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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

3 pm

Prayers—read by the Lord Bishop of St Albans.

Oaths and Affirmations

3.06 pm

Lord Hampton made the solemn affirmation, following the by-election under Standing Order 9, and signed an undertaking to abide by the Code of Conduct.

Lord Alliance took the oath.

Russia in Georgia

Question

3.07 pm

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

To ask His Majesty's Government what assessment they have made of the influence of Russia in Georgia.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, we fully support Georgia's sovereignty and territorial integrity, and we work closely with the Government of Georgia to strengthen their resilience with regard to malign Russian influence through our bilateral defence and security co-operation. The NATO leaders' summit in June agreed a tailored support package for Georgia that builds on the extensive support provided to Georgia over recent years. We expect the UK to play a leading role in the framework of this additional package, supporting strategic communications and cyberdefence.

Lord Harries of Pentregarth (CB): I thank the Minister very much for his Answer, but I am not sure that it fully reflects the seriousness of the current situation in Georgia. Political and economic life in Georgia, including the media, is controlled by Bidzina Ivanishvili, the multi-billionaire businessman who made his money in Russia. It is clearly documented that he still has huge assets there in the names of his relatives and business associates. This is worrying enough, but more recently there have been in the public realm 100 files of leading politicians, churchmen and diplomats, with the details of who their contacts are, who they support and any material that might be used for blackmail against them. That shows clear signs of collusion between Russian secret police and the Georgian police, the old KGB. This is a worrying situation; will the Minister ensure that the relevant bodies in the European Union are fully aware of this?

Lord Ahmad of Wimbledon (Con): My Lords, first, I recognise the noble and right reverend Lord's important work in support of Georgia over a number of years, not least since 2008. He raises some important issues of concern, and I will of course take them away. He spoke about sharing them with the important authorities on the ground; we do work very closely with others, including the EU. If there is more detail I can share with him, I will certainly do so.

Lord Balfe (Con): My Lords, I served for six years on the Venice Commission, where we had many problems with Georgia. Will the Minister use all his influence to encourage the Georgian parties to work together? Part of the fundamental problem in Georgia has been the inability of the political parties within its Parliament to co-operate on even the most basic things, such as the election of speakers and chairmen of committees.

Lord Ahmad of Wimbledon (Con): I assure my noble friend that I am all for cross-party co-operation when it comes to good governance in our Parliaments. Despite our different perspectives and challenges, I think your Lordships' House and the other place reflect that genuine desire to ensure good governance in Parliament. Of course, I take on board what my noble friend said. It is important that all parties work in the common interests of Georgia and ensure that the current occupation and annexation of these breakaway republics is addressed centrally, because this is a violation of its sovereign territory.

Lord Collins of Highbury (Lab): My Lords, I have raised with the Minister several times the threat to human rights in Georgia, particularly attacks on workers, trade unions and LGBT people. Can he tell us what steps the Government have taken to engage with civil society? As we often hear, civil society is the main guarantor of human rights when Governments fail to ensure them, so what are we doing to engage with it?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord knows that I agree with him totally, not just in the context of support for civil society in Georgia but generally. Civil society is core to any progressive, inclusive, functioning democracy. We are providing support in Georgia; for example, through a range of projects focused primarily on confidence-building dialogue, funded by CSF funding. That also helps Georgia take forward public administration reform, parliamentary capacity building and good governance, and includes some of the work we are doing with civil society. On the specific groups we are working with and direct engagement, if I may, I will write to the noble Lord.

Lord Purvis of Tweed (LD): Georgia has reported that there will actually be some economic growth in its economy because of the influx of over 112,000 young professionals who have fled Russia. In June, the European Union gave Georgia pre-application status to move towards membership of the single market and customs union, alongside Ukraine and Moldova. Will any of the technical support that the UK is providing to Georgia enable it to move closer to the European Union economic markets?

Lord Ahmad of Wimbledon (Con): How Georgia chooses to move forward with the EU is very much a matter for Georgia. However, I can say that we are working very closely with our European colleagues

[Lord Ahmad of Wimbledon]
on, first and foremost, the monitoring done within Georgia, particularly vis-à-vis the breakaway republics. Our ODA funding has also grown and that is helping Georgia take forward certain reforms that I have already alluded to. Specific UK funding is also helping it to build its cyberdefences, which, in the current climate, is extremely important.

Lord Carlile of Berriew (CB): Given that Vladimir Putin is an unprincipled opportunist, can we take it that the Government are aware of the danger that the exodus into Georgia of Russians apparently wishing not to serve in the Russian forces may well include a fifth column placed there under Putin's instructions? Will we try to ensure that such a fifth column does not do what some Russians were doing in Ukraine?

Lord Ahmad of Wimbledon (Con): My Lords, first and foremost, on the issue of Russians fleeing forced conscription, I think that it is a recognition that the people of Russia themselves do not support what Mr Putin is doing, in his continued violation of the rights of the Ukrainian people. On the specific issue the noble Lord raises, on whatever perspectives may be taking place, and whether some coming through those borders may pose a direct threat, that is why the UK is cognisant of this. That is why we are investing in cybersecurity; I am sure that will help to build the intelligence base as we work with our Georgian partners.

Baroness Rawlings (Con): My Lords, my question very much relates to that asked by the noble Lord, Lord Carlile. Do we still have troops or observers on the South Ossetia-Georgia border, which was very much being controlled by Russians on my last visit? I wonder how much has changed since the war with Ukraine.

Lord Ahmad of Wimbledon (Con): My Lords, on my noble friend's final point, there has of course been a refocus on the occupation and break away of the republics of South Ossetia and Abkhazia. That shows that Russia, back in 2008, had malign influence, which, as well as the territorial significance of the two breakaway republics, demonstrates what Russia's intent was both in Georgia and indeed in Crimea and Ukraine. On the specific issues, the EU monitoring mission is in Georgia and tracks the breakaway regions. We work together with our NATO allies: there is a liaison office in Tbilisi, and the UK, along with Romania, will take over as the point embassy in Tbilisi from January 2023.

The Lord Bishop of Leeds: My Lords, referring back to the original Question, have the Government made any assessment of how corrupt wealth is being laundered to get around sanctions in Russia by pushing the money through places such as Georgia?

Lord Ahmad of Wimbledon (Con): My Lords, with the implementation of our sanctions policy, we are acutely aware that there will be attempts to circumvent measures taken on both individuals and organisations. Of course, we work with our key partners, including the European Union, to ensure that once sanctions are imposed, they are applied universally. Georgia itself, as the right reverend Prelate will know, has applied to become a member of the European Union, and these kinds of things are also assessed in its reporting. Whether it is here in London or indeed in Tbilisi or elsewhere in the world, we must always remain vigilant towards those seeking to circumvent sanctions policy or, indeed, launder money or illicit finance.

Lord Wallace of Saltaire (LD): My Lords, does the Minister accept that the Government should now make it clearer to the British public that the outcome of the Ukraine conflict has implications for the future of Georgia, Moldova and the various bubbling conflicts in the Balkans, where Russian influence in Serbia and Serbian Bosnia has been very strong? The larger implications of any sort of outcome in Ukraine are not really well understood by our own public. The Government need to lead in informing them.

Lord Ahmad of Wimbledon (Con): The noble Lord has valuable insights on these matters and I agree with him. The situation in Transnistria and Moldova is of extreme concern to us, particularly with the Russian influence and presence there. Equally, with South Ossetia and Abkhazia, the influence remains very clear. We need an outcome where Russia withdraws from the occupied areas of Ukraine and where the breakaway republics are allowed to rejoin the sovereign territory of Georgia. Of course, regarding Transnistria—Moldova is a very small country; I have seen the challenges it faces quite directly in discussions that I have had—we need to ensure that Moldova is equally assured of its territorial sovereignty and integrity.

GPs: Anti-depressants and Alcohol

Question

3.18 pm

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

To ask His Majesty's Government whether they will review the purpose, effectiveness, and the cost, of GPs prescribing anti-depressants to patients who continue to consume alcohol.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): Decisions about what medicines to prescribe, and in what circumstances, are rightly made by the clinician caring for the patient. At the same time, NICE guidelines are clear that anti-depressants should not be used to treat alcohol dependency. Prescribers must be free to make their own decisions, based on their clinical judgment and discussion with their patients, with the appropriate care for the individual always being the primary consideration.

Lord Brooke of Alverthorpe (Lab): I am grateful to the noble Lord for his reply. As we face public expenditure cuts and as the College of Medicine has estimated that 110 million items prescribed every year are wasted at a phenomenal cost, what steps are the Government going to take? Will they have discussions with GPs about the ways in which we can cut back on wasting money on useless prescriptions?

Lord Markham (Con): I agree with the premise of the question. Clearly we want the most efficient use of our resources. As I am sure the noble Lord is aware, there is a national review of overprescribing, which is looking at precisely these sorts of guidelines to make sure that medicine is used only when it is needed.

Baroness Wheatcroft (CB): My Lords, there is clear evidence that the prescribing of activities, particularly cultural activities, is very effective in treating depression in many cases. What steps are being taken to encourage the prescribing of culture and other activities, as opposed to expensive drugs?

Lord Markham (Con): I agree that the first step should normally be cognitive talking-type therapies. As the House will be aware, we have been investing quite considerably in the mental health space. We have had a 25% increase in referrals to talking therapies, to 1.8 million in the past year alone. I very much agree that there should always be action to see whether we can help with those cognitive behavioural-type therapies first before resorting to prescribing drugs.

Baroness Blackwood of North Oxford (Con): For some patients talking therapies and CBT may be an appropriate treatment for depression, as discussed, but for others next-generation SSRIs may be quite literally life-saving, and I am sure that no one in this Chamber would want to shame or discourage any patient who has been appropriately prescribed such a therapy. The Minister, I know, would want to suggest that GPs should be spoken to before any such action would be taken.

Lord Markham (Con): I thank my noble friend and agree. It should always be down to the GP, working closely with the patient, to decide the best form of treatment, whether talking therapies or drugs, and that is why we are quite clear in the guidance that first and foremost it has to be the local clinician who makes the decision.

Baroness Brinton (LD): My Lords, the noble Baroness, Lady Blackwood, made the very important point that there are differing results with different anti-depressants and different reasons for depression. A 2007 study showed that the use of anti-depressants reduced alcohol intake in those who drank a lot while they were very depressed. However, a 2011 study showed that SSRIs and alcohol often produced disinhibition. The one thing those two studies both showed was that where the physician was able to talk to the patient and explain, the patient reduced their alcohol. When will more time be available for GPs to talk these things through properly with patients?

Lord Markham (Con): We all agree that GPs are best placed to do this. I think the House is aware of our commitment to increase the number of GP appointments by 50 million, and we are well on course to meet that target. At the same time, we have the independent review of drugs by Dame Carol Black, which looks at mental health, drugs and drink and how they are closely related, to make sure we have the best advice. First and foremost, I totally agree that the best-placed person is a GP talking to their patient.

Baroness Merron (Lab): My Lords, the Joseph Rowntree Foundation reports that the number of anti-depressant prescriptions is twice as high in the most-deprived areas compared to the least-deprived, with the differential even more marked when it comes to severe conditions. With the long-promised health inequalities White Paper now seemingly sunk without trace, where is the Government's strategy to change the conditions that affect mental well-being in the most deprived areas?

Lord Markham (Con): My Lords, as set out in the draft mental health Bill, mental health activities are very focused on where help can be given in areas of inequalities. As to the position in the White Paper, I am afraid that the answer is the same as in the previous case: I do not have any information at the moment on any date.

Baroness Browning (Con): My Lords, the medication for mental health conditions, including addictions, can be vastly improved in outcome and the proper use of that medication if the doctor is able to test the DNA of the patient to marry up the correct medication. When is genetic testing going to become an integral part of the NHS?

Lord Markham (Con): We all see the great promise in genetic testing, and I know that this is something very close to my noble friend Lady Blackwood's heart. It is a progressive area, where we are seeing new treatments all the time that can be helped by the use of genetic testing. As they come down the stream, this is very much on the agenda of NICE as well to make sure that those are available as required.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, regardless of the misuse of alcohol with drugs, is there also not a danger of patients taking anti-depressants, painkillers and sleeping medication, such as codeine, becoming addicted over time? Is this carefully monitored?

Lord Markham (Con): First and foremost, it is the role of the GP and the local clinician to monitor that. Again, the guidance given by NICE is that we very much back up and work with the NHS performance teams to make sure that things are integrated. Not only is there the meeting of the patient with the GP in the first place, but these are reviewed very frequently, on a six-monthly basis, to ensure that exactly the issues mentioned by the noble Lord are controlled.

Lord Sikka (Lab): My Lords, the Government can help to reduce the use of anti-depressant drugs by tackling the root causes, which are anxiety, insecurity and poverty inflicted by the Government's own policies. Will the Minister tell us when the Government will be in a position to reduce the NHS waiting lists back to the numbers they were at in 2010?

Lord Markham (Con): I believe that the House is very aware of our plan for patients. It is very much the focus of my activity. I was just talking to the NHS and the CFO this morning on where we are on the recovery of the elective treatments and the plan for that, so it is very much in the front of our minds.

Lord Teverson (LD): My Lords, I very much welcome the Government's initiative on environmental prescribing, particularly for depression and mental illness. Will the Minister say what assessments they have made of the success of that programme so far, and whether they will promote it further?

Lord Markham (Con): On this occasion, that is probably a question about which I need to write back to the noble Lord to give him the detail on it.

Lord Kamall (Con): My Lords, the noble Baroness, Lady Wheatcroft, alluded to the fact that sometimes patients would be more effectively treated through social prescribing, or cultural and arts prescribing. What advice is given to GPs to make them aware of cultural, art and music therapy in solving or tackling depression?

Lord Markham (Con): I agree that we have to make sure that GPs are equipped with the full range of tools for the job and the full range of knowledge. We are probably all aware of some instances of GPs who are very aware and progressive in this space, and others where they do not have that same level of information. We are putting a £2.3 billion increase in 2023-24 into the mental health space to treat an extra 2 million people. We need to make sure that we have a range of help that we can put in place for these people.

Baroness Altmann (Con): My Lords, I echo the words of my noble friend that GPs are absolutely critical to sorting out these issues, and the Dame Carol Black review on overprescribing presumably will look into that too. Does he agree that one of the problems that urgently needs to be sorted is the pension issues that are driving our GPs to retire early? Might we look forward to some early resolution of that problem?

Lord Markham (Con): I am very aware of the issue. Funnily enough, just today I had a meeting on this with the noble Baroness, Lady Finlay. It is something on which we are working closely with Treasury and other officials.

Avian Flu

Question

3.29 pm

Asked by ***Lord Selkirk of Douglas***

To ask His Majesty's Government how they ensure that there is a regular exchange of information with other countries on the prevalence and spread of avian flu in migratory bird populations; and what steps they are taking in this regard to protect the health of seabirds and waterfowl.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, international collaboration and knowledge exchange is facilitated through the World Organisation for Animal Health by the UK Chief Veterinary Officer and the Animal and Plant Health Agency's international reference laboratory. The UK's membership of the Ospar-Helcom-ICES joint working group on birds and the African-Eurasian Waterbird Agreement are also key forums for improving collaboration, monitoring and information sharing on avian influenza in migratory birds. Defra has commissioned Natural England to assess the vulnerability of seabird species and recommend actions.

Lord Selkirk of Douglas (Con): I thank the Minister very much for his reply and for putting in place a wild bird avian influenza strategy to assess the impact of this desperately damaging disease. In view of the fact that the United Kingdom and European nations are in the grip of the worst ever outbreak of bird flu, will he now consider widening and strengthening the Government's current measures to create a fully comprehensive avian flu response action plan, working in co-operation with the devolved Governments? This plan could include improved seabird site protection measures and the encouragement of research and development on more effective vaccines for domestic birds.

Lord Benyon (Con): My noble friend is absolutely right to raise the importance of an international response to this. I assure him that there is almost daily collaboration across the devolved Governments and through international fora such as the ones I just mentioned. We are also consulting our European colleagues in the European Food Safety Authority closely; we have two officials on the panel working on this. This requires an international response. The impact it is having on our wild bird population and on domestic birds in poultry farming and other settings is tragic. We are working really hard, with a sense of real emergency, to try to find solutions, but it is a very difficult one to solve as it is now endemic in the wild bird population.

Lord Trees (CB): My Lords, as we have heard, avian flu is causing devastating disease in wild birds but also in our domestic fowl population. Is the Minister aware of recent research using gene-edited chicken cells in culture, which has created cells that can resist avian influenza? Does he agree that gene editing offers great hope that in future we can control the disease, at least in domesticated birds?

Lord Benyon (Con): I do agree. On Monday we will debate the Second Reading of the precision breeding Bill. It will take a number of years for the measures in that Bill to become effective, but it will undoubtedly have an impact on this kind of disease, to which we will be able to improve resistance in plant and animal species.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, some strains of avian flu are transmissible to humans. Some are very mild but others are more aggressive. Of 868 cases of human infection recorded

between 2003 and October 2022, more than half—456—resulted in death. The traditional flu season is approaching. Those with flu-like symptoms tend to self-isolate and not visit the GP. How will the Government accurately assess the level of avian flu among humans in the UK and record the number of resulting deaths?

Lord Benyon (Con): The medical advice we have received is that although this is a zoonosis and can therefore be transferred from birds to humans, the risk is low. There was one case in the UK last year, in an elderly gentleman who recovered. We give clear guidance on how to work with birds, whether in a domestic fowl setting or in picking up carcasses of birds that have died of avian influenza. There is very clear guidance on this and members of the public should be wary of getting into close association with sick birds.

Baroness Crawley (Lab): My Lords, have the Government estimated, with stakeholders in the poultry business, of how long supermarket rationing will last? Is it a case of weeks or months?

Lord Benyon (Con): There have been a number of reports of difficulties of supply. I can say that my fingers and toes are crossed when it comes to turkeys for Christmas. On egg supply, about which there has been a bit of publicity today, I can tell the House that there has been a 4.11% decrease in production, not entirely due to avian influenza. It is worth reporting that we have 38 million laying hens in this country, around 812,000 of which have died or been culled since the beginning of October. That is a 2.1% reduction in the population, with a 4.11% effect on egg production. We think that is okay. There is no need to dash to the supermarket to get eggs. We believe that the supply is safe but we are monitoring the situation on the daily basis.

Lord Deben (Con): Does my noble friend agree that these diseases are likely to increase because of the effect of climate change? I declare my interest as chairman of the Climate Change Committee. Is he really sure that his department has adequate resources and adequate people working not just on avian flu but on the other pests and diseases that we are likely to have to face?

Lord Benyon (Con): I invite my noble friend to join me in my monthly security meeting, which draws together people from across Defra and its agencies, looking at the risks coming from near and far. That can be quite a sobering experience. He is absolutely right that a combination of climate change and the globalised movement of people is bringing greater risks to our shores. I am full of admiration for the work that is done, and I assure him that an enormous amount of horizon-scanning goes on in trying to see where the next risk is coming from and what we can do to mitigate it.

Baroness Hayman of Ullock (Lab): My Lords, breeding seabirds have been badly hit, particularly great skuas. Last winter on the Solway Firth, the disease killed over 16,000 barnacle geese. Seabirds are long-lived so they take longer to reach breeding age and have fewer chicks. They are already under massive pressure from climate change, a lack of prey fish and deaths from entanglement in fishing gear. What surveillance and testing systems exist for seabirds? Earlier the Minister mentioned dead birds and public health. What guidance is there on carcass removal and disposal for wild birds? What are the Government doing to prioritise and fund seabird conservation?

Lord Benyon (Con): The noble Baroness is right that this is a tragedy for populations of particular seabirds. Bass Rock, just south of Edinburgh, has been white for centuries but is now black; that is a visual reminder of the impact the disease is having.

I assure her that we are working hard. Information is available on the GOV.UK website about what people should do if they find a bird or are concerned about one. We are calling in the best advice. The Joint Nature Conservation Committee has been commissioned to set up an advisory recovery group on monitoring data and evidence on whether existing conservation interventions are working and new conservation interventions that may help.

As I said, we are working internationally through the European Food Safety Authority. Our chief vet is in regular contact with colleagues in Ireland and elsewhere, including of course in the devolved Governments. We have a clear strategy, which is available for people to see, to resolve the issue.

Dealing with the disease in poultry settings is vital but it is harder to deal with among wild birds. Still, we have a clear strategy to try to mitigate it. Some possible good news is that there is evidence that some birds are developing degrees of resistance to avian flu, but it is too early to say why that is or quite what the effect will be.

Lord Teverson (LD): My Lords, early in this outbreak there were gaps in the collection of wild birds' carcasses, between local authorities, landowners and Defra. Is the Minister now convinced that those gaps have been filled and that lessons have been learned for inevitable future outbreaks of avian flu?

Lord Benyon (Con): I cannot tell the noble Lord that there will never be any problems. I can report that yesterday, for example, there was a park in a town where the council said that it was not its job to pick up carcasses, it was the Environment Agency's—which said that it was someone else's job. These things happen. We are trying to be as clear as we can with the guidance. There should be no silo thinking here. We need these matters resolved as quickly as possible. I can assure the noble Lord that if he has any reports of where there are difficulties, I will take it up and we will try to iron them out, but there are clear processes. This is an emergency that we are dealing with on a national scale.

Parliament: Deferred Peerages

Question

3.40 pm

Asked by ***Lord Cormack***

To ask His Majesty's Government whether they have any plans to recommend the conferring of deferred peerages on sitting Members of Parliament.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, it is a common-law principle that Members of the House of Lords cannot sit as MPs and, as such, would need to stand down from the House of Commons. The Government are aware that there is some precedent for individuals delaying taking up their seats, but this is limited and largely related to their personal circumstances.

Lord Cormack (Con): Well, my Lords, we are all grateful for that Answer as far as it goes, but perhaps I might suggest to my noble friend that these rumours and stories in the press—which have the real sniff of authenticity—could, to mix my metaphors, be nipped in the bud. Does my noble friend agree that it would be very wrong for the Government to place the monarchy in an invidious position, and that it would be very wrong to create what would, in effect, be a precedent: to have a list consisting of a number of Members of the other place? Would my noble friend come forward later with a much more emphatic Answer that does indeed put an end to all the speculation?

Baroness Neville-Rolfe (Con): I will start by saying that we do not comment on leaks and rumours—but I agree that it is a core constitutional principle that the monarch is never drawn into party politics. I think we all very much agree on that. As far as individual proposals and speculations are concerned, no list has been confirmed and I will not go any further in adding to the speculation.

Baroness Smith of Basildon (Lab): My Lords, it is one thing, as the Minister says, when someone, for personal reasons, genuinely cannot take up a seat in the House of Lords that they have been awarded, but will she recognise that it is completely unacceptable, if the rumours are true, to create a situation where four Members of Parliament hang onto their seats in the other place but can jump into this House at a time of their choosing, or at a time that is more convenient for their political party? The Prime Minister could stop this in its tracks: will he?

Baroness Neville-Rolfe (Con): I do not think I can add to what I have said already. It is very important not to believe what you read in the newspapers; sometimes they are right and sometimes they are wrong. A list has not been confirmed, and it is not appropriate or fair for the Government to speculate—or encourage speculation—on names that may or may not have been nominated or vetted. We need to be fair to those being considered.

Lord Wallace of Saltaire (LD): My Lords, in the last manifesto that the Conservatives came up with, there was a commitment for a commission on the constitution to consider questions such as the future of the House of Lords and the next stage of reform. By the time of the coming election, there will be room for another 20 to 30 net Conservatives being nominated, so clearly the House would become unbalanced again.

Noble Lords: Oh!

Lord Wallace of Saltaire: I mean unbalanced in favour of the Conservatives, of course. What does the Minister think might be in the next Conservative manifesto about the next stage of necessary reform of the House of Lords?

Baroness Neville-Rolfe (Con): I cannot even speculate on the next Conservative manifesto, but I can of course point out that, in spite of winning elections since 2010, the Conservative voice is still underrepresented in the Lords.

Noble Lords: Oh!

Baroness Neville-Rolfe (Con): As of November 2022, the Conservative party still has only 34% of the seats and recent appointments have not moved the dial. Indeed, I should point out that, when lists are brought forward, potential Peers from other parties are also considered, as was the case when they were included on the recent list, and I am very happy to welcome some of these fresh faces to our Chamber to help with our debates.

Lord Judge (CB): My Lords, I have nothing whatever to do with whether there are too many of which party in the House. If the Minister cannot comment on the future, perhaps I can go back over the history of, say, the last 25 years. Has the time perhaps come when the exercise of the royal prerogative by the Prime Minister should be subject to some sort of legislation? If it is not subject to some sort of legislation, who on earth is ever going to control him or her?

Baroness Neville-Rolfe (Con): The way this works is that the Prime Minister, of any colour, is democratically accountable and appointments to the House of Lords are a matter on which he or she advises His Majesty the King. In my view, and this is the Government's view, appointments should not be decided by, for example, an unelected body.

Lord Forsyth of Drumlean (Con): My Lords, when Caligula appointed his horse as a consul, it was in order to discredit the institution. Is there not a danger that this is happening here?

Baroness Neville-Rolfe (Con): My noble friend always comes to my rescue in the most extraordinary way. Of course, we are grateful for the views and exchanges being expressed today, but I come back to my first point: it is important not to speculate on what is put forward in newspapers and so on. I always remember when I was in the newspapers because I was going to be appointed director-general of the Confederation of British Industry, when I had not even put my name forward. There is a matter of fairness and appropriateness that we need to take into account—despite the fun we are obviously having in debating this today.

Baroness Hayter of Kentish Town (Lab): My Lords, this is a serious legislature; this is not a playground for former friends of former Prime Ministers to come here at a moment of their convenience. We have had

the Burns report and know that we should be smaller to do our job properly. Will the Minister ask the Prime Minister to meet the Burns committee—I have not asked committee members whether they would be willing—to concentrate on the important thing, which is enabling us as a serious legislature to do our job properly, with fewer Members, rather than having people waiting to come in after the next election?

