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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Wednesday 26 October 2022

3 pm

Prayers—read by the Lord Bishop of Exeter.

Oaths and Affirmations

3.06 pm

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

Armenia and Azerbaijan

Question

3.07 pm

Asked by ***Baroness Cox***

To ask His Majesty's Government what representations they have made to the government of Azerbaijan regarding (1) recent military offensives inside Armenia, and (2) that government's failure to release Armenian prisoners of war and hostages under the 2020 Nagorno-Karabakh ceasefire agreement.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, on 13 September, following fighting along the Azerbaijan/Armenia international border, the United Kingdom's ambassador to Azerbaijan spoke to President Aliyev. Further, the Minister for Europe, my honourable friend Leo Docherty MP, spoke to Armenian Foreign Minister Mirzoyan and Azerbaijani Foreign Minister Bayramov on 15 and 17 September respectively. In these engagements, we urged de-escalation and a return to peaceful negotiations.

Baroness Cox (CB): My Lords, I thank the Minister for his encouraging reply, but I point out that I have visited Armenia twice this year and witnessed the pain inflicted on Armenians by Azerbaijan with impunity, including failure to fulfil its commitment in the 2020 ceasefire agreement to release all prisoners. Whereas Armenia released all Azeri prisoners, Azerbaijan recently confirmed holding at least 33 Armenian captives, including three civilians, and several hundred Armenians are still missing, with Azerbaijan refusing to allow Armenia to retrieve its dead from the occupied territories. There is recent video footage showing the maltreatment, torture and slaughter of Armenian prisoners. What significant initiatives have been or are being taken by the UK Government to call Azerbaijan to account?

Lord Ahmad of Wimbledon (Con): My Lords, first, I acknowledge the noble Baroness's work in this area and in bringing these issues to your Lordships' House. I assure her that in our most recent engagements directly with the Azerbaijani Foreign Minister the issue of the return of all prisoners of war was raised again, as well as the remains of those who are deceased. I assure her of my good offices, of those of others within the FCDO and of the ambassador to continue to do so. On the wider issue, we continue to work with our key partners, including at the OSCE, to call for calm, peace, de-escalation and, one hopes in time, a restoration of relations between those two countries.

Lord Hussain (LD): My Lords, the recent border clashes between Armenia and Azerbaijan highlight the urgent need to accelerate the EU-led peace and normalisation process between those two countries. Does the Minister agree that to achieve a sustainable solution to all the remaining issues and fully normalise the relationship between Armenia and Azerbaijan, a comprehensive peace agreement needs to be in place? Furthermore, can the Minister reaffirm the British Government's support for the EU-led mediation efforts between the two countries?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Lord on both fronts and of course, ultimately, we need a political settlement. We are fully supportive of the EU as well as the OSCE.

Viscount Waverley (CB): My Lords, negotiations are of course key, but are solutions made more complicated by the promotion of disharmony, particularly when the UK has no real leverage to bear on this quagmire? Doing so is counterintuitive, restricting the ability of Armenia to attract direct inward investment.

Lord Ahmad of Wimbledon (Con): My Lords, I do not agree with the noble Viscount on the UK's position. We are active in our engagement with our EU partners, but we are also central to, and support, the efforts of the OSCE. In terms of stability and security, we need peace between those two countries, which will see the resumption of inward investment, boosting the economies of both Armenia and Azerbaijan.

Lord Collins of Highbury (Lab): The Government's efforts to de-escalate are certainly welcome, as are their efforts to work with the EU and the civilian mission that will go there. One of the advantages of the Minister's longevity in post is that he will remember my repeated questions to him about Russian involvement in this area. What is the Government's assessment of this, and what is being done to ensure that Russia does not provoke even more violence than it already has?

Lord Ahmad of Wimbledon (Con): On the noble Lord's first point, time shall tell. On the more substantive point of Russia's role, we have been very clear, and I appreciate His Majesty's Opposition's strong support for the position on Russia. Russia is playing a particular role in the region, between those two countries. We have made no attempts to engage with Russia—we are very clear on this issue—while other partners do so. The important role for Russia, or anyone else mediating or keeping the peace, is to do exactly that.

Lord Cormack (Con): My Lords, I strongly endorse what my noble friend said about the noble Baroness, Lady Cox. Will he arrange for her to see and to brief

[Lord Cormack]
our new Foreign Secretary? The noble Baroness has more knowledge of this subject than almost anyone else and serves the whole House in what she does. Will he try to arrange for her to talk to the Foreign Secretary?

Lord Ahmad of Wimbledon (Con): My Lords, when I look around your Lordships' House, that is probably a description of many within it and I am sure that the Foreign Secretary would have a busy schedule if I arranged that kind of expert insight and briefing for him. However, I can assure my noble friend that the Foreign Secretary will be fully aware of the noble Baroness's remarks, as I always ensure he is, and we will look for opportunities for a full briefing from the FCDO with those interested, and for colleagues in your Lordships' House to come into the FCDO to meet other key Ministers.

Lord Evans of Watford (Lab): My Lords, may I draw the Minister's attention to the very important humanitarian issue of explosive mines and mining mats for demining efforts in the Armenia-Azerbaijan normalisation process? I commend His Majesty's Government for their financial assistance of £1 million for demining efforts in Azerbaijan. Most explosions over the past two years have been caused by mines, and 260 civilian casualties have occurred in Azerbaijan. Clearly, this is a continuing human tragedy. There are 3,890 missing Azerbaijanis, about whom Armenia refuses to release any information. What, if any, discussions have His Majesty's Government held with the Government of Armenia about the release of fully accurate mine data to achieve cleaning of the territories of Azerbaijan? What further support are His Majesty's Government considering?

Lord Ahmad of Wimbledon (Con): I get the gist of the noble Lord's question and assure him that we are working with both Governments. First, on the deceased, as I said to the noble Baroness, Lady Cox, this is an important issue to bring closure to those families who have lost loved ones, and we will continue to do so. On demining, I am looking over to the Lib Dem Benches, where the noble Lord, Lord Campbell, is a great advocate for these issues in conflict zones. I am very proud of the UK Government's support for these activities and pay tribute to the key players in this sphere, such as the HALO Trust, which does phenomenal work on demining across the world. Of course, I will take specifically what the noble Lord suggests and make sure that our Ministers and officials are briefed appropriately.

Lord Purvis of Tweed (LD): My Lords, just before the pandemic, I participated in dialogue sessions with young people from Armenia and Azerbaijan in Georgia. Will the Minister ensure that any work of dialogue that the UK is participating in involves young people, who have the biggest stake in any form of peace arrangements? I understand that in the recent political community meeting—at which I was glad that the UK was represented—President Macron chaired a session with representatives from the two countries. Were British officials involved in any of those discussions? Are we offering any technical assistance on the valid issues of human rights abuses, investigations and peaceful dialogue? What technical assistance is the UK offering?

Lord Ahmad of Wimbledon (Con): My Lords, there were three questions there. On UK Government's direct engagement, I will write to the noble Lord. On ensuring that we are giving technical assistance, I have already alluded to that and, of course, we stand ready to support that. As for involving young people, we are celebrating one of the youngest Prime Ministers in two centuries to hold the No. 10 office, so the noble Lord can be assured that young people's views, or those who are slightly younger, will be fully sustained in all negotiations.

Baroness Uddin (Non-Afl): My Lords, I welcome the recent discussions held in Prague on 6 October. It is a fact that, following the trilateral ceasefire agreement, the Azerbaijanis have not been provided with any details of 3,890 missing Azerbaijani persons. Families have been in turmoil for the last 30 years. What are His Majesty's Government doing to urge the Government of Armenia to fully co-operate with Azerbaijanis so that these outstanding humanitarian crises are eradicated?

Lord Ahmad of Wimbledon (Con): My Lords, I believe I have already answered that question in part. We have talked to both sides about the importance of the return of not just prisoners of war but the remains of the deceased on either side. We will continue to make that point very poignantly. I share with the noble Baroness the view that families need closure, and it is important that we continue to work on that key priority.

Housing: Manifesto Commitment

Question

3.19 pm

Asked by ***Lord Young of Cookham***

To ask His Majesty's Government whether they remain committed to building 300,000 new homes a year by the mid-2020s, as proposed in the 2019 Conservative Party Manifesto.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, I can assure my noble friend that housebuilding is a priority for this Government and a central part of our plans for growth. As my noble friend said, the 2019 Conservative manifesto stated that we will continue our progress towards our 300,000 homes a year by the mid-2020s. To unlock home ownership, we must build more homes in places where people want to live and work. We will continue to explore policies to help build the homes people need, deliver new jobs, support economic development and boost local economies.

Lord Young of Cookham (Con): I am grateful to my noble friend. However, at Prime Minister's Questions last week, the former Prime Minister said that

"we will abolish the top-down housing targets."—[*Official Report*, Commons, 19/10/22; col. 679.]

As a former Minister for Housing and a former Minister for Planning, perhaps I can say to my noble friend that we will never get the new homes the country needs in the places where they are needed if we rely solely on the goodwill of local government. Does she agree that, while there needs to be dialogue with local government, the responsibility for ensuring that families live in decent and affordable accommodation is one for the new Administration?

Baroness Scott of Bybrook (Con): I do agree that it is one for the new Administration and I cannot comment on the past Administration any longer. I agree with my noble friend that we must build more homes in places where people want to live and work, as I said. The Neighbourhood Planning Act 2017 put beyond doubt the requirement for all areas to be covered by one or more plans that address the strategic priorities for each area. Authorities that fail to ensure that in-date plans are in place are failing their communities by not recognising that homes and other facilities that local people need are relying on ad hoc, speculative development that will not make the most of every area's potential. Ministers have powers to intervene when local planning authorities fail to meet the timescales set out for preparing a local plan. However, these powers have not had to be used as yet.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, will the noble Baroness tell the House whether all these new builds will be fully insulated and fitted with heat pumps in order to meet our climate change targets without the need for any retrofitting? If not, why not?

Baroness Scott of Bybrook (Con): Yes, my Lords, from 2025, the future homes standard will ensure that new homes produce at least 75% fewer CO_2 emissions than those built to the 2013 standard. These homes will be future-proofed with low-carbon heating and high energy efficiency. In December 2021, the Government introduced an uplift in energy efficiency standards which delivers a meaningful reduction in carbon emissions and acts as a stepping stone to the future homes standard. New homes will be expected to deliver around 30% fewer CO_2 emissions.

Lord Best (CB): My Lords, I am sure the Minister will agree that housebuilding is in for a very rocky time in the months ahead, with interest rates rising, building and material costs going up, fewer people able to buy, and housebuilders sitting on their hands. Therefore, is this the moment to invest rather more in social housing, which can compensate those losses, and get some affordable homes built?

Baroness Scott of Bybrook (Con): My Lords, we have announced £10 billion of investment in housing supplies since the start of this Parliament, with our housing supply interventions due ultimately to unlock over 1 million homes over the 2020-21 spending review period. This includes an additional £1.8 billion investment announced in the 2020-21 spending review. Of course we want to invest in affordable homes, so we are also investing £11.5 billion in 2021 to 2026 on the affordable homes programme, which we hope will deliver 180,000 more affordable homes.

Baroness Hayman of Ullock (Lab): My Lords, following on from the question from the noble Lord, Lord Mackenzie, does the Minister agree that the Government should promote carbon-neutral homes with clean energy sources as part of any drive to increase housebuilding? What steps are the Government taking to ensure that environmentally sustainable homes are built as part of meeting housebuilding targets?

Baroness Scott of Bybrook (Con): I think I have given a clear answer to that. The future homes standard will provide fewer CO_2 emissions, but this is not just about new houses; it is also about the houses that exist at the moment. We have our Help to Heat programme, which I spoke about in the last Question I took at the Dispatch Box, boiler upgrades, local authority delivery schemes, home upgrade grants for sustainable warmth and social housing decarbonisation—I could go on. We are looking at energy efficiency in not just new houses but the housing stock we have.

Lord Deben (Con): My Lords—

Lord Naseby (Con): My Lords—

Lord Haselhurst (Con): My Lords—

Baroness Williams of Trafford (Con): My Lords, we have plenty of time. Can we hear from my noble friend Lord Deben, then the Liberal Democrat Benches and then my noble friend Lord Naseby?

Lord Deben (Con): I thank my noble friend for the answer on insulated homes, but since the Government went back on the promise of zero-carbon homes, we have built 1.5 million homes that have to be retrofitted, at the cost to the owners, and the profit was made by the housebuilders. Is it not time that the Government brought their future homes standard forward and enacted it immediately, so we do not put the bill for extra costs on people who buy new homes?

Baroness Scott of Bybrook (Con): I will take back to the department what my noble friend says, but we are investing £12 billion in upgrading. So it is not just home owners who are paying for this; the Government are supporting them.

Baroness Thornhill (LD): I say to the Minister that 300,000 homes is the equivalent of building a Newcastle every 12 months. My question is very simple: who is going to build them? The construction industry has been sounding the alarm on skills and labour shortages for some time, exacerbated by Brexit. What is the Government's plan to address this pertinent issue now?

Baroness Scott of Bybrook (Con): The noble Baroness is right that skills are important; we cannot build these houses without skilled construction workers. We are collaborating across the whole of government to ensure that we are effectively supporting the sector. The Department for Education is approving training routes into construction, creating opportunities for workers to retrain by working with employers to make apprenticeships more flexible and promoting the use

[Baroness Scott of Bybrook]
of T-levels, which are very important. DWP is also working with its work coaches to identify suitable candidates who might be able to change jobs and move in with local employers. A lot is going across government to make sure we have the skills in the construction sector.

Lord Foulkes of Cumnock (Lab Co-op): My Lords—

Lord Naseby (Con): My Lords—

Lord Haselhurst (Con): My Lords—

Baroness Williams of Trafford (Con): My Lords, the more that noble Lords row with each other, the less time there is to answer questions. I did say my noble friend Lord Naseby next, and then the noble Lord, Lord Foulkes.

Lord Naseby (Con): My Lords, is this not now a golden opportunity for the new Government to recognise the success of Milton Keynes as a new town/city, Northampton as a new town, and Welwyn Garden City? That concept can be modernised and is an opportunity —to pick up the point made by my noble friend—for social housing to be in the lead? Should not every one of the roofs in these new towns be appropriate for dealing with Covid, et cetera?

Baroness Scott of Bybrook (Con): New towns have been around for many years, and are a part of the solution if local people are happy to have that in their area. I will take my noble friend's views back to the department; we will discuss it further and I will talk to my noble friend.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, the manifesto promise was to build 300,000 new homes each year. How many were built in the last available year?

Baroness Scott of Bybrook (Con): Noble Lords will have to wait: I do not want to say words that are not correct, so I will make sure that I get the correct numbers. There were approximately 242,000 homes built in the last period before Covid. During the Covid period, obviously the number of homes went down, but looking at the projections for this year and forward, we are expecting to exceed the targets set.

Online Pornography: Digital Economy Act 2017

Question

3.28 pm

Asked by ***Baroness Benjamin***

To ask His Majesty's Government what plans they have to implement Part 3 of the Digital Economy Act 2017 to protect children from online pornography, until Ofcom begins any enforcement of the same under the Online Safety Bill.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Kamall) (Con): The Government have decided to use the Online Safety Bill to protect children from online pornography. This will provide greater protection to children across a wider range of services, and we expect that it will be implemented as quickly as the Digital Economy Act—if not more so. The Government are committed to bringing the Bill back to Parliament and are working closely with Ofcom to ensure that the implementation period following passage of the legislation is as short as possible.

Baroness Benjamin (LD): My Lords, 18 months ago I urged Ministers to commence Part 3 of the Digital Economy Act, so that we can put protection from harmful pornography in place for children. I was told that that would take two years, so any benefits of an interim measure would be minimal at best. Since then, millions of children, as young as seven, have accessed violent online porn, in some cases causing mental health problems and the urge to sexually assault other children. We now know that Ofcom's road map for regulation demonstrates that there will be no enforcement of the Online Safety Bill before 2025. Ofcom is taking over three years to begin enforcing laws on video-sharing platforms. Does the Minister now accept that we could have protected children three years sooner, and will the Government now commence Part 3, so that it is enforced until the new Bill is ready to replace it, and protect our vulnerable children?

Lord Kamall (Con): I thank the noble Baroness for those questions. We must be clear about why the Digital Economy Act was criticised. It was originally criticised because it did not cover social media companies, which host a considerable quantity of pornographic material. There are also other sites that it did not consider. It also considered only ISPs as gatekeepers. A number of flaws have been identified in the Digital Economy Act and we will address those with a stronger Online Safety Bill, targeted more at children.

Lord Farmer (Con): My Lords, to follow the powerful question asked by the noble Baroness, Lady Benjamin, parents are increasingly desperate for a legal bulwark against the tide of harmful and pornographic content that flows into their children's minds from the internet. They are deeply unhappy that adult freedoms currently trump their children's safety. In particular, the Government must be very clear about if and how the Online Safety Bill will prevent future deaths from potentially lethal challenges such as "blackout", which killed Archie Battersbee. Could the Minister take this opportunity to bring clarity in this area of concern for many parents?

Lord Kamall (Con): I thank my noble friend for that question. It was a deeply saddening case and our thoughts are with Archie Battersbee's family. We are focusing on doing everything that we can to prevent cases such as Archie's happening again. That is why the strongest protections in the Online Safety Bill will be for children. It is important that we sort this out as soon as possible, while putting aside or looking at

some of the debates on wider issues of freedom of speech. Clearly, free speech is not a defence for not protecting children. That is why we will focus on children. Tech firms will be forced to protect children from dangerous viral stunts and other illegal or harmful content that will cause significant harm. Where content depicting or promoting online challenges risks causing significant harm to a number of children, companies will have to take steps to protect children from this content on their services. My right honourable friend the Secretary of State, who has just been reappointed, is very clear: she wants to bring the Online Safety Bill back as quickly as possible and we aim to do that.

Baroness Ritchie of Downpatrick (Lab): My Lords, the Government have commissioned research on the prevalence and impact of a wide range of harmful content online, including pornography. Could the Minister indicate when that research will be published, and if a copy will be placed in the Library in your Lordships' House?

Lord Kamall (Con): On that particular piece of research, I will have to check with the department and write to the noble Baroness. We are quite clear that, when we bring back the Online Safety Bill, the focus will mostly be on the protection of children from harm. We can have a debate on some of the other issues—the tension between freedom of speech and what adults should have access to—sensibly and calmly, as noble Lords usually do, but we want to get this right for the protection of children.

Lord Clement-Jones (LD): My Lords, does the Minister agree with the evidence that Barnardo's gave to the Joint Committee on the Draft Online Safety Bill? It said that the failure to enact the original age-verification legislation over three years ago has meant that thousands of children have continued to easily access pornography sites. Does the Minister agree with that? Given his comments today, will he undertake to tell Ofcom that its road map needs changing and that this needs to be a major priority, in that road map, for implementation?

Lord Kamall (Con): Indeed. One of the issues my department has been discussing with Ofcom is age verification and age assurance. We have to remember that age verification is one form of age assurance. The other thing we have to be aware of is how technology changes very quickly, so we must make sure that we can be as flexible as possible so that Ofcom can update its guidelines or advice on tackling this. We are clear that we do not want to be technology-specific. We want to make sure that it is future-proofed when it comes to age verification and age assurance.

Lord Morrow (DUP): My Lords, I hope the Minister will agree that keeping children safe online requires more than just age verification. What is illegal or prohibited content offline should also be illegal and prohibited online. Will the Government ensure that the new legislation currently in the other place will indeed ensure that protections offline will be the same for online content?

Lord Kamall (Con): The noble Lord will be aware of the debate, which was about how we challenge in the Bill things that are legal offline while making sure that there is consistency between the online and offline worlds. One of the challenges is that technology is changing very quickly. We have to be honest: sometimes kids are much smarter than their parents. Whatever processes you put in place, a determined child will access this. We have to take all that into account, but we want to focus on child protection. This is why we want to bring back the Online Safety Bill as quickly as possible.

Lord Harris of Haringey (Lab): My Lords, the Minister said that the Government are focusing on the protection of children, but although he listed the reasons why the Digital Economy Act is not perfect and does not cover everything, it is better than nothing. The Government have been faffing around for three years on online safety and not bringing forward the necessary legislation. Why?

Lord Kamall (Con): I fundamentally disagree with the noble Lord. Many noble Lords will be aware that often in legislation there are unintended consequences and things that were unforeseen. I used to do a lot of writing on technology. In fact, I once wrote a book and the moment it was published it was already out of date. That shows just how quickly technology moves on. We want to make sure that we have flexibility. If we were to implement Part 3 of the Act, it would take longer than bringing in the Online Safety Bill. It would also be far too narrow: it would not take account of social media or non-ISPs. Noble Lords might shake their heads, but they are completely wrong on this.

Viscount Colville of Culross (CB): My Lords, many of us are concerned that the "legal but harmful" clauses of the Online Safety Bill will be a chill for free speech. Can the Minister assure the House that these clauses will not be included in the Bill when it comes to this place?

Lord Kamall (Con): I thank the noble Viscount for that question. It is very important that we understand the tension that we will see in this debate. Of course we want to protect children and adults from illegal content, unpleasant content and anything that encourages suicide, violence and other such things. At the same time, we live in a free society and we have to get the balance with freedom of speech right. This will be a challenge and I think we will have very interesting debates in this House. Indeed, we have a debate on this issue tomorrow. It will show the range of views but, with noble Lords' wisdom, we will try to reach that right balance.

Baroness Merron (Lab): My Lords, Ofcom's new polling shows that 78% of people expect to verify their age when carrying out certain activities online, including gambling or buying alcohol, and 80% believe that users should be required to verify their age when accessing pornography online. Given this level of public support and how easily young people are able to access pornography, why has there been long-running resistance from the Government to act?

Lord Kamall (Con): I am afraid I disagree with the noble Baroness. There is not a resistance to act; we just want to make sure that the technology is right, and that we understand the issue we are dealing with and the unintended consequences. There is a range of age-assurance issues; age verification is just one. We also have to be careful that we do not mandate not only one technology but just one company and inadvertently create a monopoly on this issue. The other tension is that pornography is not illegal, so there will be adults who watch it who will be worried about their personal data being leaked. We have to give that assurance and get that right balance with data protection. What we really want to do when we bring back the Online Safety Bill is focus on where there is consensus in this House, and that is on the protection of children.

Nursing: Recruitment

Question

3.38 pm

Asked by ***Baroness Merron***

To ask His Majesty's Government what progress they have made towards meeting their target of recruiting 50,000 extra nurses by 2024.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): This Government are committed to delivering 50,000 more nurses and putting the NHS on to a sustainable long-term workforce supply. We have set up a comprehensive work programme to improve nurse retention, support return to practice, diversify our training pipeline and ethically recruit nurses internationally. We are over half way towards meeting the commitment, with nursing numbers over 29,000 higher in July 2022—our latest available data point—than the September 2019 starting point for this commitment.

Baroness Merron (Lab): My Lords, recent analysis shows that there are over 50,000 registered nurse vacances across all settings in England alone. What assessment have the Government made of the impact of current vacancy rates on patient safety? What is the Minister's response to the warning of the Chief Nursing Officer that the Government's pledge for additional nurses, even if it is reached, will not be enough?

Lord Markham (Con): We appreciate that recruitment is an ongoing process, and while I think the whole House would agree a 29,000 increase is a good record—up 9,000 in the last year alone—we cannot rest on our laurels. Vacancies of 50,000 is partially a function of a full-employment economy, which I think we would all support. We are showing that our recruitment is working and, as I say, we are over half way towards our target of 50,000 more nurses.

Baroness Harding of Winscombe (Con): My Lords, a few months ago, the Secretary of State but two said that the NHS long-term workforce strategy would include numerical assessment of both supply and demand of nurses and other clinical professionals but that publishing those details would depend on cross-government agreement. There was broad agreement in this House, in June, that those numbers should be published. Could my noble friend the Minister put on record his support for publishing NHS workforce supply and demand numbers? If he does not feel able to, could he explain how we will know whether 50,000 is the right number of nurses?

Lord Markham (Con): There is a long-term workforce strategy plan being put together, as I think we know, and that builds on the NHS people plan of 2020, which has seen this increase in numbers. I will find out where we are with that, and the details behind that, and write to my noble friend.

Baroness Symons of Vernham Dean (Lab): My Lords, what advice would the Minister give to a senior staff nurse, working in theatre, and at the top of her pay band, alongside agency nurses who are paid two to three times as much as she is for a 10-hour shift? Should she leave the NHS and become an agency nurse herself, or should she vote to strike, as she may well be asked to by her union?

Lord Markham (Con): I would hope and trust that such a respected person would see this position as the vocation that it is and the support that they give. We accept that there are some agency workers being used in this space, because obviously, in terms of safety, we need to make sure we cover that number of people. The whole recruitment plan—which, again, we are on target to achieve—is all about making sure we have enough nurses so that we do not have to use agency workers.

Baroness Brinton (LD): My Lords, following on from the question from the noble Baroness, Lady Harding, can I ask the Minister if there are plans to increase the number of student nursing places at universities and student apprenticeships over at least the next decade? While there is a short-term crisis, there is also a longer-term sustainability crisis, especially with current demographics.

Lord Markham (Con): The noble Baroness is correct that this is a long-term pipeline. We have 72,000 nurses in training at the moment. To be clear, there is no cap at all on student places. We are seeking to increase them as much as possible, and we put a £5,000-a-year grant in so that trainee nurses could enjoy superior levels of financial support than other students. The fact that we have a pipeline of 72,000 shows that this is working, but that pipeline is not capped, so if we can get more people in, we definitely want to do that.

Lord Turnberg (Lab): No matter how many nurses we try to recruit, we never seem to catch up with the rate of loss. What are the Government doing to help retention of nurses? We must try to encourage them and support them to stay. What plans are there to do that, and what plans have the Government got to bring back nurses who have left or retired?

Lord Markham (Con): First, we are actually exceeding the number of leavers. There were 36,000 people who left last year and 45,000 who joined—a net increase of

9,000. That is not to say that we do not want to retain people. I absolutely accept the premise that we do, which is why we have a retention programme in place to ensure that we are able to do so. We also have a restart programme to help people who have left to get back into nursing in a quick and easy way. Overall, the main point here is that the number of joiners is exceeding the number of leavers. We are more than catching the number up; we are exceeding it.

Baroness Watkins of Tavistock (CB): My Lords, I declare my interests as a nurse and the co-editor of the WHO report, *State of the World's Nursing*. It is true that we have 9,000 additional nurses, but of the 48,000 who in the last year joined the register for the whole UK—for the four countries, not just England—more than half had trained overseas. Those nurses are very welcome here, but it illustrates that we are not encouraging people who wish to go into nursing to do so, beyond the 72,000 the Minister referred to. That is very much to do with student finance and the lack of apprenticeship opportunities for older people who want to go into the profession. Can the Minister look into increasing those opportunities?

Lord Markham (Con): Indeed, and towards that aim we have set up the nursing associate role, which is a stepping-stone to allow people to ease in and have qualifications on the way to becoming a fully trained nurse. The overall point I make, as before, is that by putting in a £5,000-a-year grant for student nurses, we are recruiting the numbers. I reiterate that 72,000 is a big pipeline but also that it is an uncapped pipeline. The more we can attract, the merrier—whether domestically or, as in the fine tradition of the NHS, from overseas sources.

Baroness Walmsley (LD): My Lords, is the Minister aware that the percentage of nurse vacancies is much higher in community care than in any other part of the sector? What is the department doing to ensure not only that we have enough nurses but that they are in the right places?

Lord Markham (Con): That is an excellent point. One thing I probably should have said is that the number of 36,000 leavers includes people who have left NHS trusts and gone into community care, working in GP surgeries. We do not catch that number who come back in again, so the real number is less than 36,000, but the basic premise of the question—making sure we are attracting nurses to the right place—is absolutely the right one. I believe that is the plan in place, but I will check on that and make sure we are doing as requested.

Baroness Masham of Ilton (CB): My Lords, would it be possible to make it quicker and cheaper to get visas to bring to the UK nurses from across the world who would like to work here? We can never have enough nurses without them, can we?

Lord Markham (Con): I totally agree with the approach. I have declared a personal interest before in that my wife is a dentist from the Dominican Republic who came in exactly that way, so I completely support the intent.

Lord Brownlow of Shurlock Row (Con): My Lords, I raised the subject of agency nurses in my maiden speech. In the private sector, it is quite common that if you receive training by an employer and leave within a certain period of time, you repay the cost of that training. If nurses qualify and then transfer to become an agency nurse and rip off hospital trusts, as we heard earlier from the noble Baroness opposite, should they repay the costs of the training they have been given?

Lord Markham (Con): I do not think I can quite agree with the words "rip off", but I get the sentiment. As I am sure we all have, I have been involved in industries where, if your employer pays for your training and you do not return the contract—for want of a better word—or investment by giving a few years' commitment to do it, there should be some sort of clawback. I understand the approach, but right now my focus is on making sure we get as many people into training as possible.

Arrangement of Business

Announcement

3.49 pm

Baroness Williams of Trafford (Con): My Lords, it might assist the House to know that today, all Members are invited to attend the Members' open day, which takes place in the Robing Room until 5 pm. Staff from teams across Parliament will be there to talk to noble Lords about the services and facilities available to all Members of the House and to answer any questions that noble Lords might have. It includes information on subjects such as Questions, debates, legislation, catering, finance and much more. Noble Lords may visit the Robing Room at any time it suits them.

Airports Slot Allocation (Alleviation of Usage Requirements) (No. 3) Regulations 2022

Motion to Approve

3.50 pm

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

That the draft Regulations laid before the House on 20 July be approved. *Considered in Grand Committee on 25 October.*

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

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I beg to move the Motion standing in my name on the Order Paper.

Lord Trefgarne (Con): My Lords, with your Lordships' permission, may I ask the Minister whether these restrictions mean that the need for slots for most aircraft also applies to the very smallest aircraft operating through Heathrow and Gatwick, for which this is sometimes regarded as an excessive restriction?

Baroness Vere of Norbiton (Con): I thank my noble friend for raising the issue of small aircraft. I know he has a great interest in the matter. I will have to write to him about whether it applies to private jets and other small aircraft. The instrument that we debated in Grand Committee very much covered the slots held by the large commercial airlines.

Viscount Stansgate (Lab): My Lords, before the House agrees these regulations, will the Minister tell us whether the Government expect limits to be placed on the number of passengers able to use Heathrow over Christmas?

Baroness Vere of Norbiton (Con): We are aware that the current passenger cap at Heathrow of 100,000 passengers will be removed very shortly—indeed, I think it is this weekend. I believe that no decision has been taken on the Christmas period. However, significant numbers of staff have been recruited by Heathrow, so on balance I expect that it will not return, but that would be an operational decision for Heathrow.

Motion agreed.

Water Fluoridation (Consultation) (England) Regulations 2022

Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022

Motions to Approve

3.52 pm

Moved by ***Lord Markham***

That the draft Regulations laid before the House on 20 July be approved. *Considered in Grand Committee on 25 October*

Motions agreed.

Universal Credit (Removal of Two Child Limit) Bill [HL]

Order of Commitment

3.53 pm

Moved by ***The Lord Bishop of Durham***

That the order of commitment be discharged.

The Lord Bishop of Durham: My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Seafarers' Wages Bill [HL]

Report

3.53 pm

Relevant documents: 10th and 16th Reports from the Delegated Powers Committee

Clause 3: Power to request declaration

Amendment 1

Moved by ***Lord Berkeley***

1: Clause 3, page 2, line 15, leave out "the harbour" and insert "a harbour in the United Kingdom"

Lord Berkeley (Lab): My Lords, I declare my interest as honorary president of the UK Maritime Pilots' Association and a former harbour commissioner for the port authority in Cornwall.

In moving Amendments 1 and 2 I will reflect on the purpose of the Bill. Although it was created, as Ministers have said, to avoid a repeat of the frankly disastrous attempt by P&O Ferries earlier this year to change all their seafarers, it was the process that I felt was abhorrent. Clearly, the purpose of this Bill is to ensure that the national minimum wage legislation applies to all seafarers when working in UK waters but not within the UK.

We debated the two issues in Amendments 1 and 2 in col. GC 102 of the Grand Committee on 12 October. I would like to start on Amendment 1, which is linked to Amendment 2. The question is: what is a harbour?

My Amendment 1 would leave out the words "the harbour" and insert

"a harbour in the United Kingdom".

We understood what the Minister told us in Committee, but then it got a bit confusing. She kindly wrote a long letter to us, which was helpful, but she said in the letter:

> "A service is defined … as being 'for the carriage of persons and goods by ship, with or without vehicles, between a place outside the United Kingdom and a place in the United Kingdom'".

The word "a" is interesting. If it were "the", as in the Bill, that would be just one harbour, but my argument is that "a" place can be any harbour. This comes into the scope of whether the Government are trying to protect all seafarers who are, shall we say, based in the UK—those who work in UK waters but are not necessarily employed on UK land—or whether this provision just sorts out the P&O Ferries problem. It is my contention that as the Minister referred in her letter to "a" place, that is what should be in the Bill.

I also want to explore why this needs to be confined to Dover to Calais. Many noble Lords will recall that a previous Secretary of State for Transport, Chris Grayling, created a new ferry service between Ramsgate and Zeebrugge to try to sort out the traffic jams at Dover. Of course, that ferry service did not actually exist; I discovered that the head office was in an office owned by a very large manufacturer of construction equipment in the City, but there was no ship or ferry. But Ramsgate is a perfectly good ferry terminal and I can see that ferries might operate between Dover and Calais one day and between Ramsgate and Calais the next; it could effectively be the same service. It is not right to confine the service included in the Bill to just one service, when ships can go round the country. I believe that the seafarers, in all these things, need similar protection.

We then move on to the question of having 52 or 120 days a year where the ship would have to come into a UK port in order to be included under the Bill. Ministers have said that the key is that the service must

have close ties to the UK. I suppose I would question how you can define close ties—it is a bit of a woolly concept. I am not going to give any examples, but if you are a seafarer and want to be included, you might wonder whether the company employing you has those close ties. It is a difficult question to answer.

4 pm

I am grateful to the RMT trade union for some information it has sent to me and, I expect, many other noble Lords. There are two issues here. Is there a need for this when you are operating a ferry service to a close member state of the European Union such as France, the Netherlands or the Republic of Ireland, where maybe the national minimum wage is higher than what we pay here? The argument may be that it is not really important. But this is legislation that could be on the books for many years and most countries could change their policies, so it is as well to make this applicable to many countries—member states and other reasonably close places—rather than saying that we do not need to bother with France because its pay is high anyway.

More interestingly, rather than just talking about Dover/Calais, the RMT has given me a list of services and vessels which go to and from the UK and could well meet the 52-visit figure I am proposing; the Government would rather have 120 visits. I have counted and there are 34 vessels and routes, not just one or two. I shall not read them all out. There are probably seven or eight different operators: P&O is a big one and there are DFDS, Stena and Cobelfret. We all know them. Some pay very well and, according to the RMT, some pay very badly. The lowest I have seen is Condor Ferries, which pays £2.40 per hour. That is a little bit below the national minimum wage, is it not?

