreements between ship operators and trade unions.

I hear what the noble Baroness said about legislating outside our territorial waters, but I wonder whether the department has considered other ways in which seafarers might be protected. It may be the case that operators in the North Sea will deliberately anchor hotel vessels and so on outside territorial waters to avoid the obligations of the Bill. I am also grateful to the noble Baroness for saying that she or the department will look again at the problem—if there is one—of operators with ships flagged in other states with less strict or stricter data protection laws saying, when they come to harbours in this country, "I cannot tell you what my seafarers' wages are, because I am prohibited by the data protection laws of the state in which the vessel is flagged".

We heard what the noble Baroness said on international law and international agreements, which everybody in the Room considers should be upheld in every way. There may be more discussion on this subject later today. I beg to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Baroness Scott of Needham Market***

2: Clause 1, page 1, line 8, at end insert—

"(c) a service performed by a ship which is not required to have a national minimum wage equivalence declaration."

Member's explanatory statement

This amendment seeks to clarify the scope of the bill from the outset.

Baroness Scott of Needham Market (LD): My Lords, the amendments in this group all broadly relate to the question of the ships, or the services, that are within the Bill's scope. I hope the Minister will acknowledge that there is a bit of confusion around. I spent some of the summer talking to various stakeholders—sadly, not at parties. Through the conversations I had, it became clear that there are concerns about confusion and practicality.

Clause 3 will empower harbour authorities to request that operators of services within the Bill's scope provide the declaration that they are paying seafarers the national minimum wage. The Bill also says that they cannot do the reverse: they cannot make requests if the vessel is not in scope. So far, so good, but the British Ports Association, which, after all, will be doing this, is arguing that in practice it might actually be quite difficult for a statutory harbour authority to determine with certainty whether a service will call more than 120 times a year. It is not difficult to imagine ways in which operators could perfectly legitimately alter their schedules to take them outside the scope. A harbour authority that is directed to make such a request but is not actually sure, or in a position to be sure, that the vessel is in fact in scope could be placed in an extremely difficult position and could be subject to legal challenge. My Amendment 27 is designed to deal with that: to give the Government a chance to reassure harbour authorities that they can stay on the right side of the law.

The situation is further complicated by some uncertainty that has arisen as to whether the Bill applies to vessels or to services. If it is services—from the Minister's use of the word "services" on the previous

[Baroness Scott of Needham Market]
group of amendments, I suspect it is—how does one define a service? Is it something that runs to a published timetable? How will the Bill's provisions work where there is a regular service that occasionally makes a call to another port? How exactly is a harbour authority to establish with some certainty exactly what the position is?

The Chamber of Shipping is arguing that using "services" and not "ships" would bring into scope vessels with minimal ties to the UK beyond calling in to UK ports. I know that that is not the Government's intention. The Chamber of Shipping's fear is that, in a highly competitive industry, operators will simply reduce their calls to the UK, which it argues could have implications for supply chain costs and the competitiveness of UK ports. It would be very helpful if the Minister could clarify this services/vessels issue and talk about the assessment that has been made of the potential implications described by the Chamber of Shipping. Those are covered by my Amendments 2 and 6.

Finally, my Amendment 37 relates to the report of the Delegated Powers and Regulatory Reform Committee, which has looked at Clause 3, particularly Clause 3(4), which would give the Secretary of State power to make regulations that set out the form of the declarations and the manner in which they are provided. The committee had no problem with that. It was not happy with the provision by negative instrument in which the Secretary of State could restrict the circumstances in which a harbour authority could exercise its power. It says in its report:

"We consider that the Government have failed to justify the inclusion of this power in the Bill and that, even if its inclusion could be justified",

it merits "affirmative procedure scrutiny". It has said that because, in effect, this power could almost negate the whole Bill if that is what the Secretary of State so chose, which seems a very odd power to give under negative powers. I beg to move.

5 pm

Lord Berkeley (Lab): My Lords, I will speak to Amendments 7 and 9 in my name, which cover the same ground that the noble Baroness, Lady Scott, outlined so well. I still get confused—I know that some associations are also confused—as to whether it is one ferry or a service. As the noble Baroness said, how do you define a service? For example, does it matter where the ship is registered? I do not think it does, but it would be interesting to hear the Minister's response. Where the contract of employment with the seafarers is concerned, does that make any difference?

I suppose my purpose in putting down the amendment to change the number of visits to a harbour—or the harbour—from 120 to 50 was also to probe whether it matters which harbour it is and what a harbour is. I know that this Bill is designed to support ferry workers, which of course I support, but a lot of other ships go around the coast. Coasters, for one, move china clay, cement, aggregates and other things. I am a former member of the harbour board of the port of Fowey in Cornwall. These ships go backwards and forwards; their crew are probably employed in UK contracts but they might not be. Are they included? If not, should they be?

Ditto with cruise ships. We read about many employees on cruise ships not being well paid. Most cruise ships probably move internationally; they certainly do not come to a particular port even 50 times a year. On the other hand, some smaller ones go around more often. Why should those employees not be protected in the same way as ferry operators? I asked one or two people why they thought it was so important to protect ferry operators. The answer was, "Well, they're a particular type of crew who usually go home after their shift". That is an odd definition. I am sure that it is not true when you look at the services to Spain and up to Scandinavia; they certainly do not go home every night. It is important that the Minister sets out the limits of this clause, why it is that way and whether it relates to the ships or the crews.

In relation to ships going across the channel—P&O might have three or four going across; I am sure that the crew get moved from ship to ship—is it a matter of making sure that the ship or the captain produces the documents? How is it recorded that crews who have gone from one ship one week on to another ship another week are covered by this Bill? It is a pretty complicated solution, but it is terribly important for people who may be on one side of the fence or the other. I am sure the Minister can give me a wonderful answer on this; if not, she can write to me.

Lord Hendy (Lab): My Lords, I will speak to Amendment 8, which is simply an elaboration of the points that my noble friend Lord Berkeley has already made. The proposal here is to delete "the harbour" and insert "a harbour". What lies behind that is catching those vessels that might do what I understand is referred to as harbour-hopping, where, in order to decrease the frequency with which they are recorded in any particular port, they go to a nearby port every so often to reduce the number.

My second point, which my noble friend Lord Berkeley and I have addressed, and my noble friend Lord Tunnicliffe has a slight variant on, is whether 120 occasions a year is far too high. It will exclude a lot of vessels that do weekly ferrying, which we would want to catch. If I may speak for my noble friend Lord Berkeley as well as myself, the reason we think it should be 50 is that, quite often, a ship may be serviced for a couple of weeks a year and it may not therefore achieve the full 52 occasions, even if it is running a weekly service.