Baroness Neville-Rolfe (Con): The Burns committee did of course report and the Prime Minister of the day, Theresa May, decided not to sign up to its recommendations—although, as has been said, there was a manifesto commitment to look at the role of the Lords, with any reform needing careful consideration and not being piecemeal. We obviously also have the very important House of Lords Appointments Commission. Upon taking office, it is the normal thing for the Prime Minister of the day to meet the chairman of HOLAC, as he or she values the advice of the commission, which obviously includes Members of this House.

Lord Grocott (Lab): My Lords, can the Minister explain this concept of "deferred peerages", which is completely baffling to me? The position is surely that you become a life Peer only when Letters Patent are issued. If you are a sitting MP, Erskine May declares quite clearly that you have to give up and cease to be an MP from the moment that Letters Patent are issued. Is it simply the case that this furore is because a Prime Minister has said to various colleagues, "You'll become a Peer at the next general election, whenever that might be"? If that is the case, surely there is no obligation whatever on any incoming Prime Minister to abide by a decision a previous Prime Minister has made?

Baroness Neville-Rolfe (Con): It is for the Prime Minister of the day to advise the sovereign on proposals for peerages, as the noble Lord has said. If the House will bear with me, I could mention two obvious precedents if that would be helpful. One was my noble friend Lady Davidson of Lundin Links—

Baroness Smith of Basildon (Lab): She was not an MP.

Baroness Neville-Rolfe (Con): She was an MSP—but the point is that she was nominated in Boris Johnson's Dissolution List of 31 July 2020 and her Letters Patent, to respond to the noble Lord, were issued on 16 July 2021. She was introduced to the House later that month.

Lord Foulkes of Cumnock (Lab Co-op): It is a different Parliament.

Baroness Neville-Rolfe (Con): The point I was making right at the beginning, which I will reiterate, is that the Government are aware that there are some precedents for individuals delaying taking up their seats. However, this is limited and related, as in this case, to particular circumstances.

Higher Education (Widening Access and Participation) Bill [HL]

First Reading

3.50 pm

A Bill to make provision in relation to widening access to and participation in higher education; and for connected purposes.

The Bill was introduced by Lord Griffiths of Burry Port, read a first time and ordered to be printed.

Public Order Bill

Committee (1st Day)

Relevant documents: 17th Report from the Delegated Powers Committee, 1st Report from the Joint Committee on Human Rights, 7th Report from the Constitution Committee

3.51 pm

Clause 1: Offence of locking on

Amendment 1

Moved by ***Baroness Chakrabarti***

1: Clause 1, page 1, line 5, at end insert "without reasonable excuse"

Member's explanatory statement

This amendment makes the lack of a reasonable excuse a component part of the offence of locking on, thus placing the burden of proof upon the prosecution.

Baroness Chakrabarti (Lab): My Lords, I will rise slowly to allow the mass exodus from the Chamber of noble Lords who are fascinated by the civil liberty implications of this terrible draft legislation. The exodus is nearly, if not quite, complete.

I have the unhappy duty of opening the first detailed debate on this Bill, which has so many problems. One of them is that it criminalises innocent, legitimate activity in a way that is so vague and broad it risks a great deal of potential injustice. It is really not appropriate for legislators in either place to allow this kind of shoddy work to pass, risking the liberties of our people, many years into the future.

Lord Foulkes of Cumnock (Lab Co-op): I am sorry to interrupt at such an early stage. My noble friend rightly said that she has the unhappy duty to move this amendment. It is astonishing that we are considering the Bill and these amendments today. My noble friend has been very much involved in the detailed discussions in relation to the Bill. In view of the outright opposition, right across the country, to some of the provisions in the Bill, have the Government given my noble friend any indication that they propose not to proceed with the Bill? It is outrageous that we continue to consider these details and amendments, and I am sure that my noble friend would agree with me. Surely the Government have had second thoughts on this by now.

Baroness Chakrabarti (Lab): I am grateful, as always, to my noble friend, who has been a parliamentarian of distinction in both Houses, over many years, and who cares a great deal about our constitutional climate and integrity in this country. I regret to inform him that I have heard no such cause for comfort or indication of any reflection on the part of the Government in relation to the Bill. I agree with my noble friend that that is a matter of enormous regret. As it happens, I have not heard even a hint of potential listening or movement around the Bill's detail, let alone what my noble friend and I would prefer, which is that this terrible attack on British liberty is dumped by a Government who have seen reason.

A case in point is the new proposed criminal offence of locking on. As noble Lords will remember, a person commits this offence if they

"attach themselves to another person, to an object or to land … attach a person to another person, to an object or to land, or … attach an object to another object or to land".

That is very vague and broad. The Bill also says that a person commits this offence if

"that act causes, or is capable of causing, serious disruption"—

it does not define this—

"to … two or more individuals, or … an organisation",

and if they "intend" the act to have that disruptive consequence or

"are reckless as to whether it will have such a consequence."

By the way, noble Lords in the Committee will remember the rather colourful and entertaining speech of my noble friend Lord Coaker when these provisions came this way the first time, before the current reheated version. It was either my noble friend Lord Coaker or my noble friend Lord Kennedy who talked about two people linking arms as they went down the road together. It was a rather colourful example of the two of them linking arms and going down the road together, which caused some amusement on all Benches in your Lordships' House—they would perhaps take up a bit of space, if I can put it like that. But the idea that that simple, innocent act would potentially be impugned by an offence of the breadth that I have just set out is not a laughing matter, despite the amusing example.

The only crumb of comfort that the draftsmen and policymakers in the Home Department have offered is a defence—not part of the criminal offence itself—if the person charged proves that they had a "reasonable excuse" for this attachment, be it human to human, bicycle to railings or whatever. So the burden is put upon the accused person, rather than residing where it should in our criminal law: with the prosecution.

This is a terrible offence. The principle of burden flipping—reversing the burden of proof—is in relation to the new proposed offence of "locking on", but it is present elsewhere with other offences. I object per se to reverse burdens; they are inherently very dangerous. They are sometimes necessary, but, when they are necessary, the actual conduct being impugned must be very tightly limited. It would be one thing to have an offensive weapon without a "reasonable excuse"—because you can license the holding of offensive weapons; that would make sense to me—but it does not make sense to include attaching yourself "to another person" or to property, linking arms with your chum, attaching your bicycle to railings, et cetera. These are all examples of conduct which can be potentially impugned by this criminal offence, and for which one could go to prison for nearly a year. This is totally outrageous and unacceptable.

4 pm

I declare my interests as a council member of the all-party law reform group, Justice, and as a visiting professor of practice in the law department of the London School of Economics, which is down the road. I hope, if the Minister remains confident in the wisdom and integrity of this draft legislation, that he might consider coming to the LSE, this side of Christmas, to listen to the concerns of students, lawyers, journalists and peaceful dissenters. So, in addition to debating the Bill with me, he could hear their concerns directly, allowing for public debate as well as parliamentary debate in this Committee.

With my amendments in this group—Amendment 1, as well as other amendments applying to other offences—I have taken this defence of "without reasonable excuse" and put it into the main body of the offence. This would allow, initially, a police officer when seeking to arrest and, subsequently, a prosecutor both to be clear in their own minds that there was no "reasonable excuse". If there were a potential "reasonable excuse", it should be considered as part of the central element of this offence—for example, if I needed to lock my bicycle, or if I were just walking down the road with someone intimate or my friend and, because we are big chaps, we got in the way of a police officer, but we really had a "reasonable excuse" to be linking arms. This is a very modest but essential amendment, not just to this outrageous offence of "locking on", which should not even be here, but to other offences in this awful Bill. With that, I beg to move.

Lord Paddick (LD): My Lords, I have added my name to the other amendments in this group. If noble Lords will indulge me, as is usual with the first group of amendments, I will remind them why we have arrived at this point. The Government had already included draconian anti-protest measures in the Police, Crime, Sentencing and Courts Bill—including giving the police power to place restrictions on meetings and marches if they might be too noisy, including one-person protests—when, just before the Conservative Party conference in 2020, Insulate Britain began a series of protests, including dangerously and recklessly blocking motorways. Allowing a sentence of imprisonment for highway obstruction was proposed and agreed by this House, and now many Stop Oil protestors have been either sent to prison or remanded in custody pending trial.

However, the then Home Secretary felt that she had to say something to appease Tory supporters at the Conservative Party conference: that she would introduce even more draconian anti-protest measures. Despite the PCSC Bill having already passed through the Commons, the Government introduced these even more draconian anti-protest measures, those we have before us today, as amendments in Committee of the PCSC Bill in this House. Apart from custodial sentences for highway obstruction, this House rejected all these measures on Report of the PCSC Bill.

Apart from the new stop and search powers, which some police officers and His Majesty's Inspectorate of Constabulary and Fire & Rescue Services suggested the Government might introduce, but which the Home Office left out of the original PCSC Bill, none of the measures that we are being asked to agree to today in this Bill was requested by the police, none of the measures was supported by HMICFRS, and some that were considered, such as serious disruption prevention orders, were rejected as contrary to human rights, unworkable and likely to be ineffective.

I have Amendments 8, 29, 40, 55 and 60 in this group, which all relate to reasonable excuse. We saw, with the arrest and detention by the police of a journalist who was reporting on recent protests, the potential danger of only allowing a reasonable excuse defence to be deployed once charged, as the Government propose in this Bill. In other legislation, a person does not commit an offence if they have a reasonable excuse, and therefore cannot be lawfully arrested and detained. I might not go as far as the noble Baroness, Lady Chakrabarti, in saying that it should be for the prosecution to prove that the protestor did not have a reasonable excuse. I am reminded of the wording of Section 1 of the Prevention of Crime Act 1953, where

"Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence".

If the Government are looking for compromise, as they should in the face of the opposition already expressed to these measures in this House in its consideration of the PCSC Bill and in the views expressed on this Bill at Second Reading, maybe this should be an option that they consider.

This is even more important than the offensive weapon example, in that these are basic human rights under Articles 10 and 11 of the European Convention on Human Rights—the rights of expression and assembly. To allow people who are exercising their human rights, who have a reasonable excuse for what they are doing, to be deprived of those rights by being arrested and detained, as the Government propose, but where the reasonable excuse for exercising their rights can only be considered once they have been charged, cannot be right.

In Clause 3(2), for example, the proposed legislation says, in relation to tunnelling,

"It is a defence … to prove that they had a reasonable excuse for creating, or participating in the creation of, the tunnel."

Clause 3(3) says,

"a person is to be treated as having a reasonable excuse … if the creation of the tunnel was authorised by a person with an interest in land which entitled them to authorise its creation."

I am sure that the Minister will correct me if I have this wrong but, say a landowner instructs workers to build a tunnel on her land, which she owns, before it is subject to a compulsory purchase order to facilitate a development, in order to disrupt the development, which she objects to, she and her workers can be arrested, detained and charged, and only then can they deploy the reasonable excuse defence that the Government provide for in the Bill. How can that be right?

In relation to the obstruction of major transport works, the Bill provides specifically, in Clause 6(2)(b), that if the action

"was done wholly or mainly in contemplation or furtherance of a trade dispute",

the person has a reasonable excuse, but Clause 6(2) says that

"It is a defence for a person charged with an offence".

Again, the Minister will correct me if I am wrong, but does that mean that lawful pickets, on a picket line, can be arrested by the police, detained, and charged and can deploy the reasonable excuse defence only once charged? The Minister may say that the police would not arrest those engaged in lawful picketing—even though the proposed legislation would allow it—but, presumably, the Minister also believes that a mainstream journalist, with an accredited press pass, reporting on a protest, would not be arrested and detained for five hours by the police, and would also deny that. Similar arguments apply in relation to Amendment 60 to Clause 7.

We have seen from the arrest of the journalist that the police cannot always be trusted in every circumstance to use their judgment and not use the powers given to them in legislation. If someone has a reasonable excuse for their actions—we will come to a discussion of what amounts to a reasonable excuse in the next group—such as an accredited press card holder reporting on a protest, they should not have a defence once arrested, detained and charged, but the police should not be allowed to arrest and detain them in the first place. That is the desired effect of the amendments in this group and we strongly support them.

Lord Anderson of Ipswich (CB): My Lords, I put my name to Amendments 1 and 7 in the name of the noble Baroness, Lady Chakrabarti, and I support to similar effect Amendment 8 in the name of the noble Lord, Lord Paddick, which coincides with that proposed by the Joint Committee on Human Rights. They relate, of course, to the locking-on offence in Clause 1, which, as the noble Baroness said, is an offence for which the actus reus is extraordinarily broad. You do not have to attach yourself to railings to commit it; it is enough to "attach an object"—any object—

"to another object or to land."

Nor is there any requirement that serious disruption be caused; it is enough that the act

"is capable of causing, serious disruption",

a term undefined, at least so far, and that you are "reckless" as to whether it does so.

When I raised this point at Second Reading, the Minister was good enough to say that he would write to me on it, and I thank him for doing so. He makes the point in his letter that the defendant has personal knowledge of the facts, making it reasonable for him to have to establish them. I agree with that: no one, I understand, objects to the evidential burden resting on the defendant, and I apprehend that that is what the noble Lord, Lord Paddick, was just saying, but it is clear from the letter that the Government's intention is to go further and to place the legal burden on the defendant of proving lawful excuse.

The letter explains that there are times when the evidential and legal burden of proof may legitimately fall on the defendant, notwithstanding the presumption

[LORD ANDERSON OF IPSWICH]
of innocence. One of those times, as the Minister said, is when you are carrying a bladed article in a public place. You may then be expected to prove that you had good reason to avoid conviction under Section 139(4) of the Criminal Justice Act 1988. But as the court said in the relevant case, L v DPP:

"There is a strong interest in bladed articles not being carried in public without good reason".

The public interest in objects not being attached to other objects is less strong, to put it mildly, particularly against the background of the fundamental right to protest.

As Lord Bingham went on to say in Sheldrake, now the leading case on reverse burdens, security concerns do not absolve the state from its duty to observe basic standards of fairness. There are cases not referred to in the Minister's letter, such as DPP v Wright, a Hunting Act prosecution, in which it was held to be oppressive, disproportionate, unfair and unnecessary to impose a legal burden on the defendant. Then there is the point well made by the Joint Committee on Human Rights: if the reasonable excuse is an afterthought, rather than an ingredient of the offence, protesters will be liable to be arrested whether they had a reasonable excuse or not. It is undesirable in principle for the possible defence to arise for consideration only after arrest or charge.

The curious thing about this debate, it seems to me, is that it is unlikely to affect the ease of conviction one way or the other. Once it is accepted that a protester may legitimately be asked to bear the evidential burden, then the legal burden, whatever the legal significance of the point, will rarely matter much in practice. The court will take its own view on whether the excuse is reasonable or not and not usually spend much time on the technical issue of burden of proof. Indeed, that was another point made by Lord Justice Pill in the L v DPP case, on which the Government relied in the Minister's letter to me. In other cases where the Government have overstepped the mark by putting a legal burden on the defendant when they should not have done so, Section 3 of the Human Rights Act has come to their rescue, by enabling the reverse burden to be interpreted as a merely evidential burden that does not get in the way of the presumption of innocence. That emergency cord will not be available to the Government if the courts rule against them on reverse burden after the Bill of Rights has removed Section 3, as appears to be their intention.

I approach this issue in a spirit not so much of crusading zeal as of some bafflement that the Government would take such a legally risky course for so little practical advantage. I suggest that the orthodox approach to these offences is also the fairer approach for members of the public, and the safer approach for police, prosecutors and the Government. The prosecution should simply have to prove its case in the normal way.

4.15 pm

Lord Skidelsky (CB): My Lords, I am happy to add my name to the group of amendments in the name of the noble Baroness, Lady Chakrabarti, in perhaps a more crusading spirit than the noble Lord, Lord Anderson.

If asked, most people would say that the most important principle in our legal system is that a person is presumed innocent until proven guilty. They would be surprised, and should be alarmed, by the extent to which this principle has been steadily eroded in our legal practice, of which this clause is a good example. As the clause stands, a defendant would have to prove in court that they had a reasonable excuse for committing the offence specified in Clause 1(1)(a).

Our amendment is designed to ensure that the police must prove in court that the defendant had no reasonable excuse for committing the offence. In other words, the police would need to prove that A and B, charged with walking down a street linking arms, had no reasonable excuse for doing so. As the burden of proof will fall on the police, they are less likely to arrest and charge people indiscriminately without a reasonable cause for doing so.

It is a very important point. The effect of this amendment will be to diminish the number of people detained and arrested for no offence. If we can achieve that, it will be an important thing to have done.

Baroness Blower (Lab): My Lords, my noble friend Lord Hendy has added his name to Amendment 60. In his unavoidable absence, I will speak to that amendment in words which are largely his, although I support and endorse all the amendments in this group.

The purpose of Amendment 60 is simple: to make more effective the protection the Government intend to provide for those with a reasonable excuse or those engaged in a trade dispute in the current version of Clause 7. I will focus specifically on trade disputes, with which I have some affinity.

By way of preliminary, it should be noted that the phrase

"in contemplation or furtherance of a trade dispute"

originated in the Trade Disputes Act 1906. It is now found in the Trade Union and Labour Relations (Consolidation) Act 1992, where is also found the definition of a trade dispute. For the purposes of today's debate, it is sufficient to say that trade disputes encompass disputes over terms and conditions of employment and certain other industrial relations matters.

As drafted, Clause 6 recognises that obstruction or interference, which constitute the offence in subsection (1), may well be applicable to those picketing in the course of a trade dispute. Clause 6(2) seeks to exclude pickets from being found guilty of the subsection (1) offence. However, the way the subsection is drafted means that a person in such a situation, as we have heard, may be arrested, charged and brought before the court. It is only when presenting their defence that the trade dispute defence will achieve the protection afforded by the Bill.

Those who have signed this amendment and the rest of us who support it hope that, if someone is acting in contemplation or furtherance of a trade dispute, they will not be liable, as we have heard from the noble Lord, Lord Paddick, to be arrested, charged or brought to court for a subsection (1) offence. The defence should kick in before that point.

It is important to bear in mind three points. First, the right to picket in contemplation or furtherance of a trade dispute is a statutory right, now set out in

Section 220 of the consolidation Act of 1992 but with its origins in the Conspiracy, and Protection of Property Act 1875. The price of the right to picket was that no protection was given for the offences created by the 1875 Act, such as "watching and besetting", fascinatingly; nor has it been given for the array of other potential offences such as obstructing a public highway or an officer in the exercise of his duty, or more serious offences.

Since 1875, the right to picket has been regulated and restricted by many amendments to the relevant law, the latest being several requirements imposed by the Trade Union Act 2016, now found in Section 220A of the Trade Union and Labour Relations (Consolidation) Act 1992. This leads to the second point: the amendment seeks only to strengthen the protection against this specific offence; all other potential offences which might occur in the course of a trade dispute remain open to charge. The amendment does not seek to enlarge the right to picket.

The final point is this: a picket in the course of a dispute is not a secret activity; it is not one of which local police will be unaware. The very purpose of a picket—and I can attest to this from having stood on many of them myself—in the words of Section 220 of the 1992 Act is that of

"peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working."

To this end, pickets draw attention to themselves, to their union, and to the dispute they seek to further in the hope of persuading others not to cross the picket line. Your Lordships will be familiar with images of picket lines, and over the last few months, perhaps even familiar with actual pickets. The police will have no difficulty in recognising those acting in contemplation or furtherance of a trade dispute long before they, no doubt vociferously, proclaim it.

More than that, under Section 220A, a picket supervisor must be appointed by the union. She or he must be familiar with the very extensive Code of Practice on Picketing, and, most importantly for our purposes, she or he must take reasonable steps to tell the police his or her name, where the picketing will take place, and how he or she may be contacted. The section also requires that the picket supervisor must be in attendance on the picket or able to attend at short notice. She or he must be in possession of a letter of authority from the union which must be produced on demand; significantly hedged about, therefore.

It is right that in the creation of this new offence the Government have not sought to encroach on the protection of the right to picket in industrial disputes, a right which is also protected by Article 11 of the European Convention on Human Rights, and hence the Human Rights Act 1998. This amendment is exceedingly modest: it asks that the protection be made effective by preventing a picket from being charged with a new offence.

Lord Balfe (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Blower, and even more of a pleasure to reflect on the words of our good friend, the noble Lord, Lord Hendy. Before he came into this House, I do not think that we had quite the same level of wisdom and knowledge about the details of trade union legislation.

I too rise to ask that the Minister gives serious consideration to accepting Amendment 60; all it does is make it quite clear that a person, picket or trade union does not commit an offence under the clause by removing the words:

"It is a defence for a person charged with"—

they should not ever be "charged with". This is a perfectly legitimate action undertaken by people in pursuance of a trade dispute, and quite reasonable. So I ask the Minister to look very carefully at Amendment 60, and when it comes back, to see whether this amendment cannot be accepted, because it is a very sensible amendment.

One could make virtually the same speech on many of the clauses in the Bill. I do wonder: what are we trying to achieve? Most of the things in the Bill are already offences. If we have a problem, it is that the police do not seem to think that it is worth prosecuting them—of course, we saw in the last few days that glorious picture of 11 rather bewildered policemen standing in the middle of the M25, gazing at a gantry.

This is not a sensible way to make laws; I am not sure that it appeals even to the *Daily Mail*. A lot of the Bill is reflex action stuff. It is man-in-the-pub stuff: "Oh, we don't like this"—of course we do not want people to stick themselves to the pavement, but the law already exists. Between now and Report, I ask the Minister to have a very careful look at what we are trying to achieve, whether the Bill achieves it and, in particular, Amendment 60 and the Bill's effect on the trade union movement—I probably should have declared that I am the president of a TUC-affiliated trade union—and its many voluntary workers who spend their leisure time trying to improve the lives of their colleagues. Please can the Minister have another look?

Lord Carlile of Berriew (CB): My Lords, it is a pleasure to follow the noble Lord, Lord Balfe. I absolutely agree with his fundamental point that here we are trying to create offences which are not necessary because there are already adequate offences to deal with these situations. I do not understand why the police have not used those existing offences in entirely appropriate situations.

I apologise for not having been able to speak at Second Reading, and I will try to be very brief now as a result. We have a situation here in which we are responding to someone else saying to us, "Something has to be done." There are often situations in which, when we hear those words, the answer should be, "No, it doesn't; we just need to do the things we have rather better", and not produce a load of speciality legislation that will barely be used.

Sitting just behind me is a former Director of Public Prosecutions, my noble friend Lord Macdonald of River Glaven. I have heard him, very recently in fact, talk in another setting of the discretion not to prosecute that is vested in prosecutors. I apprehend that in many of the cases we are thinking of here, the police will NFA—no further action—a lot of them. If they do get to the Crown Prosecution Service because the police have not NFAd them, Crown prosecutors will NFA them using the second part of the CPS code test; namely, the public interest. It is very important, is it not, for us and the authorities which we invest with these powers to be proportionate in their use of them?

[Lord Carlile of Berriew]

I absolutely agree with the noble Baroness, Lady Chakrabarti, and others who have said that it is much better in principle for the whole burden and standard of proof to fall on the prosecution. However, I agree with my noble friend Lord Anderson that there is a bit of dancing on pins about that; it does not really make much difference in the end.

We should not be creating offences where, if they are summary offences, lay magistrates are going to find it very difficult to square their consciences with convicting people charged with them, and where—this is the worst possible scenario—if they are triable by jury, the jury may refuse to convict when there is overwhelming evidence that the offence was committed. Juries have done that recently, not least in relation to the Colston statue case in Bristol.

If your Lordships will allow me one quotation, I return in the end to some of the very wise words of Dr Martin Luther King, who said:

"One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws."

That does not mean that a member of Just Stop Oil has the right to block the M25; the just or unjust law they would be dealing with is not the Government's policies on oil but whether it should be a crime to obstruct the highway, so it will not actually help them very much in those cases. What I really want to say is that I think we will spend many hours today talking about issues that we really should not be troubling ourselves with at all.

4.30 pm

Lord Horam (Con): My Lords, I shall follow up on precisely the point that the noble Lord, Lord Carlile, has just made about whether we are wasting our time on something which we should not really be discussing because the offence is already there. As a non-lawyer, I tread with some trepidation in this area, as the Committee will understand, but I would like to have clarified the extent to which the law to deal with this problem already exists. This has concerned me.

I took part at Second Reading and I was very interested in the comments made by the noble Lord, Lord Hogan-Howe, who has operational experience in dealing with problems similar to this, if not this particular problem. No doubt there were similar efforts of a similar kind before this business of locking on to block roads. In his remarks, he said that until recently,

"obstructing the highway has always been a simple offence—an absolute offence. No intent required".

That had been the position, apparently. However, I gather from his speech that subsequently the Court of Appeal was overruled by the Supreme Court, which said that, if a protest is obstructive, the circumstances of that protest should be taken into account. The noble Lord also said:

"Crucially, it means that protesting in a way that obstructs road users is not automatically a criminal offence."—[*Official Report*, 1/11/22; col. 174.]

Therefore, as a lay man, it seems to me that some doubt has been bought into the question of whether an ordinary police officer, acting as he thinks sensible, has the right to stop someone obstructing the highway, even if he thinks the cause is just. There seems to be some doubt, so I hope that when he comes to wind up my noble friend can clear this up. If there is no doubt here, why are we discussing all this? If there is some doubt, there is every reason to have the Bill and this clause. It seems to me that in that situation we need clarity.

Lord Carlile of Berriew (CB): If I am to be corrected, I am, but may I just offer a view? It is an offence to wilfully obstruct the highway. Of course, if you obstruct it because a person in your car is having a heart attack and needs attention, there will probably be a reasonable excuse for the obstruction and that is a defence. However, it is a summary offence to obstruct the highway, punishable by imprisonment.

Lord Paddick (LD): Before the noble Lord continues, I ask him to point to the provisions in this Bill that make up for the problem relating to highway obstruction that the noble Lord, Lord Hogan-Howe, identified. Having read this in detail, my understanding is that nothing in the Bill addresses the noble Lord's concern. Therefore, the question remains: why are we discussing this?

