Vol. 824
No. 54

Tuesday
18 October 2022

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2022-10-18

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

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

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

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

House of Lords

Tuesday 18 October 2022

2.30 pm

Prayers—read by the Lord Bishop of Oxford.

Oaths and Affirmations

2.36 pm

Baroness Howarth of Breckland took the oath, and signed an undertaking to abide by the Code of Conduct.

Several other noble Lords took the oath or made the solemn affirmation.

Nitrate-free Bacon and Ham

Question

2.40 pm

Asked by ***Baroness Ritchie of Downpatrick***

To ask His Majesty's Government what steps they are taking to support the production of nitrate-free bacon and ham in England.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I declare my farming interests as set out in the register.

Nitrates are approved additives for use in pork products. The Government consider that existing levels of nitrates in food products are sufficiently protective of consumers. We are keen to support innovation in the food industry. Where individual companies use authorised alternatives, it is ultimately a commercial decision. The Government's position is that any intervention should be restricted to areas where there are potential health and safety concerns based on available evidence.

Baroness Ritchie of Downpatrick (Lab): My Lords, I thank the Minister for his Answer, but I ask him: will the Government consider a review of regulation surrounding the use of nitrites in food production, following action taken in the French National Assembly to bring in legislation to minimise the use of nitrites in cured meats? Given the association of nitrites with a heightened risk of bowel cancer and that risk-free alternatives are widely available, would the Minister support a ban on the use of these chemicals in food production? When he is next in Northern Ireland, will he visit and tour factories beside me in Downpatrick that use innovation to produce nitrite-free food?

Lord Benyon (Con): I think the company to which the noble Baroness refers produces something called Better Naked, which is a very worthy product and has a lot of innovative approaches. However, we are following the evidence on this: while the IARC published a report that said that processed meats can be carcinogenic in some cases, it does not make a direct link between the consumption of nitrates and nitrites in processed meats and colorectal cancer. We must be very mindful of the fact that these products in meats inhibit the growth of conditions such as clostridium botulinum, which can of course be fatal.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend accept that the pig industry is suffering a crisis that is unprecedented in its history? Will he join me in regretting the closure of the Vale of Mowbray facility at Leeming Bar—a 100 year-old facility involved in world-famous pork pies—with the loss of 171 jobs? What future does he see for the pig industry in this country going forward?

Lord Benyon (Con): We want a good future for the pig industry, which has struggled for many years. As a Government we have stepped in where we can: we introduced more visas for butchers, private storage aid and the slaughter incentive payment scheme. Over 760 tonnes of pigmeat was put into the Government's freezer storage plan, and this has ended, to the greatest extent, the backlog of pigmeat that was on farms.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, nitrates are found in many foods and can be harmless, but when used to cure bacon, which is then cooked and ingested, they can result in cancers. Nitrate-free bacon represents only about 10% of current sales. We do not need chemicals to produce delicious bacon. Why are the Government not encouraging other nitrate-free methods of production? Why would the public choose something that will harm them over a non-toxic alternative?

Lord Benyon (Con): The public are informed about what is in their food by the labelling. Any nitrates or nitrites that are in food do appear on the label, so the public can make an informed choice. But I repeat what I said to the noble Baroness, Lady Ritchie, about the importance of getting a balanced view: there is not a clear scientific link between colorectal cancers and these additives. Of course, we must be mindful that these additives protect consumers from conditions such as clostridium botulinum, which, I repeat, can be fatal.

Lord Bellingham (Con): My Lords, I declare my interests as set out in the register. Is the Minister aware that the vast majority of large pig producers in East Anglia set the highest possible standards and have also done all they possibly can to reduce run-off into watercourses? Surely, the challenge now is to make sure that smaller producers also follow these very high standards?

Lord Benyon (Con): My noble friend is absolutely right: we want to see improved animal welfare standards, productivity and growth across the agricultural sector. In East Anglia, where the majority of our larger pork enterprises exist, huge strides have been taken. As of yesterday, the pork price was about £1.98 per kilo, which is considerably up on where it was last February, when it was around £1.37. This is a massive improvement, but many pig producers are still finding that their

[LORD BENYON]
costs of production exceed their income. The Government are doing all we can to make sure that they are a profitable part of our farming sector.

Lord Bird (CB): If noble Lords will forgive me, I will take this opportunity to "do a Lord West". The noble Lord seems to be able to get ships in everywhere. Can I get poverty in here? Is the Government going to bring home the bacon for the neediest among us?

Noble Lords: Oh!

Lord Benyon (Con): The noble Lord is a genius for how he wove that in. He is absolutely on the same page as the Government, who are doing all we can to help household income across the board. Compared with previous decades, food has been a relatively small element of household expenditure, but it is nevertheless significant and it has been affected by inflation. But just concentrating on food is not enough; we need to look at the whole area of household expenditure, which of course includes energy and other elements.

Baroness Hayman of Ullock (Lab): My Lords, while we must not cause alarm by overstating any risks posed by nitrates and nitrites in bacon and other cured meats, we cannot deny that a growing body of evidence links these chemicals to various illnesses. Although we may not have an appetite for a full ban, many other countries are taking clear steps to limit the use of nitrates and nitrites in pork products. So does the Minister see any future reputational risks for UK products if other countries move forward and adopt more stringent measures and we do not?

Lord Benyon (Con): We work very closely with the European agency that does this. It is quite wrong for Ministers to make sweeping decisions on this; it has to be on the basis of evidence. The Food Standards Agency is the lead on this, and it has given Ministers clear information. The 2015 IARC report stated that how cancer risk is increased by processed meat consumption is "not yet fully understood". How processed meat is cooked—for example, the temperature—and some natural components in the meat itself could be contributing factors. As the noble Baroness said, other foods naturally have large amounts of nitrates: chard and broccoli are but two.

Plurilingual and Intercultural Education

Question

2.49 pm

Asked by ***Baroness Coussins***

To ask His Majesty's Government what steps they intend to take in response to the recommendations of the Council of Europe of 2 February (CM/Rec(2022)1) on the importance of promoting plurilingual and intercultural education to support democratic culture.

Baroness Coussins (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and I remind the House of my language interests, as set out in the register.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, languages education is an important element in developing a democratic and socially just society. We are incredibly fortunate to have English as our lingua franca, but we also value familiarity with other languages and cultures. Highlighting the interconnectedness of languages and increasing the profile of community languages is part of our new language support offer from 2023. Revised GCSE content will make languages more accessible and improve uptake. New measures will increase the number of language teachers.

Baroness Coussins (CB): My Lords, I am pleased, of course, that as one of the 47 members of the Council of Europe, the UK signed up to this recommendation and I am encouraged by the positive words from the Minister. But the Government also decided to withdraw the UK's membership of the council's European Centre for Modern Languages. This means that our teachers no longer have access to a wide range of valuable professional development opportunities, which, at a time of MFL teacher shortage and under-recruitment, seems perverse. Will the Minister agree to reconsider UK membership of the ECML as one of the specific measures we could take to back up our in-principle support for this recommendation?

Baroness Barran (Con): My understanding is that the decision to withdraw from the council's European Centre for Modern Languages was taken over a decade ago and we have no plans to rejoin at this time. We currently fund teacher continuing professional development via the National Centre for Excellence for Language Pedagogy. To encourage recruitment for the academic year 2023-24, we have increased the language bursary to £25,000 and we are also offering a prestigious scholarship worth £27,000 for French, German and Spanish trainees.

Lord Addington (LD): My Lords, will the Minister give us some idea of the Government's assessment of the cost of not having sufficient people understanding other modern languages—or are the Government happy to have our heads eternally bowed to Google Translate?

Baroness Barran (Con): I am not aware of whether those costings have been done, but if they have, I am more than happy to share them with the House.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I congratulate the Prime Minister on attending in person the first meeting of the European Political Community, in Prague, which discussed security and energy. Will the Minister join me in encouraging the Prime Minister—whoever he or she may be, and from whichever party—to attend the Council of Europe summit to be held in Reykjavik in May next year?

Baroness Barran (Con): I do not believe our Prime Minister needs any advice on that matter.

Baroness Hooper (Con): My Lords, given that English is the most spoken language in the world and that Spanish, as a first language, is the second most spoken language, will my noble friend reassure me that priority will always be given to the teaching of Spanish?

Baroness Barran (Con): I thank my noble friend for her question. I am sure she will be pleased, as I am, to note that Spanish is now the second most popular modern foreign language at GCSE with almost 110,000 entries in the academic year 2020-21.

Lord Alton of Liverpool (CB): My Lords, does the noble Baroness agree that the BBC World Service is a major promoter of democratic culture and the English language worldwide? Does she think that, at a time when courageous protesters in Iran, especially women, are seeking reform and change in that country—over 1 million of whom listen to BBC radio on the World Service—this is a good time to be cutting and removing those services for people who are so desperate to see the promotion of democracy?

Baroness Barran (Con): Like all Members of the House, I have the deepest respect for the courage of very young women in Iran, in particular, and the process they have led. I am sure my colleagues at the Foreign Office are listening to the noble Lord's comments.

Lord Anderson of Swansea (Lab): My Lords, a knowledge of foreign languages opens doors, particularly for business. What encouragement, in the form of in-service training or financial help, is given to the private sector to work with government in order to ensure that we encourage UK plc to open doors through the use of language?

Baroness Barran (Con): Obviously, the Government support continuing professional development for people in work—this includes our commitment to a lifelong loan entitlement—so that we as an economy and as workers within that economy can stay agile to the requirements, whether languages or more broadly.

The Earl of Clancarty (CB): My Lords, focusing on the "intercultural education" aspect of this Question, can the Minister say what assessment has been made so far of the loss of value represented by the lack of reciprocity in the Turing scheme?

Baroness Barran (Con): I do not have a formal assessment of the impact of the lack of reciprocity, but I am very pleased to share with the House that around 38,000 young people will be funded to take part in the Turing scheme this year, going to 150 locations, and that 52% of those young people come from disadvantaged backgrounds. The noble Earl understands better than I do that you cannot make a direct comparison with the Erasmus scheme, but I remind the House that in its last year 17,000 young people took part.

Baroness Janke (LD): My Lords, does the Minister agree that the study of a foreign language provides unique opportunities to young people and to our country, given the growing isolation that has followed Brexit? Is she concerned that the lowest take-up of languages is in the poorest communities? What action will the Government take to ensure that young people in these communities receive their proper entitlement to such important educational opportunities and are not disfranchised from the international identity by recent Brexit developments?

Baroness Barran (Con): The Government are concerned about the level of uptake of modern foreign languages in schools generally, and specifically in the communities to which the noble Baroness refers. That is why we announced in our schools White Paper that we are setting up a network of language hubs, introducing new continual professional development courses for language teachers at both primary and secondary level, and have undertaken a review of the modern foreign languages GCSE curriculum and syllabus, which we think will improve uptake.

Baroness Royall of Blaisdon (Lab): My Lords, I remind noble Lords of my entries in the register. The Minister mentioned some facts and figures to do with the Turing scheme. Can she assure us that all students who spend a year abroad as part of their studies at university do not have to pay any extra and that their universities do not have to subsidise them in any way as a result of the change from Erasmus to the Turing scheme?

Baroness Barran (Con): I will need to confirm the exact details of that in writing to the noble Baroness.

Lord Geddes (Con): Does my noble friend agree that the reciprocal to this Question is equally applicable regarding the teaching of English to speakers of other languages? I declare an interest as the non-remunerated life president of Trinity College London.

Baroness Barran (Con): I absolutely agree with my noble friend. That remains an area of important focus for the department.

Baroness Chapman of Darlington (Lab): My Lords, languages unlock so many opportunities for young people, and a weight of research suggests that they positively affect all other subjects a child is studying. In light of this, we on these Benches propose after-school clubs for every child, which schools can choose to use—and often do use—for fun, accessible language provision. Will the Government consider adopting a similar measure, especially given the raging cost of living crisis?

Baroness Barran (Con): As I mentioned, the Government's focus is really on trying to improve the uptake of languages, particularly at GCSE level. That is why we have piloted the new curriculum. We are optimistic that it will be much more engaging for

[Baroness Barran]
young people. That is in no way to diminish the value of after-school clubs, but the Government's focus is on the former.

Ukraine: NATO
Question

2.59 pm

Asked by ***Lord Campbell-Savours [V]***

To ask His Majesty's Government when they next intend to meet NATO officials to discuss progress in the conflict in the Ukraine.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the United Kingdom continues to engage closely and regularly with our NATO allies as a key part of our response to Russia's illegal invasion of Ukraine. The Secretary of State for Defence met his NATO counterparts on 12 October, where allies reiterated unequivocal support for Ukraine's sovereignty and territorial integrity. We will continue to act alongside our NATO allies to counter Russian aggression.

Lord Campbell-Savours (Lab) [V]: My Lords, Ministers repeatedly blame the war for the economic crisis, and I agree. Can we have an assurance that with rampant inflation here at home, volatility in the international money markets and millions worldwide, including in the United Kingdom, facing deprivation, there are no circumstances whatever in which the UK would dispatch in isolation, or with others in NATO, combat military forces of any nature to engage in military action in Ukraine? We need to protect the international economy and seek to restrain Russian's infrastructural bombing campaign before it is too late.

Baroness Goldie (Con): As the noble Lord will be aware, since the illegal invasion of Ukraine occurred the United Kingdom has been at the forefront of assisting the country in defending itself. We have been working closely in conjunction with our NATO partners and with our other bilateral partners and friends within the EU. That concerted effort is the best way, I think, to seek to reject President Putin's illegal incursion; certainly the resolve of all countries to support the rule of law and respect the right of sovereignty is determined and resolute.

The Lord Bishop of St Albans: My Lords, will the Minister give us an update on Russia's use of drones yesterday, which caused such devastation among civilian populations? Is there any way we can give additional support to Ukraine to shoot these down? Is it not time that we urgently seek an international treaty on the use of drones, for everybody's sake?

Baroness Goldie (Con): I agree with the right reverend Prelate that the consequences of the drone attack on Kyiv have been devastating. I think that everyone has watched with horror as again civilians are targeted, people are killed and others are seriously injured. The right reverend Prelate will be aware that part of the United Kingdom's support to Ukraine has been air defence systems. NATO, plus other bilateral states, with Ukraine, have been doing their best to support Ukraine in what it needs. We are cognisant of the danger presented by this form of attack by Russia. We are also aware that the equipment supplied to date has been greatly assisting Ukraine in seeing off this kind of threat.

Lord Howell of Guildford (Con): I think one way of discouraging the use of these murderous drone weapons supplied by Iran is to make it clear to Iran that this could have very serious and disastrous consequences for Iran itself. I want to ask my noble friend whether she would encourage at any such meeting that is going to take place a very careful examination of the changing position of China and foreign policy experts in Beijing. Has she heard reports that China is becoming increasingly worried that its control and influence over Mr Putin is diminishing, and that it is very fearful that he is going to use tactical nuclear weapons? Will she make sure that we make full use of any change of opinion in China? Without China's support, there really is a good chance that Moscow might change direction.

Baroness Goldie (Con): My noble friend makes a very important point. I reassure him that the UK continues to engage with China at all levels in Beijing, London and the United Nations to make clear that the world is watching what China chooses to say and do and whether its actions contribute to peace and stability or it chooses to fuel aggression. We expect China to stand up for Ukraine's sovereignty and territorial integrity and to uphold its commitment to the United Nations charter. It has an important role to play and we want to be sure, as a sovereign state, that we keep open the lines of communication so that we can convey the very relevant points to which my noble friend refers.

Lord Morris of Aberavon (Lab): My Lords, as a once young naval soldier in Germany and a former Defence Minister, I fully support western Governments in providing arms to Ukraine. Since membership of NATO involves mutual obligations well beyond this, will the Government publish a paper spelling out the pros and cons if NATO membership is granted to Ukraine?

Baroness Goldie (Con): As the noble and learned Lord is aware, the United Kingdom is sympathetic to Ukraine's desire to join NATO. We are supportive of that aspiration, in line with the 2008 Bucharest summit declaration. However, at the end of the day, any decision on membership is for NATO allies and for aspirant countries to take.

Baroness Smith of Newnham (LD): The right reverend Prelate mentioned the drone attacks yesterday. What assessment have the Government made of the impact on Ukraine of the loss of power—about 30% of power has been lost—and is the West able to support Ukraine to keep the lights on?

Baroness Goldie (Con): As the noble Baroness will be aware, the best that we can do, along with our allies and partners, is to support Ukraine in the defence of its territory in trying to see off the barbaric and illegal attacks to which it has been subjected by Russia. The principal concern has probably been the Zaporizhzhia nuclear power plant, for understandable reasons. We welcome the efforts of the IAEA and United Nations staff to be on site, and we hope that will enable a robust inspection to be concluded. We are cognisant of the risk, and we will do everything that we can to continue to help Ukraine to see off the threat.

Lord Houghton of Richmond (CB): My Lords, the interest of the House in the progress of the military situation in Ukraine is entirely understandable, but can the Minister reassure the House that the Government recognise the two very separate objectives of conflict termination and conflict resolution, and that it is not in policy formulation that we aspire to resolve the conflict through military means alone?

Baroness Goldie (Con): It has been clear from the outset that our desire—or mission, if you like—was to support Ukraine in its attempts to defend itself against this illegal aggression and invasion of its sovereign territory. That is our role, as it is the role of NATO and other partners. As to the future, and whether the conflict can ever be resolved and negotiations embarked on, that is absolutely for Ukraine to determine.

Lord Coaker (Lab): Was it not one of the beliefs of Putin, following his illegal invasion of Ukraine, that the members of NATO would split and start arguing among themselves? Is not one of the Government's prime objectives, supported by all of us, that we maintain NATO's unity in the face of that aggression? Can the Government reassure us that, at every opportunity, they will reiterate that to all our NATO allies?

Baroness Goldie (Con): The noble Lord's point is well made. He will realise, from the evidence available to us, that in the actions of NATO members—not only in their regular engagements but at the summit in Madrid and the consequent developments from that, whether it was the comprehensive assistance plan or the development of DIANA, the accelerator for the north Atlantic—there is an absolutely united resolve to support countries that find themselves the victims of illegal activity, illegal aggression and illegal invasion. There is no question that the resolve of the member states of NATO is absolutely steady and stable. We are standing shoulder to shoulder to ward off evil—because that is what we are talking about.

Lord Selkirk of Douglas (Con): My Lords, will the Minister accept that there have been very staunch attacks on civilians and a great number of attacks on hospitals, as well as attacks on schools and stations? When these are all put together, is it not very difficult to try to imagine that these are anything other than crimes against humanity?

Baroness Goldie (Con): I have no hesitation in agreeing with my noble friend. We have all been appalled by the barbarism of Russia's attacks in Ukraine, not least in Kyiv. It is quite clear that deliberate attacks on civilians and civilian infrastructure are war crimes, and those responsible will be held to account. The ICC, with support from countries such as the UK, is doing a remarkable job in ensuring that crimes are investigated, evidence is gathered and the basis is laid for successful prosecutions.

Lord Campbell of Pittenweem (LD): My Lords, what concrete steps have the Government taken in their efforts to restore the stocks of missiles and other weapons which we have generously and properly supplied to the Government of Ukraine?

Baroness Goldie (Con): As I have observed to the noble Lord before, we continually manage and analyse our stocks of weapons and munitions against commitments and threats. We also review industrial capacity and supply chains, both domestically and internationally. These considerations have informed the numbers of munitions granted in kind to the armed forces of Ukraine and their avenues of supply.

Menopause

Question

3.10 pm

Asked by ***Baroness Thornton***

To ask His Majesty's Government what steps they are taking (1) to support women going through menopause, and (2) to increase general awareness about the challenges it poses.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): My Lords, the menopause is a priority area in the women's health strategy. The NHS has a programme to improve clinical menopause care in England and reduce disparities in access to treatment. It is also developing an education and training package on menopause for healthcare professionals. We have appointed Professor Dame Lesley Regan as the women's health ambassador for England. Her role includes raising awareness of women's health issues, including menopause.

Baroness Thornton (Lab): I thank the Minister for that Answer. Today is World Menopause Day. My Question is broader than those which concern only the medical response, so I would regard the Minister's response as inadequate. Given the doubling of menopause-related discrimination claims in a year, showing that we are losing working women from the economy who are otherwise at the peak of their skills and experience, should the Minister not counter employer mismanagement of a transition that all women go through by requiring the HSE and the EHRC to publish advice on this urgently, as neither of them do so?

Lord Markham (Con): I thank the noble Baroness. I agree that it is fitting that we should be having this debate today, World Menopause Day. I completely

[LORD MARKHAM]
agree with the importance of this subject for employers, productivity and the economy as a whole, as well as for women's health.

As I am sure the noble Baroness is aware, 10% of people end up leaving their job during menopause. That is a real loss to business and those individuals. That is why, through our strategy, we are appointing an employee champion in this area. Their job will be to reach out to employers and work with them to make sure that this subject is very high up on their agenda. As an employer myself, in my personal entrepreneurial life, I agree that it is an area of utmost importance.

Lord Patel (CB): My Lords, women with post-menopausal symptoms are disadvantaged by not getting the treatment they need due to restrictions put on the treatments by local formularies. Does the Minister agree that we need a national formulary where all hormone replacement therapy treatments are available to women who need them, and that that national formulary should be made mandatory? If he does not agree, why not?

Lord Markham (Con): I agree that we want to make sure that there is national access. I understand that, whereas we had 30% take-up as long ago as the 1990s, with the incorrect scare around some of the causes since then, that rate is only about 15% today. There is clearly a need to increase awareness and the ability for people to receive treatment.

I am aware of the issue around formularies; I have heard that they believe that it can be resolved. I will take it away and write to the noble Lord to make sure that it is properly dealt with.

Baroness Brinton (LD): My Lords, in the initial Answer that he gave to the noble Baroness, Lady Thornton, the Minister said that access to support during the menopause is vital. Does he therefore agree that, for health and economic reasons, the menopause should be added to the quality and outcomes framework to encourage doctors to investigate and treat patients who present with symptoms associated with the menopause?

Lord Markham (Con): Yes. The noble Baroness will be aware that only 55% of women showing symptoms felt able to talk to GPs about it and another 30% felt that there were delays in diagnosis. Clearly, more work needs to be done. I know that it is part of the core curriculum—that is not the proper phrasing; please excuse me. The whole point of appointing a women's health ambassador is to make sure that every avenue and channel is used to maximise access, whether at the level of GPs or as part of the education or formularies.

Baroness Gale (Lab): My Lords, what consideration has been given to allow women who need treatment for the menopause to have free prescriptions, as they do in Wales, for example, where no one has to pay for any prescriptions, and in Scotland and Northern Ireland? Only in England are there prescription fees. Free prescriptions would be a great help to women and would remove a financial barrier to accessing treatment.

Lord Markham (Con): With constraints on the public purse, I like many others believe that targeted support is probably the best form of support, and 60% of women receive it free. At the same time, as I am sure the noble Baroness is aware, to prevent it being a barrier to the others, next year we are introducing a fixed cap so that the costs should be a maximum of only £19 per year, which I believe will not act as a disincentive to the 40% who can afford to pay.

Lord Kakkar (CB): My Lords, I draw attention to my registered interests. The menopause is associated with an increased risk of heart attacks and strokes as a result of falling oestrogen levels. Despite this, women are consistently less well represented in cardiovascular clinical research than men. Is the Minister content that the ongoing publicly funded research effort in cardiovascular disease will be able adequately to address the challenge of postmenopausal heart disease?

Lord Markham (Con): I will not pretend to be able to give a detailed answer at this point. I am aware that part of the funding through the health and wellbeing fund is to make sure that women's reproductive health is included in some of those research programmes, but I will look specifically at the cardiovascular point and respond in writing.

Baroness Hussein-Ece (LD): My Lords, is the Minister aware of the report from the Fawcett Society which estimated that 900,000 women have left the workforce and countless others are reducing their hours and avoiding promotion because of their menopause symptoms? The Minister partially addressed this in response to the noble Baroness earlier, but what plans do the Government have, if any, to stem the flow of those experienced women leaving the workforce, which has an ongoing impact on equalities and the ability of women to pursue their careers in the way that men do?

Lord Markham (Con): I again agree with the point. Helpfully, the noble Baroness, Lady Thornton, pointed me towards the excellent Fawcett Society report this morning, for which I am grateful. It makes for a very interesting read. As I mentioned earlier, the statistic that 10% of women during the menopause end up leaving employment is a telling one. That is what the appointment of health ambassador for the employers is all about. I hope that noble Lords will see the seriousness with which I take this subject, because it is vital not only to women but to the economy and business as a whole. This time next year—if I am still here—I commit to doing a stocktake report on the progress that we have made on this over the year, because I think it is vital.

Baroness Chakrabarti (Lab): My Lords, I am grateful to the Minister for the very serious tone of his response to this Question. I declare an interest which is not in the register but is self-evident from my date of birth, which is public information. Will he readdress that part of my noble friend's question that was about the EHRC and whether that public body has a role in setting out guidance for employers? Will he, in the

light of his commitment on this subject, suggest that the Equality Act needs to be at the very least enforced and possibly beefed up in this regard?

Lord Markham (Con): I apologise if I have not answered the point on the EHRC satisfactorily and it is best that I follow it up in writing to make sure that I do so.

On the Equality Act, as I am sure everyone is aware, menopause should be covered as a protected characteristic within the terms of discrimination, be it on grounds of sex or age, and I believe there are cases where it has been shown to be used correctly in that regard, so the capability is there. However, if there is not adequate reason for redress under the Equality Act, that would obviously need to be looked at in the future.

Energy Prices Bill

First Reading

3.20 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Arrangement of Business

Announcement

3.21 pm

Baroness Williams of Trafford (Con): It may be for the convenience of your Lordships if I say that the House will have an opportunity to debate the Energy Prices Bill at Second Reading tomorrow. The Committee and Report stages will take place on 24 October, with Third Reading on Tuesday 25 October. If noble Lords wish to table amendments to the Bill, they may do so from this afternoon, once the Bill is printed, until 4 pm on Thursday 20 October. As noble Lords will know, amendments are tabled with the Public Bill Office in the usual way, and a message will appear on the annunciator when tabling opens today.

Looking ahead, the deadline for amendments at Report stage will be 30 minutes after the conclusion of Committee on Monday 24 October. Third Reading amendments should be tabled on Monday evening for Third Reading the following day. As usual, the Government Whips' Office and the Public Bill Office are available to assist noble Lords with any detailed questions.

Replacement of the Chancellor of the Exchequer

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 17 October.

"The Prime Minister has taken the decision to appoint my right honourable friend the Member for South West Surrey, Jeremy Hunt, one of the longest-serving and most experienced parliamentarians, as her Chancellor. Their overriding priority is to restore financial stability in the face of volatile global conditions. We will take whatever tough decisions are necessary, and have made changes to the growth plan, which the Chancellor is waiting to update the House on as soon as this Urgent Question finishes."

3.22 pm

The Lord Privy Seal (Lord True) (Con): My Lords, I think this was originally a Question asked of the Prime Minister. There has not been a Prime Minister in your Lordships' House since 1963. I am not travelling in hope.

I will venture to make a comment on the matter. It is a central responsibility for any Government to do what is necessary for economic stability and the Prime Minister took the decision to appoint my right honourable friend Mr Jeremy Hunt, who is one of the longest-serving and most experienced parliamentarians and, I think, widely respected on all sides of your Lordships' House, as her Chancellor. His overriding priority is to restore financial stability in the face of volatile global conditions.

Baroness Smith of Basildon (Lab): My Lords, the Minister gave a much shorter answer than the one given in the House of Commons. I entirely agree with the first paragraph of his full Answer, which may surprise noble Lords. He said that,

"it is a central responsibility of any Government to do what is necessary for economic stability".

Yet in the last few weeks this Government announced the biggest tax cuts since 1972 and then, within a matter of weeks, the biggest tax increases since 1993—hardly stability. The answer to this fiasco is apparently to have the fourth Chancellor of the Exchequer in under a year, with a threat of—and I quote the Chancellor—"eye-watering" further tax rises and public service cuts. Given that mortgage rates are higher today than they were yesterday, what does the noble Lord say to those who, because of the instability largely created by the Government, now face monthly mortgage increases of hundreds of pounds?

Lord True (Con): My Lords, on the question of mortgages, everyone will be sensible to the position of those seeking to buy—I have a son seeking a mortgage at the moment—in conditions where interest rates are rising, which they are internationally. On the more general question, the Chancellor is clear that the Government will need to take some very difficult decisions on spending and tax to place the public finances on a sustainable footing. Sound public finances are the bedrock on which future economic growth will be built. There is no trade-off here; the mini-Budget moved further and faster than the market expected, but this Government remain committed to growth and supporting families and the most vulnerable in society. We will continue to seek to perform that duty.

Baroness Kramer (LD): My Lords, the change of Chancellor may have mollified the financial markets slightly and temporarily but ordinary people, frankly, are on the verge of being utterly distraught. In addition to soaring food prices, mortgages and rents, they have no idea at all what their energy costs will be after April next year. When will people know what the cost of energy will be after next spring, because they have to

[Baroness Kramer]
plan and think it through? It is also crucial for businesses to know as they sign contracts. Also, how much will the typical individual be paying in bills and additional public service cuts to cover the costs of the permanent scarring and damage that the Government's appalling handling of the last few weeks has caused to the UK economy?

Lord True (Con): My Lords, apart from the rhetoric, the main part of the noble Baroness's question was on energy prices. I hope that your Lordships have heard with delight that a Bill, for which I expect the support of both parties opposite, has been presented to the House on which we will debate these matters in some detail.

On the specifics, I say that continuing with the planned level of support between now and 2023 will remain a landmark policy. It will support millions of people through a difficult winter and means that they will not have to face bills as high as they would have been. A Treasury-led review has been announced into how we support energy bills beyond April next year; its objective is to design a new approach that will cost the taxpayer significantly less than planned while ensuring enough support for those in need, which I think all noble Lords would like to see. Equally, any support for businesses will be targeted to those most affected. This new approach will better incentivise energy efficiency. However, it is important to underline that the support with energy bills that my right honourable friend the Prime Minister so swiftly announced is going ahead, and what is being provided between now and next April will not change.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend not think that this is a moment for Members of Parliament to pull together? We are facing a global crisis caused by living on printed money on an immense scale—£450 billion—to deal with Covid. Frankly, it does not matter which Benches are in power; interest rates will go up very considerably as a result. Therefore, it is necessary for us to focus on the policy changes needed to protect those who will be unable to pay their bills. Playing politics with this does no credit to Parliament and nothing to help those who will be affected.

Lord True (Con): My Lords, my noble friend, with his enormous and widely respected knowledge as a former chairman of your Lordships' Economic Affairs Committee, makes a very strong point about the international situation. However, His Majesty's Government must deal with what they can do here at home. In offering protection, as we have discussed, we will also continue to seek to promote growth. We will launch investment zones—I hope that they will be widely supported by your Lordships—and shortly introduce minimum service levels for transport services in Great Britain, ensuring that militant strike action cannot derail economic growth and union bosses cannot hold working people to ransom.

The Lord Bishop of Oxford: My Lords, I welcome the new Chancellor, many of the measures announced yesterday, and the increased prospect of greater stability. I noticed that in his Statement yesterday he used the phrase "compassionate conservatism" several times. I wonder if the Minister would unpack that phrase a little, particularly on how the Chancellor will navigate to privilege the needs of the very poorest in society, perhaps especially in the outworking of the increase in benefits in line with price inflation, and in looking to see a decrease in the use of foodbanks in the coming years, which has escalated in major ways in the last decade.