Baroness Randerson (LD): My Lords, I want to clarify what the debate has thrown up so far. I fear that the Government are guilty of mission creep on this, which may have occurred with the very best of intentions, but there is certainly confusion as a result. As outlined by the noble Lord, Lord Berkeley, a move from 120 calls to 52 would inadvertently bring in a much broader range of shipping.

The noble Lord, Lord Hendy, just touched on another issue that needs clarity, and I have three specific questions that it is important that the Minister answers clearly. If she cannot do that at this moment, we would all appreciate correspondence on this. First, on the move from "ships" to "services", can we have absolute clarity on what a service is? How would it be covered if, for example, there is a refitting such as that

just referred to by the noble Lord, Lord Hendy? I anticipate all sorts of ways in which companies will seek to avoid inclusion through the way they configure services, so we need clarity on the definition of "services".

Secondly, in summing up the first group of amendments, the Minister again used the phrase

"close ties to the UK".

This is at the core of the whole thing. Can we have a definition that will stand up in a court of law of exactly what the Government mean by that?

Thirdly, I am sure we would all be grateful if the Minister could address the concerns of the DPRRC, to which my noble friend Lady Scott referred.

Lord Fairfax of Cameron (Con): My Lords, I apologise; I have only just arrived, because I was detained elsewhere. I want to pick up on the point of the noble Lord, Lord Berkeley, about ferries. Ferries have been referred to, so maybe the Minister can clarify this later. I need to read the Bill again, line by line, but nowhere does it refer to "ferries". It refers to "ships". In the current energy crisis, for example, you may have a service of tankers of diesel fuel coming in with the required regularity. They might be caught by the Bill, because of the frequency with which they call on the UK as part of their service, but they are certainly not ferries. The Minister will confirm this later, but I do not believe we should use the language of "ferries", when we are in fact talking about ships.

Lord Tunnicliffe (Lab): My Lords, this is a useful set of amendments to clarify some of the points. I hope that the Minister will either be able to provide that clarification or, if she wants to worry about the syntax of her reply, supply it in a careful letter.

I have two amendments in this group. Amendment 10 seeks to replace 120 with 52 in Clause 3(3), so I sit alongside my noble friend Lord Berkeley and the noble Baroness, Lady Scott. My noble friend made a persuasive case for 50, as opposed to 52, and I will need considerable persuasion not to press this point on Report, unless the Minister is able to create a very powerful argument that there would be unintended consequences from that.

Amendment 36 seeks, in essence, to stop the effects of the Bill being, in a sense, destroyed by repeated regulations. Surely the Bill's minimum requirements are in the primary legislation, and the adjustments to them should really be only upwards, not reducing the requirements.

I also join the noble Baroness, Lady Scott, in her concern about the DPRRC's concerns. In my day, if it produced a recommendation, we used to shake in our boots and recognise that some deal or other had to be made with it because of the authority it carried. Once again, I hope the Government will recognise the authority and wisdom of that committee and accede to its suggestions.

Baroness Vere of Norbiton (Con): My Lords, I am again grateful to noble Lords for sharing their thoughts on this group of amendments. The thrust of the amendments in this group is very much around probing the scope of the Bill in terms of the services and ships to which it applies. As the noble Lord, Lord Tunnicliffe, noted, I will write. I do not think he was implying that my oral replies are not carefully thought through—maybe he was—but the letter will be perfect. Noble Lords should await further information in the letter, but I will try to cover as many points as I can.

I look at this borderline, grey-area conversation that noble Lords are having, and at the back of my mind I keep thinking, "What sort of an operator are you if you will go to a different port in order to drop your frequency down to be just under or over any particular target so that you don't have to pay your seafarers the national minimum wage equivalent in UK waters?"

Baroness Randerson (LD): P&O?

Baroness Vere of Norbiton (Con): Well, because of that we will come on to why it is so important that the Bill refers to services rather than ships; otherwise, quite frankly, you could do that, and all sorts of very interesting things. I will try to go through some of the amendments and think carefully about how we make sure that we reassure operators and trade associations about what a service is. Indeed, there is a question about what a harbour is. The good thing is that we have a definition of a harbour, in the Harbours Act 1964 and the Harbours Act (Northern Ireland) 1970. That is what a harbour is, so I will put that one to bed.

5.15 pm

I turn to Amendment 2 in the name of the noble Baroness, Lady Scott of Needham Market. We are satisfied that the Bill as drafted makes implicit that the scope of the Bill is limited to a particular subset of services. The Bill

"applies to a service for the carriage of persons or goods by ship, with or without vehicles, between a place outside the United Kingdom and a place in the United Kingdom."

Clause 3(3) confirms that a declaration is not to be requested

"unless it appears to the authority that ships providing the service will … have entered the harbour on at least 120 occasions in the year."

In order to consider whether a national minimum wage equivalent declaration is required, harbour authorities need to assess whether it appears to them that any service in scope of the Bill—one that falls within Clause 1—will meet the frequency requirement. Of course, after a period of time, one will know whether there was a very big ship in one's harbour 120 times per years because that is beyond doubt. Therefore, the Bill applies to all services in scope of Clause 1. However, not all services in scope are required to provide a declaration, due to the operation of the frequency requirement in Clause 3(3). I think that is quite clear. The amendment from the noble Baroness simply says that the Bill does not apply to a service to which the Bill does not apply. I know it is a probing amendment, just trying to get us focused on what we think "services" actually are.

Turning to Amendment 6, the Government's view is that adopting this position would radically change the way the Bill operates. This amendment does not clarify the scope of vessels to which the Bill applies; rather, it fundamentally changes it. The Bill is concerned with the service and not individual ships. The ship is

[Baroness Vere of Norbiton]
simply a tool for carrying goods or passengers on a particular service. A service, as noble Lords will all know, may be made up of one or more ships, particularly on the short straits, where there might be a number of ships plying the same service every single day. Really, the service has to be run by the same operator and on the same route. Obviously, by "route" one means from one particular harbour to another particular harbour: it is not a random harbour.

The seafarers in scope of the legislation are those working on the services and obviously, as noted, we have the frequency requirement of 120 times a year. Seafarers can, of course, move ships, so they could be on vessel A on one day and on vessel B on another. I slightly dispute that being able to provide a national minimum wage equivalent declaration in those circumstances would be particularly difficult. I have done quite a lot of HR processing in my time, and I think it would be perfectly feasible to make sure that one knows where one's staff are and that they are being paid the right rate when they are in UK territorial waters. So, we are content that we stay with "services". Of course, when we had the consultation, we considered whether "ships" was a more appropriate way forward, and it did not work. We do not want something to drop out of being covered because of some sort of refitting or maintenance, so the fact we refer to "services" is really important.