Lord Horam (Con): The Bill addresses this point, but we could spend for ever on that. None the less, I understand that the Bill is designed to bring clarity to the issue of whether a police officer is within his rights to deal with an obstruction, for whatever cause that obstruction may occur. To answer the point made by the noble Lord, Lord Carlile; clearly, in the situation he outlined, the police officer would exercise his common sense and would not arrest the person in question. Therefore, it seems to me that, if we seek clarity, the more we add bits and pieces to the legislation that put down reasons why people may have a right to protest—for some reason which they bring forward—we simply fudge the whole issue and deduct from the clarity that we need. At the end of the day, people really do want this clarified: they want to know what the rights and duties of the police officer are, and that they are accordingly following those thoroughly.

Lord Macdonald of River Glaven (CB): My Lords, the extent to which there are gaps in our current legislation that require filling by this legislation is a substantial question. I, for one, will listen very carefully to what the Minister has to say about this, because it seems to me that it is incumbent on the Government to point out what those gaps and loopholes are, and where those gaps and loopholes are being exploited. If the reality is that we have sufficient legislation in place but it is simply not being rigorously applied, that is no argument at all for new legislation: it is an argument for the current legislation to be properly applied. I am absolutely confident that we have legislation to deal with people who climb up on to motorway gantries and cause 50,000 or 60,000 cars to be blocked from travelling around the M25. With respect, I defy the Government to argue with any persuasive force that we do not have legislation to deal with that.

So far as the point made by the noble Lord on the recent Supreme Court judgment in Ziegler is concerned, that reasoning would of course apply to every clause

in this legislation. All that the court was saying was that when individuals are arrested for an offence in circumstances where they are exercising their Article 10 free expression rights, a proportionate examination has to be undertaken by the court as to whether the inconvenience, for example, that they are causing is so minimal that it is overwhelmed by their Article 10 rights to protest and that they should therefore be allowed to do so. Of course that is right and it would apply to every clause in the Bill. If the disruption is significant, it will almost always, in my judgment, overcome any Article 10 defence. But I ask, particularly in respect of the offence of locking on: where are the gaps that the Government say exist that need filling by this clause and subsequent clauses in the Bill?

Lord Ponsonby of Shulbrede (Lab): My Lords, I shall open by thanking the noble Lord, Lord Paddick, for setting the scene and the background to this group of amendments. I agree with the way that he set out the history of this group of amendments. I also thank my noble friend Lady Chakrabarti for the way she set out her amendments and commented on the other amendments. I agree with her assessment that the Bill, as drafted, is vague and broad—and that it is vague and broad in a dangerous way. I agree with those central points.

Throughout the Bill, a number of clauses state that it is a defence for a person charged with an offence under the clause to

"prove that they had a reasonable excuse"

for their actions. As we have heard, the JCHR flagged this as a reverse of the burden of proof, so that rather than the prosecution having to prove that a person's actions were done without a reasonable excuse and so were unlawful, it is for the defendant to prove, after they have been charged, that they had a reasonable excuse for their actions. This is in contrast to an offence such as obstruction of the highway, which we have just heard about, where the prosecution must prove that the defendant did not have lawful authority or excuse for their actions. For the new locking-on offence, the burden of proof would be on the defendant to show that he or she had a reasonable excuse.

Such a reverse burden of proof may be inconsistent not only with Articles 10 and 11 but with the presumption of innocence—a central principle of criminal justice and an aspect of Article 6 of the ECHR and the right to a fair trial. This is because requiring the defendant to prove something, even on the balance of probabilities, may result in a conviction despite there being an element of doubt, and it is hard to see why a reverse burden is necessary or appropriate in this case. The noble Lord, Lord Anderson, gave the example of a bladed article and the reverse burden of proof in that context. It is of course a defence I am very familiar with as a sitting magistrate in London. It is of course right that the court will take its own view on whether the reverse burden of proof is reasonable in these circumstances.

I agree with the point made by my noble friend Lady Chakrabarti that the better situation is that a police officer, when considering whether to charge, at that point takes into account whether there is a reasonable excuse, rather than it being subsequently resolved in a court case—although I also acknowledge the legal point made by the noble Lords, Lord Carlile and Lord Anderson, that it is not always simple to distinguish between the two. Nevertheless, the point is that the police officer should take into account a potential reasonable excuse defence before deciding whether to charge.

To summarise this debate, two noble Lords made points that I thought were particularly resonant. The noble Lord, Lord Carlile, asked whether this was speciality legislation for ever more exotic offences that can be extremely annoying to the general public. As many noble Lords have said in this debate, there is existing legislation to deal with those offences, and there is scepticism that the police are feeling able to use the legislation that is already within their power. The noble Lord, Lord McDonald, challenged the Minister to give examples of the gaps in the existing laws: in fact, he defied the Minister to go ahead and give those examples.

I also want to comment briefly on my noble friend Lady Blower's speech on Amendment 60, which of course I agreed with. I also agreed with the point made by the noble Lord, Lord Balfe, that in the case of industrial action it should not be a reasonable excuse. The offences should never be charged in the first place. It is the same point, in a sense, that the potential use of a reasonable excuse should be taken into account right at the beginning of the process rather than once you get to a court case.

Although the amendments focus on particular detailed provisions in this Bill, I think a challenge has been laid down to the Minister to give examples and to say why this is necessary when we have a plethora of laws which are being used. The demonstrators on the M25 have moved on partly because of the sentences that have been given to them, so what is the necessity of pursuing this legislation?

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I thank all noble Lords who have spoken in this debate, to which I have listened carefully. Before I turn to the specific amendments in the group, I shall start by setting out the case for Clauses 1 to 8 and why I disagree with the general thrust of many of the amendments that we are going to discuss today that seek to make these offences less effective.

Before I do that, I shall go on to a couple of general points. The noble Lord, Lord Paddick, said that this House had already rejected these measures, but one of the main criticisms that noble Lords made during the passage of the Police, Crime, Sentencing and Courts Bill was that the measures had not been debated in the House of Commons. The elected House has now had an opportunity to scrutinise this legislation and vote on the Government's proposals and has supported its move into the House of Lords.

A number of noble Lords mentioned compatibility with the ECHR. I reaffirm that it is the Government's view that the measures in this Bill are compatible with the ECHR, namely the rights to freedom of expression, assembly and association. However, these rights are not absolute. They do not extend to wreaking havoc on the lives of others. Of course, however, as with all existing public order powers, the police will absolutely need to act compatibly with the human rights of protesters when using those powers.

Lord Foulkes of Cumnock (Lab Co-op): It appears from his general introduction that the Minister is going to proceed with this Bill. Surely, in the light of the overwhelming view on both sides of the House that existing legislation is entirely adequate—with one slight hesitation from the noble Lord, Lord Horam—it is a waste of the Minister's valuable time and this House's time to proceed with this. Will he now quickly have a rethink and withdraw this Bill?

Lord Sharpe of Epsom (Con): Well, I thank the noble Lord for that, and the answer is, of course, no.

Lord Foulkes of Cumnock (Lab Co-op): That is a very clear answer. I wonder whether the Minister could give, perhaps, a sentence or two of explanation as to why he does not think that it would be a wise move to withdraw this Bill, since all its aspects are already covered by existing legislation.

4.45 pm

Lord Sharpe of Epsom (Con): My Lords, it is reasonable to say at this point that we are about to have two days of quite detailed explanation on that, so I am afraid that that is as far as I can go on this.

Returning to the more general points that have been made so far in this debate, particularly as to why the police need these powers, what existing powers they have, and so on and so forth, we will be returning to this in a much later group, and I intend to speak in much more detail on it. From a general point of view, recent protests were clear that they had as their aim the intent of causing as much disruption as possible through the use of what can only be described as guerrilla tactics. These measures give the police the proactive powers necessary to respond to these dangerous and disruptive tactics quickly. We are going to work closely with our partners in the police to ensure that they have the support and resources in place that they need to use these powers.

Again, as my noble friend Lord Horam remarked, too often we have seen protesters acquitted on grounds of technicalities or get penalties that do not reflect the harm that they have caused to others. We want simple, stand-alone offences that ensure that those who cause this level of disruption and misery can be convicted and receive a penalty proportionate to the harm that they have caused. I will return more specifically to the legislation in a later group; I hope that will be acceptable.

To give one example of this type of behaviour, just two Just Stop Oil activists climbed the suspension cables of the Queen Elizabeth II bridge in the early hours of 17 October this year. They caused its closure for more than 36 hours. Once discovered, the Essex Police attended and closed the carriageway so that officers could safely leave their vehicles in an attempt to engage with the activists. It was later advised by National Highways to keep the road closed for the safety of the protesters, road users and responding partners. The closure of the carriageway meant that the entirety of the clockwise traffic from Essex to Kent that usually utilises the QE2 bridge had to be diverted through the east bore of the Dartford Tunnel, halving the usual counter-clockwise Kent-Essex traffic capacity that would normally use all the tunnels at the Dartford crossing. This had a number of knock-on impacts in terms of the emergency services and local communities and businesses. I am sure that we are all familiar with what those were.

The noble Lord, Lord Paddick, raised a hypothetical example of a landowner in respect of a tunnel.

Lord Paddick (LD): Before the Minister continues, can he point to which part of this Bill would be deployed against the two Just Stop Oil activists who climbed on the QE2 bridge?

Lord Sharpe of Epsom (Con): Well, we are about to go into a good deal of discussion about things such as serious disruption, key national infrastructure and so on, which form essential parts of this Bill. I am not a policeman, but I imagine that the police are perfectly capable of utilising those aspects of the Bill.

I come to the hypothetical example of the landowner that the noble Lord raised earlier. It is worth pointing out, in relation to the entire Bill, that the threshold is "serious disruption". In the case that the noble Lord outlined, that is clearly not the case, so there would be no case.

I move on to the measures in Clauses 1 to 8. As well as the measures we will discuss next week, the police will have the proactive powers necessary to respond quickly to these dangerous and disruptive tactics.

I turn to the specific amendments in the group. Amendments 1, 7, 8, 24, 28, 29, 35, 39, 40, 55 and 59, in the names of the noble Lords, Lord Paddick, Lord Anderson of Ipswich, Lord Skidelsky and Lord Coaker, and the noble Baroness, Lady Chakrabarti, seek to move the burden of proof for a reasonable excuse from the defendant to the prosecution, making it a key element of the offence. We will debate the subjects that the noble Baroness, Lady Blower, raised with regard to trade disputes in the fourth group today, so I will defer specific answers to those questions until the debate on that group.

Whether or not someone has a reasonable excuse for their actions is very specific to each particular incident, so we see it as entirely appropriate that the defendant, who has committed the offence in the first place and has personal knowledge of these facts, is required to prove them. It is also the case that the burden of proof resting on the individual is not a novel concept. There are multiple offences where this is the case, including—as the noble Lord, Lord Anderson, pointed out—the defence of good reason for possessing a bladed article in a public place under Section 139 of the Criminal Justice Act 1988.

The noble Baroness, Lady Chakrabarti, raised the example of linking arms. Of course linking arms itself is not an offence; it is an offence and applicable only if the act

"causes, or is capable of causing, serious disruption to … two or more individuals, or … an organisation".

Groups of protesters linking arms and obstructing roads or buildings can cause just as much disruption as those who use other equipment to lock on. For example, it is not right that groups of people who glue themselves to roads may fall under this offence but those who link arms and cause just as much disruption do not.

On the question from the noble Lord, Lord Anderson, on why the burden of proof being on the defendant is in the public interest, we have seen people cause so much serious disruption and then continue to burden the prosecution with more and more requirements to prove things. Surely it is right that, where people have caused this kind of disruption, they should demonstrate that they had a reasonable excuse.

With these offences, the prosecution will still need to prove all the elements of the offence to the criminal standard of proof, including that the act

"causes, or is capable of causing, serious disruption",

as I just explained, and that the defendant intended or was reckless as to serious harm disruption. For those reasons, I respectfully disagree with the amendments.

Lord Skidelsky (CB): Does the Bill define serious disruption?

Lord Sharpe of Epsom (Con): Again, we will come back to that in some detail in the debate on a later group. The amendments have been grouped thematically today so there will be a bit of overlap, for which I apologise. For now, I respectfully disagree with these amendments and ask that they not be pressed.

Lord Carlile of Berriew (CB): Will the Minister at some point explain to us why Section 78 of the Police, Crime, Sentencing and Courts Act 2022, introduced by this Government, does not meet exactly the requirements discussed in this Bill? It is not an ancient Act of Parliament but a new one, and it seems to me to fit the bill proportionately.

Lord Sharpe of Epsom (Con): I commit to doing that in the debate on a later group.

Lord Paddick (LD): Can the Minister address the issue of people being arrested and detained, and being allowed to deploy a reasonable excuse defence only once charged, as opposed to someone not committing an offence if they have a reasonable excuse, which is the normal process with most legislation?

Lord Sharpe of Epsom (Con): My Lords, I think I have gone into reasonable detail on the reasonable excuse situation, so I will rest my comments there for now.

Lord Paddick (LD): I am sorry to disagree with the Minister, but he addressed the issue of whether the burden of proof was on the prosecution or on the defence. He did not address, in any shape or form, police being allowed to arrest and detain people and their being allowed to deploy the reasonable excuse defence only once charged.

Lord Sharpe of Epsom (Con): I will come back to the noble Lord on that.

Baroness Hamwee (LD): If the Minister is going to come back to my noble friend, could he do so in this Chamber? That question is absolutely fundamental to the discussion on the Bill. To have the answer in writing, available in the Library if one goes to look for it, is in our view not adequate.

Lord Paddick (LD): This is Committee, so we are allowed this sort of debate. I want to reinforce what the noble Lord, Lord Carlile, said about Section 78 of the Police, Crime, Sentencing and Courts Act. It says:

"A person commits an offence if … the person … does an act, or … omits to do an act that they are required to do by any enactment or rule of law … the person's act or omission … obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and … the person intends that their act or omission will have a consequence mentioned in paragraph (b)".

That covers, completely and perfectly, the people on the gantry of the QEII Bridge. The maximum sentence for that activity is up to 10 years in prison. None of the provisions in this Bill goes anywhere near 10 years in prison. Why do the Government not rely on existing legislation rather than creating all these other offences?

Lord Sharpe of Epsom (Con): My Lords, I think I have already gone into that. As I say, the Bill creates another set of offences designed to deal with evolving protests, but I will come back on the specific point about the PCSC Act.

Baroness Chakrabarti (Lab): My Lords, I am almost speechless. I do not blame the Minister, but those briefing him really need to consider what we have been discussing today; we are talking about the rights and freedoms of people in this country, and it is a very serious issue.

I thank all noble Lords who have participated in this debate on the first group. I particularly thank the noble Lord, Lord Paddick, for, as always, bringing his policing expertise as well as his parliamentary skills to the debate. I also thank him for mentioning Charlotte Lynch, the LBC journalist who was arrested last week beside the M25 with a valid press card and with a microphone that was clearly branded with the name of her broadcaster. She offered her press card to the police, who then slapped handcuffs on her. They took her mobile phone from her and started scrolling to see who she might have been speaking to. Perhaps she had been tipped off about the protest by protesters; that is what journalists do in a free society. She was subjected to a body search and taken to Stevenage police station. She was detained in the police station in a cell with an open toilet and a simple bed for five hours, and was eventually let go without a police interview. Records show that they arrested her for the offence of "conspiracy to cause a public nuisance". That happened under the existing law.

Now, without addressing concerns about incidents of that kind, and in the wake of what happened to Sarah Everard and all the crises there have been in public trust in policing in this country, the Government are proposing this suite of new offences—yet the Minister has not been able to identify the gap that those offences are supposed to address. That is a matter of considerable concern—a concern which was mentioned by almost every speaker in this debate, with the exception of the noble Lord, Lord Horam, and the Minister himself.

[Baroness Chakrabarti]
The noble Lord, Lord Horam, called for clarity in the law, but I am afraid I was not totally clear which provisions or amendments he was addressing.

The noble Lord, Lord Anderson of Ipswich, gave a master class on issues of burdens of proof and reverse burdens, which are sometimes used in law. However, I remind the Minister that, when they are used in law, it is in relation to very tight offences that are problematic per se, such as carrying a blade or point in a public place. Most members of the public understand that that is not innocent activity; it is incumbent on somebody to explain why they needed to be carrying that knife in the street. That is not the case with carrying a bicycle chain or linking arms with a friend. That is innocent activity per se that is rendered criminal in certain circumstances, and so it is particularly dangerous to flip the burden of proof. Further, on the point made by the noble Lord, Lord Paddick, it is essential that the person should be able to say to the police officer before they are arrested—not seven hours later, in Stevenage police station—that they have a legitimate reason for what they have done. I ask the Minister to think about Charlotte Lynch when he reflects on the powers that he is being asked to justify by others in this Chamber.

5pm

I apologise to the noble Lord, Lord Anderson of Ipswich, for my crusading zeal rather than his forensic brilliance, but his master class on the nature of these offences and defences, and how essential it is to have clarity, is worth re-reading.

I totally agreed with the noble Lord, Lord Skidelsky, about the presumption of innocence and the way that it is being further eroded by the proposals in this Bill.

Although the Minister said he would address my noble friend Lady Blower's point about a trade dispute defence in a further group, I think it would be a great opportunity for him to use that time to reflect on the fact that that amendment, as opposed to some of mine, is in tune with government policy. My understanding is that the Government do not actually intend—whatever else they intend and whatever our differences—to criminalise lawful pickets in the new Clause 7. Therefore, it would not hurt to accept my noble friend's argument, and that of my noble friend Lord Hendy, and put in the Bill that clarity and comfort around lawful trade union activity related to that particular offence. The Minister has given himself time to discuss this with colleagues and perhaps address it before we come to the later group.

I absolutely want to associate myself with the comments of the noble Lord, Lord Balfe, about the legislation generally and Amendment 60 in particular. He said it all when he said this is "reflex action stuff". This is reflex action legislation. My noble friend Lord Ponsonby called it specialty legislation—more and more exotic new offences addressing activity that is already criminalised because something must be done. The danger with that approach to legislation is that it leads to more arrests of the innocent. It does not deal with the guilty, who are criminalised already and sometimes need to be tackled. As the noble Lord, Lord Carlile of Berriew, said, we need to address the current law better.

Lord Balfe (Con): I suggest to my noble friend that it also leads to juries being less and less likely to convict because they see these offences as being very spurious.

Baroness Chakrabarti (Lab): I could not agree more with the noble Lord, Lord Balfe. Again, it echoes something that the noble Lord, Lord Carlile of Berriew, said. He will forgive me if I summarise his excellent contributions: let us not bring the law into disrepute—not in this place. We are not an elected House, but we are a scrutinising Chamber; we have the time and expertise to make sure that we do not bring our statute book into disrepute. That is where we agree, across the Benches and across this Committee.

I totally agree with the noble Lord, Lord Macdonald of River Glaven, that having proportionality in our law is not a problem; it is a benefit. Ministers should not work so hard to squeeze out the judgment and proportionality that must be employed by decision-makers, including police officers and courts.

I will stop there, save to say once more to the Minister that he has not been well served in some of his briefing. Respectfully, it is perfectly legitimate for Members in this Committee to begin by asking the Government to justify why they are legislating and where there is a gap in the existing law, because that central point has not been addressed in this hour of debate. If we do not address it, there will be more cases like that of Charlotte Lynch, and others who are not journalists—in some cases they are bystanders and in some cases they are peaceful dissenters. There is plenty of police power on the statute book and some of it has been abused. There are plenty of criminal offences and some of them have not been used when perhaps they might. It really is for the Government to justify interfering further with the spirit of British liberty. With that, I will—for now only—beg leave to withdraw my amendment.

Amendment 1 withdrawn.

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, before calling Amendment 2, I must advise the Committee that if it is agreed to I will not be able to call Amendment 3 due to pre-emption.

Amendment 2

Moved by ***Lord Paddick***

2: Clause 1, page 1, line 10, leave out ", or is capable of causing,"

Member's explanatory statement

This would limit the offence to an act that causes serious disruption.

Lord Paddick (LD): My Lords, in moving Amendment 2 in my name I will speak to the other 12 amendments in this group. Amendment 2, supported by the noble Lords, Lord Coaker and Lord Skidelsky, and the noble Baroness, Lady Chakrabarti, is related to the offence of locking on. I remind noble Lords that the Government's Explanatory Notes suggest that

"Recent changes in the tactics employed by … protesters have highlighted some gaps in … legislation",

of which this is one. Suffragettes chained themselves to railings, so to suggest that this is a gap in legislation as a result of recent changes in tactics employed by protesters is nonsense. I expect the Minister will challenge such an assertion, but we can debate that when he responds.

This amendment would narrow the offence of locking on where such actions—attaching themselves or someone else to another person, an object or the road, for example, to cause serious disruption—by removing the wider offence of an act that

"is capable of causing, serious disruption".

Can the Minister explain what "capable of causing" actually means? If someone locks on in a minor side road or at the entrance to a cul-de-sac, causing little or no disruption, but had similar action been taken on a busy major road it would have been capable of causing serious disruption, would they commit an offence in such circumstances? If they block a busy major road at 3 am when there is no traffic, whereas had it been 10 am they would have caused major disruption, does that amount to it being capable of causing serious disruption in another place and time? Amendment 2 seeks to restrict the offence of locking on to incidents where serious disruption is actually caused to probe what "capable of causing" means and how widely the offence would be applied.

Amendment 25 in my name would again remove "is capable of causing" in relation to the offence of tunnelling, for similar reasons. Can the Minister explain what sort of tunnel might be capable of causing serious disruption but does not actually do so? Why, in that case, does it need to be criminalised? Similarly, Amendment 36 in my name, supported by the noble Baronesses, Lady Chakrabarti and Lady Fox of Buckley, seeks to remove "is capable of causing" in relation to the offence of being present in a tunnel. Again, can the Minister explain how someone's presence in a tunnel might be capable of causing serious disruption without actually doing so?

Amendment 3, in the name of the noble Lord, Lord Coaker, which we support and is signed by my noble friend Lady Ludford, similarly seeks to limit the scope of the offence by removing the reference to causing serious disruption to two or more people and replacing it with

"serious disruption to the life of the community",

as suggested by the Joint Committee on Human Rights. We support this amendment.

Amendment 4, in my name and supported by the noble Lords, Lord Coaker and Lord Skidelsky, seeks to restrict the offence to cases where there is an intent to cause serious disruption—not merely, as currently drafted in Clause 1(1)(c), being

"reckless as to whether it will have such a consequence".

Can the Minister give an example of when someone who does not intend to cause serious disruption should be guilty of the offence—in this case, of locking on—when they are simply exercising their right to protest?

Amendment 26, in my name, similarly seeks to narrow the tunnelling offence to cases where there is an intent to cause serious disruption, rather than where someone is merely "reckless" as to whether their tunnel might cause serious disruption. Can the Minister give an example of reckless tunnelling that might fall within the scope of the offence as drafted?

Similarly, Amendment 37, in my name and supported by the noble Baroness, Lady Fox of Buckley, seeks to narrow the definition of the offence of being present in a tunnel to cases where there is an intention to cause serious disruption. Would a journalist who goes to interview protestors in a tunnel be guilty of an offence of being reckless as to whether her presence in the tunnel might cause serious disruption, for example? Can the Minister provide any reassurance?

Amendment 6, in the name of the noble and learned Lord, Lord Hope of Craighead, and Amendment 23, in the name of the noble Baroness, Lady Chakrabarti, supported by the noble Lord, Lord Ponsonby of Shulbrede, and the noble Baroness, Lady Boycott, quite rightly attempt to place a definition of serious disruption on the face of the Bill, rather than asking us to sign a blank cheque where such a definition is decided by the Secretary of State subsequently by statutory instrument.

Similarly, in relation to the tunnelling offence and the being present in a tunnel offence, Amendments 27 and 38 in the name of the noble and learned Lord, Lord Hope of Craighead, seek to provide a definition on the face of the Bill of serious disruption in relation to tunnelling.

Amendment 17, in the name of the noble Lord, Lord Coaker, and supported by my noble friend Lady Ludford and the noble Lord, Lord Anderson, seeks to define

"serious disruption to the life of the community"

in Amendment 3.

Finally in this group, Amendment 54, in the names of the noble Lord, Lord Coaker, and my noble friend Lady Ludford, to which we give qualified support—subject to what the noble Lord, Lord Ponsonby of Shulbrede, will say in explaining the amendment—seeks to provide a definition of serious disruption to major transport works, as suggested by the Joint Committee on Human Rights. However, we have concerns over the inclusion of "reckless" in this definition, for reasons I have previously explained.

I think noble Lords will see the complexity of this Bill and the problem we have in trying to cram so many amendments into one group. If the Minister is able to respond to each and every remark I have made, I will be astonished. I beg to move.

Lord Hope of Craighead (CB): My Lords, my name is to Amendments 6, 27 and 38, which have been mentioned by the noble Lord, Lord Paddick. They answer a question which was posed by the noble Lord, Lord Skidelsky, who asked if there is a definition of "serious disruption" in the Bill. There is not, and my amendments seek to provide a definition. I am concerned about the meaning of words, which is always crucial in Bills of this kind.

I am a member of the Constitution Committee and in our scrutiny of the Bill we noted that the clauses which use the phrase "serious disruption" create offences which could result in severe penalties. Most of them may be taken summarily before a magistrate, but then they lead on to other things. They could, in due course,

[Lord Hope of Craighead]
lead to a serious disruption prevention order and all that that involves. The committee took the view that a definition should be provided.

We looked at Section 78 of the Police, Crime, Sentencing and Courts Act 2022, to which the noble Lord, Lord Carlile, referred, but, in our view, if one has to go down the line of designing a new offence, that definition was not tailored to the offences that we are talking about in the Bill. Therefore, the committee's recommendation was that the meaning of "serious disruption" should be clarified proportionately in relation to each of the offences where the phrase arises.

In regard to locking on, I seek to say that "serious disruption" means

"a prolonged disruption of access to places where the individuals or the organisation live or carry on business or to which for urgent reasons they wish to travel"—

a hospital appointment, for example—

"or a significant delay in the delivery of time sensitive products or essential goods and services."