It is difficult and dangerous to try to limit this legislation to services which are a bit like Dover/Calais. If you are a seafarer on many of those 40 or so services, the same comments and worries apply to you all. This applies only within UK territorial waters; what happens outside is a separate issue. That is why I have tabled Amendment 2: to reduce the number of visits of a ship or a service from 120 to 52. We can debate whether 52 is the right number—that is one a week on average—but it means that we can include a much greater range of services for which seafarers deserve to be treated properly. That includes cruise ships. Why should people on cruise ships not get paid a national minimum wage? I shall not go into detail—there is another amendment that could have come in—but the key is that the 52 visits a year can be measured. That can be controlled and I think it is a much better number than the 120 in the Bill.

In moving and speaking to these amendments, I look forward to the Minister's response to Amendment 1 on whether option A or option B on harbours is favoured. It will be very interesting but I think the key is the 52 visits in Amendment 2. I very much look forward to what the Minister has to say and then I will decide whether to seek the opinion of the House. I beg to move.

Lord Forsyth of Drumlean (Con): My Lords, I declare an interest as a director of J&J Denholm, which has shipping and port services interests. I have not participated in this Bill because I thought it was excellent and doing the job that Ministers made clear was its purpose, which was to prevent a recurrence of the appalling behaviour of P&O in its ferry services. That was declared at the time.

We are looking at the provisions in the Bill and the suggestion in Amendment 2 that we should leave out 120 and insert 52. I believe that P&O has something like 15 crossings per day between Dover and Calais, so the Bill clearly deals with the problem that it was presented as seeking to solve. I am not unsympathetic to the points made by the noble Lord, Lord Berkeley, who is splendid and very careful in the work that he does in this House. Indeed, we have agreed on matters such as HS2 and others from time to time. But his amendment would completely change the Bill's scope, and to do that on Report would be quite ridiculous, when the whole thing has been presented to the public.

I am intervening because of representations from the Chamber of Shipping, which accepts that the Bill is right and the number 120 is right, but is concerned that we are drawing in other services. I have no idea what those services are and the noble Lord did not say what they were; I have no idea what the implications and costs are for the administration of the ports and so on. What I do know, however, is that it is not what the Bill was introduced to deal with. Therefore, at this late stage, it would be wholly inappropriate to amend the Bill in this way or to create an unknown administrative burden on the ports.

I guess that the noble Lord chose the number 52 because it meant once a week, but that does not address the problem that has occurred, so I hope my noble friend will continue to resist the amendment. The noble Lord seems to me to be in danger of trespassing on international conventions and rules. The Labour Party has always been a great supporter of the ILO and so on, and of having an international approach. We must tread with care. The Government, in seeking to deal with the P&O episode, took a step in a direction that moved away from the conventions that the flag of convenience should govern the rules on board ships, which was entirely justified. But this amendment is a step too far. As it is Report, I shall say no more.

Lord Balfe (Con): My Lords, I have a lot of sympathy with what my noble friend Lord Forsyth has said. We have set out to deal with the problem of P&O. I have heard nothing from the RMT—it is clearly not that bothered about this side of the House—but this pushes things a bit further than they should go. I hope the noble Lord will not test the opinion of the House.

Lord Greenway (CB): My Lords, I very much endorse what the noble Lord, Lord Forsyth, just said. I am very concerned about this amendment, as is the Chamber of Shipping. The Bill is part of the Government's nine-point plan to address the whole problem of seafarer welfare—an important one nevertheless, dealing with services with close ties to the UK, making regular port-to-port international voyages adding up to 120 calls a year. It is not just about Dover/Calais; ports all around the country will be affected, so it is wrong to concentrate just on Dover/Calais, although admittedly that is where the main problem occurred.

[LORD GREENWAY]

The Government went through extensive consultation on the Bill and came up with the figure of 120 calls a year, which is probably the right balance. I know that the chamber is very concerned that widening the scope of the services affected to those making only a single call a week would draw in a very large number of non-UK ships, subjecting many more foreign companies to UK national minimum wage legislation. In turn, that would provoke a severe reaction from the international shipping community—and I know that the International Chamber of Shipping is especially worried about this. In turn, this could be seen as an even greater infringement of international conventions and an excessive claim to prescriptive jurisdiction.

It would also be impractical for the Government to oversee such a large and diverse number of shipping services calling at UK ports, increasing the administrative burden on ports, as has already been said, and creating uncertainty across different shipping sectors such as coastal, wet and tanker services, dredgers and other services that were never intended to be part of this Bill. Any decision to have a scope in the Bill that is way beyond the original stated intention will seriously damage confidence in the UK as a global centre for shipping; it also risks fewer ships calling at UK ports.

My noble friend Lord Mountevans has taken a greater part in this Bill than I have, so in many ways I am speaking for him. I say to the noble Lord, Lord Berkeley, who is a good friend, that no cruise ship would be affected by this amendment, because cruise ships do not call that frequently and most of them migrate during the winter months. So, I do not think that the effect of his amendment would be as great as he might have hoped, and therefore I hope the Government will resist it.

Baroness Randerson (LD): My Lords, I want to start by thanking the noble Lord, Lord Berkeley, for his usual attention to detail on these issues. The noble Lord, Lord Forsyth, said that he had not participated before. If he had, he would know that the scope of the Bill has been a persistent topic, and those of us who have been engaged throughout have pressed the Minister on a number of occasions, and in a number of ways, to define it more closely. I am particularly interested in Amendment 2; the key point here is the reduction in the number of visits required to demonstrate close ties and regular links with the UK—the noble Lord has suggested a reduction from 120 to 52.

The argument against that is that it might bring in a new range of services, and I understand the Government's desire to avoid mission creep. But the truth is that although we all agree with the principle of this Bill—that seafarers should be paid a decent wage—in practice it is very poorly drafted. It has imprecise definitions, penalties that are in practice not going to be imposed—such as the denial of access to the harbour, which will come up in an amendment later—and a very cumbersome structure whereby the Government will rely on harbour authorities to implement the rules. I believe it would not have got this far in its current state if the Government had not been so distracted recently; we are after all on the third Secretary of State in three weeks, and it is difficult to get that continuity.

To address the specific issue of the numbers, the noble Lord suggests that the total is 52. It is easy, as the noble Lord, Lord Greenway, has just pointed out, to base one's judgments on what happens from Dover; in practice, there are ferry services in the rest of the UK that are in every way similar in structure, ownership of the company and the seafarers involved, but they go much less frequently. It is possible to envisage, for example, some of the ferries between the north of England and Scandinavia and ferries between the south-west of England—maybe Poole—and the north of Spain. Those are regular ferry services that often do not run at all in winter, so a total of 52 may not be out of kilter with what is required.

In the interests of fair wages, it might be worth broadening the definition. I urge the Minister to consider that, and to look, even at this late stage, at the pattern of services throughout the UK. There may well be a case to reduce the total number of services which are caught in the Bill.

4.15 pm

Lord Hendy (Lab): My Lords, I support both my noble friend Lord Berkeley's amendments. They make it more likely that operators will not be able to evade their obligation to pay at least the national minimum wage equivalent. The behaviour of P&O Ferries in March this year is the very reason for the Bill, and that behaviour shows the lengths to which operators will go to save money on seafarers' wages. The Bill should bend over backwards to narrow every opportunity for operators to evade their very modest obligation to pay seafarers the national minimum wage equivalent and prevent such behaviour.

It is not just P&O Ferries. The effect of allowing ship operators to evade the national minimum wage equivalent is that they undercut their competitors, which then join the race to the bottom and put at risk the jobs of some 2,000 UK-resident ratings and officers. Like my noble friend Lord Berkeley, I looked at the table provided by RMT. Perhaps he will forgive me giving a correction: he said that the lowest rate was £2.40, paid by Condor Ferries. However, according to the table, the lowest rate is P&O Ferries on the "Pride of York"—a vessel registered in the Bahamas—on the Hull-Zeebrugge route, which pays €2.04 per hour for cooks of Lithuanian extraction. There are a number of other low rates. For example, DFDS's "King Seaways", going from Newcastle to Ijmuiden, is on the Danish international ship register and has Polish, Ukrainian, Romanian and Filipino crew, and it pays $2.63 an hour for a cabin steward. I will not read any more examples, but this appears to be a perpetuation of nationality-based discrimination on pay which this legislation should be tight enough to avoid.

I hope the Minister will forgive me for asking before I sit down for her to clarify a point raised in Committee—namely, whether a harbour in one of the Crown dependencies is a UK harbour or whether it will become subject to a national minimum wage equivalent corridor. I did not understand the answer she gave in her very kind letter of 21 October. If it is to become the subject of a corridor, can I ask how negotiations are progressing, and whether they involve the social partners?

Lord Tunnicliffe (Lab): My Lords, to make some general comments, we welcome the Bill. I think everybody has been shocked by P&O's behaviour, but this goes a bit deeper than that. I had no idea how badly seamen are paid. It is disgraceful. This is clearly a worldwide problem, and there are problems with addressing it from a singular point of view.

I also object to the criticism of my noble friend by the noble Lord, Lord Forsyth, because this has been a normal Bill. We could not vote in Grand Committee for the usual conventional reasons. It was well debated—the noble Lord would know that if he had been present. Essentially, Amendment 2 is a judgment about degree, and we come to a different judgment than the Government. While we support the Bill in general, we have amendments where we think that a little finesse will make it more effective. A weekly service is the sort of thing that should be within the scope of the Bill. While we will not press Amendment 1, we will support the noble Lord if he wants to press his Amendment 2 to a Division.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I am very grateful for all contributions on this first group. I appreciate the support from Members on my own side; it is always good for the Minister to know that there are a range of views and that people are thinking about the Bill and taking it seriously—it is a very serious Bill.

The noble Lord, Lord Tunnicliffe, mentioned the welfare of seafarers. He is absolutely right and there are mechanisms, which the UK is deeply embedded in and has been for a very long time, which work internationally, as many noble Lords will know, to try to improve the conditions and pay of seafarers. However, that is not under discussion today. As pointed out by the noble Lord, Lord Greenway, this is an important part of the nine-point plan that Ministers set out earlier in the year, but the Bill is narrow in scope and effect. That is for many reasons but a key one is that we have to be mindful of the extent to which we are legislating; we have to be mindful that we do not overreach, because that might have some very serious unintended consequences that we would later regret. That is why, throughout the drafting of the Bill, we have had at the front of our minds not only international law but our international obligations; that is critical. Although I accept that there are many things that noble Lords would very much like to do for seafarers—and that, probably, on the face of it, I would like to do too—the reality is that, as a Government, we have to be sensible and potentially a bit boring. We must stay in our lane and make sure that we do not overreach, because the consequences would be very significant.

There are two amendments in this group. The first brings back the old chestnut of "the harbour" versus "a harbour". I am grateful to the noble Lord, Lord Berkeley, for enabling that discussion once more. I cannot go much further than I went in Committee; I just state that it is absolutely important that unless we say "the harbour", we cannot define what a service is. A service is from one point—the point—to another point. It is of great regret that the word "a" crept into the letter, but noble Lords can imagine that that was the overarching ambition: from a point overseas to a point in the UK, but "the harbour" within a place overseas and a place in the UK. Because we have defined it that way, from "the harbour" to "the harbour", we capture the high-frequency services that, let us recall, can be serviced by any vessel—you can put another vessel in when one is off being maintained or whatever—but it is always between two specified harbours.

The second part of that definition—the harbour to the harbour—that is very important is

"120 occasions in the year".

That, essentially, defines a service that has close ties. The second point about this is that unless you define it as "the harbour" to "the harbour", it would be incredibly difficult to enforce the Bill, because the Bill relies on one harbour authority being responsible for monitoring and enforcement. Individual harbours may be able to anticipate that a particular service will call in its harbour 120 times a year, perhaps because that service has been doing so for years, if not decades. That harbour authority may not be able to anticipate whether a particular operator has services to other ports, so how would the enforcement and monitoring work in those circumstances?

The noble Lord, Lord Berkeley, brought up an example about, I think, a former Transport Secretary and ships that could be brought in to operate services, but he reinforced the point I am trying to make: it is not about the ships or the specific seafarers on a particular service; it is the service itself that we must make sure falls within the Bill's scope.

I am content that we have defined the scope well. I am a little disappointed that I have not given sufficient explanation such that the noble Baroness, Lady Randerson, is content, but I feel that we are there and have clarified exactly what would happen. In response to concerns raised about services suddenly deciding to go to another port so that they do not have to pay seafarers a fair wage, as I said in Committee, I do not think that would be commercially viable. I do not think operators would play switcheroo with UK ports because, frankly, their customers would not put up with it. I do not think that point works.

I hope the noble Lord will withdraw the amendment to change "the harbour" to "a harbour". It would make the entire Bill not worth the paper it is written on, and it would not function in the way that I know the noble Lord wants it to function.

I turn now to Amendment 2, which seeks to decrease the threshold frequency from 120 times a year to 52. The figure of 120 was arrived at following very thorough and extensive consultation and bilateral discussions with industry and other stakeholders. We have looked incredibly carefully at the patterns of services, noted by the noble Baroness, Lady Randerson, and at maritime traffic data by type to reach the figure in the Bill. The scope of the Bill captures services calling 120 times a year on purpose. It is a very specific number that balances the need to maintain close ties with wanting to do the very best we can for seafarers.

The rationale is clear. It covers the vast majority of passenger ferries, including ro-pax, non-passenger ferries and ro-ro services calling at the UK. Critically, it focuses the Bill on short sea services, which justifies

[Baroness Vere of Norbiton]
the connection to the UK and therefore the UK-equivalent level protection of pay. We do not want to bring into scope some of the high-frequency deep sea container services. That would not be our intention at all and, as my noble friend Lord Forsyth mentioned, would completely change the scope of the Bill and would go against the Government's intention.

For the UK to impose pay requirements for seafarers on foreign-flagged ships that call at its ports only once week would risk being seen as an overreach by international partners. It would weaken the justification for the UK taking legislative action. As my noble friend Lord Forsyth said, we must tread with care. I appreciate that the noble Lord's intention is to protect as many seafarers as possible, but the Government can justifiably legislate only for those with close ties to the UK. To seek to do more could risk making the Bill inoperable and could damage the UK's reputation internationally.

Lord Berkeley (Lab): My Lords, I am grateful to all noble Lords who have taken part in this short debate and to the Minister for her reply. To some extent, these issues were discussed in Committee and many of us suggested to the Minister that there were questions, which the Chamber of Shipping has clearly raised with other noble Lords, about the legality of this from an international shipping point of view. The Minister convinced us—well, she said there was no problem and she thought it would be all right and within scope. The only difference, therefore, is how many times a service goes into a port before it ceases to cause an international problem? I do not know the answer to that, but I cannot believe that, if it is all right to have 120 visits a year, it is somehow illegal to have 52.

The noble Baroness also raised the question of foreign-flag ships. I thought we had established that it applied to any ship, regardless of what flag, so I do not think the foreign flag comes into it at all.

I am grateful to my noble friend Lord Hendy for setting out in more detail what the RMT has sent us, but seafarers who are operating on a service where the cook gets paid £2 an hour might look askance at seafarers who are getting the national minimum wage because they happen to be going on a short sea crossing where P&O had caused some problems earlier this year. It does not seem logical to me.

4.30 pm

Assuming therefore that the Government believe that the purpose of the Bill is legal under international law—I have to take that as read—it seems to me pretty unfair that some seafarers are going to benefit and some will not. I am sure that is not what was needed or wanted by the Government and I am sure that there will not be too many unintended consequences. It is quite possible to monitor which ships go into which ports and where, and I know the MCA and the Government can do it.

My real purpose in this amendment was to try to support seafarers who work around the UK and make sure that they are all subject to the same national minimum wage. We cannot have a few exceptions, just because a service happens not to go into a port quite so frequently.

Finally, on the question of increased costs if wages go up—we know that is why P&O did what it did, and no doubt others will try to follow—I do not think the evidence that increasing the minimum wage on certain ferries will suddenly put the UK out of business is credible. There are many other reasons—which I will not start debating now because other noble Lords will want to debate them as well—but the question of cost is something which P&O tried, and I expect won, and we do not want to see it again. It must apply to all ships which may come into the UK, as defined in the Bill, at least 52 times.

I am grateful to all noble Lords who have spoken, and I would like to withdraw Amendment 1.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Lord Berkeley***

2: Clause 3, page 2, line 15, leave out "120" and insert "52"

Member's explanatory statement

This amendment would reduce the number of visits by a ferry service to one particular port needed to qualify and bring further services within the scope of the Bill.

Lord Berkeley (Lab): I would like to test the opinion of the House on Amendment 2.

4.33 pm

Division on Amendment 2

Contents 171; Not-Contents 190.

Amendment 2 disagreed.

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4.46 pm

Amendment 3

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

3: Clause 3, page 2, line 17, leave out paragraph (a)

Member's explanatory statement

In response to the report of the Delegated Powers and Regulatory Reform Committee in relation to the Bill, this amendment removes a power to restrict the circumstances in which national minimum wage equivalence declarations may be requested.

Baroness Vere of Norbiton (Con): My Lords, the thrust of the amendments in this group is to consider the delegated powers in the Bill. I will speak to the first amendment, in my name, and return to the remainder when I have heard contributions from noble Lords. Amendment 3 addresses a concern raised in the report by the Delegated Powers and Regulatory Reform Committee, the DPRRC. The amendment removes the power in Clause 3(4)(a) to make regulations that make provision restricting the circumstances in which harbour authorities may request that operators of shipping services provide national minimum wage equivalence declarations.

After reflecting on the comments of the committee, and representations made by noble Lords on this point in Committee, I agree that the power as drafted could have been exercised in a way that had broad effect to amend the application of the Bill, with limited parliamentary scrutiny. That had not been the intention of the clause when it was included, but, after some consideration, the Government are satisfied that the removal of this power would not have any impact on the operability or policy intention of the Bill. I beg to move.

Baroness Randerson (LD): My Lords, I stand to speak to the amendments in my name and that of my noble friend Lady Scott: Amendments 6, 7, 8 and 9 in this group. We are pleased to see that the Minister has responded to comments from the Delegated Powers and Regulatory Reform Committee, and that her amendment addresses some of the issues that it was concerned about. Our amendments also address their comments, and the Government do not seem to have taken all of the committee's comments on board. That concerns us.

Clause 11 gives the Secretary of State power to give directions to harbour authorities, requiring them to do—or not to do—a number of things. The DPRRC concluded that this was

"a completely open-ended power"

and pointed out that this could modify the whole Bill by directions which are not subject to any form of parliamentary scrutiny. The Government accepted this argument in relation to Clause 3 and put in an amendment, so my question is this: why is the same principle not applicable to Clause 11? I made the point earlier this afternoon that the Bill is, in my view, poorly constructed. I genuinely think that it is quite possibly an error, rather than a considered decision by the Government, that has led to their failure to rectify Clause 11, because there is no logic to making the effort with Clause 3 but not making the effort with Clause 11.

As the Bill stands, the Government are hiding behind harbour authorities by expecting them to do the enforcement work. I understand the points the Minister made in the various debates in that regard, but at the same time the Government want to retain all the ultimate power. That is not satisfactory. It overrides Parliament's role and parliamentary democracy. It is an abuse of government power and it is bad law.

So my question to the Minister is: will the Government consider responding to and taking on board the rest of the DPRRC's comments and, at a very late stage—at the last moment—ensuring that there are amendments in line with its comments? If she feels that the Government really cannot do that, will she give an undertaking in this House that they will not depart from the Bill's basic script and intention—because there is a fear that that could happen, given the very wide-ranging power they are giving themselves in the Bill?

Lord Berkeley (Lab): My Lords, I tabled Amendment 10, which is designed to do exactly the same thing as the amendments from the noble Baroness. All I can say is that I entirely agree with what she said. It is really not acceptable that the Government can instruct or direct ports to do something, direct them not to do something, and then basically fine them, take them to court or whatever if they do not do what they say. It is all wrong and I support the noble Baroness's statement. I hope the Minister will consider this and possibly come back with changes, as she did with the earlier recommendations.

Lord Hendy (Lab): My Lords, as a member of the Delegated Powers and Regulatory Reform Committee, I support all these amendments. The Government accepted the committee's recommendation in relation to Clause 3 and introduced Amendment 3; they should also concede Amendments 6 to 9, and preferably Amendment 10.

The problem is that the Government have made harbours the enforcers of the Bill, in particular by way of imposing surcharges. That reveals the flawed structure of the legislation. The arguments are by now familiar so I will outline only three of them.

First, the national minimum wage equivalent for seafarers should not be enforced by harbours, some of which are wholly conflicted since they share ownership with the shipping lines they are to police. I do not understand how the noble Baroness could say in her letter to us of 21 October:

"The Government is confident that there are no conflicts of interest."

Instead, the declaration of compliance should be received by, and the prime enforcement body should be, a state authority. The obvious candidate is the MCA.

Secondly, there should have been provision for seafarers or their unions to enforce the national minimum wage equivalent, not least by making the entitlement to it contractual.

Thirdly and lastly, enforcement by way of surcharge is, with respect, inappropriate. It is a penalty and the noble Baroness's letter to us, of 21 October, says of surcharges that

"Rather than being a punitive measure, its purpose is to make it not worthwhile for an operator to underpay their seafarers."

Of course that is so, but then there is no distinction of purpose between a fine and a surcharge. One suspects that the real reason that a surcharge is preferred to a fine is that it avoids the stigma of a criminal sanction, which is, if that is true, an unattractive justification given that we are all here seeking to prevent repetition of the disgraceful behaviour of companies such as P&O Ferries. Such companies should be stigmatised by criminal prosecution if they underpay their seafarers.

Lord Tunnicliffe (Lab): I thank the Minister for Amendment 3. Moving on to Amendments 6, 7, 8, 9 and 10, I am more sympathetic with the Government than any of the previous speakers. These sorts of powers are necessary. Arguably, the way pressure is put on harbours to do the right thing is wrong, but it is the way the drafters of the Bill have chosen.

I wish the Government would get back to the tradition of doing what the DPRRC says, which way back, when I sat on those Benches, we did. However, none of those things will probably happen and, certainly, I do not feel it is an issue over which we would support dividing the House. I would, however, recommend that the Minister allay some of the fears that these clauses have provoked, by reading into the record the statement made to the DPRRC on 25 October, particularly, from the bottom of the page in the report:

"The policy intention is that this power would only be used in the following circumstances"

and all those circumstances, to the end of that document. In the best Pepper v Hart frame, the world would then have easy access to those limitations, much improving the likelihood of the Government sticking to those limitations. Of course, if she wants to amend the document more fully, I would not be averse to her bringing this back at Third Reading. However, I can tell from her demeanour there is not a prayer of that, so would she agree to putting those assurances into the record?

Baroness Vere of Norbiton (Con): I will indeed take option A from the noble Lord, Lord Tunnicliffe. I accept that we do not want our powers to be overreaching. I believe there is a good justification for these powers, and I will happily read into the record the circumstances in which the Government believe it would be justified to use these powers.

I will quickly address the amendment from the noble Lord, Lord Berkeley. I do not believe he will press it to a vote because it would remove all of Clause 11 and then it would remove the guidance for the harbour authorities, so it would be incredibly messy.

Let us focus on the second element of the concerns from the DPRRC. We have very carefully reflected on its recommendations. We have looked very carefully at the powers of direction for the Secretary of State in Clause 11. We have concluded that to remove them would significantly reduce the effectiveness of the Bill. These powers of direction form an important part of the compliance mechanism under the Bill. Without that power of direction given to the Secretary of State, there will be no means of correction if the harbour authorities do not exercise their powers under the Bill, or if they exercise their powers inappropriately. Given that noble Lords have raised concerns about potential conflicts of interest between harbour authorities' commercial interests and statutory functions, these powers also provide a safeguard against this risk. I assure noble Lords that the power is not intended to have general effect to allow the Secretary of State simultaneously to direct all harbour authorities to exercise or not to exercise their powers under the Bill, or to exercise them in a particular way. Nor is it intended to modify the character of the Bill itself by means of direction.

5 pm

The policy intention is that this power would be used only in the following circumstances: first, to direct a harbour authority to request a national minimum wage equivalence declaration where it appears to the Secretary of State that it has the power to request a declaration under Clause 3(1) but has not done so; secondly, to direct a harbour authority not to request a national minimum wage equivalence declaration where doing so would disrupt key passenger services and supply chains critical for national resilience; thirdly, to direct a harbour authority to impose a surcharge where circumstances are such that it should do so under Clause 7(2) but has not done so; fourthly, to direct a harbour authority not to impose a surcharge where doing so would disrupt key passenger services and supply chains critical for national resilience; fifthly, to direct a harbour authority to impose a surcharge of an amount specified in the direction instead of the amount determined by the harbour authority's tariff; sixthly, to direct a harbour authority to refuse access to a harbour where a surcharge has been imposed on an operator but it has not paid it; and, seventhly, to direct a harbour authority not to refuse access to a harbour or set conditions on the refusal of access—for example, with respect to timings—where the Secretary of State considers that the refusal of access would cause damage by disrupting key passenger services and supply chains critical for national resilience.

I hope that this is helpful in setting out the purpose of this power and provides some reassurance as to its application. I beg to move.

Amendment 3 agreed.

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

Amendment 4

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

4: Clause 9, leave out Clause 9 and insert the following new Clause—

"Detention of vessels for failure to pay surcharge

(1) A ship providing a service to which this Act applies may be detained by a person appointed by the Secretary of State for the purposes of this section if—

(a) a harbour authority has imposed a surcharge on the operator of the service in respect of the entry into its harbour by any ship providing that service, and

(b) the operator has not paid the surcharge in accordance with provision made by or under this Act.

(2) It does not matter for the purposes of subsection (1) whether an objection has been made to the surcharge under section 8."

Member's explanatory statement

This amendment would replace the penalty of refusal of access with a more conventional penalty of detention.

Baroness Scott of Needham Market (LD): My Lords, in Committee we sought to deal with a number of operational issues that have been giving us concern. The harbour authorities—the port authorities—do not want the powers they are being given in the Bill; we covered that area very well. They do not think that it is appropriate or that they are equipped. We sought to make amendments to give those powers instead to the Secretary of State, so the irony of the debate we have just had is that if the Government had accepted our amendments, taken the powers away from the port authorities and kept them for the Secretary of State, they would have been in compliance with the instructions of the Delegated Powers Committee. There is a certain Alice in Wonderland quality about this debate—and not for the first time.

I would like to return to one issue. I see that the noble Lord, Lord Forsyth, is not in his place, but in the 22 years I have been in this House the common practice is to have debates in Committee in which we listen to each other, then a gap in which we reflect on what has been said, talk to stakeholders and, crucially, have meetings with and letters from the Minister. Then we come back on Report. If taken seriously, his suggestion that this is somehow too late would render this House completely impotent. Despite his not being here, I wanted to make that point.

I turn to the point about denial of access to a vessel as a punishment for various transgressions under the Bill. Detention in a port is the accepted international way of dealing with all sorts of transgressions. It is well understood and has been done for many years. As the Minister pointed out in her letter to us, it is a considerable inconvenience to the port and therefore never undertaken lightly. The main impact is on the shipping company, which gives it an absolute incentive to comply in the first place.

Denial of access, as opposed to detention, raises a whole host of issues. The International Chamber of Shipping does not believe that it complies with international law. The British Ports Association believes that it would break long-standing UK law by denying access to such a vessel. The Government are expecting harbour authorities to take the risk of costly legal action, at their own expense, when there is this legal uncertainty hanging over them. It is even more ridiculous to expect port authorities owned by ferry companies to deny their own ships access. It is simply not going to happen. As we have just heard in Clause 11, the Secretary of State could overrule the port authorities for a wide range of reasons, which leaves the harbour authorities no comfort all. What possible incentive does the Minister see for port authorities to ever deny access to a vessel? Given the Government's assertion that this is the ultimate compliance measure, it is really hard to see how it will ever be effective as a deterrent.

If—just assuming for the moment, and giving the Government the benefit of the doubt—a ship is denied access, what might the result be? Presumably the Minister does not expect ships to be bobbing around between Dover and Calais with passengers and crew onboard. In all seriousness, I would like it confirmed that that would not be the way the Bill would work. Denying access in advance is still a massive inconvenience to the passengers who have booked on the ferry. Many will have cars; they might find it impossible to make alternative arrangements. Moreover, the port in which the vessel is docked, unable to leave because we will not take it, is going to be put to significant inconvenience. That is likely to be in another country, almost certainly France. There will be significant diplomatic ramifications if a ship is not allowed to leave the harbour, which could result in all sorts of retaliatory action. I really cannot believe that the Government think this is a sensible way to proceed. I beg to move.

Lord Hendy (Lab): My Lords, I support this amendment for the reasons put forward by the noble Baroness. In the Minister's letter to us of 21 October, she said that sufficient notice will be given of a contravention that will result in refusal of access, so that a vessel will not start its voyage. If that is so—which many doubt—the same notice that the vessel will be detained for transgression will no doubt preclude it coming to port as well. If adequate notice is not given, detention is safer for the vessel, its cargo, its passengers and other vessels than if the defaulting vessel is refused access just outside the port in question. The arrest of ships for non-payment of debts that are payable to seafarers, the port or third parties is a common and international practice. I for one am at a loss to understand why the Government do not accept that practice here.

Lord Tunnicliffe (Lab): My Lords, there is quite a good case for the noble Baroness's amendment, but I accept that the Government have, I hope, expended an awful lot of effort working through the intricacies of how this will happen. I fear that passing the amendment at this point would unduly stop this extremely important Bill's progress. I hope that the Government's judgment is correct, and that they come back very rapidly with emergency legislation if it proves to be incorrect.

Baroness Vere of Norbiton (Con): My Lords, the amendment in this group in the name of the noble Baroness, Lady Scott of Needham Market, relates to the refusal of access. The refusal of access is one way in which we establish the provision of national minimum wage declarations as a condition of access to ports. If this were replaced by a power of detention by the MCA, this would become a punitive measure and go beyond the voluntary mechanism envisaged by the Bill. Detention of vessels is a disproportionate and inappropriate mechanism in these circumstances. Detention of ships can also carry a significant cost to the port by blocking a berth, which is not the case if they are refused access.

The noble Baroness, Lady Randerson, has previously expressed concerns that refusal of access is unworkable as it might result in ships mid-passage being unable to dock, but this is not how the Bill will work in practice. By virtue of the high-frequency requirement, all services captured are almost certain to be on short routes, and access refusal would take place before a ship has set sail from the origin port. As set out under Clause 9, we will set out in detail in the regulations how the harbour authority is to communicate refusal of access, which will ensure that sufficient notice is given to prevent this possibility happening and to provide notice for users

of the service to make alternative arrangements. We will of course be consulting closely with the ports on these draft regulations.

As an additional safeguard, the Secretary of State has a power to direct the harbour authority as to how or whether it discharges its power to refuse access, which will ensure that access is not denied where it would cause damage by disrupting key passenger services and supply chains critical for national resilience.

Lord Berkeley (Lab): I am grateful to the Minister but I have a quick question. She said in reply to the noble Baroness, Lady Scott, who moved this amendment, that if the amendment were accepted it would cause a significant cost to the port. If there is significant cost to the port in Dover by this not happening, what about the cost to the port in Calais, or do we not worry about that because it is foreign? It is the same issue, just at the other end of the route.

Baroness Vere of Norbiton (Con): The noble Lord is absolutely right. It would be costly to the ports and disruptive to passengers.

Baroness Scott of Needham Market (LD): I thank the noble Baroness for that reply, which was not wholly unexpected. I happen to think that the Government are wrong. Being an optimist at heart, I still hope that, by the time this gets to the Commons, there will have been an outbreak of reality and that we might come up with something different, in not just this but other parts of the Bill. If not, then the next amendment that we come to discuss, which is about monitoring, will be really important. With that, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5

Moved by ***Lord Tunnicliffe***

5: After Clause 9, insert the following new Clause—

"Implementation and monitoring

(1) Within 90 days of this Act being passed, the Secretary of State must publish a report on the implementation of, and monitoring of the effects of, this Act.

(2) The report must include—

(a) an assessment of the impact of this Act on—

(i) roster patterns,

(ii) pensions, and

(iii) wages of seafarers;

(b) a statement as to whether further legislation will be introduced by the Government as a result of the findings of the assessment under paragraph (a);

(c) a strategy for engaging with trade unions for the purposes of monitoring the implementation of this Act, including in reference to conventions of the International Labour Conference;

(d) a strategy for monitoring the establishment of minimum wage corridor agreements with international partners of the United Kingdom, insofar as any such agreement ensures that any non-qualifying seafarer is remunerated for UK work at a rate that is equal to or exceeds the rate that would otherwise be required under this Act.

(e) an assessment of the interaction between this Act and existing international agreements or international maritime law, including reference to any litigation that has arisen as a result of this Act.

(3) The report must be laid before each House of Parliament."

Member's explanatory statement

This amendment would mean that the Secretary of State must publish a report on the implementation and monitoring of this Act.

Lord Tunnicliffe (Lab): My Lords, P&O's behaviour shocked all sides of the House. Until that happened, I suspect—I cannot know this—that few of us understood just how badly seafarers are treated. It provoked the Government into introducing this Bill and I thank them for that, but it is only a first step. It also reminded us just how badly some private companies will behave if not restrained by sensitive law and regulation.

The Bill addresses pay, but only in a narrow area. As a former pilot shop steward, and subsequently an industrial relations manager, I know how critical these other issues are. This amendment is our attempt to address them.

Subsections (2)(a) and (2)(b) of our proposed new clause address rosters, pensions and wages and require the Government to determine whether further legislation is required. We expect that it will be.

Subsection (2)(c) requires the Government to set out how they intend to engage with trade unions in monitoring the implementation of the Act.

Proposed new subsection (2)(d) touches on the extremely important initiative of establishing international minimum wage corridors, so that seafarers are properly protected for the whole of their employment in these corridors. The Government have already started work on this issue and this amendment will strengthen their arm. It is important for the House to understand what these corridors will achieve. If carried out effectively, they will extend the effect of the Bill so that it has real bite at the two ends of the route—and, I hope, sensibly in between.

Proposed new subsection (2)(e) will require an important assessment of how the Act will interact with existing maritime laws and agreements.

This amendment will strengthen the Bill in a sensitive way. I beg to move.

5.15 pm

Baroness Scott of Needham Market (LD): My Lords, I added my name to this amendment because the concerns that we have raised in this House have been quite wide ranging, from the principles of the Bill and its compliance with international law to details of its implementation. We are all agreed that we need to do something about the pitifully low wages being paid to seafarers. I think we were all probably quite shocked to hear from the noble Lords, Lord Hendy and Lord Berkeley, just how low they are. But wages are by no means the only problem; rosters and pensions and so on are equally problematic. So we commend the Government for giving this some thought, particularly in the nine-point plan; the difficulty is that if the Bill does not work as intended, nobody is a winner.

We know that the International Chamber of Shipping is very concerned about compliance with international conventions, and we have heard from both the RMT

[Baroness Scott of Needham Market]
union and the port authorities that they just do not see how the Bill is going to work in practice. We know that the Government do not accept those concerns. That is fine. But it is slightly troubling to me anyway that the key stakeholder groups have not really been listened to.