Lord True (Con): I welcome the opportunity to follow the right reverend Prelate on that point. As I tried to say in my earlier answers, the position of those in need will be at the forefront of the Government's consideration. We know that people across the United Kingdom are worried about the cost of living; that is why the Government have announced £37 billion of support for the cost of living this financial year. In addition, the energy price guarantee and energy bill relief scheme are supporting households and businesses. We are also supporting millions of the most vulnerable households with £1,200 of on-off support. So far as specific decisions on benefits are concerned, they will have to wait for my right honourable friend's Statement.

Lord Anderson of Swansea (Lab): Is not the word "replacement" in the Question a euphemism for being ignominiously and publicly sacked? Was it really fair, just and moral to sack someone who was simply carrying out a jointly agreed policy with the Prime Minister?

Lord True (Con): My Lords, I explained the reasons for the appointment of my right honourable friend, and I believe that it was a good appointment.

Lord Walney (CB): Has not the Chancellor effectively announced a comprehensive spending review? Would it not be helpful and transparent to treat it as such across Parliament?

Lord True (Con): There will be a Statement by my right honourable friend; I believe that 31 October is still the date suggested. Work is proceeding at pace and I assure your Lordships that they will receive full information on that in the same way as the other House.

Lord Cormack (Con): My Lords, does my noble friend agree that we now have a wholly credible Chancellor who fully deserves our support, and that it is important that we have a wholly credible Government as well?

Lord True (Con): My Lords, I believe that we have such a Government.

Lord Hain (Lab): My Lords, was not the Chancellor's Statement yesterday just a bonfire of Truss economic insanities?

Lord True (Con): No. A number of very important steps have been taken by my right honourable friend the Prime Minister to which your Lordships are invited to assent. Yesterday, for example, I was very grateful for your Lordships' support for the Bill that was passed that concerned reversing the national insurance levy, and I am hoping for equal support for my right honourable friend's initiative in relation to the Energy Prices Bill.

Lord Sikka (Lab): My Lords, the Government's austerity policies have already caused over 334,000 deaths. Why is the Government looking for further cuts in public spending?

Lord True (Con): My Lords, I realise the economic stable from which the noble Lord came, but the central responsibility for any Government is to do what is necessary for economic stability, and that means that there will need to be reflection on levels of both spending and taxation. As my right honourable friend has made clear, there will be difficult decisions, there will need to be spending restraint, and departments will need to find further efficiencies, but more details will be set out in the medium-term fiscal plan, as I said earlier.

Social Housing (Regulation) Bill [HL]

Report

3.35 pm

Clause 1: Fundamental objectives

Amendment 1

Moved by ***Baroness Pinnock***

1: Clause 1, page 1, line 5, after "safe" insert ", energy efficient"

Member's explanatory statement

This amendment would require the fundamental objectives to include reference to energy efficiency.

Baroness Pinnock (LD): I draw the attention of the House to my relevant interests as a vice-president of the Local Government Association and as a local councillor. I start by reaffirming what I have said throughout our deliberations on the Bill: the Liberal Democrat Benches welcome and support the Bill's purpose. However, there is always room for improvement, as the tabling of 31 government amendments clearly illustrates.

The purpose of Amendment 1 in my name is to ensure that the principle—and thus importance—of energy efficiency is one of the stated priorities and objectives of the regulator. In Committee, the Minister was not convinced by my argument, saying that energy efficiency is being addressed as part of a separate refurbishment programme. I am pleased to see a positive change of heart and a willingness to accept the argument, as demonstrated by the fact that the Minister has added her name to my amendment.

Adding energy efficiency as a key objective enables the regulator to influence those providers who have so far failed to bring their properties up to a C rating. One-third of social houses are in this bracket, and homes in the UK are among the worst insulated in the whole of Europe. Soaring energy prices mean that, even with the Government's support until next April, homes will have energy bills that are on average two times higher than last winter's. That will put a huge strain on household finances.

Now that the Government have pulled the universal support for bills after April and support will be more focused, apparently, average bills will be around £4,000 and completely unaffordable for those on lower incomes. An urgent programme to improve energy efficiency in all homes is urgently needed, but more so in homes in the social housing sector. The noble Baroness, Lady Hayman, has a detailed amendment to this effect, Amendment 14, which has been co-signed by my noble friend Lord Foster of Bath. We wholeheartedly agree with it. Will the Minister commit to an urgent programme of improving the energy efficiency of homes in the social housing sector? After all, this will contribute to the Government's growth agenda in a positive way, and it could save each household around £800 a year.

Amendment 2 in my name relates to the ongoing scandal of fire and building safety remediation. This amendment proposes that the remediation programme in the sector should be monitored by the regulator. In her reply to the same amendment in Committee, the Minister said:

"The department is currently examining options for monitoring and reporting remediation progress in future, including cladding remediation. We strongly believe that decisions in this area should be based on thorough analysis of available options; this will ensure that the function is undertaken by those with the correct skills, expertise and capacity."—[*Official Report*, 6/9/22; col. 114.]

Right. Can the Minister provide information on the progress of this proposed monitoring? What reassurance can she provide to those in shared equity arrangements, some of whom are contacting me with grave concerns that they will have a significant liability as a consequence of the arrangements that have been made?

This group includes Amendment 31 in the name of the noble Baroness, Lady Hayman of Ullock, which seeks to put more accountability into the hands of tenants. Obviously, these Benches completely support that amendment.

Finally, I return to the important need for substantial energy-efficiency improvements in the homes of those least able to meet the enormous hike in energy prices. Both the amendment in my name and that of the noble Baroness, Lady Hayman, propose practical solutions. I look forward to the debate on this group and the Minister's response. I beg to move.

Baroness Hayman (CB): My Lords, I remind the House of my interests as set out in the register and also note that a member of my family has recently undertaken some work in this field. I thank the Minister; she has been very approachable between Committee and Report and has given a lot of time to this. I am grateful for her attempts to come to some sort of positive conclusion on this.

[Baroness Hayman]

As the noble Baroness, Lady Pinnock, said, with this group of amendments, we return to the need, which was supported around the House at all earlier stages of the Bill, for a concerted effort to improve energy efficiency in social housing and bring social housing tenants the benefits achieved in terms of warmer, safer, better-insulated and healthier homes and, of course, reduced cost. That cost reduction extends to the Government and taxpayers, who are currently spending eye-watering amounts of money to reduce bills this year, with no benefit for years to come.

I have Amendment 14 in this group, as the noble Baroness, Lady Pinnock, said. I am extremely grateful to the noble Lords, Lord Bourne, Lord Foster and Lord Whitty, who added their names to this amendment, demonstrating that cross-party support. I am sorry that the noble Lord, Lord Whitty, is still unwell and is unable to be with us.

Before focusing on my own amendment, I will say a few words about Amendment 1. I am delighted that the Minister is supporting the amendment from the noble Baroness, Lady Pinnock. It is always helpful to have the importance of energy efficiency made explicit in statute and I welcome that. But I have to say that even if such an addition to the duties of the regulator is technically necessary—and, of course, the Minister argued in Committee that it was not and would be only "symbolic"—it is certainly not sufficient to ensure that we make progress. I am afraid that the history of the last five years suggests that without a firm and specific legislative mandate, we will not make the step change that is necessary.

The Government first promised a consultation on improving energy-efficiency standards for social housing as part of the clean growth strategy in 2017. No such consultation emerged in the following four years, then in last year's heat and buildings strategy, the Government diluted their commitment to one of "considering" setting a long-term regulatory standard and consulting before bringing any such standard forward. Nothing more has happened, so we are back to where we were in 2017, and social housing tenants and the taxpayer have become increasingly exposed to the costs of much higher energy bills, some of which are not down to global factors but to domestic inaction on energy efficiency.

3.45 pm

When the Government have taken action and instituted programmes, it has been done in a piecemeal way that requires landlords repeatedly to bid for successive pots of match funding. Even if the latest wave of funding committed from the social housing decarbonisation fund achieved improvements to 100,000 homes, it would address less than 10% of the 1.4 million social homes that are rated below EPC band C. At that rate, we would not complete the job until 2075.

My amendment seeks to address the problem that, to date, there have been too many generalisations and not enough specifics; there have been too many disparate, short-term schemes and no long-term consistent strategy. We now need to move on from the Government's restated ambition that homes reach the standard of EPC band C and towards a detailed plan to achieve this. I accept the Minister's point, which she made in Committee, about the importance of consultation and of having an impact assessment, and I have now included both of those in the amendment before us today. But that consultation needs predominantly to consider how to address the specific challenges of meeting the ambitions which the Government have embraced.

My amendment includes suggested timetables for achieving low-carbon heat in social housing by 2035 and an energy efficiency target of EPC band C by 2030, and those are dates that the Government have proposed in their own strategies. It is, of course, up to the Government to set out a current strategy with all the targets and dates and a costed plan of how to get there, but my amendment aims to address the need for consistent leadership from government and for clarity of direction. This is absolutely essential to give confidence in the way ahead, both for social housing providers and for the private sector so that we can build reliable supply chains, the absence of which has been so damaging to past initiatives and continues to be a problem today.

Social housing is not, I recognise, the sector with the absolute worst energy efficiency, but it still has 1.4 million properties that fall below EPC band C and it has the highest proportion of tenants living in fuel poverty. Taking action in this sector will not only help those tenants but also help to scale up the market for a wider role for energy efficiency improvement and low-carbon heating; it will build up the skills base and provide employment and make a significant dent in the liability created by the energy price guarantee that we will be debating tomorrow. Last week, the noble Lord, Lord Callanan, referred to the need for a holistic approach to energy efficiency; this amendment is our attempt to bring that holistic strategic approach in the context of social housing, and I hope that the Minister, even at this late stage, may feel able to accept it.

Lord Bourne of Aberystwyth (Con): My Lords, I support the amendment in the name of the noble Baroness, Lady Hayman, and in doing so declare my interest as on the register and that I am a member of Peers for the Planet. As the noble Baroness said, the amendment has also been signed by the noble Lords, Lord Foster of Bath and Lord Whitty, and I am sure that I send the best wishes of the whole House to the noble Lord, Lord Whitty, for a speedy recovery.

Let me say something first about energy efficiency before moving specifically to the amendment. In the area of energy efficiency, we are presented with a sweet spot where we can do a considerable amount for so many different areas of activity. First, on energy security, which is clearly a problem for many countries, including our own, we can ensure that we garner and use our supplies sensibly. Therefore, ensuring that energy is sensibly used seems to me to be of paramount importance.

In addition, particularly in this area of activity, by ensuring that energy is conserved we are helping those who are least able to pay for it. That has become more important since the action of the new Chancellor. I applaud the action he has taken in general, but of course it will present a potential headache in six months' time for people who are unable to pay their energy bills. This is a way of helping in that regard.

In addition, by promoting energy efficiency we are providing jobs for people, which seems a sensible thing to do. Therefore I am unable to understand why the Government do not move to do something constructive in this area. It could be done with very little cost and would show a commitment to tackling climate change, which of course is the most important global area we are looking at.

The Government profess that they are supportive of action to combat climate change. Indeed, they are supportive of the Climate Change Committee and so on. But words are cheap. When it comes to action, we very often find the Government wanting and not providing leadership. I have the utmost respect for my noble friend the Minister. I know her well. I like her. I think she is a good Minister. But the Government are dragging their feet in this area and the lack of strategy is worrying. We have seen where a lack of strategy has led on the economy, and the same will happen in this area if we are not careful. Leadership has been left to Back-Benchers. There has been no leadership from the Government. They have not come up with their own proposals in relation to the amendment we are putting forward for a strategy. Have the Government proposed their own strategy? No. Are they against having a strategy in this area? It would seem so. I will happily give way to the Minister if she is able, at this stage, to say that she will bring forward a strategy at Third Reading —or later today, perhaps. But there is no strategy from the Government. There is a void here and that really is appalling.

We heard the Government say previously that there needed to be consultation, and this is one reason why noble Lords are being invited to vote against the amendment. The amendment provides for consultation. If the Government think it insufficient, let them say that the consultation should be carried out in a different way. But there is a practical, sensible provision for consultation here that I think has the support of the House. If it were not a whipped vote, it would probably go through nem con. I cannot understand why the Government are opposing this. It makes total sense. It is practical, pragmatic and sensible. If the Government do not like parts of the amendment, they should say what they are. As the noble Baroness said, this consultation has been on the stocks for five years. That is an awfully long time in terms of climate change. In another five years, we shall have lost Tuvalu to the world. If we sit back and do nothing, we are signing up to that.

So it is for the Government now to come forward with some leadership in this area. So far, there has been a void and it looks like that will continue. I strongly support this amendment. I invite the Government, even at this 11th hour, to say that they will support it, or come forward with an amendment of their own to ensure that we are able to do something constructive in this area. It is easy to say that you are signed up against climate change, but it is action that is needed, not just warm words.

The Lord Bishop of Chelmsford: My Lords, it is good to see this important Bill continuing its progression through this House. I begin by declaring my specific interests as the Church of England's lead bishop for housing and as a beneficiary of the Church Commissioners.

I add my support to Amendment 1 in the name of the noble Baroness, Lady Pinnock. As the energy crisis unfolds, it is surely wise to address the issue of energy efficiency in the social housing sector in a systematic way, by including it as a fundamental objective. Many who live in social homes are among those with the lowest incomes, so they are already struggling to meet their energy bills right now. In addition to immediate relief and support, we also need to address energy efficiency to ensure true affordability in the long term.

Amendment 2, tabled by the noble Baroness, Lady Pinnock, would secure continued accountability on progress to remove dangerous cladding and the remediation of fire safety work—an important part of ensuring that a tragedy such as the Grenfell tower fire cannot happen again. As the Archbishops' commission on housing, church and community rights states in its *Coming Home* report:

> "The Grenfell victims and bereaved families deserve a profound change of culture in the housing sector to make the safety of residential housing stock an absolute priority."

I also support Amendment 14, tabled by the noble Baroness, Lady Hayman. A government strategy setting out a plan of energy demand reduction for social housing will be a significant step towards reducing energy bill costs and meeting our net-zero targets. Our national commitment to net-zero carbon emissions by 2050 will be achieved only if we are intentional about building to high thermal efficiency standards.

I very much look forward to the Government's response on these important amendments, and to working with noble Lords across all Benches to address this nation's housing crisis. Clearly, there is consensus across the House on the importance of addressing the major problems we now face in our social housing sector.

Lord Foster of Bath (LD): My Lords, I too am delighted to support Amendments 1 and 14, and the others in this group.

As we have heard from other speakers, we are in an energy crisis. Despite the welcome government support —we will be debating that in more detail tomorrow—it is the least well-off who will be hit hardest, many of whom live in social housing. As the noble Lord, Lord Bourne, has pointed out, one of the best ways of helping such people is by reducing their demand for energy in the first place, not least by improving the energy efficiency of their homes, reducing bills, reducing excess winter deaths, improving the quality of life and, as the noble Lord pointed out, increasing the number of jobs.

The Building Back Britain Commission argues that energy bills can be reduced by at least £200 every year by improving a home's energy performance from level D to C. Many homes start at an even lower level, so the savings would be even greater. Improving the energy efficiency of social housing makes sense, so I am delighted that the Minister has agreed to support the amendment of my noble friend Lady Pinnock, which makes it a fundamental objective of the regulator to include reference to energy efficiency.

However, by itself, that does not go far enough. Amendment 14 fills the gaps, not least by requiring the Government to publish a strategy on reducing energy

[Lord Foster of Bath]
demand for social housing properties within 12 months of the Bill being passed, with appropriate consultation; requiring a programme to support social housing providers to encourage energy demand reduction; and, crucially, establishing in law a target which ensures that all social housing properties achieve EPC level C by 2030.

I have spoken many times in your Lordships' House about the need to establish the Government's own energy efficiency targets in law. I have argued that the retrofit industry that will deliver the Government's energy efficiency targets, but which has been let down by numerous failed schemes, has lost confidence. The industry has shrunk and energy efficiency work has fallen dramatically. It is the industry itself that argues that to be persuaded to invest in research, training and equipment, it needs the confidence that putting targets into legislation would give.

4 pm

Mr Andrew Warren, the chair of the British Energy Efficiency Federation, the body set up by the Government to keep them informed of the industry's views, said:

"On far too many occasions the energy efficiency industry has been made promises by Governments, only to see them withdrawn."

This has continued, despite commitments by the Government. It has resulted not just in continued uncertainty but

"the laying off of staff, the loss of investment and the closure of factories".

Legally binding targets are absolutely vital to enable this industry to feel confident enough to invest.

Surprisingly, having legally binding targets to drive forward action and make it more likely that future Governments will keep the action going has in fact been advocated by numerous Conservative Ministers, past and present. I have a list of over 60 such statements by the Government as to the value of legally binding targets. I refer to just one, from Mr Kwasi Kwarteng MP, when he was the Business Secretary, two posts ago. He said two years ago:

"Legislation has really shaped everyone's approach to decarbonisation given that without that legislative structure it will be very difficult to have any forward investment. I think that targets and legislation are really important in driving policy and actions."

This was backed up by a recent Defra document, which states:

"A legally binding long-term target gives a clear signal to industry of the direction of future government policy. This will increase investor confidence and encourage industry to invest in infrastructure and research that will"

drive innovation and

"improve the circularity of the economy."

Amendment 14, with its legally binding target of ensuring that all social housing properties achieve EPC C by 2030, would achieve what appears to be the view of Conservative Ministers as to what is needed. Yet, to date, all efforts to enshrine the Government's own energy performance targets in law have been rejected without any clear reason being given. Indeed, during an Oral Question on 9 June this year, I asked the noble Baroness, Lady Bloomfield of Hinton Waldrist, why the Government rejected my proposals, and she replied:

"I cannot answer that specific point".—[*Official Report*, 9/6/22; col. 1243.]

I hope that the Minister will explain today why the Government reject this approach or, better still, support Amendment 14.

Baroness Hayman of Ullock (Lab): My Lords, we believe that this is a very important Bill and broadly, it has our support. Today, we are discussing areas where we think it could be improved. I thank the Minister and her officials for the attention they have provided to our amendments and for the discussions we have had; they have been extremely helpful and we very much appreciate that.

My Amendment 3 would ensure that the panel is chaired by a tenant, and my Amendment 31 would ensure that the Secretary of State introduces "tenant satisfaction measures". I have tabled these amendments because we believe it is vital that tenants are at the centre of any changes being brought forward through this Bill, that they are consistently listened to and that their concerns taken seriously and acted upon when that needs to happen.

The Government have already committed to introducing a set of tenant satisfaction measures. We know that all stock-holding local authorities will need to be adequately funded by the Government to deliver this new statutory requirement to collect housing-related data, in line with the new burdens doctrine. I thank the Local Government Association for its support for my Amendment 31, on tenant satisfaction. Can the Minister and the Government look at these areas again as we move through the Bill?

The noble Baroness, Lady Pinnock, opened our debate, and we support her Amendment 2. As the right reverend Prelate the Bishop of Chelmsford said, talking about the continued importance of the removal of cladding and remediation around fire safety continues to keep that accountability on the face of everything that we are doing. We must not forget why we are here with the Bill in the first place.

I am pleased that the Government support Amendment 1 from the noble Baroness, Lady Pinnock, but, as other noble Lords have said, the energy demand and efficiency matters raised by various amendments in Committee and on Report are critical, and we believe that the Government need to give further consideration to them. Like the noble Lord, Lord Bourne of Aberystwyth, I do not really understand the Government's reluctance to act on this issue. We know that it can make a real difference not just to climate change and reducing energy use but to the cost of living crisis that we are facing. Given the recent warnings from the national grid about the prospect of power cuts this winter, the Government need to take this more seriously than they have.

I draw particular attention to Amendment 14, in the name of the noble Baroness, Lady Hayman. As we have heard, it requires the Secretary of State to publish the social housing energy demand strategy, which she introduced extremely thoroughly. She went into some detail about how this can be achieved, why we need it and the importance of this amendment, and other noble Lords have stressed that they strongly agree with the noble Baroness. So again I urge the Minister to take this away and think about whether it is something the Government could do more on.

Like other noble Lords, we are pleased that the Minister has been able to accept Amendment 1 in the name of the noble Baroness, Lady Pinnock, but it simply is not sufficient. I completely agreed with the noble Baroness, Lady Hayman, when she said that we need a long-term strategy, a detailed plan and—as the noble Lord, Lord Bourne, also said—leadership. That is what we need to drive this forward.

I will not go into any more detail—we discussed this a lot in Committee and we have heard from noble Lords today—but, if the noble Baroness, Lady Hayman, wishes to test the opinion of the House on this matter, she will have our full support.

Lord Young of Cookham (Con): My Lords, I apologise for missing my cue and interrupting the wind-ups. I will speak briefly to Amendments 2 and 14. On Amendment 2, veterans from the Building Safety Bill will recall that much of the debate focused on the impact on social housing of the costs of remediating the defects. This amendment would give the regulator a role in ensuring that this remediation was concluded satisfactorily.

Some of the information asked for in the noble Baroness's amendment is already available. Figures from the building safety programme published last week showed that all 180 high-rise social housing buildings, bar one, have had the dangerous materials removed. Remediation has started on the final building, but the cladding has yet to be removed. The Government initially expected remediation to be completed by June 2020, so, after a slow start, it seems that real progress has been made, which is welcome. But 37 privately owned blocks still have Grenfell-style cladding five years after the fire.

Turning to funding, can my noble friend confirm that the social sector ACM cladding remediation fund has enough resources to compensate the social housing sector for the costs incurred and that there will be no impact on its development programme or rents as a result of the remediation? It appears that 17 of its buildings will not receive any money from the fund; is there a reason for this? Is it because the remediation was funded by the developers? Are the Government planning to recoup any of the costs to the fund from those responsible? In that context, can my noble friend update the House on the ongoing discussions with the private sector to get it to accept its responsibility for this debacle, with its tragic consequences?

The noble Baroness's amendment, however, goes further than the removal of unsafe cladding and refers to

"the remediation of other fire safety defects in social housing."

Will my noble friend say what progress has been made on that front, and in particular how much that will cost and how it will be funded without impacting on rents or development? Presumably the work was undertaken at the same time as the cladding removal, so this information is available.

While the amendment has provided a useful peg for a debate, I am not sure we need it in the Bill. The removal of cladding and fire safety defects are clearly needed to make a building safe—covered in Clause 1—and the regulator already produces an annual report and accounts, which could include the information in the amendment, but it would be helpful to have some information about funding and the impact on the social housing sector.

Finally, turning to Amendment 14, I, along with others, am a planetary Peer—although flying at a much lower orbit than that of the noble Baroness, Lady Hayman. As the noble Lord, Lord Foster, said, the amendment requires targets and the targets are important, but they require funding. Ideally, the funding to pay for these energy conservation measures should not be at the cost to the new build programme—which brings me to the social housing decarbonisation fund, mentioned by the noble Baroness, Lady Hayman, which was set up to improve the energy performance of social homes in England, including local authority stock.

I know that that fund is the responsibility of BEIS and not of my noble friend's department, but it is directly relevant to the debate on energy efficiency in social housing. There was a manifesto commitment in 2019 of £3.8 billion to this fund over a 10-year period. Will my noble friend confirm that that is still the case and that the sum has not been eroded in the meantime? What has been the take-up and evaluation of that programme and what assessment has been made of the number of homes that the sum could improve the energy conservation of? If my noble friend cannot answer now, perhaps she will reply in writing.

Finally, I understand that the amendment may be unacceptable to my noble friend, but I wonder whether she can show a little bit of ankle in her reply and indicate that this is not the Government's final word on this and that as the Bill proceeds downstream in another place there might be the opportunity for further discussion and improvement.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, before I turn to the amendments, I will say a few words about the Bill more generally to frame the debate for the rest of today. It is now over five years since 72 people tragically lost their lives in the Grenfell Tower fire. The situation in which the residents of Grenfell Tower were placed was unforgivable. The Bill we are debating is a key step in the department's response to this tragedy, ensuring that social housing tenants are safe, have decent homes and receive a good service from their landlord.

I must also pay tribute to the work of Grenfell United, which has championed the Bill from the very beginning. The Bill appears before noble Lords today because of the commitment of Grenfell United to these critical issues, which affect millions of tenants up and down the country. It is right that we recognise specifically the leading role that Grenfell United has played.

I will begin with Amendments 1 and 14, and Amendments 33 and 36 in my name, which all relate to energy efficiency. Throughout the passage of the Bill, we have heard from many noble Lords about the importance of energy efficiency in social housing, and I thank the noble Baronesses, Lady Pinnock and Lady Hayman, for their amendments. I turn first to the

[Baroness Scott of Bybrook]
amendment in the name of the noble Baroness, Lady Pinnock, which advocates including energy efficiency in the Regulator of Social Housing's fundamental objectives. Having listened to the powerful speeches made in Committee, I have added my name to her amendment and offer two further amendments—Amendments 33 and 36—which we think are necessary as consequential amendments to this.

As an aspect of housing quality, energy efficiency is already implicitly covered by the regulator's fundamental objectives. The regulator's home standard requires registered providers to comply with the Government's decent home standards, which include requirements on energy efficiency. However, having considered further, we believe that these amendments would send a very strong signal to social housing providers and reinforce the broader importance of improving the energy efficiency of homes, to the benefit of communities, this country and the planet.

With the regulator having a specific objective to ensure that social housing maintains an appropriate level of energy efficiency, it will be important that government provides clarity on what standards of energy efficiency are expected of registered providers. That is why I am pleased to announce today that, following on from our 2021 *Heat and Buildings Strategy*—I say to my noble friend Lord Bourne that we do have a strategy—the Government will consult on energy efficiency in social housing within six months of the Bill receiving Royal Assent. I hope that answers a couple of questions from my noble friend Lord Bourne and the noble Baroness, Lady Pinnock. I say to the noble Baroness, Lady Hayman, that as long as I am a Minister in the department, I will make sure that this time we deliver within the timescale we set out today—because my name is on this.

4.15 pm

This will allow us to put forward proposals and enable social housing providers to give their views before the content of new standards is decided. It is important that we listen before we act. I believe that this consultation is in the same spirit as the noble Baroness, Lady Hayman, proposes in Amendment 14. However, her amendment also sets out a number of specific targets that the strategy would need to deliver. I am afraid that these mean I cannot accept her amendment.

Social landlords must balance many competing pressures to ensure that tenants live in safe, decent and well-maintained homes. It is of the utmost importance that the standards we set are agreed through consultation with that sector. Although the noble Baroness's amendment contains a requirement to consult, this is not on the standards themselves. Imposing overly burdensome standards may risk resources being diverted from other areas, such as cladding remediation or even, as my noble friend Lord Young of Cookham said, the supply of new housing stock.

Lord Foster of Bath (LD): Can the Minister confirm whether the Government already have their own target in relation to the number of homes that should be brought up to EPC level C, including all fuel-poor homes and those in the social housing sector?

Baroness Scott of Bybrook (Con): I am not aware that there is a target. I will look to see whether there is one and come back to the noble Lord. As we have heard in this debate, the social housing sector is in fact better than any other sector at getting to EPC level C.

The noble Baroness, Lady Pinnock, and my noble friend Lord Young asked whether we have an energy-efficiency programme and what we are doing about it. We do have an energy-efficiency programme—my noble friend Lord Young of Cookham mentioned it: the social housing decarbonisation fund. In the 2019 manifesto the Government committed £3.8 billion to this over a 10-year period. This will upgrade a significant proportion of the stock that at the moment is below EPC level C up to that standard. The latest funding round was launched in September this year, so it is continuing and ongoing. There is £3.8 billion to do just that.

I now turn to Amendment 2, tabled by the noble Baroness, Lady Pinnock, regarding cladding remediation. Nothing is more important than keeping people safe in their homes. The department continues to work closely with registered providers to facilitate the remediation of unsafe cladding and other fire safety defects. However, we are not persuaded that the type of monitoring suggested by the noble Baroness's amendment is necessarily appropriate for the Regulator of Social Housing. The regulator is not a specialist building safety body, nor does it collect data on hazards, safety breaches or associated remedial works. As I believe I said in Committee, the department is examining options relating to the monitoring of fire defects, including unsafe cladding. I know we are always saying this, but we will set out our plans in due course and I will keep the noble Baroness updated on those plans. As I said, I will personally keep an eye on them now that I am in the department.

The noble Baroness also asked what progress had been made on the monitoring of cladding for social homes and about shared equity. The Secretary of State made it clear that no leaseholder living in a building of above 11 metres will ever face any costs for fixing dangerous cladding, and that applies to shared ownership too. The Government will provide grant funding for the removal and replacement of unsafe cladding in buildings that are over 11 metres. We have also introduced a new model for shared ownership which will include a period during which the landlord will provide support for the cost of repairs in new-build homes as well. I hope that answers the noble Baroness's question—I know that I am also answering a further question that she asked earlier in the week on a similar issue.

My noble friend Lord Young of Cookham asked for some details. I think I will need to write to him because he wanted quite a lot of detail. We recognise that some social landlords face significant building safety costs and that they are having to balance their existing budgets to support this. The Government committed over £400 million to fully fund the removal and replacement of unsafe ACM cladding systems on buildings over 18 metres that are owned by registered providers of social housing. The Government have also committed to meeting the costs of removing other types of unsafe cladding on social sector buildings over 18 metres where the financial viability of a registered

provider would otherwise be threatened. We are working on it. My noble friend asked me a lot of other questions and I will make sure that we answer those in writing.

The noble Baroness, Lady Hayman of Ullock, has tabled two amendments relating to tenant engagement. I thank her for these because that is what the Bill is all about—tenants. I begin with Amendment 3, which seeks to require a social housing tenant to chair and set the agenda for the advisory panel. As I said in Committee, tenants are at the heart of the Bill. It is vital that we empower tenants and ensure that their voices are heard. I reiterate that the advisory panel is intended to allow a diverse range of individuals to share their knowledge and opinions with the regulator. The views of tenants are absolutely central to this objective.

However, I do not believe that requiring a social housing tenant to chair the advisory panel and set the agenda is necessary to ensure the views of tenants are heard. In line with the White Paper commitments, the panel will listen to, and balance the interests of, the full range of stakeholders, including tenants. We want all members of the advisory panel, along with the regulator, to shape its agenda and how it operates, and decide who is the best person to chair it at any one time; that might mean different chairs for different debates. The panel will provide an essential platform to give tenants a voice, which will be listened to and considered, alongside the opinions of other stakeholders. Tenants will continue to be central to the regulator's work; it is already enabling tenants to influence the design and implementation of the new regulatory regime through a number of tenant engagement events.

I now move to Amendment 31 from the noble Baroness, which proposes that the Secretary of State introduces tenant satisfaction measures—TSMs—within 30 days of the Bill passing. The regulator has already consulted on and issued a standard for TSMs, which comes into force on 1 April 2023, alongside technical guidance to promote compliance. Tenants will be able to scrutinise the first full set of survey results in 2024 to evaluate the performance of their landlord.

The regulator developed the TSMs regime through a detailed consultation process, gathering over 1,000 responses from stakeholders, including tenants, landlords and trade bodies. Given this detailed process, and the progress that the regulator has already made in implementing TSMs, there is no need for an amendment requiring the Secretary of State to introduce them. In the light of the commitments and points I have made, I hope that noble Lords are reassured and will not press their amendments.

Baroness Pinnock (LD): My Lords, I thank everyone around the House for a good debate on the issues, particularly those of energy efficiency and the affordability of energy for heating homes. I add my thanks to the Minister for being so open about having a discussion and trying to resolve some of the issues that we have raised. She has been very generous with her time, especially when she has had this Bill put in her lap at the last minute, so to speak. I thank her for the support for Amendment 1 in my name.

On Amendment 2, it is still unclear to me why, if one of the fundamental objectives of the regulator is safety, monitoring the remediation of cladding cannot be included—but there we are. I am pursuing this issue elsewhere, as the Minister well knows, and I shall do so.