So I have tried to design something that is very specific to the locking-on offence described in Clause 1.

5.15 pm

My suggestion is that tunnelling, which arises in Clauses 3 and 4, should mean

"a significant interruption to any construction or maintenance works or other activities that are being, or are to be, performed or carried on by the individuals or the organisation on the ground above the tunnel or in its vicinity."

These suggestions are put forward in the knowledge that one has to be extremely careful about defining an expression of this kind. You do not want a definition to be too narrow or too wide, and I have tried to strike a balance between the two.

One has to bear in mind that the purpose of a definition is to provide guidance to the protesters about what they can and cannot do, to the police, to prosecutors and especially to lay magistrates, who have to consider whether an offence has or has not been proved. Consistency of interpretation is also important, so that the effect of a definition will reduce the possibility of people taking a very soft view in one case and a very hard view in another. It directs attention to the purpose of the clause, and I therefore hope it would avoid too much discrepancy between the people who have to take the various decisions. That is the value of a defence.

I do not claim to have found the perfect solution; my aim is to invite the noble Lord and his Bill team to recognise the importance of providing a definition. If they agree with the suggestion that it is important to do so, and if my amendments are not acceptable, I invite them to come up with a more suitable, or perhaps more proportionate and carefully phrased, set of amendments than I have put forward. I hope I have made my position clear; it is about the meaning of words, which are of particular importance when one has regard to the significance of this particular phrase with which my amendments are concerned.

Baroness Jones of Moulsecoomb (GP): I cannot sit still any more. I am starting to feel sorry for the Minister, who is on a very sticky wicket because this is clearly rubbish legislation. I do not understand how it got through or who directed the civil servants to write it. It is absolute rubbish. We have heard all of the arguments about how it is so broadly written and will criminalise too many people—many more than the peaceful protesters whom the Government are trying to target. I just wonder where the idea came from. This is so right-wing; it is not an appropriate Bill for a democracy.

The noble Lord, Lord Paddick, has beautifully laid out the lack of a definition of "serious disruption", and I cannot better that. But, for example, what about arresting the Government for serious disruption to the NHS over the last 12 years? I would support that. But we would obviously have to know exactly what "serious disruption" meant.

The criminal courts in this country are crumbling and cannot cope with the number of cases that they have at the moment. Yet here the Government will insist on more cases, sometimes on very specious grounds, which will clog up the courts even more and make life even more difficult for people who care about justice and law. I beg the Minister to meet with some of the more learned noble Lords here and perhaps start either to clarify the Bill or to scrap it altogether.

Lord Carlile of Berriew (CB): My Lords, I will make a very serious request of the Minister, who is dealing with this difficult Bill with great courtesy and who is very amenable to comment, even if he disagrees. I ask him to take the trouble, before he replies to this debate, to read Section 78 of the Police, Crime, Sentencing and Courts Act 2022—it is only one page, and I will lend him my iPad if he needs it. In this country, we have training for magistrates and judges, which is provided by the Judicial College— certainly for judges; indeed, I see the noble Lord, Lord Ponsonby, nodding that this is the case for magistrates as well. One of the reasons why this training is provided is to ensure consistency between courts around the country.

If there are two sets of legislation—this Bill and Section 78 of the 2022 Act—the Government cannot control who charges whom with what. It is quite likely that, in "Lonechester", the police will charge someone who glued themselves to the passageway of the cathedral with this new law, while in "Scuddersfield" they will charge them with Section 78 of the 2022 Act. They are quite different: the Bill is basically a summary trial on these offences and has very low sentencing powers, but the 2022 Act, which we have already passed, has a maximum sentence of 10 years' imprisonment, as the noble Lord, Lord Paddick, said. We cannot expect police officers to know these differences when they are busily rushing around trying to save the public from being stuck on the M25 for seven hours. But they can expect the law to make life easier for them by ensuring that it has that consistency. At the moment, we are breaking the rules which we generally set ourselves to scrutinise legislation so that we do not create ambiguity and inconsistency. In the context of what we are discussing now, nothing in the Bill is not covered under Section 78 of the 2022 Act, which has already had the scrutiny of your Lordships' House.

The Lord Bishop of Southwell and Nottingham: My Lords, in the absence of my right reverend friend the Bishop of St Albans, who is a signatory to Amendment 17

but unable to be present in the Chamber this afternoon, I am pleased to speak in its support, as it provides much-needed clarity to the law. I am also very grateful to the noble Lord, Lord Paddick, for explaining the amendments with such clarity at the beginning of this group.

I will make two main points. First, the Bill, in its present form, fails to provide a definition of what constitutes "serious disruption" to the "community". I strongly support providing a strict statutory definition of this; it will give clearer guidelines to the police as to what is acceptable, as well as to those wishing to engage in lawful protest, and will provide much-needed democratic oversight to the Bill. Under the current law and the Bill as drafted, there is no clear definition of what disruption to the community means, and it would be subject to the discretion of the police themselves. A lack of clarity is not helpful to either the police or the community. As reported in evidence to the Bill Committee in the other place, many police officers have expressed a desire for clearer statutory guidance, and many are concerned that they will be asked to make decisions on matters which they do not have the confidence to make. If we are to reflect on the consequences of the amendment, we can see that it would mean that protesters would rightly be prevented from disruption to essential services—schools, hospitals or places of worship—but the right to reasonable democratic protest would still be protected.

Secondly, it is important that proposed new paragraph (c) in the amendment upholds the access to "a place of worship" as an essential service. I am very pleased that this amendment would enshrine freedom of religion or belief as a central part of the Bill. As we have been reminded over the pandemic, churches and other religious buildings offer essential services for their local community. Access to these buildings and the pastoral work of the clergy and other faith leaders should not be unreasonably hindered.

Churches are not unfamiliar with protests. Indeed, they have sometimes been a catalyst for good and even forthright protest inspired by principles of faith in the interest of the common good. The example of Jesus is a challenge and, I believe, an inspiration in this regard. Sadly, there have also been times when churches have been the focus of reasonable protest, challenging the Church when it and society have failed to exemplify the values that underpin faith. Either way, many protests over the centuries have happened inside or within the vicinity of our buildings. Churches are public buildings, places of sanctuary and refuge, there to serve all in their community. They are therefore to be considered essential places for people to meet, to worship and to nourish their faith, and for all who are seeking spiritual comfort or hope, often in difficult times. The right to attend a place of worship is therefore a vital human right enshrined in law in our country, and it is important that this law makes that clear. I once again express my wholehearted support for this amendment.

Lord Skidelsky (CB): My Lords, I speak in support of Amendments 2 and 4 in the name of the noble Lord, Lord Paddick, to which I have added my name.

Amendment 2 is designed to raise the threshold required for the committing of the offence of causing a disruption. The clause leaves what is capable of causing disruption to purely subjective judgment, which is not satisfactory. I do not think that I have ever made a speech that insults members of the audience; I hope I never have. But such a speech may be reasonably deemed to be capable of causing a serious disruption—at least maybe in the other place, if not here. In other words, an event has to happen that is provocative in order to make it reasonable for the police to come to that conclusion. Whether it is provocative is the test of whether it is capable of causing disruption. Perhaps I can make a constructive suggestion here: every time the words "capable of causing disruption" appear, why do not the Government put in front of them "It is reasonable to believe that it is"?

On Amendment 4, the purpose is to make the intention to cause serious disruption the test of an offence. I strongly support that. I have become increasingly suspicious of the growing tendency to treat reckless speech—and suspicious, in fact, of the word "reckless" —or action as a criminal offence in itself, regardless of the intention of the speaker or actor. Of course I should consider the consequences of my words and actions—everyone should—but the line between reckless speech and free speech is a delicate one, and I would prefer to err on the side of free speech and peaceful protest.

Lord Hain (Lab): My Lords, I support most, if not all, of the amendments in this group seeking to circumscribe the new powers over "serious disruption", especially Amendment 23. I do so not to offer the kind of forensic advice and analysis that many much more eminent noble Lords have already given today, but to offer a general and a more personal view, because I think the Bill takes the state's power to restrict the right to protest to unprecedented levels. Many of the clauses in the legislation bear a striking resemblance to anti-terror laws. Surely, this is no way to treat those exercising their fundamental rights to dissent in the liberal democracy that the Government claim the UK to be. It is more like a police state Bill, in my view, than a liberal democracy one; more something that Beijing's autocracy would favour, as opposed to London's democracy.

Noble Lords need not take my word for it. Please read the recent *Financial Times* article by the noble Baroness, Lady Cavendish of Little Venice, who elegantly but devastatingly demolishes the case for the Bill and its many clauses, including those we are discussing right now. The noble Baroness is no leftie: she was a policy adviser to Prime Minister David Cameron. Under this Government, the trajectory of public order legislation has slowly chipped away at people's fundamental rights, weighting the balance of power heavily towards the state and its agencies. These amendments are trying to redress that a bit, but the legislation advances that trajectory, despite the ink barely being dry on the recently passed Police, Crime, Sentencing and Courts Act. It is a constant ratcheting up of restrictions at the expense of our freedoms and the health of our democracy.

5.30 pm

The catch-all offence of "serious disruption" in the Bill, together with its companion, the Police, Crime, Sentencing and Courts Act, would have made illegal,

[Lord Hain]
and conceivably completely suppressed, the anti-apartheid protests I led in 1969-70 that stopped the all-white South African cricket tour scheduled for the summer of 1970, helping propel apartheid South Africa into international sporting isolation—only lifted after Nelson Mandela walked to freedom after his 27 years in prison. The protests I led would undoubtedly have constituted "serious disruption" as defined—albeit very loosely, as we have heard—in the Bill.

Some noble Lords might retort "And a good thing, too" to the idea that I would have been blocked, prosecuted and possibly jailed; many rugby and cricket fans at the time certainly wished I had been. But most people now accept Nelson Mandela's assessment that apartheid would not have been defeated without such non-violent—I stress "non-violent"—direct action, including in sport. Most reasonable people doubt that a black Springbok captain could have led a multiracial team to lift the rugby World Cup in 2019 without South Africa's sporting system being forced to rid itself of apartheid.

Why do I make these point in relation to the specificity of these amendments? Remember that when I and many others ran on the pitch at Twickenham and elsewhere in late 1969 and early 1970, causing serious disruption to Springbok matches, the head of rugby in South Africa, Dr Danie Craven, said memorably:

"There will be a black Springbok over my dead body."

Well, it was over his dead body, 50 years later, that there was indeed a black Springbok captain.

By the way, many protesters were arrested at the time, for "causing obstruction", "breach of the peace" and other such offences. Indeed, I was prosecuted two years later for criminal conspiracy, spending four weeks at the Old Bailey, acquitted after a hung jury on the three most serious counts and merely fined £200 for conspiracy to sit peacefully on a tennis court for a couple of minutes in Bristol in July 1969, in a Davis Cup match between South Africa and Great Britain, causing what under this Bill would constitute "serious disruption" in the process. As it happens, I was not charged. It underlines the point that the noble Lord, Lord Carlile of Berriew, and others made: that there is a panoply of existing offences for which people can already be prosecuted—and, indeed, were prosecuted during the campaign that I led.

The police have plenty of powers already. These new ones are not necessary except, in my view, to act oppressively. Just think how they could be applied. When Dame Vera Lynn led local villagers, I think it was in the Sussex village of Ditchling, where she lived, to stop juggernauts coming through the village, polluting local streets, filling them up and blocking them, she could have been prosecuted for "serious disruption". Is that an advertisement for freedom, liberty and British democracy? It does not apply only to radical protesters: it applies also to ordinary citizens exerting their ordinary rights.

The suffragettes would undoubtedly have been guilty of serious disruption; after all, they locked themselves on to Parliament's railings, not with glue but with chains, and they are now applauded for their historic role in getting women the vote. Those demonstrators who in 1936 bravely blocked fascists seeking to intimidate local Jewish communities in the East End of London, specifically in Cable Street, undoubtedly caused serious disruption, yet they halted the spread of Mosley's fascists and Blackshirts.

What I fear about this Bill, and particularly the detail of the serious disruption clause, is that it is on the wrong side of history. I applaud the forensic critiques that have already been made by many noble Lords in this debate, but I say to the Minister that he and the Government are on the wrong side of history and I urge them to think again.

Baroness Fox of Buckley (Non-Afl): My Lords, I have put my name to Amendments 36 and 37 in the name of the noble Lord, Lord Paddick. I could also have backed a number of other amendments. The noble Lord clearly explained lots of problems with the clauses discussed in this group. The only thing that I did not agree with—the noble Lord, Lord Hain, also said this—was when he compared present-day protesters with the suffragettes. The suffragettes were democrats without the vote; Just Stop Oil are anti-democrats with the vote. There is a real distinction there.

Although I have very serious reservations about this Bill and think it is unnecessary, we need to approach the discussion and debate going on outside this House with a little more humility. On the first group, a number of noble Lords raised the point that the country was up in arms about the Bill. I do not recognise that description; actually, many people in the country are up in arms about the Just Stop Oil protesters. They are so frustrated that we have people ruining their daily lives and getting in the way and that not enough is being done about it. My argument with the Government is that this is a crisis of policing, which they will not tackle and instead have introduced a whole new set of laws that we do not need.

As legislators, I understand the need for a definition of "serious disruption", and the noble and learned Lord, Lord Hope of Craighead, explained the difficulties around defining it. But the people we are talking about who are locking themselves on, tunnelling and so on, boast that they are seriously disrupting things. They say, "What choice have we got? We're involved in serious disruption." They do not have a definitional problem; they say, "We're trying to seriously disrupt the ways of life of everyone until we get our way and until you agree with us".

So in some ways it is important that the Government do not exploit the fact that we have protesters who say "Our job is to seriously disrupt the lives of ordinary people" and ordinary people who are completed frustrated that nothing is being done about these people seriously disrupting their lives, and say that we need all these laws—because this is not the solution to that problem. It is a con, as I said in my Second Reading speech. An answer should be given to the point made by the noble Lord, Lord Horam, that, if the Government's argument is that we do not have laws on the statute book that can deal with very specific issues, they have to be very clear about exactly why the laws do not work at present. If it is the Supreme Court, then say that—but at the moment there is a muddle on that question.

On the specific amendments dealing with "serious disruption", given that we have protesters—I think they are more people who indulge in stunts, rather

than protesters—who admit that they intend to cause serious disruption, I am concerned that there should be some intent to cause serious disruption, which is why Amendment 37 is important. The noble Lord, Lord Skidelsky, made a hugely important point about the way that the term "reckless" will be used to clamp down on this; the idea that your intention is read into it as being reckless indifference is one of the great ways that censorship is happening in this country. I am very nervous about having in law a situation where, whatever you intend, the law can decide that you intended something. That is why I support Amendment 37.

Amendment 36 would limit the offence to an act that actually causes serious disruption, rather than one that is capable of causing serious disruption. It seems to me that if something does not cause serious disruption, it is not serious disruption. It seems blatantly ridiculous for a Bill to criminalise something that is not seriously disruptive because it could be seriously disruptive at a different time and a different place.

I rather liked the example of what happened recently in Germany, where people locked on in the Volkswagen museum. They did not cause any serious disruption because the curators turned the lights out, turned the heating off and went home, leaving them there. As it happens, the protestors response to this was to complain that they had been left in the cold and that they could not order in food. Instead of draconian and criminalising bills, perhaps what we need is a bit more of that kind of attitude, both from the police and from institutions, which seem to stand by and do nothing as disruption occurs. However, I do not want the law to compensate for that spinelessness either.

Lord Marlesford (Con): My Lords, having not spoken at Second Reading, but having listened to the debate, I want to contribute one thought which I think follows rather well from what the noble Baroness, Lady Fox, said. This debate on the definition of the word "serious" is really pretty sterile. Talking about the word "serious" is rather like talking about whether a work of art is good or not good. What we are really talking about is judgment, and the judgment of many different groups: of the demonstrators, of the police, and of the courts and within the courts—juries, magistrates and all the rest of it. All we are striving to do is to get what the people as a whole—who are demanding something better than what is happening at the moment—want: better solutions when things happen. I do not believe that we can be precise in laying down in law what is serious or not serious, but that does not mean that we cannot use the word "serious" as shorthand for the collective judgment of all those interests involved.

Lord Anderson of Ipswich (CB): My Lords, the noble Lord, Lord Hain, with his proud record of disruption, cautioned us against forensic critiques. I am afraid that he is in for another one, but in my defence, I will make it very short.

The Minister hinted at the end of Second Reading that he would give thought to a definition of "serious disruption", which I think would be useful. That is certainly what police witnesses suggested in another place, and what some of us, including my noble friend Lord Hogan-Howe, suggested at Second Reading. I am grateful to the Minister for the opportunity to discuss it yesterday.

I put my name to Amendment 17, recommended by the Joint Committee on Human Rights, which is based on part of the definitions in Sections 73 and 74 of the Police, Crime, Sentencing and Courts Act 2022. Having now had a chance to review Amendments 6, 27, and 38, in the name of my noble and learned friend Lord Hope, I am minded to jump ship—I hope that does not make me a rat—because I think his amendments may be better adapted to the purposes of the Bill.

The particular merit of my noble and learned friend Lord Hope's approach is to recognise that the offences in Clause 1 on the one hand and Clauses 3 and 4 on the other are very different in nature. Disruption consequent on locking on is liable to be caused to any individuals or organisation based or carrying on business in the locality, and it is right that the definition should acknowledge this. Equally, it seems right that the threshold should be a very high one: "prolonged disruption of access" to homes, workplaces or other places to which there is an urgent need to travel, or

"significant delay in the delivery of time sensitive products or essential goods and services."

That latter condition about significant delay appears in Sections 73 and 74 of the Police, Crime, Sentencing and Courts Act 2022 but has, for some reason, been omitted from the JCHR definition.

The tunnelling offences are of a different nature. The serious disruption that they seek to address is to "construction or maintenance works" or related activities. Amendments 27 and 38 appropriately reflect that narrower scope.

If the Government are going to come back with a definition, or definitions, of "serious disruption", I hope they will see the force of doing it in this way. My noble and learned friend Lord Hope modestly suggested that they might be able to manage something more proportionate and carefully phrased than he did—all I can say is, good luck with that.

5.45 pm

Lord Macdonald of River Glaven (CB): My Lords, as a former prosecutor, I commend Amendment 6 to the Minister. I have no doubt at all that a definition along the lines of that pressed by the noble and learned Lord, Lord Hope of Craighead, would be of assistance to the police in judging their response to these sorts of events. A definition would certainly be of assistance to prosecutors in coming to a determination about what the appropriate charge is. It would assist judges in summing up cases to juries, and it would certainly assist juries in coming to fair conclusions by judging the conduct of defendants against an intelligible definition. If we do not have a definition, the danger is that people will be more at sea than they need be.

I have one other point. People who are proposing to go out and demonstrate are entitled to understand and to be able to predict with some confidence whether what they are proposing to do will be lawful or unlawful. This is an important aspect of the rule of law: that the law is predictable and the consequences attendant on the behaviour that demonstrators seek to engage in

[Lord Macdonald of River Glaven]
are predictable. This important aspect of the rule of law is clearly undermined by a lack of certainty in the Bill in the absence of a definition of one of its most important concepts—that of "serious disruption".

Baroness Blower (Lab): My Lords, my noble friend Lady Chakrabarti is unable to be in her place for this group, which affords me the opportunity to speak to Amendment 23, which would include in the Bill a definition of "serious disruption"—a single definition, in contradistinction to the ideas proposed by the noble and learned Lord, Lord Hope.

Much turns on this phrase; it appears a grand total of 132 times, acting as a core component to several new and extremely broad criminal offences. As things stand, the consequence of "causing or contributing to" serious disruption of varying kinds could result in a prison sentence, unlimited fines or a variety of conditions imposed through what many are calling protest banning orders, including GPS ankle tagging, bans on internet usage, prohibitions on associating with certain people and, again, imprisonment—yet, as we all now know, nowhere in the Bill is "serious disruption" defined.

The former Minister, Kit Malthouse MP, claimed at Second Reading in the other place that

"the phrase 'serious disruption to the community' has been in use in the law since 1986 and is therefore a well-defined term in the courts, which of course is where the test would be applied under the legislation."—[*Official Report*, Commons, 23/5/22; col. 106.]

I am afraid that I do not think that explanation suffices. The test to which the former Minister refers is that set out in the Public Order Act 1986, which is now almost four decades old. It relates to the imposition of conditions on public procession, assemblies and one-person protests. This Bill is very much wider, and that framework does not necessarily neatly map on to what is before the House today.

I add that it is surprising that the Government should be content to allow legal uncertainty and let the courts, through lengthy and expensive litigation, rather than through Parliament, set the parameters of what actions they wish to criminalise. The lack of a definition of serious disruption in the Bill is an obvious and, in my view, critical deficiency and one which Members on all sides of this House and those in the other place have identified on several occasions.

The Joint Committee on Human Rights remarked in its report:

"It is unclear who or what would need to be seriously disrupted, what level of disruption is needed before it becomes serious and how these questions are meant to be determined by protesters and police officers on the ground—or even the courts."

At Second Reading, the noble Lord, Lord Anderson, made apt reference to both the Joint Committee report and the evidence to the other place from West Midlands Police, who called for

"as much precision … as possible"—[*Official Report*, Commons, Public Order Bill Committee, 9/6/22; col. 58.]

in defining serious disruption. The noble Lord, Lord Hogan-Howe, who has much experience of police operations in response to protests through his time as Metropolitan Police Commissioner echoed this call for clarity. In another place, Sir Charles Walker condemned the overall thrust of the Bill, no doubt worsened by this vague and all-encompassing term, calling it "unconservative".

Therefore, it was heartening to hear at Second Reading the Minister recognise the House's "strength of feeling" on this issue and that

"a clear definition could bring benefits".—[*Official Report*, 1/11/22; col. 204.]

This amendment would deliver such benefits, giving legal certainty and precision to what are otherwise vague and, frankly, highly draconian offences. It does so by clarifying that before the Bill's offences are engaged, significant harm must be caused to persons, property or, per the Public Order Act 1986, the life of the community. It sets the bar at an appropriately high level, stating that "significant harm" must be

"more than mere inconvenience, irritation or annoyance".

The example of people joining arms to walk down the street has already been given, so I will not repeat that. Under the amendment's proposed definition, these ordinary everyday behaviours would be rendered safe from undue criminalisation. The definition also requires that significant harm must be

"of a kind that strictly necessitates interference with the rights and freedoms curtailed by proportionate exercise of a power, or prosecution for an offence, provided for under this Act."

We have seen the police exercise existing powers inappropriately and disproportionately—I will not go into the case of Charlotte Lynch yet again, but it is one such.

This amendment is designed to prevent the future misuse of any new offences and powers created. Its benefits are threefold, giving guidance to the police in exercising their powers; safety to the public, who should be free to enjoy their right to protest free from prosecution; and clarity to the courts when they must interpret the law.

The criminal law acts as a powerful and coercive tool by which dividing lines are set between conduct Parliament has deemed acceptable or unacceptable. As the former senior Law Lord and eminent jurist, Lord Bingham, posited in the 2003 case, R v H and the Secretary of State for the Home Department, its purpose is

"to proscribe, and by punishing to deter, conduct regarded as sufficiently damaging to the interests of society".

Clear definitions are therefore indispensable, for without them, how is the public expected to understand what is proscribed, from what they are being deterred or what Parliament has concluded is sufficiently damaging to the interests of society?

I strongly believe that the Bill should be voted down in its entirety. It represents a dangerous and authoritarian boost to the state's power to curtail the vital right to protest peacefully. However, this amendment's definition would go some way to remedying one of the Bill's many critical flaws. I therefore commend it to the House.

Lord Ponsonby of Shulbrede (Lab): My Lords, I will speak to the amendments in my name and the name of my noble friend Lord Coaker. This debate has been about the threshold for committing an offence, the meaning of the phrase "serious disruption", which is not defined in the Bill, and the need for the intent of

an offence for an offence to be committed. The key overarching issue is the drafting of good law and not broad, poorly defined offences and powers which the police then have to try to navigate.

I turn first to Amendment 3, as drafted and recommended by the JCHR. It would change that threshold to causing serious disruption to the life of the community. This is supported by the National Police Chiefs' Council, which in its written evidence stated

"In addition, we believe using the definition of 'serious disruption to the community' may be preferable to 'two or more people, or an organisation', as the former is more widely understood and will allow more effective application consistent with human rights legislation."

In the Commons Committee stage, the Minister, Kit Malthouse, referenced disruption to the life of the community as the threshold for the offence of locking on. He said that some behaviour

"would not necessarily cause serious disruption to the life of the community, and would therefore not necessarily constitute an offence under the Bill."—[*Official Report*, Commons, Public Order Bill Committee, 14/6/22; col. 93.]

So it seems that the Minister already agrees that there may be a more appropriate threshold.

Moving on to Amendment 17, this is a JCHR recommendation that goes hand-in-hand with Amendment 3 to provide a definition of serious disruption to the life of the community in the Bill. I recognise that the noble Lord, Lord Anderson, has jumped ship and is supporting the noble and learned Lord, Lord Hope. I reserve my judgment; I may do the same at a later stage but, for the moment, I will press ahead with Amendment 17. It is one option, as drafted by the JCHR. It replicates the definition eventually added by the Government to the PCSC Act but, as we have heard, this group contains multiple possibilities for how the necessary level of disruption could be appropriately and clearly defined.

Turning again to the evidence submitted by the National Police Chiefs' Council, it has requested clarity to allow it to respond operationally, saying:

"Within public order legislation 'serious disorder, serious damage to property and serious disruption to the life of the community or intimidation of others' is a key phrase. The elements of serious disorder, serious damage and intimidation are accepted and clear. However, the term 'serious disruption' has been subject to much discussion and debate. Within any new legislation we would welcome clarity or guidance about the threshold and interpretation of this to allow operational commanders to best apply their operational responses."

This amendment is about clarity, as well as passing laws that can be easily understood by both the public and the police.

Amendment 23, spoken to very powerfully by my noble friends Lady Blower and Lord Hain, would provide a definition of serious disruption as actions

"causing significant harm to persons, property or the life of the community."