The noble Lord, Lord Berkeley, looks as though he wants to ask a question.

Lord Berkeley (Lab): I just want to comment on the Minister's last statement, which was very helpful. I think she needs to recognise that the maritime industry has probably got very good PR, but some of what goes on on the ships is highly dubious. I have been honorary president of the United Kingdom Maritime Pilots' Association for about 25 years—heaven knows why so long, it is very nice of them—and I hear stories about what pilots find when they get on the ships. It is not just that the pilot ladder might break, which sadly does happen occasionally, but that there is a language problem within the ships, or that the master sometimes cannot control the crew and that they will do anything to save tuppence ha'penny. So, I appreciate what she is saying, and in a normal business, she is probably right, but in this sector, it may not be the ferry or the short-haul freight services, but we have to recognise that every penny seems to count and usually it is very bad for some of the crew.

Baroness Vere of Norbiton (Con): Of course, the noble Lord has much more experience aboard such vessels than me, and I will take his word about some of the conditions on ships. Indeed, we heard during Covid how what happened on ships was very distressing for some people and extremely disappointing. I take all of that on board but I go back to: I cannot fix the entire world today but what I can fix is what is before the Committee in terms of the scope of this Bill.

The noble Lord, Lord Berkeley, mentioned specific types of services, such as coasters—which apparently take English clay around the coast, et cetera—and cruise ships. This is why it is so important to do this based on the service and its frequency rather than what it is actually providing. Coasters might be caught but if they are doing only domestic work they will be caught anyway because they are in UK waters and they are caught if it is port to port within the UK, but if they are doing a run frequently—say three times a week across to France—they will be caught, and I do not see why they should not be. I have no problem with that. Let us catch them. The people working on such vessels most likely have close ties to the UK and those vessels clearly have close ties to the UK because they dock here so frequently, so it does not matter where the ship is flagged or where the employment contract is. It is the fact that it spends a lot of its time in UK waters and enters UK ports on a very frequent basis. This frequency is important.

I note that two noble Lords have tabled amendments to go down to 52 occasions from 120. We looked at this very carefully during the consultation. My current view—and of course we are going to go away and consider this—is that 52 would catch too many vessels that we did not intend to catch and would be overreach in terms of the current settlement with the international shipping community. Again, we might be entering the sort of territory where the unintended consequences would be quite significant. I go back to the fact that this is a narrow Bill, it has a narrow scope, it does a very specific thing, and I would like it to do that specific thing on services which dock here 120 times a year.

Amendments 7 and 8 refer to this issue of "a harbour", "the harbour" or "harbours". We have established what "a harbour" is—so that is done—and we are very clear that the service is to a particular harbour. It is not to "a harbour" within the UK because Calais-Dover is not the same as a service running from Calais to any other harbour. The route is specified. It is the same route, not using the same ships, high frequency to a specific harbour. We think that is quite clear.

The noble Baroness, Lady Randerson, asked for a definition of "close ties". I do not think I will ever be able to get to that but we have been able to define what a "service" is. Those services have close ties. It is descriptive language to define what these services are, but it is merely that. It is not something that will be legally defined and taken forward.

Baroness Randerson (LD): Do I understand, then, that the Government are unable or unwilling to define "close ties"?

Baroness Vere of Norbiton (Con): The Government are very willing to define what these services are and, by implication, those have close ties to the UK. I can probably come up with lots of other clever descriptors to define these sorts of services. A large container ship stopping at the UK once a month does not have close ties to the UK; it is an international container ship, shipping around wheat or whatever it might be shipping. We can think of some other language, but once we have nailed what the service is, where it goes, how frequently it goes and which ships it utilises, then we have defined it. That is it, we are done. That is the definition that works legally because it has hard boundaries and can be fairly well defined, I think.

I absolutely appreciate that Amendment 27 is a probing amendment. We intend to provide guidance to harbour authorities, and that guidance will be consulted on. We can define what the service is but we need to help harbour authorities to fully understand those definitions. We will consult with the industry to make sure that there is absolute clarity. I would not say that the guidance should be put on a statutory footing; that is not entirely necessary in this particular case.

I turn finally to Amendment 37. I have of course seen the DPRRC report. It was published only a few days ago so I beg your Lordships' leave just to say that, at this stage, we are considering what is in it. We are taking it very seriously; I reassure the noble Lord, Lord Tunnicliffe, that we take all DPRRC reports very seriously. We will publish our response to it before Report so noble Lords will have the opportunity to peruse that. I have no doubt that we will be able to have further conversations about that.

Lord Tunnicliffe (Lab): Will the Minister be answering on Amendment 36?

Baroness Vere of Norbiton (Con): I absolutely shall cover Amendment 36. My apologies, I slightly went off-beam so I thought I had already covered it.

Regarding Amendment 36, the clause as drafted does not allow a Government to amend or reduce the overall extent of services in scope of the Bill. It provides only that regulations may make different provisions for different cases, including for different descriptions of service to which the Bill applies or non-qualifying seafarers. This power cannot be used to amend the Bill and is not intended to be used to alter the scope of the Bill. I slightly thought that I would need to come back to this particular issue to make sure that noble Lords are in agreement as to what we are trying to achieve here. I will give that further consideration.

Baroness Scott of Needham Market (LD): I am grateful to noble Lords for their comments and to the Minister for hers. This set of amendments really comes down to the practicalities of statutory harbour authorities trying to manage this legislation, which, we have to recognise, is taking them into a completely new area of endeavour. They are comfortable with environmental and shipping things but we need to remember that this is new. Uncertainty at this stage about fundamentals, such as ships and services and what close ties are, is quite concerning. I hope that the Minister will ensure as a matter of urgency that the conversations that ought to take place with the harbour authorities will take place fairly soon so that we can clear up some of these issues and put them in a position where they feel a little more comfortable with what they are being asked to do.

With that, I beg leave to withdraw my amendment.

Amendment 2 withdrawn.

Clause 1 agreed.

Clause 2: Non-qualifying seafarers

Amendment 3

Moved by ***Lord Hendy***

3: Clause 2, page 1, line 18, after "of" insert "section 40 of"

Lord Hendy (Lab): My Lords, this group of amendments seeks to extend the protections given by the Bill. My noble friend Lord Berkeley will speak to the question of whether Clauses 4 and 9 should stand part of the Bill and my noble friend Lord Tunnicliffe will speak to Amendment 25, which seeks an impact assessment in relation to roster patterns, pensions and wages, and Amendment 26 on engagement with trade unions.