The key issue is how very disappointing it is that the Government are apparently unable to support Amendment 14 in the name of the noble Baroness, Lady Hayman. We need a strategy that will work, and clearly we do not have one, otherwise one-third of houses in the social housing sector would not still be well below the EPC level C rating. I am fed up with all this bidding for money at the centre; it is very ineffective. We need a proper strategy to get this done, as Kirklees Council did when I was leader, with the Kirklees warm homes scheme.

With those final comments, I beg to move the amendment.

Amendment 1 agreed.

Amendment 2 not moved.

Clause 2: Advisory panel

Amendment 3 not moved.

Clause 7: Registration criteria

Amendment 4

Moved by ***Baroness Scott of Bybrook***

4: Clause 7, page 5, line 36, after "194" insert ", 194ZA"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause before clause 19 inserting a new section 194ZA into the Housing and Regeneration Act 2008.

Baroness Scott of Bybrook (Con): My Lords, there was an extremely important debate in Committee on the professionalisation of the social housing sector. As a Government Whip at that stage, I committed to speak to the new Minister once in post to let them know the strong views of the House on this issue. The noble Baroness will be reassured to hear that the conversation went well, even if it was a little one-sided.

Let me be clear: the Government support the professionalisation of the sector. We strongly agree that there is a need to improve the behaviours, skills and capabilities of staff in the sector. The Grenfell tragedy and our subsequent social housing Green Paper consultation highlighted that many staff did not listen to or treat residents with respect, provide a high-quality service, or deal appropriately with complaints. That is why we have brought forward Amendments 18 to 39, which address these issues. The amendments give the Secretary of State a power to direct the regulator to set regulatory standards on the competence and conduct of all staff delivering services in connection with the management of social housing. A competence and conduct standard will require landlords to ensure that their staff have the skills, knowledge, experience and behaviours they need to deliver professional services. Qualifications such as those offered by the Chartered Institute of Housing will be one part of how landlords could achieve this, as part of a holistic approach to staff training and development.

4.30 pm

As noble Lords will be aware, we committed in the social housing White Paper to review arrangements relating to the training and development of the sector's workforce. The review has involved engagement and consultation with tenant groups, including Grenfell United and Shelter, as well as landlords, trade and professional bodies, and academic experts. The review's findings will be published shortly.

Our review has led us to conclude that directing the Regulator of Social Housing to set regulatory standards on staff competence and conduct is the best way to professionalise the sector. Our amendments offer a way forward which will drive up professional standards while maintaining landlords' flexibility to determine the right mix of qualifications, training and development for their staff. Throughout our review we have heard how important flexibility is, given the wide range of organisational structures, operating models and role types which exist in the sector. Landlords need to be able to tailor their staff development to meet the particular needs of their tenants, staff and operational circumstances.

It is important to note that regulatory standards will apply to employees at all levels of seniority. This will ensure that changes happen across organisations and that professionalism is embedded into organisational cultures from top to bottom. That is the real prize here.

It is imperative that the Government and the regulator get the details of their approach to the new requirements right. We will continue to work with interested stakeholders to ensure that we do so. The amendments pave the way for a statutory consultation on the Government's draft direction to the regulator about the contents of the standard and specified objectives that the regulator must have regard to when setting it. The regulator will in turn be required to consult on its draft standard before it comes into force, as it does now for its existing standards. This means that the passage of this Bill will by no means spell the end of our conversations on this important point.

Once our standards are in force, the regulator will proactively seek assurance that providers are meeting them. It has already set out how it plans to seek assurance that its consumer standards are being met, using a range of tools from planned inspections and reactive engagement to assessment of performance information and other data returns. We anticipate that these tools will also underpin its approach to assurance here.

The regulator already has a strong track record in regulating the sector's financial viability. It will be able to use its expertise to ensure landlords take effective action on professionalisation. Previously, the regulator has not proactively regulated consumer issues, but under its new consumer regime it will be relentless in ensuring that providers meet the standards required. If the regulator finds evidence of a breach of its competence and conduct standards, it will be able to require the provider to produce and implement a performance improvement plan. Failure by the landlord to implement an improvement plan would result in an enforcement notice, which, if breached, would be sanctionable by an unlimited fine.

What we have heard during our review supports the approach we are bringing forward and does not support the introduction of mandatory qualifications for specified roles—the approach to which the amendment of the noble Baroness, Lady Hayman of Ullock, lends itself. During our review, we found no clear evidence that specified qualifications in and of themselves lead to more professionally delivered services, or that they are the key to delivering the outcomes that matter to tenants: being treated with dignity and respect, being listened to, and having issues dealt with effectively and efficiently. We have heard from professional development experts that although formal housing management qualifications can be important for some staff, there is no single qualification which adequately meets the sector's diverse requirements, and that a prescriptive approach would hinder landlords' flexibility to determine the right mix of qualifications and training for their staff. I must stress the importance of that point.

Review participants also told us that continuing professional development is key to ensuring that knowledge and skills are current and that staff reflect on their behaviours and practices. Again, there is no one-size-fits-all approach in what constitutes effective CPD for the sector or how it should be delivered.

Significant concern was raised by review participants that mandatory qualifications and registration requirements would be likely to exacerbate providers' difficulties in recruiting staff. Attracting individuals with the right attitudes and behaviours is critical to this sector. Mandating qualifications carries a real risk that individuals who are well suited to working in the sector would be prevented or deterred from doing so. There is also a significant risk that mandating qualifications could lead to the reclassification of housing associations as public sector bodies, bringing up to £90 billion of debt on to the public ledger. Reclassification of the sector could also have an impact on housing associations' ability to invest in the supply of new affordable homes and improve the quality of their existing stock and services. The Bill must be about helping tenants; we cannot risk a scenario where they are disadvantaged as a result of this.

I wish to be completely clear that the risk of reclassification is not hypothetical. The ONS deems that government control over housing associations is significantly closer to the threshold for reclassification than for other comparable sectors. Indeed, the sector was reclassified to the public sector in 2015 and was reclassified again only once legislative steps were taken to remove government controls. The last thing any of us wants is for this legislation to be derailed by classification issues. I beg to move.

Baroness Hayman of Ullock (Lab): My Lords, I shall introduce my Amendment 23. I thank the Minister for her introduction of her amendments, for listening to the debate on this in Committee and for bringing the amendments forward today. The government amendments really address competence and skills and, to my mind, the industry should already have competence and skills as part of its training and how it operates. The question I ask myself is: is this sufficient or is professionalisation needed?

We know that the Government recognised the need for a professionalised social housing sector in the White Paper back in 2020, but we all need to consider the fact that the Grenfell Tower fire back in 2017 is a stark example of exactly what can happen when we have an underregulated, unprofessional management in social housing. This is why Grenfell United and others believe that professional qualifications in part of the sector is so important. We believe there should be clear recognition of this and that the Government should be driving towards a properly trained professional sector that has ethics and values underpinning it. We know that Grenfell United has made it very clear that the bereaved and the survivors of the fire want this to be their legacy.

We know that poorly managed and maintained social housing can cause serious harm to renters' health and well-being, yet there are no requirements to be properly qualified or to undergo professional development. As a result, too many tenants are not given a good service or treated with the care and respect they need and deserve. This is not to undermine the many good social housing operators, but unfortunately not everybody is as good. How do we professionalise the sector? This is what my amendment seeks to achieve. We believe that professional development should be mandatory for senior managers working in social housing. Other social professions have this requirement and rules for registration; they have continuous professional development as part of the way they operate while someone is a manager within their sector.

We believe that qualifications and training should aim to provide housing management staff with the skills and knowledge needed to do the job—and to do the job well—as well as instilling the right values to underpin it. If over time you have a better qualified, more professional sector, you will increase the perception of housing management as a valued profession, one that will attract dedicated individuals to a rewarding, if challenging, career.

A concern has been expressed that my amendment will mean that everybody working in social housing will have to be qualified, and that this will be too onerous for the sector to cope with. That is not what my amendment seeks to do. It is deliberately non-prescriptive, to allow for the flexibility needed in a sector where you have diverse businesses, from small almshouses to very large housing businesses. The Minister talked about the importance of flexibility and, if she looks at proposed new subsection (1), she will see that it states that:

"Regulations may provide that a person may not engage in the management of social housing … unless he or she … has appropriate professional qualifications … or satisfies specified requirements".

Proposed new subsection (3) states:

"A requirement of regulations … may … relate to … the possession of a specified qualification or experience"

or

"participation in or completion of a specified programme or course of training, or … compliance with a specified condition".

I am trying not to be prescriptive or make life difficult for housing associations and social housing provider but to provide a certainty that managers know what they are doing. It is as simple as that.

We think this should apply at first only to senior management because we believe that having senior staff with the appropriate skills and qualifications will ensure that the teams underneath them, those working in offices and other junior staff, would then be professionally run and deliver a quality service for residents. We believe this would not create barriers to housing associations and councils finding enough staff because the amendment requires regulations to define what types of work require qualifications. Flexibility in the amendment will lead to important change but without being overprescriptive and onerous for housing associations.

We know that housing management is no more complex than other professions that have legal requirements for training and development: for example, social work, healthcare, education—so why not include social housing? The secondary legislation regulations that guide mandatory qualifications in those fields are extensive and there are many different routes to being qualified, with many different expectations depending on the service being delivered. Why not have the same for social housing?

I turn now to some of the Minister's arguments. Will this make housing associations into public bodies? I understand what she said about this, but I do not believe we have seen concrete evidence to suggest that my amendment on professional qualifications would bring the Government's role in housing association business over the threshold. She referred to the review, but we have not seen that, so will this make housing association businesses technically public bodies? I am yet to be convinced of this and would like to see more evidence. We know that the economic standards in social housing have been proactively and extensively regulated for some time. Where is the tipping point? Why are the Government so concerned about this?

Finally, I come back to Grenfell. Grenfell United and Shelter, which has supported it throughout the process and the different legislation that has come through, are simply not satisfied with this. They have made it crystal clear—I have a note from them here—that it does not meet their reasonable expectations in this area. They believe that:

"Clear requirements are needed to bring social housing management on a par with other socially important professions, properly safeguard the wellbeing of tenants, and attract dedicated individuals to a meaningful, challenging career."

It is appropriate to leave those last words to Grenfell United. I urge the Minister to revisit this at some point. However, because I think this is such an important issue for tenants and the survivors and bereaved of Grenfell Tower, I will seriously consider testing the opinion of the House on this matter.

4.45 pm

Lord Young of Cookham (Con): My Lords, I very much welcome the Government's response to our debate in Committee in tabling government Amendment 4, which is a very welcome step forward. It honours the undertaking my noble friend gave in Committee to

"talk to the Minister personally, whoever that may be, to reflect the views of the Committee on this important issue."—[*Official Report*, 6/9/22; col. 139.]

That dialogue turned out to be a monologue.

[Lord Young of Cookham]

Before coming to the substance, I will say a quick word about reclassification, mentioned by my noble friend and the noble Baroness, Lady Hayman. It has clearly acted as a brake on the Government's proposals. I entirely agree that we do not want to see the sector's borrowing classified as "public sector", with all the restraint that would follow. However, without getting into the complex theology of what is and what is not public borrowing, instead of this cat-and-mouse game with the ONS, with the Government never quite sure how far they can go before the elastic snaps, why can there not be a civilised dialogue with the ONS in advance? That would give the Government some certainty on how far they could go, instead of having to wait for a retrospective judgment, which is what happened last time. It seems to me a far more sensible approach to engage in dialogue in advance.

Turning to the substance, I agree with much of what the noble Baroness, Lady Hayman, has said. While I believe the general standard of management in the social housing sector is high and the movement is conscious of the need for improvement, we need a framework of professional training such as that proposed in the amendment, which exists for other professions such as education and social care.

For example, a recent article in *Inside Housing* said that the department had published a list of 18 social landlords against which the Housing Ombudsman had made findings of severe maladministration since September 2021. We have also read of the recent tragic case of a social housing tenant of one of the most reputable housing associations lying dead in her home for two years before she was discovered. An independent report concluded:

"What may have been designed as a service centred on the customer failed to work. Instead, the focus became the processes themselves … The culture of the organisation needs to change."

That was said about what I believe to be a well-run body. It underlines the need for higher standards and a more professional approach.

Report is not the place to repeat the powerful arguments made in Committee, but it is worth reminding the House that, unlike private tenants, social tenants have few options to move to an alternative landlord if they do not get the service that they are entitled to.

My noble friend referred to the White Paper and the commitment to:

"Review professional training and development to ensure residents receive a high standard of customer service."

My noble friend said in response to the debate in Committee that her department had set up a working group to review professional standards. Might we know how they are progressing, when the report will be completed, whether it will be made public and how that will feed into the work of the regulator, as proposed in the Government's amendment? It would also be good to have confirmation that the CIH and the NHF will be involved with the regulator in drawing up standards. Finally, as the department has clearly been in dialogue with the regulator on this matter, can my noble friend in winding up give some indication of the timescale the regulator might adopt in taking this issue forward?

The Lord Bishop of Chelmsford: I rise to express very briefly my support for Amendment 23, in the name of the noble Baroness, Lady Hayman of Ullock. I welcome the Government's restating at the Bill's Committee stage their commitment to review professionalisation. However, I want to urge them to accept this amendment, which would help to ensure that appropriate professional qualifications, training and registration are upheld. The challenges we face in the social housing sector require high standards of management which, sadly, we do not always see, and this amendment will help to ensure those.

Baroness Sanderson of Welton (Con): My Lords, I thank my noble friend the Minister and the Secretary of State for the time and effort they have put into this and other issues; they should be given credit for what they have done. I declare my interest as a community adviser on Grenfell. The Minister has worked with the community in a previous role, and I know she always has their best interests at heart, as well as those of other social housing tenants across the country. However, while I appreciate that the Government's amendment improves on the current situation, I am afraid that the lack of any professional qualification structure leaves something of a hole—a cavity, if you like—in their plan.

In essence, the Government's proposal says that requiring the regulator to set a professional standard will drive up knowledge, skills and experience in the sector. It argues that while they are not mandatory, qualifications may be one element of how landlords could achieve this, as part of a wider approach to training and development. I agree: qualifications are not the only way to improve skills and standards, but I am struggling to see how we do it without them, particularly in an area where the need to drive out stigma is so necessary and overwhelming. In any other sector, be it social work or education, qualifications are integral—fundamental, even—to increasing knowledge and, most importantly, to providing a career path. If we want to encourage people into social housing, to take pride in that career, we must give them a way to progress. Without that infrastructure it will be so much harder to bring about meaningful change. Would it not also be a useful indicator of compliance? It is hard to see how the regulator will accurately measure competence across the sector. I welcome the checks and balances provided for in this amendment, but it is unclear on what grounds the regulator will be able to apply sanctions where necessary.

I realise that some of these questions will be for the proposed consultation, but at the moment it all feels a bit woolly. There is constant talk of driving up skills and knowledge, but not enough in practical terms on how to achieve this goal. To that end, as the Bill progresses will the Government consider including a specific request to the regulator to consult experts such as the Chartered Institute of Housing on a suitable qualifications framework?

I am pretty sure that the Minister will say to me that doing so could lead to a reclassification by the ONS. I fully understand the risks involved, as have been mentioned by the noble Baroness, Lady Hayman, and I appreciate that the Government have no control over the ONS's decisions. However, at the moment we are still talking

about a risk, not a certainty, so, as my noble friend Lord Young suggested, is it not possible to consult the ONS on this? Otherwise, we are in a world of "what ifs" and "maybes", which seems absurd given what is at stake. For as it stands, we seem to be saying that tenants in social housing can expect to send their child to a school where the teacher must be qualified, and to send their parents to a care home where there must be suitably qualified staff, but that the people responsible for running their homes do not need any qualifications at all.

The Government argue that they are not ruling out qualifications, but that providers must be allowed to determine the right mix. I am sure the Minister will understand why there is nervousness about leaving this to landlords' discretion. Do we really expect them to introduce qualifications voluntarily? This is not just about Grenfell. As I mentioned in Committee, one look at Kwajo Tweneboa's Twitter account and the neglect and misery it chronicles will tell you all you need to know about the attitude and aptitude of some providers. They are the worst examples, but surely the least likely to equip their staff with qualifications.

Finally, I repeat one more point I made in Committee: what happens if the Grenfell Tower inquiry recommends mandatory professionalisation? Will all the same arguments apply, or will we have to find a way around this later down the line, when we should be doing it now? To that end, while I reiterate my thanks to the Minister and the Secretary of State—I understand that it is a difficult area—I cannot help feeling that on this issue, the department may need to provide us with some more answers.

Baroness Pinnock (LD): My Lords, this has been a very powerful debate on something that is pretty esoteric: the qualifications of those providing social housing. However, it seems vital for the safety of social housing tenants that the people responsible for the management of their properties know what they are doing. This group of amendments includes alternative ways forward in relation to the importance of raising standards of management and the need for professional qualifications.

On the one hand, the Minister is arguing for a light-touch approach, as set out in her Amendment 10, arguing that there is a risk of reclassification of the sector if the strategy laid out by the noble Baroness, Lady Hayman of Ullock, in her Amendment 23 is followed. But two things come to mind. First, the noble Baroness, Lady Hayman, explained that the approach she has laid out is flexible and combines that with an ambition for higher standards in the sector. Her amendment uses "may" throughout, so it is not a mandatory approach. It is trying to say, "Here is a way forward to raise standards—follow it, sector, and raise standards". What an ambition that would be.

On the other hand, we have the Minister arguing that there is a risk of reclassification. I have to say that if there is a barrier to raising standards in the management of social housing, it needs to go. We have to find a way around it. We have heard two examples from the noble Lord, Lord Young of Cookham, and the noble Baroness. They have both explained how we can get around this—so let us get around it.

Shelter has highlighted in the wake of the Grenfell tragedy that social housing tenants were concerned not only with safety but with maintenance, repairs and poor living conditions. Social landlords and managers are the first port of call for tenants to raise concerns about standards, so ensuring that senior managers are qualified and have the requisite knowledge and experience will have a trickle-down effect—something I am sure the Minister will approve of. So, let us professionalise the workforce.

In Committee, my noble friend Lady Thornhill—who is unfortunately unable to be here today as she is not well—made comparisons between the workforce of the health and care sector and that of the social housing sector. That comparison rightly reflects the important role of social housing in the well-being of the nation, but, like the health sector, housing and construction are facing shortages of both people and resources. Amendment 23 in the name of the noble Baroness, Lady Hayman of Ullock, would ensure that the Government were able to prescribe mandatory qualifications—but, as I have said, in a flexible way. That would protect tenants and make sure that their homes were safe and fit for habitation, and that tenants' voices were heard. As has already been said, one of the findings of the Grenfell inquiry was that tenants' voices were ignored.

The Government have listened to the debate in Committee and the calls from groups such as Grenfell United and Shelter, reflected on their own commitment and brought forward a number of amendments in this group with the aim of raising standards for registered providers and social housing managers. Of course, I welcome this, but the Government's argument that a balance needs to be struck between safety and workforce supply is, in my view, a false one. Ultimately, the safety of social housing tenants has to be paramount. We need to make sure that the situation is not made worse for tenants by exacerbating problems in the training and retention of staff, but in the end, the quality of managers is what keeps tenants safe.

5 pm

We know that the Government are reviewing professional training and development, but what are they doing to review workforce problems in the housing sector more widely and the impact of these shortages on the safety of social housing tenants? We welcome what the Government have said so far. However, it is not enough and if the noble Baroness, Lady Hayman of Ullock, decides to test the opinion of the House on this issue, we feel so strongly about it that we will support her.

Baroness Scott of Bybrook (Con): My Lords, the speeches from across the House today are a tribute to the role that real scrutiny of legislation can play. I personally thank the noble Baronesses, Lady Hayman of Ullock and Lady Pinnock, my noble friend Lady Sanderson and the noble Lord, Lord Best, among others, with whom I have had extremely constructive conversations on this critical issue over recent days. I also met Grenfell United and told them what I have to do and why I have to do it.

[Baroness Scott of Bybrook]

I will start by answering a couple of questions. The noble Baroness, Lady Hayman of Ullock, said that her amendment is permissive not prescriptive. Unfortunately, the existence of a power in legislation for the Government to in effect control hiring and firing decisions would still be deemed a government control by the ONS, even if it is permissive and flexible.

A number of noble Lords asked why we cannot ask the ONS about its decision before we make any further decisions—it is a question that I asked too. The ONS is the independent body statutorily responsible for making classification decisions, which includes determining whether bodies are part of the public sector. The ONS will make a formal assessment only once a new policy or regulation has been implemented; it does not classify the impact of policies still under development, so we cannot go to it until the decision is made.

Baroness Pinnock (LD): I hear what the noble Baroness says, but have the Government actually asked the ONS whether it would be prepared to give an indication of whether the level of reclassification is reached? As others have said, that would really help.

Baroness Scott of Bybrook (Con): It will not engage, as far as I understand. His Majesty's Treasury would deal with this and it has advised that we cannot do that, as that is not what the ONS does. The ONS publishes its assessments and its decision cannot be challenged. It will review its decision only in very limited stated circumstances, including when new legislation, policy proposals or machinery of government changes impact the operations of an organisation or, in this case, a sector.

I go back to the point that, in 2015, following further legislation on the social housing sector that had tipped it over, the ONS changed the classification and we had to introduce new legislation again. We do not want to be in that position—that would not be what anybody would want—and the time involved in doing all that would be extensive.

My noble friend Lord Young asked whether the review of professionalisation would feed through to the development of standard. Yes, it will: the review will inform the Secretary of State's direction to the regulator about the context and objectives for the standard, so it will be used in that way.

My noble friend Lady Sanderson asked whether the Secretary of State could direct the regulator to include qualifications in the standard. Again, directing the regulator to require qualifications would also risk reclassification. However, in setting standards for the competence of their staff, landlords would have to provide assurance that their staff had the requisite capabilities, and I suggest that ensuring that their staff have appropriate qualifications would be a key way of achieving that aim.

Baroness Hayman of Ullock (Lab): My Lords, having looked at the classification process on the ONS website, I see that it states:

"HM Treasury may … submit policy proposals for classification advice from the Economic Statistics Classification Committee … either on its own behalf if it is the policy lead, or on behalf of another department".

It looks to me like the issue could have been put to the ONS for advice ahead of the position that we find ourselves in.

Baroness Scott of Bybrook (Con): We have asked for an indication, but the ONS will give only an indication. As far as I understand it, the indication is that this could tip over into a reclassification.

Baroness Hayman of Ullock (Lab): Could we perhaps have the official response to the Treasury, if it has put forward a request?

Baroness Scott of Bybrook (Con): I am more than happy to provide that.

I think that I have answered all the questions. As I have said once already and as I said in Committee—although it perhaps bears repeating—the Government believe in professionalising the social housing sector. As was mentioned, we sent out an all-Peers briefing on Friday setting out the full rationale for what we are doing, why we are doing it and why we are unable to accept the amendment in the name of the noble Baroness, Lady Hayman of Ullock. The qualifications, training and development needed to professionalise social housing cannot be a one-size-fits-all; we must protect landlords' ability to determine the most appropriate qualifications and training for their staff. The regulator has deep sector expertise and a strong track record of regulating the sector for financial liability, on which it would be able to draw, to ensure that landlords raise professional standards. The introduction of tough sanctions for landlords failing to comply with the new standard will ensure that consistently high standards are achieved across the sector.

To push back against what the noble Baroness, Lady Pinnock, said, I say that this is not light touch, given the enforcement powers and unlimited fines and the fact that the regulator will be looking at tenant satisfaction levels in great detail. If tenants are unsatisfied with their housing provider, they will say so, and at that point the regulator can move in—and the regulator has teeth to ensure the enforcement of specially trained staff, and has unlimited fines if the provider does not comply. There are tough sanctions for failing to comply with the new standards, and I believe that the provisions will ensure that consistently high standards are achieved across the sector.

Finally, the risk of reclassification of the social housing sector is substantial. The proposal to mandate qualifications for staff risks adding £90 billion to the public balance sheet. Reclassification could limit landlords' ability to invest in new homes and in improving the quality of existing stock and service provision. This would clearly disadvantage tenants and undermine our objective of increasing professionalism in the sector. It is likely that we would want to introduce deregulatory measures to address that. It would weaken the regulatory framework that the Bill creates, and we cannot allow that to happen.

The Government are not trying to hide on this issue. It simply comes down to how we accomplish the outcomes for which we are all looking. I believe that the Government's approach is the right one. I hope that noble Lords have been persuaded by my arguments.

Amendment 4 agreed.

Clause 15: Notification requirements: expansion to profit-making organisations

Amendment 5

Moved by ***Baroness Scott of Bybrook***

5: Clause 15, page 13, line 18, leave out subsection (3)

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause after clause 15.

Baroness Scott of Bybrook (Con): My Lords, this set of government amendments delivers technical changes which will ensure that measures in the Bill operate effectively and consistently.

Amendments 19, 20 and 21 to Clause 24 will ensure that both registered providers and the occupiers of premises will receive the same 48-hour notice period before the Regulator of Social Housing conducts a survey. The noble Baroness, Lady Pinnock, raised the discrepancy in notice periods in Committee. We agree that there should have been no difference between the notice periods that the tenant and landlord receive. I hope that she will welcome these amendments which address this problem.

I turn to the other amendments in this group. Amendments 26 to 30 are a series of changes to Clause 26. These will enable a regulator to carry out emergency remedial action more effectively. Given the urgent nature of these remedial works, these changes are highly important. Ahead of carrying out emergency remedial action, a person authorised by the regulator is required to notify all parties.

Amendment 28 allows all parties to consent to early entry before the minimum advance notice period has elapsed. This ensures that, where all parties are content, there will be no barrier to preventing urgent works starting immediately. Amendment 28 also allows the occupier to consent to a person authorised by the regulator conducting emergency remedial works in advance of the date specified on their pre-entry notice. Amendment 27 is consequential on this change.

Amendment 29 offers greater flexibility to the regulator by making it clear that the person authorised by the regulator to notify parties that emergency remedial works are due does not have to be the same person who carries out the works. Amendment 26 clarifies that, when emergency remedial works affecting common parts are due to take place, a notice is required to be given only in respect of occupied dwellings that have use of the common parts. Amendment 30 is a minor amendment to improve the drafting.

Amendment 6 would remove the requirements for the regulator to decide on the eligibility of registration of a registered provider that has recently converted from a company to a registered society. In such an event, the registered provider's existing registration remains in place. Amendment 5 is consequential on this change.

Amendment 7 proposes a new clause in relation to the restructuring of a registered provider that is a registered society. It removes a duty on the regulator to make a registration decision where a registered society converts into a company or transfers undertakings to another society that is also a registered provider. Registration decisions are not needed in these circumstances. In the case of a conversion, the provider's existing registration continues. In the case of a transfer, the transferee is already registered. Where a registered society amalgamates with another or transfers its undertakings to a society that is not also a registered provider, proposed new Section 163ZA provides that the successor body should be treated as registered and designated as a non-profit organisation pending the registration decision. Amendments 8 and 9 are consequential on this change.

These amendments are largely technical in nature. Many of them will support the regulator to deliver effectively on its economic and consumer regulation objectives, while others will ensure greater clarity and consistency in the legislation. I hope that noble Lords will support their addition to the Bill. I beg to move.

5.15 pm

Baroness Pinnock (LD): My Lords, I thank the Minister for putting right what was clearly an oversight in the Bill, whereby landlords were given 48-hours' notice before entering a property while tenants got only 24 hours.

Baroness Hayman of Ullock (Lab): My Lords, I reiterate what the noble Baroness has said. It is good that what was said in Committee was listened to. We support the amendments and thank the Minister.

Amendment 5 agreed.

Amendment 6

Moved by ***Baroness Scott of Bybrook***

6: Clause 15, page 13, line 24, leave out subsection (4)

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause before clause 16.

Amendment 6 agreed.

Amendments 7 and 8

Moved by ***Baroness Scott of Bybrook***

7: After Clause 15, insert the following new Clause—

"Conversion of company into registered society: continuation of registration

In section 161 of the Housing and Regeneration Act 2008 (company: conversion into registered society) omit subsections (4) to (7)."

Member's explanatory statement

If a registered provider which is a company becomes a registered society the body's registration as registered provider continues. This amendment removes the provisions requiring the regulator to decide whether the registered society is eligible for registration as a registered provider.

8: Before Clause 16, insert the following new Clause—

"Restructuring of registered societies

(1) The Housing and Regeneration Act 2008 is amended as follows.

(2) In section 163 (registered society: restructuring) omit subsections (5) to (8).

(3) After section 163 insert—

"163ZA Restructuring of registered societies: registration of successor bodies

(1) This section applies where —

(a) a registered provider notifies the regulator of a resolution passed by the provider for the purposes of section 109 of the Co-operative and Community Benefit Societies Act 2014 (amalgamation of societies);

(b) a registered provider notifies the regulator of a resolution passed by the provider for the purposes of section 112(1)(b) of that Act (amalgamation of society and company);

(c) a registered provider notifies the regulator of a resolution passed by the provider for the purposes of section 110 of that Act (transfer of engagements between societies) and the society to which engagements are transferred is not a registered provider;

(d) a registered provider notifies the regulator of a resolution passed by the provider for the purposes of section 112(1)(c) of that Act (transfer of engagements between society and company) and the company to which engagements are transferred is not a registered provider.

(2) When the resolution mentioned in subsection (1) ("the relevant resolution") takes effect, the regulator must decide whether the successor body is eligible for registration under section 112.

(3) "The successor body" means—

(a) if the relevant resolution is a resolution described in paragraph (a) or (b) of subsection (1), the body created by virtue of that resolution or by virtue of that resolution and other resolutions described in that paragraph, and

(b) if the relevant resolution is a resolution described in paragraph (c) or (d) of subsection (1), the body to which engagements are transferred by virtue of the resolution.

(4) If the successor body is eligible for registration, the regulator must register it and notify it that it has done so.

(5) If the successor body is not eligible for registration, the regulator must notify it of that fact.

(6) Pending registration, or notification that it is not eligible for registration, the successor body is to be treated as if it were registered and designated as a non-profit organisation."""

Member's explanatory statement

Where a restructuring of a registered provider which is a registered society results in the creation of a new body or in the transfer of the engagements to a body which is not a registered provider, these amendments provide that the regulator must decide whether or not to register the body and describe how the body should be treated pending that decision.

Amendments 7 and 8 agreed.

Clause 16: Receipt of transfers of engagements from a registered society

Amendment 9

Moved by ***Baroness Scott of Bybrook***

9: Clause 16, page 14, line 1, leave out "section 163" and insert "section 163ZA (inserted by section (Restructuring of registered societies))"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause before clause 16.

Amendment 9 agreed.

Amendment 10

Moved by ***Baroness Scott of Bybrook***

10: Before Clause 19, insert the following new Clause—

"Standards relating to competence and conduct

After section 194 of the Housing and Regeneration Act 2008 insert—

"194ZA Standards relating to competence and conduct

(1) The regulator may set standards for registered providers in matters relating to the competence and conduct of individuals involved in the provision of services in connection with the management of social housing.

(2) Standards under subsection (1) may, in particular, require registered providers to comply with specified rules about—

(a) the knowledge, skills and experience to be required of individuals involved in the provision of services in connection with the management of social housing, and

(b) the conduct to be expected of such individuals in their dealings with tenants."""

Member's explanatory statement

This gives the regulator power to set a standard requiring registered providers to ensure that individuals who provide services in connection with the management of social housing have the knowledge, skills and experience to do so and to set out expectations as to how the individuals conduct themselves in relation to tenants. See also the amendment to Schedule 5, page 49, line 32 in the Minister's name.

Amendment 10 agreed.

Clause 19: Standards relating to information and transparency

Amendments 11 to 13

Moved by ***Baroness Scott of Bybrook***

11: Clause 19, page 16, line 18, leave out "section 194" and insert "section 194ZA (inserted by section (Standards relating to competence and conduct))"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause before clause 19 inserting a new section 194ZA into the Housing and Regeneration Act 2008.