It specifies that serious harm must mean

"more than mere inconvenience, irritation or annoyance"

and be action

"of a kind that strictly necessitates interference with the rights and freedoms curtailed by proportionate exercise of a power, or prosecution for an offence"

provided here. I support that amendment as well.

Amendment 54 is again a JCHR recommendation. It adds, first, a threshold of causing serious disruption, and secondly, a requirement that there was an intent to cause serious disruption to the offence of obstructing major transport works. The JCHR said that

"there is no requirement that the offending conduct could be capable of causing significant disruption and there is no requirement that these actions be carried out with any particular intention of causing obstruction or disruption. This means that inadvertent actions could result in arrest or even a criminal penalty."

Across this group of amendments, the question of intent is integral to the debates that we have been having. The question of whether it is intended or reckless is really key to these debates. Can the Minister say something more about what recklessness covers? It is a phrase that is used in many other aspects of law, but how will the police be expected to prove that a person has been acting recklessly or not?

6 pm

A number of other amendments in this group would remove the words "is capable of causing" from narrow offences to actions which cause serious disruption. Is it the case that without that change, a person could commit an offence under the Bill without any disruption actually being caused and where they did not even set out with an intention of causing any disruption? Is that a correct interpretation of the Bill as currently drafted?

This has been a wide-ranging debate which has gone to the heart of a number of the issues within the Bill. I look forward to the Minister's response.

Lord Sharpe of Epsom (Con): My Lords, I once again thank your Lordships for all the contributions made in this debate. We turn to a series of amendments which seek to raise the threshold for the corresponding offences. Amendments 2 and 4 target the lock-on offence; Amendments 25 and 26 target the tunnelling offence; Amendments 36 and 37 target the offence of being present in a tunnel; and Amendment 54 targets the offence of obstruction of major transport works.

Before I deal with some of the questions concerning those amendments, I will just say two things. First, on the subject of the suffragettes, I entirely agree with the distinction the noble Baroness, Lady Fox, made between the protesters we see now and the suffragettes. Secondly, while we are slightly off the subject, I will make a few comments about the journalist who was arrested, who has been referred to twice. Clearly, the arrest of journalists lawfully reporting on events should not have happened—I want to make that very clear. I understand that an independent investigation into the arrests has been commissioned by the relevant police force. However, we do not agree that more powers will lead to further arrests of journalists: the issue lies with the training of journalists—a subject to which we will return.

A noble Lord: Police.

Lord Sharpe of Epsom (Con): The training of police—I am sorry.

The scope of the offences is drafted as such to ensure that all kinds of behaviour that protestors engage in to cause misery and disruption can be captured. Amendments 2 and 4 would mean the offence

[Lord Sharpe of Epsom]
would not account for situations where, for example, a person has locked on to a dangerous structure but is removed by the police before maximum disruption can be inflicted. Amendments 25 and 26 would mean the offence would not account for situations where, for example, a person has started creating a tunnel but is removed before maximum disruption can be caused. Amendments 36 and 37 would not account for situations where, for example, a person is present in a tunnel with the intent to cause serious disruption but is removed by the police before the tunnel can reach the designated area where maximum disruption can be inflicted.

Amendment 54, tabled by the noble Lord, Lord Coaker, and the noble Baroness, Lady Ludford, seeks to add a threshold of causing "significant disruption" to the offence of interfering with key national infrastructure. I am not sure whether the amendment should say "serious" disruption rather than "significant" disruption, as I note that the JCHR's own explanatory statement stated the former. That would echo the threshold for other offences in the Bill. If Amendment 54 is intended to add a threshold of serious disruption, I would argue that while we assess that it is right for the lock-on offences and certain other protest-related offences to include serious disruption within their scope, we do not see it as necessary here.

As I have stated already, protestors have been able to cause huge damage to major projects such as HS2. While much attention has been focused on how protest activity across HS2 sites causes massive disruption to the project, protestors have also engaged in many more minor disruptive acts, such as disrupting ecological surveys, damaging construction vehicles or blocking access points to construction sites. While some of these acts may not meet the threshold of serious and/or significant disruption, they still have a significant impact on the project and its costs. The Government view such actions as serious and completely unacceptable criminal activity. The offence as drafted seeks to deter individuals from targeting these projects while giving the police powers that are more sufficient in order to respond.

Before I get onto the amendments dealing with serious disruption, I accepted the invitation of the noble Lord, Lord Carlile, to read Section 78, and I will have a go at answering. Because many Just Stop Oil protesters have been arrested for public nuisance and obstruction of the highway, it has been asked why, in light of that, we need to introduce the measures in the Bill. The fact is that we are not solely interested in the process on the M25: the Bill was conceived before Just Stop Oil protesters were dangling off gantries. There are other unjustifiable protests, such as those targeting HS2, which I have just discussed. The criminal offences in the Bill extend to private land; currently, those who lock on or tunnel are only committing aggravated trespass, which carries a relatively low sentence. As it is a broad offence, I am sure that many here in the Chamber today would not welcome the sentences for aggravated trespass being increased. Finally, the pre-emptive measures in the Bill will improve the response to criminal protest. They were in fact conceived following discussion with the Metropolitan Police Service on what would have improved their response to Extinction Rebellion-style protests.

Amendments 3, 6, 17, 23, 27 and 38, all seek to provide a definition of serious disruption. I thank all noble Lords for these amendments, particularly the noble Lord, Lord Anderson—although I note that he is potentially deserting his—for our constructive engagement so far. I also thank the noble and learned Lord, Lord Hope of Craighead, for his thoughtful contribution to this debate.

I assure the House that I absolutely recognise the benefits that a clear definition of serious disruption could bring. However, we have faced some difficulties when trying to define serious disruption. That is because being too prescriptive in our definition risks creating a loophole which would provide those intent on causing as much disruption as possible an opportunity to evade arrest and prosecution. I would also say that, as drafted, some of these amendments offer a narrower definition of serious disruption than the Police, Crime, Sentencing and Courts Act provides for under

"serious disruption to the life of the community."

None of that is to say that I dismiss the principle of these amendments. There is a balance to be struck between a definition which is too broad and one which is too prescriptive. We will consider these amendments in detail to ensure that they accurately reflect the disruption that the Government seek to target while providing clarity to the police and others, as many noble Lords have mentioned, and we will continue to work with all interested noble Lords on this important matter.

Lord Hope of Craighead (CB): Is there a prospect of the Minister coming up with definitions in time for Report, to prevent us having to discuss this all over again? It would be a great help if he could come forward with his definitions, if he is going to proceed along this line.

Lord Sharpe of Epsom (Con): I will certainly endeavour to—I can make no promises. I am sorry: the noble Lord, Lord Ponsonby, asked me about recklessness, which I forgot to answer. The definition of reckless is to capture those for whom we cannot prove that they intended to cause disruption but who were clearly happy to cause it. I hope that clarifies the matter to some extent. For now, I ask the noble Lord to withdraw his amendment.

Lord Paddick (LD): My Lords, I thank all noble Lords for their contributions to this debate. The noble and learned Lord, Lord Hope of Craighead, made some very important points. He is a member of the Constitution Committee. He said that convictions for these offences could lead to more serious consequences such as serious disruption prevention orders and that some of the conditions that could be imposed under those orders are quite draconian, such as 12 months of electronic tagging. He made the important point that because the offences are very different in nature, there should perhaps be a tailored definition of serious disruption depending on what offence we are talking about.

The noble Lord, Lord Carlile of Berriew, made a very important point about creating ambiguity between the provisions in this Bill and Section 78 of the Police,

Crime, Sentencing and Courts Act 2022. The Minister's attempt to explain why Section 78 could not be relied on does not hold water. He started talking about offences of aggravated trespass and having low sentences, but Section 78 has a far more serious penalty than any of the offences contained in the provisions here, so I do not understand why we need new offences that have serious sentences attached to them when Section 78 can provide much stiffer penalties than any offence in this Bill. That does not seem to make any sense.

The right reverend Prelate the Bishop of Southwell and Nottingham made an important point about places of worship. The noble Lord, Lord Hain, made an important point too. I greatly respect the role that he played in overturning apartheid in South Africa, but I am not sure he can say with confidence that what he did amounted to serious disruption when we do not have a definition of serious disruption in the Bill. The noble Baroness, Lady Fox, supported by the Minister, talked about suffragettes and how they were very different from the protesters at this time, but that was not the point I was making. My point was that suffragettes locked on and the Government are saying that this new offence of locking on is a response to new tactics employed by protesters. Well, that is what the suffragettes did. That is the only point I was trying to make.

As for nothing being done, the police have been arresting stop oil protesters even before they have caused serious disruption. They have been arresting them for conspiracy to cause public nuisance. Whether it is for causing public nuisance under the famous Section 78 or highway obstruction, for which they can now be sent to prison, protesters are being remanded in custody by courts which are not confident that they would not go on to repeat the offences for which they have been arrested. Some of them have been sentenced to prison for highway obstruction. So I do not think it is the case that the police are not doing anything, or that existing legislation cannot be used effectively by the police.

The noble Lord, Lord Anderson, supported the idea of tailored definitions, hence his wavering, if I can put it that way, in terms of his own amendment. The noble Lord, Lord Macdonald of River Glaven, reinforced the point about clarity and predictability. People need to know whether they are going to break the law if they do something, which is why we need these definitions.

The infamous Section 78 of the Police, Crime, Sentencing and Courts Act talks about serious harm, rather than serious disruption, but it is defined in the Act. So, if the Government can define serious harm in that Act, why can they not define serious disruption in this legislation? The noble Baroness, Lady Blower, talked about what the Minister said in the other place about there being a definition of serious disruption under the Public Order Act 1986. I agree with the noble Baroness that it is out of date and dubiously applicable in the circumstances set out in this Bill. Even the noble Lord, Lord Hogan-Howe, talked at Second Reading about the importance of clarity, and police witnesses at Committee stage in the other place said that as much precision as possible is desirable, yet the Minister seems completely ambiguous about whether the Government are going to define serious disruption in the Bill in response to the question asked by the noble and learned Lord. The noble Lord, Lord Ponsonby of Shulbrede, said that the National Police Chiefs' Council is in favour of the definition of serious disruption to the life of the community put forward by the Joint Committee on Human Rights, so surely there is at least a lead for the Government to follow.

6.15 pm

The Minister then prayed in aid the HS2 project and all the problems that it had faced. My understanding is that the HS2 project has obtained a nationwide injunction in the High Court against interference with its projects in any place in any circumstances, so why is there a need for this new legislation when there is already a practical example of how major infrastructure projects, such as HS2, can protect themselves through civil injunctions?

There is clearly going to be a lot of work for us to do when it comes to Report. I have to say that I find the Minister's responses to the very detailed and powerful concerns expressed by noble Lords all around the Committee a little thin. I hope we can get to some substance on Report, because we are not getting it here. At the moment, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendments 3 and 4 not moved.

Amendment 5

Moved by ***Baroness Jones of Moulsecoomb***

5: Clause 1, page 1, line 15, at end insert—

"(1A) In this section, "attach" means to connect by mechanical means, and does not include circumstances where persons, objects or land are merely touching, holding or being held, or seated or placed upon each other."

Member's explanatory statement

This amendment probes the definition of "attach" in the Clause 1 offence of locking on, and whether it includes for example holding hands or sitting down.

Baroness Jones of Moulsecoomb (GP): My Lords, I am not going to describe all the amendments in this group. I am hoping that noble Lords will introduce their own.

I have one point to make about the arrest of Charlotte Lynch. I had the dubious pleasure of sitting on a panel with David Lloyd, the PCC for Hertfordshire, who seemed to suggest that it was the journalist's fault and that journalists should not report on protests. He believed in a free press, but not always, so I was slightly worried about the Minister's reaction, but he said that he used the wrong word.

All these offences deserve to be probed because they are so badly drafted, so broadly drafted, that we cannot be sure what they mean. For example, the Bill names the offence of locking on, but the definition is much broader. The Bill talks of a person attaching themselves or an object to another person, another object or land. What does "attach" mean? Does it

[Baroness Jones of Moulsecoomb]
mean people linking arms or holding hands? What if they were tied together by a ribbon with a loose bow that you could undo? Would that be attached? Exactly what does it mean? If it is easy to remove the attachment, does it count? Is it still criminal? It seems that these offences are absurd. I do not understand where the threshold is for criminal conduct. It makes the whole Bill worthless if we cannot be sure what it means, and certainly the courts are going to have a field day with this. I beg to move.

Lord Beith (LD): My Lords, the noble Baroness has raised the absurdity of the locking-on offence and the problems that will arise, which are addressed by some of the amendments in this group.

I want to introduce the Minister to an issue he may not be familiar with—perhaps it does not happen in his part of the country. Quite a lot of young couples go about carrying padlocks. Why do they do that? It might not be immediately apparent to a constable that they are wishing to pledge their lifelong devotion to each other. They go to a place such as the High Level Bridge in Newcastle, and they attach the padlock to the bridge; they then throw the key into the water. Explaining that that is what you are about to do might be pretty difficult when your average police constable says that you are carrying a padlock, obviously intending to lock on to somewhere. But they do not lock on to anything—except perhaps each other, and they might be caught by that, as the noble Baroness just pointed out. That is simply one example.

Another obvious example which has been raised by noble Lords before is that of bicycle padlocks. People have to carry them whenever they are going to use their bicycle. Again, these are pretty obvious cases for the locking-on offence as the Government have conceived it.

These are things that just happen in ordinary life. When you compound the offence created in the Bill with the offence of obstruction of a constable, you can see really difficult situations arising, where citizens with no intention of creating serious disruption are nevertheless caught because they are carrying such things in the vicinity of somewhere where serious disruption might be about to arise, or might be known to be about to arise.

I really think that the Government have got to clean up this Bill if they want to proceed with it, and remove from it things that drag ordinary citizens into conflict with the criminal law when they have no criminal intent at all—and do not need to have for the purpose of some of these offences—and are not involved in serious protest. Serious protest is itself, of course, an often justifiable activity, as the courts have demonstrated in some recent cases. Quite apart from the problems faced by those who want to engage in legitimate protest, we should not be passing legislation that simply confuses ordinary citizens as to what they are allowed to do.

Lord Paddick (LD): My Lords, on Amendment 5, in the name of the noble Baroness, Lady Jones of Moulsecoomb, we agree that there needs to be far more clarity as far as the offence of locking on is concerned.

On Amendment 18, in the name of the noble Lord, Lord Coaker, supported by the noble Baroness, Lady Fox of Buckley, to which I have added my name, we agree that the scope of going equipped for a locking-on offence should be limited to where the person intends to use the object for locking on, rather than including an object that may be used for locking on. There is a real danger of innocent people carrying innocuous objects being drawn into this offence, as my noble friend Lord Beith has just illustrated.

If we look at a similar offence in Section 25 of the Theft Act 1968, "Going equipped for stealing, etc.", we see that the wording is:

> "A person shall be guilty of an offence if, when not at his place of abode, he has with him any article for use in the course of or in connection with any burglary, theft or cheat."

There is no mention of any article that may be used in the course of or in connection with the substantive offence. Can the Minister explain why there is a difference in this case from the Theft Act's "going equipped" and these "going equipped" offences?

Amendment 19 in my name, supported by the noble Lords, Lord Coaker and Lord Skidelsky, and the noble Baroness, Lady Fox of Buckley, probes what "in connection with" means; in this case, "in connection with" locking on. Can the Minister give an example of where an object can be used in connection with locking on but is not used to actually lock on? Similarly, Amendment 48 in my name, supported by the noble Baroness, Lady Fox of Buckley, seeks to establish what "in connection with" means in relation to offences of going equipped to tunnel. Can the Minister give an example where an object can be used in connection with tunnelling but is not used to actually construct, or even to be present in, a tunnel?

Amendment 20, in the name of the noble Lord, Lord Coaker, supported by the noble Baroness, Lady Fox of Buckley, and signed by me, includes the question around the term "in connection with" but extends to whether it should also include items for use by someone else, through the term "by any person". This is the substance of my Amendment 21, signed by the noble Lords, Lord Coaker and Lord Skidelsky, and the noble Baroness, Lady Fox of Buckley, which would replace "any person" with "them."

As in the Theft Act example, surely it makes no difference if the person carrying a pair of handcuffs with the intention of committing an offence of locking on is the person who is actually going to chain themselves to the railings. If the thief and his mate go looking to break into cars, but the person carrying the crowbar is not the thief who is actually going to use it, the thief's mate is still guilty of the offence of going equipped to steal. Why then is it necessary to include "by any person" in this offence when it is not present in the offence under Section 25 of the Theft Act 1968?

Similarly, Amendment 49 in my name, supported by the noble Baroness, Lady Fox of Buckley, seeks to understand why "any person" is included in the offence of going equipped for tunnelling when there appears to be no need for this widening of the offence.

Amendments 51 and 52 in my name, and supported by noble Lord, Lord Coaker, seek to understand what would be caught within the offence of obstructing

major transport works by including Clause 6(1)(a)(iii), which includes obstructing someone

"taking any steps that are reasonably necessary for the purposes of facilitating, or in connection with, the construction or maintenance of any major transport works".

This seems to be extraordinarily wide, to the extent that it is almost impossible to understand what would or would not come within the remit of the offence. For example, if a construction worker working on a major transport works is prevented from filling her car with petrol the day before she is due at work—a car she uses to get to work—is that caught within the remit of this offence? Where is the line drawn? Can the Minister give a clear understanding of what is included in the offence, and if not, how does he expect protestors to know whether they are going to be committing an offence?

Amendment 53 in my name, and supported by the noble Lord, Lord Coaker, seeks to probe why Clause 6(1)(b) is necessary. It refers to interference with apparatus, for example. Can the Minister explain how interfering, moving or removing apparatus relating to the construction or maintenance of any major transport works would not amount to obstructing the construction or maintenance, an offence under Clause 6(1)(a)? If it did not amount to obstructing the construction or maintenance, why should it be a criminal offence?

Amendment 65, in the name of the noble Lord, Lord Coaker, supported by the noble Baroness, Lady Fox of Buckley, and signed by me, seeks to narrow the scope of the criminalisation of interference with the use or operation of key national infrastructure to cases where the use or operation of the infrastructure is prevented to "a significant" extent, rather than to "any extent". In other parts of the Bill, reference is made to serious disruption, so why is there no such caveat in this part of the Bill? Would teenagers involved in horseplay, for example, where one throws the other's mobile phone on to the train tracks, resulting in staff temporarily halting trains so that the phone can be retrieved, be guilty of an offence under this section as drafted?

Amendments 66 and 67 in my name are intended to probe what Clause 7(5) means. It states that

"infrastructure is prevented from being used or operated for any of its intended purposes … where its use or operation for any of those purposes is significantly delayed."

That makes sense, and that would be the effect of Amendments 66 and 67. Can the Minister explain how adding "The cases in which" at the beginning of that subsection and "include" in the middle of the subsection extend the offence beyond the specific example of significant delay? What else would count as preventing its use or operation?

We support Amendments 69 and 78 in the name of the noble Baroness, Lady Chakrabarti, to probe whether "broadcasting and telecommunication services", as well as "newspaper printing infrastructure", should be included in the definition of "key national infrastructure".

We also support Amendment 70 from the noble Lord, Lord Coaker, which I have signed, to narrow the definition of "road transport infrastructure" to A roads rather than both A and B roads, as recommended by the Joint Committee on Human Rights. Highway obstruction is already an offence for which a custodial sentence can be given, and the enhanced penalties for this offence should be limited to key roads such as motorways and A roads.

We support Amendments 71 and 72 in the name of the noble Lord, Lord Coaker, which I have also signed, recommended by the JCHR, to probe the extent of "rail infrastructure" and "air transport infrastructure". Does "rail infrastructure" include, for example, the Romney, Hythe and Dymchurch railway, a narrow-gauge steam service used solely for tourism purposes? Does "air transport infrastructure" include small, private airfields or airstrips with little or no air traffic? In what way are they part of "key national infrastructure"?

We also support Amendments 73 to 76 in the name of the noble Lord, Lord Coaker, which I have signed, to probe what facilities would be considered as being used "in connection with" infrastructure, in relation to

"harbour infrastructure … downstream oil infrastructure … downstream gas infrastructure … onshore oil and gas exploration and production infrastructure … onshore electricity generation infrastructure".

Finally in this group, my Amendment 79 seeks to probe whether all periodicals and magazines should be included in the definition of "newspaper". Noble Lords will be able to think of several disreputable or trivial titles that should not be considered part of "key national infrastructure".

6.30 pm

Baroness Fox of Buckley (Non-Afl): My Lords, I put my name to a number of amendments, as the noble Lord, Lord Paddick, read out. He has largely explained my reservations and why I put my name to, in this instance, Amendments 19 to 21. This is the focus on what equipment is "intended" to be used for.

I think it extraordinary that the Bill would criminalise somebody holding equipment that "may be used" for something. Completely innocent objects can be interpreted in the most malign way, and it seems far too speculative. Everyone should remember that, while we have in our minds locking on and Just Stop Oil, this piece of legislation does not mention Just Stop Oil. Therefore, anything that speculates about what people might be about to do with an object could be used to criminalise any range of behaviours. That is one of my concerns. It feels as though, rather than being proactive policing, as the Minister discussed earlier, it allows people to be scooped up just in case they use any object in a particular way.

Amendments 48 and 49 focus on the offence of "being equipped for tunnelling" and the requirement for the object to be used not specifically by the person with the item but by "any person". My concern is that this puts into law a kind of guilt by association. Somebody has not committed a crime and there is no indication that they have, but somebody else has used an item that they had and then committed a crime. It reminds me of the worst of the joint enterprise laws that led to so many injustices for all involved. I would really like to see that go. In fact, I would like the whole thing to go—but if we are going to have it, et cetera.

Finally on Amendment 65, which focuses on key national infrastructure, this is one of the things that the public most worry about—that key national

[Baroness Fox of Buckley]
infrastructure will be targeted by these kinds of stunt protesters. Somebody described it as guerrilla warfare, and it sometimes feels like that. We all know how important key national infrastructure projects are to any country. That is why Russia targets them in Ukraine. You know that the maximum number of people will suffer if you attack the things that keep any country going at any given time. So I am very keen that we protect them, but it is about the wording on the extent to which they are attacked and the illustrations that the noble Lord, Lord Paddick, gave. Again, it is not only Just Stop Oil. We have to keep getting that out of our minds, because this affects anyone who does anything to possibly disrupt a key infrastructure project.

Perhaps I might echo, in a glib way, the comments made earlier by the noble Baroness, Lady Jones of Moulsecoomb, in relation to the NHS. I thought she had a point there. In this instance, when I read about "key national infrastructure"—

"road transport infrastructure … rail infrastructure … air transport infrastructure … oil infrastructure … gas infrastructure",

et cetera—I thought, "Who needs Just Stop Oil?". Most of that infrastructure does not work. I spend most of my time not being able to get trains, and the energy system is in total crisis. If noble Lords want to know what is likely to create the greatest threat to most of the national infrastructure projects in the forthcoming months, I can tell them: it is not Just Stop Oil but austerity cuts coming from the Government. Although that is a slightly glib point, it indicates why using these things in the law, if you are not precise about exactly what you describe as "disruption", can get you into hot water.

Lord Skidelsky (CB): My Lords, I will speak briefly in support of Amendment 21 from the noble Lord, Lord Paddick, to which I put my name. The principle it seeks to uphold is that the offending person must be the one committing the offence or intending to commit the offence, rather than somebody else connected with that person. That is a very important point, because "in connection with" is another of these vague phrases that have crept into this kind of legislation. It is also there in counterterrorist legislation. How connected? Friend, lover, colleague, co-religionist? What is the nature of the connection? All these things are undefined. What counts as a malicious connection? That is why we want this amendment.

Lord Coaker (Lab): My Lords, I thank those who have supported the various amendments in my name. I very much supported the comments that the noble Baroness, Lady Jones, made when she opened the group. Similarly, I thank the noble Lord, Lord Paddick, for his support and the arguments he put forward on the various amendments. I also thank the noble Lords, Lord Beith and Lord Skidelsky, and the noble Baroness, Lady Fox. She made some very good comments about "serious disruption" and "key national infrastructure".

This is the first contribution I have made. The Minister said that the Government had listened to the House of Lords by withdrawing amendments when they came up in the Bill at the beginning of the year, putting them through the Commons and then bringing them to the Lords, that constitutionally that was the right way of doing things, and therefore that the Government had correctly brought the Bill forward to the Lords. I say to him that we as the Lords have a constitutional right to review legislation that comes from the Commons, to say where we think it is wrong, to put forward amendments and to seek clarity where there is none.

That has been the purpose of all the amendments put forward here this afternoon as we go into the evening. Each amendment put forward has sought that clarity of definition—what the Government actually intend and mean—so that as this law goes through and the Bill passes, as it will, it will be a better Bill that delivers what the Government want. That is what we seek to do with all the various amendments.

The key question that will keep coming back to the Government is: why is the Bill necessary? There is no dispute in this Chamber—we all totally and utterly feel that the Just Stop Oil protesters went too far, and that was serious disruption that was unacceptable. It is an Aunt Sally, or whatever the politically correct term is, to say, as the Government sometimes do, that they are in favour of the great British public who object to having their lives disrupted while there is a group of others, in this Chamber or elsewhere, who seek to be on the side of the protesters instead. We are all on the side of the public. We all agree that there is a right to protest but that there should be limits to it, and there will be a debate about where that should come.

The third group deals with the scope of the offences. Again, there is a series of questions for the Government in this group about where we are with the drafting and the scope of the offences. As I say, we keep coming back to the need to draft good law and the need for clarity, not offences so broad that they impinge unreasonably on the British public's rights and are unenforceable. Other key issues include focusing police resources on where they actually matter, not criminalising lawful behaviour or peaceful protest by members of the British public who are causing minor disruption. Our various amendments seek to probe the Government so that we can consider what to bring forward on Report.