My amendments are Amendments 3, 13 and 14. I have now convinced myself that Amendment 3 is completely unnecessary. I was trying to ensure that the protection in Section 40 of the National Minimum Wage Act 1998, which deals with residency of seafarers, or lack of it, would still be a condition for engaging the Act where the seafarer was a regular visitor to UK ports but not resident in the UK. On reflection, it seems that it is not necessary to refer to Section 40 because Clause 2(c) specifically engages the National Minimum Wage Act as a whole, and therefore Section 40.

5.30 pm

Amendment 13 relates to Clause 4. It seeks a specific inclusion of the prohibition in the National Minimum Wage Regulations that prevents deductions from pay of the costs of providing seafarers' accommodation, food and water. In fact, those regulations have detailed provisions about how accommodation is to be taken into account. The proposition I put to the Minister is that these should be included in the national minimum wage equivalent that the Bill intends to confer on seafarers. She questioned whether ship operators would really bother treating seafarers' wages in a way that sought to remove every penny available but that is in fact the reality. I am told by the RMT that there have been occasions when seafarers' accommodation and food have been deducted from their pay. That is obviously a completely unacceptable practice that should be outlawed; this is the purpose of Amendment 13.

Amendment 14 is also to Clause 4. Clause 4(2) says:

"For the purposes of this Act, the national minimum wage equivalent is an hourly rate specified in regulations."

Subsection (5) then says that

"a non-qualifying seafarer is for the purposes of this section remunerated at a rate equal to the national minimum wage equivalent only if their remuneration is in all the circumstances broadly equivalent".

I would make it "at least" equal to the national minimum wage equivalent in order to preclude ship operators simply confining wages to the national minimum wage equivalent, although I accept that that will be the general practice. I beg to move.

Lord Berkeley (Lab): My Lords, I speak briefly to oppose Clauses 4 and 9 standing part of the Bill. Again, this goes back to what I spoke about earlier in terms of the legality of this legislation. It comes from the International Chamber of Shipping, which says:

"The vessel declaration requirements envisaged in the Bill … contravene the international frameworks and principles governing seafarers' remuneration, which confer jurisdiction to the flag State. Notwithstanding the fact that NMWe"—

national minimum wage—

"payments and declarations would be limited to work done while a ship is in UK waters / ports (to address 'extraterritorial reach' concerns), this would still amount to an excessive claim to prescriptive

[LORD BERKELEY]
jurisdiction, contrary to the fundamental principle of flag State jurisdiction, i.e., that a vessel's flag State has overall responsibility for the employment conditions aboard a vessel. UNCLOS Article 94 (Duties of the flag State), specifies that the flag State shall 'exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag'. It would further be contrary to the universal norm that port States will not regulate the 'internal affairs' or 'internal economy' of visiting foreign vessels (a principle that includes employment conditions)."

This may seem a long way away from ships going between the UK and close waters, but it indicates that what vessels from further afield—which may or may not get tied up in this—will do may be something that the UK finds unpalatable. In other words, if they start doing this to show up the UK as not complying with the UNCLOS requirements, it could be difficult. Again, I would be grateful if the Minister could write to me on this; indeed, we may need a meeting with our legal experts to see how important this is and what can be done about it.

Baroness Randerson (LD): My Lords, we do not have any amendments in this group, but I take this opportunity simply to make the point that we share the concern of those noble Lords who do have amendments in this group. These are important issues that reflect the reasonable fear that employers could use tactics that circumvent the measures in the Bill.

One thing that has been speculated on is that seafarers could be paid at a lower rate when they are outside UK waters to compensate for the higher rate that they must be paid in UK waters. There are things about which the Government can do nothing, but it is really important that the things that can be got right are looked at carefully to ensure that they are absolutely on the nail. I point in particular to Amendment 26 in the name of the noble Lord, Lord Tunnicliffe, to emphasise the importance of monitoring the effectiveness of this legislation and engaging with the trade unions. P&O's tactics—the audacity with which they were announced surprised everyone, I think—exposed the weakness of the current safeguards. However, if the Government attempt to plug the loophole but fail to do so effectively, I fear that P&O would not be alone and other owners would attempt to do something similar—perhaps not as blatantly as the way in which P&O did it, but it certainly could undermine legislation further if the Government's efforts here are not fully effective.

Lord Tunnicliffe (Lab): My Lords, I will speak on the two amendments in my name in this group, but I commend the other amendments to the Minister's study, because it is important to achieve clarity on some of these issues.

On Amendment 25, my original involvement with these sorts of issues was in an analogous industry—transport—where I was a shop steward and subsequently an industrial relations manager. In the crew situation, issues with roster patterns and pensions are every bit as important as wages. The way that rosters are handled in particular can have a serious impact on remuneration and a massive impact on quality of life. It is important that there is a proper impact report on these issues, ideally within 90 days.

This leads on to Amendment 26, because this and other issues would be much enhanced if we could develop a proper relationship with the trade unions. The importance of this from the point of view of the trade union movement is exemplified by an appeal—for want of a better term—to the International Labour Organization from the general secretary of Nautilus; the general secretary of the RMT, Mick Lynch; the general secretary of the TUC, Frances O'Grady; the acting general secretary of the European Transport Workers' Federation; the general secretary of the International Transport Workers' Federation; and the general secretary of the International Trade Union Confederation. I read those out to emphasise that this is a heavy coalition of the trade union movement. Their appeal is set out in a document that I hope the Minister has seen, which centres on what happened at P&O. It helps one to understand how broad detailing and managing the employment conditions of crew is and how important it is to get a hold of this to make sure that crews are properly looked after, both in their remuneration and conditions of work. I therefore commend Amendment 26 to the Minister.

Baroness Vere of Norbiton (Con): My Lords, this third group of amendments is broadly concerned with the relationship of this Bill to the domestic national minimum wage. The noble Lord, Lord Hendy, has already decided that Amendment 3 is not necessary; I agree with him so, if noble Lords agree, I shall just move on.

Amendment 13, also in the name of the noble Lord, Lord Hendy, relates to the calculation of the national minimum wage equivalence and deductions. We have been clear that this will be covered by regulation and is not for the Bill. This also allows us a little more flexibility decades hence, should changes need to be made. Nevertheless, Section 2(5)(c) of the National Minimum Wage Act 1998 does not prohibit deductions from pay of costs for providing seafarers' accommodation, food or water, but simply provides for regulations on the matter. We will very much be matching up.