12: Clause 19, page 16, line 29, leave out "and 194" and insert ", 194 and 194ZA"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause before clause 19 inserting a new section 194ZA into the Housing and Regeneration Act 2008.

13: Clause 19, page 17, leave out lines 1 to 3

Member's explanatory statement

This is consequential on the amendment to Schedule 5, page 49, line 32 in the Minister's name.

Amendments 11 to 13 agreed.

Amendment 14

Moved by ***Baroness Hayman***

14: After Clause 20, insert the following new Clause—

"Standards relating to energy demand

(1) In section 193 of the Housing and Regeneration Act 2008 (standards relating to consumer matters)—

(a) in subsection (2), at the end insert—

"(k) energy demand.";

(b) after subsection (2) insert—

"(2A) In setting standards relating to energy demand, the regulator shall have regard to the Government's strategy on reducing energy demand for social housing properties."

(2) The Secretary of State must, before the end of the period of 12 months beginning with the day on which this Act is passed, publish a strategy on reducing energy demand for social housing properties, to include but not limited to the following—

(a) achieving a low-carbon heat target, of 100% of installations of relevant heating appliances and connections to relevant heat networks in social housing properties being low-carbon from 2035;

(b) achieving an energy-efficiency target, of all social housing properties attaining a minimum EPC C rating by 2030;

(c) interim targets relating to the targets in paragraphs (a) and (b) at not less than three-yearly intervals;

(d) a programme to support registered social housing providers in engaging with each other, the regulator and a source of advice provided by the Government to encourage energy demand reduction.

(3) Before publishing their strategy, the Secretary of State must—

(a) consult the Climate Change Committee and its sub-committee on adaptation;

(b) publicly consult on the most practical, cost-effective and affordable way of achieving the targets in subsection (2)(a) to (2)(c), and

(c) publish an assessment of the long-term impacts of the strategy on tenants of social housing and registered social housing landlords."

Baroness Hayman (CB): My Lords, I listened very carefully to the words of the Minister in responding to our earlier debate. I do not have a scintilla of doubt about her sincerity and integrity in offering a consultation, but the House will understand that many of us have been promised consultations and not seen them, or they have not been acted upon. In this area, we were promised the consultation in 2017. It has not happened yet. This amendment would give us a coherent and costed plan for energy efficiency in a sector that needs it very urgently. In view of the support from all Benches—I am particularly grateful to the Bishops' Benches for joining the political parties—I would like to test the opinion of the House.

5.18 pm

Division on Amendment 14

Contents 189; Not-Contents 176.

Amendment 14 agreed.

Division No. 1

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Adonis, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Bourne of Aberystwyth, L.
Bradley, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brown of Eaton-under-Heywood, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bull, B.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carlile of Berriew, L.
Carter of Coles, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Chartres, L.
Chelmsford, Bp.
Clancarty, E.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Craigavon, V.
Crawley, B.
Curry of Kirkharle, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
D'Souza, B.
Dubs, L.
Elis-Thomas, L.
Faulkner of Worcester, L.
Featherstone, B.
Ford, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Freyberg, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasgow, E.
Gohir, B.
Goudie, B.
Grantchester, L.
Green of Hurstpierpoint, L.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hall of Birkenhead, L.
Hamwee, B.
Hannay of Chiswick, L.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Hayman of Ullock, B.
Hayman, B. [Teller]
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollins, B.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Judge, L.
Kakkar, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Khan of Burnley, L.
Knight of Weymouth, L.
Kramer, B.
Layard, L.
Lennie, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Londesborough, L.
Ludford, B.
Macdonald of River Glaven, L.
Mann, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Merron, B.
Monks, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
O'Neill of Bengarve, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patel, L.
Pinnock, B.
Pitkeathley, B.
Prashar, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Randerson, B.
Ravensdale, L.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Russell of Liverpool, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
St Edmundsbury and Ipswich, Bp.
Stansgate, V.
Stephen, L.
Stern, B.
Stevenson of Balmacara, L.
Stoneham of Droxford, L.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Thomas of Winchester, B.
Thurso, V.
Tomlinson, L.

Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Tyler of Enfield, B.
Uddin, B.
Wallace of Saltaire, L.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Wheatcroft, B.
Wheeler, B. [Teller]
Whitaker, B.
Wigley, L.
Wilcox of Newport, B.
Willis of Summertown, B.
Wood of Anfield, L.
Worthington, B.
Wrigglesworth, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altrincham, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashton of Hyde, L.
Balfe, L.
Barran, B.
Bellamy, L.
Bellingham, L.
Benyon, L.
Berridge, B.
Bethell, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Brady, B.
Brookeborough, V.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Chisholm of Owlpen, B.
Colgrain, L.
Cormack, L.
Courtown, E. [Teller]
Craig of Radley, L.
Crathorne, L.
Cumberlege, B.
Davies of Gower, L.
De Mauley, L.
Dobbs, L.
Duncan of Springbank, L.
Dunlop, L.
Eaton, B.
Eccles, V.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Framlingham, L.
Frost, L.
Garnier, L.
Geddes, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Greenway, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harlech, L.
Harrington of Watford, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hoey, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Kamall, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Mancroft, L.
Manzoor, B.
Markham, L.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Mobarik, B.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrow, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patten, L.
Pearson of Rannoch, L.
Penn, B.
Pidding, B.
Popat, L.
Randall of Uxbridge, L.
Reay, L.
Redfern, B.
Remnant, L.
Ribeiro, L.
Risby, L.
Robathan, L.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Spencer of Alresford, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stirrup, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L.
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Warsi, B.
Wasserman, L.
Wei, L.
Wharton of Yarm, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wolfson of Aspley Guise, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

5.30 pm

Clause 21: Direction by Secretary of State

Amendment 15

Moved by ***Baroness Scott of Bybrook***

15: Clause 21, page 17, line 21, at end insert—

"(za) to set a standard under section 194ZA,"

Member's explanatory statement

This enables the Secretary of State to direct the regulator to exercise the new power to set standards conferred by the new section 194ZA of the Housing and Regeneration Act 2008 (see the amendment to insert a new clause before clause 19 in the Minister's name).

Amendment 15 agreed.

Amendment 16

Moved by ***Baroness Scott of Bybrook***

16: Clause 21, page 17, line 24, after "paragraph" insert "(za) or"

Member's explanatory statement

This is linked to the amendment to clause 21, page 17, line 21 in the Minister's name and enables the Secretary of State to direct the regulator about the content of the standards set under the new section 194ZA and to direct the regulator to have regard to specified objectives when setting them.

Amendment 16 agreed.

Amendment 17

Moved by ***Lord Best***

17: After Clause 22, insert the following new Clause—

"Inspections

(1) The Housing and Regeneration Act 2008 is amended as follows.

(2) For sections 201 (inspections) and 202 (inspections: supplemental) substitute—

"201 Inspections

(1) It is the duty of the regulator to carry out inspections, at such intervals as may be prescribed, of—

(a) every registered provider's performance of its functions in relation to the provision of social housing, and

(b) the financial or other affairs of every registered provider.

(2) Following each such inspection under subsection (1), the regulator must—

(a) assess the performance of the providers, and

(b) publish a report of its assessment.

(3) Regulations may provide that this section does not apply to specified providers or categories of providers in prescribed circumstances.

(4) The assessment of a registered provider's performance is to be by reference to such indicators of quality as the Secretary of State may devise or approve.

(5) The Secretary of State may direct the regulator to devise indicators for the purposes of subsection (4) and submit them to the Secretary of State for approval.

(6) The regulator must prepare a statement describing the method that it proposes to use in assessing and evaluating the performance of a registered provider under this section, and submit the statement to the Secretary of State for approval.

(7) Regulations must provide that in conducting an inspection of a registered provider under this section, the regulator must have regard to any views expressed to him or her by certain persons or classes of person which must include tenants of the provider.

202 Special inspections and investigations

(1) The regulator may at any time, where he or she considers it appropriate, conduct a special review or investigation, and must do so if the Secretary of State so requests.

(2) A special inspection or investigation is an inspection (other than a periodic inspection) of or an investigation into—

(a) the exercise of its functions by a registered provider;

(b) the financial or other affairs of a registered provider;

(c) the standard of accommodation provided by a registered provider;

(d) other matters relating to the governance or performance of a registered provider.""

Lord Best (CB): My Lords, Amendment 17 is in my name and those of the noble Baronesses, Lady Hayman of Ullock and Lady Thornhill, whose support is much appreciated.

This amendment, first tabled in Committee, would oblige the Regulator of Social Housing to carry out regular inspections into the affairs of all social landlords. The objective of such inspections would be to ensure that the new regime introduced by the Bill, with its emphasis on consumer protection for residents—the missing element in the current regulatory regime—was actually achieved. By visiting social landlords and talking with residents, inspections would enable the regulator to see whether its set of standards was being properly met and to take action if not.

The Government have previously mentioned Ofsted-style inspections, perhaps every four years and maybe covering providers with 1,000 or more homes. Such statements in press releases are all very well but are not a substitute for a requirement on the regulator set out in the Bill.

We have all been deeply affected by the efforts of the Grenfell survivors, represented by Grenfell United supported by Shelter, to secure real change as a lasting legacy for the 72 lives lost. They have made the case tenaciously. Without a requirement in the Bill for regular inspections, this key component in support of the Bill's intentions could evaporate. Without a basis in law, the regulator could not be challenged in the courts if it failed to inspect an organisation large or small. The Grenfell families want to ensure that their efforts have made a difference, and this needs to be evidenced by a legal duty for the regulator to conduct regular, routine inspections.

Meetings have been held with the Minister and the Bill team. As a result, the Government devised Amendments 22 and 38, which come close to fulfilling the ambitions of Grenfell United and its supporters at Shelter. They require the regulator to make a plan for regular inspections, spelling out the basis for them, their frequency and their variations for different cases and circumstances, and they ensure proper consultation with tenants and their representatives.

The Minister has been involved with Grenfell families for many years and is clearly deeply committed to meeting their wishes in so far as she is able. The new government amendments on inspections are intended to secure the outcome sought by Grenfell United and I am extremely grateful to the Minister for bringing them forward. It may be that, on reflection, further tweaks would be helpful when the Bill moves through its Commons stages—Shelter's excellent briefing on this theme illustrates possible additional refinements—but at this moment I am delighted to support the Government's amendments and will not take my Amendment 17 to a vote.

In conclusion, I hope that all those who have suffered so much as a result of the disgracefully poor management of those Grenfell homes will recognise that it is their efforts that have improved the Bill in this regard. More than this, it is their perseverance, eloquence and sincerity that have led to this whole legislative change. Because of their courage and perseverance, hundreds of thousands of those living in social housing will now benefit from the significant extra dimensions to their protection from poor landlords that this Bill will accomplish.

Baroness Pinnock (LD): My Lords, my noble friend Lady Thornhill is not well and is unable to be here today. She put her name to the amendment to which the noble Lord, Lord Best, has just spoken, so I am speaking on her behalf as much as anything.

These amendments are really important, because at the heart of the debate is the safety of social housing tenants. It is a similar debate to the one we have just had about whether there should be more professional qualifications for housing managers. Like that one, it is based on the social housing White Paper, in which the Government have suggested introducing Ofsted-style inspections for social landlords. This is, in essence, what the amendment in the name of the noble Lord, Lord Best, proposes. In mandating inspections but

[Baroness Pinnock]
leaving their frequency to the Secretary of State, and allowing them to exempt certain providers, Amendment 17 is robust but workable.

There was widespread support across the House for the same amendment in Committee, with organisations such as the National Housing Federation and the Chartered Institute of Housing welcoming stronger and more proactive regulation of the consumer standards. As the CIH stated in its briefing, it is vital that the regulator has the resources to undertake these inspections. Ultimately, these inspections will help not only to avoid the catastrophic lapses in safety that led to the Grenfell tragedy—among others, but obviously Grenfell is by far the worst—but to strengthen the ability of the social housing sector to provide warm, secure and affordable housing.

The Government have tabled Amendments 22 and 38, and the Minister has again shown that she is listening and seeking to respond to what was said in Committee. But in the opinion of these Benches, the government amendments do not appear as robust as the one tabled by the noble Lord, Lord Best. Inspections are not mandated; rather, the plan must outline whether they "should" take place and at what frequency. The regulator

"must take appropriate steps to implement the plan."

Perhaps the Minister can outline what the steps could be. What are these "appropriate steps"? What teeth does the regulator have to implement inspections? Will the Government review these provisions to determine whether they have been successful or whether further steps will need to be taken to make sure that inspections are happening? What timeframe will we see for the plan? When will it be published and how often should it be reviewed? There are lots of questions, and lots of answers are needed if we are to be able to judge whether the proposals from the Government are sufficiently robust.

Given that tenants, providers and the Government all seem to agree on the need for more proactive regulation, we on these Benches hope that the government amendments will be all that is necessary for inspections to be frequent and effective. We just hope that we will not look back and wish we had used this opportunity to further strengthen the law on this issue, as the amendment from the noble Lord, Lord Best, would allow us to do.

I want to end the debate in this House on this very important Bill by recognising, as others have done, the powerful commitment that Grenfell United has made to making the Government and the rest of us understand the importance of social housing being of the highest quality and safe and secure, with managers who know what they are doing and with a regulator who has teeth. None of us ever again wants to be party to a terrible tragedy like that which occurred in June 2017.

Baroness Hayman of Ullock (Lab): My Lords, I shall be brief because much has been said that needs to be said, and we had quite a debate on this in Committee. I thank the noble Lord, Lord Best, for the amendments he put down in Committee and again on Report, and for all the hard work and time he has put into moving this issue forward so that we have reached a stage where the Government have recognised that more needed to be done in this area. I thank the Minister for her amendments and for recognising that inspection is a critical part of making progress on standards in social housing.

We are now reaching the end of the debate at Report, so I would just like to say a couple of things. The noble Baroness, Lady Pinnock, asked a number of questions; I will not add to them but will wait to hear the Minister's response. I thank again the Minister and her officials, as I did at the beginning of today's debate, for her personal commitment and time on this Bill, and for her efforts where she has been able to make progress—for example, on this issue and in some other areas. It is appreciated by all of us who want this Bill to be as good as it can possibly be.

The noble Lord, Lord Best, ended in the way that we ought to end this debate, which is to recognise why we are here today. It is because of those who suffered so much during the Grenfell tragedy not giving up and keeping going and pushing us politicians and others on what needed to change in the social housing sector. This Bill is a credit to them. On that note, I thank everybody for the debate and for their time today.

Baroness Scott of Bybrook (Con): My Lords, I thank the noble Lord, Lord Best, for his Amendment 17 relating to inspections and for the time he has given me and my officials on this issue; it was important. He knows so much about this sector, and it was really very useful to spend time with him, as it was useful to spend time with many other noble Lords on a number of issues here. I thank them so much for their time.

5.45 pm

The regulator of social housing has committed to delivering regular consumer inspections as part of its proactive regime to gain assurance that providers are meeting the new consumer standards. This will be an integral part of the proactive regime. The regulator is accountable to Ministers and Parliament for delivering effective regulation under its statutory objectives. The department has strong working relationships with the regulator and has consistently followed policy objectives set by government. The regulator continues to develop its approach to inspections and will work closely with the sector in this process.

While legislation is not required to facilitate the introduction of regular consumer inspections, I have listened and heard the strength of feeling on this issue both in the House and from Grenfell United. Once again, I thank the noble Lord, Lord Best, for his support in helping us through this. To demonstrate our continued commitment to the delivery of regular inspections, we have tabled Amendment 22, which gives the regulator a duty to publish, and take reasonable steps to implement, a plan for regular inspections. This will ensure that inspections take place, while preserving the regulator's operational independence and flexibility. This is essential in ensuring that it has the flexibility to respond to events in the sector in an agile way. It also ensures that it is the regulator who designs the inspections regime and allows it to do so following proper engagement with the sector and, importantly, social housing tenants.

Amendment 38 is a minor amendment to clarify that the regulator is required to consult bodies appearing to represent the interests of tenants of social housing before giving guidance about the use of its intervention powers. This simply provides greater clarity and consistency in the Act.

I support everything that noble Lords have said today about the importance of this Bill and, particularly, its importance to the people of north Kensington—especially those affected by the fire. Our thoughts and our prayers are with them as we move the Bill forward. On the basis of what I have said, and in the hope that my amendment will satisfy the noble Lord, I ask him to withdraw this amendment.

Lord Best (CB): Everything that should be said has been said, and I am very glad that we have finished on the note of thanking those in Grenfell United. Over so many years such persistence has been shown in getting us to the point we are at today, and we are all very grateful to them. I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Clause 23: Performance monitoring

Amendment 18

Moved by ***Baroness Scott of Bybrook***

18: Clause 23, page 18, line 2, after "194" insert ", 194ZA"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause before clause 19 inserting a new section 194ZA into the Housing and Regeneration Act 2008.

Amendment 18 agreed.

Clause 24: Surveys

Amendments 19 to 21

Moved by ***Baroness Scott of Bybrook***

19: Clause 24, page 19, line 9, leave out from "if" to end of line 14 and insert "an authorised person has given at least 48 hours' notice of the first exercise of the power—

(a) to the registered provider, and

(b) if the premises are occupied, to the occupier (or any one of the occupiers)."

Member's explanatory statement

This provides for occupiers of premises to be given 48 hours' notice of the first exercise of the power to enter to carry out a survey (as opposed to 24 hours). This places occupiers in the same position as registered providers of the premises concerned.

20: Clause 24, page 19, line 20, leave out "(2)(a) or (b)" and insert "(2)"

Member's explanatory statement

This amendment is consequential on the amendment to clause 24, page 19, line 9 in the Minister's name.

21: Clause 24, page 19, line 23, leave out "under" and substitute "required by"

Member's explanatory statement

This amendment is consequential on the amendment to clause 24, page 19, line 9 in the Minister's name.

Amendments 19 to 21 agreed.

Amendment 22

Moved by ***Baroness Scott of Bybrook***

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

"Inspection plan

(1) The Housing and Regeneration Act 2008 is amended as follows.

(2) After section 201 (inspections) insert—

"201A Inspection plan

(1) The regulator must make a plan as regards—

(a) the descriptions of registered provider that should be subject to regular inspection under section 201,

(b) the intervals at which regular inspections should be carried out under that section, and

(c) the circumstances in which registered providers should be subject to inspections under that section other than regular inspections.

(2) The plan may make different provision for different cases, circumstances or areas.

(3) The regulator must take appropriate steps to implement the plan.

(4) The regulator must—

(a) keep the plan under review,

(b) when appropriate, revise or replace the plan, and

(c) publish the plan and any revised or replacement plan."

(3) In section 215 (use of intervention powers), after subsection (1) insert—

"(1A) In determining whether the regulator has complied with subsection (1) in relation to its power to arrange for inspections under section 201(1), a plan published under section 201A may be taken into account.""

Member's explanatory statement

This imposes a duty on the regulator to produce, publish and take appropriate steps to implement a plan relating to the carrying out of both regular and one-off inspections of registered providers of social housing. It requires the regulator to keep the plan under review and to update it as appropriate.

Amendment 22 agreed.

Amendment 23

Moved by ***Baroness Hayman of Ullock***

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

"Persons engaged in the management of social housing to have relevant professional qualifications

After section 217 of the Housing and Regeneration Act 2008 (accreditation), insert—

"217A Professional qualifications and other requirements

(1) Regulations may provide that a person may not engage in the management of social housing or in specified work in relation to the provision of social housing unless he or she—

(a) has appropriate professional qualifications, or

(b) satisfies specified requirements.

(2) Regulations specifying work for the purpose of subsection (1) may make provision by reference to—

(a) one or more specified activities, or

(b) the circumstances in which activities are carried out.

(3) A requirement of regulations under this section may, in particular, relate to—

(a) the possession of a specified qualification or experience of a specified kind,

(b) participation in or completion of a specified programme or course of training, or

(c) compliance with a specified condition.

(4) Regulations may make provision for any of the following matters (among others)—

(a) the establishment and continuance of a regulatory body,

(b) keeping a register of social housing practitioners,

(c) education and training before and after qualification,

(d) standards of conduct and performance,

(e) discipline and fitness to practise,

(f) removal or suspension from registration or the imposition of conditions on registration,

(g) investigation and enforcement by or on behalf of the regulatory body, and appeals.""

Member's explanatory statement

This amendment seeks to create a power for the Secretary of State to require managers of social housing to have appropriate qualifications and expertise.

Baroness Hayman of Ullock (Lab): My Lords, I have listened very carefully to the Minister's response to my amendment. However, my strong feeling—which is supported, as I said, by Grenfell United—is that professionalism is very important in the industry. I do not believe that the Government's amendments go far enough, so I would like to test the opinion of the House.

5.50 pm

Division on Amendment 23

Contents 171; Not-Contents 175.

Amendment 23 disagreed.

Division No. 2

CONTENTS

Adams of Craigielea, B.
Addington, L.
Adonis, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Berkeley, L.
Best, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Brinton, B.
Brooke of Alverthorpe, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carlile of Berriew, L.
Carter of Coles, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Chelmsford, Bp.
Clancarty, E.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Craig of Radley, L.
Crawley, B.
Davies of Brixton, L.
Desai, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
D'Souza, B.
Dubs, L.
Elis-Thomas, L.
Faulkner of Worcester, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasgow, E.
Greenway, L.
Grender, B.
Grey-Thompson, B.
Grocott, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L. [Teller]
Khan of Burnley, L.
Knight of Weymouth, L.
Kramer, B.
Layard, L.
Lennie, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Ludford, B.
Macdonald of River Glaven, L.
Mann, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Merron, B.
Monks, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
O'Neill of Bengarve, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Randerson, B.
Ravensdale, L.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rosser, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
Stansgate, V.
Stephen, L.
Stevenson of Balmacara, L.
Stoneham of Droxford, L.
Storey, L.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Teverson, L.
Thomas of Winchester, B.
Thurso, V.
Tomlinson, L.
Tope, L.
Touhig, L.
Tunnicliffe, L.
Tyler of Enfield, B.
Uddin, B.
Wallace of Saltaire, L.
Watson of Invergowrie, L.
Wheatcroft, B.
Wheeler, B. [Teller]
Whitaker, B.
Wigley, L.
Wilcox of Newport, B.
Willis of Summertown, B.
Wood of Anfield, L.
Wrigglesworth, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altrincham, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashton of Hyde, L.
Balfe, L.
Barran, B.
Bellamy, L.
Bellingham, L.
Benyon, L.
Berkeley of Knighton, L.
Berridge, B.
Bethell, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Brady, B.
Brookeborough, V.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Bull, B.

Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Chisholm of Owlpen, B.
Colgrain, L.
Cormack, L.
Courtown, E. [Teller]
Craigavon, V.
Crathorne, L.
Cumberlege, B.
Davies of Gower, L.
De Mauley, L.
Dobbs, L.
Duncan of Springbank, L.
Dunlop, L.
Eaton, B.
Eccles, V.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Frost, L.
Garnier, L.
Geddes, L.
Glendonbrook, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harlech, L.
Harrington of Watford, L.
Haselhurst, L.
Hay of Ballyore, L.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hoey, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Kakkar, L.
Kamall, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lansley, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Mancroft, L.
Manzoor, B.
Markham, L.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
Mendoza, L.
Meyer, B.
Mobarik, B.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrow, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patel, L.
Patten, L.
Penn, B.
Pidding, B.
Popat, L.
Reay, L.
Redfern, B.
Remnant, L.
Ribeiro, L.
Risby, L.
Robathan, L.
Rogan, L.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Spencer of Alresford, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stirrup, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Warsi, B.
Wasserman, L.
Watkins of Tavistock, B.
Wei, L.
Wharton of Yarm, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wolfson of Aspley Guise, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

6.03 pm

Clause 25: Performance improvement plans

Amendment 24

Moved by ***Baroness Scott of Bybrook***

24: Clause 25, page 21, line 32, after "194" insert ", 194ZA"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause before clause 19 inserting a new section 194ZA into the Housing and Regeneration Act 2008.

Amendment 24 agreed.

Amendment 25

Moved by ***Baroness Scott of Bybrook***

25: Clause 25, page 21, line 35, after "194" insert ", 194ZA"

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause before clause 19 inserting a new section 194ZA into the Housing and Regeneration Act 2008.

Amendment 25 agreed.

Clause 26: Emergency remedial action

Amendments 26 to 30

Moved by ***Baroness Scott of Bybrook***

26: Clause 26, page 25, line 29, leave out from "building" to end of line 31 and insert "and there are occupied dwellings in the building that have use of those common parts, the occupier (or any one of the occupiers) of each of those dwellings,"

Member's explanatory statement

This is to make it clear that notice of entry to carry out works on common parts needs to be given under this provision in respect of dwellings which have use of the common parts only if the dwelling is occupied.

27: Clause 26, page 25, leave out lines 37 to 41

Member's explanatory statement

This is consequential on the amendment to clause 26, page 26, line 18 in the Minister's name.

28: Clause 26, page 26, line 1, leave out from beginning to "premises" in line 2 and insert "A pre-entry notice required by subsection (2) need only be given once in respect of emergency remedial action in relation to premises, even if an authorised person enters the"

Member's explanatory statement

This is to make it clear that the authorised person who gives the notice need not be the same authorised person who exercises the power to enter.

29: Clause 26, page 26, line 18, at end insert—

"(6A) An authorised person may not enter premises in reliance on a pre-entry notice—

(a) before the date (or the first date) specified in the notice, or

(b) within 24 hours of giving the notice,

except where the relevant person in respect of the notice consents.

(6B) In subsection (6A), "the relevant person" in respect of the pre-entry notice means—

(a) in the case of a pre-entry notice required by subsection (2)(a) or (b), the occupier (or any one of the occupiers) of the premises or dwelling;

(b) in the case of a pre-entry notice required by subsection (2)(c) or (d), the person (or each person) to whom a pre-entry notice is required to be given."

Member's explanatory statement

This enables persons who are entitled to receive a pre-entry notice to consent to early entry to premises for emergency remedial action to be taken.

30: Clause 26, page 29, line 20, after "notice" insert "under section 225C(2)"

Member's explanatory statement

This is to aid the reader by pointing them to the provision under which a pre-entry notice is given.

Amendments 26 to 30 agreed.

Amendment 31 not moved.

Schedule 5: Minor and consequential amendments

Amendment 32

Moved by ***Baroness Scott of Bybrook***

32: Schedule 5, page 49, line 19, at end insert—

"(za) in paragraph (a), for "to 198B" substitute "to 198";"

Member's explanatory statement

The amends section 192 of the Housing and Regeneration Act 2008 to reflect the repeal of section 198B by clause 22 of the Bill.

Amendment 32 agreed.

Amendments 33 to 39

Moved by ***Baroness Scott of Bybrook***

33: Schedule 5, page 49, line 25, after "safety" insert ", energy efficiency"

Member's explanatory statement

This is to make it clear that the regulator's power to set standards extends to setting standards for registered providers as to the energy efficiency of accommodation, facilities and services provided in connection with social housing.

34: Schedule 5, page 49, line 30, at end insert—

"(c) omit subsection (3)."

Member's explanatory statement

This is consequential on the amendment to Schedule 5, page 49, line 32 in the Minister's name.

35: Schedule 5, page 49, line 30, at end insert—

"17A In section 194 (standards relating to economic matters), omit subsection (3)."

Member's explanatory statement

This is consequential on the amendment to Schedule 5, page 49, line 32 in the Minister's name.

36: Schedule 5, page 49, line 32, leave out "or safety" and insert ", safety or energy efficiency"

Member's explanatory statement

This is linked to the amendment to Schedule 5, page 49, line 25 in the Minister's name and is to make it clear that the power of the Secretary of State to direct the regulator about the setting of standards extends to standards relating to the energy efficiency of accommodation.

37: Schedule 5, page 49, line 32, at end insert—

"18A In section 198 (supplemental provisions about standards), after subsection (5) insert—

"(6) In setting standards the regulator must have regard to the desirability of registered providers being free to choose how to provide services and conduct business.""

Member's explanatory statement

This avoids repetition in the Housing and Regeneration Act 2008 by including in one place (section 198) provision which is currently included in sections 193, 194 and the new section inserted by clause 19 of the Bill. There are consequential amendments removing the provision from those sections.

38: Schedule 5, page 50, line 1, at end insert—

"21A In section 216 (consultation), in paragraph (b), at the end insert "of social housing"."

Member's explanatory statement

This makes clear that the regulator's duty to consult bodies appearing to represent the interests of tenants before giving guidance about the use of its intervention powers is a duty to consult bodies appearing to represent the interests of tenants of social housing.

39: Schedule 5, page 50, line 1, at end insert—

"21B In section 217 (accreditation)—

(a) in subsection (4)(b), after "193" insert "or 194ZA";

(b) in subsection (6), after "193" insert "or 194ZA"."

Member's explanatory statement

This amendment is consequential on the amendment in the Minister's name to insert a new clause before clause 19 inserting a new section 194ZA into the Housing and Regeneration Act 2008.

Amendments 33 to 39 agreed.

Parole Board (Amendment) Rules 2022

Motion to Regret

6.06 pm

Moved by ***Baroness Prashar***

That this House regrets that the Parole Board (Amendment) Rules 2022 introduce a "single view" procedure which (1) will prevent forensic psychologists, prison and probation officers, and other specialists working for or commissioned by His Majesty's Prison and Probation Service from making recommendations to the Parole Board on the release or transfer of prisoners to open conditions, (2) has potentially profound implications for the sentence progression of individuals subject to Parole Board oversight, and (3) has been made by the made negative procedure, with no external consultation or parliamentary debate.

Relevant document: 10th Report from the Secondary Legislation Scrutiny Committee

Baroness Prashar (CB): My Lords, I declare my interest as a former executive chairman of the Parole Board of England and Wales from 1997 to 2000. This regret Motion relates to a specific part of the statutory instrument which amends Part B of Schedule 1 to the Parole Board Rules 2019 to allow the Secretary of State to give a single view on suitability for release or transfer in certain cases. The introduction of the "single view" procedure forms part of a wider series of changes to the parole system introduced by the former Justice Secretary and Lord Chancellor, Dominic Raab.

The first ground for regret is that the specific change implemented by the statutory instrument—preventing forensic psychologists, prison and probation officers

and other specialists working for or commissioned by His Majesty's Prison and Probation Service making recommendations to the Parole Board—was introduced without consultation. This meant that those with experience of the parole system had no input into the new statutory instrument. Such radical changes to how the parole system works should have been implemented only after those who work in it were consulted. The manner in which these changes were introduced, with no consultation even with the Parole Board, undermines confidence in the professionals and the system.

The second ground for regret is that the Government have simply failed to establish that there is a problem which justifies the package of changes made. In other words, there is no evidence of the problem the changes purport to solve. These changes may well result in increased risk to the public, as the Parole Board is denied the benefit of expert opinion and the opportunity to see how prisoners respond in conditions of lower security. As we know, having the benefit of expert opinion and proper risk assessment is important to ensure that prisoners are prepared for reintegration into society.

The reason for introducing the "single view" procedure was to respond to recent cases in which expert witnesses employed by the Secretary of State took a different view from that of the Minister. Parole panels hear different opinions and, after consideration, reach their own conclusions. The Secretary of State may disagree and can now insist on a reconsideration. This provides an adequate remedy in such situations. Therefore, excluding the input from expert witnesses appears extreme and ill judged.

The department expects the "single view" procedure to operate rarely, in perhaps 150 cases out of over 3,000 annually, but the rule changes go much further. They prevent witnesses employed or commissioned by the Secretary of State providing a recommendation to any parole hearing either in writing or orally. This represents a major interference with the Parole Board's ability to operate independently and undercuts the independence of a court-like body. It also undermines the professional standing of witnesses, for whom risk assessment is a core skill.