Amendments 18 and 20 deal with being equipped to lock on. Currently, Clause 2 provides that an offence of being equipped for locking on takes place where a person is carrying an item that "may" be used "by any person" in the course of a locking-on offence or "in connection with" such an offence, or which may be used "by any person" in the course of or in connection with a locking-on offence. The amendments that I have tabled and others in the group would narrow that scope so that an offence was committed only where a person was carrying an item with the intention that it "will" be used to commit an offence by the person carrying it. As I say, those amendments are to probe the scope of the offence. Why is the word "may" there, not "will"? Why is the phrase "in connection with" used?

What does "by any person" mean? Any person in the group? Any person standing next to them? Any person who happens to be standing nearby? We heard from my noble friend Lady Armstrong about the difficulties one has where you just imply that someone in the group may be associated with a particular

person, and the problems that causes. As my noble friend Lord Ponsonby said to me, there is already a well-used piece of legislation containing the offence of being equipped. He would know, as a magistrate. Why does that legislation not work here? Time and again, the Minister has been asked to say why the current legislation is inadequate to deal with such situations.

Last Friday when Just Stop Oil called off its protest, I heard one of the protesters say on Radio 4—it was the "Today" programme, and the Minister can go back and listen to it—that among the reasons why they did so were the number of people who had been arrested and the number who were in jail or on remand. They said that was having an impact on the ability to carry out protests. Is that not part of the existing legislation dealing with these problems? Maybe it should have been used or enforced quicker but that is a process issue and a policing issue, not a legislative one.

Under current drafting, if an item is not used and absolutely no disruption is caused to anyone, has the person committed a criminal offence because something in their possession may have been used by someone else—not even themselves—to lock on? Is that a criminal offence or not? What does "in connection with" a locking-on offence mean? What activity does that cover?

The classic example that we have all used is a bike lock. We keep coming back to that because it has not been properly addressed. If a person walks through Parliament Square with a bike lock, they could be caught by that clause—is that not the case? Will it be up to that member of the public to prove to a police officer that they have no intent even though it might be used by someone else, not even to commit locking on but for an action that is somehow connected to it? Again, clarity is needed in the law because that police officer will be required to enforce it.

It is worth noting that the clause does not include a reasonable excuse defence. In practice, that is what happens when someone has a reasonable excuse, such as they work close by and own a bike. How is that going to work if there is no reasonable excuse defence available in the clause. Or have I misread it? Asking these questions is, after all, the purpose of Committee.

Amendment 52 concerns the obstruction of major transport works. Clause 6 makes it an offence to obstruct any actions that are

"reasonably necessary … in connection with"

constructing or maintaining transport works. The amendment would remove "in connection with". Again, this is to probe what actions that may cover. Clause 6 currently provides that it is an offence to obstruct a person

"taking any steps that are reasonably necessary for the purposes of facilitating, or in connection with, the construction or maintenance of any major transport works".

What does "in connection with" mean? Imagine the list of activities that could be considered as any step that was reasonably necessary in connection with maintaining a transport work. If a local protest prevents a person from painting a railway generator for a few hours, is that now a criminal offence? As the JCHR said:

"For example, the offence would be committed by moving any apparatus that 'relates to' construction or maintenance of major transport works (such as a shovel, a broom or a traffic cone) or, indeed, moving any apparatus (even if unrelated to the works) that belongs to a person acting under the authority of the person in charge of the works."

Is the JCHR wrong to have used those examples? As I say, poor, open-ended drafting will make these offences unusable, casting the net so wide that it means that in no way is the Bill focused on the small number of highly disruptive protesters who are purposefully breaking the law.

6.45 pm

Amendments 65 and 70 to 77 deal with interference with key national infrastructure. Clause 7 provides that it is an offence to prevent the use or operation of key national infrastructure "to any extent". I suggest that "any" is a wide term. Amendment 65 would replace that wording with "to a significant extent". Again, that is to probe what the Government mean by "to any extent". What does it mean? If a protest blocks a single fuel pump at a petrol station or a minor junction on a B road, that is interfering with infrastructure to some extent. Does it have to cause serious disruption for that to be a problem, or is that an offence per se?

Similarly, Amendments 73 to 77 probe what would be considered as being "in connection with" key infrastructure. When the Bill says that the offence covers facilities in connection with, say, harbour infrastructure, how broad is that? Can the Minister give us examples of what the Government believe will or will not be covered?

Amendment 70 is a recommendation of the JCHR that would limit the offence of interfering with road transport to major roads. It would focus the offence on A roads rather than B roads. During the passage of the now Police, Crime, Sentencing and Courts Act we actually supported increased sentences for those obstructing highways, but we raise the issue at this time —I have tabled it again today—to probe the Government's thinking. Is it not more meaningful to focus those offences on major roads, where maximum disruption is caused, rather than including B roads? I looked this up and it turns out there are still C roads, so one wonders what happens about them too.

I have asked detailed questions today, because it is Committee, I have tried to highlight, as other noble Lords have done, that the drafting is too broad and the definitions too vague. How is it going to work in practice—even by the Government's standards—to deliver what the Government want to do?

Many of us believe that the existing law works in many areas where the Government believe there are problems. So far the Minister has been unable to identify where the gaps are that the legislation seeks to fill. There are real concerns across the House about the implications for personal freedom and the ability to protest, and the Government need to come up with clear answers to some of the many questions that have been asked today.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords who have taken part in this shortish debate. I have already spoken about the damage and disruption that these offences can cause. Narrowing the scope of these offences, as the amendments in this group seek to do, would restrict the ability of the police to stop individuals from causing unjustifiable amounts of disruption and harm.

[Lord Sharpe of Epsom]

Before I get on to the amendments, I agree entirely with the noble Lord, Lord Coaker, about the scrutiny that this Bill deserves in this Chamber. I was merely clarifying an earlier point when I referred to its passage through the other place.

Amendment 5 provides a definition for the term "attached" in reference to the locking-on offence. We are fundamentally interested here in the disruption caused. The range of equipment used for locking on is extensive and ever changing. So, aside from bike locks, chains, cable ties and glue, police have also seen sophisticated devices that have been deliberately designed to be difficult and time-consuming to remove. Arm tubes involve protesters putting their arms through pipes containing concrete, steel or other materials that can either be released by the protester at will or require the police to use machinery to cut them free. Sometimes, such devices are designed to inflict harm on anyone who tries to remove them, placing the police in harm's way. These devices are constantly evolving and designed to waste as much police time as possible. Given this, equipment that could be used in the course of, or in connection with, a locking-on offence is in scope. This could include locks and chains and large objects used to lock on, such as the bamboo structures that have featured in many protests. Specific equipment is not listed in the legislation as protesters can easily create new methods of locking on. Instead, referring to the act of locking on, and the serious disruption it causes, ensures this clause will remain relevant going forward.

Amendments 18, 19, 20, 48, 49, 51, 52, 53, 73, 74, 75, 76 and 77 seek to remove those acts which are taken "in connection" with these offences. I recognise the sentiment behind these amendments, but it is our view that it is vital that the full range of disruptive tactics that can be, and frequently are, deployed are captured to ensure our major transport works are protected.

With respect to the tunnelling offence, removing "in connection" would mean that those who carry items that are not strictly necessary for the construction or occupation of a tunnel are not in scope of this offence. The aim of the tunnellers is to cause disruption by delaying their removal for as long as possible. To achieve that, they will often create obstructions that will include, for example, coils of wire mesh and even nooses attached to the tunnel's door to tie around their own necks. Items to make these are not themselves necessary for the commission of the other tunnelling offences, but I am certain that many in the House would agree that anyone carrying these items for these purposes should be in scope of the offence.

To use the obstruction of major transport works as an example, as I have already said, while many noble Lords will be familiar with the larger-scale protester action, many will be less familiar with the more minor acts of disruption that can start before construction even begins. Whether that is disrupting ecological surveys, removing or interfering with apparatus that is needed for construction, or blocking access to construction sites, all have a significant impact and can cause significant delays and additional costs to these works. For that reason, the scope of the offence is drafted as such to ensure all highly disruptive action are included in the scope.

Amendment 65, tabled by the noble Lords, Lord Coaker and Lord Paddick, and the noble Baroness, Lady Fox, seeks to narrow the scope of the offence of interfering with key national infrastructure to include only those who interfere to a "significant" extent rather than "any extent". Again, I understand the core sentiment behind this amendment, but I would like to remind noble Lords that the types of infrastructure regarded as key national infrastructure are those that this Government have identified as playing a vital role for the nation. This is also the infrastructure that is being targeted by protest groups who are intent on causing disruption of any kind. As such, it is important that key national infrastructure is protected using the existing threshold of the Bill.

In a similar vein, Amendments 66 and 67 seek to narrow the scope of what it means to prevent the use of, or operation of, key national infrastructure, so that it only refers to instances where significant delay is caused for the use or operation of the targeted infrastructure. As I have touched on already, there are many circumstances beyond significant delay that should be captured within this offence. For example, should protesters successfully reduce the output of oil from an oil terminal but not delay its delivery, we could still see heating switched off as supplies dry up. We therefore see it as wholly necessary that the full range of disruptive behaviours and acts are captured.

Amendment 68 and 78, tabled by the noble Baroness, Lady Chakrabarti, would replace "newspaper printing infrastructure" with the term "communications" in the list of key national infrastructure on the face of the Bill. The list of key national infrastructure is based on sites that protesters have or are likely to target through their current tactics. Therefore, we do not believe it is necessary to add "communications", as defined by the noble Baroness, into the list of key national infrastructure at present. However, as the noble Baroness will know—and we will definitely come to consider this in group six—the Bill does contain a delegated power that will allow us to amend this list as tactics and infrastructure evolve.

Amendments 70, 71, 72 and 79 seek to narrow the scope of the interference with key national infrastructure offence by altering the definitions provided for in Clause 8, including by removing B roads from the list of infrastructure in scope or by narrowing the definition of "printing presses". The scope of the offence as drafted reflects the importance of the continued operation of the infrastructure as defined in Clause 8. Some B roads are lifelines for small towns and villages, and we see it as entirely right they should be included. Printing presses have been included to protect the distribution of print media and news. There are many publications which serve that purpose which are not newspapers.

Finally, I would probe noble Lords on what they deem as "essential" and "inessential" elements of infrastructure. Many elements that some deem inessential, such as signs along railways and roads, provide important information to train and car drivers and may be necessary to ensure the high standards of safety we expect in this country.

For those reasons, I disagree with these amendments and ask that they be withdrawn.

Lord Beith (LD): Can the Minister help the Committee by saying how he would answer this question, and if he has asked himself this question? If he were one of the people carrying something that a constable challenged him for—maybe the padlock that I talked about earlier that a young couple were going to put on a bridge, or maybe a packet of cable ties—what would his answer be to the constable who challenged him? Does he think it would result in him not being charged?

Lord Sharpe of Epsom (Con): My Lords, these things are judged on a case-by-case basis. It would depend entirely on where I was, what I was doing and also the intention as described in Clause 2 of the Bill.

Lord Harris of Haringey (Lab): My Lords, I listened with great interest to the Minister's reply to the Committee's discussion on this. Could he explain why, rather than trying to define all these activities—this happening, that happening and this piece of equipment and so on—has he not sought to do it in terms of intent, and a requirement that before an offence is committed intent to cause disruption is demonstrated?

Lord Sharpe of Epsom (Con): That is captured. As I say,

"A person commits an offence if they have an object with them in a place other than a dwelling with the intention that it may be used in the course of or in connection with the commission by any person of an offence under section 1".

Lord Coaker (Lab): On this issue of intent, Clause 6 creates a criminal offence of obstructing "major transport works" but the Constitution Committee notes that unlike Clause 1, 3, 4 and 7, intent or recklessness are not required for an act to constitute an offence under Clause. Can the Minister explain why?

Lord Sharpe of Epsom (Con): Not at this point, I will have to write to the noble Lord.

Lord Paddick (LD): Bearing in mind the number of amendments, I worked out that the Minister spent 17 seconds per amendment in his response. I gave the example of a mobile phone that ended up on railway tracks interrupting national infrastructure and whether that was within the scope of the Bill. Does the Minister feel that his response has been comprehensive enough, on the very detailed questions he's been asked?

Lord Sharpe of Epsom (Con): My Lords, I am afraid I do.

Baroness Jones of Moulsecoomb (GP): I thank all noble Lords who have contributed to this debate. I have really enjoyed it and I think we are expecting some better answers in the future. The Minister said something about probing us on what we thought, but it is our job to probe him about what this legislation means. So far, it is not coming out very well.

Personally, I hope it gets thrown in the rubbish bin because, quite honestly, we are spending an awful lot of time and energy debating it when we know it is awful. It is not as if we can see a glimmer of hope that it might solve some problems. The Minister talked about the damage and disruption that these protesters are doing. In fact, the Government have done more damage and disruption to our social fabric than XR, Insulate Britain or Just Stop Oil could ever do. They have had 12 years and made the most horrendous mess.

Getting back to the Bill, the Minister did not answer my question about "attach". I still do not know what "attach" means. I am happy to wait and hear a longer answer, if he has one, on another occasion.

7 pm

I loved the mention that the noble Lord, Lord Beith, made of love locks. I have seen them on bridges on Paris, and he is quite right about not dragging innocent people into conflict with the police. The noble Lord, Lord Paddick, made some excellent challenges about the lack of common sense in the Bill. The noble Baroness, Lady Fox, was absolutely right to talk about broken infrastructure—trains, the NHS and almost everything else. The noble Lord, Lord Skidelsky, challenged on what "connected with" means. The whole Bill lacks clarity, as the noble Lord, Lord Coaker, said. That is a real problem for us when we spend all this time trying to pin things down and cannot do it.

As for the public being furious with the protesters, they absolutely are—that is what the polling says—but they agree with their causes. We have to remember that these protesters do not run away from the police. They do not try to avoid arrest but accept accountability through prison sentences or whatever. They are not criminals in that way; a criminal tries not to get caught while protesters are actually happy to take the consequences. I cannot bear the thought of all the evenings I shall sit in this Chamber, way past my dinner time, arguing through these provisions but, in the meantime, I will withdraw Amendment 5.

Amendment 5 withdrawn.

Amendments 6 to 8 not moved.

Amendment 9

Moved by ***Baroness Jones of Moulsecoomb***

9: Clause 1, page 1, line 18, at end insert—

"(2A) It is a defence for a person charged with an offence under subsection (1) that their actions were likely to avoid greater disruption or were otherwise in the public interest."

Member's explanatory statement

This amendment creates a defence for actions that are in the public interest or which avoid greater disruption.

Baroness Jones of Moulsecoomb (GP): Again, I will just talk to my two amendments. The noble and learned Lord, Lord Hope, and I are probing the Government from both ends with our amendments. I am probing on the basis that the offences are so broadly drawn that they require equally broad defences to protect innocent people from being criminalised. I imagine that the noble and learned Lord is being rather more forgiving on the drafting of the offence, and therefore trying to ensure that it works by not making the

[Baroness Jones of Moulsecoomb]
defences overly lenient. I am happy to be corrected, but both perspectives can be true. That is why the drafting is so bad. These issues will not just detain us here—she says, bitterly—but will create hours, days and weeks of legal arguments in the courts, which is very much to be avoided.

There is an opportunity in this legislation which I might explore later: that fossil fuel companies and other environmentally destructive actors could be prosecuted and convicted for locking on. For example, if a fracking company attaches a drilling rig to land, that potentially causes serious disruption to two or more individuals. It could leak or cause earthquakes; it could contribute to climate change, or two people might have wanted to walk through that field but now there is a rig in the way. Local people could be seriously inconvenienced by having to protest against the fracking rig, rather than pursuing their hobbies such as birdwatching.

The Government probably do not mean to criminalise fracking and other oil and gas extraction, but this is a logical consequence of such broadly drafted offences. I rather suspect that people such as those at Greenpeace or the Good Law Project might enjoy some time in court with private prosecutions of that kind. I beg to move.

Lord Hope of Craighead (CB): My Lords, I shall speak to my Amendments 11, 30, 34, 41, 57 and 63. That may seem a bit of a mouthful but they are all in exactly the same terms. They refer to the reasonable excuse defence in Clauses 1, 3, 4, 6 and 7. Perhaps I should preface my remarks, particularly in the light of the comments made by the noble Baroness, Lady Jones of Moulsecoomb, by saying that I very much subscribe to the view that these measures are not needed at all. These are laws we do not need and they may cause confusion, but I have to take the Bill as it is. I am making my remarks with reference to the Bill as we find it, not as I would like it to be.

The Constitution Committee examined the phrase "reasonable excuse" and its implications, and said that it is

"constitutionally unsatisfactory to leave to the courts the task of determining what might be a 'reasonable excuse' without Parliament indicating what it intends the defence to cover".

There are two points in particular: first, it invites argument over whether certain, but not other, political motivations might constitute an excuse—how serious they are and their consequences, and so forth; secondly, and perhaps even more important, is whether the defence of reasonable excuse should be available at all in cases where serious disruption has been caused. This is exactly the other side of the argument that the noble Baroness put forward a moment ago. The committee's recommendation was that unless a precise definition of reasonable excuse is provided, the defence should be removed from Clauses 1, 3, 4 and 7 altogether.

The point is really this: if the wording remains in the Bill as it is, it opens the door to arguments that bodies such as Extinction Rebellion and Just Stop Oil use to justify their actions. I recall the lady who was sitting up on a gantry when she was interviewed on television. With tears in her eyes, she said, "I know I'm causing terrible disruption to many people"—you could see all the cars stuck behind the police cordon—"but I've got no alternative. Look at the serious disruption that climate change is giving rise to; that's my case. We've got to do something about it, so I don't mind how much disruption I cause to however many people because I've got to get that message across." The problem with the reasonable excuse defence is that it opens up that kind of argument.

The committee's recommendation was, as I say, that unless a precise definition is provided it should be removed. My amendments propose that the question

"is to be determined with reference to the immediate interests or intentions of the individual, not any public interest which that person may seek to invoke".

The immediate interest point would cover the case of the journalist Charlotte Lynch, who was arrested by the police. In her position, she could obviously say that as a journalist she was doing her job. That would undoubtedly be a reasonable excuse if she was having to defend a charge in this situation, and one could think of many other examples, so the opening words of my amendment are designed to deal with people of that kind. But they are intended to meet the very point on which the noble Baroness, Lady Jones, focused on so clearly: the position of protesters who are protesting because of climate change, for example, or other big public interests that people feel it necessary to protest about.

There are various problems with leaving the words as they are. The offences described in Clauses 1 and 6 are to be tried summarily before magistrates. I am conscious that the noble Lord, Lord Ponsonby, is here with his experience but I suggest that leaving it to magistrates to decide whether a particular public interest excuse is reasonable, without any guidance from Parliament, is not satisfactory. There is a risk of inconsistent decisions between one bench of magistrates and another but there is another problem, too. These arguments, if they are to be raised in a magistrates' court, may take up a great deal of time. I have heard at second hand of a case where one of these issues was raised in a magistrates' court and it took hours and hours as people deployed their arguments. The magistrates' courts are not equipped for that kind of interference in their ordinary business, so one has to have regard to the consequences of leaving it to them to decide issues of this kind. That important factor needs to be borne in mind.

Lord Beith (LD): Could the noble and learned Lord explain whether he thinks that phrasing the clause in this way dispenses with the proportionality issue, which was so important in the Supreme Court judgment in the Colston statue case?

Lord Hope of Craighead (CB): I am grateful to the noble Lord because I am coming on to deal with exactly that. Indeed, it leads me into the next paragraph in my notes. I am just making the point that one has to consider the practical consequences for prosecutors and the police of leaving this expression as wide as it is and without qualification of some kind. Of course, I am pointing to a particular qualification that needs to be made.

The Supreme Court, in a well-known case called Ziegler in 2021, held that protesters had been rightly acquitted of obstructing a highway when protesting about an armament fair. That is not an easy judgment to read or understand, not helped by the fact that there were two dissents in a court of five, but it has been thought to support the view that invoking the public interest defence in that context is acceptable. However, a series of decisions in the Court of Appeal have narrowed the window that Ziegler left open. The point is that we are dealing now, in the offences that we are considering in the Bill, with offences that require proof of serious disruption. The Court of Appeal's point is that that changes the balance between what is proportionate and what is not, which is at the heart of this issue. The proof of serious disruption was not a necessary element of the offence of obstructing the highway considered in Ziegler, but it is important to notice that in our offences it is a vital and essential element.

The Colston case was the subject of the most recent Court of Appeal decision, which is Attorney-General's reference no. 1 of 2022. The court was asked to rule on what principles judges should apply when determining whether the convention rights are engaged by a potential conviction for acts of damage during a protest, and when the issue of proportionality should be withdrawn from the jury. The court held that the convention did not provide protection to those who cause criminal damage during a protest that is violent, not peaceful. That was the Colston case.

However, it went on to say that a conviction for causing significant damage to property, even if inflicted in a way that could be called peaceful, could not be held to be disproportionate either. The prosecution in the Colston case was correct, both because the toppling of the statue in that case was violent and, as a separate issue, because the damage to the statue was significant. The words "serious disruption", which appear in these offences, seem to fall into the same category. In other words, a person who engages in criminal conduct that causes serious disruption cannot take advantage of this defence.

It has been pointed out that a case raising this issue is expected to be heard by the Supreme Court before Christmas. I think there are problems with that. The judgment is not likely to be given until well into next year because the court takes a considerable time to consider all the issues. I think one would be fortunate if the judgment were out before the early summer. This is a problem that needs to be solved now, and I will come back to the question of the magistrates' court and the problems that could arise there.

I stress again that the offences we are dealing with here all require proof of serious disruption. That is why the reasonable grounds defence should be removed altogether or qualified in the way I am suggesting, to confine it to circumstances that affect the position of the individual on the ground at the time he or she is causing the disruption. That qualification would be welcome, and undoubtedly useful, in many cases. Without it, I suggest that the whole defence be removed.

Lord Judge (CB): My Lords, I am very sorry that I was not able to speak at Second Reading. I shall be very brief. I share the various arguments presented to the Committee about the vagueness of this legislation and the ineptitude of the drafting that leaves so many criminal offences so vaguely described. I support the basic premise of the noble and learned Lord, Lord Hope. We are about to legislate in a situation where there is a decision of the Supreme Court, with two dissenting judgments out of five; further decisions of the Court of Appeal are rowing back from the majority decision in Ziegler; we have the Colston decision, which will have to be reconciled with Ziegler; and we know that the Supreme Court is looking at the issue again.

What on earth are we supposed to do when we have the opportunity to make it clear what the answer is to these problems, revealed by the number of cases to which I have referred? We have the opportunity, and we should take it. We really should not just say, "You carry on sorting it out". How many more times does the issue have to be examined in higher courts? If the issues are being examined in magistrates' courts, there will inevitably be references to cases stated and so on. If we do not accept the amendment of the noble and learned Lord, Lord Hope, or at least the thrust behind it, we are sending a slightly chaotic situation back to the courts when we could clear it up.

7.15 pm

Lord Paddick (LD): My Lords, I hesitate, as a non-lawyer, or even as someone who has never been a judge or magistrate, to enter this debate. I have amendments 34, 56 and 62 in this group.

Amendment 34 seeks to ensure that only those people present in tunnels created under Clause 3 are criminalised—in other words, illegal tunnels, or tunnels dug by protesters—rather than those present in tunnels such as the London Underground tunnels. The drafting of the offence appears to capture people causing serious disruption in the London Underground tunnels, which I am sure was not the intention. In meetings with Ministers before today's debate, there was an undertaking to recognise that and address it. I would be grateful to hear from the Minister what conclusions the Government have come to, bearing in mind that they have been given prior notice.

Amendments 56 and 62 reflect the recommendations from the Joint Committee on Human Rights that particular regard must be had to the right to peaceful protest under Articles 10 and 11 of the European Convention on Human Rights when deciding whether someone has a reasonable excuse for their actions that would otherwise be an offence of obstructing major transport works and interference with the use or operation of key national infrastructure.

On the other amendments, I admire the ingenuity of the noble Baroness, Lady Jones of Moulsecoomb, in her Amendment 9. I shall leave it at that.

With regard to the noble and learned Lord, Lord Hope of Craighead, the reasonable excuse defence is clearly very difficult. One can understand and sympathise with Extinction Rebellion or the Just Stop Oil people who say, "You're destroying the planet by giving out more licences for oil and gas exploration". What more reasonable excuse could you think of for causing this sort of disruption? My only concern is that the Government will take the noble and learned Lord's

[Lord Paddick]
first option of doing away with the reasonable excuse defence altogether in these offences, rather than adopting the approach that the noble and learned Lord has suggested.

In the case of the journalist who was arrested, the alternative suggestion in the noble and learned Lord's detailed amendments would clearly be something that she could use in her defence. I hesitate to say what would happen to her if there were no reasonable excuse for these offences. As the noble and learned Lord said—and with no disrespect to the noble Lord who is a serving magistrate—these are very difficult decisions. If the Court of Appeal and the Supreme Court disagree, and if you have two judges even on the Supreme Court dissenting, how can a Bench of lay magistrates grapple with these difficult issues around reasonable excuse? So there certainly needs to be clarification and clarity around reasonable excuse, and I hope that the Minister can help us with these issues.

Lord Coaker (Lab): My Lords, this is an interesting group of amendments. I will come to the amendments of the noble and learned Lord, Lord Hope, but I will deal with my Amendment 42 first, because it deals with an important specific ask of the Government. I will then come on to the more general point about the reasonable excuse defence.

My Amendment 42, for which I am grateful for the support of the noble Lord, Lord Paddick, would insert a defence for a person who is present in a tunnel or is undertaking acts

"wholly or mainly in contemplation or furtherance of a trade dispute."

The amendment probes situations where all or part of a person's workplace is within a tunnel, such as the London Underground.

Currently, other clauses, such as Clause 6 on obstruction of transport works, include a reasonable excuse defence for people causing disruption as part of a trade dispute, and I think we all welcome the Government's inclusion of that. But have they considered whether that defence needs to be replicated for the new offence of being present in a tunnel? What is covered in the definition of a "tunnel" under the Bill? Does it include the London Underground or the Channel Tunnel, for example? Under the Bill, the definition of a "tunnel" is simply

"an excavation that extends beneath land".