Rather than re-table amendments on all those issues, I think we have settled on this amendment being the best way forward because it provides an opportunity to review how the Bill is operating in practice and, crucially, how it is fitting with the nine-point plan and with the progress we are making on international wage corridors and so on. We can see how the international shipping community is responding and where the port authorities have found ways of delivering what the Government ask. Crucially, we might be able to work out whether this legislation is resulting in a better deal for seafarers.

Lord Woodley (Lab): My Lords, this amendment is needed to put the seafarers' charter in the Bill. There is no doubt about that. Voluntary agreements do not work with employers such as P&O which have shown complete and utter contempt for the law and have avoided working with trade unions fighting to preserve local jobs that really keep the economy going. As a good example, the agency crew on P&O ferries are denied the basic ILO right to organise.

We have mentioned often in this debate the Dover-Calais route, and that must be an absolute priority for imposing conditions that P&O and Irish Ferries have to abide by, stopping them exploiting foreign seafarers on poverty pay for long and exhausting roster patterns. We need more ratings to be trained, but it is disappointing to see that only 60 new ratings have been trained since 2020. It is scandalous at a time when demand for ratings is increasing. The number of UK ratings employed in the industry has plummeted, with almost all the jobs operating in and out of UK ports now held by foreign workers.

Will the Government act now to protect our depleted and declining maritime workforce or are they prepared to see UK seafarers suffer and struggle for survival at the hands of law-breaking profiteers such as P&O? I urge everybody to support this important amendment.

Lord Hendy (Lab): My Lords, I have added my name to this amendment, which goes some way to implementing one of the Government's nine points in response to P&O Ferries' shameful conduct. That point was the creation of minimum wage corridors and

"asking unions and operators to agree a common level of seafarer protection"

on ferry routes.

In the Minister's recent letter to us of 21 October, she said that the Government were

"committed to a voluntary Seafarers' Charter because it avoids confusion, complexity and over-regulation of an industry. It is right to keep this as a voluntary agreement initially, while we monitor the impacts of the Charter. However, we are keeping the need for a legislative basis under review."

It appears, disappointingly, that discussions have stalled; the last version of the charter has not been circulated since early August, and the forum of employers and trade unions overseeing it appears to have been unilaterally scrapped by the department. The crucial area of roster patterns, which had been agreed by unions and operators —two weeks on and two weeks off—has now stalled, because the Government have proposed that further research is needed. That may be delay the publication of the seafarers' charter. Is the Minister in a position today to give us a timeline for completion of that vital work?

Still, the principle of collective bargaining lies behind point nine, and also underlies the amendment proposed by my noble friend Lord Tunnicliffe. Given the precedent established by P&O Ferries in abrogating without notice collective agreements with unions that had been updated and developed over 100 years, it is essential for the Government to act to restore protection for seafarers by way of upholding collective bargaining, as intimated in the Minister's letter.

It may be relevant for your Lordships to note that the EU, which of course covers the countries to and from which most of the routes that we are considering go, has adopted a social pillar, which in principle encourages the social partners

"to negotiate and conclude collective agreements".

Partly in consequence of that, the European Council and Parliament have recently approved a draft directive on minimum wages. Seafarers are excluded on the basis that ship owners and seafarers' unions will collectively bargain their own procedures to determine minimum wages. The UK should encourage such sectoral collective bargaining. That would be consistent with our obligations under the trade and co-operation agreement.

A return to encouragement of the social partners in the shipping industry to negotiate a comprehensive seafarers' charter, impact assessed and monitored in accordance with my noble friend Lord Tunnicliffe's amendment, is important. I invite the Government to adopt his amendment.

Lord Balfe (Con): My Lords, I will say a couple of words. This clause is a typical "Let's have a review" clause. In 90 days, it could do nothing at all, of course, because by the time the Act has commenced nothing at all will have happened. We have a failing in this House, and in legislature generally, that we tend to pass Acts and then forget them; they just pass away into the distance. I would welcome it if the Minister could give us some assurance that there will be monitoring of this Act and that we will be looking to see where it goes.

A subject such as this seems to be an ideal one for an inquiry in about a year's time as to how the Act has affected the industry. I suspect that it will have very little effect on pensions, for instance, and we might well wish to look at a stronger charter overall. Could the Minister assure us that her department will keep this under review? Perhaps some noble Lords could decide in time that it might be a subject that should be looked at by a special committee of this House.

Baroness Vere of Norbiton (Con): My Lords, this final group contains one amendment in the name of the noble Lord, Lord Tunnicliffe. I have listened very carefully to what the noble Lord had to say and to all noble Lords who participated in this debate.

In my response I will have bad news and then good news. First, I will address why the amendment as it stands is not appropriate. As my noble friend Lord Balfe pointed out, I am afraid that after 90 days, to coin a phrase, nothing will have changed. There will not be regulations in place, the guidance will not be in place and there will be little, if anything, actually to report on. Therefore, the fundamental premise of having a report in 90 days will, unfortunately, not achieve what the noble Lord is looking for.

Looking at the detail of the amendment, proposed new subsection (2)(a) goes back to the point that my noble friend Lord Balfe made. It is true that we pass laws but we do not forget about them; there is always the process of the post-implementation review, but we would have to wait five years for that. I accept that that is a long way away and possibly not ideal, but it would cover pensions and pay. I will retain the position that to cover rostering would be a challenge because there are many different impacts on rostering. It may be that we can decouple them but I would not want to make that commitment now.

Proposed new subsection (2)(b) goes beyond the implementation and monitoring of the Bill. I understand that noble Lords wish to probe the UK Government's plans for legislation, but I cannot say that we currently have plans to legislate further than is necessary. I have already noted that we must tread with caution, but we are already taking action on the areas beyond the matter of minimum pay, which, as I think noble Lords will all agree—indeed, as I agree—is not the only aspect of seafarer welfare that requires attention.

Noble Lords, including the noble Lord, Lord Hendy, mentioned the seafarers' charter; I will get an update for him on where we are with it. In government terms, if the latest version was published in August, that is not as bad as I feared; I thought the noble Lord might have said April. But I will provide a written update afterwards on where we are and what the next steps are, because that is incredibly important.

Turning to proposed new subsection (2)(c), we always engage with the unions and recognise the importance of doing so. We have discussed the Bill with the unions. I do not feel that a written strategy of union engagement would be helpful; it would not be flexible enough and may miss things or include things that are no longer appropriate, and it would mean that we would be too constrained. I am absolutely sure that noble Lords would be the first people to write to me if they felt that unions were somehow being cut out of discussions.

Proposed new subsection 2(d) refers to

"a strategy for monitoring the implementation of"

bilateral wage corridors. Again, I appreciate the noble Lord's interest in this important area and we are working hard to seek agreements. However, publishing a strategy for the implementation of a bilateral wage corridor may in itself be counterproductive, as many noble Lords discussed in Committee. These corridors will be memorandums of understanding and backed up by domestic legislation in each country, so their implementation will be different in different countries. Proposed new subsection (2)(d) would be a step too far in the current circumstances.

On proposed new subsection (2)(e), we do not consider that the Bill's proposals interfere with rights and obligations under international law, including the United Nations Convention on the Law of the Sea, or UNCLOS. We therefore would not deem it necessary to state as much in the Bill.

In potentially better news, although I cannot commit to legislating for a report, I can reassure noble Lords that we are currently looking at governance structures to deliver *Maritime 2050*. Noble Lords will know about that very important document; it sets out the Government's vision and ambitions for the future of the British maritime sector. This governance structure will include the delivery of the nine-point plan. Furthermore, the Government are planning annual joint industry and government progress reports—it is almost as though my noble friend Lord Balfe read my notes beforehand. Every year we will have an annual joint report between the industry and government. It will include progress on the nine-point plan, implementation of the Bill, the seafarers' charter and an update on bilateral wage corridor negotiations. I feel that is pretty much what noble Lords are looking for. On the basis of this reassurance, I hope the noble Lord feels content to withdraw his amendment.

Lord Tunnicliffe (Lab): I almost feel that the noble Baroness totally agrees with me but not quite enough. The amendment is meant to be helpful—it is helpful. I note that she more or less said that virtually everything in the amendment was right. I just want this in the Bill, so I feel that I have to divide the House on this point.

5.30 pm

Division on Amendment 5

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5.42 pm

Clause 11: Guidance and directions

Amendments 6 to 10 not moved.

Avanti West Coast Contract Renewal

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 25 October.

"On 7 October, a short-term contract was entered into with the incumbent operator for the West Coast Partnership. The contract extends the delivery of the West Coast Partnership and Avanti West Coast business for six months until 1 April 2023. This gives Avanti a clear opportunity to improve its services to the standard we and the public expect. The Government will then consider Avanti's performance while finalising a national rail contract for consideration in relation to the route, alongside preparations by the operator of last resort should it become necessary for it to step in at the end of the extension period.

The primary cause of Avanti's recent problems is a shortage of fully trained drivers. Avanti was heavily reliant on drivers volunteering to work additional days because of delays in training during Covid. When volunteering suddenly all but ceased, Avanti was no longer able to operate its timetable. Nearly 100 additional drivers will enter formal service between April and December this year, and Avanti has begun to restore services, initially focusing on the Manchester and Birmingham routes.

From December, Avanti plans to operate 264 daily train services on weekdays, a significant step up from the circa 180 daily services at present. We need train services that are reliable and resilient to modern life. Although the company has taken positive steps to get more trains moving, it must do more to deliver certainty of service to its passengers. We will hold Avanti fully to account for things in its control, but this plan is not without risk and, importantly, requires trade union co-operation. The priority remains to support the restoration of services before making any long-term decisions.

In assessing options for a longer-term contract, the Secretary of State will consider factors including outcomes for passengers, value for money and the delivery of major projects and investment—in this case High Speed 2, given the links to its future delivery model. To put it simply, things must improve during this probation period for the contract to be further extended."

5.43 pm

Lord Tunnicliffe (Lab): A cursory look at the coverage in local and regional newspapers across the north-west and West Midlands will tell you that there is seething frustration about Avanti's ongoing failures and their impact on the travelling public. It also impacts those living in London and rest of the south-east looking to travel to some of our other great cities for work and pleasure. This is therefore a matter of national concern and I hope the Minister will ensure it becomes a bigger priority for her new boss at the department. Will she explain what level of failure the department is waiting for before ending Avanti's management of the service? It should surely be expected to equal or exceed the performance of the state-owned LNER.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Government take the performance of Avanti very seriously. We are looking at the performance metrics and working with it on its recovery plan. As noble Lords will know, any award is published in line with Section 26(1) of the Railways Act franchising policy statement. There is also an independent process to assess whether performance targets have been met. We are very focused on working with Avanti to pull it out of this period of poor performance and on to the sunlit uplands of fulfilling the needs of its passengers. From the next timetable change in December, Avanti will go from 180 daily services to 264—a massive step change. Everybody will notice the trains are back. We need to make sure that they are reliable, but I absolutely appreciate that at this current time the service is not good enough.

Baroness Randerson (LD): My Lords, Avanti has run only 40% of the services out of Euston that its predecessor ran. The Government's Answer to this Question refers to Covid as a cause of the problem, but other operators do not seem to have had the same problem with training—GWR, for example. The truth is that bad management has undermined staff goodwill and the Government have rewarded failure in this decision. Will the Minister explain why Avanti has reduced its service but has been rewarded with the same £6 million fee? If the excuse is that it is in the contract, why are the contracts so badly written that the Government could not reduce that fee?

Secondly, it is almost impossible for the poor souls forced to travel on these trains to buy advance tickets. They have to buy on the day, and it costs more as a result. This is a con. Will the Minister intervene on this issue and ensure that the prices are adjusted appropriately if no advance tickets are available?

Baroness Vere of Norbiton (Con): My Lords, there were several questions there, but I hope to get through as many as possible. There is a well-worn path which involves independent adjudication for contracting and that is utterly necessary. We do not want contracts in the whim of Ministers, because on either side of that debate, it could end up with very poor outcomes. Contracts must be assessed properly and there are legal and contractual processes to be gone through. It is absolutely true that Avanti is on probation. It has the six-month extension for a reason, and we will be watching it like a hawk. Obviously, its performance will be measured by the independent adjudicators.

What we tried to do over the summer period—as we tried in the aviation sector—was to ensure that we had reliability. If you have good communications and a robust timetable, at least people who do have a train ticket can turn up and actually get their train, which brings me to the advance ticketing issue.

I am pleased to say that it is now possible to get advance tickets on weekdays until 13 January and on weekends up to four weeks from 7 November. It is shorter at weekends, because travel is sometimes disrupted by engineering works.

I am aware that I have not covered the Covid issue, but I might come back to that in subsequent questions.

Lord McLoughlin (Con): My Lords, I declare my interest as chairman of Transport for the North. I think the Government fully accept that at the moment the service that Avanti is offering is basically not acceptable. I am very pleased that extra pressure is being put on Avanti by the Government, but there is no quick, easy solution to this, because of the problems of driver training. I am pleased that another 100 drivers will be trained in the next few months. However, there is growing concern, not only about Avanti but about TransPennine services. Will my noble friend relay to the Secretary of State the very deep concern across the whole House and across the north about the poor service which they are currently getting?

Baroness Vere of Norbiton (Con): I will certainly relay that concern to the new Secretary of State. I am very grateful to my noble friend for raising TransPennine Express, because that is a very similar situation. It goes back to Covid, the point that the noble Baroness, Lady Randerson, was trying to get me on to. TransPennine Express is having the same issues as Avanti—actually, it is slightly earlier in its journey, so at least the Government will have had experience with Avanti when trying to get TransPennine Express through. It has had higher than average sickness among train crew, high levels of drivers leaving and reduced training. It has also had the loss of driver rest-day working because ASLEF decided not to extend or renew the rest-day working agreement that has expired. There is a theme here. The Government will work with Avanti and TransPennine Express. I encourage all noble Lords on the other side of the House to work with the unions to reach an agreement on getting these services up and running.

Lord Snape (Lab): Will the Minister accept that her responses stretch credulity, to say the least? As recently as July this year, in response to a Question from me, she acknowledged that Avanti's performance was "terrible". Since then, it has had a contract extension and, for no accountable reason, a £4 million bonus for customer service. Is she aware of the misery that regular travellers on the west coast main line have to put up with daily from this incompetent outfit? What will it take for the Government to do their job and relieve Avanti of any responsibility for being involved in our railway system ever again?

Baroness Vere of Norbiton (Con): I am pretty sure that Avanti has not received a performance bonus of £4 million for providing services in the current period—if I am wrong, I will of course correct the record. I should like to be a bit pragmatic about all this, because we have to look at the alternative. The alternative would be to send in OLR—obviously there would be legal and contractual processes to go through—but what would OLR do? It does not have train drivers up its sleeve. The issues are the lack of train drivers and the rest-day working agreement not being adhered to, and those issues would remain. We understand what the problems are. We are getting the drivers trained and into the trains, and services are going from 180 to 164. I hope that the next time I speak to the noble Lord, Lord Snape, he will be at least a little more content than he is now, because I do want to make him happy. We all want Avanti to succeed.

Baroness Walmsley (LD): I declare an interest as one of the seething passengers: my train from Crewe this morning took one and a half hours longer than it should have. Can the noble Baroness say whether the independent adjudicator will take evidence from individual passengers, because I would be very happy to send some to it? Your Lordships' finance department knows very well the number of delay repays that have gone back to my travelcard because of the delays on Avanti trains over the last six months. If Italian state railways can work on time, why cannot ours?

Baroness Vere of Norbiton (Con): I suggest that we convene a meeting with the Rail Minister—I am not the Rail Minister—which may be a better idea than shouting at an adjudicator. Perhaps noble Lords could join me in that meeting. We can discuss Avanti and TPE, and we might be able to touch on reform and how we are going to take the railways forward. I am very happy to sort that out; perhaps a bit of face-to-face discussion with the Minister would be appreciated.

Baroness Jones of Moulsecoomb (GP): Can the Minister guarantee that this is the last rail franchise extension for Avanti? That would be good to know. Also, will all the legislation for Great British Railways come through before the end of this Parliament?

Baroness Vere of Norbiton (Con): I cannot give a guarantee on the first question, because Avanti is on probation, as I said. Let us be clear: there is a recovery plan, which has been reviewed by the ORR and Network Rail's programme management office. It could be that that recovery plan comes into place and, in a few months' time, everybody is content with the performance, so I shall say no more than that. On the legislation for Great British Railways, we are working as hard as we can to find parliamentary time for it, and in the meantime are doing everything that does not need legislation—important elements that will take us towards a modern, seven-day railway.

UK-India Free Trade Deal

Commons Urgent Question

5.44 pm

The Minister of State, Cabinet Office and Department of International Trade (Lord Johnson of Lainston) (Con): I ask noble Lords to indulge me with their forgiveness for not delivering my maiden speech as my first item, but I have been asked to answer this Question. I will be giving my maiden speech tomorrow, for those who wish to hear it, in a QSD on Iran. It is a pity, because I should obviously like to use this opportunity to talk about the courtesies and kindnesses I have received from so many noble Lords, but please know that that will be forthcoming tomorrow.

I also declare an interest, as we are talking about India and a free-trade agreement. I have equity in a fund management business that invests in India, although I do not think there are any specific issues raised by this discussion.

With the leave of the House, I shall now repeat the Answer given to an Urgent Question by my right honourable friend the Minister for Trade Policy.

"India is an economic superpower, projected to be the world's third largest economy by 2050. Improving access to this dynamic market will provide huge opportunities for UK business, building on a trading relationship worth more than £24 billion in 2021. That is why we are negotiating an ambitious free trade agreement that works for both countries. We have already closed the majority of chapters and look forward to the next round of talks shortly.

A strong FTA can strengthen the economic links between the UK and India, boosting the UK economy by more than £3 billion by 2035. An FTA can cut red tape, making it cheaper for UK companies to sell into India's dynamic market, helping drive growth and support jobs across region of the UK. Greater access could help UK businesses reach more than a billion more consumers, including India's growing middle class, estimated to reach a quarter of a billion by 2050, and give them a competitive edge over other countries that do not have a deal with India. An FTA with India supports the Government's growth strategy by taking advantage of the UK's status as an independent trading nation, championing free trade that benefits the whole of the UK. We remain clear that we are working towards the best deal for both sides and will not sign until we have a deal that is fair, reciprocal and, ultimately, in the best interests of the British people and the UK economy."

5.56 pm

Lord McNicol of West Kilbride (Lab): My Lord, I welcome the Minister to your Lordships' House and wish him all the best for his maiden speech tomorrow. I know he will agree that achieving a free trade agreement with India is vital for the opportunities it presents—financial opportunities to increase our GDP, create new markets and achieve key areas of shared interest, but also opportunities to raise a number of vital issues where the Indian Government fall short, including on human rights and workers' rights, the environment, climate and other geopolitical issues.

In January, the Government promised that talks towards the deal would be completed by Diwali, which Hindus across the world are celebrating this week. What makes the Government's failings on this FTA all the worse and significant is that that deadline was self-imposed, but we all knew it would fail. I challenge the Minister: can he therefore outline to your Lordships' House what plans his Government are making to get the talks back on track?

Lord Johnson of Lainston (Con): I thank the noble Lord, Lord McNicol, for that follow-up question, and thank him very much for his kindness earlier, as well. He promised to be as kind as possible during this debate, so I thank him for that.

Actually, the Government never promised to conclude these talks by Diwali. We promised to have the majority of the talks concluded by the end of October, which we have: 16 chapters, the majority, are already concluded. This trade deal is actually on track. For me, it is one of the most exciting opportunities this country has had in generations. If we think about what India has to offer us, it is phenomenal. I was in India last week, and I pay tribute to our staff on the ground there, who are doing a huge amount of work to ensure our cordial relations with a country that will, in my view, become one of our greatest partners. I have celebrated Diwali with our high commission office in Mumbai.

Negotiations are ongoing and have been going on today. We have had five formal negotiations so far, I think; we are expecting a sixth in the next month or so. If we expect progression of that, we will be looking forward to substantial progress over the coming months.

Lord Purvis of Tweed (LD): My Lords, I also welcome the noble Lord to his position. Since I have been covering international trade issues for these Benches, he is now the seventh Minister that I have been shadowing, so I wish him a long time in the position. If he lasts more than nine months, he is breaking the average over the last few years.

Given that the Minister has not yet had an opportunity to update his register of interests on the Parliament website—I am grateful for his declaring of that interest at the moment—could he say, given that the UK is seeking to have services as part of this agreement and given that he has a direct financial interest, whether he will recuse himself from any of the discussions on services going forward?

We would support an FTA with India very strongly, and when we debated the issue, we also questioned which areas were still outstanding. Can the Minister confirm that the UK has put wider visa access and mutual recognition of qualifications on the table?

Can he also confirm that—while not disregarding the figures of benefits that he indicated—nearly as much of the benefit for trade with India will be offset by a decline in trade with developing nations through trade diversion, to the tune of about £3 billion, which means that the net benefit for trading with the wider region is far less than what we would expect?

Finally, can he say whether the fact that India has negotiated with Moscow a rupee/rouble swap, for the purchasing of cheaper fuel, has been raised by the UK at the very time that we are discussing services access? Surely it is not right for us to fail to raise issues of such seriousness when we are negotiating with our friendly nation in Delhi.

Lord Johnson of Lainston (Con): I thank the noble Lord, Lord Purvis, for that range of questions, which I am sure we will have an opportunity to discuss at great length personally. I would like to reassure noble Lords that I am very much available to all of them for not only the formal process for discussion around trade deals but also as an individual, to make sure that we share the excitement and the opportunities offered to us and I can give noble Lords as much information as I can, in order that we can progress this process.

I would like to answer, most importantly, the first question. I do not want to go into my financial details now, but I am in the process of ensuring that I will not be presented with a conflict of interest in the next few days—hopefully by the end of the month. Of course, if there is any conflict of interest, I assume that will be

[Lord Johnson of Lainston]
addressed in the appropriate manner. I am grateful to noble Lords for your indulgence to ensure that this is done properly and effectively, and I hope that you see me as transparent on this point.

Lord Hannan of Kingsclere (Con): My Lords, I also welcome my noble friend the Minister to the Dispatch Box. If the House will indulge me for a second, I have known the Minister since we were teenagers, and he has always been wise, humble and funny, albeit evincing a curious fondness for the European Union which doubtless will endear him to all sides in this House, including several noble Lords who I see are present here now.

May I ask him about the potential landing zone for the UK-India FTA? There has been a demand from some in Delhi for visa rights equivalent to those for Australia and New Zealand, which I think all sides recognise is not realistic given the disparity in GDP and the disparity in numbers. However, I think that there is space for a more generous visa regime, particularly for business travellers and some work permits, as well as a more generous attitude from the UK when it comes to respecting WTO rules on food, rather than adding on EU additions, in exchange for a lot more market access for our services. Does my noble friend the Minister see the outlines of a deal on that basis?

Lord Johnson of Lainston (Con): I am very grateful to my noble friend for highlighting our childhood friendship and exposing me as a Europhile—I am not sure if that was quite so necessary in my opening gambit. But I am a free trader above all things, and I think he encapsulates very well the views of this Government in terms of the benefits that free trade brings.

I would like to make an important clarification, and I am happy to have further discussions with noble Lords about this. The free trade agreement with India does not include sections on immigration; that is a completely separate matter. What we are talking about here is mobility visas for businesspeople, and we require those opportunities as much as Indian companies do. I remind noble Lords, and my noble friends behind me, that Indian companies in this country employ literally tens and tens of thousands of people. The opportunities we have to swap intellectual property—our human capital, which is what we will export to India in exchange for the huge opportunities that it will present to us—insist on, and ensure we should have, an element of toing and froing. That is how we benefit through the brotherhood of trade and the brotherhood of nations. But I must separate those two points; I think that is very important.

Baroness Hayter of Kentish Town (Lab): On behalf of the International Agreements Committee and as its chair, I welcome the Minister to his place. He will have read our report on the India free trade agreement, so I will ask him two questions. The first is the one that he did not answer from the noble Lord, Lord Purvis, on how this sits alongside the close relationship that India has with Russia, which goes against our current interests. Secondly, facilitation payments are common in India and are well below modern international business standards. What are the Government doing to tackle this great problem in our business relations with India?

Lord Johnson of Lainston (Con): I greatly appreciate the noble Baroness's question. I thank her for all support she has given us in the department to ensure that we have a very powerful exchange and that we work very closely with her and her committee. I hope she will feel that I am fully available to her to ensure that she is thoroughly apprised of our activities around all free trade deals.

It is important that we are negotiating a free trade deal with India, and it is important to note, when it comes to the noble Baroness's question about Russia, that we work with all our international partners, including India, to co-ordinate the international response to Russia's unlawful invasion of Ukraine. We encourage all our partners to support international efforts to counter Russia's flagrant aggression and violation of the United Nations charter, and to avoid any actions that might undermine this. It is important that we stress our position in those words.

Viscount Waverley (CB): My Lords, I too pay due regard to and thank all our representatives in India, including those in Bangalore, Hyderabad and Mumbai. I have recently returned from that country, and I left with an undeniable assessment that there is a firm need for this country to have a strategic relationship with India. We need to run to keep up. One area I can identify in particular is the supply chain, given our issues with China. There is a real role for India to fulfil that position not only for the UK but globally, along with Turkey and Brazil, for example, so that supply chain issues can be diversified to the benefit of the world at large.

Lord Johnson of Lainston (Con): I thank the noble Viscount, Lord Waverley, for his point and I completely agree: the opportunities we see there are phenomenal. If we can find a powerful way to access this market, we will astonish ourselves with the wealth that we will create and the additional opportunities that we will have to control our destiny. When I was there last week, I came across a mobile phone company that had 400 million subscribers and a car company that wanted to sell 30,000 cars in one year and instead sold 100,000 in half an hour. As has rightly been said, there are opportunities for this nation. It is a millimetre away from escape velocity to become one of the greatest economies in the world. The state of Tamil Nadu will have an economy bigger than the UK's, we think, in 10 to 15 years' time. I appreciate the noble Viscount's support and this question. We should be continually striving to do free trade agreements with India and other countries. I very much look forward to the support of noble Lords opposite and my noble friends behind me as we embark on this great mission.

Republic of Ireland: British Passports

Question for Short Debate

6.07 pm

Asked by ***Lord Hay of Ballyore***

To ask His Majesty's Government what plans they have, if any, to grant an automatic right to a British Passport to people born in the Republic of Ireland who have lived in Northern Ireland for 50 years or more.

Lord Hay of Ballyore (DUP): My Lords, I welcome the Minister to the Dispatch Box and I wish him well in his new role. I am grateful to have the opportunity to hold this debate in your Lordships' House. This is a very personal issue to me and to many out there who believe that this is a serious anomaly that needs to be addressed.

I will give a brief history of how we got here. When the Irish Republic—previously known as the Irish Free State—left the Commonwealth in 1949, the British Government at the time allowed those who had been born in the Republic and had moved to Northern Ireland or elsewhere in the United Kingdom prior to that date to retain their British citizenship. That all changed after 1949: for people born in the Republic of Ireland after 1949, that right was taken away from them. Since 1949, many individuals who have lived here in the United Kingdom for many years, voted in UK elections and paid their taxes have found themselves disadvantaged by a bureaucratic and lengthy process.

Indeed, instead of an application fee of £100, there is a large fee to apply for citizenship of around £1,300. These costs put many people off. There is also a requirement for Irish citizens who have been resident here in the UK for many years then to pass a Life in the UK Test. This is a discriminatory process for those who have been living and working in Northern Ireland, in the United Kingdom, for years, who find when they go to apply for British citizenship that they have many hurdles to clear that simply do not exist for others. They look around and see that many with no prior connection to the United Kingdom or Ireland find the process of applying for a British passport much quicker and far less hassle. Those Irish-born citizens who have lived, worked and voted in Northern Ireland and paid their taxes for many years—for many decades in some cases—have every right to British citizenship, to be an equal part of this United Kingdom and to hold a British passport. I question the very logic of this process. It impacts many thousands of people, and I question the hurdles that have been introduced.

One point worth noting is that last February, the Court of Appeal found that similar fees of £1,000 for children to register as British citizens were unlawful and must be reconsidered by the Home Office. The current application process can be an increasingly long and frustrating one for many. It is especially challenging for those from lower-income backgrounds.

The process of British citizenship applications can take six months, but usually it takes much longer. It has several steps and can be a major hurdle to people who genuinely want to apply for British citizenship. As part of the process, applicants are required to pay £350 simply for the privilege of a decisions report, where somebody will tell them whether they can apply and whether they qualify for British citizenship. That will cost £350, whether it is a "yes" or a "no" answer. In many instances, another frustration exists whereby even if registered as a British citizen and successful, this does not automatically entitle an individual to a British passport; it entitles them only to apply for a British passport.

This is an insensitive situation for those who have paid taxes and national insurance contributions here for many years. Present census figures indicate that it affects approximately 40,000 people living in Northern Ireland, and this number is growing year on year. This is a huge number of people who cannot avail themselves of a British passport without navigating a long and winding process. It is quite clear that barriers exist in their route to citizenship.

Of course, this is against the backdrop of a process that has been simplified in respect of Irish passport applications for people living in Northern Ireland. The Irish Government reviewed the whole process of application in 2011 and came up with a simple way of applying for an Irish passport for those living on the island of Ireland. If you apply for an Irish passport, the application is around €80 in total. Anyone born or living in Northern Ireland, or anyone who has a parent or grandparent living on the island of Ireland, is automatically entitled to apply for Irish citizenship. They have thrown the net so wide. Applicants do not need to have been born on the island of Ireland if their father, mother or a grandparent was born there; they are entitled to an Irish passport and Irish citizenship. It is a simple and quick process. When you apply for an Irish passport, you can trace the whole process, and online applications are completed in approximately 20 working days. This is a sharp contrast to the long and costly process that some Irish-born people living in Northern Ireland face when applying for British citizenship.

There are ways to remove the financial and bureaucratic barriers in relation to this, if the will exists from government and the Home Office. There is a solution; a modest change in current practice could affect that group of 40,000 people. This is a sensitive matter that affects many and requires only a slight adjustment to be resolved. If an individual born in the Irish Republic after 1949 can prove that they have been living in Northern Ireland for between five and 10 years, have been working, voting and paying taxes and national insurance contributions, and are genuinely a part of that community, surely there ought to be a practical, sensible, streamlined way forward in this process.

I welcome the report published by the Northern Ireland Affairs Committee in the other place last year and concur with its recommendations that these fees and this cumbersome process should be abolished. That committee has unionist, Conservative, Labour, Alliance and SDLP members, so there is unanimity in trying to resolve this issue not only in this House—I hope—but in the other.

The great irony is that when we hear people in the media and Members of this House and the other House talk about the Belfast agreement, they often say "parity of esteem": two communities working together and recognising whether someone is Irish, British or both. The extraordinary situation I have outlined today goes directly against the grain of the Belfast agreement. Let us not forget that the agreement is held up because it recognises the birthright of people living in Northern Ireland to identify themselves and be accepted as Irish, British or both. We are talking about people living in Northern Ireland for 30, 40 or 50 years, who were born five miles across the border in the Republic but have lived in Northern Ireland for virtually all their lives. To date, there has been a reluctance by government to act in relation to this. I

[Lord Hay of Ballyore]
welcome the opportunity to have this debate and trust that noble Lords will concur that this is an unfair process that could be remedied with minimal change.

A number of Members in the other place agree with the recommendations that the lengthy process required and the payment of associated fees should be waived in the applications of long-term residents of Northern Ireland who were born in the Republic of Ireland and wish to access their British identity by holding a British passport. Other representations have been made to the Home Office in respect of this issue, which goes back as far as 2004 or 2005, when it was raised in the House of Commons by my colleague Gregory Campbell. For whatever reason, the Government have refused to address it.

There should be real parity of esteem for people living in Northern Ireland who were born in the Republic. That is not the case. For many decades, the Government have failed to consider the history of the personal ties of thousands of people in this unique situation. This issue unites all backgrounds and traditions in Northern Ireland. That does not happen often, but on this issue, it is the case. I hope today's debate will move us some way towards finally bringing a resolution.

Does the Minister agree that this issue must be addressed? Will he commit seriously to doing so? It directly affects a large number of taxpaying residents in our United Kingdom. It is so bad in Northern Ireland at the minute that the number of people applying for British passports has dropped by 30%, while the number applying for Irish passports has gone up by 27%.

6.19 pm

Lord Browne of Belmont (DUP): My Lords, I am pleased to welcome the Minister to his post, and I know that he will bring a wealth of experience and knowledge to this House. I congratulate my noble friend Lord Hay of Ballyore on securing this short, but nevertheless important, debate. This issue, I know, is incredibly personal for him, but, more importantly, for the many thousands of others living in Northern Ireland.

It is wrong that many Irish-born citizens, who have been living, working and paying their taxes in Northern Ireland and in the United Kingdom for years, have so many hurdles to go through before they can officially be recognised as British. They may have identified as British for years, or even for decades; but a costly, overly bureaucratic and uniquely discriminatory process has meant that, in the eyes of the law, they are technically not yet fully recognised as British citizens. Many of these people feel very strongly that holding a British passport should come naturally to them, as they have been law-abiding, taxpaying residents of this United Kingdom. As it stands, they feel, understandably, that they are being blocked in respect of this.

This process is set in stark contrast to the simple and easy way of applying for an Irish passport for those born and living in Northern Ireland, whereby some who have never been to, or lived in, the Republic of Ireland can quickly apply for and receive Irish passports. Indeed, all they have to do is simply go along to their local post office, ask for an Irish passport application, fill it out and attach a relatively small fee of 80 euros; and the passport, when determined, will be delivered to the home by the post in a relatively short period of time. This is all under the terms of the Belfast agreement.

Yet, those born a few miles across the border who are resident in the UK must pay £1,300 to register their citizenship, and then apply for a British passport. In terms of UK citizenship, it is clear that the people in this situation are still somewhat disadvantaged. Certain financial and bureaucratic barriers still exist that make it difficult for Irish-born residents of the United Kingdom to attain British citizenship or a British passport.

It is false to claim that changing this would have any impact whatever on the Belfast agreement. Indeed, for true parity of esteem to exist, those Irish-born citizens who live and work in Northern Ireland should be able to avail of a British passport in the same way as Northern Irish-born British citizens can avail of an Irish passport. It is a curious situation that we presently have two groups: those who were born in the Irish Republic and live in Northern Ireland, who cannot easily obtain British passports; and those who were born in, have relatives in or live in Northern Ireland, who can easily and cheaply obtain Irish passports.

Last year, the chief commissioner of the Northern Ireland Human Rights Commission called on the Government to fix this anomaly. He said categorically that,

"the Belfast agreement presented no impediment to slightly changing the law, if the UK Government decided to exercise its discretion to do it."

If certain criteria were set, surely this could be resolved with relative ease.

I, too, welcome the findings in the report published by the Northern Ireland Affairs Committee in the other place last year. I concur with the recommendations made in the report that the fees and the current unwieldly process should be abolished. Does the Minister agree with the findings, and will he commit to look at this further?