The "single view" procedure is currently subject to an ongoing judicial review in the case of Bailey v Secretary of State for Justice. In this case, the court has provided interim relief solely to the plaintiff on the basis that the parole panel should be free to ask any questions relevant to its task and expect the witness to answer them. This includes asking an expert witness for their recommendation. This judicial review is an important test of the "single view" procedure.

My third regret is the change in the criteria by which prisoners may move to open prison. These changes were expressly opposed by the Parole Board and the National Association of Probation Officers. As we know, the period spent in open conditions is a practical aid to resettlement in the community, and considered recommendations by the Parole Board, albeit subject to the Secretary of State's approval, are crucial for public protection. These directions had three tests: that the prisoner is assessed as having a low risk of absconding; that a period in open conditions is considered essential to inform future decisions about release and to prepare for possible release on licence into the community; and that the transfer to open conditions would not undermine public confidence in the criminal justice system.

The second test is controversial as it sets the bar for open release very high and excludes prisoners who have progressed well and for whom a move might be considered beneficial, rather than essential. It prevents the decision-makers from considering whether a move to open prison might reduce risk and improve the prospect of safe release.

The third test—that the transfer to open prison would not undermine public confidence—is completely open-ended, and no guidance has been provided as to the circumstances in which it might apply. Now, only the Secretary of State considers the public confidence criteria, a task which essentially falls on officials. This has led to a dramatic reversal in the proportion of prisoners being approved for transfer to open conditions.

The Parole Board has estimated that the consequent delays may add 800 a year to the number requiring prison places. The Prison Reform Trust has recently received data from the Parole Board showing that, prior to these changes, 94% of recommendations for open conditions made by the Parole Board were accepted; since the change in criteria, and despite a falling number of recommendations, only 87% have been accepted.

Since the Worboys case in 2018, the parole system and the Parole Board have been subject to multiple reviews; some have been independent of the ministry, but the root-and-branch review prompted by the 2019 Conservative manifesto was conducted by unnamed officials within the department. Only aspects limited in scope were subject to public consultation, but change introduced by this statutory instrument formed no part of that review, and the Parole Board was given almost no notice of it, still less consulted.

The Parole Board has an enviable record; in recent cases only one in 200 releases resulted in a person being charged with a further serious offence. Every time a prisoner absconds, or a person released on parole commits a serious further offense, public concern is wholly understandable, but it is important that the response to these cases is proportionate. The Parole Board has co-operated in an exemplary way, with some radical changes in its operation. Its willingness to provide the public with reasons for decisions in individual cases, its adoption of a reconsideration process, and its skill in undertaking the complex challenge of holding some hearings in public all show that the Parole Board is open to new ideas. But some of what has been forced upon it in recent months has clearly been ill-thought through, and I hope that the Minister might now be open to a conversation on how these aspects of reform might be adjusted.

To conclude, I ask the Minister why the Secretary of State decided not to consult before introducing the statutory instrument, and if he will do so now. Given the dramatic reversal in the proportion of prisoners now being approved for transfer to open conditions, what is the Minister's assessment of the probable delay before those prisoners may now be safely released from prison?

[Baroness Prashar]

On the "single view" procedure, what is the Minister's assessment of the impact of the new procedures on public protection, particularly in cases where decisions on release or transfer are complex, and where the Parole Board will not now have the benefit of clear recommendations from officials? I beg to move.

6.15 pm

Lord Garnier (Con): My Lords, I support the noble Baroness, Lady Prashar. Because she set out the arguments so well and so fully, there is very little more that I need to say—save that, in standing, I want to demonstrate that this is not a party-political issue; this is a matter of constitutional propriety, and I think it is a matter of justice.

I suppose this is a smallish point, but I think that the negative procedure is the wrong way to deal with a statutory instrument of this nature. According to the notes attached to the statutory instrument, this regulation has been in law since the summer, and this is the first time that your Lordships' House has had an opportunity to discuss it. As we have learned from the noble Baroness's remarks, this statutory instrument carries with it matters of huge importance which should not just be lightly passed into law.

The second point I draw from her remarks is that, long ago, we got rid of political decision-making in the tariff-setting of life sentences for prisoners, and yet we are now introducing political input into questions which should be dealt with by the Parole Board by a "single view" of the Secretary of State. I suppose there was a time when the Secretary of State for Justice might be expected to know something about the law, but that is no longer the case. Therefore, it seems to me all the more extraordinary that a political Minister should have the power, passed by this little-discussed measure, to have a single view which trumps all others—indeed, shuts out all others.

In essence, I entirely support what the noble Baroness had to say, and I am reasonably certain that most other speakers will as well.

Lord Dholakia (LD): My Lords, I am pleased to support the Motion in the name of the noble Baroness, Lady Prashar, and to reinforce her concerns about recent changes to the parole process.

When it considers a prisoner's case, the Parole Board has two decisions to make: first, whether to direct the prisoner's release; and, secondly, whether to recommend that the prisoner should be transferred from a closed prison to an open establishment. The board carries out these functions to an extremely high standard. Its members include current and former judges, police officers, Crown prosecutors, probation officers, psychiatrists, psychologists, lawyers and members of other professions.

All Parole Board members receive thorough training on risk assessment, which is regularly reinforced by risk-focused in-service training. In every case which goes to an oral hearing, the board assesses whether a specialist member—such as a psychiatrist, a psychologist or a member with particular training in terrorism issues—should be on the panel. As a result of this strong focus on effective risk assessment, the proportion of prisoners released on parole who commit a further serious offence is less than 0.5%, which is a remarkable record of the success of the Parole Board in its work. It is difficult to see how any system based on human judgment could produce a significantly better result.

An essential part of the parole process is the provision to the board of reports from specialists working for His Majesty's Prison and Probation Service—including prison staff, probation officers and psychologists—as well as other specialist reports commissioned by the service. These reports contain a detailed assessment of the prisoner's risk. They include information about the prisoner's progress in custody, their sentence plan, their risk of reoffending, their risk of serious harm and the arrangements and licence conditions which would be in place if they were released.

In the past, these reports also contained recommendations for or against release on parole and for or against a transfer to open conditions. The Parole Board was not bound to accept these recommendations, as it has a duty to make its own independent assessment of the prisoner's suitability for release or open conditions. However, it was obviously helpful for the board to receive recommendations from professionals who had particular knowledge of the prisoner because they had worked with him or her on a regular basis during the prisoner's sentence.

These recommendations have now been prohibited. This decision is totally illogical, since professionals who are commissioned by the prisoner's legal representatives will not be prohibited from making recommendations. If a prison psychologist assesses the prisoner and believes that he or she is not safe to release, they are prohibited from saying so. However, if an independent psychologist is commissioned by the legal representative to assess the same prisoner and concludes that they are safe to release, they can make a recommendation for release to the Parole Board. In this case, the board would receive only one recommendation from a psychologist, a recommendation in favour of release, as even though the prison psychologist considers that the prisoner remains too dangerous to be released on licence, they are prohibited from saying so to the Parole Board.

This approach is patently nonsensical. It is difficult to see what it has to do with protecting the public or promoting sound decisions. The decision to prohibit these professionals from making recommendations seems to have arisen from the desire of the previous Secretary of State, Dominic Raab, to reject recommendations for open conditions in certain cases, specifically cases where he argued that a move to an open prison would "undermine public confidence in the criminal justice system". This phrase seems to be shorthand for refusing recommendations in high-profile cases because of a fear of adverse media publicity, even when there is strong evidence of the prisoner's suitability for open conditions.

The former Secretary of State may well have feared that it would look embarrassing if he refused a recommendation for open conditions when his own professional employees in the Prison and Probation Service recommended this. This does not seem to be a

very grown-up way of making decisions. ln any organisation, senior leaders are entitled to overrule the recommendations of subordinates if they consider that there is a good reason for doing so. But no sensible leader would prohibit their staff from making recommendations in the first place in areas where the subordinate has particular knowledge and expertise.

The Secretary of State has always been able to reject recommendations for open conditions made by the Parole Board. But it makes no sense for him or his officials and the Parole Board itself to make their decisions in the absence of recommendations from those who have close knowledge of the prisoner. The new Secretary of State should review this change in the parole procedure and reverse it. This would be by far the least of the U-turns which the Government have undertaken in the last few weeks. None of us would be inclined to crow over a sensible reversal of policy of this kind. On the contrary, we would welcome a readiness to change direction after considering reasoned arguments from those with knowledge and experience of the parole system.

I believe strongly that future parole decisions should continue to be based on the accumulated experience and expertise of the Parole Board, informed by reports and recommendations from professionals with close knowledge.

Lord Garnier (Con): I apologise for intervening. I forgot to refer to my interests in the register. I am a trustee of the Prison Reform Trust and am connected to a number of other prison welfare bodies.

Lord Carlile of Berriew (CB): My Lords, I speak in support of my noble friend's regret Motion, which she moved with such clarity. She speaks with great experience and authority, as she told us at the beginning of her speech.

These regulations, already in force, feel like an attack on the Parole Board. I have been knocking around the legal system for decades, and I know many people who have been, and some who are, judicial members of the Parole Board. I think I reflect their feeling of the Parole Board being under attack from the Government, so I want to start by praising the Parole Board: for its fastidious care over the evidence in cases for which it is responsible; for its determined and proper independence, which is key; and, indeed, for its accepting the increased judicialisation that has made its processes more transparent and public. The Parole Board has moved with the times, and it perfectly understands its responsibilities.

Like others, I want to focus on paragraph (22), which provides that:

"Where considered appropriate, the Secretary of State will present a single view on the prisoner's suitability for release."

Even by statutory instrument standards, those are words of breathtaking vagueness. I suggest that this provision is a very unwise and unwelcome change for the following reasons. First, it is nothing less than an unwarranted interference by Ministers with what is clearly, now at least, a judicial process. Nobody can deny that the Parole Board is a judicial process; the issue goes, therefore, to the heart of the separation of powers. The previous Lord Chancellor knew perfectly well that he was attacking the separation of powers. I have, sneakingly, more confidence in his successor, who in my view has operated with some skill in bringing to an end quickly the justified strike by criminal barristers.

As I said a moment ago, the provision is vague. What are the terms of reference that would make it appropriate for a ministerial single view to be given? What does a "single view" mean in this context? Who is actually going to make these decisions? Who is going to prepare the papers to be put in the Minister's red box? This is such an unclear procedure as to be wholly unacceptable.

Why on earth are report writers such as psychologists, an example already given, those with real knowledge of the prisoner concerned and, by definition, experts themselves to be banned from expressing a written opinion, which, of course, is not more than that—an opinion, not a decision, on the outcome of the case? This seems to me to presage a political reaction to media stories in an attempt to influence the Parole Board. That can have no legitimacy.

Furthermore, these ministerial decisions or recommendations are apparently not binding. What do they really mean? Well, they obviously mean that the Minister does not trust the tribunal, or at least he does not trust the media's reaction to a decision that may be made by the Parole Board as a tribunal. But it certainly puts unacceptable pressure on the Parole Board.

With those comments in mind, please will the Minister tell us whether the Parole Board was consulted and, if so, whether the Parole Board welcomed these proposals and in what terms? Indeed, I think that we are entitled to know who else was consulted. What did they say? Did anyone support these proposals? If so, who were they and what reasons did they give?

Also, please will the Minister tell us how many cases this is expected to apply to? Is he, as a very experienced and eminent lawyer, comfortable with these changes? Do they accord with the ethical principles that separate Ministers from the courts and tribunals? He should be clear, when he answers, that most responsible commentators and respected NGOs see this as a slippery-slope provision to be deprecated.

6.30 pm

Lord Bradley (Lab): My Lords, I shall speak extremely briefly. I declare my interest as a trustee of the Prison Reform Trust. I fully support the views expressed in the excellent speech by the noble Baroness, Lady Prashar, in introducing this regret Motion.

I want to ask the Minister one question. Has guidance now been issued on the interpretation of the public confidence test and if not, when will it be issued? Who will be consulted on it, so that there is absolute clarity as to what public confidence means?

Lord Patten (Con): My Lords, I rise somewhat nervously to speak, because I am not an expert in this field. I am not a lawyer. There are clearly many noble Lords in your Lordships' Chamber tonight who are experts. Unlike some of my dafter colleagues in another place, I rather value experts. I listen carefully to what they have to say.

[Lord Patten]

Whatever disagreements there may be tonight, I think we can all agree that public service on the Parole Board is one of the most challenging tasks imaginable: balancing the paramount need for public safety with the hopes of eventual reform and re-entry into society for some offenders.

It is often said that nothing seems to work in the UK criminal justice system. I do not think this is right. It is a mistake. An awful lot works pretty well. The record shows that this most specialised part of the criminal justice system, in respect of which I am an amateur—a layman is perhaps a better way of putting it—generally works quite well. But because of human nature, it does not work all the time, alas; sometimes it fails, whatever the statistics show.

While I agree with noble Lords that a bit more consultation in drawing up these regulations would not be a bad thing, I must respectfully disagree with the regret Motion, for two reasons. First, the Secretary of State, like Parole Boards, has a very challenging task regarding public safety. On reflection—again, I stress, I speak as a layman—it is surely right that he or she should be able to produce a single view in a small number of the most serious cases. In all other cases, whole dossiers of reports can be obtained from those who are experts—psychologists, psychiatrists and, of course, lawyers. I am content with that, and I want my noble friend the Minister to know that I strongly support it.

Secondly and lastly, I strongly support our manifesto commitment to have more public hearings, where possible, at the request of victims and their families, the media and the general public. This is to the public good. As a layman, I feel strongly that the parole system must be as open and transparent as possible—not some experts' secret garden where the generality of the public should not go. As I said before, I do greatly value expertise.

It is interesting to see what happens in other jurisdictions, which are not often spoken of well in this country, such as the United States. In some states, though not all, the system is very open indeed. Some have parole boards on which ex-convicts, as they call them, serve as full members. We must not shut our eyes to trying to make our system as transparent as possible. This is a second reason why I strongly support our manifesto commitment being followed up.

Baroness Newlove (Con): My Lords, I am here listening because I may shortly be on the Woolsack—although hopefully not—after my friend, the noble Baroness, Lady Fookes. However, I declare an interest. I am a victim, and so are my daughters, of the murder of my late husband, Garry Newlove. Having listened to Members, and with no disrespect, I cannot agree with this regret Motion.

For the last 15 years, I have attended every parole hearing and tariff review hearing and, in my role as Victims Commissioner, I have shadowed parole hearings. I also worked on the review of the Worboys case. Although an appeal system is in place, the bar is so high that it feels like a waste of time. I have been through an appeal. I have been through exactly what anybody else would have to go through, with no favours. That appeal route is not easy. You must explain why you want to do this and why you disagree with the result of the parole hearing. My appeal was sent to the then Secretary of State, Robert Buckland. His team looked at it and worked on it without knowing any of my views, except for what I had written through my victim liaison officer. His office then recommended that it be reviewed.

I want to draw the Chamber's attention to the information victims receive. In bold letters, the Parole Board says that no matter what goes through, it does not change its mind. For a victim, it is absolutely appalling to see that in bold, even though there is a process for victims to go through. This is not to be disrespectful to the qualified people in this room, but I am speaking up for the many victims who go through a system that says one thing and delivers another. I speak as the mother of three daughters, who witnessed every kick and punch to their father, when I say that the system is broken. I totally agree that the public has no confidence in the criminal justice system where victims are concerned. I am very grateful that the media pick up these stories, because that means that I find out more information about my case than I would have been told personally by the system.

I disagree with this regret Motion. The system needs a good overhaul, and we need transparency. I hear from Parole Board members that it is a courtroom. Well, if it is a courtroom then there should be transparency, so that victims can fully understand why the decision was made. In one of the parole hearings, the Parole Board disagreed with a psychologist from the prison, a representative who knew the situation and went against that decision.

I welcome that we are discussing this, but I cannot agree with the regret Motion. We need transparency and we need public confidence. Victims have a right to know, to understand and to be treated with dignity, as I have for 15 years. They have a right to understand, to be there, to listen. More importantly, this is an opportunity to ask my noble friend the Minister: when will a draft victims Bill be presented, so that our voices can be listened to?

Lord Ponsonby of Shulbrede (Lab): My Lords, I too thank the noble Baroness, Lady Prashar, for tabling this regret Motion, which I support. She made a powerful case. I will not repeat the points she made but, in opening, I put six questions to the Minister.

First, why was removing probation recommendations not included in the root and branch review and why was there no prior consultation with all the stakeholders before the changes were implemented? Secondly, on the removal of probation recommendations, what impact assessments have been carried out regarding black, Asian and minority ethnic prisoners and IPP prisoners?

Thirdly, the National Association of Probation Officers is concerned that removing professional recommendations in parole will lead to inappropriate releases and the non-release of those who otherwise may have been granted parole. Therefore, what impact assessment has been carried out on this issue, and did the Government seek the views of the Parole Board itself about having to make release decisions without expert witness recommendations?

Fourthly, under the changes, what protections are in place for probation staff who are required to attend a public parole hearing? I agree with the noble Lord, Lord Patten, and the noble Baroness that these hearings should be public, but the question is specifically about the protection of parole officers—and, potentially, expert witnesses—when they are taking part in these hearings.

Fifthly, how many responses were there to the root-and-branch review, and how many of those were in favour of the public parole hearings? I echo the question of the noble Lord, Lord Carlile, about whether anyone at all supported the Government's proposals.

Sixthly, will the Government withdraw these changes if the judicial review finds against them?

In July's Justice Questions in the other place, Kate Green MP challenged Dominic Raab on the proposed changes. He argued that

"there is a risk that separate reports, whether from psychiatrists or probation officers and those who manage risk, may give conflicting recommendations."—[*Official Report*, Commons, 5/7/22; col. 711.]

Sonia Flynn, the chief probation officer, added in September's committee session that differing recommendations would seem

"quite confusing, given that we are one HMPPS",

and that the new change

"kind of tidies"

that up. That was the justification.

I must say that I find that explanation very surprising. I am absolutely sure that Parole Board members are well used to assessing conflicting sources of information; it is what people who sit as judges, or in a quasi-judicial capacity, do all the time. In other contexts, such as criminal courts or family courts, it is absolutely routine to get recommendations from probation officers—or in the context of family courts, recommendations from experts—which can indeed be contradictory. That is what the judges or magistrates do when they decide the merits of a case.

I hope that the Minister, who is exceptionally experienced, will bring an open mind to this situation. There have been a lot of changes on the Government and Treasury Benches over the last few months—or days. He is in a position where he can bring an open mind to this, and I hope that he will respond to the noble Baroness's regret Motion in that spirit.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, I am very grateful to all noble Lords who have contributed to this debate, and in particular to the noble Baroness, Lady Prashar, for tabling this regret Motion.

The principal concern is that the recent changes to the Parole Board Rules prevent prison and probation staff making specific recommendations in the reports that they give the Parole Board. It is said that this has implications for the sentence progression of individuals subject to parole review, and complaint is made that this was done through the negative procedure without consultation. What we are not considering today are other changes, such as changes relating to the move from closed to open prisons, which are, strictly speaking, not the subject of today's regret Motion.

I will provide some background. The Parole Board of England and Wales is an arm's-length body which, as has been pointed out, performs a judicial, or at least quasi-judicial, function. It is required by statute to decide whether prisoners serving eligible sentences can be safely released into the community—that is the board's decision. The statutory test requires that the board must direct release if it is

"satisfied that it is no longer necessary for the protection of the public that the person should be confined."

6.45 pm

As is well known, the Secretary of State is required to refer eligible prisoners to the Parole Board once they have completed the relevant period of their custodial sentence. When a reference is made, the Prison and Probation Service—HMPPS—provides a comprehensive dossier of evidence, which includes information about the offence, risk assessments and information from those who have worked closely with the prisoner during their time in custody. Those reports, including those from psychologists, may be anywhere between 150 and, in some complex cases, up to 1,000 pages. Essentially, that procedure and process will continue.

I simply point out that the change that we are talking about is quite limited. It is concerned with the removal of the previous requirement that written evidence submitted on behalf of the Secretary of State must include a recommendation. The previous legislation said that the staff reports must include a recommendation, and that provision is no longer in force. In other words, the reports continue as they did before, but there is no final conclusion that says, "I therefore recommend" whatever the recommendation is.

Lord Ponsonby of Shulbrede (Lab): Is it still open for any expert to give a recommendation if they so choose?

Lord Bellamy (Con): My understanding is that they are not to make recommendations. They can make their risk assessments and say whether there is a valid release plan; they can do all of those things. They can say this man or woman poses no risk to the public, or does pose a risk, or whatever it is, but they cannot express an opinion on the very question that the Parole Board is required to answer: whether the prisoner should be released. This is essentially a change that brings the decision on release back to where it belongs: the Parole Board, not the expert.

Lord Carlile of Berriew (CB): Is not the noble and learned Lord confusing two quite different things? The expert does not give an opinion on whether the person should be released, as the noble and learned Lord suggested has been the case; the expert gives his opinion on whether it is safe for the person to be released. That is quite different. Can the noble and learned Lord, with all of his expertise, think of another form of expert evidence in which the expert is not permitted to give his opinion on the key matter under consideration?

Lord Bellamy (Con): My Lords, I respectfully submit that we are dealing with angels dancing on pins here. What is intended by this change is to make it clear that the responsibility for the decision rests squarely with

[LORD BELLAMY]
the Parole Board, and to avoid the risk, however remote, that the expert report tends to usurp the role of the decision-maker, running the risk of them delegating their decision to the expert. This amendment brings the Parole Board process in line with the rest of the justice system. I respectfully refer your Lordships to the evidence of Professor Stephen Shute to the Science and Technology Committee of the other place on 7 September. He made this very point, saying that it is for the Parole Board to make the decision, rather than run the risk of the matter being left in the hands of the expert.

Analogy has been rightly drawn with what happens elsewhere in the justice system; for example, in relation to pre-sentence reports in the criminal process. One does not find the probation officer saying that the court should impose a community sentence. One asks the probation officer to assess whether the offender is suitable for a community sentence. This change will align the practice of the Parole Board more closely with the rest of the justice system.

Lord Brown of Eaton-under-Heywood (CB): Not realising that this was a high tea, rather than a dinner break, I confess that much to my regret I was not here at the start of the debate. Why, if this is designed to stop these individual experts pre-empting the Parole Board's decision, is it left to the Secretary of State to be allowed to do so with his single view?

Lord Bellamy (Con): If I may respectfully point this out to the noble and learned Lord, the Secretary of State with his single view does not pre-empt the decision of the Parole Board. He presents a single view to the Parole Board.

Lord Brown of Eaton-under-Heywood (CB): Why is that any different from the same operation being done by those who have been contributing to the background?

Lord Bellamy (Con): In a sense, this is an inter partes procedure, with the Secretary of State on one hand and the prisoner on the other. The Secretary of State, like a party, is putting his view to the board. That is the single view that, in my submission, he is entitled to put.

While I am on the single view, this is likely to refer simply to the very top tier of cases, probably 150 to 200 cases a year out of the many thousands that the Parole Board deals with. It refers to very dangerous, highly sensitive cases of prisoners involving murder, serious violence and so forth. In those cases, it is thought right that the Secretary of State, through his representative before the Parole Board, should be able to present a single overarching view. That is a sensible approach which avoids confusion and uncertainty.

Nothing in any of these reforms prevents or limits the ability of the Parole Board to make the right decision or the ability of the relevant members of staff, whether psychologists, probation officers or whatever, to make the risk assessments or to put in whatever observations they wish within the assessment that they are required to make, except to make the relevant recommendation.

It is not a change that should in any way undermine the system. HMPPS staff will continue to provide reports to the Parole Board. Their reports will still contain the same detailed evidence and assessment of risk as before. The only omission will be a recommendation on what decision the report writer thinks the Parole Board should make. Far from undermining the Parole Board, the intention of these reforms is to draw a sharp distinction between the roles of those who provide evidence and those whose duty it is to assess the evidence and reach a decision. That is the essential background.

Lord Garnier (Con): Does my noble and learned friend think it appropriate that a political Minister should be the conveyor of a single view—the only view—on a matter for quasi-judicial discussion?

Lord Bellamy (Con): The Secretary of State has an overriding duty to protect the public. In that context, as the guardian of the safety of the public, he is entitled to present his view to the Parole Board, which then decides.

On the second point made by the noble Baroness in relation to the implications for the progression of offenders, the Government's position is that there is no change. The rules by which prisoners progress through the system and their opportunity for release will continue to be assessed by the Parole Board, as they are at the moment.

On this occasion, I will not go into the open prison/closed prison issue, because that is not the subject of what we are discussing today. On the point we are discussing, this change in the rules about the recommendations, it is a very limited change and is fully in accordance with general principle. HMPPS will continue to provide comprehensive evidence to the Parole Board and factual evidence for the assessment of risk, as before.

Lord Woolf (CB): I am really rather surprised at what the Minister says. I have sat in courts for many years. To suggest that an expert cannot give an opinion as to what should be the outcome is something I find contrary to everything I remember from my experience, which admittedly was a long time ago.

Lord Bellamy (Con): My Lords, with respect, I have always understood it to be the case—I hope I have not got this wrong—that an expert should not normally give his opinion on the very issue on which the court is required to decide. The scope of the expert's opinion is to provide the court with the factual details. It is the duty of the expert not to say whether X or Y is guilty or not guilty but to provide the court with the facts on which that decision is taken. At least, that is common practice.

Lord Carlile of Berriew (CB): In the jurisdiction in which the Minister is so expert, namely competition law—as he knows, I have sat with him in the Competition Appeal Tribunal—economists and other experts giving evidence before the Competition Appeal Tribunal do give an opinion as to whether the practice under consideration is competitive or anti-competitive.

I pull the Minister back to a previous point. Time and again, those of us who have been in criminal courts for a long time have heard judges say to a probation officer, for example, "If I pass a non-custodial sentence, do you think he would comply with orders A, B and C?". That is an opinion on exactly the issue under consideration. I am completely befuddled by that part of the argument and so, I think, are many noble friends and colleagues.

Lord Bellamy (Con): Perhaps I ought to try to bring this somewhat tetchy debate to a close. The Parole Board is required to decide that it should direct release if it is satisfied that the detention is no longer necessary for the protection of the public. The provision we are discussing makes it clear that the expert should not pronounce on the prisoner's suitability for release. In other words, the expert should not pronounce on the principal matter on which the Parole Board is being asked to decide. Subject to that, all the other material that was there before will continue to be there.

7 pm

I am not in a position to answer all the questions that the noble Lord, Lord Ponsonby of Shulbrede, was kind enough to ask; I think there were six and maybe several sub-questions within the six. I will have a look at the transcript, if I may, and answer what I can in due course as with other questions asked by noble Lords this evening. There was no consultation in this case. This is within the legislation; that is the procedure that is normally adopted for amendments to these rules. I am perfectly happy on behalf of the Government to say that we will keep this issue under review and see how it works out. There is a case in the High Court, which I cannot comment on, which may affect the outcome. The essential point is that these rule changes in no way undervalue the importance of the reports or the assessments that will continue to be provided by prison and probation staff and psychologists. Those will remain vital. In closing, I pay tribute to all the staff in the service who provide those reports and reassure them that their role will continue to be vital, as heretofore.

Baroness Prashar (CB): My Lords, I know that time is rushing on and the Front Bench is keen to close the debate. I first want to thank all the colleagues who have contributed to this debate and say that I respect the alternative views expressed by the Minister and the noble Baroness, Lady Newlove.

I found the Minister's response rather confusing. He was trying to justify the unjustifiable. If I wanted to refute every point, it would take me about half an hour, which I do not have. This really highlights why it is important to have a consultation—a proper debate—so we are not eroding the fundamental principles on which the Parole Board actually operates. At the outset he said it was an arm's-length body and should be respected as such. Also, if may say so, experts can give their opinion but from my experience the Parole Board hears different, conflicting views and it makes up its own mind. It does a risk assessment, which it is good at. Its record shows that.

I ask the Minister, having listened to this debate and felt the unease round the House, whether the Government will be willing to meet to see how some of these things are going to be discussed. We need clarity about what actually is intended. I am leaving this debate more confused than enlightened. But I thank the Minister for the response and everybody else for their contributions. I beg leave to withdraw the Motion.

Motion withdrawn.

Chinese Consulate: Attack on Hong Kong Protesters

Commons Urgent Question

7.04 pm

The Minister of State, Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, with the leave of the House I shall now repeat in the form of a Statement the Answer given by my right honourable friend the Minister for the Americas and the Overseas Territories to an Urgent Question in the other place on the protests at the Chinese consulate in Manchester. The Statement is as follows:

"His Majesty's Government are extremely concerned at the apparent scenes of violence at the consulate of the People's Republic of China in Manchester on Sunday afternoon. Greater Manchester Police had been pre-notified of the demonstration and intervened to restore order, and we are grateful to it for its action. I understand that Greater Manchester Police has launched an investigation to establish the facts of the incident.

The Foreign Secretary has issued a summons to the Chinese chargé d'affaires at the Chinese embassy in London, to express His Majesty's Government's deep concern at the incident and to demand an explanation for the actions of the consulate staff. It would be inappropriate to go into further detail until the investigation has concluded, but let me be clear that peaceful protest, as this House has always recognised, is a fundamental part of British society and our way of life. All those on British soil have the right to express their views peacefully without fear of violence. FCDO officials expressed that clearly to the Chinese embassy yesterday. We will continue to work with the Home Office and Greater Manchester Police colleagues to decide on appropriate next steps."

7.06 pm

Lord Collins of Highbury (Lab): I thank the Minister for repeating that Statement. I share the Government and the Minister's concerns at the violence at the consulate. While I welcome the fact that the chargé d'affaires has been summoned and that a meeting apparently took place this afternoon, we must show that such behaviour will not be tolerated on our streets. Therefore, I was disappointed that Jesse Norman was today unable to confirm that the Foreign Secretary would immediately summon the Chinese ambassador to demand an explanation for the incident. I hope that the Minister will urge him to do so without delay.

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for his remarks. As was said in the Statement, the police in Manchester have launched

[Lord Goldsmith of Richmond Park]
their investigation, and a police patrol plan is in place in the area. The use of police powers and management of demonstrations are obviously operational matters for the police—but, in relation to what happened on the ground, at this stage it would be inappropriate to comment further until that investigation is completed, at which point the noble Lord's remarks may well become more pertinent.

Lord Dholakia (LD): My Lords, there is ample video evidence to be able to see precisely what happened in Manchester on that day. There are hundreds of Hong Kong refugees now in this country for the purpose of resettlement. Is there any way that it can be determined whether there is diplomatic immunity, on the basis that we can take no action—other than making sure that we expel those who are responsible from this country back to China?

Lord Goldsmith of Richmond Park (Con): The noble Lord makes an important point, but it is one to which I cannot respond with any degree of authority or detail. We have to wait until the investigation is complete before knowing for sure what took place at the protest, and whatever actions follow will result from that clearer understanding.

Lord Alton of Liverpool (CB): My Lords, I declare my non-financial interest as vice-chair of the All-Party Parliamentary Groups on Hong Kong and on Uyghurs, and as a patron of Hong Kong Watch. This question is about grievous bodily harm, which has been done to a peaceful protester who has had to be hospitalised. It is about the Chinese Communist Party believing that it is above the law and can act with impunity on British soil. It is about the importation of CCP brutality, which has so disfigured the lives of the peoples of Hong Kong, Xinjiang, Tibet and Taiwan, and Chinese citizens who have dared to question the tyranny of the one-party state. It is also about the contagious spread of CCP cadres, whether they are intimidating students on our campuses and subverting institutions and even, as our intelligence agency has pointed out, CCP spies working in the precincts of our Parliament.