Regulations under the Bill will need to be consistent with the provisions within the Maritime Labour Convention, or MLC, whereby requiring seafarers to meet the cost of food and water is expressly forbidden. We therefore do not need to amend the Bill to account for this. Perhaps the noble Lord might remind the RMT about that, if it feels that seafarers out there are being charged for those things. That is clearly and expressly forbidden.

Regarding deductions for accommodation, under the National Minimum Wage Regulations 2015, employers on domestic services are permitted to apply a reduction of up to £8.70 per day in respect of the provision of living accommodation, without that affecting the assessment of the worker's pay for national minimum wage purposes. The MLC does not make express provision for reduction for accommodation, and shipping industry practice is not to charge seafarers for accommodation. It is not our intention that operators should be encouraged to make such reductions for accommodation to reduce their overall wage fee, so we will be considering this in the regulations in due course.

5.45 pm

I am grateful to the noble Lord, Lord Hendy, for his well-explained Amendment 14, relating to the insertion of "at least" the minimum wage. Of course, it is not our intention that the wages should be limited to the national minimum wage. I commit to him that we will consider further whether the wording is clear, making sure that any improvements to the wording indicate that it is the national minimum wage or above, but recalling that we have this strange situation because of the way that the Bill works, with this thing called the national minimum wage equivalence. I do not want, by putting in "at least" the national minimum wage, to end up inadvertently dropping the link to equivalence. I understand where the noble Lord is coming from; we will look at it again and make sure that we are not constraining the ability of operators to pay fair wages and over the national minimum wage.

Amendment 25, in the name of the noble Lord, Lord Tunnicliffe, seeks to assess the impact of the Bill within 90 days. The anticipated impact of the Bill is already set out in the impact assessment. The Government's view is that 90 days is far too early to see the real impacts of this legislation on these issues. More time will be needed to draw realistic conclusions on how the legislation has influenced employer behaviour and potentially influenced how services have adjusted, or not—one would hope. As a matter of course, we will conduct a post-implementation review of the Act, but I am afraid that I am not entirely sure that we would learn anything useful from a review within 90 days.

The noble Lord mentioned the impact on rostering. The Bill is necessarily narrow in scope; it is very much focused on the national minimum wage. I accept that there is potentially a link between rostering and pay, but we are not seeking to influence roster patterns. In due course, I am sure that the unions that he is in contact with will be able to provide evidence of changes to rostering, and the Government will be pleased to see it when it appears.

Amendment 26, also in the name of the noble Lord, Lord Tunnicliffe, would require the publication of an engagement strategy with trade unions. The Government have engaged extensively with trade unions on the Bill and the other elements of the nine-point plan, and we will continue to do so across all manner of issues impacting their members. The Government's view is that it is beyond the scope of the Bill to legislate for union engagement, and indeed that might be counterproductive if any strategy is drawn too tightly or is not able to consider matters which could not be foreseen at the time when the strategy was drawn up.

We are very keen to continue to work with the unions. They provide a good source of evidence surrounding what is happening on wages, but legislating to publish a strategy may not be the best way to ensure that that engagement happens. I am sure that the noble Lord, Lord Tunnicliffe, will be on my case if he feels that we are not engaging properly with the unions. It is not in the Government's interest not to do so: good consultation and engagement are critical to good law.

Lastly, I will address the comments from the noble Lord, Lord Berkeley, once again on international law. I do not have any further comments to make on international law as regards the way that he framed it, but of course I will look back through *Hansard* and will consider it in due course.

Lord Hendy (Lab): My Lords, I am grateful to all noble Lords who spoke in the debate, and to the noble Baroness for her explanations and her undertaking to look at certain matters again. I share my noble friend Lord Tunnicliffe's regret that she could not go a little further with his Amendments 25 and 26, because we know from the experience with P&O Ferries that the collective agreements were torn up and the role of the trade unions abolished by that employer. Those amendments would have been quite useful to see what the impact would be on industrial relations and whether trade unions would be left with any role, whether over pensions, rostering or any other matter concerning terms and conditions. I beg leave to withdraw my amendment.

Amendment 3 withdrawn.

Clause 2 agreed.

Clause 3: Power to request declaration

Amendment 4

Moved by ***Lord Hendy***

4: Clause 3, page 2, line 4, leave out "may" and insert "must"

Lord Hendy (Lab): My Lords, these amendments also concern enforcement of and compliance with the Bill's provisions. I have Amendments 4 and 11 but, to deal with this generally, Amendments 12 and 24 seek to impose much higher penalties—detention of a ship or a minimum £1 million fine. Amendments 31 to 34 deal with the Delegated Powers and Regulatory Reform Committee's report. Amendments 20 to 22 and 31 deal with transferring tariffs from harbour authorities to the Secretary of State. Amendments 30, 35 and 39 depend on the removal of earlier clauses. Amendment 17 deals with naming the particular inspector.

My Amendment 4 is to Clause 3(1), which provides:

> "Where ships providing a service to which this Act applies use the harbour of a harbour authority, the authority may request the operator … to provide a … declaration".

I seek to change "may" to "must", because it does not seem appropriate that the harbour should be left with any discretion at all. I appreciate that there are to be regulations later on that would give the Secretary of State power over harbour authorities, but one might have thought that it would not be unreasonable to demand in the Bill that harbour authorities demand an equivalence declaration.

My Amendment 11 is also to Clause 3, this time to Clause 3(5). As it stands, it requires that the operator must inform the harbour authority that there is an inconsistency with a declaration. I am seeking for the Maritime and Coastguard Agency likewise to be informed, because it will, essentially, be the regulator. I beg to move.

Baroness Scott of Needham Market (LD): My Lords, this is a bit of a humdinger of a group, but a lot of the amendments are mine. Only four are of substance and the rest are consequential, so it is not as bad as it looks.

The first set of amendments I tabled concern the duty for setting a tariff of surcharges and moving it from the harbour authorities, as currently provided for, to the Secretary of State. I will explain why I think this is important. The practice of harbour authorities surcharging is well established. When I was on the board of Harwich Haven we created surcharges as a way of funding specific objectives, such as channel deepening. They are always done after a process of negotiation with the shipping companies that will pay them. I am not going to say that they are always popular but they are generally accepted. At the end of it all, harbour authorities always have to be mindful of the competitiveness of their own ports. That holds them in check.