The Government should take the opportunity presented today to look seriously at a different approach to this unique situation, which has created an unfair process. The issue has been overlooked for too long. As has been alluded to, this unique situation, which has been outlined today by my noble friend Lord Hay, goes directly against the grain of the Belfast agreement. Routes to British citizenship for those who have spent the vast majority of their lives contributing to British life or communities, and the tax base in the United Kingdom, should not be fraught with difficulty and uncertainty.

It is right and proper that this issue should be addressed as a matter of urgency. It is wrong that successive Governments have failed so far to deal with this issue. I trust that today's debate will help move us towards righting this wrong.

6.25 pm

Lord Rogan (UUP): My Lords, I too welcome the Minister to his place this evening. I am sure that we all wish him well in his new role.

It is a pleasure to speak in this debate, which I congratulate my friend the noble Lord, Lord Hay, on securing. Your Lordships will be well aware of his

long-held and understandably strong views on the matter before us tonight, which he has again outlined with the customary clarity we have come to expect from him. While we may be concentrating on his dilemma this evening, the anomaly applies equally to many more persons in a similar situation. My noble friend has been a passionate campaigner on the right of people living in Northern Ireland, but born in the Republic of Ireland, to hold a United Kingdom passport. This is an incredibly personal matter for him, and understandably so.

As the House will be aware, the noble Lord, Lord Hay, was first elected to Londonderry City Council more than four decades ago and, in 1993, served as the mayor. He was elected to the Northern Ireland Assembly in 1998 in the wake of the Belfast agreement, and held the senior position of Speaker from 2007 to 2014. He is also a prominent member of both the Orange Order and the Apprentice Boys of Derry. I am proud to have marched with Willy Hay on many occasions down the years.

In short, and despite the occasional political differences he and I may have had, there are few Northern Ireland citizens more committed to their British identity than the noble Lord, Lord Hay. As such, it should be described not as an anomaly but as an abomination that he is not allowed or entitled to a British passport as of right.

The noble Lord mentioned the Good Friday agreement, as did the noble Lord, Lord Browne. Despite being on opposite sides of the debate in 1998, I am sure the noble Lords would agree that the Belfast agreement was a huge game-changer with regard to national identity. Under the provisions of that agreement, Northern Ireland residents can apply for an Irish passport, and many, from both political traditions, have chosen to do so. In contrast, people resident in Northern Ireland but born in the Republic of Ireland are not automatically entitled to a UK passport, even if, as in the case the noble Lord, they have lived there for many decades, paid their taxes there and, in his case, made a significant contribution to the public life of Northern Ireland.

Speaking in another place last week, the Northern Ireland Office Minister Steve Baker proudly described himself as "defiantly and ferociously pro-union". However, he proceeded to describe his holding of a United Kingdom passport as

"an administrative thing, not a definition of who I am".

He added:

"I gently make that point to illustrate that perhaps not all of us feel exactly the same way about our passport".—[*Official Report*, Commons, 18/10/22; col. 242WH.]

Mr Baker has not been in post for very long and, with the ministerial shuffles currently going on, he might not stay in place much longer. However, I respectfully suggest to your Lordships that this Minister's understanding of the unionist mindset in Northern Ireland remains very much in the remedial stage.

It will shock this House to learn that, despite his fresh-faced youthfulness and boundless energy, my friend the noble Lord, Lord Hay, was born in fact in 1950. However, that makes him one of an estimated 40,000 people born in the Republic of Ireland after 1949 and resident in Northern Ireland who are currently expected to apply for naturalisation before being entitled to a UK passport. That application currently comes at a cost of £1,330 and the process includes a requirement to pass the Life in the UK test and attend a citizenship ceremony. For people such as my noble friend, who have lived in the Province for many decades, it is nothing short of demeaning that this should be the case.

I commend the work of the Northern Ireland Affairs Committee in another place which last year conducted an inquiry into the barriers to UK citizenship for Northern Ireland residents. The committee concluded that a bespoke solution was required for Irish citizens to gain UK citizenship, reflecting

"personal ties, relationships, geopolitical realities and movement of people"

between the United Kingdom and the Republic of Ireland. It also recommended that the current £1,330 application fee should be abolished, describing it as

"at worst indefensible, and at best unreasonable and excessive."

I recognise the UK Government's desire to better control our borders in a post-Brexit world, and I support this approach in principle. However, Northern Ireland is different, not least because of the 300-mile land border with our friends in the Republic, incorporating more than 280 crossing points. The issue we are debating today has nothing to do with Brexit. This is a matter which has been around for many years and which successive United Kingdom Governments have failed to deal with, hence the reason why my friend the noble Lord, Lord Hay, has rightly felt compelled to continue his high-profile campaign, not just for himself but on behalf of the many others in his position.

The United Kingdom is a welcoming country and I would argue, without fear of contradiction, that Northern Ireland is its most welcoming component part. Like the noble Lord, Lord Hay, I am a committed unionist, and unlike many UK government Ministers down the years I am proud to describe myself as a persuader for the union. I want as many people as possible living in Northern Ireland to support the British identity in Northern Ireland and to embrace it collectively. It is something to be cherished, of that there is no doubt, but also something which should be shared.

My friend the noble Lord, Lord Hay, is every bit as British as I am. He is every bit as British as everybody in this Room tonight. He and others like him should have that identity recognised in the same way as my British identity is recognised, and noble Lords' British identity is recognised, by having the automatic right to hold a British passport. I commend my noble friend for bringing forward this important debate and I hope the Minister will finally signal a change of approach on behalf of His Majesty's Government in his closing remarks. The noble Lord, Lord Hay, has my full support in what he is seeking to achieve.

6.32 pm

Baroness Suttie (LD): My Lords, I also welcome the Minister to his place and look forward to hearing his maiden speech in response to this very important debate this evening. I wish him well in his future career as a Minister.

[Baroness Suttie]

I can be very brief and say that I fully support the case made by the noble Lord, Lord Hay of Ballyore, this evening. It seems to me quite wrong that someone who has lived in the United Kingdom for more than 50 years, and indeed has served as Speaker of the Northern Ireland Assembly, should not be entitled to the same rights that I have in being able to apply for a United Kingdom passport.

Like other noble Lords this evening, I very much agree with the conclusions of the Northern Ireland Affairs Select Committee in the House of Commons on the need for a bespoke solution for people in Northern Ireland like the noble Lord, Lord Hay, who find themselves in this situation. We are not talking about very many people here; we are talking about approximately 40,000 people. I feel that it is such a small number that we need to look at it correctly, properly and in proportion.

The Government's approach to this matter is unnecessarily inflexible and bureaucratic. I have two points on which I should like to receive clarification from the Minister in his concluding remarks. First, Ireland already enjoys special status with the United Kingdom for the common travel area and the EU settlement scheme. As I understand it, the Republic of Ireland is not considered a foreign country for the purpose of UK laws. Irish citizens in the UK are treated as if they have permanent immigration permission to remain from the date when they take up ordinary residence here. If the common travel area and the EU settlement scheme already mean that Irish citizens are treated differently in this country, why could that special status not be extended for the application process for UK passports?

My second point is simply about having generosity of spirit. As other noble Lords have mentioned this evening, there is a special relationship between these islands. We have common bonds, family connections and hundreds of years of shared history. My father was born in Enniskillen in County Fermanagh, so four years ago I was able to take advantage of that special relationship and apply for my Irish passport, for which I am very grateful. It seems somewhat inexplicable that we are not willing to demonstrate that generosity of spirit the other way around, for people born in Ireland who, like the noble Lord, Lord Hay, have lived in this country their entire working lives and would like a UK passport. I look forward to hearing the Minister's response to both points this evening.

6.35 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, I too welcome the Minister to his new position. I know that he is also a local councillor at Gedling Borough Council, so he will be well used to the cut and thrust of debate across the Chamber.

We are sympathetic to the concerns raised by the noble Lord, Lord Hay. We too believe that the Government seem unnecessarily inflexible on this matter. I shall also speak relatively briefly on some of the points raised today and in the Northern Ireland Affairs Committee. That cross-party committee, chaired of course by the Conservative Party, recommended, first, that the naturalisation fee charged to Irish applicants who wish to naturalise as British citizens be abolished altogether. Secondly, it recommended that the requirement for Irish citizens to pass a "Life in the UK" test be waived. Thirdly, it recommended that attendance at the citizenship ceremony should be optional.

Could the Minister explain to the House why each of those recommendations in turn is not being accepted by the Government, and why the Government have not taken the generality of the recommendations forward? On the question of the fee, which is £1,300, how much is the actual administrative cost to the Home Office and how much is a fee on top of that? What is the actual administrative cost of processing the applications? On the "Life in the UK" test, is there a point at which the Minister considers that it may not be necessary—after 20, 30 or 40 years? Surely, at some point that test would not be necessary. How many people do the Government estimate will be impacted? We have heard from the noble Lord, Lord Rogan, that it may be 40,000, a figure the noble Baroness, Lady Suttie, also referred to. Could the Minister confirm the figure?

Finally, in the Westminster Hall debate earlier this month, on 18 October, Steve Baker, the House of Commons Minister, who I understand is still in his place —I certainly welcome that—said that he would reflect on the issues raised. What does that reflection look like in practice? What further discussions have been had by Northern Ireland Ministers, and with which stakeholders, since the issue was raised in Parliament?

For some people this is a minor matter, but for the people concerned it is extremely important. An expression of good will could have ramifications on other, far more important matters, if I can put it like that, such as the Northern Ireland Protocol Bill that we were talking about last night. There is an opportunity here for a gesture of good will, and I hope that the Government will take up that opportunity.

6.39 pm

The Minister of State, Home Office (Lord Murray of Blidworth) (Con) (Maiden Speech): My Lords, it is a great honour to be here to make the final contribution to this short debate today, and I thank you all for your kind words of welcome. As the newly appointed—and, I hope, as the noble Lord, Lord Rogan, has noted, remaining—Lords Minister of State in the Home Office, it falls to me to respond on behalf of His Majesty's Government to this interesting debate. As your Lordships have all noted, this also happens to be my maiden speech.

First, I thank the noble Lord, Lord Hay of Ballyore, for tabling this Question for Short Debate. I am aware that this is an issue of personal relevance for the noble Lord and for many, and one about which, clearly, he and many others feel strongly.

If I may, I will now turn to the customary part of a maiden speech. I must thank noble Lords for the great welcome they have given me in this place, particularly my supporters, my noble friends Lord Sandhurst and Lord Sharpe of Epsom—the latter being my fellow Home Office Minister. I also thank Black Rod, the clerks, and especially the doorkeepers. Needless to say, I am very grateful to my wife Amelia, and my children

Matilda and Archie, who have been very supportive of my sudden change of career, notwithstanding that this means that I am not on hand as often at Blidworth, in the County of Nottinghamshire, to help with their homework.

As a lifelong member of the voluntary party, I was until 7 October proud to serve as the Conservative Party's East Midlands regional chairman and as deputy leader of the Conservative group on Gedling Borough Council, as the noble Lord, Lord Ponsonby, has observed. I would like to thank all the hard-working Conservative volunteers for their help through the years and for their support.

It is with some trepidation that I come before your Lordships' House. My professional background is as a barrister specialising in public law and human rights, and I have had the honour to have been led by some truly learned and impressive legal Members of your Lordships' House: notably, my noble friend Lord Sandhurst, who led me in the very lengthy Kenyan emergency group litigation, which was one of the longest running civil trials in England; the noble Lord, Lord Faulks, who led me in a number of cases, notably one before the Supreme Court which concerned the assessment of damages for the violations of Article 5 of the European Convention on Human Rights; and the noble Lord, Lord Pannick, who led me in an important case concerning the imposition of "Do not attempt cardiopulmonary resuscitation" notices and more recently in the litigation in relation to the memoranda between His Majesty's Government and the Government of Rwanda, in which case the judgment is still awaited.

Having worked with these three noble Lords, I am sure your Lordships can now appreciate the trepidation to which I referred earlier. I shall be responsible in particular for the conduct of Home Office business before your Lordships' House concerning migration and borders. This is a matter of special interest to me, not least since litigation concerning these issues has formed a significant part of my legal practice for the last 15 years, but also because it is one of the most difficult and sensitive areas of policy-making.

One pertinent family matter which I should perhaps mention in connection with this debate, is that, as with the noble Lord, Lord Hay, my mother is a citizen of the Republic of Ireland, having been born in County Cork.

That brings me neatly to the question before the House today. In summary, the answer comes in three parts. First, given the long history of these two islands and the close relationship between the Government of Ireland and His Majesty's Government, Irish citizens have a special status in all of the United Kingdom. An Irish citizen residing in the United Kingdom is treated in the same way as a British national, even including, as the noble Lord demonstrates, in relation to entitlement to membership of this House.

Secondly, it is of course open to those of more than five years' residence within the United Kingdom, such as the noble Lord, to apply for naturalisation as a British citizen should they wish. Thirdly, the present entitlements to nationality are compliant with the provisions of the Belfast/Good Friday agreement, which provides that British nationality may be available for certain people born in Northern Ireland and not more broadly. By way of amplification, British citizens are defined by the British Nationality Act 1981. Only they are entitled to hold a British citizen passport as a matter of statute. This has been the case since the change of law in 1949, as the noble Lord, Lord Hay, referred to. The Government have no plans to reverse this position.

Article 1(vi) of the Belfast agreement states that it is the birthright of all people of Northern Ireland to identify themselves and be accepted as Irish or British—or both, as they may so choose—and separately confirms that both Governments recognise that the people of Northern Ireland are able to hold British and Irish nationality. That agreement is very clear in its definition of "the people of Northern Ireland". It defines them as

> "all persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence."

People born in Ireland and living in Northern Ireland or the rest of the UK are consequently not deemed to be "people of Northern Ireland" for the purposes of that agreement, and they do not benefit from the agreement's important birthright provisions on identity and citizenship. Turning to the point raised by the noble Lord, Lord Rogan, it is important to note that the birthrights on how a person of Northern Ireland chooses to self-identify and their citizenship are quite rightly separate and distinct.

The noble Lord, Lord Browne of Belmont, raised a point on the interpretation of the Belfast agreement. As noble Lords are well aware, the Belfast agreement was carefully negotiated and accepted in referenda in both Northern Ireland and the Republic of Ireland. There are no plans to reopen it to change the definition of a "person of Northern Ireland"; nor indeed would the UK Government be able to amend an international treaty. Not meeting the definition of a "person of Northern Ireland" under the agreement does not mean, however, that you cannot get British citizenship.

As noble Lords across the House have noted, there is already a residence-based route which Irish citizens born after 1 January 1949 can utilise to become British citizens should they choose to do so: they can, of course, apply to naturalise. When naturalising, an applicant need show only five years' lawful residence. This is of course a fraction of the period that the noble Lord, Lord Hay, has been resident in Northern Ireland. If an individual opts not to become a British citizen when they first become eligible to do so, and so resides in the UK for far longer than the minimum time period needed, they will still need to meet the same statutory requirements as any other applicant. This is fair and applies to applicants of any nationality. The noble Lord, Lord Hay, noted that the process was, in his view, discriminatory. I do not accept that, because it is important when considering naturalisation that everyone is treated the same. Many people across the union of the United Kingdom have lived here for a long time and paid taxes, and there is no particular reason why they should be treated differently from those the noble Lord suggests should be.

[Lord Murray of Blidworth]

Turning to the question of fees, fees for naturalisation have remained static in recent years. This followed a period of increases imposed as part of the Home Office's move towards a user-pays model. Irish nationals are considered as settled in the UK from their date of arrival, which gives them an advantage over applicants of other nationalities, who need to hold indefinite leave to remain under the Immigration Rules before they can apply to naturalise. Irish nationals do not, therefore, have to pay ILR fees, which amount to £2,404 on some routes to indefinite leave to remain. On the point from the noble Lord, Lord Ponsonby, about the breakdown of fees in respect of the cost of actually processing the application, I do not have that information to hand, and I will ensure that he is written to.

Turning to the knowledge of language and life in the UK test, mentioned by the noble Lords, Lord Hay and Lord Rogan, individuals applying to naturalise across the piece are required to meet the Life in the UK test. A special provision, unsurprisingly, means that Irish nationals are exempt from the requirement to prove English language competency.

The Government's view is that it is fair that all those who choose to take the step of becoming British citizens should meet the same core criteria, so citizenship can be awarded consistently. Citizenship carries important personal and legal consequences, and while I note the strength of feeling of the noble Lord, Lord Hay, on this issue, it cannot be assumed that just because someone is a long-term resident in Northern Ireland, or any other part of the United Kingdom, they wish to become a British citizen. We do not consider that automatically imposing British citizenship on Irish citizens resident in Northern Ireland, or indeed anywhere, without their opting to apply for it would be appropriate. We would not want to do anything that might jeopardise the unique relationship between the United Kingdom and Ireland.

Our existing naturalisation processes provide an adequate route for Irish citizens with a close and continuing connection to the UK to become British, should they wish to do so. That route can be accessed by Irish citizens with far less residence than that suggested by the noble Lord. There is no provision in British nationality law for the automatic acquisition of citizenship on the basis of long-term UK residence for anyone, and we do not consider it appropriate to single out Irish nationals born in Ireland who live in Northern Ireland for different treatment from those from other countries with which the UK has strong links, such as the Commonwealth or EEA countries.

It would be impracticable to operate a system where an applicant must demonstrate residence in the UK for five decades. It would raise logistical issues regarding acceptable documents, permitted absence periods and challenges in establishing evidential thresholds for historical residence. They are changes which would, in turn, inflate the costs of citizenship processes for all and potentially reduce the likelihood of a successful application.

While I appreciate the strength of feeling on this issue, and why the noble Lord, Lord Hay, has raised these questions, matters of identity and citizenship are complex and present difficult questions for our society. However, for the reasons I have given, it would not be right automatically to confer British passports on Irish citizens living in Northern Ireland in the manner the noble Lord has suggested.

I am aware that a number of direct questions were asked of me by the noble Lord, Lord Ponsonby, and the noble Baroness, Lady Suttie. I will reply to those by correspondence given the lack of time available.

House adjourned at 6.53 pm.

Grand Committee

Wednesday 26 October 2022

Procurement Bill [HL]

Committee (7th Day)

4.15 pm

The Deputy Chairman of Committees (Lord Geddes) (Con): I advise the Grand Committee that, if there is a Division in the Chamber while we are sitting, which is likely, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Clause 50: Key performance indicators

Amendment 268

Moved by ***Lord Lansley***

268: Clause 50, page 31, line 6, leave out from "publish" to end of line 7 and insert "performance indicators in respect of the contract, which must include at least three quantifiable measures and such further factors and measures as the contracting authority considers justified in relation to the requirements and value of the contract."

Lord Lansley (Con): My Lords, this is quite a large group, led by Amendment 268, and it encompasses a number of issues all of which relate to the structure of contracts and how contracting authorities enter into agreements with their suppliers. I will not attempt to speak to anything other than my five amendments, save to say that the first, Amendment 268, originally went alongside Amendment 269, which has subsequently been withdrawn but was in the name of my noble friend Lady Neville-Rolfe. Were it still there, I would have said that I have some sympathy with what she says, as there can be circumstances in which a contract, in effect, looks for one item of delivery. Therefore, in my view, one quantified key performance indicator may be appropriate and the requirement to have at least three would be unnecessary. The point is that contracts should have key performance indicators.

My point in Amendment 268, which starts this group so I am able to move it, is to replace the reference to "key performance indicators" with "quantifiable measures". I entirely admit that we know where we are with KPIs, everybody has them and so on. The trouble is that KPIs can be non-quantifiable and qualitative. That is not what we are looking for here. There is a risk that, if we are not precise about it, they will not be quantifiable, and quantifiable is what we are looking for. I do not think key performance indicators should be subjective; they should be objective and demonstrably proven. Suppliers have a significant benefit where that is the case.

That is Amendment 268, and it is more or less probing. Many of my amendments in this group are intended to ask my noble friend and the department whether they will take account of these points in the way they draft the national procurement policy statement in the guidance that follows.

Amendment 270 also relates to key performance indicators and is linked to a point we discussed on Monday, which is that the structure of the relationship and contract entered into with suppliers should relate to the original tender and the specifications in it. The amendment says that the key performance indicators "must relate" to the tender. Likewise, I hope that my noble friend will say that the Government understand that and that that is their intention. Otherwise, we run the risk that people will enter a competitive selection process, win that process and negotiate a contract but, suddenly, the contract asks them to do things that were not in the original specification. That should not be the case.

My third amendment in this group is Amendment 364. As one reads the Bill, one may come across something and think, "How does that work?" This relates to changes in the contract and the definition in Clause 69 of "substantial modification". The first definition is that the term of the contract is increased or decreased

"by more than 10 per cent".

Most contracts are expressed in terms of months and years, and 10% is an awkward measure: "10% of an 18-month contract is 1.8 months—let's work that out in days". Can we not write this is in a slightly simpler way? One-sixth has the benefit, in my view, of making a substantial modification slightly more than 10%—16% or thereabouts—but the point is that it is readily transferrable into months and years, particularly months. So, if a contract for 18 months is modified by more than three months, you know where you stand; it is dead simple. The purpose of the amendment is to suggest that it could be done a little more simply.

My final two amendments are Amendments 397 and 400, which relate to the termination of a contract and to Clause 72. The clause states:

"every public contract … can, if a termination ground applies, be terminated by the contracting authority",

and a list is then given of the termination grounds. I do not know whether this has been left out deliberately, or because it does not appear in the public contract regulations, or because it is intended to be part of general terms and conditions anyway and therefore does not need to be specified in legislation. But force majeure is, I think, a termination ground for a contract, so I am not sure why it is not mentioned. The point is that it should be mentioned—and if it is, there is a problem with it.

I declare an interest, and in doing so revert to what I was saying earlier about the European Commission. This issue arose for us—my wife's company—during the pandemic. We were contracted to supply a number of events and when the pandemic hit, or shortly thereafter, some of them had to be cancelled. Members will not be surprised to hear that, under those circumstances, a significant amount of expenditure had been incurred, including cash expenditure on locations, suppliers, venues and so on. The term of the force majeure written into the European Commission's standard contract was that, at the point at which force majeure is notified, payment for the services provided is required. As noble Lords can imagine, initially, they said, "Well, you haven't provided those services. Those events haven't happened and we won't be having them." I will not

[Lord Lansley]
bore noble Lords with all the detail, but the net result was that we lost money. We did not lose as much as we had feared because we had a negotiation, but, according to the letter of the contract, they could have said, "You've spent tens of thousands of euros on events that will not now take place, but because they are not taking place, you're at risk and you will meet the cost." This a very large public authority expecting an SME to take the hit. We did discuss it and they did come round, but I do not think that that arrangement is sensible.

I cannot imagine that our experience is in any sense unusual. During the pandemic, thousands of businesses must have had exactly the same kind of force majeure complication. In public contracts, the force majeure contract should say what I suggest in the amendment: that, under those circumstances, when the termination ground is notified, there should be a requirement to meet the expenditure

"necessarily incurred in relation to the contract"

up to that point.

I will be happy if my noble friend the Minister is able to say, as with the other amendments, that these are interesting points and she will take them away and look at how the guidance or the statement might reflect them for the future. I beg to move Amendment 268.

Baroness Thornton (Lab): My Lords, my speech is a good way of following the excellent introduction to this group of amendments by the noble Lord, Lord Lansley. I start by thanking my noble friend Lady Hayman of Ullock for putting her name to Amendment 276A and the noble Baroness, Lady Bennett, and the noble Earl, Lord Devon, for putting their names to both Amendments 269A and 276A.

As the noble Lord, Lord Lansley, said, Amendment 269A is dealing with the key performance indicators, and it adds a line that I hope the Minister will find useful:

"including at least one indicator in relation to social value."

This would mean that all public sector contracts over £2 million would have to include a key performance indicator on social value. This would ensure that social values are included in all public sector contracts over £2 million and would send a clear signal to the private sector in particular. It would also ensure—similar to Amendment 477A, which we discussed on Monday—that contracts with social value commitments are monitored effectively and transparently.

Amendment 276A concerns transparency and "open book accounting". It would insert a proposed new clause that I hope the Minister will see as helpful, given that she has spoken already in Committee about transparency and its importance in the spending of public funding. It says:

"All suppliers bidding for public contracts must declare the expected profit and surplus they expect to generate through the contract."

In childcare, for example, the top 10 providers have made £300 million in profit, despite the standards of care falling and local authority budgets being under such pressure. We know this because the newspapers have reported on the conditions in which we have found cared-for children. During Covid, when we had PPE, a number of companies were making significant profits from these contracts without the need to report to the contract what margin they were prepared to make. I believe that this prevented the state adequately protecting our public money.

This amendment would mean that, on all government contracts, the supplier would have to report what profit or surplus they were expected to generate from the contract and then report back each financial year on how much profit or surplus they had generated—although I do not believe that this would solve the problem of people charging the state too much money for goods and services, and there is still a risk that companies could cost-shift artificially to reduce their declared profits. This may well leave the taxpayer in a better position to understand the true costs of contracts and would advantage providers such as social enterprises and SMEs, which are more likely to be investing the money received from contracts back into their businesses than extracting public money as profit. That is an important point because charities and social enterprises are bound by their rules to complete their accounting in two or three ways, which would include the social value of the contracts they are fulfilling.

Baroness Noakes (Con): My Lords, I have tabled Amendment 271 in this group. At the request of my noble friend Lord Moylan, and with the leave of the Committee, I will also speak to Amendment 486 as my noble friend is unable to join us today.

This Bill is of course about the procurement process, rather than contract management, but Clause 50 wisely requires the setting and publication of performance indicators, which are a key element of contract management. I was always taught that what gets measured gets managed. I cannot envisage a situation where contracts could be managed without some form of measurement that could be converted into performance indicators. Amendment 271 in my name leaves out Clause 50(2), because that allows the contracting authority not to set performance indicators if it considers that

"performance under the contract could not appropriately be assessed by reference to key performance indicators."

Clause 50(2) is fundamentally unsound because it is tantamount to saying that the contracting authority cannot manage its contract.

There are some kinds of contract—for example, the delivery of health and social care services—where measurement may rely on subjective judgments by the service recipient, but they too can be converted into indicators. I disagree with my noble friend Lord Lansley, who seemed not to like subjective performance indicators; I think they are a perfectly good part of any framework of contract management. Light-touch contracts are of course not covered by Clause 50, and that covers quite a lot of the contracts involving health and social care.

4.30 pm

My question to the Minister is: in what circumstances do the Government think the contracting authorities should be allowed to dispense with performance indicators? Since this is a rather generous let-out clause, what will the Government be doing to monitor that it

is not abused but used only for what I think would be extraordinarily rare contracts where measurements would make no sense whatever?

I turn to Amendment 486. I should let the Committee know that this amendment was originally tabled by my noble friend the Minister when she was a lesser mortal like me. In short, the amendment is designed to ensure that contracting authorities in the public sector do not use their contractual power to force suppliers to accept onerous terms relating to the supplier's own innovation and intellectual property. The amendment would prohibit restrictions on the ability of the supplier to provide similar or identical services to other purchasers.

Like so many of my noble friend's amendments to the Bill when she was on the Back Benches, it has the interests of small and medium-sized entities at its heart. There is usually a massive imbalance of power between public authorities that are letting contracts and the SMEs with which they are dealing, and there are many stories of the abuses of such relationships. I very much look forward to what my noble friend will say in response to the amendment.

Lord Scriven (LD): I shall speak to Amendment 272 in the name of my noble friend Lord Wallace, to which I have added my name. The Bill includes key objectives, which involve delivering value for money, maximising public benefit, sharing information and acting with integrity. Amendment 272 would ensure that the public benefit included explicit economic, environmental and social factor indicators as part of a list of KPIs. Following on from what the noble Baroness, Lady Noakes, has just said, I would say that the situation is slightly different—it is not just that what is monitored gets managed; what is monitored gets done. That is the issue: it sends a clear signal to those providing the service that the contracting authority sees those issues as an important and vital part of any contract that is let. Amendment 272 would add to the KPIs that anything done as part of the contract should bring about sustainable local improvements in the environmental, social and economic parts of the contract.

4.33 pm

Sitting suspended for a Division in the House.

4.44 pm

Lord Scriven (LD): My Lords, as I was saying before I was so rudely interrupted by the Division Bell, the concept of Amendment 272 is to ensure that the KPIs support in more detail the public benefit test. There will be economic, social and environmental factors that provide sustainable local improvement. The reason for this is that many times when a provider goes in and provides a service—I speak as a former leader of a council and I have seen it in some of the work I do in public sector reform—the public good that happens, whether it be social or environmental, lasts only while that provider is there: that is, the jobs are dependent on that provider providing that service, or are adjacent to or an adjunct to the work it is providing. This amendment tries to ensure that when public sector contracting authorities are writing their KPIs, they have a view that they should be economic, social or environmental but also sustainable—that is, when the contract ends or the contractor leaves, the things it has put in place are sustainable, rather than being for just a limited period. That is reason behind Amendment 272.

I shall take a little time to speak to Amendment 353AA in the name of the noble Baroness, Lady Hayman of Ullock, to which my noble friend Lord Fox has added his name, which is about the public sector interest test being applied when a service is at present provided by a public sector body and is being outsourced. I want to be clear that this amendment does not stop outsourcing. I do not subscribe to the view that public is good and private is bad, or vice versa. In a mixed market you can get good and bad in both providers. This amendment stops the sometimes very narrow view of public sector contracting authorities that they will outsource without thinking about the wider implications for citizens and the economy of the area.

Let us look at some of the issues in this amendment. Paragraph (c) of subsection (2) of the proposed new clause refers to

"implications for other public services and public sector budgets".

I have seen outsourcing in social services that has no assessment of what it will mean for working with the NHS. A contract that is purely for one part of what the citizen goes through could fragment the citizen journey or the service.

The other issue is the effect on employment conditions. If, for example, the contract is on lowest price, particularly in a deprived area, it could have the disastrous result, which I have seen, of reducing wage rates, which works against the wider public benefit of increasing prosperity and having better jobs in the area.

While the amendment would not preclude outsourcing, it is important for the wider public benefit test and for ensuring that services, which in many cases join up with another part of the organisation or a different organisation, think through the implications for that service and the citizen's journey through the service being provided, whether by a public provider or private provider, if part of it is going to be outsourced. I therefore commend this amendment, which, if accepted, would not preclude outsourcing. It would simply get public sector bodies to think more widely about why outsourcing needs to take place.

Baroness McIntosh of Pickering (Con): My Lords, Amendments 370ZA and 370ZB are tabled my name and I thank the noble Baroness, Lady Hayman of Ullock, and the noble Lord, Lord Coaker, for their support which is much appreciated.

The thinking behind these amendments relates to the plight of the wholesale sector, which supplies food and drink to critical public service infrastructure on which we all depend, including schools, hospitals and care homes. According to the briefing I have received from the Federation of Wholesale Distributors, wholesalers are struggling to fulfil these contracts due to unfavourable contractual terms, which are resulting in these businesses making significant losses. That does not bode well for the future viability of the sector. They are facing rising costs and food inflation, which we know has hit 15.1% as of August 2022—

[Baroness McIntosh of Pickering]
this week it looked as though it could be higher still. It leaves the wholesalers unable to negotiate any price increases; or the smaller price increases they have negotiated on certain contracts have been well below inflation. This is an unsustainable circumstance going forward.

Given the situation where price reviews occur only every six months or, in some cases, only once a year, this gives wholesalers very little room for manoeuvre to negotiate price increases. This means that wholesalers are not making a profit on the product and service they provide to their customers. This is affecting the quality of the products they are able to serve to children and the most vulnerable, and the viability of providing catering services in the long term. They would argue that the quality of catering services is of paramount importance, as we have seen with Jamie Oliver's campaign in hospitals and during the pandemic.

I support the fact that the Government's food strategy is seeking to drive up standards of public sector food by requiring caterers to use more organic and locally sourced foods. This is not sustainable, however, without funding that matches inflation—it is just not viable going forward. In the federation's view, small and medium-sized enterprises will be the most affected of all businesses. Without quarterly price reviews, the trend will continue towards market consolidation and homogenisation, driving standardisation not the localisation of publicly produced foods.

I expressed my disappointment previously that the public procurement contracts we signed up to under the European Union conditions have been replaced by the GPA; this is something we need to look at on an ongoing basis. Of course, it is right that the Procurement Bill aims effectively to open up public procurement to new entrants such as small businesses and social enterprises, so that they can compete for and win more public contracts. It is just the case that SMEs are more acutely affected by price increases. They are smaller in scale, less resilient and need to pass the increases on in real time. They do not have the capacity to absorb those increases and, as such, are more vulnerable to these pressures if price increases are not passed on. We can therefore envisage a situation where SMEs are either closing down or being sold to larger national conglomerates. If these conditions continue, the sector believes that this will undo competition and the diverse market that brings a number of benefits to the public sector.

To ensure that the targets in the Procurement Bill are met, to encourage more SMEs to supply contracts and to ensure the continued supply of public sector food—which I think the Committee would sign up to—I ask my noble friend the Minister to consider publishing guidance to instate quarterly price reviews to allow contract price increases more regularly than once a year or every six months, and only if a certain threshold is met—for example, inflation over 5%. This is what I have set out in Amendment 370ZA to Clause 69 and in Amendment 370B to Schedule 8, regarding a review when inflation is 5% or more.

The quarterly price reviews would allow contract price increases more regularly, as I have stated, than either once a year or once every six months, if the threshold is met. I propose that that threshold should be over 5%. I remind the Committee that we have seen record increases in the price of staple goods such as milk, dairy, bread and even pasta, and some of the cheaper products that these public sector wholesalers would seek to provide in the context of the contracts we are discussing this afternoon.

I put on record that public sector caterers are struggling to meet the food standards, being forced to reduce portion sizes and using less UK-grown and produced product, which is against both my better judgment and the Government's aims. I would like to see the quality of the food used to service public sector contracts improve, under the amendments I have spoken to. Without these amendments, standards will continue to decline to mitigate the rising costs if the Government do not step in to support the industry. A number of wholesalers rely on profitable contracts subsidising loss-making contracts at the moment. However, with the ever-decreasing level of profitable contracts, the balance is tipping towards overall loss-making, which is unsustainable in the long term.

Other advantages of these amendments are that they would enable meeting the government targets which would otherwise not be met in the current climate, and would enable those in this sector to bid for more contracts, which would impact the supply of food and drink to public service infrastructure. Some 95% of wholesalers have said that the current climate and rising costs mean they are unlikely to bid for new contracts, especially ones with unfavourable terms, such as the long pricing review.

I ask my noble friend to respond to these issues to help SMEs and secure more bids for future contracts, in particular by a three-monthly review and a 5% review of inflation. The level of food inflation is pushing up the level of inflation across the piece. We are woefully short on food self-sufficiency, particularly fruit and vegetables. I hold the Minister's feet to the fire, because we heard from her colleague the Minister for Agriculture in this place, my noble friend Lord Benyon, that the Government are seeking to do something to help produce more fruit and vegetables locally, even to increase production such that we can export. Nowhere is that more important than in the delivery of public sector contracts.