The key question for the Minister tonight is that, once this investigation has been completed—and we all welcome the work that is being done by the Greater Manchester Police force—if it shows that Consul-General Zheng Xiyuan, Consul Gao Lianjia, Counsellor Chen Wei and Deputy Consul-General Fan Yingjie, who were all directly involved in attacking peaceful protesters in Manchester, will the Government ensure that they will be treated as persona non grata forthwith and told to pack their bags? To do anything less would devalue the currency of our belief in free speech and the right to protection while peacefully expressing dissent.

Lord Goldsmith of Richmond Park (Con): The noble Lord makes a powerful intervention. However, it is simply not possible for me to respond in any detail until those inquiries are completed. Once they are and we know what happened, it would then be for the Government to respond appropriately.

The noble Lord makes an important point. Peaceful protest is an absolutely core part of a democratic society. It is a long-standing tradition in this country. People are free to gather to demonstrate their views, and to do so knowing that they will not be punished as a consequence. As the noble Lord knows, that is not true all around the world. However, it is very precious and we will continue to defend it.

The noble Lord has done some sterling work for those from Hong Kong fleeing persecution. I hope he will agree with me that the Government have stood by those citizens of Hong Kong who face persecution. We have been very clear that China remains in an ongoing state of non-compliance with the Sino-British joint declaration.

I was looking for the latest figure for the number of people who have come over from Hong Kong—as I say that, I find them. There have been 140,000 applications, with 133,000 granted. That is a reflection of the value that the British people and Government place on our friends in Hong Kong.

Lord Campbell of Pittenweem (LD): My Lords, I cannot resist an observation to this effect: suppose that the roles had been reversed and representatives of the United Kingdom had behaved in this way. One can only imagine the rightful indignation that we would have heard from Beijing. Here is the question I want to address: have there been incidents of peaceful presentation at this particular location in the past that have passed without incident?

Lord Goldsmith of Richmond Park (Con): The noble Lord makes a useful observation on the turning of the tables. The answer is that I do not know. I suspect that there have been peaceful protests. The fact that we have not debated incidents in that venue suggests that the answer to his question is yes, but I will need to get back to him to confirm that.

Lord Collins of Highbury (Lab): My Lords, I want to come back to my original question. I totally understand that it is not the Government's position to interfere with the operations of the police or their investigations. However, the Government felt it right to summon the chargé d'affaires to make clear our view about this incident. Why is it not right for the Foreign Secretary to summon the ambassador to make this position clear? Surely that must be done immediately.

Lord Goldsmith of Richmond Park (Con): My Lords, that depends on what is discovered. It may well be, as noble Lords are implying, that this was an egregious act of wrongdoing. If that is the case, the Government will respond accordingly and, at that point, our conversation and interaction with China and Chinese representatives would change. However, at this point, it would be premature for me to map out a course of action.

Lord Alton of Liverpool (CB): My Lords, will the Minister ensure that he takes a look at the video material that is available? It shows the protester being dragged into the consulate grounds. What happened

to the protester is all on film. This is not us becoming angry about what someone said might have happened; it can be seen very clearly.

Lord Goldsmith of Richmond Park (Con): My Lords, I have seen the images captured on video. All I would say is that there has to be a process. This is a very serious incident. If noble Lords' fears are confirmed, obviously the situation will be escalated, as it must be. It is incumbent on the Government, before they respond, to they know absolutely the facts on the ground.

House adjourned at 7.14 pm.

Grand Committee

Tuesday 18 October 2022

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, good afternoon. I remind your Lordships that, if there is a Division in the Chamber while we are sitting, the Grand Committee will adjourn for 10 minutes as soon as the Division Bells are rung.

Digital Government (Disclosure of Information) (Amendment) Regulations 2022

Considered in Grand Committee

3.45 pm

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

That the Grand Committee do consider the Digital Government (Disclosure of Information) (Amendment) Regulations 2022.

Viscount Younger of Leckie (Con): My Lords, the purpose of the regulations is to allow information sharing between specified bodies for the specific purpose of identifying and targeting funded early learning and childcare for families with eligible two year-olds in Scotland. They seek to amend the Digital Government (Disclosure of Information) Regulations 2018. The public service delivery power supports public bodies to improve or target the important public services that they provide. The power is designed to give public bodies the information needed to provide early intervention and vital support for those who need it or, where possible, to prevent the problems that reduce people's life chances.

The regulations seek to establish a new objective for data sharing under the public service delivery power in the Digital Economy Act 2017, for identifying and targeting funded early learning and childcare for families with eligible two year-olds in Scotland. The Scottish Government identified that there was low uptake for eligible two year-olds in Scotland and seek similar data-sharing arrangements as those already in place with English and Welsh local councils. Although Section 34 of the Scotland Act 2016 allows sharing of information between the Secretary of State and the Scottish Ministers, this has to be for the purpose of their respective social security functions. Regulations can expand on what those functions are but early learning and childcare does not relate to social security. Furthermore, HMRC has neither Secretary of State nor social security functions. For this reason, the Scotland Act 2016 is not a suitable vehicle to implement these powers and we are using the data-sharing powers in Part 5 of the Digital Economy Act 2017.

The objective created through this regulation would enable data sharing from DWP and HMRC to the Scottish Government and allow for this to be forwarded to Scottish local councils. It would allow Scottish local councils access to the necessary information held by DWP and HMRC to enable them to identify households most in need, and then directly contact these families to inform them of the support that they are likely to be eligible for. To exercise the public service delivery power, the Government must set specific objectives for data sharing via regulations. Those objectives must meet specific criteria defined in the primary legislation. For the avoidance of doubt, these regulations do not create a new Henry VIII power. Instead, we are adding a new objective to the current tightly controlled Digital Economy Act powers, which make it possible to add or remove specified objectives and persons.

The current power to make amendments of this nature was subject to robust scrutiny by the Delegated Powers and Regulatory Reform Committee and, as a result, the power to add this early learning and childcare objective must be scrutinised by Parliament via affirmative regulations. The territorial extent of this regulation is Great Britain and the territorial application is England and Scotland.

This regulation must be taken through the UK Parliament by the UK Government because information sharing under the proposed objective would involve disclosure and processing of data held by UK departments: HMRC and DWP. The Scottish Parliament can approve proposals only for new objectives which solely involve specified Scottish bodies permitted to make use of the public service delivery power. Legal gateways already exist in England and Wales to enable data sharing to support delivery of early learning and childcare. This draft regulation will bring Scotland parity of service provision that families in England and Wales already enjoy.

Data sharing is a vital and effective way of identifying individuals and households experiencing problems that reduce their life chances. Access to high-quality early learning and childcare is a key factor in determining life chances.

There are safeguards in place to protect personal data from misuse. The objective has already been subject to scrutiny by the Public Service Delivery Review Board, which oversees the use of the public service delivery power as set out in the underpinning code of practice. The review board comprises specialists working in the UK Government and in the devolved Administrations, as well as public representative bodies and civil society groups. Officials from the Information Commissioner's Office also attend as observers. The board is tasked with considering proposals for new objectives for data sharing under the public service delivery power and making recommendations to Ministers. The board's recommendation to take forward these draft regulations was approved by the relevant Minister as it meets the criteria set out in Section 35 for objectives under the public service delivery power: enabling the sharing of personal information to support "the improvement or targeting" of public services to individuals or households to improve their well-being.

Furthermore, the objective has been subject to public consultation. Respondents to the statutory public consultation have been decidedly positive, with up to 94% agreeing that the proposed data share would improve and target a service to eligible households,

[Viscount Younger of Leckie]
and 88% agreeing that the data sharing would improve well-being for these households. Some 86% also agreed that the data sharing would deliver tangible benefits to households, including early stage support to promote education, health and social equalities. Importantly, the majority of respondents, 87%, agreed that the personal data items to be shared, specifically including the customer—parent or carer—name, address and national insurance number for unique identification, as well as a child or children indicator to confirm the existence of a child or children, are appropriate for early learning and childcare service delivery.

Parliamentarians have already approved the code of practice and the previous Digital Government (Disclosure of Information) Regulations 2018, which I referred to and which established existing public service delivery objectives. Sharing personal data will, understandably, tend to attract attention and scrutiny. However, the power—as with the other data-sharing powers in Part 5 of the Digital Economy Act 2017—must be exercised in compliance with the data protection legislation and UK GDPR.

The data being shared is strictly limited to the names and addresses of parents and confirming whether they are eligible for qualifying benefits. This does not involve the sharing of data held regarding the child, nor does it involve supplying further information than is necessary or confirming which benefits the parents do or do not claim. Scottish local councils also have arrangements in place to identify children in care or with guardians who may be eligible.

There is an underpinning code of practice, which sets out how the power must be operated. This includes setting out how any data shared under this power must be processed lawfully, securely and proportionately, in line with data protection legislation. Anyone making use of any objective must have regard to the code. The code of practice also requires that information-sharing agreements are included in a public register of information-sharing activity under the powers.

I hope colleagues in this Committee will join me in supporting the regulations. I apologise for a bit of technical information but, in the meantime, I beg to move.

Lord Bruce of Bennachie (LD): My Lords, I thank the Minister for that introduction and explanation. There is very wide support for the extension of childcare. Indeed, I have always believed that structured play and social engagement for young children is beneficial. Very early on in my political career, I campaigned successfully for increased funding for playgroups and for the extension of nursery-year schools in my area—I might say against campaigns from other political parties that were less supportive.

The basic understanding of the consultation is that it is overwhelmingly supported because of the objective, but there are perhaps one or two wrinkles worth pointing out. First, in that context, all children and all families are different, so there should not be a presumption that every child must or should go to childcare or nursery education between the ages of two and five. It should be a choice for the family and the parents, and sometimes there is pressure that is not appreciated.

Looking at some of the responses to the consultation, they were, I accept, overwhelmingly supportive across the piece—as the Minister pointed out—but large statistics still cover small minorities of concern. Taking one section as an example, 55% of respondents said that they saw no risk of loss of benefits; that means a pretty substantial minority were concerned that there might be. Does the Minister have any information on how that could come about and what the risks were? In the same category, 64% of respondents saw no risk of a loss of access to services, but that leaves a significant minority concerned that there might be. While in no way detracting from the very targeted purpose and desirability of this overall, and the general support for it, there needs to be recognition that there will be people for whom this raises some concerns.

Coming on to the specifics of the actual data-sharing, the Minister was careful to acknowledge that, by definition, data collected for one purpose being used for another is very much of concern. When people give information, they need to know what it is for and not to find it has been used for something they did not expect. In that context, it seems that the relationship between the Government, local authorities and all the relevant agencies needs to be sensitively handled. Think of a family who are struggling: if somebody rocks up at their door saying, "We have data to suggest this", it could create a sense of threat or concern because we are, by definition, talking about vulnerable communities. What provision is there for ensuring that there is co-ordination and the best networking to get the most sensitive application of this and the desired result? The desired result should surely be that every child whose parents wish it and who qualifies should be found and given the opportunity to benefit from the care and support that is on offer and paid for.

Finally, it is interesting that devolution lives within this instrument, and I have no problem with that. But there was a point in a debate last week, which I unfortunately could not attend because I was speaking in the Chamber, where the Scottish Government were again asking the UK Government for assistance in collecting data. Again, I have no problem with it but it raises the question of what the capacity of the Scottish Government is or should be, or, indeed, why on earth they need a separate capacity if there is a perfectly adequate UK-wide system that they can access, subject to the appropriate safeguards.

The people of Scotland have voted more than once for devolution. They have never voted for independence, but you would hardly know that when you talk to Scottish Government Ministers, who have a great reluctance to admit publicly that devolution has any merit—never mind that it applies the will of the Scottish people, while they frustrate that will by promoting something the people do not want. In the meantime, this co-operation across the UK in data-sharing for legitimate purposes seems efficient and sensible and, in that context, I am happy to support the instrument from these Benches.

Lord Jones (Lab): My Lords, I thank the Minister for his patient and courteous exposition. I rise essentially as a matter of principle, because these regulations rattle through so often when they are so important.

Briefly, in the helpful explanatory pages I note that he has consulted Welsh and Scottish Ministers. The Explanatory Notes have this important Scottish example, which gives the regulations a very human form. My question to him is: how were the consultations carried out? Were they digital or personal? He might be able to give some indication of whether they were effective consultations. Might he also instance an example of an action or objective concerning Wales or England? The Scottish one was fine, but are there others that come to his mind?

4 pm

Lord Holmes of Richmond (Con): My Lords, similarly, I rise to support these regulations. I congratulate my noble friend the Minister on the manner in which he introduced them. They are specific in scope, as all good statutory instruments should be; I support that specificity in them.

My question for my noble friend concerns that specificity of scope. It is underpinned by perhaps one of the most important principles for government both at Westminster and in all the devolved nations: how we optimise the potential, not inevitable, benefits that we could have from the data that exists and the sharing of that data. What more is happening across Whitehall to enable the right level of data sharing to ensure that we have robust, reliable and real-time data in all government departments and that citizens are far more engaged with the opportunities and how we all may play our part in them? Certainly, there are areas where the data is patchy; it is even non-existent in some areas. As we know, none of us fits into one simple, vertical departmental silo; we need support and services horizontally from a number of different departments, in a number of circumstances and at a number of times throughout our lives.

As I say, the underpinning nature of these regulations is probably one of the most critical elements if we are to take advantage of the opportunity that this data can bring us and deploy all the elements of the new human-led technologies for the benefit of citizens and the state alike.

Baroness Chapman of Darlington (Lab): To begin, I thought that was a very interesting question from the noble Lord. It probably stretches the scope of this discussion but perhaps we could return to it in a debate because it is something we are all trying to grapple with at the moment.

The Minister knows that an SI is uncontroversial when most of the questions are about the consultation. I think there is nothing of substance to object to here. As an aside to my noble friend Lord Jones, about parental lack of choice around childcare, let me say that the issue is that the lack of choice is down to the complexity of the available schemes, the lack of support, the lack of availability and the cost. I am surprised it has taken the Scottish Government so long to get to this measure, I must say, but it is welcome. It will enable more parents to have that choice, which we very much welcome because we know about the evidence of the benefits to pre-school children of participating in learning through play and childcare more generally.

As we are here, the Minister is here and there has been a consultation, I want to ask the Minister something. He spoke about percentages in his helpful and thorough introduction. Can he give us an idea of how many people took part in the consultation? What assurances can he provide in response to the concerns raised about the sharing and handling of sensitive data?

Viscount Younger of Leckie (Con): My Lords, I start by thanking all noble Lords who have spoken in this short debate. I am pleased that there is broad support for the regulations, so I will start with that and endeavour to answer as many questions as I can.

I will go straight in by speaking a little more about the consultation. A letter might need to be written to give further details about this, particularly the numbers of people involved, but I will have a bash. As I said, the responses received were broadly positive. No significant issues were raised during the consultation and, as a result, no changes were made to the proposed objective or the draft regulations. That is a start to understanding.

The UK Government carried out the consultation together with the Scottish Government, who engaged with specialist learning and childcare organisations, as well as Scottish councils. That takes us a little further. Further numbers than those I have given on responses that were negative rather than positive is probably a matter for a letter, so that I can get the technical details to noble Lords. It is understandable that those questions were asked by the noble Lord, Lord Bruce of Bennachie, and the noble Baroness, Lady Chapman. I have statistics in front of me that I have already read out, so I do not think they are particularly helpful.

Moving on, a question was asked about to what extent the devolved Administrations are engaged with this in general. As mentioned, the UK Government are taking this objective forward at the request of the Scottish Government. The territorial extent of the regulations is UK-wide and applies in England and Scotland only, as I mentioned. Under Section 44(4) of the DEA, the UK Government are required to consult the devolved Administrations—plural—on our proposed objectives. A formal consultation was carried out with the devolved Administrations at the time of the public consultation. Furthermore, ongoing liaison has taken place at official level to ensure that the views of Welsh and Northern Irish colleagues have been fully accounted for. I help that is helpful, particularly in answering the question from the noble Lord, Lord Jones.

A very fair question on safeguards was raised by the noble Lord, Lord Bruce of Bennachie. It focused on misuse, which is a fair point. I alluded to this in my opening speech, but I will try to go a little further. The data-sharing provisions in Part 5 of the DEA include a number of robust safeguards, the most important being compatibility and strict adherence to the Data Protection Act 2018 and UK GDPR. The DEA goes further and includes a number of additional safeguards, including sanctions for unlawful disclosure. That includes custodial sentences. Furthermore, public service delivery powers are permissive, which means that public authorities listed in Schedule 4 can choose whether or not to do so. This safeguard prevents inappropriate data sharing.

[Viscount Younger of Leckie]

Finally, as the new public service delivery objectives are created by affirmative secondary regulations, new objectives are defined for use before data sharing can commence, following public consultation and parliamentary scrutiny.

The noble Lord, Lord Bruce, also asked what provision there was to ensure co-ordination of the desired results. I think this is more about dissemination. The Scottish Government are keen to ensure that those families who wish to take up the early childcare offer can do so. They plan to co-ordinate the update and use of the objectives, which will be reviewed after one year. It is quite important to mention that.

I listened carefully to the short speech from my noble friend Lord Holmes. If I have got it right, his focus was really on the openness and transparency of data. He also spoke of the importance of the opposite, which I have already covered. We are committed to being open and transparent by making information about data shared under the DEA easily available for all to find out and understand. This helps citizens, the Government and the Information Commissioner's Office to understand what data sharing is taking place.

Public authorities using the public service delivery, debt, fraud and civil registration powers must add data shares to a public register. The Cabinet Office is responsible for this and for maintaining the register, and the Public Service Delivery Review Board oversees strategic consistency. All accredited research projects and researchers are published on the UK Statistics Authority's website, along with Research Accreditation Panel meeting minutes, to uphold the transparency requirements set out in the Research Code of Practice and Accreditation Criteria.

Finally, for statistics purposes, a list of data sources is available on the ONS website to maintain transparency of the data sources that the ONS holds to support its statutory functions, including data sources obtained under the statistics powers. That was quite a long answer but I hope it helps my noble friend.

I shall try to answer two or three more questions, if I may. I was asked what more is happening to enable the right level of data sharing across the UK. I think it may also have come from my noble friend—I see he is nodding. The Cabinet Office is working with the devolved Administrations to ensure that more data sharing takes place across the UK. It is rather outside the scope of this debate, but I will consider the replies I have given and may well add to a letter that may be coming the noble Lord's way. I shall copy in all noble Lords who have contributed to this debate.

One final response that has just come to me may be helpful to the noble Lord, Lord Bruce. It is about the responses. I can confirm that we received 69 responses. That is the only response I have. As I said, I think we should look at the full consultation details and I will furnish the noble Lord with more information, should we have it.

Lord Bruce of Bennachie (LD): I am grateful to the Minister. I was trying to see whether I could get the detail. There is an appendix list of who has submitted, and some of them have published their submissions. My council, Aberdeenshire Council, has provided a submission, but I could not find what it was, so if the Minister is able to point us to where submissions can be sourced—if they are published or publishable—it would be helpful.

Viscount Younger of Leckie (Con): I will be in touch with the noble Lord outside the Committee to do so.

I finish by saying that the regulations will benefit an estimated 14,000 of Scotland's most disadvantaged children by giving them access to a high-quality service that would cost families £5,000 a year per child if they were to purchase it themselves. I hope that, having heard the benefits spelled out, noble Lords will join me in formally supporting these draft regulations. I commend them to the Committee.

Motion agreed.

Public Sector Bodies (Websites and Mobile Applications) Accessibility (Amendment) (EU Exit) Regulations 2022

Considered in Grand Committee

4.13 pm

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

That the Grand Committee do consider the Public Sector Bodies (Websites and Mobile Applications) Accessibility (Amendment) (EU Exit) Regulations 2022.

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

Viscount Younger of Leckie (Con): My Lords, the main purpose of these amending regulations, laid before the House on 18 July, is to update the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 so that they can continue to operate given that the UK has left the European Union. This instrument is technical. It does not introduce new policy but moves the implementation detail of the legislation from being set by the European Commission to being set in the UK. These amendments will not reduce any of the UK's standards and support for disabled people, nor add any additional burdens to the UK's public sector. The changes will allow the UK to be more responsive to the needs of disabled people when they use public sector websites and online services.

"Digital accessibility" refers to principles and techniques to follow when you design, build, maintain and update websites and mobile applications to make them as easy as possible for people to use. This applies in particular to making websites and apps that disabled people can use. There should be no disadvantage when using assistive technology with computers, tablets and mobile phones, such as switch controls for a computer rather than a keyboard and mouse or screen-magnification software.

I shall give some examples. A blind student should be able to access their university's website through a screen reader, find out their timetable and download course information and lecture notes. A business owner with arthritis who uses speech recognition rather than

a keyboard should be able to log on and pay their taxes. We all have access needs at some time in our lives, and we expect to be able to continue to use public services ourselves, independently.

The accessibility regulations build on existing UK legislation and commitments, such as the Equality Act 2010 in England, Scotland and Wales, and the Disability Discrimination Act 1995 in Northern Ireland, which place duties on service providers to make reasonable adjustments for disabled people when providing services and exercising public functions.

The 2018 regulations that this instrument amends were transposed from EU directive 2016/2102, which requires public sector bodies to make their websites and mobile applications accessible unless it would impose a disproportionate burden on the public sector body to do so.

The regulations can also place obligations on the Minister for the Cabinet Office, including monitoring of the public sector to ensure that the regulations are being met, and sending a report to the European Union every three years, detailing what has been found during the monitoring.

The implementation of these monitoring and reporting obligations was harmonised so that implementation was similar across EU member states and so that there could be comparison between countries. This harmonisation is no longer required, and the specified monitoring process has been inefficient to implement. These amendments move the monitoring process from being defined in a European Commission implementing decision to being set by the UK Government. The model accessibility statement that websites and mobile apps need to publish is also moved to be set by the UK Government.

Although the UK is no longer party to the discussions within the EU about best practice in implementing these policies and how the European Commission will update its monitoring and reporting process, the UK will continue to iterate the monitoring based on our research, analysis and findings. The monitoring team in the Government Digital Service continues to share experience and knowledge with other countries around the world with similar policies and will update the monitoring process as new technology becomes available.

The first report was due to be sent to the EU in December 2021. Instead, the Minister for the Cabinet Office published a report on GOV.UK, and the amendments in question alter the obligation, allowing the same procedure to be followed in the future. This ensures that the monitoring and the effectiveness of the regulations are transparent to all.

The 2018 regulations use a European technical standard as the definition of the accessibility requirements placed on the public sector. This standard is controlled by the European Commission and is subject to its funding and timeframes. Practically, this standard mainly references an international standard called the web content accessibility guidelines, created and published by the World Wide Web Consortium.

These amendments would move the technical standard to this international standard, which is far better known, used by digital accessibility experts and open for all to contribute to. Updates to this standard may be quicker to implement in the UK than when we followed the previous European process, which included updating the European standard and creation and ratification of an EC implementing decision.

These regulations are made under Section 8 of the European Union (Withdrawal) Act 2018, which allows a Minister to make regulations to resolve any deficiencies in law that arise as a result of the UK's departure from the European Union. The technical standard, monitoring and reporting methodology and the model accessibility statement were set through the European Commission implementing decisions. The UK no longer adopts new implementing Acts, so changes to these Acts no longer take effect in the UK. This instrument removes the links to the Commission's implementing Acts and replaces them with UK-set implementations, as mentioned previously. Three European Commission implementing decisions will be revoked once the amendments are made.

With these explanations, I hope that noble Lords will join me in supporting these draft regulations. I commend them to the Committee.

Lord Wallace of Saltaire (LD): My Lords, I have some questions and rather a strong comment. It is clearly convenient that we do not diverge too far from the existing European regulations. I should like to ask whether there is much divergence. There is a good deal of reference here to the World Wide Web Consortium, which attempts to set the standards. It is an interesting body, not entirely intergovernmental, and operates, I assume, by consensus. Are the Government entirely happy with the way in which the World Wide Web Consortium operates, or are there any problems? I know that the Government are concerned about rising Chinese influence within the World Wide Web Consortium.

Do the standards that the United States, for example, sets in this particularly technical area differ considerably from those set within the European Union? One of the challenges that we face in reshaping our regulatory patterns as we leave the European Union is how far we simply follow the United States instead or whether we continue to keep as close as possible to the European Union. I note in this area that a high proportion of British citizens who retire overseas retire within the European Union. If we are looking at something relevant to the disabled and the elderly, therefore, it would make a great deal of difference to ensure that we do not diverge too far from the European Union.

My final comment and objection draws on the Secondary Legislation Scrutiny Committee comment that the proposals move down from legislative processes to administrative purposes. This, after all, is something that the Government are doing across a whole range of legislation: lessening the ability of Parliament to scrutinise, lessening accountability to Parliament and, indeed, as a number of the Minister's right-wing colleagues mentioned in the Northern Ireland protocol debate earlier this week, asserting executive sovereignty against parliamentary sovereignty.

I suspect the Minister is among those unhappy with this trend. I should like him to take back to his colleagues that, given the extent of this gradual slide towards lessening parliamentary accountability and giving greater ministerial discretion across the board—

[Lord Wallace of Saltaire]
something we are also dealing with in the Procurement Bill and a number of other Bills before the House—there will come a point when the House stands up and objects to SIs. I will take back to my party group whether, if it comes before the House, we should draw the attention of the House to this element of reducing parliamentary scrutiny. There is behind these technical and entirely suitable regulations a larger constitutional issue of how we maintain parliamentary democracy, rather than executive government, in this country.

Lord Holmes of Richmond (Con): My Lords, I welcome these regulations and congratulate my noble friend the Minister on the manner in which he introduced them to the Grand Committee. In essence, the regulations take us from the European standards, EAS, to the Web3 standards, IWAS. For the convenience of the Grand Committee, when my noble friend responds, perhaps he could set out some of the material differences, as he sees them, between EAS and IWAS to bring some clarity to this matter.

He rightly commented on the monitoring done by the GDS and the report published at the end of 2021. In that report, 612 public websites were sampled: 593 with a light touch, 19 more in depth. Does the Minister believe that this is the right level of scrutiny and assessment of public sector websites, and that going into only 19 in more depth is the right means of getting a clear picture of what is going on out there? Some 90% of the websites have an accessibility statement but only 7% of those sampled had what should have been in that accessibility statement. There is a clear departure there. Can he say whether the EHRC is playing a full role in this and whether he would envisage greater involvement by the EHRC in this process?

Some 19 years ago, when I was at the Disability Rights Commission, I was involved in the first formal investigation into UK websites. It was an important piece of work then but multiple times more important in 2022. In this area, we considered not just websites but mobile applications because what we get from technology is the potential inclusion, empowerment and enablement of disabled people given what the technology is capable of doing. Equally, however, technology can exclude and discriminate if it is not produced and constructed while rooted in being inclusive by design.

It is understandable why it has taken the country years to enable buildings such as Parliament—that is, a physical building—to become accessible for disabled people. It is desperately unfortunate when we see inaccessible steps, if you will, being built in cyberspace when, in many ways, we are starting from a greenfield site. If everything across the public and private sectors was predicated on inclusive design, there would be no issues here. Does my noble friend the Minister believe that more needs to be done across this area, with a greater understanding across Whitehall, to grasp what it really means to begin and run all this through that conception of "inclusive by design"? Does he agree that inclusion leads to innovation, empowerment, engagement and enablement, by which I mean human-led technology enabling all the talent that we have in this country? In many ways, there could preciously be a more important time for us to focus on this.

Baroness Uddin (Non-Afl): My Lords, I came in just to listen to this important debate; it is a real privilege to follow the noble Lord as I had not intended to say anything. I should declare an interest: I currently co-chair the All-Party Parliamentary Group on the Metaverse and Web 3.0. I am in an almost infantile state in terms of learning to understand the huge implications for ordinary lives of the new and emerging technology.

I want to make one point about inclusion and accessibility. We must remember that we spent a great deal of hours and months debating how much access all people have to technology. We assume that all this brilliant access is going to erupt from the beautiful, advanced phones that we either get from the House of Lords or can afford to buy, but that is not the case for millions of people in this country who have a huge amount of difficulty accessing information. More and more organisations—not just government organisations and local authorities, but mental health organisations and housing associations—are going digital; indeed, everyone is. There is not enough communication with the public. There is not enough communication with—or, frankly, respect for—the users.

I speak as someone whose son has learning disabilities and lives with autism. I can tell the Committee that he has mastered the iPad but there is no way for him to navigate. As yet, nothing has been made easier for him to ensure that he can access information more easily. We must not live in a panacea of our own with governing regulations, talking about legislation and implementing it as though everything is done once it leaves this building. I urge the Government and the Minister to consider the implications for those who have no access anywhere to the internet or smart technologies. What will happen to them? Are we going to ensure that people who do not have access to their information can have the privilege of understanding all the changes we are about to agree to?

4.30 pm

Baroness Chapman of Darlington (Lab): Again, we could take this debate off in all kinds of directions. I am struck by the points just made about what we used to call digital exclusion—I do not know whether that is still what we call it. I was struck recently by news reports about people who, because of the stresses of the cost of living, have decided no longer to have access to broadband, which will clearly present a huge problem in their access to information and public services. It might be helpful if the Minister could say something about that.

My question is similar to that asked by the noble Lord, Lord Holmes. Obviously, we need this SI because of our exit from the European Union. I do not know enough about this to be fully up to speed on the differences between the EU standard and the new international web accessibility standard. It would be helpful if the Minister could let us know the key differences, if there are any, and whether there has been any discussion with disabled people's organisations. What has been done that would lead the Government to favour that route?

I see that the Minister will be obliged to publish a report. Where will that report go? It would be helpful if there were a commitment from the Government to

publish it and to alert certain specific organisations to its existence, so that they can engage with it to improve and develop the Government's approach to this in the coming years.

I have a question about the Brexit freedoms Bill. This instrument would seem to be an ideal candidate for that legislation, but it has all gone a little quiet. It would be useful to understand whether this kind of measure would be in that Bill and what mechanics we should expect in that legislation. It seems an enormous undertaking when actually we are able to deal with these issues quite sensibly as they arise with the assistance of the dashboard, perhaps. It would be useful to know what the Government intend to do.

It has also gone a bit quiet on the Government's disability strategy. Obviously, they have got themselves in a bit of difficulty in the way that it was initially set about. It would be helpful to know whether these issues and concerns are likely to form part of a revised strategy when it emerges.

I echo the questions others have raised on monitoring. It is all very well to have standards but if there is no assurance that they are being met and no remedies to put things right, it all becomes a bit of a Whitehall exercise. I am sure that is not what Ministers intend.

Viscount Younger of Leckie (Con): My Lords, I thank the Committee once again for its interest in these regulations. I thank all those who have spoken for doing so in broad support for them. The Government are committed to improving the everyday lives of disabled people, and access to public information and services is vital. I shall be touching on some themes that were raised on this issue in a moment. This instrument makes sure that the public sector remains accessible to all as it moves online.

I have no answer to give on the point raised the noble Baroness, Lady Chapman, about the Brexit freedoms Bill. I do not have any information on that, but she will probably respect that we have had a few noises off and there may have been a few distractions. If I have some information for the noble Baroness before the end of my remarks, I will certainly pass it on.

A number of questions were raised. I shall start by touching on the point about the monitoring process. The European Commission-set monitoring process was designed more for harmonisation across countries rather than effectiveness. The monitoring process will be iterated to have more impact on the least accessible websites, and on sites and services that disabled people may use more often. I think these were points raised by the noble Baroness, Lady Chapman, and my noble friend Lord Holmes.

The noble Lord, Lord Wallace, spoke about the differences between the EU and the UK. His core question was: are we deviating? The World Wide Web Consortium is an open organisation, as he knows. All can contribute and there is a process for technical experts to ratify. It is interesting that the similar US regulations use an older version of the international standard—2.0 versus 2.1. The EU also bases its standard on the international standard, so the variation is minimal and practically follows the WCAG standard.