The problem is that what is being called a surcharge is not; it is a fine. There is a danger of muddying the water by taking a tried and tested system of surcharging, which is generally positive, and then turning it into something negative when it is really a fine. As I and the BPA understand it, the rate of surcharge or fine will be set by the harbour authorities with reference to the national living wage deficit—in other words, the difference between the actual amount paid to seafarers and the amount they should have been paid under the national minimum wage. The problem with that is that it makes it impossible to do what one normally would with fines and produce a tariff in advance. In the interests of transparency, that is pretty much always the case but in this the authorities could almost make it up as they went along. This puts harbour authorities in quite a difficult position. It would be much better to have a system of fines—and call them fines—and a tariff set by the Secretary of State.

That is linked with my amendment on conflicts of interest. It is really to try to get a sense from the Government about how harbour authorities are to manage this conflict of interest, given that port ownership in this country is very much a mixed model: Holyhead is privately owned, Dover is an independent trust and Portsmouth is owned by the local authority, while it is of course quite common for shipping companies to seek ownership of a harbour or terminal. The Committee can see that there would then be a direct conflict of interest in setting the surcharge or fine, so I would be interested in hearing more from the Government about that.

Then I have a group of amendments about the consequences of a shipping company failing to meet its obligations or to pay. What I envisage is that harbours would still request the declarations and pass them on to the MCA for enforcement. The Government would require HMRC to have the power to investigate vessel operators, and the MCA could levy fines for non-payment. Importantly, in the event of repeated infringements the MCA would have the power to detain the vessel. It sounds much more draconian to detain a vessel—does it not?—rather than deny access, as proposed in the Bill. In fact it is standard practice by port state control. I would not say that the MCA does it all the time, because it rarely comes to that, but it has that power and it is a way of dealing with vessels which do not meet their legal obligations.

Denial of access to harbours is an extremely important matter. It would require a derogation from the open port duty on harbour authorities but, even then, it would be a very draconian step. The International Chamber of Shipping has cited the OECD's *Understanding on Common Shipping Principles*, which refers to

"non-discriminatory treatment … in … the assignment of berths and facilities"

and so on. It goes on to promote the freedom for shipping companies to promote the interests of "maintaining a competitive environment". Can the Minister say whether she has had specific legal advice on compliance with these OECD common principles?

Finally, I have amendments which return to the Delegated Powers and Regulatory Reform Committee's report. In Clause 11(2), the Bill gives the Secretary of State power to give directions to the harbour authorities to exercise their powers, or not to do so, or to exercise them in a particular way. It is worth quoting from the report. The committee says

"it is capable of being exercised not only in individual cases but generally, so as to have legislative effect: it would allow the Secretary of State to direct all harbour authorities that they must not, for example, impose surcharges or indeed exercise any of their powers".

The committee finds this "startling", and goes on to say that this clause

"should be removed from the Bill".

I would be very interested to hear what the noble Baroness says about that.

6 pm

Lord Berkeley (Lab): My Lords, I have a number of amendments in this group, including some clause stand part notices, but first I must say that I support everything the noble Baroness, Lady Scott, said about these issues. It will be very hard for ports to be responsible for setting tariffs when they are in competition with the ports next door—it does happen. The other thing that worries me about the ports being involved in this is that, again, it is not unknown for crew members to disappear off a ship or come on to a ship when they are in harbour. We do not need to go into detail, but it is all part of the competition, the regulation and the enforcement, which is terribly important.

On the question of conflicts of interest, again, the noble Baroness is absolutely right that a number of ports are owned by shipping lines, but of course there are also other parts of ports—different quays or wharves—that are owned by a shipping line or by a different company that owns the actual harbour. My question then is, who will be responsible: the competent harbour authority or someone else? Take the Port of London Authority, which is the authority for the whole port, and Thamesport, which now has two or possibly three massive quays there: will the PLA be responsible, and would it like to be seen to be going in, interfering and getting information? I do not know the answer, but there is a conflict there.

Retaining vessels, as the noble Baroness again said, is actually quite common. It happened to us in Fowey about five years ago when a Russian vessel came in.

It sat there, the tide went out and I suppose it probably ran aground on the bottom. Somebody went by in a small boat and found a hole in the side of the ship, well below the waterline, into which a dirty rag had been stuffed. The harbour authority, with the MCA's support, quite rightly prevented that ship leaving until it had blocked up the hole with something better than a rag. Okay, that is not something you see every day, but it does happen.

Things happen to affect the proper management of a port. Sometimes ports are in competition, but they do not want to get into the position where they act as policeman to their own possible part owners, possible customers or anything else. I am sure the MCA and HMRC, as necessary, ought to be involved, so I support the amendments that the noble Baroness has tabled as well as my own.

I shall finish, again, on the legal questions and the scope of the UK port state control powers, which is to do with the ability to levy surcharges—these, as the noble Baroness said, are like a fine—or issuing suspensions via the SHA. The advice from the international chamber is that the Government could potentially be exceeding the powers conferred on them under the Merchant Shipping (Port State Control) Regulations 2011, which implement the UK's international obligations under the IMO's Paris memorandum of understanding on port state control in UK law. It suggests that the enforcement measures contemplated in the Bill should be aligned with and adhere to title 5 of the ILO MLC convention, which relates to "compliance and enforcement". That is the third of what might be called my legal challenges to the Minister, which I hope I have put correctly. I can send her the briefing if she would like it; I am sure it would be useful to have a discussion about this when she has had a chance to read it.

Lord Mountevans (CB): My Lords, the case for the Secretary of State being responsible for surcharges was very well made by the noble Baroness, Lady Scott, and the noble Lord, Lord Berkeley. To summarise, it sits much better with the Secretary of State. We have a situation in which the port authority is normally providing a service to the owner; the owner-operator is therefore a customer. To be, in effect, levying a fine on your customer is an unnatural state of affairs. In the interests of transparency and consistency, we should have one entity in the land deciding these things. They can vary from port to port and there may be special circumstances, but it is desirable to have one authority making the surcharge across the land.

Baroness Randerson (LD): My Lords, I start by thanking the noble Lords, Lord Berkeley and Lord Mountevans, for joining us on some of these amendments. I will briefly underline some of the points that my noble friend and those noble Lords made.

The complexity of expecting ports to do what is essentially the Government's job for them will undermine the effectiveness of this legislation. Think about the use of the term "surcharge". You pay a surcharge when you use a service voluntarily; it has no implication of illegality. If, however, a company finds itself paying a surcharge according to the rubric of this Bill when it becomes legislation, it will have broken the law. In other words, it is paying a surcharge as a fine—and a fine should be called a fine. I urge the Minister to look again at the phraseology here. Let us be clear: if companies are going to be fined, let us call it a fine.