I really regret that we are going backwards, having left the European Union, and are relying on more imported and more expensive food. We should be sourcing more food, whether it is meat, bread or dairy—milk and butter—as all these staples have been hugely impacted by inflation. I urge my noble friend to look favourably on these two amendments.

Lord Mendelsohn (Lab): My Lords, this is my first opportunity to welcome the Minister back to her place and to say what a pleasure it is to see her here. We who have experienced time with her have always been impressed by her courtesy and the seriousness with which she takes these deliberations. I am returning to a theme we first discussed during the Small Business, Enterprise and Employment Bill in 2014. As they say, some songs are so good, they may be old but are worth repeating. I hope she will forgive me for coming back to some of the issues we had then, of which,

during her time on the Back Benches, she has been a doughty supporter. I am conscious that there is an awful lot to respond to in this group of varying themes. I look forward to seeing her do so with aplomb.

When I saw the amendments tabled here, I had a moment of undiluted joy when I noticed that Amendment 356A in my name suddenly had the addition of "g" before it. I initially thought that, in the chaos of the last few months, I had been called into government service unbeknown to me and without the benefit of a phone call. Having realised that that was probably not the case, I then thought that I had won the lottery—that, for once, one of my amendments was so good that the Government had finally adopted it and were prepared to champion it. Of course, it is a printing error.

I return to some of the things we talked about before, such as how we can align this Bill with the Prompt Payment Code and the Late Payment of Commercial Debts Regulations, for example. Genuine progress has been made in trying to deal with the curse of late payments, which affects small, medium and even large businesses, to try to improve their payment terms and to make sure that the Government play their part where they can, both as an agency of regulation and a procurer.

5 pm

Ministers have been very good in writing to confirm, for example, that intermediate finance companies cannot use the regulations to avoid payment terms on the right dates, which has been very encouraging, and that confidentiality clauses will never cover things such as late payment or payment terms, and that they are for the protection of proper commercial terms as opposed to payment practices. So that has been very encouraging.

In that context we have, in a sense, two distinct groups. Turning to Amendments 353B, 370A and 430A, in my name and that of the noble Lord, Lord Aberdare, whose support I greatly welcome, where there is scope to dispute invoices, we are just trying to find the route to do two things. The first is to make sure that they cannot be gamed or used. We cannot create incentives for contracting authorities to use the dispute process to delay a payment in order to gerrymander the system, or to use it posthumously to try to change those payment terms. These three amendments both proscribe that and provide the opportunity for the Small Business Commissioner to be a form of mediation to make sure that these things can be dealt with in the round. I think they have great strength. Under the Bill as drafted, we expect other authorities to do the job, which really is one that government should address from the top, setting the tone of what needs to be done and how these things can be remedied.

Amendment 356A, in my name, is about streamlining reporting and making sure that there is one place for the reporting of all measures. The Government have previously objected to this, saying that this underlines the market nature of the country, which of course is absolute nonsense—the idea that payment terms do not do that, or even the velocity of cash that can be generated from people paying properly, which are of course great generators of growth. But this area is also targeting contracting authorities. Regulation 113 of the Public Contracts Regulations 2015 states that public authorities need to publish the percentage of their invoices paid within 30 days, the amount of interest paid to suppliers due to late payments, and the total amount of interest the contracting authority was liable to pay, whether it was paid or not, due to Regulation 113.

I tried for a long time to find out what was happening with this and what the facts were, because this data was not really published anywhere. Noble Lords will have to forgive me because this is not last year's data. I had to bring a researcher in to do it but in the end, the only way we got even a partial element of the information, which they were obliged to publish in public under the regulations, was when I made some freedom of information requests. We saw that local authorities, NHS trusts and all sorts of contracting authorities in the public sector were doing this, and we found that they did not subscribe to Regulation 113. When, for example, we were looking at the NHS trusts, we challenged the Department of Health and Social Care but it said it had no authority or role to interpret the regulations and therefore to talk to authorities about it. Every department which had a responsibility said that it had no responsibility, and even the Cabinet Office said that only the departments have the responsibility. This is just not acceptable and it is a problem. When you have a regulation that is not enforced, it is terrible.

I will tell your Lordships why it is terrible. When we did the research, we found out what was going on with particular authorities. For example, Hounslow Council said that it paid 91% of payments within the terms, which meant that for 4,900, in reporting year 1 the interest alone liable for payment was £13 million. You only have to do the maths to realise that that is hundreds of millions of pounds in contract value, if that is the interest payment due. How much of that £13 million which should have been payable was actually paid to a small or a medium-sized business? It was £334.83. By the way, that is a fairly impressive amount.

I cannot say that I scanned the full 433 local authorities, but all the ones that we looked at had, on average, in any contracting year, £1 million due in interest charges. The only authority I found that paid was Hounslow. There were 4,900 of a particular value. In Leicester City Council, for example, 21,063 were not paid; zero interest was paid. When we looked at the NHS trusts, we found that the amount they had not paid in years ranged from £1.5 million to £2 million. One paid a very small amount—£62 in interest—but of the hundreds of millions of pounds of interest charges that were due, zero was paid. Zero reporting, zero payment, zero consequence, zero responsibility.

Amendment 356A tries to say, "Can we not have one place for everything—private and public—and, if we have coalesced around the Small Business Commissioner's office, should we not do it there?" It proposes one place for everyone involved in the payment process to be able to report their data so that it can be seen and be transparent, and put in the hands of people who can do something about it. I would be very grateful for a full answer to that. Obviously, there is a lot going on, so I am sure that I will not get much more than a quick paragraph at the moment, but it is an issue we need to return to.

[Lord Mendelsohn]

Finally, I commend the very sensible Amendment 361A, in the name of the noble Lord, Lord Aberdare. It deals with the fact that when a supplier acts against the interests of a subcontractor, the contracting authority should have a responsibility to make sure that the right thing is done. We have made a terrible error in that we have allowed ourselves to have regulations, but we have not made sure that we enforce them and create responsibilities. No responsibility means no accountability, and across all these things, it would be much better if we were much clearer about that from the very beginning. That is why these amendments are so important.

Lord Aberdare (CB): My Lords, after that introduction I am not sure that I need to say much at all, but I will speak to Amendment 361A, in my name, and briefly in support of the amendments in the name of the noble Lord, Lord Mendelsohn, to which I have added my name, and to his Amendment 356A.

Amendment 361A is another of my probing amendments seeking to reinforce SME involvement in public procurement. It would give the public sector contracting authority the specific right to make a payment directly to a subcontractor when payment from a tier 1 contractor to that subcontractor for an undisputed invoice takes more than 30 days. The contracting authority would also have the right to offset any such payment it has made from moneys owed to, or already paid to, the tier 1 supplier. The aim is to provide the contracting authority with the flexibility to support the financial viability of the supply chain while avoiding unnecessary delays. The amendment creates a right, not an obligation, so the subcontractor cannot insist on such a direct payment. A previously existing and regularly used right would be restored.

During the 1970s and 1980s, when the UK economy last experienced high levels of inflation, public sector clients would often name a specific subcontractor to be used when tier 1 contractors were choosing subcontractors. They also had the right, when the subcontractor was not paid, to step in and pay the subcontractor directly to ensure that the delivery of the contract was not compromised and value for money was preserved. This was accompanied by a corresponding right to reclaim any such payment from the tier 1 main contractor. It was widely used in construction, where the public sector accounted for some 40% of demand in both construction and maintenance of public assets. Of course, this option is particularly important to encourage more SMEs to participate in public procurements. The fact that they can be paid directly by the client if there are problems or delays in payment by the main contractor can significantly boost their confidence in engaging in the procurement process.

There was a similar right introduced by the European Union through article 71.7 of EU directive 2014/24 on public procurement. I do not know why this directive was not transposed into UK law, nor why this direct payment practice, which the UK Government had, after all, pioneered and used themselves for decades, has not been readopted. Now, more than ever, with a volatile economic environment and high rates of insolvency among construction subcontractors, such a right could play an important part in building trust and liquidity in the SME supply chain. There is nothing stopping a client, whether public sector or commercial, from using direct payment, if this is allowed by the contract, but nor is there anything encouraging or motivating them to do so. This amendment would make clear the ability for direct payment to be used where necessary and would drive a fairer payment culture and greater transparency across the supply chain. I hope that the Minister will consider accepting the amendment, or at least undertaking some work to assess the impact of spelling out the possibility of direct payment as an option.

I have also added my name to Amendments 353B, 370A and 430A, tabled by the noble Lord, Lord Mendelsohn, which would represent another valuable step towards improving payment terms and practices for public contracts. I have very little to add to what he has so powerfully said. I understand that the role of the Small Business Commissioner as currently set out in legislation might make it difficult for her to be given the additional responsibilities implied by these amendments. However, I understand that the public procurement review service within the Cabinet Office operates a similar function in relation to public bodies, so perhaps an alternative approach for the Minister to consider would be to require unresolved payment disputes to be referred to them. If the Minister can come up with a better approach to resolving payment disputes in a timely way and ensuring that smaller suppliers receive the funds due to them, I would welcome that with enthusiasm equal to that which I have for the noble Lord's amendments.

The noble Lord, Lord Mendelsohn, has also tabled Amendment 356A, relating to the BEIS payment performance reporting scheme, which I had not spotted to add my name to. It seems extraordinary that, whereas several thousand of the largest private contractors report every six months to their suppliers on a public database, public sector contracting authorities also report but only on their own individual website. There is no single place where individual small suppliers can understand the rather unimpressive payment behaviour that the noble Lord described of public sector clients, without going through an unbelievable search of numerous databases. I hope that the Minister will support the idea of bringing all this information together in one location and looking at some sort of enforcement mechanism for this reporting, along the lines of the "what get measured gets managed" quote that we have heard a number of times.

Most of the amendments that I have tabled or spoken to in Committee have related to achieving the Bill's aim of increasing the number of small businesses participating in the public procurement process, particularly in the construction sector. During earlier sessions in Committee, Ministers told us several times that there will be meetings before Report to discuss what more the Government can do to promote the involvement of SMEs and of the voluntary and community sector. Indeed, the offer of such meetings was welcomed by the noble Baroness who is now herself the Minister. Can she confirm that such meetings are still planned and when they are expected to take place? We have heard a great deal in Committee about

the need to increase the involvement of SMEs in public procurement. It would be good to review the overall approach that the Bill takes and how it will seek and indeed achieve this worthy result.

5.15 pm

Lord Fox (LD): My Lords, as the noble Lord, Lord Mendelsohn, pointed out, this is a wide range of varying amendments on a scale that, I suggest, is suboptimal for the proper scrutiny of this Bill. Frankly, it is symptomatic of the whole nature of this Bill and the way in which we are expected to scrutinise it. That said, because there are so many different things in here, there is a danger of some of the gems getting buried. I am going to burnish just a few of them but I hope that the Minister will be able to look back through the Marshalled List and *Hansard* to make sure that they are not overlooked, even if she is unable to comment fully on the whole range of amendments.

Those of us who can remember the beginning of this group will remember that we were talking about KPIs. The noble Lord, Lord Lansley, the noble Baroness, Lady Noakes, and my noble friend Lord Scriven, talked about them, as will I when I speak to Amendments 275A and 276ZA—I have never seen a "ZA" before—in my name.

Amendment 275A would remove the power granted by the Bill to the appropriate authority—otherwise known as the Secretary of State, as far as I understand it—to change the threshold at which KPIs may be published. At the moment, the threshold is set at £2 million. If my noble friend Lord Scriven, the noble Baroness, Lady Noakes, and the noble Lord, Lord Lansley, were successful in changing the KPI regime and making it rigorous, the Secretary of State could at a stroke remove a large proportion, if not all, of public procurement from that KPI obligation simply by arbitrarily lifting the threshold. This is a process that should not be left to the Secretary of State alone; that is what Amendment 275A refers to.

Furthermore, Amendment 276ZA would ensure that the regulations could be used only to reduce the threshold, not increase it. I must say, it is ingenious; I would not have thought of it on my own account. These are well-worded and reasoned amendments. I am sure that, if the Minister were not at the Dispatch Box, the Back-Bench version of her would have been making this speech because these amendments are of course hers. When she was promoted, she swiftly withdrew them. Because I agree with them and think that they are good amendments—I did not do this simply to have some fun; these are important issues—I put them back in for your Lordships to consider. The threshold at which the KPIs are published is absolutely central to whether we have a KPI system that works. It is important that Parliament is left with the right to do that.

I shall speak to another gem: Amendment 272 in the names of my noble friends Lord Wallace and Lord Scriven and the noble Baroness, Lady Bennett. I will not speak at length. In previous debates, Ministers have argued against adding principles and things to this Bill, but central to the Green Paper was a section on the principles of public procurement. The Government accept that there should be principles here and have advanced some, so putting into the Bill the principle that procurement should help local communities with the deployment of sustainable local improvement would seem to be central to what this Government want to do, especially given their stated aim of bringing local communities and the quality of life in them up.

I also associate myself with my noble friend Lord Scriven's speech on Amendment 353AA; it sounds more like a battery than an amendment. I look forward to his further speech on that.

Finally, I want to say a word in favour of the amendments in the name of the noble Lords, Lord Mendelsohn and Lord Aberdare, which seek to address further the pernicious practice of late payment. This is the Procurement Bill and it is about public procurement. It is unthinkable to me that this Bill and the Act that will follow do not have something to say about late payment and something to improve this activity. Whether it will be along the lines of the noble Lords' proposal, I do not know, but these are important points. This seems to be a genuine opportunity for the Minister. This is a cross-party concern. I am sure that the Minister, working with others, can come back on Report with something that will further stiffen the process. I suggest that the process of publishing, as set out by the noble Lord, Lord Mendelsohn, would be a very good way of starting so that we can at least see where the poor behaviour lies.

I hope that, in the post-Committee quiet, the Minister can scrutinise where we are with all these amendments and come forward on Report with some sensible improvements based on them.

Baroness Hayman of Ullock (Lab): My Lords, this has been an interesting debate that I hope has been helpful to the Minister. I have three amendments in this group. Amendment 273 requires that one KPI is compliant with the carbon-reduction plan. Tied into that is Amendment 274, which requires that, where public contracts in scope of the KPIs fall below the threshold for mandatory carbon-reduction plans, at least one KPI should assess the supplier's performance against climate or environmental considerations.

As I said on Monday, the transparency requirements are very welcome. We believe they could provide the opportunity for contracting authorities and their suppliers to demonstrate that they are having regard to climate change and are managing the risks through regular environmental reporting as a KPI. However, those requirements are not set out in the Bill but will be left to secondary legislation. For example, they do not impose requirements in relation to the environmental commitments made by the supplier awarded the contract or for the regular reporting on whether the commitments have actually been met. We feel that that needs to be strengthened, which is why we have tabled the two amendments on this area.

My Amendment 353AA would create the process to ensure that contracting authorities safeguard the public interest. I thank the noble Lord, Lord Fox, for his support. The noble Lord, Lord Scriven, gave a detailed explanation of the importance of this, so there is no need for me to go into any further detail. Looking at

[Baroness Hayman of Ullock]
the public interest and the wider potential impacts of any contracts that are supplied is something that we need to be extremely aware of and cautious about.

I turn to other amendments in this group. The noble Lord, Lord Lansley, made some important points here; we are very sympathetic to them and I would be interested to hear the Minister's thoughts. These seem to be straightforward areas where the Bill could be improved. In particular, the noble Lord explained how the time modifications, going from one-10th to one-sixth, made sense and would make life a lot easier for people. Again, these are sensible amendments so it would be interesting to hear the Minister's response.

My noble friend Lady Thornton has tabled some amendments around KPIs and social value, and we strongly support both of them. I am sure the Committee is aware that social value is included in the national procurement policy statement, but there is no reference to social value in the Bill itself, as has been said on a number of occasions when we have debated this in Committee. We have been told by officials—and by previous Ministers before the noble Baroness—that social value is integrated into the concept of public benefit, but we believe that "public benefit" is just too vague a concept and it is just not clear where social value sits within this framework. My noble friend raises an important point with her amendments, and I hope the Government will start to take this issue more seriously.

As usual, the noble Baroness, Lady Noakes, put her finger on an area that needs proper clarification. I am sure the Minister will have listened very carefully to everything she said.

The noble Lord, Lord Scriven, introduced some of the Liberal Democrat amendments by talking about the importance of sustainable local improvements and, again, the wider public benefit: what is this, what does it mean and what will we get out of it in the Bill? Again, a lot of what he was saying—and what the amendments from the Liberal Democrats are doing—is very similar to, and ties in with, the amendments we have put down: they look at the environmental and social value impacts and how we can build these into the Bill to make important improvements.

The noble Baroness, Lady McIntosh of Pickering, made some important and specific points with her amendments, and I was happy to add my name to them. They draw attention to a really important issue, which has been missed out and is extremely pertinent at the moment when we consider current concerns over inflation—particularly food price inflation, as she mentioned—and the rise in prices more generally. Public sector catering businesses were really badly hit during the pandemic and are still struggling, so we need to pay proper attention to her amendments. If we are genuine about supporting SMEs, this is an area where they really need some strong support from the Government at the moment.

I commend my noble friend Lord Mendelsohn for his work on tackling the issue of late payment. His dogged approach to this has achieved much, but there is still much more to achieve. His amendments are very important and helpful; again, they are about helping SMEs, something the Minister has said time and again she wants to do.

As the noble Lord, Lord Fox, asked, why is there nothing on late payments, or the issues he raised in particular, in the Bill? This is a real opportunity to do that. The noble Lord, Lord Aberdare, raised similar issues around small and medium-sized businesses and the kind of support they need for procurement if they are to be able to make the most of the contracts that are out there for them. I totally agree with him on the issues around SMEs and the construction sector: it can be very difficult for SMEs to break into that sector, and very difficult for them to manage their cash flows if they start having issues around late payment, which unfortunately happens all too often. In addition, we would strongly support his request for picking up the meeting idea to see whether we can make some progress on this matter between Committee and Report.

To summarise, the Bill needs to ensure that it specifies that KPIs are flexible, proportionate, realistic, agreed properly with the provider and informed by engagement with the people accessing any services. These are helpful amendments, seeking to achieve many of these aims. I hope that the Minister is sympathetic to much that has been proposed and I look forward to her response.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, I am glad to be debating this group, which deals with prompt payment of suppliers throughout the supply chain, an important innovation in the Bill to deal with a long-standing problem. I am slightly perplexed by the words of the noble Lord, Lord Fox, because one of the advantages of the Bill is that we are making progress on prompt payment and adding rules in relation to the indirect suppliers, which is a considerable breakthrough.

There are a number of government amendments. Amendments 354 and 434 confirm the start of the period during which payment must be made following receipt of an invoice. Amendment 361 signposts the reader to an electronic invoicing provision in Clause 63. Amendments 360, 362, 363, 431 and 432 align wording with equivalent provisions elsewhere. Amendment 433 corrects the territorial application of this regulation-making power in Clause 80.

I now turn to government amendments to Clauses 69 and 70 and Schedule 8 on contract modification. Amendments 365 to 371 to Clause 69, "Modifying a public contract", have been made to correct technical errors and make the clause clearer. Many of the amendments to Clause 70—I reference Amendments 390, 391 and 392A—arise as a consequence of the decision to divide this clause to make it simpler for contracting authorities to understand their publishing obligations.

Amendment 372 has been made to ensure that contract change notices are published when a contract is transferred to a new third party under paragraph 9 of Schedule 8. Amendments 373 and 374 clarify the anti-avoidance provisions. Amendment 375 creates a new paragraph (b), which reduces the burden of publication. Amendment 376 sets out certain contracts that are exempt from the obligation to publish contract change notices. Amendments 377, 381 and 385 are

consequential. Amendments 378, 380 and 383 have been made to ensure that the clause will work effectively for Wales and Northern Ireland. Amendment 384 and 389 provide that certain other contracts are exempt from the requirement to publish details of a qualifying modification.

5.30 pm

Sitting suspended for a Division in the House.

5.40 pm

Baroness Neville-Rolfe (Con): Amendment 392 makes it clear that the power to change the percentage thresholds in Clause 70 applies to Welsh Ministers as well as a Minister of the Crown.

I apologise in advance for the length of my reply to the substantive points in this important group. I turn first to key performance indicators in Clause 50. My noble friend Lord Lansley's first amendment would require contracting authorities to set at least three KPIs that are "quantifiable measures" as well as

"such further factors and measures as the contracting authority considers justified in relation to the requirements and value of the contract".

The very nature of a KPI means that it has to be quantifiable; otherwise, performance cannot be effectively measured. In addition, the Bill already requires contracting authorities to set "at least three" KPIs, but they can set more where they consider it justified. His second amendment relates to where the KPIs are derived from. It proposes that they be tied to the specifications of the tender rather than to the contract itself. Forcing KPIs to be tied to the specifications of the tender means performance is not measured effectively. They need to relate to the final agreement, not to a previous document that may have been changed during the competitive tendering procedure. However, I can assure my noble friend that further regulation and guidance will describe the best way to set and monitor KPIs.

Amendment 269A, tabled by the noble Baroness, Lady Thornton, Amendment 272, tabled by the noble Lords, Lord Wallace and Lord Scriven, and Amendments 273 and 274, tabled by the noble Baronesses, Lady Hayman and Lady Bennett, and the noble Lord, Lord Coaker, would require KPIs to relate to wider policy matters, such as social value, carbon reduction and, as I think the noble Lord, Lord Scriven, mentioned in his intervention, sustainable local improvement. As stated a number of times in Committee already, and for good reason, procurement policy is not fixed and evolves as new strategic priorities emerge, such as our action to address climate change in procurement in recent years. Policy matters such as these should therefore not be included in the Bill and are better addressed in the national procurement policy statement.

Amendment 271, proposed by my noble friend Lady Noakes, suggests that Clause 50(2) should be removed. This provision confers a discretion on the contracting authority not to publish KPIs if the contract in question could not be appropriately assessed by reference to KPIs. Subsection (2) serves a vital purpose. It is not appropriate to measure all contracts by reference to KPIs—for example, a goods contract for an order of IT hardware or office furniture. We therefore need to confer a discretion on contracting authorities, rather than create a legal obligation that cannot be met in every case and which, in some instances, would add legal and administrative burdens with limited additional benefit that would be hard to justify. Moreover, the discretion in subsection (2) not to publish KPIs can be exercised only when appropriate. The transparency obligation in Clause 51 should, I believe, help to prevent any abuse of the provision. In addition, the Freedom of Information Act, which was mentioned in the discussion, allows stakeholders to exercise scrutiny over the form of KPIs that contracting authorities write into their contracts. It is not in their interest to avoid these requirements as the information will become public in any event.

I thank the noble Lord, Lord Fox, for his Amendments 275A and 276ZA and his thinking on KPIs, although I must confess to having a sense of déjà vu. The balance of benefit against burden is an important matter that we must look at in this Bill, and one that merits investigation by us all. I am therefore grateful for the opportunity to set out our position on this.

The power in Clause 50(4) allows amendment of the £2 million threshold in subsection (1) above which KPIs must be set and reported on. The two proposed amendments probe that power in different ways. The first amendment seeks to remove the ability to amend the threshold in its entirety and the second limits the power to reducing the threshold.

5.45 pm

The power to change the threshold is important. It might, for example, be used to reduce the threshold to increase transparency, or to increase the threshold to take account of inflation. It might also be used to raise thresholds if, in certain types of contract, we find that KPIs are not providing a useful enough source of information to justify additional burdens on some contracting authorities, potentially leading to delays and confusion in the letting of contracts. This system has to settle down. It is important that the Government retain the ability both to react to challenges such as inflation and to take into account the need to balance the burdens on contracting authorities. Use of this power will be subject to the affirmative procedure and Parliament will have the opportunity to provide robust scrutiny and ensure that it is used only in appropriate circumstances.

Amendment 276A from the noble Baronesses, Lady Thornton, Lady Hayman and Lady Bennett, would require contracting authorities to apply the principles of open-book accounting to all contracts awarded under this regime. Open-book accounting has a place in contract management, but it is not necessary or desirable for many public sector contracts as it would place significant additional burdens on contracting authorities and could act as a barrier to new entrants and SMEs, which are exactly the kind of organisations we are all looking to attract through the new regime. Ultimately, the open-book mechanism requires the generation and regular tracking of detailed and complicated financial information and would draw on potentially costly financial accounting resources. This means it is unsuitable for simpler, more transactional requirements.

[Baroness Neville-Rolfe]

Amendment 353AA from the noble Baroness, Lady Hayman, and the noble Lord, Lord Coaker, would require contracting authorities, when considering outsourcing services, to undertake a public interest test. There is a case for applying a public interest test for some outsourced services. However, it is not necessary or desirable for all public sector contracts because it would place unnecessary additional burdens on the contracting authorities. In addition, the objectives of this amendment are covered—this may be the source of the amendment—in the *Sourcing Playbook*, which we think is a better place for them.

I listened with particular interest to the point made by the noble Lord, Lord Scriven, on social care and the need to look at the impact on the NHS in these sorts of cases. I assure him that the decision to pursue an outsource solution would be carefully considered and assessed against the public body's requirements and capability offering. However, the scope of the Bill begins once a decision has already been taken in principle to approach the marketplace. Therefore, decisions relating to this sit better elsewhere in public spending and other guidance.

Lord Scriven (LD): I am confused by that answer; I do not understand, in practice, what the Minister has just said. There could be at least two public bodies involved in an individual's care, through social care and the NHS. Can the Minister clarify a little better how the public interest is served when one public body decides to outsource, having an impact on another public body which has no control or say over the contract that has been let, when the client the contract could serve impacts on both bodies?

Baroness Neville-Rolfe (Con): I was trying to make sure that the noble Lord knew that I had listened to his point. There is a point about what is covered by the Bill and what is not, so perhaps I will reflect a little further on how we achieve the best outcome in the sort of circumstances he describes.

Moving on, I thank the noble Lord, Lord Mendelsohn, for his kind words. I look back with great pleasure on the work we did together on those Bills. I very much agree with the noble Baroness, Lady Hayman of Ullock, that he has made a huge contribution in this area. To some extent, his dogged determination has been rewarded with this Bill, which, I think, as I said right at the beginning, makes something of a breakthrough. That is why I am glad now to be the Minister and to make sure that that breakthrough is reflected in a larger share of procurement for SMEs, with payment being more consistently speedy. It is clear that, in a lot of areas, payment is quite good.

The noble Lords, Lord Aberdare and Lord Mendelsohn, have tabled Amendments 353B, 370A and 430A. They would create a process for resolving payment disputes that would mandate escalation to the Small Business Commissioner, who we remember so well, for arbitration and resolution. Going back, I think that the noble Lord, Lord Mendelsohn, wanted me to be the commissioner, but it never happened. The amendments would also require the automatic payment of late payment interest in the event of a contracting authority being found to be in violation of the payment provisions of this Bill.

I believe that this Bill represents a big step forward in tackling late payment, as I have said. However, I believe that these amendments could introduce unwelcome complexity into the system for government suppliers and remove the parties' ability to be flexible in matters of dispute resolution by tailoring dispute resolution and escalation procedures to particular contracts. There are now—this is an important point—a range of existing mechanisms in place to deal with late payment. Suppliers, including those in public sector supply chains, can raise payment delays with the Public Procurement Review Service, which the noble Lord, Lord Aberdare, kindly drew to our attention and which will work to unblock any overdue payments. It is a well-established service. It has been successful in releasing more than £9 million of late payments to date and has grown in confidence since we passed the Small Business, Enterprise and Employment Act 2015. I assure noble Lords that the PPRS will continue to carry out this function under the new regime to unlock contract-specific instances of late payment.

Lord Mendelsohn (Lab): I have just two things to say very briefly. First, I did say that I thought the noble Baroness would be a brilliant Small Business Commissioner, but I think that she is a brilliant Minister.

I did not put the Public Procurement Review Service in my speech because I have issues with it. It has unlocked £9.4 million. When I first read its work in 2020, it said £8 million. I thought that meant £8 million in that year, but £9.4 million is the entire sum that it has unlocked since it was set up in the Small Business, Enterprise and Employment Act 2015. Last year, its achievement was £1.4 million. It has dealt with 400 cases and has, it says, been 100% successful. However, it is also reported elsewhere that it has dealt with more than 1,900 cases, most of which involved suppliers that gave up on it during the course of its process. Let me retell the numbers: 23,000 invoices in one local authority alone. The Minister can tell me that 400 cases over an eight-year performance is good, but I am not so sure. I appreciate that there is a vehicle—again, I am not picky about which one it is—but one cannot say that that performance is making any meaningful impact. That is why I would be grateful if the Minister could look at that in more detail.

Baroness Neville-Rolfe (Con): I will certainly look at the figures, which I am very interested in, but this Bill obviously represents something of a step change. The key thing is how we can make it work effectively. I also highlight that suppliers already have the ability to claim interest on late payment under the Late Payment of Commercial Debts (Interest) Act 1998, which has been referenced. A reference to it in our Bill therefore seems unnecessary.

The proposed amendment would also significantly alter the remit of the Small Business Commissioner. Under current legislation, a small business may complain only about a large business. As such, it would not be appropriate to reference the Small Business Commissioner in this context; it is a slightly different type of system.

The noble Lord, Lord Mendelsohn, has also tabled Amendment 356A, which would place a duty on contracting authorities to report payment performance under regulations made under Section 3 of the Small Business, Enterprise and Employment Act 2015. These regulations currently place a duty on the UK's largest companies to report on a half-yearly basis on their payment practices, policies and performance. We are thinking about what we can do to open up more contractual opportunities to SMEs and will come back to that on Report. We recognise the need for alignment with the private sector so that we can have a bit more comparison of performance.

However, we do not, for example, want to constrain the Government in the future from pursuing the reporting of higher payment standards for the public sector should we wish to do that, nor can we add new requirements to the private sector without some form of consultation, especially at this difficult time. I am happy to look at the possibilities on publishing payment performance information for private companies alongside those in the public sector and at trying to make the results more easily comparable. It may take a little time, but I hope that noble Lords will find that assurance helpful. We will see what we can do.

Turning to Amendment 361A, tabled by the noble Lord, Lord Aberdare, this amendment would enable contracting authorities to pay subcontractors in their supply chain directly where a prime contractor does not pay within agreed terms. The contracting authority would then be able to reclaim the outstanding amounts from the prime contractor, either by discounting the sum owed or by reclaiming the money as a debt. This amendment would, of course, utilise public money as a method of resolving such disputes. Where insufficient money remained, this would introduce risk and liquidity pressure to public sector accounts, with financial implications that are extremely difficult to countenance, especially in current circumstances.

The noble Lord, Lord Aberdare, asked whether we could introduce the "step-in" right, as suggested by Amendment 361A, as a right rather than an obligation. This could lead to confusion for contracting authorities about when they should step in. It would also expose them to unnecessary challenge when they decided not to step in. However, suppliers in public sector supply chains can, as we have noted, use the Public Procurement Review Service to help unlock late payments where existing contractual routes fail. Further, there are some other mechanisms available, for example, project bank accounts, which may work in some cases and allow protected sums to be distributed to those in the supply chain.

Turning to contract modifications, my noble friend Lord Lansley has tabled Amendment 364 to substitute a 10% term threshold with a threshold of one-sixth of the contract term. Noble Lords will wish to note that the Bill does not say that contracting authorities cannot extend a contract's duration by more than 10%. They can do so, but they must use other grounds within the contract modification rules. They are set out in Clause 69 and Schedule 8. These other grounds, in the majority of cases, will oblige them to publish a contract change notice, which will set out why they are making that modification.

We do not think that contracting authorities should be given greater leeway by increasing the 10% to one-sixth. Under the current regime, we have seen contracting authorities extend contracts by substantial periods time and time again without the public or the market being aware of the situation and therefore able to challenge it. We hope Clause 69(3)(a) will change that behaviour.

Amendment 370ZA, tabled by my noble friend Lady McIntosh, the noble Baroness, Lady Hayman, and the noble Lord, Lord Coaker, proposes that we insert a provision in the Bill that contract reviews should be held by both parties every three months. The Procurement Bill covers a huge variety of contracts—that is one of the challenges—and suppliers and contracting authorities are in frequent contact. A legal obligation that contract reviews must be held every three months is overly prescriptive. Contracts are kept under review by contracting authorities and suppliers as appropriate. One size does not fit all.

I see from Amendment 370B that the proposition that contract reviews should be held every three months has arisen from current concerns over inflation. Prices may be index-linked, and contracts may contain review clauses related to inflation. In those circumstances, modifications under the ground of Schedule 8(1) are already permitted.

My noble friend Lady McIntosh raised an important point relating to the context of rising food prices, caused, ultimately, by the situation in Ukraine. Complex public contracts, including large outsourcing contracts which cover food provision for public bodies, generally do account for inflation. Obviously, coming from a farming and retail background, I understand some of the issues that my noble friend described. I particularly agree about the importance of SMEs, as we all say again and again, and trying to get them a bigger share of procurement. However, her approach is too prescriptive and could lead to yet more inflation, and would put costs on the public sector at a particularly difficult time.

6 pm

Contracts may also contain other relief mechanisms that can help address the impact of inflation. In addition, Clause 69(1)(c) permits a modification to be made if it is a "below-threshold modification"—that is to say, it does not increase the estimated value of a contract by more than 10% for goods or 15% for works.

Amendment 370B, if accepted, could be misinterpreted or even be open to abuse. The term "disproportionately affected" is imprecise. Moreover, contracting authorities should not be automatically expected to shoulder inflationary costs. Such costs would be borne ultimately by the taxpayer, so I am afraid that I must resist that amendment.

My noble friend Lord Lansley tabled Amendments 397 and 400 on the implied right to terminate public contracts. The implied term at Clause 72(2)(a) permits contracting authorities to terminate a contract in circumstances where they are required to because they have breached the provisions of the Act. This is necessary to ensure that contracting authorities can mitigate their liability and the cost of the breach to the taxpayer, and fix that breach of the rules.

[Baroness Neville-Rolfe]

We are very grateful for my noble friend Lord Lansley's other suggestion on force majeure, and recognise his experience in working with SMEs, but the effect of his amendments would be to insert the additional circumstances of force majeure into the list at Clause 72(2). The contracting authority would then have to pay the supplier

"such costs as have been necessarily incurred in relation to the contract up to the point of notification under subsection (4)."

Clause 72 is not intended to be a definitive list on contract termination. If referenced as a termination right, force majeure would need to be defined in the Bill, whereas we found that, in practice, parties agree what will constitute a force majeure event—I know this, having been involved in small government contracts—and negotiate clauses on the effect of the event, if it occurs, of an appropriate kind.

We would not want to mandate that a force majeure event always triggers an immediate right of termination or that contracting authorities must always bear the costs. Obviously, that would substantially increase the cost of public contracts to the taxpayer. Moreover, neither should suppliers always bear the costs, as this could lead to additional costs being priced in to deal with what may be an exceptional occurrence. So we feel that this is one for the terms and conditions rather than for the Bill, to answer the noble Lord's question.