So some clarification of that would be helpful, and I would be grateful for answers on my Amendment 42.

Aside from that amendment, we have had an interesting, almost philosophical, debate. The noble and learned Lord, Lord Hope, is right to say that you cannot just leave this to others to debate. There is a very real debate here: how far is protest justified by people who say, "My reasonable excuse is that there's such a climate emergency and, if only people realised it, they would realise that we're the people who are being sensible and reasonable"? This is a very difficult debate and discussion, but the noble and learned Lord, Lord Hope, has challenged Parliament to have it. The Government may need to think about this and come back on Report with something that seeks to explore the whole issue.

This example is not the same, for obvious reasons, but the Chartists would have been regarded in their time as unreasonable extremists. Many of the suffragettes were imprisoned and force-fed. You can say that this is different and we are in a different time, but you see the point that the noble and learned Lord, Lord Hope, is getting at: what is a reasonable protest, and how far should someone go? In other words, where is the balance in a protest that will inevitably cause some disruption? I have been on protests and demonstrations that have caused disruption. But where is the balance and where do you draw the line? We never debate or discuss this—

Lord Hope of Craighead (CB): The crucial point that I was trying to make is that we are dealing here with serious disruption. I have been trying to get a definition of what that really means. These two points meet: you have to identify what you mean by "serious disruption", and you reach a point where the proportionality tips against the person who is causing the disruption. That is what we need to get at and why the language in the Bill needs to be more precise to enable that to be determined.

Lord Coaker (Lab): I could not agree more; the issue of proportionality is exactly right. But this is difficult. I have been on demonstrations that caused serious disruption that we regarded as perfectly reasonable, but I am not sure that everybody else would have thought they were perfectly reasonable.

So I support what the noble and learned Lord's amendments seek to do, which is to get the Government to justify where they think that line should be and say—I am not a lawyer, but I often hear the lawyers here say this—that it should not be left to the courts to determine and try to guess what the Government's view was and what Parliament was seeking to do. It is Parliament's responsibility to try to define and clarify what the law seeks to achieve. The courts then interpret that, which is right in a democracy. But we abrogate our responsibility if we do not even seek to discuss this.

The noble and learned Lord, Lord Hope, is exactly right, but my question to him is: where does it tip? One person's view of what is proportionate may be regarded by someone else as weak and not strong or determined enough to challenge the system. The system might need more challenge, not less, to bring about the change that is needed.

So the debate is necessary, but quite where that takes us and how you put forward an amendment, other than the interesting amendment of the noble and learned Lord, Lord Hope, is really important, as is how the Government respond to it. This important point should not be lost. It is almost a philosophical debate, but its practical implications for protest in our society are immense.

Speaking as an individual, I would put up with some disruption because I recognise the need for people to protest. When I drive into London and sometimes cannot get into Parliament, I remind myself that I have done similar things to people in other circumstances—

Lord Lennie (Lab): And worse.

Lord Coaker (Lab): And worse. Well, not quite worse, but I have done similar things, and that is the price you pay for democracy. Where you draw the line —before anyone takes me on, I suggest that the Just Stop Oil protesters have acted disproportionately—is an interesting debate and discussion to have, and the noble and learned Lord has done the Chamber great credit by bring it forward.

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): I thank all noble Lords for their contributions to this very interesting debate on this set of amendments. Before I begin, I will respond to the noble Lord, Lord Paddick, and the noble Baroness, Lady Chakrabarti, who is not present in her place, in respect of the comments made at the end of group 1, particularly those relating to the reasonable excuse defence being available before arrest and the recent specific case of the arrest of the journalist Charlotte Lynch. I repeat the words of my noble friend Lord Sharpe: this was clearly wrong and should not have happened. Hertfordshire Constabulary has confirmed that additional measures are now in place to ensure that legitimate media are able to do their jobs.

More generally, I make clear that, to arrest someone, the police need to have reasonable grounds to suspect that they have committed or are about to commit a crime. Of course, we would expect the police to consider the likelihood of someone having a reasonable excuse when making arrest decisions. But the police must be able to intervene early to deal with serious disruption, without having to go through bureaucratic hurdles.

Turning to the group at hand, we have already discussed the reasonable excuse defence at some length today, and I will not detain noble Lords for too much longer. Specifically in relation to Amendments 9 and 10, I thank the noble Baroness, Lady Jones, for giving me the opportunity to make it clear that trampling on the rights of the public in the name of environmental activism is not by default a reasonable excuse for locking on; nor does legitimate activity by the highly regulated energy sector constitute a criminal offence.

Turning to perhaps the most interesting part of the recent debate—regarding Amendments 11, 30, 41, 57 and 63—I particularly thank the noble and learned Lord, Lord Hope of Craighead, for his amendments, which seek to ensure that the reasonable excuse defence is assessed by the courts with reference to an individual's direct intentions, rather than with reference to any type of public interest they claim to be pursuing through an offence. This would prevent someone using an argument of public interest as a reasonable excuse for committing an offence. I also thank him for his excellent contribution to the debate.

7.30 pm

As a lawyer myself, I absolutely understand and recognise what he says about the need for clarity, a call echoed by the noble and learned Lord, Lord Judge, and the noble Lord, Lord Coaker. I understand that the amendments he proposes seek to provide that clarity to the courts. However, I am assured—and, indeed, know from my own experience of acting in cases concerning reasonable excuse—that the courts already have a responsibility to assess what that phrase might mean, and do so regularly. In doing so, they form a view on proportionality on the facts of those cases. Of course, each case and offence is different in context and nature; as such, the Government do not presently feel that it is necessary to limit the safeguard of a reasonable excuse at this time. However, as we discussed in our engagement earlier today, my noble friend Lord Sharpe and I commit to meeting the noble and learned Lord on this important topic and other important issues he has raised throughout the Bill. Clearly, these are significant issues, as the noble Lord, Lord Coaker, highlighted, and considerations of proportionality are very difficult and of fundamental importance, so I can certainly undertake to do that.

I turn to Amendment 34 tabled by the noble Lord, Lord Paddick. My noble friend Lord Sharpe has already spoken about the staggering impact of tunnels, both to businesses and, more importantly, to lives. That is why we have created all three tunnelling offences. It is our intention to ensure that anyone involved in such reckless activity is prosecuted with ease. That is why this offence is drafted in such terms: it is vital that those who commit such dangerous acts face the consequences of their actions. It is worth remembering that they are endangering not just themselves but those seeking to remove people from such tunnels.

On the specific point about the London Underground raised by the noble Lords, Lord Paddick and Lord Coaker, the tunnelling offence concerns acts that would intentionally or recklessly cause "serious disruption". Charging and prosecution decisions would be for the police and the CPS and, ultimately, it would be for the court to decide whether the offence had been committed in a particular case. I can confirm that the Government's intention is not to cover the London Underground, but I commit to considering this further and thank the noble Lord, Lord Paddick, for his amendment.

Amendment 42 seeks to insert a

"defence for a person who is present in a tunnel"

on the basis "of a trade dispute". This defence was provided for the infrastructure offences in the Bill to make it explicitly clear that lawful and legitimate industrial action does constitute a lawful excuse. To be absolutely clear, this provision does not give anyone carte blanche to disrupt "key national infrastructure" in the name of a trade dispute. Therefore, this excuse should not apply to the other offences in the Bill.

Amendment 61 similarly seeks to strengthen the defences available. As I have said, whether someone has a reasonable excuse for their actions is very specific to each incident.

Baroness Blower (Lab): Before the arrival of the Minister in the Chamber, the noble Lord, Lord Sharpe, said that he would return to my point about picketing in the response to this group of amendments. Clearly this is what is happening now. However, I am afraid I did not really understand what the Minister was putting to us about other things in the Bill. Could he recap a little on what is intended by

"furtherance of a trade dispute"

in that context? I am sure it is entirely my own fault, but I just did not understand this.

Lord Murray of Blidworth (Con): Certainly, and I thank the noble Baroness for her question. It is important that we have clarity because this is clearly a very important point. In the Bill, the pursuit of lawful and legitimate industrial action constitutes a lawful exercise of that right and is not criminalised. However, that provision in the Bill does not read across, if you like, to all the other offences, and in particular is not found in any tunnelling offence. That is the point where I differ from the speech the noble Lord, Lord Coaker, gave moments ago. The reason for that—

Lord Paddick (LD): I am very grateful to the Minister for giving way. He just said that, in other parts of the Bill, somebody engaged in a trade dispute is not criminalised by the offences contained in this Bill. However, we had a discussion in the Minister's absence about the fact that it was a reasonable excuse defence once charged. In other words, somebody engaged in a trade dispute could be arrested, detained and charged by the police, which I would describe as being treated as a criminal, and it is only at the point after a charge and an appearance at a court that this defence is available. I guess that the Minister is technically right, in that somebody is not criminalised until they are convicted by a court, but we are really arguing semantics here. So the way that the Minister expressed himself—saying that, effectively, somebody involved in a trade dispute would not be in danger from the provisions of the Bill—is not actually accurate.

Lord Murray of Blidworth (Con): In Clause 7, "Interference with use or operation of key national infrastructure", one can see that, in subsection (2), "a defence" is provided

"for a person charged with an offence under subsection (1) to prove that … (b) the act mentioned in paragraph (a) of that subsection was done wholly or mainly in contemplation or furtherance of a trade dispute."

I am sure the noble Lord can see how the protection for the right to be involved in a trade dispute is protected by that drafting—and that is certainly the clear intention of the Government.

Lord Coaker (Lab): Is the Minister saying that you cannot lock on in the furtherance of a trade dispute but you can picket in the furtherance of a trade dispute?

Lord Murray of Blidworth (Con): Clearly, the provisions of the locking-on offence do not expressly contain the same provision. Therefore, it is correct to say that the Bill envisages a defence for the involvement in industrial disputes in relation to key national infrastructure, but there is no need for such a like provision in respect of locking on. I will obviously clarify that with my officials and respond to the noble Lord in on that.

Baroness Blower (Lab): I just seek some clarification. In response to the speech I made earlier about picketing, and since there is no intention in Amendment 60 to expand picketing, or any rights in relation to picketing, is the Minister therefore saying that, on everything that has been permitted by law in terms of picketing—which is already hedged with quite a lot of regulation and requirements—there is no intention in this Bill to make any alteration to the lawful carrying out of picketing in furtherance of a trade dispute? I believe that is what I am hearing the Minister say, and I hope that is the case.

Lord Murray of Blidworth (Con): Can I confirm with my officials and write to the noble Baroness in respect of that point? My understanding is that that is so, but I want to check that before I confirm.

Lord Judge (CB): While the Minister is conferring with his officials, can he suggest to them that they look at Clause1(1) and put in some new words? After

"A person commits an offence if",

he should add "without reasonable excuse", if (a) they do this, (b) they do that and (c) they do the other. Then he should get rid of subsection (2).

Lord Murray of Blidworth (Con): I hear what the noble and learned Lord says, and I will certainly ask them.

I think that I had reached Amendment 61. It similarly seeks to strengthen the defences available. As I have said already, whether or not someone has a reasonable excuse for their actions is very specific to each particular incident, and we see it as entirely appropriate that the defendant, who committed the offence in the first place and has personal knowledge of those facts, is required to prove them.

I turn lastly to Amendments 56 and 62, which seek to make it an explicit requirement for the police and courts to pay regard to Articles 10 and 11 of the ECHR when determining whether someone has a reasonable excuse for the offences of obstructing major transport works and interference with key national infrastructure. Although I understand the sentiment behind the amendment from the noble Lord, Lord Paddick, I do not see it as being necessary. It is of course right that the courts and other public bodies are already obliged to act compatibly with the ECHR by reason of the provisions of Sections 6 and 7 of the Human Rights Act 1998. Therefore, there is already legislative protection for the consideration of such rights, and it is not necessary to repeat that in this Bill.

Lord Paddick (LD): Can I just seek clarification on what the Minister said earlier about tunnels not constructed by protesters and people causing serious disruption in those tunnels? My understanding is that the Minister is saying, "Don't worry, trust the police." I know that that is what the legislation says about someone causing serious disruption in a London Underground tunnel, maybe London Underground workers operating a picket line in a tunnel constructed by London Underground: "Don't worry about it, the police are reasonable people; they wouldn't use the law in that way and, at the end of the day, the courts wouldn't convict." However, as the journalist who was trying to report on a protest found—the case that the Minister started his remarks with—we are still faced with the possibility of being arrested and detained for five hours by the police and of the police being unreasonable; that is by their own admission now. It seems an onerous experience for a completely innocent person to go through that, and to have to rely on the

fact that, at the end of the day, the courts will not convict them, when they have been completely innocent from the start.

Lord Murray of Blidworth (Con): I thank the noble Lord for his intervention. The short answer is that these cases are always going to be fact-specific. If there was a serious disruption in a London Underground tunnel, I suspect that there would potentially be many offences being committed other than those under this Bill. As my noble friend Lord Sharpe has already said, this situation will be considered and we will come back to the noble Lord. I invite the noble Baroness to withdraw her amendment.

Baroness Jones of Moulsecoomb (GP): My Lords, I thank all noble Lords who have contributed. I enjoyed the critique of reasonable defence from the noble and learned Lord, Lord Hope, and I was delighted that the noble and learned Lord, Lord Judge, has come into the debate. However, I ask both of them not to be helpful to the Government—I just want to vote against everything in this Bill and they are making it difficult.

7.45 pm

The noble Lord, Lord Paddick, was very modest about his qualifications to be in this debate; I think that he is absolutely superb. My qualifications are much shakier, being based on 12 years on a police authority and getting arrested myself—not for being on the police authority, although I am sure that some of the police officers would have liked to have done that.

The noble Lord, Lord Coaker, pushed on the whole "reasonable disruption" point. I would like to ask him why he is driving into Parliament, but perhaps I will do that outside the Chamber. The fact is that climate protest is a reasonable defence. I personally think that it is criminal not to act now, and act fast, on the climate crisis that we face. I personally think that the Government are being criminal, and I make no bones about saying that time and again.

The Minister mentioned how protesters must face the consequences of their actions. They do—that is the point I made earlier. They do not run away and try not to be arrested; they face the consequences of their actions because they believe in the cause. Who can argue against Insulate Britain's idea of insulating houses? Who is going to argue—actually, quite a lot of people have—against the whole idea of no new licences for oil and gas extraction? It is common sense.

We are in a terrible mess with this Bill, but I beg leave to withdraw Amendment 9.

Amendment 9 withdrawn.

Amendments 10 and 11 not moved.

House resumed.

Social Housing Standards

Statement

7.47 pm

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made in the other place earlier today by my right honourable friend the Secretary of State for Levelling Up, Housing and Communities. The Statement is as follows:

"Mr Speaker, Members across the House and people across the country will have been horrified to hear about the circumstances surrounding the tragic death of Awaab Ishak. Awaab died in December 2020, just days after his second birthday, following prolonged exposure to mould in his parents' one-bedroom flat in Rochdale. Awaab's parents had repeatedly raised their concerns about the desperate state of their home with their landlord, the local housing association, Rochdale Boroughwide Housing. Awaab's father first articulated his concerns in 2017, and others, including health professionals, also raised the alarm, but the landlord failed to take any kind of meaningful action. Rochdale Boroughwide Housing's repeated failure to heed Awaab's family's pleas to remove the mould in their damp-ridden property was a terrible dereliction of duty.

Worse still, the apparent attempts by Rochdale Boroughwide Housing to attribute the existence of mould to the actions of Awaab's parents was beyond insensitive and deeply unprofessional. As the Housing Ombudsman has made clear, damp and mould in rented housing is not a lifestyle issue, and we all have a duty to call out any behaviour rooted in ignorance or prejudice. The family's lawyers have also made clear their view that the inaction of the landlord was rooted in racism and cultural prejudice.

The coroner who investigated Awaab's death, Joanne Kearsley, has performed a vital public service in laying out all the facts behind this tragedy, and I wish to record my gratitude to her. As she said, it is scarcely believable that a child could die from mould in 21st-century Britain, or that his parents should have to fight tooth and nail, as they did in vain, to save him. I am sure the whole House will join me in paying tribute to Awaab's family for their tireless fight for justice over the last two years. They deserved better and their son deserved better.

As so many have rightly concluded, Awaab's case has thrown into sharp relief the need for renewed action to ensure that every landlord in the country makes certain that their tenants are housed in decent homes and are treated with dignity and fairness. That is why we are bringing forward further reforms. Last week, the House debated Second Reading of the Social Housing (Regulation) Bill. The measures in that Bill were inspired by the experience of tenants that led to the terrible tragedy of the Grenfell fire. The way in which tenants' voices were ignored and their interests neglected in the Grenfell tragedy is a constant spur to action for me in this role.

However, before I say more on the substance of those reforms, I would first like to update the House on the immediate steps that my department is taking with regard to Awaab's death. First, as the excellent public service journalism of the *Manchester Evening News* shows, we are aware that Awaab's family was not alone in raising serious issues with the condition of homes managed by the local housing association. I have already been in touch with the chair and the chief executive of Rochdale Boroughwide Housing to demand answers and that they explain to me why a tragedy such as Awaab's case was ever allowed to happen, and

[Baroness Scott of Bybrook]
to hear what steps they are undertaking immediately to improve the living conditions of tenants, for which they are responsible.

I have also been in touch with the honourable Member for Rochdale, who has been a powerful champion for his constituents, and will be speaking shortly to the honourable Member for Heywood and Middleton to discuss finding suitable accommodation for tenants in Rochdale who are still enduring unacceptable conditions. I also hope to meet Awaab's family, and those who live in the Freehold estate, so that they know that my department is there to support them. It is right that the Regulator of Social Housing is considering whether this landlord has systematically failed to meet the standards of service it is required to provide for its tenants. It has my full support in taking whatever action it deems necessary. Finally, I know the coroner has said she will write to me, and I assure the House that I will act immediately on her recommendations.

Turning to the broader urgent issues this tragedy raises, let me be perfectly clear, since some landlords apparently still need to hear this: every single person in this country, irrespective of where they are from, what they do or how much money they earn, deserves to live in a home that is decent, safe and secure. That is the relentless focus of my department. Since the publication of our social housing White Paper, we have sought to raise the bar dramatically on the quality of social housing, while empowering tenants so that their voices are truly heard. We started by strengthening the Housing Ombudsman service so that all residents have somewhere to turn when they are not getting the answers they need from their landlords. In addition, we have changed the law so that residents can now complain directly to the ombudsman, instead of having to wait eight weeks while their case is handled by a local MP or another 'designated person'.

One of the principal roles of the Housing Ombudsman service is to ensure that robust complaint processes are put in place, so problems are resolved as soon as they are flagged. It can order landlords to pay compensation to residents whom they have mistreated. It can also refer cases to the regulator of social housing, who will in future be able to issue unlimited fines to landlords they find to be at fault. All decisions made by the ombudsman are published in the public domain, for the whole world to see which landlords are consistently letting their tenants down.

It is clear from Awaab's case, which did not go before the ombudsman, that more needs to be done to ensure that this vital service is better promoted and reaches those who really need it. We have already run the nationwide Make Things Right campaign to ensure that more social housing residents know how they can make complaints and easily access the Housing Ombudsman service when things are too slow. We are now planning another targeted multi-year campaign so that everyone living in the social housing sector knows their rights, knows how to sound the alarm when their landlord is failing to make the grade, and knows how to seek redress without delay.

Where some social housing providers have performed poorly in the past, they have been given ample opportunity to change their ways and to start treating their residents with the respect they deserve. The time for empty promises of improvement is over, and my department is now naming and shaming those who have been found by the regulator to have breached consumer standards, or who have been found by the ombudsman to have committed severe maladministration.

While there is no doubt that this property fell below the standard that we expect social landlords to meet, Awaab's death makes it painfully clear why we must do everything we can to better protect tenants. Our Social Housing (Regulation) Bill will bring in a rigorous new regime that holds landlords such as these to account for the decency of their homes and the services they provide. At the moment, the system is too reliant on people fighting their own corner, and we are determined to change that. The reforms we are making through the Social Housing (Regulation) Bill will help to relieve the burden on tenants with an emboldened and more powerful regulator. The Regulator of Social Housing will proactively inspect landlords and will have power to issue unlimited fines. It will be able to intervene in those cases where tenants' lives are being put at risk because landlords are dragging their feet in actioning repairs. In the very worst cases, it will have the power to instruct that properties are brought under new management.

Landlords will be judged against tenant satisfaction measures, allowing tenants and all of us to see transparently which landlords are failing to deliver what residents expect and deserve. The right of everyone to feel safe in the place that they and their loved ones sleep at night is universal. That is why both our levelling-up and private rented sector White Papers set out how we will legislate to introduce a legally binding decent homes standard in the private rented sector for the first time. We recently consulted on that and are reviewing the responses so we can move forward. It is a key plank of our ambitious mission to halve the number of non-decent homes across all rented tenures by 2030, with the biggest improvements in the lowest-performing areas.

Through the legislation we are bringing forward, we hope no family ever has to suffer in the way that Awaab's family has suffered. We will end the scandal of residents having to live in shoddy, substandard homes, such as some on the Freehold estate. We will restore the right of everyone in this country, whatever their race or cultural background, to live somewhere warm, decent, safe and secure—a place that they can be proud to call home. I commend this Statement to the House."

7.57 pm

Baroness Hayman of Ullock (Lab): My Lords, I thank the Minister for repeating the Statement from the other place. I am sure we all agree with Secretary of State Michael Gove that Awaab Ishak's death, after months of living in a mouldy home, is an unacceptable tragedy, so we support the Government in bringing forward legislation to ensure that housing associations responsible for social housing are held to account. Yet I also draw attention to the Housing Ombudsman, who has recently drawn attention to "a dramatic increase" in cases of damp and mould. Last month, it issued a special report on Clarion Housing in which it says:

"The landlord's approach was often inconsistent, which seriously impacted residents. It did not have a sufficiently robust and detailed policy in place, and the policy aims that it did have were not met in practice."

It says that recurring themes included

"a failure to accurately diagnose the cause of damp within a reasonable timeframe, poor communication with residents, and failures to update residents on inspection findings and the actions to be taken."

So, sadly, this case is not an isolated one. This attitude by housing associations is clearly unacceptable and must be tackled urgently.

I have a number of questions for the Minister on these issues. New regulation is clearly important and welcome, but there is also a funding crisis for local authorities, which need to invest in their social housing stock, and this will be a roadblock to improvement if not addressed. What are the Government doing to support investment in social housing, and the monitoring of standards and enforcement? Every year, £38 million is spent on treating damp and mouldy homes. With energy bills shooting up, this winter will likely lead to a further spike in mould problems. Damp is also more likely in homes that are excessively cold and more expensive to heat. Will the Minister confirm what steps the Government are taking to retrofit and insulate older social housing stock? Will she commit to sufficient new resources being allocated to the regulator to allow it to effectively perform its inspection role and any new duties that will arise from the Social Housing (Regulation) Bill?

While this Statement mainly focuses on social housing, there are equivalent concerns about private rented properties. One in four private renters is living in fuel poverty. Generation Rent research has found that, for every three serious hazards that councils identify in private rented homes, local government inspectors issue just one formal enforcement notice. The majority of tenants are simply not being protected.

The Government have said they will apply the decent homes standard to the private rented sector, which we strongly support. The consultation on this closed on 14 October, so can the Minister tell your Lordships when the results of the consultation will be published and when we are likely to see the long-promised renters reform Bill? Will she confirm that the Government will commit to the abolition of Section 21 to give tenants greater confidence to complain about unsafe conditions, to ensure minimum standards and landlord registration so that landlords are truly accountable for the properties they let out, and to give stronger powers to councils to take action against landlords who break the law?

When a local authority has a selective licensing scheme, it is more proactive in enforcement. However, it concerns us that the Government seem to be taking a very cautious approach to these schemes. Can the Minister explain why, when they clearly seem to be having a positive impact on standards?

Finally, I draw attention to the Statement's very welcome recognition of the serious matter regarding the way in which the housing association behaved towards the family. As the Statement says, their lawyer said that racism and cultural prejudice played a role in their treatment and the handling of their complaints, which is clearly disgraceful. Recent government statistics show that white British households were less likely to live in damp conditions than other ethnic groups: while the figure for white British households is 3%, mixed white and black Caribbean is 13%, Bangladeshi is 10%, black African 9% and Pakistani 8%. I am sure the Minister recognises that this is a serious matter. Does she agree that this is a clear problem of inequality that must be addressed and that these complaints about racism must be thoroughly investigated?

We are pleased that the Government refer to support for this. It is the response we need, but we also need action. We expect the Government to stick to their promise that they will act immediately.

Lord Stoneham of Droxford (LD): I too thank the Minister for repeating the Statement. I am standing in for my noble friend Lady Pinnock, who cannot be here tonight; I have 15 years of experience in chairing a housing association, so I hope that I can contribute some constructive points.

This Statement follows a personal tragedy for the Ishak family in Rochdale. We should convey our sympathy and support for them, but the best thing we can do is reduce the possibility of this happening again. However, in my experience, social housing is not easy or straightforward, but complex. Some of the housing stock is far from up to standard, some tenants have very complex social needs and investment in this sector is switched on and off with each change of government, which also has further implications. The regulation regime and regulators also change frequently—three times during my 15 years—which means a loss of experience and knowledge of housing associations and a weaker regulator as a result.

Sadly, one of the problems is that too many tenants in social housing feel a lack of respect. They are demoralised. Anyone who has canvassed such housing knows that one of the biggest problems is getting them to vote, with the consequence that they do not get the all-round, cross-party political attention that they should.

I will make three points relevant to this case. First, maintenance is always a variable expenditure, depending on the state of finances of housing associations. It is easily switched off and the consequences follow much later. This is why, in looking at the funding of social housing, the Government need to look at not just new development and building, which is already inadequate, but at what is being invested in improving and maintaining the stock. I always had to fight in the housing associations that I chaired; investing in development is attractive but the stock is the most important thing, because the tenants are often paying for the new developments through their rents and therefore they need improvements too. That must always be respected by housing associations and the Government.