The other issue is the complexity of expecting ports to deny access to the harbour. The international law on denying access to a harbour is complex and it would be difficult for them to do so. They would have to be absolutely sure that there is no question of danger to life. As a result, they will err on the side of caution and it will not happen. As both the noble Lord, Lord Berkeley, and my noble friend Lady Scott said, detaining ships is a normal course of events. It is not done frequently but it is done, and for safety reasons as well. I urge the Government to have the courage of their convictions and give these powers to the Secretary of State, because they are much more appropriately those of the Secretary of State.

It is not as if the Government do not want to be involved, because Clause 11 gives them wide-ranging powers of direction. It essentially gives them control, so the Government want that control behind the scenes but do not have the courage to put their name on the notices. That is a strange approach, so I urge them to rethink the way this is to be done. The impact would be that well-meaning and very important legislation could be undermined. At the same time, it would put our ports in a difficult position, make their relationship with ship owners more complex and create for them, as other noble Lords said, a conflict of interest.

Lord Tunnicliffe (Lab): My Lords, I have a couple of amendments in this group. The first is Amendment 12, which would create a minimum fine of £1 million. Whether that is the right figure, I am not sure, but the real concern is about the size of the owners; I believe that P&O's owners have made $721 million in the past six months. There is a real risk that, if businesses of this size take an almost doctrinal opposition to the measure—the P&O debacle showed such a doctrinal opposition to reasonable conditions on board ships—a fine that is not substantial becomes just a cost of business. That would be regrettable; I am sure that it is not the Government's intention but I would value some feedback from the Minister. How does one assure oneself that the fines are sufficiently large to impinge on the decision-making of these companies? There is a concern that good companies do the right thing anyway. The trouble is that we have a very real example in the recent past of one of these companies not doing the right thing; that is what provoked this legislation.

The second area concerns naming the inspector or inspectors. I tabled my amendment here to draw out how the world will know that this is happening. Organisations that have either a principal inspector or someone like that as a named individual are so much clearer as to who will be held to account for appropriate levels of activity. As a minimum, I hope that the Minister will be able to give me a feel for how quickly inspectors will be appointed and how many of them there will be, as well as assure us that there is adequate inspection capability. We know that this whole issue of minimum wage enforcement is pretty difficult in a land situation; at sea, it will be much more difficult to get the details to know whether an offence or the wrong charge has been committed.

[Lord Tunnicliffe]

With that, I come to the amendments in the name of the noble Baroness, Lady Scott, regarding the Secretary of State having the authority to determine the tariff, which will really be a fine. I think that harbour authorities are about harbours. I can see why they perhaps must be drawn in at one level but when it comes to becoming a policeman, in essence, that is what the state should be doing. I agree with the general thrust that this should be the Secretary of State's responsibility.

Finally, I hope that the Government will give careful consideration to the amendments addressing the DPRRC's concerns.

Baroness Vere of Norbiton (Con): My Lords, this fourth and final group of amendments is concerned broadly with incentives, enforcement and compliance. There is a wide range of amendments herein. It has been helpful to have this discussion today.

I will start with Amendment 4, with which the noble Lord, Lord Hendy, seeks to make requesting a national minimum wage equivalent declaration a duty rather than a power that can be used with some discretion. The payment of national minimum wage equivalent would be a condition of port entry and so should be a matter for the harbour authority to decide. Furthermore, by making this a "may" rather than a "must", we are allowing for flexibility in circumstances where there might be overlapping harbour authorities, for example where a vessel transits through one harbour authority's area of jurisdiction to call at a port within another harbour authority area of jurisdiction. There may be other circumstances that noble Lords can think of where it is not necessary that this declaration is shared every single time. It should be noted that the Bill provides the Secretary of State with the power to direct harbour authorities to request a declaration, so there are necessary safeguards against harbour authorities not discharging this function properly.

6.15 pm

I am grateful to the noble Lord, Lord Hendy, for Amendment 11, which would require operators to inform the Maritime and Coastguard Agency—the MCA—if a service is operating inconsistently with the NMWE declaration. The MCA's role is to investigate inconsistencies between the declaration and the actual rates of pay. We had considered that, given the operator's relationship with the harbour authority, the information of a change in circumstance would be better passing through it. However, I take note of this amendment, and we will consider with the MCA what information would be useful to it in fulfilling the enforcement role it would have.

Amendment 12 in the name of the noble Lord, Lord Tunnicliffe, seeks to specify a minimum fine of £1 million. There are two issues worth drawing out on this. The first is that there is limited legal precedent for specifying a minimum fine in legislation and it would not be consistent with the sentencing guidelines for criminal fines. I also note that the breaches could be of a variety of types, including relatively minor matters for which a very significant fine would be disproportionate.

The Government's position is that it is far better to allow a court to determine the appropriate fine according to the standard scale applicable in each jurisdiction, if indeed the matter came to that point. Fundamentally, incentives to pay an equivalent to the national minimum wage are based on surcharges and, ultimately, the possibility of suspension of service rather than court proceedings. Any suspension of service, for example, would have far-reaching consequences for an operator and should therefore act as a significant deterrent. It is worth noting that there are different sentencing guidelines in Scotland and Northern Ireland so introducing a minimum fine in England and Wales would be inconsistent with other parts of the UK.

I understand a bit better than I did previously the thinking behind Amendment 17 in the name of the noble Lord, Lord Tunnicliffe. We will take it away and consider it. I understand the need for transparency so I undertake to set out a little further in writing the MCA's plans both to carry out its enforcement role and to make sure that officers are properly recruited and trained and have the resources. Of course, the MCA carries out inspection functions all the time, but I will get greater clarity as to how it proposes to do that and also ensure that we have the right level of transparency such that people can see that the MCA has had to take action—indeed, that is what happens.

Amendments 18 to 22 and 31, from the noble Baroness, Lady Scott, relate to the role of the ports in the compliance process, specifically the proposed surcharge for non-compliance. I think noble Lords will understand where the Government are coming from on this. I appreciate the contribution from the noble Baroness, Lady Randerson, about the terminology "surcharge" and what that may mean. We envisage that a schedule of rates for the surcharge—we will call it that—will be set by the harbour authority but with reference, as noble Lords have noted, to the difference in what they should have been paying had they been paying the national minimum wage equivalent in the first place.

However, it will not be an exact calculation. We will of course set out in regulation what the calculation, or indeed the bandings, might look like. To my mind, there is probably still a bit of flexibility around how we ensure that this does not lead to a loss of competitive advantage by any particular harbour authority. I understand that we do not want a race to the bottom in terms of calculating a surcharge—that would be nuts. It would go against what we are trying to achieve in the Bill. We will take that away and potentially give further reassurance about how we envisage the calculations will be set out in regulations. We need to maintain the correct balance, such that operators have the correct and appropriate surcharge levied against them versus putting everything in the laps of the harbour authorities so that they basically end up looking like the bad guys, which is not at all our intention. We will probably come back to that in writing.