My noble friend Lady Noakes also spoke to Amendment 486, tabled by my noble friend Lord Moylan to ensure that the treatment of intellectual property rights will not prevent the private sector spreading innovative solutions. They are right to raise the link between the intellectual property generated by public procurement and the opportunities for economic growth. However, I have been glad to discover that this is an area where the Government have carried out significant work to facilitate innovation.

In December 2021, they published *The Rose Book: Guidance on Knowledge Asset Management in Government*, which highlights the need for decisions on the ownership of intellectual property to be made on a case-by-case basis. Depending on the nature of the public contract, either the contracting authority, the supplier, or indeed both, might be best placed to exploit the intellectual property rights. This has been accompanied by the establishment of the Government Office for Technology Transfer within BEIS to provide specialist support within government. The Cabinet Office has this year updated its model services contracts, so there are now five different options on intellectual property rights.

This amendment suggests that the supplier is always best placed to maximise the public benefits of intellectual property rights. That is obviously not right, but we are making progress in this area, which I hope will satisfy my noble friend.

Baroness Noakes (Con): I feel obliged to pursue this issue just a little further. When I spoke to the amendment, I referenced the imbalance of power between contracting authorities and small and medium-sized enterprises, which was its focus. I understand the points that my noble friend is making about when there are parties on either side of the transaction with equal bargaining power, but it does not work like that when there is unequal bargaining power. I am not suggesting that Amendment 486 is a perfect answer to that, but I do not think my noble friend has addressed the point as it applies to SMEs. I know that is a theme that has run throughout our consideration of the Bill, but I want to record that I do not regard her response to my amendment as really getting to the heart of the problem.

Baroness Neville-Rolfe (Con): I thank my noble friend for her intervention. I agree that we need to try to get at the issue of the balance of power; indeed, we were discussing it at my briefing meeting. I think it may be worth having a further discussion with the Government Office for Technology Transfer, because it needs to understand the importance of these small companies to innovation and how the kinds of decisions that they make on rights and intellectual property can make an important difference. I am grateful to her for raising that further point.

Baroness McIntosh of Pickering (Con): I listened very carefully to what the Minister said to our noble friend and to her response to my two little amendments. I am struggling to understand how she believes that Amendments 370ZA and 370B would transfer cost to the public sector. I know from her time on the Back Benches how much my noble friend likes impact assessments, so I refer to page 44 of the impact assessment, which states strongly that this is to encourage SMEs. I hoped that I had made the case—as did a number of others, including my noble friend Lady Noakes—for how SMEs should be benefiting from this, but, in two specific areas that I set out, SMEs are actually being handicapped by the current provisions under the Bill.

Baroness Neville-Rolfe (Con): I will certainly look carefully at *Hansard*. I think my noble friend was basically talking about an inflation adjustment.

Baroness McIntosh of Pickering (Con): Five per cent, plus the three-month review.

Baroness Neville-Rolfe (Con): And a three-month review. The point about inflation is that if you build it in—this is a wider economic point—and then it goes up further, you can get an inflationary spiral. We have to try to find a way for people to come together and think about how we can best handle that, and I think the current system does that well. That is certainly my own experience, having been involved in procurement on both sides of the divide.

You can write in three-monthly reviews, but the difficulty is that this is an all-embracing Act and putting that into the Bill could lead to a lot of extra meetings and reviews that might not fit in with simplicity. But obviously this is Committee and we will be reflecting further on the right thing to do. I thank my noble friend for, as always, pursuing her point with such clarity and doggedness.

Finally, this is not in my script but I would like to confirm that I and the team are looking back at the undertakings made on earlier days in Committee to make sure that balls are not dropped. I confirm that we will be arranging meetings on the SME angle, even though I am not able to champion them. I have already had a round table with SMEs and the official

team to see what can be done. I do not want to overpromise, but we want to do our best. I respectfully request that the various non-government amendments be respectively withdrawn or not moved.

Lord Lansley (Con): Thank you. That was a long group so the reply was necessarily substantial, and we are most grateful for that. I was happy to have the confirmation that KPIs must be quantifiable. I am still slightly uncertain whether 10% works very easily—maybe it would have been easier to express it as one month in a year or something like that to deal with time—but still I am grateful.

If the question of force majeure is taken up through the general terms and conditions, I just ask that it requires the system, as it were, to say that we have standard terms and conditions and, as a result of some of the debates on the Bill, we also need to look at our general terms and conditions, and how things are to be expressed in future. As far as Amendment 268 is concerned, I was grateful for the Minister's response and I beg leave to withdraw the amendment.

Amendment 268 withdrawn.

Amendment 269 had been withdrawn from the Marshalled List.

Amendments 269A to 274 not moved.

Amendment 275 had been withdrawn from the Marshalled List.

Amendment 275A not moved.

Amendment 276 had been withdrawn from the Marshalled List.

Amendment 276ZA not moved.

Clause 50 agreed.

Amendment 276A not moved.

Clause 51: Contract details notices and publication of contracts

Amendments 277 to 287

Moved by ***Baroness Neville-Rolfe***

277: Clause 51, page 31, line 24, leave out "awarded under this Part"

278: Clause 51, page 31, line 33, leave out from beginning to "a"

279: Clause 51, page 31, line 34, after "authority" insert "that"

280: Clause 51, page 31, line 35, leave out ", the authority"

281: Clause 51, page 31, line 35, at end insert—

"(a) if the contract is a light touch contract, before the end of the period of 180 days beginning with the day on which the contract is entered into;

(b) otherwise, before the end of the period of 90 days beginning with the day on which the contract is entered into."

282: Clause 51, page 31, line 37, after "authority" insert "or a transferred Northern Ireland authority"

283: Clause 51, page 31, line 38, leave out "or a transferred Northern Ireland procurement arrangement"

284: Clause 51, page 31, line 40, at end insert "or a transferred Northern Ireland procurement arrangement"

285: Clause 51, page 31, line 41, leave out "or a Northern Ireland department"

286: Clause 51, page 31, line 42, leave out "in subsection (3)"

287: Clause 51, page 32, line 3, leave out "virtue of" and insert "reference to"

Amendments 277 to 287 agreed.

Clause 51, as amended, agreed.

Clause 52: Time limits

Amendments 288 and 289

Moved by ***Baroness Neville-Rolfe***

288: Clause 52, page 33, line 6, at end insert—

"The contract being awarded is being awarded by reference to suppliers' membership of a dynamic market	10 days"

289: Clause 52, page 33, line 24, leave out "tendering procedure other than an open" and insert "flexible"

Amendments 288 and 289 agreed.

Amendment 290 had been withdrawn from the Marshalled List.

Clause 52, as amended, agreed.

Clause 53 agreed.

Clause 54: Meaning of excluded and excludable supplier

Amendment 291

Moved by ***Baroness Neville-Rolfe***

291: Clause 54, page 34, line 2, leave out "supplier" and insert "person"

Amendment 291 agreed.

Amendments 292 and 293 not moved.

Amendment 294

Moved by ***Baroness Neville-Rolfe***

294: Clause 54, page 34, line 5, leave out second "supplier" and insert "person"

Amendment 294 agreed.

Amendment 295 had been withdrawn from the Marshalled List.

Amendment 296

Moved by ***Baroness Neville-Rolfe***

296: Clause 54, page 34, line 10, leave out "supplier" and insert "person"

Amendment 296 agreed.

Amendments 297 and 298 not moved.

Amendment 299

Moved by ***Baroness Neville-Rolfe***

299: Clause 54, page 34, line 13, leave out second "supplier" and insert "person"

Amendment 299 agreed.

Amendments 300 and 301 not moved.

Amendment 302

Moved by ***Baroness Neville-Rolfe***

302: Clause 54, page 34, line 19, leave out first "section" and insert "Act"

Amendment 302 agreed.

Clause 54, as amended, agreed.

6.15 pm

Schedule 6: Mandatory exclusion grounds

Amendments 303 to 305

Moved by ***Baroness Neville-Rolfe***

303: Schedule 6, page 91, line 14, at end insert ", other than an offence under section 54 of that Act"

304: Schedule 6, page 91, line 17, at end insert—

"4A_ An offence at common law of conspiracy to defraud."

305: Schedule 6, page 91, line 34, at end insert—

"8A_ An offence under Article 172 or 172A of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) (taking vehicle without authority etc)."

Amendments 303 to 305 agreed.

Amendments 306 to 308 not moved.

Amendment 309

Moved by ***Baroness Neville-Rolfe***

309: Schedule 6, page 93, line 1, leave out paragraphs 2 and 29 and insert—

"28(1) An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.

(2) In this paragraph,"tax" means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under—

(a) Part 1 of the Social Security Contributions and Benefits Act 1992, or

(b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992."

Amendment 309 agreed.

Amendment 310 not moved.

Amendments 311 to 314

Moved by ***Baroness Neville-Rolfe***

311: Schedule 6, page 94, line 15, leave out "a tax arrangement that is abusive" and insert "tax arrangements that are abusive (within the meaning given in section 207 of the Finance Act 2013)"

312: Schedule 6, page 94, line 17, leave out from beginning to "(countering" in line 18 and insert "adjustments have accordingly been made under section 209 of that Act"

313: Schedule 6, page 94, leave out line 21 and insert "Adjustments are not to be treated as having been made until they"

314: Schedule 6, page 94, line 30, leave out from "of" to end of line 32 and insert "notifiable tax arrangements they have entered into.

(2) In this paragraph—

"defeat" means that—

(a) Condition A in paragraph 5 of Schedule 16 to the Finance (No. 2) Act 2017, or

(b) Condition B in paragraph 6 of that Schedule,

is met in respect of the arrangements (where "T" in those paragraphs is taken to mean the supplier or connected person entering into the arrangements);

"notifiable tax arrangements" means tax arrangements in respect of which a reference number—

(a) has been notified to the supplier or connected person under section 311A, 312 or 312ZA of the Finance Act 2004 (disclosure of tax avoidance schemes) or paragraph 22A, 23 or 23A of Schedule 17 to the Finance (No. 2) Act 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes), and

(b) has not been withdrawn;

"tax arrangements" has the meaning given in paragraph 3(1) of Schedule 16 to the Finance (No. 2) Act 2017."

Amendments 311 to 314 agreed.

Amendment 315 not moved.

Amendment 316

Moved by ***Baroness Neville-Rolfe***

316: Schedule 6, page 95, line 1, leave out paragraph (b)

Amendment 316 agreed.

Amendments 317 and 318 not moved.

Schedule 6, as amended, agreed.

Schedule 7: Discretionary exclusion grounds

Amendments 319 and 320 not moved.

Amendment 321 had been withdrawn from the Marshalled List.

Amendments 322 and 323 not moved.

Amendments 324 and 325

Moved by ***Baroness Neville-Rolfe***

324: Schedule 7, page 99, line 38, leave out "the supplier or connected person is"

325: Schedule 7, page 99, line 40, at beginning insert "the supplier or connected person is"

Amendments 324 and 325 agreed.

Amendments 326 to 332 not moved.

Schedule 7, as amended, agreed.

Clause 55: Considering whether a supplier is excluded or excludable

Amendment 333 not moved.

Amendment 334

Moved by ***Baroness Neville-Rolfe***

334: Clause 55, page 34, line 27, leave out second "supplier" and insert "person"

Amendment 334 agreed.

Amendment 335 not moved.

Amendment 336

Moved by ***Baroness Neville-Rolfe***

336: Clause 55, page 34, line 30, leave out second "supplier" and insert "person"

Amendment 336 agreed.

Amendments 337 and 338 not moved.

Amendment 339

Moved by ***Baroness Neville-Rolfe***

339: Clause 55, page 35, line 5, leave out paragraph (b)

Amendment 339 agreed.

Amendment 340 not moved.

Clause 55, as amended, agreed.

Clause 56: Notification of exclusion of supplier

Amendments 341 to 349

Moved by ***Baroness Neville-Rolfe***

341: Clause 56, page 35, line 15, leave out "procurement" and insert "competitive tendering"

342: Clause 56, page 35, line 17, leave out first "supplier" and insert "person"

343: Clause 56, page 35, line 17, leave out second "supplier"

344: Clause 56, page 35, line 19, leave out "supplier" and insert "person"

345: Clause 56, page 35, line 20, at end insert—

"(iv) has rejected an application from a supplier for membership of a dynamic market on the basis that the supplier is an excluded or excludable supplier (see section 36), or

(v) has removed an excluded or excludable supplier from a dynamic market under section 37, and"

346: Clause 56, page 35, line 25, leave out "or replaced" and insert ", replaced or removed"

347: Clause 56, page 35, line 25, leave out "exclusion" and insert "fact"

348: Clause 56, page 35, line 31, leave out "or exclusion" and insert ", exclusion, replacement or removal"

349: Clause 56, page 36, line 2, at end insert—

"(aa) if the contracting authority is a transferred Northern Ireland authority, the Northern Ireland department that the contracting authority considers it most appropriate to notify;"

Amendments 341 to 349 agreed.

Clause 56, as amended, agreed.

Clause 57: Investigations of supplier: exclusion grounds

Amendment 349A not moved.

Clause 57 agreed.

Clause 58 agreed.

Clause 59: Debarment list

Amendments 349B to 351 not moved.

Amendment 352

Moved by ***Baroness Neville-Rolfe***

352: Clause 59, page 38, line 34, leave out "a Northern Ireland department" and insert "the Northern Ireland department that the Minister considers most appropriate"

Amendment 352 agreed.

Clause 59, as amended, agreed.

Clauses 60 and 61 agreed.

Amendments 353 to 353AB not moved.

Clause 62 agreed.

Clause 63: Implied payment terms in public contracts

Amendment 353B not moved.

Amendment 354

Moved by ***Baroness Neville-Rolfe***

354: Clause 63, page 41, line 13, at end insert—

"(b) a reference to a contracting authority receiving an invoice includes a reference to an invoice being delivered to an address specified in the contract for the purpose."

Amendment 354 agreed.

Clause 63, as amended, agreed.

Clause 64: Payments compliance notices

Amendments 355 and 356

Moved by ***Baroness Neville-Rolfe***

355: Clause 64, page 41, line 30, leave out "An appropriate authority" and insert "A Minister of the Crown or the Welsh Ministers"

356: Clause 64, page 41, line 36, after "to" insert "a transferred Northern Ireland authority or"

Amendments 355 and 356 agreed.

Amendment 356A not moved.

Clause 64, as amended, agreed.

Clause 65: Information about payments under public contracts

Amendments 357 and 358

Moved by ***Baroness Neville-Rolfe***

357: Clause 65, page 42, line 1, leave out "An appropriate authority" and insert "A Minister of the Crown or the Welsh Ministers"

358: Clause 65, page 42, line 6, after "contract" insert "awarded by a private utility"

Amendments 357 and 358 agreed.

Amendment 359 not moved.

Clause 65, as amended, agreed.

Clause 66: Assessment of contract performance

Amendment 360

Moved by ***Baroness Neville-Rolfe***

360: Clause 66, page 42, line 32, leave out "remedy the breach or"

Amendment 360 agreed.

Clause 66, as amended, agreed.

Clause 67 agreed.

Clause 68: Implied payment terms in sub-contracts

Amendment 361

Moved by ***Baroness Neville-Rolfe***

361: Clause 68, page 43, line 37, leave out "subsection (8)(a) of section 63" and insert "section 63(8)(a) (electronic invoices)"

Amendment 361 agreed.

Amendment 361A not moved.

Amendments 362 and 363

Moved by ***Baroness Neville-Rolfe***

362: Clause 68, page 44, line 2, leave out "the whole" and insert "all"

363: Clause 68, page 44, line 5, leave out "the whole" and insert "all"

Amendments 362 and 363 agreed.

Clause 68, as amended, agreed.

Clause 69: Modifying a public contract

Amendment 364 not moved.

Amendments 365 to 370

Moved by ***Baroness Neville-Rolfe***

365: Clause 69, page 44, line 25, leave out from beginning to "materially"

366: Clause 69, page 44, line 25, leave out "its scope" and insert "the scope of the contract"

367: Clause 69, page 44, line 36, after "not" insert "materially"

368: Clause 69, page 44, line 37, at end insert—

"(4A) In this section, a reference to a modification changing the scope of a contract is a reference to a modification providing for the supply of goods, services or works of a kind not already provided for in the contract."

369: Clause 69, page 45, line 1, leave out from "been" to end of line 2 and insert "permitted under subsection (1)"

370: Clause 69, page 45, line 7, leave out from "to" to end of line 8 and insert "a contract to modify a contract where the modification is made in accordance with this section"

Amendments 365 to 370 agreed.

Amendment 370ZA not moved.

Clause 69, as amended, agreed.

Amendment 370A not moved.

Schedule 8: Permitted contract modifications

Amendment 370B not moved.

Amendment 371

Moved by ***Baroness Neville-Rolfe***

371: Schedule 8, page 104, line 36, after "assignment" insert "(or in Scotland, assignation)"

Amendment 371 agreed.

Schedule 8, as amended, agreed.

Clause 70: Contract change notices and publication of modifications

Amendments 372 to 378

Moved by ***Baroness Neville-Rolfe***

372: Clause 70, page 45, line 19, at end insert—

"unless the modification is a permitted modification under paragraph 9 of Schedule 8 (novation or assignment on corporate restructuring)."

373: Clause 70, page 45, line 23, leave out "to a public contract that is"

374: Clause 70, page 45, line 26, leave out "another modification made to" and insert "an earlier modification of"

375: Clause 70, page 45, line 31, at end insert "or,

(b) the modification."

376: Clause 70, page 45, line 35, leave out "was" and insert—

"(za) is a defence and security contract,

(zb) is a light touch contract,

(zc) was awarded by a private utility,"

377: Clause 70, page 45, line 36, at beginning insert "was"

378: Clause 70, page 45, line 36, after "authority" insert "or a transferred Northern Ireland authority"

Amendments 372 to 378 agreed.

Amendment 379 not moved.

Amendments 380 and 381

Moved by ***Baroness Neville-Rolfe***

380: Clause 70, page 45, line 37, leave out "or a transferred Northern Ireland procurement arrangement"

381: Clause 70, page 45, line 39, at beginning insert "was"

Amendments 380 and 381 agreed.

Amendment 382 not moved.

Amendments 383 to 387

Moved by ***Baroness Neville-Rolfe***

383: Clause 70, page 45, line 39, at end insert "or a transferred Northern Ireland procurement arrangement"

384: Clause 70, page 45, line 41, leave out "was" and insert—

"(za) is a defence and security contract,

(zb) is a light touch contract,

(zc) was awarded by a private utility,"

385: Clause 70, page 45, line 42, at beginning insert "was"

386: Clause 70, page 45, line 43, after "awarded" insert "as part of a procurement"

387: Clause 70, page 46, line 1, at beginning insert "was"

Amendments 383 to 387 agreed.

Amendment 388 not moved.

Amendments 389 to 392

Moved by ***Baroness Neville-Rolfe***

389: Clause 70, page 46, line 3, leave out subsection (10)

390: Clause 70, page 46, line 8, leave out paragraph (a)

391: Clause 70, page 46, line 9, leave out "in subsection (7)"

392: Clause 70, page 46, line 9, at end insert—

"(12) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the percentage thresholds."

Amendments 389 to 392 agreed.

Clause 70, as amended, agreed.

Amendments 392A and 392B

Moved by ***Baroness Neville-Rolfe***

392A: After Clause 70, divide Clause 70 into two clauses, the first (Contract change notices) to consist of subsections (1) to (5) and (9) and (12) and the second (Publication of modifications) to consist of subsections (6) to (8) and (11)

392B: After Clause 70, transpose the new Clause (Publication of modifications) to after Clause 71

Amendments 392A and 392B agreed.

Clause 71: Voluntary standstill period on the modification of contracts

Amendments 393 and 394

Moved by ***Baroness Neville-Rolfe***

393: Clause 71, page 46, line 12, after "period" insert "("a voluntary standstill period")"

394: Clause 71, page 46, line 13, at end insert—

"(2) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract change notice is published."

Amendments 393 and 394 agreed.

Clause 71, as amended, agreed.

Clause 72: Implied right to terminate public contracts

Amendments 395 and 396

Moved by ***Baroness Neville-Rolfe***

395: Clause 72, page 46, line 24, leave out "supplier" and insert "person"

396: Clause 72, page 46, line 25, leave out second "supplier" and insert "person"

Amendments 395 and 396 agreed.

Amendment 397 not moved.

Amendments 398 and 399

Moved by ***Baroness Neville-Rolfe***

398: Clause 72, page 46, line 30, leave out " 28(1)" and insert " 28(A1)(a)"

399: Clause 72, page 46, line 32, leave out paragraph (b) and insert—

"(b) subsection (3A), (3B) or (3C) applies.

(3A) This subsection applies if, before awarding the public contract, the contracting authority did not know the supplier intended to sub-contract the performance of all or part of the contract.

(3B) This subsection applies if—

(a) the sub-contractor is an excluded or excludable supplier under section 54(1)(b) or (2)(b) (the debarment list), and

(b) before awarding the contract the contracting authority—

(i) sought to determine whether that was the case in accordance with section 28(A1)(b), but

(ii) did not know that it was.

(3C) This subsection applies if—

(a) the sub-contractor is an excluded or excludable supplier under section 54(1)(a) or (2)(a),

(b) the contracting authority requested information about the sub- contractor under section 28(1), and

(c) before awarding the contract, the contracting authority did not know that the sub-contractor was an excluded or excludable supplier."

Amendments 398 and 399 agreed.

Amendment 400 not moved.

Amendment 401

Moved by ***Baroness Neville-Rolfe***

401: Clause 72, page 47, line 22, leave out "8" and insert "9"

Amendment 401 agreed.

Clause 72, as amended, agreed.

Amendment 402

Moved by ***Baroness Neville-Rolfe***

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

"Terminating public contracts: national security

A contracting authority may not terminate a contract by reference to the implied term in section 72 on the basis of the discretionary exclusion ground in paragraph 15 of Schedule 7 (threat to national security) unless—

(a) the authority has notified a Minister of the Crown of its intention, and

(b) the Minister considers that—

(i) the supplier or sub-contractor is an excludable supplier by reference to paragraph 15 of Schedule 7 , and

(ii) the contract should be terminated."

Amendment 402 agreed.

Clause 73: Contract termination notices

Amendment 403

Moved by ***Baroness Neville-Rolfe***

403: Clause 73, page 47, line 37, at end insert ", or

(b) in relation to a contract awarded under section 40 by reference to paragraph 16 of Schedule 5 (direct award: user choice contracts)."

Amendment 403 agreed.

Clause 73, as amended, agreed.

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): Finally, we come to Amendment 404.

Noble Lords: Well done!

6.30 pm

Clause 74: Conflicts of interest: duty to identify

Amendment 404

Moved by ***Lord Scriven***

404: Clause 74, page 47, line 41, leave out "reasonable"

Member's explanatory statement

This amendment is intended to probe what actions a contracting authority must take about, and to what extent they must investigate, conflicts of interest and potential conflicts of interest.

Lord Scriven (LD): My Lords, I have never heard such a reception before speaking. I congratulate the Deputy Chairman of Committees on the professionalism with which she handled that. Many noble Lords will know that we sometimes get through less business in a dinner hour, so well done. On a serious note, when we canter through a Bill in that way on the seventh day in Committee, it shows the lack of scrutiny it is getting.

I speak on behalf of my noble friend Lord Wallace on Amendment 404, and in moving that amendment I will also speak to Amendments 407, 409, 410, 412, 413, 421, 422 and 423. This group deals with conflicts of interest in public procurement, and getting the process and the management of those conflicts correct is absolutely vital to upholding the public's trust in the use of their taxes when contracts are being laid. It has to be said that the new conflicts of interest provisions in Part 5 are a step forward. They impose some positive obligations on authorities to identify conflicts and give them a duty to mitigate them, including by conducting a conflict assessment. The provisions also ensure that conflicts can pertain to Ministers, not just officials taking procurement decisions. This is especially important given the issues with the VIP lane during the Covid procurement.

However, these new provisions do not go anywhere near as far as did the review by Sir Nigel Boardman, which the Government asked for and which was published in May 2021, in that they do not require a centralised register of conflicts that authorities can consult. Nor does the Bill contain sanctions for non-compliance with these measures. A central plank of the Boardman proposals, that suppliers should also be required to make conflict of interest declarations themselves, is also not included in the Bill. Boardman recommended that when there are direct awards with no competition, additional disclosure of conflicts at a more senior level should be required. Again, that is missing from the Bill.

The Boardman review gave 12 recommendations on conflicts of interest and bias. The amendments I referred to earlier try to put in the Bill the recommendations that the Boardman review gave. What is the point of doing the most detailed review asked for by government about conflicts of interest, based on recent history, if it is totally ignored when a Bill on procurement is written and when Part 5, on conflicts of interest, seems to ignore them altogether?

I will not go through all 12 recommendations, but some of them are quite important. Recommendation 18 says:

"Cabinet Office should strengthen its model for the management of actual and perceived conflicts of interest in procurements, following the 'identify, prevent, rectify' sequence."

That is completely missing from the Bill. The Minister may say that some guidance will come out on that from the Cabinet Office. The difference is that this is primary legislation. If an expert has recommended that this should be the prescribed way that the Government do things on procurement to improve it around conflicts of interest, why is the "identify, prevent, rectify" sequence not identified in the Bill?

Recommendation 20 indicates:

"Declarations of interests should be recorded and logged alongside the departmental gift register and, where appropriate, this and other, relevant information should be made available to those responsible for procurement and contract management."

I ask the Minister where, or if, a central register of conflicts of interest will be made available so that all public sector bodies that are procuring can have access to it. Remember, it is not just government departments at Whitehall that we are talking about: the Bill relates to all public sector bodies apart from the NHS which, even if it is procuring outside this, should have access to conflicts of interest on a central register.

The Boardman review also goes on to suggest the types of people who should be required to declare conflicts of interest; it goes much wider than the Bill. Recommendation 23 says:

"All guidance should make it clear that the requirement to declare and record actual or perceived conflicts of interest applies to all officials or those working on behalf of Cabinet Office equally, including civil servants, contractors, consultants, special advisers, and other political appointees."

Where do they sit in the Bill? It is not just individuals whose job it is to procure; there are others who will have potential conflicts of interest that need to be made public, and people need to be aware of them.

Recommendation 24 says:

"There should be a clear process for managing risk regarding conflicts of interest."

Where in the Bill are the process for managing conflicts of interest and the sanctions? What are the sanctions? Will they be left to each individual contracting body, or is there a central view of what the sanctions for dealing with conflicts of interest should be?

Recommendation 28 of the Boardman review says:

"Suppliers should be required to follow similar processes regarding declarations of actual or perceived conflicts of interest at the outset of a procurement, with appropriate sanctions for non-compliance."

Where in the Bill is such provision? How will the conflicts, or potential conflicts, of interest of those looking to supply be dealt with?

I wish to speak to other amendments in this group that talk about not just direct employees. For example, Amendment 423 says that people who have left public service but are then employed or subcontracted by or give paid advice to a company should not be allowed to do so for a period of six months. That is not just for government but for all public sector bodies. If that is not in the Bill, it will be left to individual councils or individual procurement bodies to make their own rules and there will not be a uniform approach across the public sector. Is it the Government's view that there should not be a uniform approach across the public sector for conflicts of interest for people who leave the public sector and are going to be employed, subcontracted or paid to give advice, or should it be down to each individual contracting authority outside of government departments to make up their own view? If so, how will suppliers be able to understand that individuals are complying, based on the complexity that will require?

Amendment 422 is a probing amendment to understand how the Government anticipate managing conflicts of interest and to make sure, again, that that is standardised across the public sector, not just what happens under the procurement rules for government departments.

There are a number of issues here, and I know that my noble friend Lady Brinton will raise the NHS and Palantir, where senior officials who were working on a multimillion-pound procurement for IT left the Department of Health and subsequently went to work for a company that was bidding for that particular contract.

These are serious amendments, which, as the new Prime Minister said on the steps of Downing Street yesterday, seek to rebuild trust. Rebuilding trust to ensure that taxpayers' money is used appropriately and no one is getting an unfair advantage means that we have to have a standardised system to deal with conflicts of interest across the public sector, for all bodies, and a system of managing those in a way that is appropriate. I hope that the Minister will be able to answer those questions. I beg to move Amendment 404.

Baroness Brinton (LD): My Lords, it is a pleasure to follow my noble friend Lord Scriven. I have signed Amendment 423, but I support all his amendments and those of my noble friend Lord Wallace of Saltaire in this group.

My noble friend Lord Scriven has set the scene for the reason why these amendments are needed, with the background of the Boardman recommendations. I want to give one example of how the culture has allowed one particular firm to get its feet very firmly under the NHS desk over the last three years—it is now a bit more than three years—and why, had stronger conflict of interest arrangements been in place that did not permit very senior staff to go and work for someone who is about to bid for NHS contracts, in line with these amendments, we would have benefited.

In April 2020, the United States tech firm Palantir was awarded a contract for an NHS Covid datastore under the Crown Commercial Services G-Cloud 11 Framework. This meant that it did not need to be publicly tendered or the results published. During 2020, campaigning organisations Foxglove and openDemocracy, as well as a number of parliamentarians in both Houses, including my noble friend Lord Scriven and me in the Lords, raised repeated concerns about the contract. It then emerged that part of the cost-effectiveness of this contract was that Palantir bid very low in return for access to every patient's medical and personal data held on the Covid datastore. No permission had been asked for or given by any individual about this highly confidential data, and of course it breached GDPR—that is not formally within the scope of this Bill.

The first contract, from April 2020, was for three months, and the value of that contract in return for the data was £1—not £1 million but £1. A further continuation contract for a further four months was for £1 million, and in December 2020, a two-year contract was issued, again under the same arrangements, for £23 million. As details started to emerge, and after the public outcry, the contract was ceased in April 2021—not least because Foxglove and openDemocracy had initiated a court case against the Department of Health and Social Care.

What has emerged is that, in 2019, a number of private meetings were held between senior NHS managers and senior managers of Palantir, described by the NHS managers as very positive—I bet they were. A November 2021 National Audit Office report on government contracts during the Covid pandemic found that a lack of transparency and adequate documentation was very evident.

During 2020, Palantir did not just have contracts with the NHS, it had contracts worth £46 million with UK government or public bodies. Palantir, which in

[Baroness Brinton]
conjunction with Cambridge Analytica provided data support for Donald Trump's 2016 presidential election campaign and for the Vote Leave campaign, is known for working below the radar. I am very mindful of the comments that the noble Lord, Lord Mendelsohn, made earlier about people gaming the system.

6.45 pm

After the Covid data scandal, Palantir undertook to be more transparent, so it was astonishing to read on 22 April this year in the *Health Service Journal* that Indra Joshi, the NHS head of artificial intelligence, left the NHS at the end of March and in mid-April joined Palantir. One week later, Harjeet Dhaliwal, the deputy director of NHS England data services, also left and also immediately joined Palantir. At that time the NHS had said publicly that it was about to tender for a £240 million NHS datastore contract. Six months on, that contract has grown to £360 million.

In September—just last month—NHS England's interim chief data and analytic officer, Ming Tang, admitted that NHS England had failed adequately to engage trusts in plans for this bid and said that procurement rules were partly to blame. When she was asked about Palantir and the possible conflict of interest, Ms Tang said:

"Palantir is one of the providers that I am sure will be bidding for this work".

The noble Lord, Lord Mendelsohn, referred in the previous group to organisations and people gaming the system. This one case has become very public due to campaigning organisations being very concerned about the spending of public money below the radar under special contract arrangements.

The Palantir saga—this is only part of its NHS contracts; there are many more—shows that without specific conflict of interest rules, which the NHS just does not have, firms will be able to get a head start. I suspect that across the UK there are many other public bodies or agencies that will be required to follow the rules being set out in the Bill which may have the same arrangements. Leaving it to good fortune, or hoping that people believe in the ethics of conflicts of interest, is not good enough. That is why I support the amendments. In particular, if the Government are not prepared to accept them, we really need to consider whether Clauses 74, 75 and 76 should stand part of the Bill.

Baroness Noakes (Con): My Lords, I have Amendments 415 and 419 in this group. In addition, I will speak to Amendment 417, which is in the name of my noble friend Lord Moylan but originated as an amendment tabled by my noble friend the Minister.

Amendments 415 and 419 are somewhat narrower than the other amendments in the group, which the noble Lord, Lord Scriven, has spoken to. They simply probe how the Bill has been drafted in relation to the term "conflict of interest". Under Clause 75 contracting authorities have a duty to mitigate conflicts of interest, and under Clause 76 they are required to carry out conflict assessments. In each case, the clauses define the term "conflict of interest" by reference to Clause 74. Under Clause 74(2), a conflict of interest exists if someone has a conflict of interest—hence the Bill basically says that the definition of a conflict of interest is that it is a conflict of interest, which is not entirely helpful.

While "interest" is defined in Clause 74, "conflict" is not. Clause 74 says who might have a conflict but not what a conflict actually is. Is it an objective test or can conflicts include subjective perception? Does it have to be an actual conflict or just a possible one? Clause 74 is no help whatever. Clauses 75 and 76 have tried to define "conflict of interest" by reference to Clause 74, but in doing so they have merely highlighted that there is no definition in that clause. I have not attempted to define the term myself as my amendments today are obviously probing ones, but some attention needs to be paid to the drafting.

Amendment 417 would delete Clause 76(4), which deals with conflict of interest assessments. Subsection (4) takes the contracting authorities into the realms of fantasy. They have to think about what they know that might cause "a reasonable person" wrongly to think that there are actual or potential conflicts of interest. It is often hard enough to identify the range of potential conflicts of interest; getting into the territory of trying to work out what a so-called "reasonable person" might wrongly think is a potential conflict of interest is mind-blowing.

Having worked out what this reasonable person wrongly thinks, the contracting authority must take steps to demonstrate that the imagined wrong thought by the imagined reasonable person does not in fact exist. This is beyond parody. For good measure, there is no definition of "reasonable person". We do not know whether this reasonable person is assumed to have any knowledge of public procurement or the workings of contracting authorities. Those of us who live in the world of politics know that otherwise reasonable people often believe extraordinary things and their capacity for thinking extraordinary things wrongly is infinite.

I very much look forward to hearing how my noble friend the Minister will defend subsection (4).

Baroness Bennett of Manor Castle (GP): My Lords, it is a great pleasure to follow the noble Baroness, Lady Noakes, and congratulate her on the first half of her contribution, which clearly identified a crucial problem that has undoubtedly been missed by numerous other eyes.

However, I entirely disagree with the second part of her contribution, which referred to Clause 76(4). I do not often find myself in the position of defending what is potentially the Government's position—perhaps I am about to pre-empt entirely what the Minister is about to say—but subsection (4) says:

"If a contracting authority is aware of circumstances".

It does not say, "We expect the contracting authority to be clairvoyant and know of every single circumstance where a reasonable person might". We all know this. Think about local councils. Having been a local journalist on another continent, I think of a case where a large city authority kept commissioning a certain architect to do a whole series of projects. That ended up raising considerable public concern. If that is happening,

noble Lords can see why it would make sense to pre-empt the explanation of why there is no conflict of interest and therefore no problem here. It is also worth pointing out that the amendment tabled by the noble Lord, Lord Moylan, said that this was a subjective judgment that would affect the letting of the contract. In fact, it would not; it just says that there must be details of the steps included. So I would defend Clause 76(4), if the Government feel that it needs to be defended.