The noble Baroness, Lady Chapman, and my noble friend Lord Holmes asked particularly about the material differences between the EAS and the IWAS—the European and international versions of the standard. I can reassure them that they are minor and are really variations on mobile accessibility. I hope that answer is of some help.

Lord Wallace of Saltaire (LD): Can I ask the Minister a question? We are concerned about how much influence we have in these international organisations. Paragraph 7.15 of the Explanatory Memorandum says:

> "The UK Government can influence updates to the standard as a member of the World Wide Web Commission."

It would be nicer if it said "does influence". Are we happy with the influence we have in this rather odd mixed private, university and intergovernmental organisation?

Viscount Younger of Leckie (Con): I cannot answer that. I imagine we are but, if we are not or if there is any issue arising from that, I will write to the noble Lord. I assume that we are happy with that, but he raises a fair point.

My noble friend Lord Holmes asked about Parliament, its role and why it is not keeping responsibility for updating the version of the technical standard. I reassure him that the international standard is updated relatively frequently, with a new version due next year. The standard is open for all to contribute to and goes through extensive review by industry experts. We think it may not be the best use of parliamentary time to require further legislation every time it is updated.

My noble friend also requested a response to his concerns about the movement of power away from Parliament. We are happy to write with a response. He also asked about enforcement of the regulations. The Equality and Human Rights Commission enforces digital accessibility in England, Scotland and Wales, and the Equality Commission for Northern Ireland enforces it in Northern Ireland. Both have taken steps to make sure that public sector bodies meet these regulations.

This allows me to talk more generally about inclusion or the lack of it, perhaps. This was raised particularly by the noble Baronesses, Lady Chapman and Lady Uddin, and my noble friend Lord Holmes. I can give some reassurance: this is one of the great priorities of the Government. The *UK Digital Strategy*, published by the Department for Digital, Culture, Media and Sport in June, includes plans to strengthen the digital education pipeline as well as to provide essential digital skills training. The Department for Education is delivering free learning and qualifications for adults with low digital skills.

A question was asked about the national disability strategy, which allows me to expand a little on what I just said. In January 2022, the High Court declared that the strategy was unlawful, because the UK disability survey, which informed it, was held to be a voluntary consultation that failed to comply with the legal requirements of public consultations. The Government strongly disagree with the finding and the Work and Pensions Secretary of State has sought permission to appeal the High Court's declaration. We are awaiting

[Viscount Younger of Leckie]
the Court of Appeal's decision on whether that permission is granted. That provides an update on what is clearly a challenging situation—that is probably the best way to put it.

I believe I have answered the majority of questions. I have an answer on the Brexit freedoms Bill which I have already given, so I will write to the noble Baroness, Lady Chapman, because there is no more information on that. I understand her concern. With that, I beg to move.

Motion agreed.

Armed Forces (Covenant) Regulations 2022

Considered in Grand Committee

4.41 pm

Moved by ***Baroness Goldie***

That the Grand Committee do consider the Armed Forces (Covenant) Regulations 2022.

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

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the Government have delivered on their manifesto commitment to further incorporate the Armed Forces covenant into law by introducing a new duty in the Armed Forces Act 2021. The Armed Forces (Covenant) Regulations 2022 implement key provisions of the new duty by doing two things: bringing supporting statutory guidance into force; and defining "relevant family members" of service members and former service members for the purposes of that duty.

In the 11 years since the Government put the Armed Forces covenant on a statutory footing, we have seen excellent work across the UK in support of the Armed Forces community. However, there remained concerns that some members of the Armed Forces and their families continued to experience disadvantage when accessing public services, particularly as they moved around the country. This was largely due to a disparity in the level of awareness of the covenant among local service providers. To address this issue, the Armed Forces Act 2021 introduced a legal duty on specified public bodies to have due regard to the covenant principles when exercising relevant public functions in the fields of education, healthcare and housing. These are the most commonly cited areas of concern for the Armed Forces community.

Bodies in scope of this new duty will be required to consider the needs of the Armed Forces community when developing policy and making decisions in these key areas. In this way, the duty will raise awareness of the covenant and its principles, which in turn will help to ensure that members of the Armed Forces community are treated fairly.

Regulation 2 brings into force the statutory guidance supporting the new duty. When exercising relevant public functions, the bodies in scope of the duty must have regard to this guidance, as set out in the Act. The statutory guidance will help these bodies understand what is required of them under the new duty. It does this by explaining the principles of the covenant and how and why members of the Armed Forces community may experience disadvantage, and by providing good examples of mitigating actions.

The covenant principles relate to disadvantage faced by servicepeople, including the relevant family members of service members and former service members. Regulation 3 therefore defines who is a relevant family member in respect of the new duty. Quite deliberately, a broad approach was taken in this definition, as a family group may look very different depending on circumstances, and those outside what might traditionally be defined as family may well be impacted by service life. Where family members are affected, it is usually due to their cohabitation with, or dependency on, a service member. This has, therefore, been used as the basis for the definition, which extends beyond immediate family members.

By assisting public bodies to identify groups impacted by service life, including family members, to whom they must have due regard, the guidance will be a key tool in raising awareness of issues faced by the Armed Forces community, and will help promote better outcomes for them when accessing key public services. I beg to move.

4.45 pm

Lord Craig of Radley (CB): My Lords, this is a very detailed piece of work, all 73 pages of it, and I commend the efforts and industry of all those involved in preparing it for publication. But this covenant concept had its origins as far back as 2000, and even before; it was very much championed in the mid-noughties by the noble Lord, Lord Dannatt, when he was Chief of the General Staff.

In 2007, the Government recognised that all three services should be considered. They produced a Command Paper, CM 7424, dated 1 July 2008, *The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans*. It opened with an enthusiastic message of intentions and promises, signed by the then Prime Minister Gordon Brown. However, in spite of the Command Paper's promising title, his Government stopped short of legislation and sought to encourage local authorities, service charities and private businesses to participate voluntarily. It took the incoming coalition Government, while encouraging the voluntary approach, to introduce a statutory mention when updating the Armed Forces Act 2006.

As someone who has tabled or supported amendments about the covenant in the relevant 2011 Act, and in subsequent quinquennial updates of the 2006 Act, I have become somewhat involved with pushing the covenant's progress and development through statute. But one needs a surgeon's magnifying spectacles to discern the glacial progress, over a quarter of a century, to get even as far as today's incomplete commitment. In 2011, all that the Government proposed was a minimalist inclusion in statute. It was to add a single-line clause requiring just an annual report to Parliament under a heading "Miscellaneous" in an identically named "Miscellaneous Part", near the back end of that 350-page Act and immediately following Section 359.

That section pardoned World War I servicemen executed then for disciplinary offences, recognising these deceased veterans as victims.

As a result of my objections, and following negotiations with Ministers in the Summer Recess, a new Part 16A headed "Armed Forces covenant report" was created. This gave the covenant the greater visibility it deserves in legislation. However, the Government then resisted my suggestion at the time that the central heading should be "Armed Forces covenant" and not "Armed Forces covenant report". I was quietly amused to note that the Government introduced that semantic change in their amendments last year.

I was also pleased to see reference in paragraph 14 of the Explanatory Memorandum to my specific amendment which ping-ponged last December, leading to the Government's undertaking to complete a report on the operation of the covenant duty next year. In particular, it will consider whether central government and any of its functions could usefully be added. The noble Baroness will need no reminding of the importance that I attach to this aspect of the review.

I was also struck that in paragraphs 1.31 and 1.41 of the statutory guidance, in section 1J and headed "the Armed Forces community", "veteran", when applied to former members of the Armed Forces, meant that they were in scope of the duty only if they are ordinarily resident in the UK. I accept, as a consequence of those authorities listed to exercise this duty all being those which have no overseas function, that that is true. But at all costs it must not be turned on its head and misconstrued as suggesting that classification as a veteran depends on being ordinarily resident in the UK.

Looking to the future, if central government were to have this duty, as I hope, a veteran and former member of His Majesty's Armed Forces who has chosen to live abroad must lie within central government scope. Attempts to define veterans by location are wrong and would be better avoided. Even the definition used in the guidance is unfortunate if it causes confusion or upset to veterans, wherever they live. There is a duty of care to those who have served in the Armed Forces and retired—in agreed language, veterans. They must never be geographically shut out of the approved scope of that duty, to which they become entitled by statute; I hope that the Minister agrees. However, I support the SI.

Baroness Smith of Newnham (LD): My Lords, it is a pleasure to rise after the noble and gallant Lord, who brings a wealth of expertise to this afternoon's debate on this statutory instrument. Like him, I am pleased to see the guidance and to have this opportunity to discuss the instrument. Also like him, I note that there are still some gaps in the legislation.

As I read through this statutory instrument, my mind turned back in particular to the 2021 Act and the fact that, at various points during its passage, many of the noble Lords and noble and gallant Lords who rose to speak asked about the role of central government. Although we acknowledge the importance of imposing duties on local authorities, I believe there is still a question about what duty we put on central government. At the moment, the legislation talks only about consultations with the devolved Administrations and certain departments: the Department for Education, the Department of Health and Social Care and the Department for Levelling Up, Housing and Communities. Obviously, that speaks to the three core aspects of the duties—education, healthcare and housing—but what thought have the Government paid to whether those duties should be widened to central government more generally? I ask this precisely because, as the noble and gallant Lord, Lord Craig of Radley, pointed out, to the extent that the duties and benefits of the Armed Forces covenant relate to veterans, they should not be determined by their geographical location. It is wholly wrong to give somebody rights only if they are resident in the United Kingdom. If they are veterans who have served with His Majesty's Armed Forces, they should be within scope.

Beyond that, I have a couple of specific questions associated with this statutory instrument. It is absolutely right that the Government are taking a broad view of what it means to be part of a family, going beyond the traditional view of a spouse and children of a traditional marriage. There are now many other types of family that would be affected, so that view is clearly right, but can the Minister explain a little more about how the Government would interpret, and how service providers should be expected to interpret, Regulation 3(3), which states:

> "For the purposes of this regulation, references to A's spouse or civil partner includes … a person whose relationship with A is akin to a relationship between spouses or civil partners"?

At one level, that might seem self-evident. However, if we are looking at local authorities being requested to find housing, how established does the relationship have to be? How will it be evaluated and what guidance will be given to local authorities when looking at housing provision, for example?

Similarly, with a wide understanding of children, stepchildren and other relatives, we could see quite wide sets of family relations. To what extent will that be considered in looking at housing, for example? If stepchildren arrive every other weekend, should they be taken into consideration when looking at local housing provision? Similarly, how extensive a group of family members might be considered for education and school waiting lists? What are the implications of that?

Regulation 3(3)(b) talks about

> "a former spouse or civil partner or a person whose relationship with A was formerly akin to a relationship between spouses or civil partners."

Again, how will that be evaluated? It might seem quite clear cut if somebody was part of an established relationship for 20 years, but how will a former partner who has been divorced, remarried and has not suffered as being part of the Armed Forces family in quite the same way be evaluated when people say, "We think we should be covered under the Armed Forces covenant"?

None of this is intended to sound churlish in any way; it is to probe the Government about how service providers are meant to interpret this. It is right that we should be generous and expansive in the way that we interpret the family, but it is also important that there are no ambiguities in the proposals put forward.

Finally, I could not see anything in the points on healthcare about dentistry. Maybe I missed it, but one of the big issues at the moment is the difficulty of

[Baroness Smith of Newnham]
people finding NHS dentists. If that is true for stable members of the population who do not move very much, how much truer will it be of the Armed Forces and their families? Is dentistry included, and if not, could it be?

Lord Jones (Lab): My Lords, I thank the Minister for her usual informative and fluent explanation, and for the detail of the department's Explanatory Memorandum. It is always a privilege to speak in any debate graced by the noble and gallant Lord, Lord Craig. One learned from the historical viewpoint of the emergence of the covenant. I will be brief.

Paragraph 7.4 of the Explanatory Memorandum says that the duty aims

"to address the disparity of awareness of the Covenant".

Paragraph 7.5 talks about "former service members" and a "broad approach", and says that

"those outside the 'traditional' family may well be impacted by Service life."

Those are important statements and it is good that they are highlighted in the papers before us.

The tradition of Armed Forces Day helps to address the challenge around the covenant. I do not think we can praise Armed Forces Day too highly. It is good that it has re-emerged after Covid.

The covenant helps evoke patriotism. Professor Helen Thompson, a left-leaning professor at Cambridge, recently said in the *New Statesman* that Britishness is still best defined as monarchy and the military. That is not for debate now, but if one is considering patriotism, the covenant and Armed Forces Day, that is a relevant foundational statement to make.

Further, paragraph 10.2 of the Explanatory Memorandum refers to local government associations. One local government unit, Flintshire County Council in north-east Wales, has a very fine record of helping those who were in the Armed Forces. Armed Forces Day in Flintshire is always heavily subscribed by the local government. The current Armed Forces champion is county councillor David Evans OBE. He is worthy of a mention, as was his predecessor, Andrew Dunbobbin, who is now the police and crime commissioner for north Wales. The county of Flintshire has a very fine record.

5 pm

I also note that in all these matters there is always the major input of the reserves. The reserves are undervalued. I do not think they get the praise they should have, and I am certain that they are important across the board in our communities in upholding the standards that we usually say are under attack. Certainly the reserves in Wales have a fine reputation.

I think I should declare my presidency of the training ship "Tuscan" and my recent, five-year presidency of the Army Cadet Force Association Wales. When I was listening to the noble and gallant Lord, Lord Craig, I thought that the covenant would have been a godsend to a 1950s greenhorn conscript national serviceman, but that is by the bye.

My last point is to ask the Minister whether she will give some detail on the reference to "focus groups" at paragraph 10.6 of the Explanatory Memorandum. Who organises them? How many were there in each of the focus groups and was there any feedback that may be of help to the Committee?

Lord Coaker (Lab): My Lords, I shall start with my noble friend Lord Jones's remarks. He mentioned the reserves and the covenant affecting military families. My son-in-law is an active member of 4 Mercian reserve. He was recently in eastern Europe and will be away again in a couple of weeks' time. Given that my noble friend Lord Jones mentioned the reserves, I felt I should mention that for obvious reasons.

I thank my noble friend for his remarks. The point he made about Armed Forces Day is well made and speaks for itself. I agree with everything that the noble Baroness, Lady Smith, and the noble and gallant Lord, Lord Craig, said, the contributions that they have made to where we are now with the covenant, and the challenging questions they have put to the Government to try to improve it.

We too welcome the regulations relating to the Armed Forces Covenant as far as they go, but before asking some questions I shall remind the Committee, as the noble Baroness, Lady Smith, and the noble and gallant Lord, Lord Craig, did, that there was much debate about the covenant as the Armed Forces Act 2021 passed through your Lordships' House. Many of us called for the expansion of the covenant to all areas of public policy and for it to apply to the national Government and the devolved Administrations. Alongside that we said that having "due regard" to the covenant should include other areas of public policy as well as education, healthcare and housing, which were outlined.

The Government resisted those calls, and we therefore felt the covenant was a missed opportunity by being too narrow, particularly the failure to place a duty on the national Government in the way that they placed a duty on others. They also failed to define what "have due regard" meant, how members of the Armed Forces community can seek redress if they feel let down and how the covenant is to be enforced. The Minister knows that we welcome the regulations and the new duties they place on specified bodies and persons to have due regard to the principles of the covenant when exercising certain statutory functions in the areas of healthcare, housing and education, but it could have gone further. Having said that, these are important regulations and will make a difference.

I have some specific questions. As some of the responders to the guidance consultation asked, why does the guidance not include prescriptive actions that bodies in scope should follow to demonstrate that they are meeting the duty of having due regard? The guidance notes the value of good recording as a means of demonstrating having due regard to the covenant. However, as the Government themselves note in the guidance that they have published, it is voluntary. Why was there never a statutory requirement to record actions that show and demonstrate that a public body is having due regard to the covenant?

How, therefore, more generally—the noble Baroness, Lady Smith, in particular, alluded to this—is the covenant to be enforced? What redress is there for an individual, family or organisation if they believe that the covenant

is not being properly followed or implemented? As the noble and gallant Lord, Lord Craig, asked—and I will come also to something else mentioned by the noble and gallant Lord—what action will the Government take to publicise their new regulations to ensure that awareness is as wide as it should be?

I completely endorse the position taken by the noble and gallant Lord, along with the noble Baroness, Lady Smith, that paragraph 14.1 in the regulations is crucial. In response to the amendments made and the ping-pong that took place on the Armed Forces Act, the Government have said—to be fair to the Minister, she will have argued this within the MoD—that they will come forward in 2023 with a report on how the covenant has operated. I say to the Minister that the noble Baroness, Lady Smith, the noble and gallant Lord, Lord Craig, and I will be looking quite carefully at how paragraph 14.1 is implemented and how the Government meet their commitments. As the noble and gallant Lord, Lord Craig, said, it is a particularly important point.

I come to something that the Minister has explained to me before, but it is important that this is put on the record. Tucked away in regulations will often be things understood by MoD officials and so on. The regulations that we have before us cover England, Wales, Scotland, Northern Ireland, the Isle of Man and the British Overseas Territories, except Gibraltar. Will the Minister explain why Gibraltar is excluded from these covenant regulations? Clearly, Gibraltar is extremely important to us as a base for our Armed Forces. It seems a little strange. I am sure there will be a good reason for it —some treaty or other that makes its inclusion unnecessary —but it is important to have it in the record to help those who read our deliberations to understand why that "except Gibraltar" is there.

These questions highlight once again the importance of paragraph 14.1, which basically says that the Government will assess how well the covenant operates with respect to due regard and whether there are other areas of public policy that could usefully be added to the scope of the Act as it is now. We all look to see what happens under paragraph 14.1. These regulations are an important step forward. We welcome them; we just wish they could have gone a bit further. The implementation will be everything.

Baroness Goldie (Con): My Lords, I thank noble Lords for what admittedly has been a fairly short debate but not in any way lacking in quality and penetrating questions, which is entirely what I would expect from the contributors. I shall deal first with the comments of the noble and gallant Lord, Lord Craig. I thank him for his very useful historical context of the evolution of the covenant. It is worth remembering the journey that the covenant has travelled. I accept that progress may at times have been somewhat plodding, but I feel that, in recent years, we have got to a good place. These regulations are the manifestation of the important progress that has been made.

I pay tribute to the noble and gallant Lord, Lord Craig, for his perseverance in drawing attention to the role of central government and whether it should be brought within the ambit of the covenant statutory duty. I remember that we had informed and interesting exchanges at the time the Armed Forces Bill went through this House. We certainly felt that this was not an issue that should be summarily dismissed as being without merit. Our concern was that we were already biting off quite a lot in terms of what we were introducing in that Bill and in what was to be further covered by delegated legislation, and we did not want to bite off more than we could chew. The provisions now to allow for a review are meant to reassure, and I shall say a little more about them.

The review will consider the roles of the UK Government and the devolved Administrations in conducting the functions already in scope of the duty. It will also consider the extent to which they currently consider the covenant principles, as well as the benefits and costs of bringing them into scope. As the noble and gallant Lord is aware, the reason why I resisted his persuasive blandishments to include the scope of central government in the Armed Forces Act was because we did not think that it was quite within the scope of the original Bill. The Government are responsible for setting the overall strategic direction and national policy but they do not directly deliver the relevant healthcare, education and housing services to citizens.

Let me give your Lordships a little more information on the review itself. Members of Parliament will have the opportunity to assess and comment on the review in the debate on the 2022 covenant report. The Government have been working with stakeholders to establish an open and transparent evaluation process by which to investigate the evidence about whether new policy areas should be added to the scope of the duty; that point was specifically raised by the noble Lord, Lord Coaker, who was naturally interested in what criteria might be deployed to assess this. Potential additional functions will be assessed against clear and robust criteria that have been established and agreed with covenant stakeholders in order to provide advice to the Secretary of State, with whom the final decision rests.

To clarify, a blanket inclusion of all UK Government and devolved Administration bodies would not be appropriate to include within the list of specified bodies to which the duty applies because the "due regard" duty applies to specified functions that are precisely defined in law. Due to the broad-ranging work of the UK Government and the devolved Administrations, it would be impractical to seek to define precisely such functions for these bodies.

One of the questions asked by, I think, the noble and gallant Lord, Lord Craig, during our debates on the then Armed Forces Bill concerned why the duty was not extended to central government because it has a duty of care to the Armed Forces. However, the purpose of the covenant duty is to raise awareness among providers of public services of how service life can disadvantage the Armed Forces community in accessing key public services. That is why we have focused on these three areas of health, education and housing. As the noble and gallant Lord is aware, central government is directly responsible for the Armed Forces and the MoD has always looked after the welfare of service personnel. As he knows, there are various ways in which the Government can be held to account, from the requirement for Ministers to appear at the Dispatch Box and explain what has been happening

[Baroness Goldie]
to the facility for Members to put down Questions and seek debates. There is a variety of methods available for parliamentarians to call the MoD to account for what it has been doing.

Accompanied by the noble Baroness, Lady Smith, and the noble Lord, Lord Coaker, the noble and gallant Lord raised the issue of central government. I tried to cover the points that were made in my comments addressed to him. One other point that he mentioned concerned why the guidance refers to those who are ordinarily resident in the UK. The "ordinarily resident in the UK" restriction applies only to veterans. This restriction on veterans is in the Act, which is why it is in the guidance. The guidance clearly says that serving personnel are in scope

"wherever they are located—in the UK or abroad."

Veterans who live overseas and are having issues accessing public services due to their service career will find that those issues are best raised with the relevant authority or embassy in the area in which they live because such services fall outside the responsibility of the UK Government.

Lord Craig of Radley (CB): Mentioning embassies in that sense seems to bring in the possibility of central government interests and the FCDO.

5.15 pm

Baroness Goldie (Con): It may do so, but only tangentially, because the FCDO has a UK government responsibility to UK citizens abroad, which is a standard duty. It is why we have a diplomatic presence, and it is the role of embassies and consulates to assist these citizens. I suggest that that is different from placing a broad duty of care on central government in relation to the Armed Forces Act.

The noble Baroness, Lady Smith, specifically raised Regulations 3(3)(a) and (b) and the use of the phrases

"is akin to a relationship"

and, similarly,

"formerly akin to a relationship".

I said in my opening remarks that the attempt to define family members had deliberately been made broad because, as a consequence of service within the Armed Forces, we often find circumstances which confront personnel that will not affect them in civilian situations. We are trying to be as flexible as possible.

The noble Baroness legitimately asks about there being a disagreement with armed service personnel; what if the veteran says, "I think that I was in what was akin to a relationship, and that is why I should get a house" or "be entitled to particular medical support"? It will be for the applicant who is seeking help or a particular service, in conjunction with the deemed provider of that service, to discuss whether they can resolve the matter. The regulations are not meant to be phrased unhelpfully—quite the opposite. They are meant to be as broad as they can be to ensure that this widespread blanket of support reaches as many people as possible.

This brings me to a point pertinently raised by the noble Lord, Lord Coaker, about enforcement—the teeth that can apply to this legal duty and how providers operate it. Enforcement is a complex area in general and I will deal with it in detail. Before I do, let me address the contribution from the noble Lord, Lord Jones, and a final point raised by the noble Baroness, Lady Smith, on dentistry. That very important issue will come under the health "due regard", but it will not cover private dentistry, only the public service provider of dentistry services.

I thank the noble Lord, Lord Jones, for a very positive contribution in which he praised Armed Forces Day. I agree it is an important opportunity to acknowledge our service personnel and veterans. Within my own area of Scotland, it is something we celebrate with great respect, pride and pleasure. I was interested to hear what happens in the noble Lord's area of Wales, as clearly Armed Forces Day has a pan-United Kingdom appeal, which I am pleased to have confirmed.

The noble Lord particularly raised reservists, and I was interested in his observation that they are perhaps underacknowledged. If he looks at the provisions regarding Future Soldier—the new model for how we see our military, infantry and army going forward—he will see some very exciting opportunities in there.

5.19 pm

Sitting suspended for a Division in the House.

5.29 pm

Baroness Goldie (Con): I think I was addressing the contribution from the noble Lord, Lord Jones, when we were summoned by Division Bells. I was talking about the role of reservists. Following the important review of reservists carried out by my noble friend Lord Lancaster, some really helpful and interesting virtues were identified. One quite simply is this: we have among our reservists skills that we might not regularly have in the regular Army. One of the desires is to ensure that we can offer reservists a more flexible career opportunity: that is, if we have need of a particular skill and a reservist possesses it, we can draw them in for a fixed period that they can work with and that their employer can cope with. That is why Future Soldier creates a template for an exciting future for our Armed Forces. Reservists will play a critical role in that.

The noble Lord, Lord Jones, also asked about engagement and consultation, specifically the matter of focus groups. The engagement that took place in drafting the guidance was comprehensive. We worked with our stakeholders to develop the statutory guidance, but we engage with a wide range of groups, including the devolved Administrations, covenant partners across government, the Armed Forces community, local authorities, relevant ombudsmen, and the service charity and welfare sectors. That gave us a very broad basis on which to frame our guidance.

Lord Jones (Lab): That is a very broad answer. I did ask a specific question, but I know that time is of the essence.

Baroness Goldie (Con): I looked at the Explanatory Memorandum. My understanding is that focus groups are designed specifically to encompass those groups

that have an interest and have knowledge. I hope it is clear from the list that I just enunciated to the Committee that there has been very broad consultation, importantly, with the people who know about this, understand it, and have a stake in making sure that it works.

The noble Lord, Lord Coaker, raised a number of points, some of which I have already addressed, but particularly the important issue of the statutory duty of "due regard". As a former lawyer, I well understand why he homed in on what exactly that means. The purpose of the statutory guidance is to help organisations understand and discharge their obligations. On enforcement, the duty we have created does not mandate particular outcomes. It is very important to be explicit about that. That is because it is not within the ability of the MoD to control what the deliverers do, whether they are devolved Administrations, local authorities or health boards. That is not what we want to do. It would therefore be inappropriate for the guidance to include a level of prescriptiveness that goes further than what is already set out in law.

We expect that, by raising awareness, we will reduce disadvantage. We do not seek to penalise or police public bodies because we are not in position to do so, but we do not want to do that anyway; they are autonomous and freestanding, and have their own responsibilities to discharge. If there was a disagreement or dissatisfaction, we imagine that the starting point would be that complaints would be pursued in the normal way, whatever that was for a health board, a hospital, an education facility or a housing complaint. I think that the vast majority of complaints would be resolved in that manner. Certainly in the first instance, any grievance should be pursued through the internal complaints process of the relevant local authority or public body. If the matter is still unresolved, I suggest that the relevant ombudsman would be able to consider the matter if the complainant did not think that the authority had followed its own policy correctly. In our work supporting the implementation of the new duty, we will certainly promote these mechanisms among our Armed Forces community.

As a last resort, and this would be a very heavy hammer to deploy, the opportunity to challenge an alleged failure to comply with the duty would be by way of judicial review. That would obviously be an unattractive prospect to many, but it could well be a legal option available to a class group of people if they were dissatisfied. To take the example of dentistry from the noble Baroness, Lady Smith, it might very well be that the provision of dentists is not a problem in one part of the UK but it might be a huge challenge in another. I imagine that if veterans or service personnel in that area felt aggrieved then they could very easily put pressure on, and they might very well have resource to bring a class action. Remedies are there.

It is important to remember that the duty does not require certain outcomes to be achieved, just that these public bodies need to consider the covenant. That will lead to better policy and decision-making in relation to the Armed Forces. I hope that reassures the noble Lord that thought has been given to this and that we anticipate the system being workable and, for providers, deliverable.

Finally, the noble Lord asked me about Gibraltar. I recall—no doubt he will correct me if I am wrong—writing to him about this. My recollection is that Gibraltar is outwith the scope of the Act and not within its jurisdiction. However, it can apply the Act using its own legislation: technically, if it wishes to invoke in respect of its own forces provisions that we have introduced in the Armed Forces Act, it can use its own legislative powers to achieve that. So it is a technical issue of being outwith the jurisdiction of and not encompassed by the Act.

I have tried to deal with the points that were raised. I hope that I have covered them. If I have omitted to deal with anything, I will gladly undertake to write to your Lordships, of course. In the meantime, I thank noble Lords for their contributions.

Motion agreed.

Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022

Considered in Grand Committee

5.36 pm

Moved by ***Baroness Goldie***

That the Grand Committee do consider the Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022.

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

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): I feel almost Gilbertian in this Gilbert and Sullivan-esque interchanging of roles.

My Lords, this statutory instrument consists of three changes to the rules that apply to the service courts: to provide an overriding objective for court martial, the Service Civilian Court and the Summary Appeal Court; to give the Director of Service Prosecutions responsibility for warning prosecution witnesses of trial dates; and to increase the representation of women on court martial boards.

The first of the measures in this statutory instrument implements a recommendation of His Honour Shaun Lyons' review of the service justice system, which was published in 2020. The review recommended the introduction of an overriding objective for the court martial, based on Part 1 of the Criminal Procedure Rules for England. A similar rule has been used in the civil and criminal courts in England and Wales for some time. The overriding objective in the criminal courts is that cases are dealt with "justly", which encompasses considerations such as the need to acquit the innocent, convict the guilty and ensure that cases are dealt with efficiently and expeditiously. The participants in the case are also subject to this duty as well as the court, which assists with active case management. This measure will mean that judge advocates and participants in proceedings in the court martial, the Service Civilian Court and the Summary Appeal Court are subject to similar duties and will assist case management in those courts.

[Baroness Goldie]

The second measure in this instrument also implements a recommendation of His Honour Shaun Lyons' review. The measure amends the current rules on notifying witnesses to give the Director of Service Prosecutions, rather than the Military Court Service, responsibility for warning prosecution witnesses of trial dates. This change will align practice in the service courts with the civilian criminal justice system for England and Wales, where the role is performed by the Director of Public Prosecutions.

Finally, this instrument inserts a new Rule 34A into the court martial rules, which requires the court administration officer to ensure that, if any lay members of the court are servicepersons, there is at least one man and one woman on the board. I emphasise that we are confident that the court martial, in its current form, is a fair, efficient and effective court, which delivers justice for our Armed Forces. However, due to the lower numbers of women compared to men serving in the Armed Forces, the chances of a woman being selected at random to serve on a court martial board are significantly lower than those of a woman being randomly selected to serve on a jury in the civilian system.

We want to redress that imbalance by means of this procedural adjustment, which aims to improve and enhance the representation of women on court martial boards. Rather than it being left to chance that a woman will be randomly selected, this change will ensure that there will always be at least one woman on every board. This will bring the court martial closer to the civilian criminal justice system, so that servicewomen's voices, experiences and perspectives are part of the decision-making process.

This important change has its origins in a recommendation made in the highly regarded Defence Sub-Committee report *Women in the Armed Forces: From Recruitment to Civilian Life*. That sub-committee was chaired by the recently appointed Minister for Defence People and Veterans, my honourable friend Sarah Atherton. In the government response to the report, the MoD undertook to carry out work to increase women's representation on court martial boards related to sexual offending. I am delighted to say that the Government are going further than the report recommendation, as we think it is right to ensure that women are better represented on boards dealing with all types of cases.

I reassure your Lordships that the MoD has very carefully examined the impact this will have on women who serve in our Armed Forces. It is true that this measure will mean that women are slightly more likely to be selected to sit on a court martial board than currently. The total number of women required to populate all three services' boards is 192. This is an increase of 48 more women per year than the current 144, and is 4.2% of the population of women eligible to sit on a court martial board, due to rank and seniority requirements. The total number of men required to populate the three services' boards would be 672, which is 1.7% of the population of men eligible to sit on a court martial board.

This difference, however, will not result in women being treated less favourably than men. Service as a lay member of a board lasts only around two weeks and is a normal part of the duties of any senior NCO or officer. It can also be useful experience for future command, as commanding officers play a key role in the service justice system. To mitigate the risk of the same women being selected repeatedly, we will also introduce an exemption of 12 months for those women who have already sat on a court martial board for more than five working days.