Now I come to the big one: the clause stand part notices and Amendments 30, 35 and 39. Obviously many noble Lords have an interest in this group. These amendments would fundamentally change the entire compliance mechanism of the Bill. The Government's proposed mechanism has been carefully designed; we believe that it is a proportionate and appropriate balance of roles between the ports, which will fulfil an essentially administrative role of ensuring that access

to ports is conditional on payment of the equivalent to national minimum wage, and the MCA, which will be the body responsible for enforcement and prosecutions. The whole mechanism of the Bill relies on the national minimum wage declarations being a condition of access to ports.

It is for harbour authorities to set surcharges—subject to the regulations—and deny access in order to establish the condition of access connection. If the surcharge and refusal of access provisions were to be replaced with inspections and detentions only, the connection to the port would be lost. This is important, because vessels visiting a port are not in innocent passage. This means that associated restrictions on the exercise of jurisdiction, as set out in UNCLOS, do not apply. The Bill requirements will therefore apply only where the UK has jurisdiction over visiting ships and where the right of innocent passage does not apply. This would not be the case if the connection to the port is lost, as these amendments propose.

This role is not beyond the realms of harbour authorities' capabilities, as they administer charges across many other issues. Beyond this, harbour authorities will not have to play a very significant enforcement role at all. The MCA will be the government agency responsible for detailed inspections, investigations and prosecutions, on behalf of the Secretary of State—in Scotland, that power would lie with the Lord Advocate. The harbour authorities will not be responsible for checking whether national minimum wage equivalent is actually being paid. As noted, harbour authorities can be directed by the Secretary of State to exercise their powers, or indeed not to exercise their powers, accordingly. The Bill simply would not work if we were to alter the compliance process in the way suggested. It has been designed to respect our international obligations, while assigning appropriate roles to ports and the MCA.

I turn to Amendment 24 on the detention of vessels. The Government's view is that the detention of vessels would be a disproportionate and inappropriate mechanism in these circumstances. Detention provisions are provided for in legislation implementing international conventions dealing largely with matters relating to health and safety and pollution. It would therefore be inconsistent to use detention provisions in this case. Indeed, we are satisfied that we have the right compliance process of surcharges and refusal of access by ports, which means that any detention provisions would not be necessary.

On Amendment 28, regarding conflicts of interest and guidance, the Government are confident that there are no conflicts of interest. I would be very grateful if noble Lords want to send further information drilling down into how those conflicts of interests would manifest. Harbour authorities' primary role under this Bill is to receive declarations—to receive a piece of paper. They will not be involved in checking the validity of those declarations. The form and nature of the declarations will be set out in secondary legislation, so they will not be defined by the harbour authority. This will, of course, all be following consultation. It is not envisaged that these declarations will include commercially sensitive information. The Secretary of State will have the power to direct the harbour authority in the exercise of its powers under the Bill. That also will safeguard against any potential conflict. It is not new to have a duty that is perceived to be in conflict with a harbour authority's commercial position. Harbour authorities are well versed in fulfilling their wide and varied existing statutory functions and duties independently of their commercial interests, or those of associated companies.

Finally, Amendments 29 and 32 to 34 relate to the powers of direction that would be available to the Secretary of State. We have touched on these before. We are seeking back-up powers for the Secretary of State to issue directions to exercise their powers, or not, in line with the wider policy intention. A particular area in which it is expected that the direction-making power may be needed is in respect of the surcharges under Clause 7. For example, if a harbour authority declines to charge a surcharge, the Secretary of State may need to step in.

In addition to the powers to require a harbour authority to exercise its powers, the Secretary of State also has the power to direct that the harbour authority does not exercise its powers. I think I have already said that, so forgive me for repeating it. I do not think that adds anything further to the debate.

That being said, now that we have the DPRRC report we need to go back through the concerns it raised to ensure that we are content with what we are proposing, and indeed whether alternatives might keep the DPRRC happy—and of course, more importantly, to keep your Lordships happy. We will look at that again and we will write back to the DPRRC ahead of Report. We will have further discussions on that.

There have been a number of further mentions of different international considerations—the OECD common principles, for example. I will address those in writing. Obviously, as your Lordships know, the Government's intention is not to share their legal advice, but we will be able to set out our position on how we feel this Bill works with other international obligations that we have.

Lord Tunnicliffe (Lab): The noble Baroness promised to write letters. Will it be a common letter to all of us?

Baroness Vere of Norbiton (Con): Yes. I tend to do one letter addressed to all noble Lords present. A copy will be placed in the Library. It will be lengthy, but it will be set out by topic and cover, with as much detail as I can, things that I have not been able to cover today and any additional information that would be helpful to noble Lords.

Lord Hendy (Lab): My Lords, I am grateful to all noble Lords who have spoken in the debate, and to the noble Baroness for her explanation and response to the points raised in this group of amendments. I am very grateful in particular that she will look again at the Delegated Powers and Regulatory Reform Committee's recommendations. I should have said earlier that I am a member of that committee.

I wonder whether, having heard the almost unanimous view expressed this afternoon about the effective delegation of authority to harbour authorities, the Government would be prepared to look at that a little further. Having said that, I beg leave to withdraw my amendment.

Amendment 4 withdrawn.

Amendments 5 to 12 not moved.

Clause 3 agreed.

Clause 4: Nature of declaration

Amendments 13 to 15 not moved.

Clause 4 agreed.

6.30 pm

Clause 5: Requirement to provide information

Amendment 16 not moved.

Clause 5 agreed.

Clause 6: Inspections

Amendment 17 not moved.

Clause 6 agreed.

Clause 7: Imposition of surcharges

Amendments 18 and 19 not moved.

Clause 7 agreed.

Clause 8: Objections to surcharges

Amendments 20 to 22 not moved.

Clause 8 agreed.

Clause 9: Refusal of harbour access for failure to pay surcharge

Amendments 23 and 24 not moved.

Clause 9 agreed.

Amendments 25 and 26 not moved.

Clause 10 agreed.

Clause 11: Guidance and directions

Amendments 27 to 35 not moved.

Clause 11 agreed.

Clause 12: Regulations

Amendments 36 and 37 not moved.

Clause 12 agreed.

Clause 13 agreed.

Amendment 38 not moved.

Clause 14: General interpretation

Amendment 39 not moved.

Clause 14 agreed.

Clause 15 agreed.

Bill reported without amendment.

Committee adjourned at 6.32 pm.