Before I get to what I chiefly want to say, I want to apologise briefly. I attached my name to a number of amendments in the previous group; I meant to be here to speak to them but events unfortunately intervened and I could not be. I still stand behind them.

Coming to this group, I have attached my name to a number of amendments in various combinations of the names of the noble Lords, Lord Wallace of Saltaire and Lord Scriven, and the noble Baroness, Lady Brinton. As the noble Lord, Lord Scriven, clearly outlined—I will not go over the same ground—the Boardman review reported in May 2021, which has allowed plenty of time for this issue to be included in this Bill, despite all the hurry and rush that we know there has been around it. I would also point out something that the noble Lord did not say: when the Boardman report came out, the Government said, "We accept all of these recommendations". If the Government have accepted them, they should surely be incorporated in this Bill.

I want to pick up on one amendment that I did not sign, although I would have had I noticed it: Amendment 413 in the name of the noble Lord, Lord Wallace of Saltaire, that

"a donation or loan of more than £7,500 to any political party in a calendar year"

should be declared. We are talking about transparency and trust. This is obviously a practical, simple step that would not be very hard to implement and would be well worth while.

Amendments 421 to 423 are about preventing undue influence. Like the noble Baroness, Lady Brinton, I shall concentrate on Amendment 423. There is huge public concern about the revolving door, and I note that my honourable friend in the other place, Caroline Lucas, has done a huge amount of work, dating back in *Hansard* to at least 2013, on the revolving door in the defence and energy sectors.

That concern is not restricted to the Green Party. I was just looking through some of the reports. In 2011, Transparency International UK issued a press release headed

"Revolving door between Government and business is 'spinning out of control'".

If it was spinning out of control in 2011, we are at jet engine speeds by this stage. In 2016, the Centre for Crime and Justice Studies, in a report entitled *Redefining Corruption*, said that the public want a ban on the revolving door. This amendment provides much less than a ban; it is a modest six months, and I am not altogether sure that it should not be longer, but there is certainly great public concern about this. In 2017, the Committee on Standards in Public Life expressed concern about the revolving door.

The noble Baroness, Lady Brinton, set out one disturbing case. Here is another. In 2020, We Own It highlighted the interaction between Serco and NHS Test and Trace, and the degree to which there has been a revolving door between Serco and the senior Civil Service, to the point where a former head of public affairs of Serco became a Health Minister—I am not sure how many Health Ministers back, but at some point, anyway.

Finally, we should not forget the Greensill scandal. Just look at the mess that arose in part because of a revolving door—indeed, in some cases people were stuck in the same door at the same time, apparently representing both private interests and public, government interests. The Advisory Committee on Business Appointments noted that there were thousands of potential cases, but initially looked at only 108. There is lots of discussion about limits to that committee's power; it cannot possibly cover this issue. We must start from the other side of the contracts.

Lord Coaker (Lab): My Lords, I will be relatively brief, because I sense that some of the drive and energy has gone out of the Committee.

Noble Lords: Oh!

Lord Coaker (Lab): Noble Lords have more energy than me, then.

Having said that, we are discussing incredibly important issues. In his opening remarks about Part 5, the noble Lord, Lord Scriven, was absolutely right. To be fair to the Government, Part 5 is undoubtedly a step forward and an improvement. For that reason, they are to be commended.

The amendments before us seek to improve what the Government have done and take it forward, and to provide clarity where it is lacking, as the noble Baroness, Lady Noakes, has done. These amendments are particularly good in challenging the Government to go further in achieving their objectives, but also asking whether they are sure they have defined things as well as they might have done.

7 pm

I could not agree more with the noble Lord, Lord Scriven. This is one of the most important parts of the Procurement Bill. However procurement is organised, the public perception is frankly that, by and large, too many contracts are given to friends and acquaintances, and are not subject to proper process. Overall, I do not think that is true, at a local, regional or national level. It may or may not be true in every circumstance, but that is what large numbers of the public think. That is corrosive for our politics and corrosive for anything that we seek to do. That is why I say that this is one of the most important areas of the Bill and why many of the amendments, although clearly probing, are worth the Government's consideration. I know the Minister will look at them to see, if they cannot be accepted, whether improvements or changes can be made.

Sir Nigel Boardman's recommendations are really seeking to improve the Bill. If you read the whole report, he does not criticise the Government in great detail.

[Lord Coaker]
Actually, I would not agree with one or two of his conclusions, but I do agree with many of the recommendations that he made. The main amendment that I want to talk about concerns where those recommendations would be in the Bill.

There are a couple of amendments that I would like to highlight. Amendments 407 and 409, from the noble Lords, Lord Wallace and Lord Scriven, and the noble Baroness, Lady Bennett, broaden the range of people to whom conflicts of interest in procurement should be identified. Sir Nigel Boardman recommends that. Can the Minister say something about this range of people—whether the Government consider it broad enough, and what consideration they have given to Sir Nigel's recommendation that it ought to broader?

I agree, again, with the recommendation from the noble Baroness, Lady Noakes, which is really about clarity. What do the Government mean by a conflict of interest? What is included in a conflict of interest? Is it just financial or is it rewarding somebody because they are a relative—your son, your daughter, your friend's niece? Some people might say that it is obvious what it means, but clarity in that is quite important, so those amendments are important as well.

Amendment 421, again from the noble Lord, Lord Wallace, and the noble Baroness, Lady Bennett, ensures that there is no undue influence by former Ministers or senior civil servants on a procurement. It includes provisions to establish a register of interests for five years. The Government will say that there are rules to govern this and to prevent this happening. If there are rules, I am not sure that they are as effective as they should be—let us put it that way. Maybe there is an opportunity here for the Government to look at how things work and whether more can be done. As I say, this series of amendments allows the Government to make improvements or take other things forward.

Amendment 422, again from the noble Lords, Lord Wallace and Lord Scriven, and the noble Baroness, Lady Bennett, concerns the management of conflicts of interest. It is really important for the Government to spell out in their Procurement Bill how they will ensure that the conflict of interest regime that they are introducing in the Bill will work. Who will monitor it? How effectively will it be monitored? Will there be regular reports to do that? Some of that, such as regular reports, is probably a step too far, but we can see what Amendment 422 is getting at. It is saying that a whole series of recommendations is being made, all sorts of guidance will be published and various other points will be made—but what will actually be done? How will the Government ensure that it is enforced and effectively followed? Whose responsibility will it be? If the Government can answer some of that, it will help restore some public confidence. People want to know that the rules laid out are followed, and seen to be followed, which requires transparency and proper monitoring of the regulatory framework that is set up.

Part 5 is one of the most important parts of the Bill. If we can improve it and get it right, it will start to address the very real lack of public confidence in how public procurement operates at every level. Again, far too many people think that there is one rule for those who are in the system and one rule for people who are not. We have an opportunity to do something about it. With that, I hope the Minister will address some of these amendments and the points that have been made.

Baroness Neville-Rolfe (Con): My Lords, we come to Part 5 of the Bill on conflicts of interest, where the Government have sought to give greater clarity on these obligations, partly in the light of the difficult experience during Covid-19.

On the one hand, it is critical that the public and businesses trust our approach in procurement. They must trust that we are acting with integrity—an important word today—spending public money responsibly and that suppliers will be treated fairly. The Bill is a step forward, as the noble Lord, Lord Coaker, has been kind enough to acknowledge. On the other hand, we must not have a process which overall has a chilling effect because good honest suppliers who do not understand the arrangements are needlessly put off participating in procurement.

I turn to the various amendments tabled by the noble Lord, Lord Wallace, and spoken to with great passion by the noble Lord, Lord Scriven: Amendments 404, 407, 409, 410, 412, 413, 421, 422 and 423.

The Cabinet Office commissioned Sir Nigel Boardman to review communications procurement in the department. His first report was published in December 2020 and focused on Covid-19 and the difficulties then. A major public inquiry is now on the way, and of course we need to learn the lessons of that. However, his recommendations in that report have been substantially implemented by the department. For example, Procurement Policy Note 04/21 includes comprehensive guidance for authorities on how to ensure that conflicts are managed appropriately.

Before I comment on the individual amendments, I will try to reply to the comments made by the noble Lord, Lord Scriven. I emphasise that the Boardman recommendations have not been ignored. The Cabinet Office has implemented them in its commercial operations. It is not appropriate to put every recommendation into legislation, which of course applies for many different types of contracting authority and procurement—large and small. Our provisions allow for a framework in which authorities can implement best practice in accordance with their governance structures.

The noble Lord raised the subject of sanctions. Boardman's recommendation 26 highlighted that there needed to be sanctions and that these should be made clear in policy and guidance. The Procurement Bill is not the place to detail every possible sanction for every breach. Disciplinary action should be for each authority to enforce as well. If a supplier believes there to be a breach, the Bill provides appropriate remedies in Part 9.

The noble Lord, Lord Scriven, also questioned the recommendations on direct award. As mentioned on Monday, we have introduced a new requirement that contracting authorities must now publish a transparency note before they award a direct award contract. This obviously did not happen during Covid and is a major safeguard.

Amendment 404 would require contracting authorities to take all steps to identify conflicts. This risks creating an impossible threshold for authorities to meet. It could always be argued that more steps should have been taken.

On Amendments 407 and 409, we agree that the Bill's current scope of those "acting in relation" to the procurement is the right one. We have set out more detail on different groups of individuals involved in commercial guidance, as obviously there are broader groups now involved, in the Procurement Policy Note 04/21, which is the right place for that information. Amendment 410 would add obligations on suppliers relating to conflicts. Suppliers of course also have a role in mitigating conflicts, and this can be seen in Clause 75(2).

The Bill has generally sought to avoid regulatory obligations on suppliers, and such prescriptions are better placed in guidance than in legislation. This ensures that a proportionate approach can be applied by both smaller local councils and large central government departments. The purpose of Amendment 412 is to broaden the evaluation of conflicts. We do not think that this is needed, as the Bill already includes the principle of integrity, in Clause 11.

Amendment 413 requires that suppliers declare, during the procurement process, whether they have given a donation or loan of more than £7,500 to a political party in a calendar year. This was mentioned by the noble Baroness, Lady Bennett. UK electoral law already sets out a stringent regime of donation controls, which I am very familiar with. Donations from the same source that amount to over £7,500 in one calendar year are included. Donation reports are published online by the Electoral Commission for public scrutiny, providing an appropriate level of transparency. We do not see the need to add this to the Bill.

Amendments 421 and 423 concern former Ministers and civil servants. We certainly want to avoid the risks of individuals leaving the public sector and exploiting privileged access to contacts in government or sensitive information. To mitigate these risks, the *Civil Service Management Code* includes business appointment rules, which apply to all civil servants who intend to take up an appointment after leaving the Civil Service. They replace requirements on former civil servants which include standing aside from involvement in certain activities: for example, commercial dealings with their former department or involvement in particular areas of their new employer's business.

Baroness Brinton (LD): I am grateful to the Minister for allowing me to intervene. I absolutely accept the point about the change to civil servants' arrangements. The example that I gave is outside the Civil Service, as would be many other contracts issued through this Bill when it becomes an Act. Can she assure me that every member of staff in any body or agency would be covered in the same way?

Lord Scriven (LD): Before the Minister answers that, a number of times in my intervention I highlighted that there must be a standardisation not only for the Civil Service. Billions of pounds of procurement is carried out by non-central government departments. The rules need to be clear and uniform across the procurement process for the whole public sector, not just for government departments. That is a key issue and why many of these provisions need to be in the Bill, so that they are applicable to all public sector procurement bodies.

Baroness Neville-Rolfe (Con): I thank the noble Baroness, Lady Brinton, and the noble Lord, Lord Scriven. I will not continue with the Advisory Committee on Business Appointments, as it sounds as though the Committee is familiar with that. Having experienced it, I would say that it is quite effective.

Baroness Bennett of Manor Castle (GP): To take us back 30 seconds, to Amendment 413, about political donations over £7,500, I take the Minister's point that yes, that register exists, but this amendment requires the supplier to take reasonable steps to make the declaration. If the supplier is not required to do that in their bid application, does that mean that every commissioning authority must add to their list of things to do, "Go and check the donations register every quarter to see what is happening"? Would not structuring it in this way make it much easier for the commissioning body?

Baroness Neville-Rolfe (Con): I will start by trying to answer the point that the Civil Service has rules and this Bill is far wider in its application, which we accept. If we are too prescriptive in listing every relevant person in legislation, we may miss persons who should be considered. We think guidance provides a comprehensive list; Peers should see the guidance for commercial professionals in PPN 04/21, for example. As we have discussed in relation to other parts of the Bill, we have to have a combination of the Bill and guidance.

7.15 pm

Lord Scriven (LD): But this is the whole point of the Boardman review. By not having clear legislation and rules which are applicable across the public sector, we end up with things happening because they fall through the gaps. People in local government, for example, may not be aware of some of the guidance given to departments by central government, because it is not given to local government. It may be given to the ministry, but it does not necessarily filter down.

That is why we should have a standardised approach—which is not chilling. Then, regardless of whether you are in a local authority, the NHS, a central government body or an arm's-length body, these are the rules on dealing with conflicts of interest. All that these amendments seek to put on the face the Bill is consistency across procurement in the public sector.

Baroness Neville-Rolfe (Con): To come back to how you do it, you can do things in guidance as well as in the Bill. I take the noble Lord's point that consistency would be helpful, but I have explained that there can be difficulties. I will just add that transparency will be a fundamental pillar of the new regime, which I think we all support. Extended transparency requirements,

[Baroness Neville-Rolfe]
a single digital platform and so on will mean that decisions and processes can be much more closely monitored in future.

Baroness Noakes (Con): Could my noble friend help me on the legal effect of the Civil Service management rules? It is my understanding that they cannot actually be enforced in a court of law because it would act as a restraint on the individual's ability to earn a living. So the rules might exist and there might be advisory bodies et cetera, but it has always been my understanding that they cannot actually be enforced in a court of law. I am not trying to speak for the amendment, but the advantage of it is that it creates a statutory basis for it to have legal effect.

Baroness Brinton (LD): My Lords, if I might try to assist, employment tribunals in the private sector have taken the view that you can have fairly tight, limited terms. I am sure that one of the reasons my noble friends Lord Wallace and Lord Scriven chose six months was that that is the sort of term that is acceptable.

Baroness Neville-Rolfe (Con): I will look into the point about the Civil Service, but certainly people are very careful about the Civil Service rules when they leave. I say that as someone who left many years ago. The rules are observed by civil servants on the whole and we try to emphasise that. As has been said, what we are trying to do here is have a regime that covers not only the Civil Service but elsewhere. However, as always, my noble friend Lady Noakes has bowled a good ball, so I will look into that.

I turn now to Amendment 422, which proposes to introduce a power specifying how conflicts of interest are to be managed on a day-to-day basis. The Bill covers the plethora of organisations which make up the public sector and gives clear obligations on all contracting authorities to identify and mitigate their conflicts. It would not be wise to start dictating the implementation of such a process for each and every authority, so we do not think the power is right.

My noble friend Lady Noakes has spoken to Amendments 415 and 419 on the definition of a conflict of interest, and the noble Baroness, Lady Bennett, came in helpfully too. I recognise that Clause 74 does not explicitly define "conflict of interest" as it does "Minister", for example. However, Clause 74(2), combined with the definitions, does give conflict of interest a meaning, so it is correct to say elsewhere, as in Clause 75(5), that conflict of interest has the meaning given by Clause 74.

By inference, then, a conflict of interest is where a personal, professional or financial interest of a relevant person, as set out in Clause 74, could conflict with the integrity of the procurement. Essentially, this is where there is a risk that someone from the contracting authority, who is involved in the procurement, could benefit from taking a decision that might not be in the best interests of the contracting authority itself.

Finally, there is Amendment 417, which would remove Clause 76(4). I reassure my noble friend that the purpose of Clause 76(4) is to help, not hinder, contracting authorities. A perceived conflict, as provided for in Clause 76(4), is where a person might wrongly believe there to be a conflict when in fact no actual or potential conflict arises. We must obviously make sure that the public and suppliers are confident that the public sector is conducting its procurements in a fair and open way. We therefore need to consider what others may perceive about the procurement process. I have asked officials to look at the precise wording in Clause 76(4) to ensure that this is properly expressed and is not misleading. I hope that at this late hour my contributions have helped noble Lords to understand the balance that we are trying to draw and what we are trying to achieve. I respectfully request that the amendment be withdrawn.

Lord Scriven (LD): I thank the Minister. The Committee will have to give her 10 out of 10 for trying to explain, but we might not give as high a score on being convinced that she has alleviated some of our concerns.

Many noble Lords who have spoken on this group have tried to explain that the balance seems wrong. That is the issue in terms of conflicts of interest. The puzzling thing for all of us is that the Government agreed and accepted the Boardman recommendations, and some of them need to be in the Bill. Like other noble Lords, I accept that not all of them need to be, but some do.

These clauses have been written in haste. The noble Baroness, Lady Noakes, gave a definition. Clause 75(2) states:

> "Reasonable steps may include requiring a supplier to take reasonable steps."

So a reasonable step is a reasonable step. Unless the Government come back on Report with some serious amendments to this, I think we on these Benches will want to consult His Majesty's loyal Opposition to see how we can strengthen this. As other noble Lords have said, this is really important in terms of the public's perception and their trust that their taxes are being used in a way where no one gets an unfair advantage. That is what these amendments are about.

Baroness Neville-Rolfe (Con): Clearly, trust is important and we are trying to do the right thing here. We are also trying to have a balance so that the interest provisions do not have a chilling effect. I said that right at the beginning. In any event, we are planning to have further meetings between now and Report, and it is something we should add to the agenda.

Lord Scriven (LD): I hope the Minister has heard what I said; this is about getting the balance right. Certain things probably need to change and others might be referred to in guidance. Having said that, I beg leave to withdraw the amendment.

Amendment 404 withdrawn.

Amendments 405 to 410 not moved.

Clause 74 agreed.

Clause 75: Conflicts of interest: duty to mitigate

Amendments 411 to 413 not moved.

Amendment 414

Moved by ***Baroness Neville-Rolfe***

414: Clause 75, page 48, line 34, leave out from "must" to end of line 35 and insert "in relation to the award—

(a) treat the supplier as an excluded supplier for the purpose of—

(i) assessing tenders under section 18 (competitive award), or

(ii) awarding a contract under section 40 or 42 (direct award), and

(b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure."

Amendment 414 agreed.

Amendment 415 not moved.

Clause 75, as amended, agreed.

Clause 76: Conflicts assessments

Amendments 416 to 419 not moved.

Amendment 420 had been withdrawn from the Marshalled List.

Clause 76 agreed.

Amendments 421 to 423 not moved.

Clause 77: Regulated below-threshold contracts

Amendments 424 to 426 not moved.

Clause 77 agreed.

Clause 78: Regulated below-threshold contracts: procedure

Amendments 427 and 428

Moved by ***Baroness Neville-Rolfe***

427: Clause 78, page 50, line 20, leave out "Where" and insert "If"

428: Clause 78, page 50, line 33, leave out "An appropriate authority" and insert "A Minister of the Crown"

Amendments 427 and 428 agreed.

Clause 78, as amended, agreed.

Clause 79: Regulated below-threshold contracts: notices

Amendments 429 and 430

Moved by ***Baroness Neville-Rolfe***

429: Clause 79, page 51, line 5, leave out "where" and insert "if"

430: Clause 79, page 51, line 21, leave out "An appropriate authority" and insert "A Minister of the Crown or the Welsh Ministers"

Amendments 429 and 430 agreed.

Clause 79, as amended, agreed.

Clause 80: Regulated below-threshold contracts: implied payment terms

Amendment 430A not moved.

Amendments 431 to 434

Moved by ***Baroness Neville-Rolfe***

431: Clause 80, page 52, line 8, leave out "the whole" and insert "all"

432: Clause 80, page 52, line 13, leave out "the whole" and insert "all"

433: Clause 80, page 52, line 20, leave out "An appropriate authority" and insert "A Minister of the Crown or the Welsh Ministers"

434: Clause 80, page 52, line 24, at end insert—

"(b) a reference to a contracting authority receiving an invoice includes a reference to an invoice being delivered to an address specified in the contract for the purpose."

Amendments 431 to 434 agreed.

Clause 80, as amended, agreed.

Clause 81: Treaty state suppliers

Amendment 435 not moved.

Amendment 436

Moved by ***Lord Lansley***

436: Clause 81, page 52, line 40, at end insert—

"(3A) Regulations may only be made under this section in relation to international agreements which have been laid before Parliament under the Constitutional Reform and Governance Act 2010."

Lord Lansley (Con): The lead Amendment 436 in this small group is in my name. These three clauses are about putting into the Bill a list of who the treaty state suppliers are. They introduce Schedule 9, which sets out that long list of countries with which we have international trade agreements that give rise to access to procurement opportunities for them here and us there.

Turning to Amendment 436, I do not disagree with the Government wanting to use secondary legislation to implement international trade agreements' procurement requirements. I think that is a perfectly reasonable thing to do, because there will be a string of them, and amendments to them; changes to the general procurement agreement; and new agreements being entered into—all of which would lead to a tedious amount of primary legislation. Therefore, having secondary instruments is perfectly reasonable. As we will see later in the Bill, that the secondary instruments are subject to the affirmative procedure is also important.

We have to understand—I speak as a member of the International Agreements Committee—that there is a relationship between these processes and the scrutiny by Parliament. Essentially, treaties are laid under the Constitutional Reform and Governance Act. We then have a period of time in which to report

[Lord Lansley]
to the House. I think our normal expectation is that the House would have an opportunity to look at any issues raised by the International Agreements Committee, in our case, either for information or for debate, before the point at which it is likely to have to decide whether there would be any reason to object to a draft of a statutory instrument of this kind. That would not be the case if the relevant agreement were not laid under CRaG. Noble Lords might say, "Surely they all are", and indeed the reply from the Minister might be that they all will be. That would be a very useful thing for the Minister to say—I am not trying to lead the witness in advance—because they are not always.

7.30 pm

I have raised the amendment for two reasons. The first is the trade and co-operation agreement, which was not laid under CRaG because CRaG was disapplied by the relevant legislation, so the scrutiny that might have been applied to it was not. There was no value in that process, frankly, because the European Parliament spent ages looking at it anyway and we could have looked at it.

The second is that the International Agreements Committee is concerned by the increasing use of memoranda of understanding. That has been done in relation to the Rwanda agreement—I will not go on about that. We are looking at making sure that MoUs are used only where they should be. I do not think it likely that an agreement of this kind, which is intended to be binding in international law, would not be laid under CRaG. Memoranda of understanding can bypass CRaG because they are not binding in international law, and an agreement of this kind that was not binding in international law would be a very unusual instrument, so let us hope that is not the case.

This amendment is to get confirmation from the Minister that all such agreements and all such additions to Schedule 9 would be in relation to international agreements laid before Parliament under CRaG. I beg to move.

Lord Purvis of Tweed (LD): My Lords, I support the noble Lord's endeavours. He and I have debated with Ministers on many occasions the interaction between the CRaG process, our international negotiations and the regrettable times when there has been, to some extent, circumvention of that approach. Therefore, I am glad he has put forward his amendment to seek clarification, as he outlined.

I have Amendment 441 in this group, which is a probing amendment to test a little further the Government's thinking about the interaction with treaty state suppliers. It is my understanding that the countries in the schedule are only those with which we have an agreement where there is a procurement chapter or some procurement elements. It has not entirely been spelt out; I will be grateful if the Minister can confirm that this is the case.

When I looked through those countries, I noticed that there is not a single country from Africa in any of these arrangements. It may be that none of the EPAs we have rolled over have procurement chapters. The noble Lord, Lord Lansley, asked a question, and I ask the Minister whether that is the case. For example, in the SADC agreement, we have a chapter for co-operation which may lead to formal procurement agreements. I will be grateful if the Minister can simply clarify the reasons why those countries are in Schedule 9 and others were left out. It may lead to a couple of jarring interactions on the approach, but I am sure the Minister will be able to clarify that point.

My second question relates to our debates on the interaction between the UK system now, including guidance, and treaty state supplying nations. In a debate on Monday, I asked questions relating to exclusions. For example, on human trafficking and slave labour, why is it only a discretionary ground if a supplier would have met a threshold of having a prevention order, whereas if they had met the threshold of a conviction, it would be a mandatory exclusion ground? We in the All-Party Group on Human Trafficking and Modern Slavey have lobbied hard to ensure that, where there are serious allegations of modern slavery, forced labour or human trafficking, there are mechanisms that UK purchasing bodies and supply chains can automatically trigger. This could bring in some grey areas. I do not believe that is the Government's intention, but it could be an unintended consequence, especially when it comes to very large frameworks and supply chains within those countries.

I will give an example regarding one of the countries in this list, Colombia. We have debated the human rights situation in Colombia with regard to the agreement we have signed. The EU paused the agreement, but the UK did not. There are very few mechanisms in this Bill where we can use the rest of the text of the Colombia agreement on human rights as a triggering mechanism when we procure from organisations or state enterprises in Colombia.

This is just my ignorance, so the Minister might be able to clarify this: are state-owned enterprises in treaty state countries treated the same as private sector companies? I assume they would be, but it opens up a different area of concern for me.

The second linked area is on human rights elements. We have an agreement, and are looking for future agreements, with Israel. The Minister will know that, under the European agreement that we have rolled over, there had been a clear dividing line when it came to the illegal occupation of Palestine. As I understand the Bill, when it comes to technology companies or other companies, it will be very hard for contracting bodies in the UK to consider whether services provided will meet the equivalent criteria for goods imports for those within the Occupied Territories. I would be happy if the Minister would write to me on that specifically, rather than give me a response at this moment.

There is a wider concern regarding this Bill when it comes to how a contracting authority would consider fair competition in procurement. On the Australia agreement, we debated whether produce that came from Australia that was manufactured or reared in different ways and on industrial scales provided unfair competition for UK suppliers. Australia also uses

pesticides that are banned in the UK. There is an interesting clause in the Australia agreement that allows for those contracting bodies to

"take into account environmental, social and labour considerations throughout the procurement procedure".

My amendment lifts text from the Australia agreement and suggests that this should be uniform across all agreements, if that is what the Government consider a gold-standard agreement, as they told us it was. The Australia agreement is broadly in line with what we inherited in the European directive, which had the requirement to take into account social criteria and environmental and labour factors. We have adopted that for the TCA, but it is absent for other treaty state suppliers.

For example, our agreement with Japan has no social or labour considerations in the procurement chapter in Article 10.9. I do not know why—that is a separate issue; we have debated the Japan agreement—but I have not been able to find any consistency in any of the treaty state suppliers. I understand that this Bill will then provide that consistency, and it will either be above or below treaty obligations, which I find curious. For example, unless my amendment is accepted by the Government and the Bill is changed, our legal requirements will be less than our treaty obligations in our Australia agreement. I do not know how that is going to operate when it comes to legal challenges.

It is also potentially the case that there will be inconsistency in application. I simply do not know how contracting bodies are going to navigate their way around this, especially as the Minister says so much is going to rely on guidance. In many of the areas, when it comes to the previous group that we were debating on conflict of interest and on other requirements in the Bill, a contracting authority will have to satisfy itself that the treaty supplier meets all of the criteria in this Bill. I do not know how it will do that when it comes to taking into consideration the other ethical factors or conflicts of interest—what are they going to ask a treaty supplier from Colombia, for example, unless there is some stronger mechanism?

The Minister might also help me with something that has been puzzling me. I do not know why, when it comes to operating no discrimination in relation to treaty state suppliers, that does not apply to Scotland. For Scotland, the Bill provides only that there "may" be regulations which mean that there cannot be discrimination. With the Government's amendment requiring consistency with the United Kingdom Internal Market Act, which means that there cannot be any internal discrimination, I do not how that is going to interact. The Bill currently allows Scottish Ministers, for example, to say that they will be able to discriminate against certain treaty state suppliers on the basis, perhaps, of the overall human rights record of that treaty state—of which Colombia or Israel may be an example. I do not know, so I am hoping that the Minister might be able to help me with that.

Finally, I am not sure how investigations will be carried out when it comes to treaty state suppliers. Of all the areas we discussed previously regarding the grounds for the investigations by the PRU, which the Minister said will be a non-statutory element that will pursue these, I do not know what powers the PRU will have to secure information from treaty state suppliers. There is no mechanism under this Bill, and unless the provision of information is provided for, as happened in the Australia agreement, I do not know how the PRU will get that information. On all those areas, I hope the Minister will be able to reassure me, because at the moment I am fearful that there is a rather high level of opaqueness.

Baroness McIntosh of Pickering (Con): My Lords, I will speak to Amendment 443A, in my name, to Clause 83. The amendment is, very simply, to leave out

"A Minister of the Crown",

and its purpose is to remove the power from Ministers of the Crown to make regulations under Clause 83. It may be the case, because this relates especially to the situation in Scotland, that my noble friend the Minister is not able to reply this evening, so I would be very grateful if she could write to me, and I can then share that with the Law Society of Scotland, which has raised this matter with me.

7.45 pm

The reason for tabling the amendment is that Clause 83, as drafted, provides a power for a Minister of the Crown or the Scottish Ministers to make regulations

"for the purpose of ensuring that treaty state suppliers are not discriminated against in the carrying out of devolved procurements."

In the view of the Law Society, under paragraph 7(1) of Schedule 5 to the Scotland Act 1998, international relations are a reserved matter. However, paragraph 7(2) makes clear that observing and implementing international obligations are not reserved matters. The purpose of this amendment is to clarify matters for our better understanding of how the provision under the Procurement Bill before us this evening sits with the Scotland Act 1998—on which I think I made my maiden speech the other place, so it has always been a matter close to my heart.

Removing the provision, as I have tabled in the amendment, under Clause 83(1) for

"A Minister of the Crown"

to make such regulations ensures compliance with the provisions of the Scotland Act. I hope that my noble friend will be able to clarify the situation, if not this evening then in writing.

Baroness Bennett of Manor Castle (GP): My Lords, being aware of the hour, I will be extremely brief, but I just want to express support particularly for Amendment 441, in the name of the noble Lord, Lord Purvis. I think we have to look at this in the context of, as the Committee may be aware, the current movement in relation to the Energy Charter Treaty and the way in which increasing numbers of states—most recently France but also the Netherlands, Spain, Poland and Italy—have found that this treaty that they entered into years ago has really restricted their ability to act on the kind of environmental, social and labour matters identified here. It is really important that we do not bring in new laws that create further restrictions.

[Baroness Bennett of Manor Castle]

On the amendment from the noble Lord, Lord Lansley, there has been lots of criticism of the CRaG process and that it was essentially designed for long ago when trade treaties were something very different from what they are today. Just to illustrate that point, this morning I was with the Commonwealth Parliamentary Association for a visit of Canadian lawmakers. We learnt then, very interestingly, that Canada had wanted to include the issue of frozen pensions—the fact that the UK does not uprate its pensions for people in Canada while it does so for people in the United States. That is the kind of way in which trade deals can become far more complicated today. Unfortunately, on the account we heard this morning, the UK Government refused to countenance this being included in the trade deal, but it is really important that we see how broad trade deals can be today and that they have the maximum democratic scrutiny. That is what I think this amendment seeks to achieve.

Baroness Brinton (LD): My Lords, I will speak to Amendment 436, from the noble Lord, Lord Lansley, and to my noble friend's Amendment 441. It is a pleasure to follow both of them.

I want to talk a bit about some of the problems that we face inside our own government structures and Parliament. The noble Lord, Lord Lansley, and I spent quite a bit of time earlier this year on the Health and Care Act. Indeed, there was a section in there about healthcare arrangements with other countries. But that was the end of a story, and at each stage from 2014 onwards we kept finding people trying to relax the EU directive on procurement rules, which we had to abide by then, in order to enlarge the gift that we could give under a treaty. For health, this is an extremely important matter.

The EU procurement directive, which governs all public sector procurement in member states, defines fair process and standards to ensure that all businesses, including the NHS, have fair competition for contracts. It also, incidentally, prevents conflicts of interest through robust exclusion rounds and protects against creeping privatisation. It is that latter point that is really important in particular for the NHS, but there are other sectors of the public realm where that matters too.

On 18 November 2014, I asked the noble Lord, Lord Livingston of Parkhead, whether the EU procurement directive protected the NHS. He replied:

"Commissioner de Gucht has been very clear:

'Public services are always exempted ... The argument is abused in your country for political reasons.'"

The noble Lord, Lord Livingston, went on to say:

"That is pretty clear. The US has also made it entirely clear. Its chief negotiator—

this was in relation to TTIP—

said that it was not seeking for public services to be incorporated. No one on either side is seeking to have the NHS treated in a different way … trade agreements to date have always protected public services."—[*Official Report*, 18/11/14; col. 374.]

Again in 2018, I raised these points with the noble Lord, Lord O'Shaughnessy, in a debate and he said:

"I can tell them that we have implemented our obligations under the EU directive. The Government are absolutely committed that the NHS is, and always will be, a public service, free at the point of need"—

and the current Government repeat that point.

"It is not for sale to the private sector, whether overseas or here. That will be in our gift and we will not put that on the table for trade partners, whatever they say they want."—[*Official Report*, 29/3/18; col. 947.]

That was very helpful because it came in advance of President Trump's attempt to broaden what could be in a possible trade agreement, which would definitely have included health. Those of us who are concerned about these matters therefore relaxed a bit, until the Healthcare (International Arrangements) Bill came before your Lordships' House, which was intended to replicate the reciprocal healthcare arrangements that we used to have under EHIC. The problem was that it had a clause that also gave rights under international trade agreements for health services to be part of those trade agreements, with no reference back to Parliament. It was an expedited process but, during the passage of that Bill, we managed to revert to it being just about reciprocal healthcare arrangements in the European Economic Area and Switzerland.

However, this year, we went through exactly the same process again when the Health and Care Bill was introduced, as it contained a much looser series of clauses that would have allowed health to become part of trade agreements. During the Bill's passage, a cross-party group of Peers fought very hard and were really grateful that the Government recognised the risk that they were putting the NHS under and conceded. Now, the provisions under the Health and Care Act are the equivalent of EHIC but for other countries.

I wanted to raise these points because it seems to me that we must have Parliament's involvement before things are signed and sealed. We also need to let those people who are negotiating our trade agreements understand where some of the clear red lines remain across Parliament—and certainly across this nation—for certain public services, including the NHS.

Baroness Hayman of Ullock (Lab): My Lords, I shall be very brief, as time is ticking away. I start by saying that we completely support Amendment 436 in the name of the noble Lord, Lord Lansley. It is really important to get proper reassurance and clarification in this area, and I hope that the Minister will be able to give that to us today.

We also absolutely support what Amendment 441, in the name of the noble Lord, Lord Purvis, is trying to do. Environmental, social and labour conditions are incredibly important when looking at who you are procuring with. The noble Lord introduced it very thoroughly, so I will not go into any further detail, but he is absolutely right that we need clarification on this.