We believe that increasing the representation of women on court martial boards ensures that they are always part of the decision-making process in service justice. It will better reflect our society and reinforce the important role that servicewomen have, not just in our Armed Forces, but in the service justice system. I beg to move.

Lord Craig of Radley (CB): My Lords, in supporting this draft SI and accepting that revision is not an option, I still have a couple of points to raise. The overriding objective introduced in all three types of service court seems, on first reading, to be almost entirely motherhood and apple pie, or should almost be taken for granted as sound administration. But I accept that, in the legal world, it is perhaps better to have every likely "i" dotted and every possible "t" crossed. It also follows a recommendation of his honour Shaun Lyons, whose knowledge and expertise in service law and procedure is well recognised and respected. It is right, therefore, that this new section is inserted.

However, I noted, although the accompanying memorandum does not mention it, the extra Rule 3A(2)(h)(v), which is not in the criminal court's rules. It reads,

"the need to maintain the operational effectiveness of Her Majesty's forces."

I imagine some printing amendment will replace "Her" with "His", but this raises the question of who decides. Presumably the Defence Secretary is responsible for such a judgment, but can he tell a court marital what to do? It may be so unlikely that the situation never arises; in which case, why put it in at all?

5.45 pm

Say a key witness is, at short notice, an irreplaceable specialist in a Trident boat whose patrol is about to start and immutable, what then? What if the defendant argues that his Article 6 rights are being set aside or delayed for some operational reason? In the legal world, is this issue better left unsaid? I raise this not to argue against the draft rules but because the Minister's response may provide further guidance on how the phrase "operational effectiveness" should be interpreted. Indeed, I notified the Minister last week that I would mention this today.

My second point, which is dealt with in the memorandum, is the inclusion of a female lay member. It seems slightly inconsistent to argue both that the small number of females available means that none might be called to serve but that there will always be enough to find at least one available. Should such a rule apply were the Judge Advocate to be a woman? Making this subject to guidance rather than a statutory rule might have been easier to administer, but I accept that restricting it to only sexual crimes was unnecessary and provocatively sexist. I await with interest the Minister's response on operational effectiveness.

Baroness Smith of Newnham (LD): My Lords, like the noble and gallant Lord, Lord Craig of Radley, on reading the overriding objective as outlined in the statutory instrument, my sense was that it appears in some ways to be motherhood and apple pie. It would seem self-evident that an overriding objective should be that cases should be dealt with justly. How else should we expect the law to be administered? However, the important thing is that the intention is to bring courts martial in alignment as closely as possible with civilian courts, and that is welcome. His honour Shaun Lyons recommended that and that the Government are finally bringing that within the scope of service justice seems entirely appropriate. Similarly, the point about female representation, following from the Atherton report, is welcome, and the Minister's explanation of why it goes beyond simply sexual crimes and the like is wholly appropriate.

Therefore, in the absence of my noble friend Lord Thomas of Gresford, I am not sure there will be any specific questions from the Liberal Democrat Benches. I realise I should have brought in reinforcements because Liberal Democrats feel that service justice is always best dealt with by my noble friend Lord Thomas of Gresford.

Lord Jones (Lab): My Lords, I presume that prior to the very welcome rules female board members were never present. Was that the case? I am looking at Rule 3A(1). How often do these boards sit? One presumes it is as events dictate, but how many are there in the average year? What number are we dealing with? This issue is central to the rules and some numbers might help. Finally, can the Minister furnish an example of gender representation—a woman/she/they—on a given present board? Is an example available?

Lord Coaker (Lab): My Lords, I do not wish simply to make things up. I have very little to say on this. However, the amendments to the rules that the Government have brought forward are important. I agree with the noble and gallant Lord, Lord Craig, the noble Baroness, Lady Smith, and my noble friend Lord Jones.

From the various reports we have seen, there seems to be a real problem of confidence in some of the service justice system. To be fair to the Government, it is good to see them coming forward to adopt the recommendations of the review that they set up to look at this. These days, being commended is probably something the Government would welcome, but this is an important step forward in this case.

I sometimes wonder about overriding objectives. The noble Baroness, Lady Smith, is right: this is not a sarcastic remark, but it is quite astounding that we have to say that a court must deal with people fairly—"justly", according to the law—and that that needs to be written down in law. Having said that, I understand that it is something put down by Judge Lyons—fair enough.

I want to tease the Minister a bit politically here. I do not know whether she has passed this by all sections of the Government but I am absolutely delighted to see them recognising the rights of defendants, particularly under Article 6 of the European Convention on Human Rights. It is absolutely wonderful that the Ministry of Defence is defending the convention and using it as a way of ensuring that courts operate—

The Deputy Chairman of Committees (Lord Beith) (LD): There is a Division in the House. The Committee will adjourn for 10 minutes.

5.51 pm

Sitting suspended for a Division in the House.

5.59 pm

Lord Coaker (Lab): My Lords, I was in the process of welcoming the Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022, in particular their adoption of the recommendations of His Honour Shaun Lyons—we are pleased about that.

I was also congratulating the Minister on the MoD's including the European Convention on Human Rights. I was excited to see it mentioned on page 2, but my excitement reached a crescendo when I saw it also mentioned on page 3. Then I turned over, and with just a scant look through I saw it mentioned again on page 5. That is before we get to the Explanatory Memorandum, which talks about the importance of the European Convention on Human Rights. Leo Docherty has said that the instrument is consistent with it.

It is important that the Minister outlines for the Committee how important she and the Ministry of Defence think retaining Article 6 of the European Convention on Human Rights is to the maintenance of the instrument before us. The Committee needs an explanation of that. She will be aware that many members of her own Government seem to think that the European Convention on Human Rights is not important, but I am pleased to see that the Minister and the Ministry of Defence have laid this instrument before us, which makes it clear through repetition that the European Convention on Human Rights is absolutely fundamental to this SI. Will the Minister ensure that all parts of the Government are aware of the importance the MoD attaches to the convention? Looking around the room, I am sure that a number of Committee Members are certainly well able to defend the Minister and help her in that respect, should she need it.

I think we would all welcome the addition of lay members to the court martial panel, and the gender balance. Can the Minister explain what a lay member is? I was speaking to the noble Baroness, Lady Smith, about this. Our understanding is that a lay member is not a member of the public, so who is a lay member who becomes a member of the court martial board?

Given that the whole purpose of the change in new rule 34A is to try to ensure that initially, there are more effective procedures with respect to sexual offending, I think we are all pleased to see that the Government have now extended that to all offending. Can the Minister say how that will be monitored, and what we mean by lay members?

With those few comments, we welcome the instrument before us. It will be an improvement, and will hopefully lead to greater confidence in the service justice system.

Baroness Goldie (Con): My Lords, once again we have had an interesting debate. In many respects this has been a more technical SI than the earlier one, but none the less, it has generated points of interest and I will do my level best to address them.

The noble and gallant Lord, Lord Craig, raised the very important issue of who decides. This duty created by the instrument to consider operational effectiveness is vital, and the noble and gallant Lord was good enough to indicate to me where his area of concern lay. I have tried to do some research into it, and I will try to deal with the points that he raised.

It will be for the judge advocate alone to decide what should or should not be done to take account of the need to maintain operational effectiveness. However, it is important to put this provision in context. The overriding objective is that cases be dealt with justly. Some slight mischief was articulated about this being motherhood and apple pie. The essential components are good, but that is because we are replicating what already exists in the civilian criminal justice system, and it works. I make no apology for transporting that into our court martial procedures because I think these are virtuous and will greatly improve our court martial system.

The reference to operational effectiveness does not change the overall objective that cases be dealt with justly. Nor does it affect in any way a defendant's right under Article 6 of the ECHR. It is there to recognise that the services courts deal with cases where defendants, board members and witnesses will generally be services persons, who will often have other important and sometimes unpredictable commitments.

The role will give judge advocates the flexibility to take this into account. The kind of scenario where we expect it to be relevant would be, for example, where the date of a trial might need to be brought forward or, indeed, delayed, or a witness might be allowed to give evidence via live link. Certainly, I reassure your Lordships that the Judge Advocate-General was consulted and agreed with the use of the phrase "operational effectiveness" in the context of this change.

I thank the noble and gallant Lord for raising an important point. I have tried to address it. The fact that the Judge Advocate-General is content with the position I think provides significant reassurance.

Lord Craig of Radley (CB): Just to be clear, is the Minister saying to the Committee that the Judge Advocate-General has the say and, regardless of whether the Secretary of State agrees with him, the Judge Advocate-General wins?

Baroness Goldie (Con): That is what I am saying. Indeed, I add to that by observing that it would be profoundly undesirable if the Secretary of State, as a government Minister, were getting involved in the discharge of justice under what should be an independent criminal justice system, albeit within the services justice environment. It would be most undesirable for the Secretary of State to get involved. The Judge Advocate-General alone will decide what should or should not be done to take account of the need to maintain operational effectiveness.

I think I have dealt with the commentary of the noble Baroness, Lady Smith, about why this is phrased as it is. It is not some cosy set of aspirations; it really is intended to deliver what has been working well in the civilian criminal justice system and to try to ensure that our services criminal justice system benefits from that. I thank her for her observation about the absence of her colleague, the noble Lord, Lord Thomas of Gresford, who is, of course, always a welcome presence in these debates where legal issues arise. I am sure that he would have had some pithy observations to make on the technical content of the Sis, but I am grateful to the noble Baroness, Lady Smith, for confining her remarks to general observations.

The noble Lord, Lord Jones, asked some specific questions, including how often the board sits. Court martial boards sit in assizes of two weeks with 24 periods in any year; that is, 48 weeks a year. The noble Lord also asked whether the measure of extending female representation on the court martial board should be extended to the judge advocates. There is a mix of men and women judge advocates now; we have both men and women. The role is being introduced to align better with juries where women are represented in civilian courts, but there has been under-representation in the analogous role within the services justice system.

I thank the noble Lord, Lord Coaker, for his kind remarks about the SIs and where we have got to in delivering improvements for Armed Forces personnel. I particularly noted his phrase, "commend the Government". It is certainly not something I have been hearing very regularly in recent times, and I thank him for that. On his reference to Article 6 of the ECHR, the MoD has consistently shown a desire to comply with human rights legislation and conventions, and the convention is an important part of the framework within which we operate; hence the various references to Article 6 throughout the SIs.

The noble Lord, Lord Coaker, also asked about the composition of a court martial board in general; I think that his question related to lay personnel. This measure will have an impact only on women in the Armed Forces at ranks of OR7 and above. To help your Lordships, I asked for clarification on this. In the Royal Navy, the rank of OR7 is chief petty officer; for the Royal Marines, it is colour sergeant; for the Army, it is staff colour sergeant; and, for the Royal Air Force, it is flight sergeant/chief technician. Service persons below that rank are not eligible to sit as lay members. Eligibility is currently set at OR8 personnel but from January next year it will be OR7. We are broadening the scope in the hope that this will facilitate the presence of more women. Also, as I said, there will be a 12-month exemption for women who have already sat. That is important, because it is a sizeable chunk out of otherwise operational time. If any woman has sat on a court martial board for more than five working days, this provision will prevent them repeatedly sitting on boards.

Lord Coaker (Lab): This is a really important point, which, as I said, the noble Baroness, Lady Smith, and I were discussing. If somebody outside this Committee read our proceedings and saw the word "lay" they would assume that these people are members of the

public, even though the instrument deals with non-service personnel and the military courts. The Minister putting this on the record is quite helpful for those who read our proceedings to understand exactly what we are talking about.

Baroness Goldie (Con): I thank the noble Lord. We are sometimes guilty of using vocabulary in the environment with which we are all familiar. These are lay members who are not legally qualified; they sit as a presence roughly comparable to a jury. The noble Lord is right that they are "lay" not in the sense of any members of the public coming in but in the sense that they are in the Armed Forces and not legally qualified.

I have tried to address the points that were raised; I hope that I have managed to do so. I thank your Lordships for your contributions. This instrument takes us another step forward in making our service justice system stronger, better and fairer.

Motion agreed.

Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2022

Considered in Grand Committee

6.13 pm

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

That the Grand Committee do consider the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2022.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, in an increasingly interconnected world where crime knows no borders, international co-operation that promotes justice and helps to keep the British public safe has never been more important. The instrument before the Committee will enhance our international judicial co-operation framework, specifically in relation to mutual legal assistance.

Before I come on to the contents of this instrument, I will briefly outline the context. Mutual legal assistance is a method of co-operation between states for obtaining assistance in the investigation or prosecution of criminal offences. The UK is a party to the Council of Europe's 1959 European Convention on Mutual Assistance in Criminal Matters and its additional protocols, which form an essential part of our fight against transnational crime and our co-operation with other contracting parties in relation to criminal proceedings.

The second additional protocol to the 1959 convention widens the scope of available mutual legal assistance among contracting parties and includes specific provisions regarding requests for hearings by video or telephone conference, joint investigation teams and the temporary transfer of prisoners. The UK ratified this additional protocol in 2010.

Under our domestic framework, mutual legal assistance is governed by the Crime (International Co-operation) Act 2003, henceforth referred to as the 2003 Act. The 2003 Act states that, for the UK to request and facilitate certain types of mutual legal assistance, the country in question must be designated as a participating country as defined by Section 51(2).

6.15 pm

Therefore, the purpose of this instrument is to designate Georgia, Liechtenstein, Luxembourg, the Republic of Moldova, Switzerland and Turkey as participating countries. These countries have ratified the second additional protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters, and designation will allow us to co-operate with them in relation to specific types of mutual legal assistance.

This instrument establishes only the ability to provide or seek certain types of assistance to or from the reference countries; it does not create an obligation to do so. Incoming mutual legal assistance requests from a designated participating country will be reviewed in line with existing practices. This includes a human rights assessment.

With this in mind, I now turn to the specific effect of the provisions for which these countries are to be designated. First, designation for the purposes of Section 31 of and paragraph 15 of Schedule 2 to the 2003 Act enables the UK to facilitate requests for a person in the UK to give evidence by telephone in criminal proceedings before a court in a participating country, where that witness gives their consent.

Secondly, designation for the purposes of Sections 32 and 35 of the 2003 Act enables the UK, on request from a participating country, to obtain customer and account information to assist an investigation in the participating country. Designation for the purposes of Sections 43 and 44 of the 2003 Act are the reciprocal provisions, which enable the UK to make requests for the same information to a participating country. Additionally, designation under Section 45 provides that requests for assistance under Sections 43 and 44 must be sent to the Secretary of State for transmission, unless the request is urgent.

Finally, Section 47 makes provision for the temporary transfer of UK prisoners to a participating country to assist with an investigation if the prisoner has given their consent to the transfer. Section 48 makes a directly reciprocal provision for prisoners in the participating country to be temporarily transferred to the UK to assist with investigations if consent has been given.

In summary, this instrument will help to strengthen the UK's ability to investigate and prosecute criminality at home and promote the same objectives abroad.

I should also be clear about what this instrument does not do. It does not designate Russia. Following the invasion of Ukraine, the Council of Europe expelled Russia—a decision that is unprecedented in its 73-year history. However, Russia remains party to the 1959 European Convention on Mutual Assistance in Criminal Matters and its first and second additional protocols, the latter of which Russia ratified in 2019. Given Russia's unprovoked, premeditated and barbaric attack

[Lord Sharpe of Epsom]
against a sovereign democratic state, and as law enforcement and criminal justice co-operation is based on mutual trust and respect for international law, we are not seeking to designate Russia at this time.

The UK is committed to improving the provision of mutual legal assistance across borders and this order will enhance the level of co-operation that the UK can offer to, and seek from, other countries. Mutual legal assistance is a key tool in combating cross-border crime and ensuring justice for British victims of crime. I therefore commend the order to the Committee, and I beg to move.

Lord Paddick (LD): My Lords, I thank the Minister for introducing this order. As he just said, criminality is increasingly cross-border and anything that mitigates the reduction of the UK's ability to tackle international crime as a result of the UK leaving the European Union has to be welcomed. I have only a couple of questions.

Paragraph 8.1 of the Explanatory Memorandum to the order states:

"This instrument does not relate to withdrawal from the European Union."

Yet paragraph 6.3 explains that Switzerland is included in this order because it was previously included

"on the basis of the Cooperation Agreement between the European Community and its Member States on the one part, and the Swiss Confederation, on the other part"—

the so-called "Swiss Agreement". Paragraph 6.5 states,

"When the UK left the European Union ("EU"), the obligations that previously applied to the UK as a member of the EU, under the Swiss Agreement, ceased to apply."

Albeit only in relation to Switzerland, it appears that this instrument does relate to withdrawal from the European Union. Will the noble Lord explain? Will he also explain why these countries—Georgia, Lichtenstein, Luxembourg, Moldova, Switzerland and Turkey—have now been included and why now, bearing in mind that the primary legislation dates from 2003 and the 1959 convention was ratified in 2010? I am reassured that Russia is not included as part of this instrument, and we support the order.

Lord Coaker (Lab): My Lords, I agree with the noble Lord, Lord Paddick, and the Labour Benches support the order. I have a couple of questions. Luxembourg was the latest country to ratify the second additional protocol in 2021. When did the other states in this order ratify it? Is there any reason why we have waited until now to designate them?

Brexit impacted some of the collaboration we had on criminal matters with Switzerland, as the noble Lord, Lord Paddick, mentioned, and the statutory instrument will rectify that. Were there any other consequences on international co-operation from Brexit? Have they also been rectified? Are there any other countries apart from Russia—I totally agree with what the Minister said—we wish to designate but are unable to at present? If so, which are they?

The order refers to Sections 47 and 48 regarding prisoner transfer if consent is given. What happens if consent is refused, if a prisoner does not agree? What then takes place? Is there a process or are there other ways by which a prisoner can be moved between countries? Are all the arrangements outlined in this protocol reciprocal? How many requests do we typically make under this Act each year? One of my favourite questions: this order relates to England, Wales and Northern Ireland; will the Minister explain how Scotland operates with respect to this protocol?

Lord Sharpe of Epsom (Con): My Lords, I should say I thank all noble Lords, but I can be specific: I thank the noble Lords, Lord Coaker and Lord Paddick, for contributing to this debate. As I set out at the start, this instrument will enhance mutual legal assistance with these six countries and strengthen the UK's overall ability to combat transnational crime. Mutual legal assistance is a critical tool in tackling cross-border criminality and promoting a pathway to justice here in the UK and overseas. As we have all said, this form of international co-operation has never been more important. Not only does it help to ensure that borders are not barriers to justice, but it allows us better to defend our public safety interests.

To go on to the specific points that have been raised, I am grateful to both noble Lords for supporting the non-designation of Russia at this time. I will have to come back to the noble Lord, Lord Coaker, on his question about other countries that may have been non-designated in the past, because I do not know the answer. I will find out.

The noble Lord, Lord Paddick, asked about Switzerland and the EU and why we are redesignating Switzerland. Its designations for certain sections of the 2003 Act were removed following the UK's departure from the EU, as the co-operation agreement between the European Community and its member states on the one part, and the Swiss Confederation on the other part, to combat fraud and any other illegal activity to the detriment of their financial interests, also known as the Swiss agreement, no longer applied. However, Switzerland remains a signatory to the 1959 European Convention on Mutual Assistance in Criminal Matters and its additional protocols, so it has been determined that it should be redesignated for the relevant provisions of the 2003 Act. Inasmuch as that relates to the EU, the question is correct: our departure from the EU meant that we had to redesignate Switzerland. Switzerland is obviously an important partner in the fight against cross-border crime and it is important legally and operationally for the UK to seek and provide effective assistance.

I hope I can reassure the noble Lord on whether there has been any capability gap between the UK and Switzerland in the period since the 2019 regulations and this order. We are unaware of any requests which have not been facilitated while these additional Swiss designations have not been in place.

Lord Paddick (LD): Is it right then that what the Explanatory Memorandum says about this order being nothing to do with the UK's withdrawal from the EU is wrong?

Lord Sharpe of Epsom (Con): I am reluctant to comment on the Explanatory Memorandum, simply because I have not read it. It sounds like it is, from what the noble Lord has said. I will seek clarification on that.

Both noble Lords asked why these countries are being grouped together. To be honest, it is in the spirit of efficiency and maximising the use of parliamentary time. It was decided that one instrument should be used to make a number of designations, rather than designating Switzerland and the other countries listed through separate instruments.

The countries that have ratified the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters 1959 since the previous designation in 2013 are those that we have listed. I will not run through them again, but the most recent country to ratify was Luxembourg, which did so in 2021.

The noble Lord, Lord Coaker, asked for the total number of outgoing MLA requests sent to all countries over the past few years. I can run through them in detail. In 2017, the number of outgoing requests was 346; in 2018, it was 350; in 2019, it was 320; in 2020, it was 235; and in 2021, it was 371, making a total of 1,622. I can go into much more detail on incoming requests if the noble Lord wishes me to, but I hope he does not. I will also more than happily come back to him on the reciprocal question that he asked because I do not have the information on that to hand.

Lord Coaker (Lab): I also asked about Scotland.

Lord Sharpe of Epsom (Con): The noble Lord is quite right and is just in time. Scotland will need to make its own order as this power is delegated. Officials from the Scottish Government and the Crown Office and Procurator Fiscal Service are in the process of preparing parallel legislation. I had forgotten that question—my apologies.

To conclude, mutual legal assistance is a key tool in the UK's fight against international criminality. This form of judicial co-operation enables the UK to seek and provide various forms of assistance to ensure that regardless of where a crime is committed perpetrators can be bought to justice. The instrument we have considered today helps to achieve this outcome and in turn to protect the British public and the wider international community. I therefore commend the order to the Committee.

Motion agreed.

Sanctions (Damages Cap) Regulations 2022

Considered in Grand Committee

6.28 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the Grand Committee do consider the Sanctions (Damages Cap) Regulations 2022.

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

The Minister of State, Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, this instrument, which is subject to the affirmative procedure, was laid before Parliament in draft on 20 July 2022, under Section 55(5) of the Sanctions and Anti-Money Laundering Act 2018—the sanctions Act. It will be made once it is approved by both Houses.

The instrument represents further action to strengthen the UK's sanctions regime in response to Vladimir Putin's illegal and abhorrent war against the people of Ukraine. Since the invasion, the UK has worked with international partners to deliver an unprecedented package of sanctions against Putin's regime and his allies who are complicit in its brutality.

As noble Lords will be aware, the Economic Crime (Transparency and Enforcement) Act 2022 proceeded quickly through Parliament following Russia's invasion and received Royal Assent on 15 March. That Act amended the sanctions Act to reform how sanctions are imposed and reviewed and how challenges to them are dealt with. Those amendments received cross-party support, including across the Benches in this House.

The economic crime Act created a power for the Government to set a limit on the amount of damages that a court can award for designations made in bad faith. In exercise of that power, the instrument before us introduces a cap of £10,000. This cap will apply to any proceedings challenging the Government's use of designation powers under the sanctions Act or to the specification of a ship issued on or after 4 March 2022. It will minimise the risks to His Majesty's Government of spurious or vexatious litigation from deep-pocketed oligarchs, as we continue to ratchet up the pressure on Putin. It is right and proper that the Government protect public funds in this way.

To be clear, this will not affect the right of a designated person to challenge their designation in a court or, if appropriate, have the designation lifted. Furthermore, the courts will have the power to disapply the damages cap to avoid any potential breaches of human rights, where necessary, in individual cases. But the cap will send a strong signal that Putin's oligarchs and kleptocrats cannot draw on the public purse in this country to boost their coffers, that this Government will not be distracted from the task in hand by endless litigation and that we will not be knocked off course by the risk of damages claims. Noble Lords should make no mistake: this is not about protecting the Government from acting in bad faith. It is about sending a clear message to friends of Putin who are tempted to bring claims without merit.

To conclude, the UK Government will not hesitate in bringing forward further sanctions to target those who participate in or facilitate Putin's illegal war of choice. On 26 September, the UK announced further sanctions targeting those responsible for Putin's sham referenda. They included four Russian Government officials, four further oligarchs, 55 state board executives, and 29 individuals and organisations working for illegitimate proxy groups in Donetsk, Luhansk and Zaporizhzhia. On 30 September, the Foreign Secretary announced a new set of sanctions that further limited Russia's access to the foreign services on which it depends.

Taken alongside previous action, the UK is now preventing Russian access to advertising, architectural, auditing, engineering and IT consultancy services, as well as various commercial legal services. The announcement included a new ban on the export of nearly 700 goods

[Lord Goldsmith of Richmond Park]
that are crucial to Russia's industrial and technological capabilities. It also included new sanctions on Elvira Nabiullina—with apologies for the pronunciation—the governor of the Central Bank of the Russian Federation, who has been instrumental in managing the Russian economy throughout the war and in the rouble being imposed on Ukrainian territories that have been seized by Russia.

I trust that the Committee will support this instrument, which strengthens the UK's ability to sanction those responsible for Putin's illegal and brutal war. I beg to move.

Lord Collins of Highbury (Lab): I thank the Minister for introducing this statutory instrument. Yesterday, we debated other sanctions and focused particularly on Russia. Of course, around the time of that debate, 28 unmanned drones reaped further unnecessary destruction in the capital, Kyiv. A young couple, who were expecting their first child in a matter of months, were among those killed by the senseless barbarity that is driving Putin's war effort. I know that such crimes will strengthen the resolve not only of the people and Government of Ukraine but that of our Government, this House and all Members of Parliament to ensure that we continue to support Ukraine.

Before I cover the substance of this SI, last night the Minister kindly promised to let me have sight of a letter to my honourable friend Stephen Doughty that answered several of his questions, which I had repeated. By the time I got back to my office, I had received it; I thank the Minister. I specifically raised the issue of mixers, which scramble the origins of crypto transactions to make them virtually untraceable. I asked why two of those mixers—Tornado and Blender—are not on our sanctions list, despite being targeted by the United States. Short of the letter saying that it would be wrong of the Minister to speculate about the targets of future sanctions, there was no mention of them. I will keep repeating the point I have made before: if we do not act in concert with our allies, such as the United States, these mixers will have the capacity to funnel billions to Putin and his cronies. I hope the Minister can reassure us tonight that the Government will act on this.

I turn now to the substance of today's SIs. It is absolutely right to disincentivise oligarchs and other designated persons from pursuing the Government through the courts by capping the damages that they could receive if they prove that they were sanctioned in bad faith. For far too long, oligarchs from Russia and beyond have acted with complete impunity, their wealth a symbol of global failure to tackle the illicit finance channels which span our economy, politics and society.

Last month, it was revealed that at least 21 Russian businessmen were engaged in legal proceedings across the European Union to overturn sanctions against them, according to filings at the European Court of Justice. I absolutely agree with the noble Lord that today's action is a welcome step in constraining their ability to tie up these designations in legal showdowns and limit our ability to act. Given that they operate within the parameters of the ECHR, Labour welcomes these changes.

However, it makes no sense to make these changes without acting against illicit Russian finance, which still pollutes the City of London. Labour welcomed the economic crime Act, but the measures it sets out are only the beginning in addressing the chronic problem of dirty money. Minimising what an oligarch can glean from a protracted legal battle is one thing but driving illicit finance out of our institutions is another matter entirely.

As I have repeatedly stated in the Chamber, we must reform Companies House, with new powers to verify information and remove corporate entities from the register once rules are broken. It is vital to ensure that our enforcement bodies are funded for the long term and are no longer outgunned by the seemingly endless resources of oligarchs that we are up against. Spotlight on Corruption highlighted that money laundering prosecutions have dropped by 35% over the last five years. The United Kingdom is by far the most frequent country of origin of SLAPPs—strategic lawsuits against public participation, also known as intimidation lawsuits—with 31% of these cases originating in the UK, according to the Anti-SLAPP Coalition.

The existing budget for economic crime law enforcement is £400 million, with only £100 million of that coming from the Treasury. Given that this is supposed to be a priority of the Government, that amount seems entirely inadequate. I hope the Minister can reassure us that we will build capacity to tackle these oligarchs.

Before I conclude, I have a couple of questions. The cap on damages appears to apply to any proceedings after 4 March. Does the Minister know how many proceedings this will apply to? When the then Minister of State at the Home Office, the noble Baroness, Lady Williams, introduced the relevant sections of the economic crime Act, she said that the cap on damages would limit the oligarchs' claims, but it is not clear what will have been paid out before the cap comes into effect. Is there information on that amount? Can the Minister tell us exactly how the Government concluded that £10,000 is an appropriate level for a cap?

With these comments, I reiterate that we are strongly supportive of the Government's actions, and we certainly support the adoption of this SI.

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for his comments and support for the measure. We have acted swiftly to hold Russia to account for its attack on Ukraine. The UK is inflicting devastating pain in areas of strategic importance to Putin and Russia following the unprovoked and illegal invasion. The Government brought forward this legislation before the Summer Recess and, as the noble Lord said, the cap will apply to all proceedings brought before 4 March.

We continue to make maximum use of our sanctions powers to ensure the strongest possible response to Putin's illegal invasion of Ukraine. We must ensure that the measures and cases are carefully targeted on the basis of robust evidence before we sanction individuals, goods or companies. That is why we are taking it step by step but noble Lords may rest assured that we will continue to sanction where it will have maximum impact.

It is important to recall that, when this House decided to restrict damages to cases of bad faith, it also gave the Government the power to set a cap. That was done precisely to send the message that no one should benefit from massive payouts from sanctions litigation. We have concluded that £10,000 is appropriate. I am confident in the integrity of our process but this is about sending a message. By imposing a cap, we are removing incentives for deep-pocketed oligarchs or financial institutions to bring unfounded or vexatious litigation. A court cannot neglect to apply the damages cap except in specific circumstances where failure to do so would be in breach of the individual's human rights.

The starting point will always be that the damages cap applies and will be disapplied only in those very particular circumstances. Any designated person may challenge their designation in court and have it removed if it is not justified, and has the right to receive damages where the Government have acted in bad faith. The core right remains for any designated person to challenge their designation in court and have it removed if it is not justified. This House considered the arguments and supported without objection the Government's proposal to exclude damages for negligence during the passage of the Economic Crime (Transparency and Enforcement) Act.

I apologise that reference was not made in the letter that the noble Lord, Lord Collins, saw last night to the two mixers he mentioned in his comments yesterday. I am not able to be specific in my answer to him now other than to say that we are working in concert with our allies and will continue to act where appropriate. Absolutely no entity is off the table. We will go further to bring about an end to Putin's war. I note the recommendation made by the noble Lord; he makes a strong argument. I will make sure that there is appropriate follow-up by government but I hope he understands why I cannot go into more detail now.

The noble Lord asked about 4 March and, I think, how many processes would pre-apply before that date. I think the answer is none. He also asked what has been paid out as a result of actions that precede these measures coming into force. I think the answer to that is also nothing. I think that is correct—I am getting a nod of agreement behind me. That is good news.

The noble Lord rightly raised the question of capacity. I hope I can reassure him by saying that, in December last year, there were 48 substantive roles in the sanctions unit, which has now become the sanctions directorate. We have doubled the number of officials focused on our response. We now have more than 100 permanent staff delivering our response. This number does not include those working across the FCDO and its overseas network, who cover sanctions as part of their wider roles.

The Office of Financial Sanctions Implementation—the OFSI—has also doubled its size this financial year and continues to grow to meet the challenges of the sanctions introduced under the Russia sanctions regime. The recruitment of new permanent staff continues following the former Chancellor's announcement in March to double the size of the OFSI.

It is the responsibility of the UK and our allies to ensure that our sanctions regimes are maintained and updated appropriately so that we can respond at pace to the activities of malign actors around the world. I once again thank the noble Lord for his insightful contributions and support.

Motion agreed.

Committee adjourned at 6.44 pm.