One thing I have found with this Bill is that different bits are cross-referenced all the way through and, on occasion, I have got somewhat confused, to say the least. This might not be important at all but I ask for some clarification. Schedule 9 is on the various parties with which we have trade agreements, and we have been talking about trafficking, slavery, exploitation and so on, which are all mentioned in Schedule 7. We welcome the fact that Schedule 7 covers all these areas, but paragraph 2 of that schedule says that engaging in conduct overseas that would result in an order specified in paragraph 1—trafficking, exploitation, modern slavery

and so on—if it occurred in the UK constitutes a discretionary ground for exclusion from procurement. Does that conduct overseas, as referred to in Schedule 7, cover anything that happens with procurement coming out of a trade agreement? That is what I do not understand. If it does, it alters what we have just been talking about. If it does, how does that operate and how is it enforced? Who manages it? If it does not, how do we address that when we are negotiating trade agreements in order to achieve the outcomes that we would all like to see? It may be that the Minister does not know and needs to talk to officials, but that is something on which I would like clarification.

Baroness Neville-Rolfe (Con): My Lords, this group seeks to deal with amendments relating to treaty state suppliers. There are three minor government amendments either to improve the drafting or to ensure the proper functioning of the clauses, Amendments 438, 440 and 442. As the time is late, I will not go into detail, but I am happy to explain them to noble Lords on another occasion if they wish.

Amendment 436, tabled by my noble friend Lord Lansley, proposes that regulations could be made only in relation to agreements that had been laid before Parliament under the Constitutional Reform and Governance Act 2010. The use of regulations in the Procurement Bill in relation to implementing international agreements is limited to two circumstances. The first is to give effect to the procurement aspects of new trade agreements. For these, the Committee will know that treaties requiring ratification follow the established domestic scrutiny process set out in the CRaG Act. However, not all agreements will necessarily require ratification, and the amendment would place the implementation of such agreements outside the scope of this power. For the agreements that fall within the Act, the Committee will be aware that the Government have previously made commitments in our response to the International Agreements Committee, of which my noble friend is a prominent member, concerning the submission of international agreements to Parliament for scrutiny.

The second set of circumstances is to give effect to any changes to trade agreements over their lifetime. These are envisaged to be small technical changes, such as updating schedules following machinery-of-government changes or modifications to market schedules. In such circumstances, those more administrative matters may not trigger the CRaG procedures and, as such, the amendment would prevent them being implemented using this power. Any such updates and modifications would therefore require new primary legislation to implement, at a huge cost in time and resources. However, I reassure noble Lords that the Government intend to keep the relevant Select Committees aware of any changes during the life cycle of a free trade agreement.

Amendment 441, tabled by the noble Lords, Lord Purvis and Lord Wallace, seeks to provide that a contracting authority does not discriminate against a treaty state supplier if it takes into account environmental, social and labour considerations and indicates in the notice of intended procurement or tender documentation how such considerations are defined. The impact of this would be that a contracting authority could, within the rules, apply environmental, social and labour considerations in a way that breached a treaty state supplier's entitlement to no less favourable treatment, and that would risk breaching our international obligations. For example, if a contract can be delivered remotely from an overseas base, our obligations to ensure no less favourable treatment for treaty state suppliers mean that it would not be appropriate for a contracting authority to require socioeconomic or environmental criteria that could not be performed from overseas. However, I assure the Committee that the Bill as drafted allows contracting authorities to include social, environment and labour considerations when setting award criteria, as long as they are non-discriminatory.

Lord Purvis of Tweed (LD): I am grateful for that response. I struggle with the first part of what the Minister said because I lifted the wording from Articles 16 and 17 of the Australia agreement. If we have those obligations with Australia, how are we not able to provide that with all the other treaty state suppliers in the schedule where we do not have that language? Japan is lower than that, for example. I am struggling to understand why that would be the case. If she is reassuring me that the power provided by my amendment is already within the Bill, she has basically contradicted her own argument that we are not providing that to all the other countries. I do not understand.

Baroness Neville-Rolfe (Con): The noble Lord's question was why social considerations are not in the Japan agreement but they are in the Australia agreement. The answer is that every trade deal is unique. The noble Lord is trying to apply one principle to all trade deals.

Lord Purvis of Tweed (LD): That is what the Government are doing. All the other requirements in the Bill are not in the trade agreements with other countries. That is the point that I was making. The Government are introducing a whole set of requirements under the Bill that are not in treaty obligations. I am just trying to say that it would be better if this were consistent.

8 pm

Baroness Neville-Rolfe (Con): The honest truth is that we seem to have a bit of a disagreement on this; maybe a bilateral discussion would be helpful. The noble Lord, Lord Lansley, also raised a question on which we should have a further discussion; I will write to him on that and the other points he was raising. We had advice from the people involved in trade agreements in preparing our response.

Lord Purvis of Tweed (LD): I am very grateful for that offer. I am very happy for it to be multilateral rather than bilateral if that assists the Committee. If the Minister wants to make officials available for the discussion, I will be happy with that, or she may want to write to me in advance of that. It will be helpful if she is able to write to Members before we have a discussion, so that we get a bit more information from the Government first. I will then be more than happy to have the discussions with her about this before Report.

Baroness Neville-Rolfe (Con): That would be helpful. We can certainly look at *Hansard* and write a letter, but we should get together in the next 10 days or so to try to sort this out, because it is complicated—that was clear from being at the briefing.

The noble Lord asked one or two questions which I can clarify. Schedule 9 lists countries, states or regions with which we have an agreement that covers procurement—obviously, that is the purpose of that schedule. All the agreements in that schedule are binding; in contrast, obviously MoUs are not legally binding. On the Colombia agreement, any human rights obligations in the Andean trade agreement will have been reviewed by the CRaG process before it came into force—I think that was probably accepted—and the procurement chapter in trade agreements must be complied with unless these agreements are breached and coverage withdrawn.

Following that agreement with the noble Lord, I move on to Amendment 443A, tabled by my noble friend Lady McIntosh, which proposes to remove the power of a Minister of the Crown to make regulations under Clause 83. Under current drafting, either a Minister of the Crown or a Scottish Minister is entitled to make regulations to ensure that treaty state suppliers are not discriminated against in Scotland in relation to devolved procurement. The use of these concurrent powers would allow either the Minister of the Crown or a Scottish Minister to legislate with respect to devolved procurements in Scotland in order to implement new and existing international trade agreements. Similarly, concurrent powers were used in Section 2 of the Trade Act 2021. Of course, the power would not prevent Scottish Ministers legislating in respect of devolved procurements. However, in the event that they chose not to do so or if they wished, perhaps for reasons of efficiency, to allow a single set of regulations to implement a new trade agreement, this power would allow a Minister of the Crown to pass the necessary legislation. I should say that we continue to engage with the Scottish Government on this and other matters; your Lordships will have seen that the new Prime Minister has indeed spoken to the First Minister since his appointment.

I think we have probably debated this as much as we can this evening.

Baroness Hayman of Ullock (Lab): Can the Minister clarify the question around Schedule 7 or will we perhaps discuss that when we get together at the meeting?

Baroness Neville-Rolfe (Con): I think the greatest brains behind me have not managed to answer the noble Baroness's question—she has bowled another good ball. Perhaps we can add that to the list for our discussions.

With that, I hope that the noble Lord will withdraw his amendment.

Lord Lansley (Con): My Lords, only 110 amendments to go, so, with the benefit of that promise of further discussions, I beg leave to withdraw Amendment 436.

Amendment 436 withdrawn.

Amendment 437 not moved.

Amendment 438

Moved by ***Baroness Neville-Rolfe***

438: Clause 81, page 53, line 17, leave out "or services" and insert ", services or works"

Amendment 438 agreed.

Clause 81, as amended, agreed.

Schedule 9 agreed.

Clause 82: Treaty state suppliers: non-discrimination

Amendment 439 not moved.

Amendment 440

Moved by ***Baroness Neville-Rolfe***

440: Clause 82, page 53, line 37, at end insert—

"(3A) In this section, a reference to a supplier's association with a state includes a reference to the fact that the state is the place of origin of goods, services or works supplied by the supplier."

Amendment 440 agreed.

Amendment 441 not moved.

Amendment 442

Moved by ***Baroness Neville-Rolfe***

442: Clause 82, page 53, line 42, leave out "virtue of" and insert "reference to"

Amendment 442 agreed.

Amendment 443 not moved.

Clause 82, as amended, agreed.

Clause 83: Treaty state suppliers: non-discrimination in Scotland

Amendments 443A and 444 not moved.

Clause 83 agreed.

Clause 84: Pipeline notices

Amendment 445 not moved.

Amendments 446 and 447

Moved by ***Baroness Neville-Rolfe***

446: Clause 84, page 54, line 35, leave out "An appropriate authority" and insert "A Minister of the Crown or the Welsh Ministers"

447: Clause 84, page 54, line 37, at end insert ", or

(b) a transferred Northern Ireland authority."

Amendments 446 and 447 agreed.

Clause 84, as amended, agreed.

Amendments 448 to 449A not moved.

Clause 85: General exemptions from duties to publish or disclose information

Amendments 450 and 451 not moved.

Clause 85 agreed.

Clause 86: Notices, documents and information: regulations

Amendments 452 to 452B not moved.

Clause 86 agreed.

Clause 87: Electronic communications

Amendments 453 and 454 not moved.

Clause 87 agreed.

Clause 88: Information relating to a procurement

Amendments 455 and 456 not moved.

Clause 88 agreed.

Amendment 457

Moved by ***Baroness Neville-Rolfe***

457: After Clause 88, insert the following new Clause—

"Data protection

(1) This Act does not authorise or require a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred and the duties imposed by and under this Act).

(2) In this section "the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act)."

Amendment 457 agreed.

Amendments 458 to 459A not moved.

Clause 89: Duties under this Act enforceable in civil proceedings

Amendment 460 not moved.

Amendment 461

Moved by ***Baroness Neville-Rolfe***

461: Clause 89, page 56, line 32, at end insert—

"(4A) A contracting authority's duty to comply with section 12(9) or 13(8) (requirement to have regard to procurement policy statements) is not enforceable in civil proceedings under this Part."

Amendment 461 agreed.

Amendments 462 and 463 not moved.

Clause 89, as amended, agreed.

Clause 90: Automatic suspension of the entry into or modification of contracts

Amendments 464 to 468

Moved by ***Baroness Neville-Rolfe***

464: Clause 90, page 57, line 11, after "if" insert "during any applicable standstill period"

465: Clause 90, page 57, line 12, leave out "have been" and insert "are"

466: Clause 90, page 57, line 14, leave out "has been" and insert "is"

467: Clause 90, page 57, line 17, leave out subsection (3)

468: Clause 90, page 57, line 24, at end insert—

"(6) See sections 49 and 71 for provision about standstill periods."

Amendments 464 to 468 agreed.

Clause 90, as amended, agreed.

Clause 91: Interim remedies

Amendment 469

Moved by ***Baroness Neville-Rolfe***

469: Clause 91, page 57, line 33, leave out "entering" and insert "entry"

Amendment 469 agreed.

Clause 91, as amended, agreed.

Clauses 92 to 94 agreed.

Clause 95: Time limits on claims

Amendments 470 to 476

Moved by ***Baroness Neville-Rolfe***

470: Clause 95, page 60, line 1, at end insert—

"(A1) A supplier must commence any specified set-aside proceedings before the earlier of—

(a) the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim;

(b) the end of the period of six months beginning with the day the contract was entered into or modified."

471: Clause 95, page 60, line 2, after "any" insert "other"

472: Clause 95, page 60, leave out line 5

473: Clause 95, page 60, line 6, leave out subsections (2) to (4)

474: Clause 95, page 60, line 19, leave out "(1) or (4)" and insert "(A1)(a) or (1)"

475: Clause 95, page 60, line 21, after "after" insert—

"(a) in the case of specified set-aside proceedings, the end of the period referred to in subsection (A1)(b), and

(b) in any case,"

476: Clause 95, page 60, line 23, at end insert—

"(7) In this section, "specified set-aside proceedings" means proceedings under section 93(2) to—

(a) set aside a public contract in circumstances where the contracting authority did not publish a contract details notice in respect of the contract in accordance with section 51, or

(b) set aside a modification of a contract."

Amendments 470 to 476 agreed.

Clause 95, as amended, agreed.

Clause 96: Procurement investigations

Amendments 477 to 480 not moved.

Amendment 481

Moved by ***Baroness Neville-Rolfe***

481: Clause 96, page 61, line 12, at end insert—

""section 97 recommendation" has the meaning given in section 97"

Amendment 481 agreed.

Clause 96, as amended, agreed.

Clause 97: Recommendations following procurement investigations

Amendment 482 not moved.

Clause 97 agreed.

Clause 98: Guidance following procurement investigations

Amendments 483 and 484

Moved by ***Baroness Neville-Rolfe***

483: Clause 98, page 62, line 14, after "to" insert "relevant"

484: Clause 98, page 62, line 14, at end insert—

"(3) In subsection (2), the reference to relevant guidance is a reference to guidance that could, in light of Part 11, be addressed to the contracting authority."

Amendments 483 and 484 agreed.

Clause 98, as amended, agreed.

Amendments 485 to 486A not moved.

Clause 99: Welsh Ministers: restrictions on the exercise of powers

Amendments 487 and 488 not moved.

Amendment 489 had been withdrawn from the Marshalled List.

Amendment 490 not moved.

8.15 pm

Amendment 491

Moved by ***Lord Wigley***

491: Clause 99, page 62, line 41, after "wholly" insert "or mainly"

Lord Wigley (PC): I congratulate the Deputy Chairman of Committees on that "Just a Minute" miracle. I will speak to Amendment 491 standing in my name and those of the noble Baroness, Lady Humphreys, and the noble and learned Lord, Lord Thomas of Cwmgiedd.

We return to the question of the relationship of Wales to the rest of the provisions of the Bill, which we touched on way back in May or June. It was certainly a very long time ago. A certain amount of water has gone down the river since then, but none the less, the representations made by the Welsh Government to the UK Government at that time, as well as to those of us serving on this Committee, are still matters that need to be finally aired before we move out of Committee.

I note, as it is relevant to Amendment 491, that the Government did not move Amendment 490. If I am right in my understanding of that, the content which Amendment 491 seeks to amend is not changed. Amendment 491 therefore stands in relation to the Bill as it was originally formulated. I am grateful for that clarification.

The Welsh and UK Governments have, by and large, worked very closely together on the Bill, and there has been quite a close meeting of minds and a considerable amount of harmony. However, there is one matter which the Welsh Government have raised with us. The Minister concerned is seeking an amendment to the definition of the WCAs, with a view to ensuring that the clauses work more fairly in relation to some cross-border procurements—single procurements which relate to both Wales and England. The Minister in Cardiff wrote to the Minister for Brexit Opportunities and Government Efficiency on 18 May, raising this question, and discussions thereafter took place. None the less, to the best of my knowledge, there has been no amendment to the Bill that has met the question about procurement relating solely to Wales or of whether it should read, in the words of Amendment 491, "wholly or mainly".

We are talking about the awarding of

"a contract for the purpose of exercising a function wholly in relation to Wales".

The question is whether we put in "wholly or mainly" relating to Wales. That amendment is needed for the Bill to work effectively. One only has to think of certain of the procurements that the Welsh Government, or an agency on their behalf, are making, which may be having an effect both in Wales and over the border. One thinks of procurement in relation to water and rivers, for example, where the river runs from Wales to England. Quite clearly, in making a procurement one cannot be absolutely certain whether the product or service that is being procured relates solely to Wales, or to Wales and England. One thinks of certain aspects of the health services along the borders where that again will arise.

It seems sensible to put in the words "or mainly" to ensure that the Welsh Government, or anyone else who is concerned with this, do not get caught in a tangle about what is covered by the Bill and what is not.

Given that there has been such a close working relationship between the Welsh and UK Governments on this matter, I am surprised that there has not been a

meeting of minds. If there has been some non-legislative agreement that has covered this, that we may not know about in this Committee, I would be glad if that was pointed out. I am not speaking to the other amendments in this group because they do not seem to be dealing with the same point. I would be glad to have the Minister's response in relation to Amendment 491. I beg to move.

Lord Lansley (Con): My Lords, these are different subjects, and before we turn to how regulations are to be agreed, I will turn to Amendment 527. It might be helpful if colleagues, if they have a moment, look at Schedule 11. Clause 107 sets out in Schedule 11 the repeals of legislation resulting from this legislation. The third item under "Primary legislation" says:

"An Act of Parliament resulting from the Trade (Australia and New Zealand) Bill that was introduced into the House of Commons on 11 May 2022."

My amendment relates to whether it would be appropriate for the whole of that piece of legislation to be repealed if it were amended in the other place or in this House. As it stands at the moment, the Bill implements the procurement chapters of the two agreements. They will be implemented by their being added to Schedule 9. That is absolutely fine—it is not the issue. The issue is if the Trade (Australia and New Zealand) Bill is amended. It was not amended in Committee in the other place, but there is an amendment down on Report in the other place in the name of Nick Thomas-Symonds, for the Official Opposition, which adds a clause that says:

"The Secretary of State must publish an assessment of the impact of the implementation of the procurement Chapters within twelve months of the coming into force of Regulations made under section 1 of this Act and every three years thereafter."

It probably will not be passed, but let us say for the sake of argument that an impact assessment was passed here—or an impact assessment or report on the impact was required here in relation to the Australia and New Zealand trade agreements more generally—into the Trade (Australia and New Zealand) Act. I think either House would then expect it to happen. However, it would probably not happen because the Procurement Bill will become the Procurement Act, and when it comes into force it would repeal the Trade (Australia and New Zealand) Act and all that is in it, regardless of whether it has been amended.

The point of my Amendment 527 is to repeal the provisions of the Act resulting from the Trade (Australia and New Zealand) Bill in so far as they were included in the Bill at its introduction. Therefore, if there is an amendment, it would not be repealed by virtue of this provision. That is the question. We are at the stage of having further conversations, and I would be very happy to have further conversations with my noble friends about this matter before we get to Report.

Baroness Humphreys (LD): I will speak reasonably briefly to Amendment 491 in the name of the noble Lord, Lord Wigley, to which I have added my name. I thank the noble Lord for outlining the reasons for this amendment so clearly. I reiterate my thanks to the Cabinet Office and its civil servants, which I expressed earlier in Committee, for their constructive and positive engagements with Welsh officials. I know they have worked closely to ensure that Welsh policy objectives have been included in the Bill.

The issues that Amendment 491 highlights arise in Clause 99 and have been the subject of discussion between the two parties for some time. Like the noble Lord, Lord Wigley, I understand that the Welsh Minister for Finance and Local Government wrote to the Minister for Brexit Opportunities on 18 May to ask the UK Government to consider an amendment to the Bill to address her concerns. I hope that in the intervening five months, some agreement has been reached between the two parties.

As the noble Lord pointed out, this is a probing amendment designed to tease out, first, the problems that arise from the definition of Welsh contracting authorities and, secondly, the issue of ensuring that both clauses work more fairly in relation to some cross-border procurements. The definition of Welsh contracting authorities initially proposed by the UK Government was that of a "devolved Welsh authority", as defined in the Government of Wales Act 2006. However, as the Welsh Government have pointed out, that does not accurately reflect all the contracting authorities in Wales that should be on the list of Welsh contracting authorities. Clauses 1 to 3 of the Bill now set out a broader definition of a devolved Welsh authority. However, there is still a concern that the breadth of contracting authorities that are not DWAs within the GoWA definition, but are to be treated as DWAs for the purpose of the Bill when they carry out a cross-border procurement, does not go far enough.

My real concern is about Clause 99(3)(b)(i), which provides for those contracting authorities that are to be treated as DWAs for the purpose of the Bill and bound by the Welsh rules where the authority is awarding a contract for the purpose of exercising a function wholly in relation to Wales—the point that the noble Lord, Lord Wigley, raised—but not for any other procurements, including cross-border ones. That word, "wholly", means that the Welsh Government play no part in this. Ultimately, this means that, even if 90% of a cross-border procurement is for use in Wales, the English elements of the rules would apply. To me, that smacks a little of the lion wanting to take the lion's share.

We on these Benches agree with the fairer and more pragmatic approach suggested by the Welsh Government: to follow Regulation 4 of the Public Contracts Regulations 2015 for mixed procurements. This would allow for cross-border contracts to be procured depending on the main geographical location of the contract; on which financial value was the highest; or on where the majority of the services, goods or works were being delivered. The Welsh Government have suggested that, where more than half of the procurements are to be delivered in Wales, the Welsh procurement rules should apply. They contend that, in the event of a 50/50 split, the English rules should apply. The insertion of the words "or mainly" following "wholly" in Clause 99(3)(b)(i) would achieve this end.

These proposals by the Welsh Government seem reasonable and fair. They would redress the balance between the two parties on cross-border procurement,

[Baroness Humphreys]
and are supported by the Lib Dem Benches. I look forward to the Minister updating us on where officials are with these issues and hope that the spirit of positivity and co-operation that has characterised the negotiations on this Bill extends to the issues in Clause 99.

Lord Fox (LD): Coming from Herefordshire as I do, I comment on matters Welsh with great trepidation. I commend the two previous speakers on this amendment. If the Minister could see common sense in what they have said and sort out the situation, that would leave the Welsh Government in a very comfortable place. I do not like to speak for the Welsh Government but that is my understanding of it.

Amendment 527 in the name of the noble Lord, Lord Lansley, looks as if it ought to have been in the previous group. It sounded like he was describing the special case of the problem set out by my noble friend Lord Purvis; it therefore seems to me that he should be part of that future meeting. Indeed, that special case should be covered in the Minister's letter before we have the meeting so that we can take it forward. That would be the sensible way.

Two amendments have my name on them: Amendments 529 and 531. The Minister will be glad to hear that I am not going to speak at length on either except to say that they are on a subject she has spoken to, as I noted on Monday when I welcomed her to her new role, because the Executive taking power over the legislature is something on which she has spoken many times. I have spoken about it at length during the passage of lots of other Bills because it is something we get time and again.

8.30 pm

These amendments seek to move important decisions in Clause 110 to a more affirmative or super-affirmative process. It is quite simple. It is something that the Minister has spoken for on many occasions. This is an important and far-reaching clause that otherwise leaves the Minister almost unchallengeable. These two amendments would simply move things back to where they should be: giving Parliament a better say over changes to the regulations set out in Clause 110. It is as simple as that.

Baroness Hayman of Ullock (Lab): I will be brief. First, let me say that we absolutely support Amendment 491, tabled by the noble Lord, Lord Wigley, which raises a very real concern. It strikes me that his amendment is quite simple and practical, and would easily resolve the concerns that the Welsh Government have here. It does not seem that it would be onerous for the Government here in Westminster so I hope that there will be some real consideration of it ahead of Report.

We also support the two amendments tabled by the Liberal Democrats. Again, it seems that this is the right way to go about making legislation, and we support them.

When I was looking at Amendment 527 in the name of the noble Lord, Lord Lansley, I had a vague thought that this had been discussed before, but Second Reading seems such a long time ago now. I picked up my scribbled-on copy of the Bill and looked at the relevant bit. I had highlighted it and written, "See Lord Lansley, Second Reading", so it clearly had an impact on me. It struck me what he said at that stage; thinking about it since, I completely understand where he was coming from and believe that he is correct in what he says. This is something that needs sorting out. Otherwise, we are going to end up in a bit of a pickle, to be honest. Again, it would be good if this could be ironed out before we get to Report.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I should say at the outset that it appears from the debate and earlier conversations we have had in Committee that this is rather a work in progress. Conversations with the Welsh Government continue and we appreciate the collaborative nature of those discussions. I just thought I would put that on the record before I start on the formal part of my speaking notes.

This group seeks to deal with amendments relating to regulations. First, I will briefly address the government amendments in this group. There are three of them: Amendments 496, 518 and 533, all of which are minor technical amendments to optimise precision in meaning or cross-referencing to other legislation.

Amendment 491, tabled by the noble Lord, Lord Wigley, the noble Baroness, Lady Humphreys, and the noble and learned Lord, Lord Thomas of Cwmgiedd, seeks to extend further the competence granted under the Bill to Welsh Ministers to exercise powers in respect of certain Welsh authorities. The noble Lord, Lord Wigley, mentioned the example of rivers; I note that housing associations could be another, as they may be funded by the Welsh Government but operate across borders. We are cognisant of the various issues this could give rise to.

Clause 99(3) already sets out that, in addition to the authorities whose procurement is within devolved competence under the Government of Wales Act, certain cross-border bodies exercising functions predominantly in Wales should fall under the regulatory control of the Welsh Government when—and only when—they are awarding a contract wholly in relation to Wales. This is an extension of the position in the Government of Wales Act.

This amendment would further extend regulatory control to cover cross-border bodies in respect of contracts for the purpose of exercising a function mainly in respect of Wales, as well as wholly. Noble Lords will be aware that we have worked very closely with the Welsh Government throughout the development of this Bill. The position on cross-border bodies was developed at the request of the Welsh Government to accommodate a small number of Welsh authorities which carry out limited operations in England. It is not unreasonable to provide that where a cross-border body carries out a procurement which extends across borders the rules for reserved procurements should apply. However, I reassure noble Lords that we will continue to work through all outstanding issues in discussion with the Welsh Government.

The noble Baroness, Lady Humphreys, went further on the Bill seemingly allowing English procurement rules to take precedence over Welsh laws. That is not

the intention of the Bill. These are not English rules but UK rules, and it is not unreasonable, as I have said, to provide that where a procurement by a cross-border body extends across borders, reserved rules apply. In this Bill, we feel that we have gone beyond the position settled in the Government of Wales Act 2006 and reinforced in the Wales Act 2017, where competence for procurement was specifically addressed. This Bill confers greater powers on the Welsh Ministers. As I have said, conversations continue between the two Governments and I am sure that we will find a resolution.

Amendment 527 limits the repeal of the Trade (Australia and New Zealand) Bill to those provisions in the Bill at its introduction, so does not apply to any amendments made to that legislation during its parliamentary passage. My noble friend Lord Lansley has already drawn the Committee's attention to an amendment on Report in the other place. Any amendments made by the Trade (Australia and New Zealand) Bill will be in relation to the existing procurement regulations to ensure that they are compliant with the Australia and New Zealand free trade agreements. That will allow the UK to bring those agreements into force before the regime established under this Bill comes into force.

When this Bill comes into force it will ensure our continued compliance with these and other trade agreements. At that point, the Trade (Australia and New Zealand) Act will no longer be necessary and can be repealed. This does not in any way diminish the merits of debating the Trade (Australia and New Zealand) Bill or the importance of any regulations made under it, which will ensure compliance with the procurement provisions of those free trade agreements until this Bill comes into force.

We do not believe that the amendment of this provision is currently necessary, but if amendments are adopted in the Trade (Australia and New Zealand) Bill, we will reconsider the position. We have all agreed that we will add that to the list of discussion topics with the noble Lords opposite as well.

Finally, Amendments 529 and 531, tabled by the noble Lords, Lord Wallace of Saltaire and Lord Fox, would have the effect of requiring the super-affirmative procedure to be used for the first set of regulations under Clause 110(4)(a) to 110(4)(r). The super-affirmative procedure has its place, but it must be used in appropriate and proportionate circumstances. It is not appropriate or proportionate for this exceptional procedure in this case. These regulations are uncontroversial. While I recognise that some are Henry VIII powers, they address matters that are predominantly administrative by nature. They are not sufficiently controversial or significant to merit the disproportionate use of parliamentary time inherent in the super-affirmative procedure. An example would be specifying the content of particular forms that needed to be filled out which contracting authorities must complete, and when authorities provide information to the marketplace about contractual requirements.

Finally, I remind noble Lords that the Delegated Powers and Regulatory Reform Committee did not suggest any need for the super-affirmative procedure, which should give some reassurance. I therefore respectfully request that these amendments be withdrawn.

Lord Wigley (PC): My Lords, I am very grateful to the Minister for her response to this debate. I am sure that my Liberal Democrat friends will be happy with the assurances that they have been given of further discussion on the other amendments. On the basis of the commitment given by the Minister to seek an agreement with the Welsh Government on this matter, and that discussions are still ongoing, I beg leave to withdraw Amendment 491.

Amendment 491 withdrawn.

Amendments 492 and 493 not moved.

Amendment 494 had been withdrawn from the Marshalled List.

Clause 99 agreed.

Clause 100: Northern Ireland department: restrictions on the exercise of powers

Amendment 495 not moved.

Amendment 496

Moved by ***Baroness Neville-Rolfe***

496: Clause 100, page 63, line 28, leave out "in" and insert "by"

Amendment 496 agreed.

Amendment 497 had been withdrawn from the Marshalled List.

Amendment 498 not moved.

Clause 100, as amended, agreed.

Clause 101: Minister of the Crown: restrictions on the exercise of powers

Amendments 499 and 500 not moved.

Amendments 501 and 502

Moved by ***Baroness Neville-Rolfe***

501: Clause 101, page 64, line 5, at end insert "or 98 (guidance following procurement investigation)"

502: Clause 101, page 64, line 6, leave out "(electronic invoicing)" and insert ", or publish guidance under section 98,"

Amendments 501 and 502 agreed.

Amendments 503 to 507 not moved.

Clause 101, as amended, agreed.

Clause 102: Definitions relating to procurement arrangements

Amendments 508 and 509 not moved.

Amendment 510

Moved by ***Baroness Neville-Rolfe***

510: Clause 102, page 65, line 28, after "framework" insert "agreement"

Amendment 510 agreed.

Clause 102, as amended, agreed.

Clause 103: Powers relating to procurement arrangements

Amendments 511 to 517 not moved.

Amendment 518

Moved by ***Baroness Neville-Rolfe***

518: Clause 103, page 66, line 6, leave out "section" and insert "Act"

Amendment 518 agreed.

Clause 103, as amended, agreed.

Clause 104: Disapplication of duty in section 17 of the Local Government Act 1988

Amendment 519 not moved.

Clause 104 agreed.

Amendments 519A and 519B not moved.

Clause 105 agreed.

Schedule 10: Single Source Defence Contracts

Amendments 520 to 526

Moved by ***Baroness Neville-Rolfe***

520: Schedule 10, page 108, line 6, leave out "the parties to it agree"

521: Schedule 10, page 108, line 7, at end insert—

"(7) For the purposes of subsection (6), a part of a contract is to be treated distinctly if—

(a) single source contract regulations contain provision to that effect, or

(b) the parties to the contract agree that it should."

522: Schedule 10, page 108, line 8, leave out "(7)" and insert "(8)"

523: Schedule 10, page 108, line 8, leave out "specify circumstances in which certain" and insert "make provision about when"

524: Schedule 10, page 108, line 9, leave out "may or may not" and insert "are or are not to"

525: Schedule 10, page 109, line 8, leave out paragraph (c)

526: Schedule 10, page 109, line 12, at end insert—

"(ea) in new step 3, before "Any increase" insert "In specifying provisions of the contract or component, the Secretary of State must comply with any requirements imposed by the regulations, and";"

Amendments 520 to 526 agreed.

Schedule 10, as amended, agreed.

Clauses 106 and 107 agreed.

Schedule 11: Repeals and Revocations

Amendment 527 not moved.

Schedule 11 agreed.

8.45 pm

Clause 108: Power to disapply this Act in relation to procurement by NHS in England

Amendments 528 to 528C not moved.

Clause 108 agreed.

Clause 109 agreed.

Clause 110: Regulations

Amendments 529 to 532 not moved.

Amendment 533

Moved by ***Baroness Neville-Rolfe***

533: Clause 110, page 70, line 10, leave out "Part 2" and insert "section 29"

Amendment 533 agreed.

Clause 110, as amended, agreed.

Amendment 534 not moved.

Clause 111: Interpretation

Amendment 535 not moved.

Amendment 536

Moved by ***Baroness Neville-Rolfe***

536: Clause 111, page 70, line 35, leave out "payable" and insert "paid, or to be paid,"

Baroness Neville-Rolfe (Con): My Lords, this final group deals with amendments on VAT. The Government's Amendment 536 simply broadens the notion of amounts payable to include amounts that have already been paid, as contracting authorities may be required to take into account expected or completed payments.

I turn to Amendments 537 and 538. With the agreement of the Committee—I have agreed this with my noble friend Lady Noakes, whose amendments they are—I will reply to her now.

Baroness Noakes (Con): My gift to the Committee is not to make an extended speech on the subject of value added tax. I know that many noble Lords would like to hear that, but we have expedited procedure and my noble friend the Minister will respond instead.

Baroness Neville-Rolfe (Con): I am very grateful to my noble friend Lady Noakes, who, as usual, has come to the rescue. She raised the question of whether VAT should be taken into account when calculating the value of a concession contract. I confirm that, when a contracting authority values a concession contract, it should calculate the maximum amount the supplier could expect to receive. I thank my noble friend for

raising whether this policy intent is adequately covered in the current drafting of Clause 111 and will give this careful consideration ahead of Report.

My noble friend Lady Noakes also asks why the formulation

"any amount referable to VAT"

has been used in Clause 111(2). Amendment 538 proposes to remove the words

"a reference to any amount referable to".

As I understand it, the amendment does not aim to change the effect of the clause. Rather, the intent is to rationalise the drafting. I assure noble Lords that the proposed edits have been carefully considered and the existing wording is thought to be better suited to achieving the desired policy outcome.

I therefore respectfully request that these amendments be withdrawn. I will move the other government amendments in my name but, before I sit down, I thank our Deputy Chair of Committees and the Committee for their patience and good humour with the large number of government amendments. We will try to keep up our good record of government engagement and do better on the number of amendments.

Lord Fox (LD): I would just like to congratulate the Minister on the smooth transition from Back-Bench jabs to Front-Bench defence. We look forward to seeing the reprinted version of the Bill so that we can start to track where all these amendments have gone and what they do. We also look forward to the meetings we will be having to sort these matters out.

Amendment 536 agreed.

Amendments 537 and 538 not moved.

Clause 111, as amended, agreed.

Clause 112: Index of defined expressions

Amendment 539

Moved by ***Baroness Neville-Rolfe***

539: Clause 112, page 71, line 3, leave out "supplier" and insert "person"

Amendment 539 agreed.

Amendment 540 not moved.

Amendment 541

Moved by ***Baroness Neville-Rolfe***

541: Clause 112, page 71, line 25, leave out "35" and insert "34"

Amendment 541 agreed.

Amendments 542 and 543 not moved.

Amendments 544 and 545

Moved by ***Baroness Neville-Rolfe***

544: Clause 112, page 72, line 11, at end insert—

requirements	section 18"

545: Clause 112, page 72, line 25, at end insert—

"utilities dynamic market	section 35
Utility	section 35"

Amendments 544 and 545 agreed.

Clause 112, as amended, agreed.

Clauses 113 and 114 agreed.

Clause 115: Commencement

Amendment 546 not moved.

Clause 115 agreed.

Clause 116 agreed.

Bill reported with amendments.

The Deputy Chairman of Committees (Baroness Newlove) (Con): My Lords, that concludes the Committee's proceedings on the Bill.

Committee adjourned at 8.53 pm.