Complacency culture is a problem. There are some fantastic people working in the housing sector, to whom we should give respect, but there are a minority of housing associations and managers who are inadequate. It is too easy for the bad associations to run themselves for the convenience of staff and not tenants. In every housing association I have been involved in, whether you like it or not, you have to fight to make people

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think that it is simply not good enough to say, "This is good enough for them." You need higher standards than that. Tenants need to be at the forefront and have respect.

Finally, we always need to learn from mistakes and seek to improve, but there is a danger with blame culture. It is very easily politically to say, as the Statement does,

"The time for empty promises of improvement is over, and my department is now naming and shaming those who have been found by the regulator to have breached consumer standards".

I agree that we should expose that, but we also need to be aware of the unintended consequences. If that stops an openness and a willingness of people to admit mistakes, we will have a worse situation.

It is important to ask why the Regulator of Social Housing, after two years of this case, is only now considering whether the Rochdale association is up to scratch. Where has it been? Did the housing association in Rochdale alert the regulator at an early stage that it had a severe problem, and what has it done over the past two years to address these issues? That seems pretty important. I accept that naming and shaming has a role, but not if it leads an organisation to cover up and disguise mistakes. I give the example of the airline industry: we would never be where we are in the airline industry if we spent all our time naming and shaming rather than trying to deal with mistakes and errors and improve the safety record.

So I would like to end with three questions to the Minister. First, is there enough social housing stock in the system to allow housing associations to move people where improvements are needed on the existing stock? I would identify that as almost certainly a major problem that needs addressing. Secondly, are the Government happy with the speed of the Social Housing Regulator in intervening in this case? Did it wait until the end of this case before it intervened? Surely it should have been involved at a much earlier stage, and somebody, if they were running a housing association, should have alerted the housing regulator to the problem. If the *Manchester Evening News* was involved, I cannot believe that it was not in contact with the regulator—so what has it been doing over the last few months such that we are now waiting for it to make its judgement?

Thirdly, will there be much more attention paid by the Government to improving our housing stock in all sectors, rented and owner occupation, to phase out outdated housing? Surely, we need to do this as part of the insulation programme, but it is fundamental to the problem that we are talking about today that not enough attention has been placed on improving existing housing stock.

Baroness Scott of Bybrook (Con): My Lords, I can hear the passion from both noble Lords opposite and I think it is completely appropriate. I wish to add my voice to those who have shone a light on the failings of the housing association, although I understand that the blame culture does not always work; you always have to have with it the support to do better. I have a huge amount of respect for the regulator, and when the regulator has the new duties when the Bill goes through, I am sure that they will do the shaming, if necessary, but they will also do the supporting where necessary as well.

We cannot allow families such as Awaab's to live in housing that is not fit for human habitation, where there are clear signs of neglect, damp, and mould, and where the family fears for the children's health. Living in a decent home is a right, and the Secretary of State has been quite clear that the Government will not rest until every single household feels safe in their home. Addressing a number of things that have been brought up, the noble Baroness, Lady Hayman of Ullock, quite rightly talked about the issues of the Housing Ombudsman. I do think that this is the way forward for individuals, the way forward for the regulator to get to know issues that are becoming systemic in any area, and the way forward for individual issues to be dealt with in a very timely manner. But we do need—the Secretary of State mentioned this in his Statement—to get out to the tenants to tell them how to do this, and that needs to be done sensitively, because having English as a second language can be a barrier to that, as can other things. We need to make sure that we are doing everything we can, and the Secretary of State said that we are going to go into another country-wide communications project on this—the ombudsman is part of the key to making sure that this does not happen again.

Both the noble Baroness, Lady Hayman, and the noble Lord, Lord Stoneham, mentioned building. We know that there is, I believe, £11.5 billion in the affordable housing building fund, and some of that is for social housing. But I say to the noble Lord, Lord Stoneham, that there is never enough housing stock to do what we really want to do. This has not just been the case recently; it has always been a challenge, and it is a challenge that you have heard the Secretary of State say that he is up to delivering. We just have to keep going with building the necessary housing stock in this sector that is required.

Energy—once again from the noble Baroness, Lady Hayman of Ullock—is always something she challenges the Government on, and quite rightly. As I have mentioned before, there is a government programme of support and money available to retrofit all housing stock, and we also have to remember that the social housing sector is the most energy efficient sector in the country—but we cannot be complacent, and we need to move on this as well.

On private rented sector properties, I have not got the timeline yet, but the review has been done and we are working on getting that through, because it is important. This was not a private rented sector house or flat, but we do know that these issues are just as difficult and complex in the private sector as they are in the social sector. I say to the noble Lord, Lord Stoneham, that I think there is an issue about culture in the housing sector as a whole, and I am hoping that the Social Housing (Regulation) Bill will start to change that culture. That was something that we brought out very early on when we announced the Bill—the fact that we wanted a cultural change within the sector. That is extremely important. I have been involved in the sector a little bit—not as much as some noble Lords, but I have—and there is a cultural issue that

does need changing. The regulator knows that, and will spend time working with the sector to change that culture.

I agree with the noble Lord, Lord Stoneham, on maintenance and stock improvement, and I will take that back to make sure that we are encouraging all social landlords to make sure that the maintenance is agreed. I know from the local authorities delivering social housing that this is something that is always important to them; certainly, when I was involved, we had planned maintenance—it was good planned maintenance, and the money was there to do that. But there is always a bit of a pull and push on this—whether it goes into maintenance or new properties—and that is an issue too.

I will look at *Hansard* and, if I have not answered all noble Lords' questions, I will, as always, write. But what is important to me is that we continue to have a discussion, all of us, in this House, because this House has many of the answers and challenges us all. To any Peer—there are not many of us here—who wants to contact me following the debate to discuss this matter further, I say that my door is open, because it is an important matter and I want to discuss it. It is important that all of us. There is expertise and experience in this House, and I can see that there are noble Lords who know quite a lot about this sector with us today. We need to use that to ensure that nobody has to deal with what Awaab's family faced ever again.

Before I sit down, I just want to say that our thoughts and prayers are with Awaab's family through what must have been the most horrendous time—something that obviously they will never forget, and let us hope that we never forget it either.

8.18 pm

Lord Best (CB): My Lords, this is such a horrible tragedy. I join the Minister in sending sympathies to Awaab's parents. To lose a two year-old child is just about as bad as it gets, and I feel very strongly about that. I know that the housing association itself is deeply troubled and upset by what has happened on its watch. The coroner said that this should be a "defining moment" for the housing sector. I spoke today to the chief executive of the housing association, Rochdale Boroughwide Housing, and there are some important lessons that the housing associations and we in Parliament and government can learn from this tragedy.

First, the Statement from the Secretary of State explains that the Social Housing (Regulation) Bill, which we greatly welcome in this House—we have completed its stages here—will enhance regulation of social landlords and the role of the Housing Ombudsman. This new legislation is important, since I suspect that in this case there was no knowledge at all of the Housing Ombudsman. There was an opportunity to make a complaint and be listened to a lot earlier, but I think that opportunity was simply not known about in Rochdale at the time. We now have legislation that will strengthen the ombudsman, but we need to promote that ombudsman service really quite energetically, and I believe that this process has started.

In my ignorance, I did not understand that mould can actually kill a small child—it is as bad as that. Mould is a horrible thing to have in your house, but the fact that it can lead to death really brings home just how awful this plague is in so many houses where ventilation and heating in combination are not achieving a balance, and where condensation is causing this horrible mould. The urgency of doing something about this has now been magnified by this event and it means that all housing associations have to give priority to this. When they hear that a place has mould on the walls, they must take that very seriously. When a visit is happening for any other reason, staff need to be told, "Look out for mould as well; report that back to base. That is a serious issue". Now that housing associations are very large enterprises, communications within them need to be good enough so that people share all the information and understanding they bring back from a visit or telephone call. That sharing of information needs to identify where mould is a problem so that something can be done about it.

My next point is that fuel poverty is also behind this. People are not putting the heating on and not making the place warm enough. They cannot be blamed for that; the cost of fuel is a major part of the household budget. This will get worse with the current energy crisis and we will have more of these cases, not fewer. I am afraid that a lot of properties owned by housing associations—including pre-1919 street properties and 1960s and 1970s concrete buildings—need serious attention. They need insulating in a modern way that will cut those energy bills and mean that the lack of heating does not create the condensation that leads to the mould that leads to tragedies like this. We are going to have to invest in these older properties. We are ready for decent homes round 2; I hope the Government are up for this. These things are not just a matter of regulation; they are, as the noble Lord, Lord Stoneham, said, also about investment. We all agree on that. The social housing decarbonisation fund coming through will be really helpful. The levelling-up funding should target the insulation of older properties. We can see where the priority really lies in terms of the resources we are going to put into properties: cutting down on fuel bills.

There are some important lessons here. There are lessons for government as well as for the housing associations. Let us hope that some real value can come from this miserable tragedy of poor little Awaab, and that this is indeed a defining moment for the housing sector.

Baroness Scott of Bybrook (Con): It is indeed a defining moment. The Secretary of State has made it very clear that he thinks that this is a defining moment and that he is not going to let this go.

I was also surprised by how dangerous mould can be. I have concerns about the sharing of information in these cases, because a health visitor and a visiting midwife both noticed this mould. They put forward a report to the council, which did not seem to go as far as it should have. Sadly, communication is often an issue in these cases and we need to make sure that those problems are dealt with as well as the issues of the housing.

Obviously, this case was two years ago, but I am concerned about fuel—of course I am. However, I am mostly concerned about whether some of these tenants know what they can get from the Government to help

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them. I am not sure that they do. Through wearing my other hat as a Faith Minister, I am working very closely with the faith communities to make sure that when they talk to their communities and have their warm hubs and so on, they ensure that everybody knows exactly what the Government are offering to help them, because that sometimes is not the case. This case was not so much about heating but about ventilation, but that is another issue we need to look at across the sector, because mould often grows when ventilation is not correct.

Lastly, the noble Lord is absolutely right that not enough people know about the ombudsman. We had the Make Things Right campaign, which reached millions of social housing residents. This family obviously did not know about that, but I would then ask: where was the housing association to say that the family could go to the ombudsman when they first complained? There is more that we need to do, both the Government, in telling social housing residents about what they can get, and others who have contact with these families, by suggesting to them that the ombudsman is there to help them.

Lord Pickles (Con): My Lords, mould was causing death to children when Charles Dickens explored the inequities in the rookeries, so it is particularly shocking that this should occur in our own century. My noble friend talked about the rights of tenants and their inability to understand the role of the ombudsman, but this tenant family did the right thing: they got legal advice and their lawyer approached the council. For some reason, the council thought that was a reason to do nothing and not to attend to the mould. Will my noble friend make it clear that this is not a reasonable excuse not to act to provide safe and secure housing? This is particularly important because she talked about the culture. There is a disturbingly high level of churn among officials doing this kind of work in housing associations, looking at maintenance and the like. You can get it right for a while and then someone else comes along. Can my noble friend be unambiguous and say that this is clearly a misunderstanding of how the law operates and not a reasonable excuse?

Baroness Scott of Bybrook (Con): I agree with my noble friend. When I read about this, I was also very surprised by the timeline: once Awaab's father had instructed solicitors, the housing association then said it could do nothing further. I understand that many housing providers have a policy to routinely pause addressing complaints through their process when legal proceedings are commenced, and that this stays in place until agreements are reached between solicitors. I do not think that is right. We need to look at this. Repairs should not be stopped. When rehousing is necessary, I do not think that should be stopped. I understand that this is in the hands of the housing providers; if they want to keep going with maintenance, rehousing or whatever is required, they can. They have decided to have this policy, but personally I do not think it is acceptable.

Baroness Sanderson of Welton (Con): My Lords, the Housing Ombudsman said earlier today that at the heart of little Awaab's death lies the behaviour of the landlord, Rochdale Boroughwide Housing. As he said, for this landlord, and perhaps too many others in the social housing sector, there are issues with culture, behaviours and values. We know this. We have seen it time and again. So, while I commend the Government for all the actions they have taken since Grenfell, will they look again at including professionalisation in the Social Housing (Regulation) Bill? My noble friend the Minister has emphasised the importance of culture change, but without professionalisation it will be so much harder to change the culture, behaviours and values of those working on social housing.

My right honourable friend in the other place said that it is the right of everyone to feel safe in the place where they and their loved ones sleep at night. We know that many living in social housing would feel happier, safer and more valued knowing that the people responsible for their homes were qualified, just as those in other sectors with responsibilities to others are qualified. If this is to be a defining moment, let us not waste this opportunity. We have a real opportunity to do something about this now.

Baroness Scott of Bybrook (Con): I thank my noble friend. I wondered whether I would get that question from her or the Front Bench opposite. Noble Lords know that we recognise in the social housing White Paper the need to improve professional standards in social housing, so that all residents receive the high-quality services they deserve and, as importantly, in my opinion, are treated with dignity and respect by social housing staff.

We have carried out a review on professional training and development and, as a result, have amended the Social Housing (Regulation) Bill to allow the Secretary of State to direct the regulator to set standards on the competence and conduct of all staff involved in the management of social housing. The new competence and conduct standard will ensure providers take appropriate steps to ensure all staff have the right knowledge, skills and experience, and demonstrate the behaviours required for the delivery of high-quality and professional services for tenants. As my noble friend knows, the Bill is going through the other place at the moment. I am sure there will be more discussions on this, so we wait to see.

Baroness Eaton (Con): I declare my interests in the private rented sector, as in the register. We have heard from a number of colleagues about the importance of the culture in social housing provision being improved. Would my noble friend agree that social housing landlords must do better to train staff to see the welfare of tenants as their responsibility, rather than seeing them as a problem to be managed?

Baroness Scott of Bybrook (Con): I absolutely agree with my noble friend. That is the culture change we need to embed in the sector and the Social Housing (Regulation) Bill is the catalyst for this. I know that professional qualifications are an issue, but the Government have made it very clear that they want the staff working in housing associations to have the right knowledge and skills, and particularly empathy with tenants. That applies in every sector. Training is necessary and will come. The regulator will certainly

be looking at these issues as it moves forward to taking on responsibility for not just the financial issues within the sector but the consumer issues.

Baroness Hayman of Ullock (Lab): The noble Baroness said that she would look through *Hansard* and write to us. Could she look at when we are likely to see the passage of the renters reform Bill? We have talked about the importance of private rented housing compared with social housing and the Bill is critical to making progress, so I would be grateful for a response on that.

Baroness Scott of Bybrook (Con): I will. I am sorry; I forgot that. I will probably give an answer in the debate tomorrow.

Public Order Bill

Committee (1st Day) (Continued)

8.34 pm

The Deputy Chairman of Committees (The Earl of Kinnoull) (CB): My Lords, I must inform the Committee that if Amendment 12 is agreed, I will not be able to call Amendment 13 by reason of pre-emption.

Amendment 12

Moved by ***Baroness Chakrabarti***

12: Clause 1, page 2, line 2, leave out "to imprisonment for a term not exceeding the maximum term for summary offences,"

Member's explanatory statement

This amendment, with others in the name of Baroness Chakrabarti, reduces the maximum sentence for the proposed new offence of "locking on" to a fine.

Baroness Chakrabarti (Lab): My Lords, I now get the opportunity to congratulate and welcome the Minister—the noble Lord, Lord Murray—to this Committee. I have had the opportunity to welcome him in other ways before, but it is important to be engaged in detailed scrutiny of the Bill for the first time.

This group is about sentencing. Notwithstanding everything that I have said so far—and no doubt will say again, and make the Minister's ears bleed with my position on the Bill as a whole and specific offences—it is also important to engage with the specific issues of appropriate and proportionate sentencing, how the sentencing framework and different offences in that framework fit together, and whether we in this country should be incarcerating more and more people, including for what may well be peaceful dissent. It is very difficult to separate the issue of sentencing from the other formulation of the offence. When I was young, I was a lawyer in the Minister's department, and one of the things that we were responsible for at that time in the Home Office was looking at the overall sentencing framework. That may now belong in the Ministry of Justice, but none the less the point was that whenever a new offence was proposed by any government department, it needed to pass some gatekeepers in a little unit in the Home Office who wanted to be clear about the formulation of the offence—mens rea, actus reus, et cetera—but also about the sentence, because in government people look for levers for change and everyone has a new big idea about a new offence.

In particular, in this group, with my first and some other amendments, including those of other noble Lords, I am really probing whether the new proposed offence of locking on—the Minister's colleague, the noble Lord, Lord Sharpe, who is about to arrive in his place, was discussing that earlier—could even include people who, in a disruptive way, link arms. The noble Lord, Lord Sharpe, made the argument that sometimes linking arms in big enough groups would be just as disruptive as gluing your hands to the road. Are we really suggesting incarceration for up to 51 weeks for an offence that could be perpetrated by people singing "Kumbaya" and linking arms? It is a probe, but it is important that there should be some probes about the sentences for these offences, and not just their intention and formulation. I think that it is very important that we consider how many people we are incarcerating in this country, the trajectory that we are on with imprisonment in this country, and whether we have a criminal statute book—including a sentencing statute book—that is proportionate and coherent to meet the needs of a very troubled and polarised society at the moment. With that, I beg to move.

Lord Paddick (LD): I look around in vain for anyone else who wants to speak. I agree with the principles that the noble Baroness, Lady Chakrabarti, has just spoken about. Amendment 13, in my name, is based on a recommendation from the Joint Committee on Human Rights. In its report on the Bill, the committee points out that the offence of locking on under Clause 1 is punishable with—as she just said—

"up to 51 weeks in prison."

The committee states that:

> "This sanction is significantly harsher than the maximum penalties that, until recently, applied to existing 'protest-related' non-violent offences such as obstructing the highway (level 3 fine) or aggravated trespass (3 months imprisonment)."

The committee notes that there is likely to be a low hurdle for prosecution—again, as the noble Baroness, Lady Chakrabarti, just said. The amendment therefore questions whether the length of potential imprisonment—51 weeks—is proportionate to the offence that is committed. Amendment 13 suggests that this should be reduced to a three-month maximum sentence.

The remaining amendments in my name in this group relate to the level of fine that can be issued to a person who commits an offence under Clauses 1 to 7. They are similar to amendments that I tabled to the corresponding clauses of the Police, Crime, Sentencing and Courts Bill—now an Act—when it was previously debated in this House. However, given the nature of the debate at that stage—in particular, in Committee, we started discussing those clauses at 11.45 pm—I believe that there is merit in discussing this issue again in this Committee.

Under Clauses 1 to 7, a person convicted of an offence may be liable to "a fine". However, the Bill does not specify what the maximum level of such a fine should be. For each of these new offences, our amendments ask the simple question: is an unlimited fine proportionate for such an offence? In particular, is it proportionate that a person convicted of the offence of being equipped for locking on, for example, should be subjected to an unlimited fine? The Minister may

[LORD PADDICK]
argue that the level of fine suggested in our amendments is too low. At this point, they are simply probing amendments designed to make the principled point that an unlimited fine may be disproportionate for a number of the offences contained in the Bill. Finally, it would also be of benefit to the Committee if the Minister could set out how they intend fines to be applied consistently for these offences, if there is no upper limit as to the fine that can be imposed.

Lord Ponsonby of Shulbrede (Lab): My Lords, I will be extremely brief. I want to reiterate the final two points that the noble Lord, Lord Paddick, made. I speak as a sitting magistrate in London. I occasionally have to deal with unlimited fines, but it is far more straightforward as a magistrate, when you have a level set and an example of what the maximum fine might be for whatever offence one is dealing with at the time. For most offences that we deal with, levels are indeed set; we are given the parameters, if you like, of what would be appropriate. I was going to make the same point as the noble Lord, Lord Paddick: if one wants some form of consistency across the country for these types of offences, it would be useful to have some level of guidance, perhaps setting a level of fine that may be appropriate.

The other point I want to make, which is slightly outside the scope of these amendments, is about the power of the court to set compensation. I have been in a case dealing with relatively minor offences, but the level of potential compensation was absolutely astronomical when we were talking about disrupting train services and things such as that. The level of compensation is a judicial decision but, certainly in my experience, the level of compensation can potentially eclipse the maximum level of any fine the court may give. I do not know whether the Minister is able to say something more about appropriate levels of fines—and appropriate levels of compensation.

8.45 pm

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): My Lords, I thank noble Lords for that short debate, and I particularly thank the noble Baroness, Lady Chakrabarti, for her warm welcome to this Committee. It has been a fascinating exercise to conduct my first Committee stage.

The general intention of this group of amendments is to reduce the maximum fines and the maximum sentences listed in Clauses 1 to 8. The maximum fines and sentences attached to these offences reflect, in the view of the Government, the serious harm and disruption that can be caused by these actions. It may be helpful if I set out just one example of that harm for the Committee. During the targeted and reckless activity by Just Stop Oil in August 2022, protesters dug two tunnels in an attempt to disrupt access to an oil terminal in Essex. This particularly dangerous protest tactic not only disrupted the operation of the terminal but had a knock-on impact on many others. First, it led to full and partial road closures impacting the public, local and private businesses and the council. Secondly, it resulted in ambulances and fire and rescue services being on standby due to the risk of collapse in the tunnel, thereby impacting on availability of those emergency services. Thirdly, it consumed a huge amount of police resources in responding to the operation, impacting on the police as well as the public, as officers had to be diverted from other duties.

Given this example and countless others, the maximum sentences and fines set out in the Bill are not only proportionate to the harm and disruption caused but necessary. It is worth saying that these are maximum sentences and it is plainly not the case that every person convicted under these offences will be given these sentences and penalties. Indeed, it is right to say that the maximum penalties are used only in the most egregious cases. The courts will consider the appropriate penalty in each case and, in response to the point made by the noble Lord, Lord Paddick, they will be considered on a case-by-case basis. For these fundamental reasons, I therefore respectfully disagree with these amendments and ask that Amendment 12 be withdrawn.

Lord Paddick (LD): Will the Minister address the issue that the noble Lord, Lord Ponsonby of Shulbrede, and I raised about how consistency in the levels of fines being imposed, particularly by lay magistrates' Benches, will be achieved when there is absolutely no guidance in the legislation on the level of fine that should be imposed?

Lord Murray of Blidworth (Con): It is, of course, frequently the case in legislation that there is no guidance on the face of the Bill as to the likely sentences that are imposed. It is very common for there to be sentencing guidelines formulated in the usual way by the judiciary. No doubt that is what will happen in relation to these offences. As I am sure the noble Lord, Lord Ponsonby, will agree, these are the guidelines to which prosecutors routinely refer the court before the court passes sentence.

Baroness Chakrabarti (Lab): My Lords, I am grateful to all noble Lords who have participated in this all-too-sparse and short, but very important, debate about maximum sentences for new offences that are incredibly controversial. To address the Minister's response directly, I am concerned that a briefing pattern is developing in the course of this Committee, where the Minister is given an example of something that protesters did that caused a lot of disruption and harm and so on, but we have yet to really understand why existing criminal law is not capable of addressing that. What is not being offered to the Committee—and perhaps not being advised to Ministers—is where the need is, given the scale of the public order statute book as it is. Within that, specific to this group, we are not being given a picture of where these offences sit in the hierarchy of criminal offences and criminal sentences.

Instead, we are being given a story about something outrageous that some protesters did and told that this is why the whole Bill is justified. We really need to get into a bit more specificity when we are playing with the criminal statute book and potentially sending people to prison or bankrupting them and so on. That is no disrespect to the Minister, his noble friend, his colleagues, or even his advisers. What is more traditional—certainly in this place—is that when offences are offered, and

sentences to go with them, we are given a picture of where they sit within the current ecosystem of the criminal law; then we can really drill down into both the formulation of the offence and the sentence. People who disagree with me and, perhaps, welcome the offences, can nonetheless improve them and make sure that they are proportionate in their formulation and sentencing.

That has not happened in this debate, and it really must happen for us to do our duty as a Committee. That really must start to happen during the passage of this Bill, and it certainly will have to happen on Report. Concerns about incarceration, bankruptcy and maximum sentences, as well as fundamental concerns about the formulation of the offences themselves and even prior concerns about the need for them, are going to keep coming, group after group, in this Committee, and they will come again as we go down the road of consideration. I hope, therefore, that Ministers will take that in good part. For the time being, I beg leave to withdraw.

Amendment 12 withdrawn.

Amendments 13 to 17 not moved.

Debate on whether Clause 1 should stand part of the Bill.

Baroness Chakrabarti (Lab): I apologise in advance to the Ministers for making their ears bleed. A lot of what I have just said is relevant to this group as well. In previous hours in this Committee, noble Lord after noble Lord from around this Committee—from the Benches opposite, the Cross Benches, lawyers, lay people, people concerned with the balance between peaceful dissent and other rights and freedoms for the rest of the community—has been really concerned about these new offences and the justification for them. There was a real consensus that it is for the Government of the day, and those who propose new restrictions of whatever kind on liberty, to make the case. Particularly when we are talking about coercive police powers at a time when there has been a bit of a crisis of trust in the police, which is not what we want, it is really important that the justification for new offences, new police powers and so on be made before we sign these blank cheques. It is no disrespect to the police. Every day that I come into this place, I am grateful to our wonderful police, who stand out there and protect us all as legislators. I am so grateful to them. Of course, it crosses my mind that I am criticising expansive police powers and so on, but I still feel that is my duty.

I will not take up too much time, but the case for these new offences has not been made by the Government. I tried to make my point in response to the debate on the previous group. We need a statement from Ministers about the existing public order statute book, what these existing offences and powers do and do not do, and what the gaps are thought to be, so that noble Lords in this Committee, including the noble Lord, Lord Carlile of Berriew, who knows a little about the criminal law—he and I have debated it over many years; sometimes we have agreed and sometimes we have disagreed—can bring their minds to this schedule, which hopefully the Government will provide, and ask, "Is there really a gap?"

That has not been done to date, despite the fact that these measures are largely defrosted and reheated from a previous Bill and have been through the elected House. That forensic case, that examination of the existing statute book and where the gaps are, has not been made. I do not vote on people's liberties to protest, whether I agree or disagree with them, unless I see the case being made. That is why I have taken the step of opposing so many of the clauses—and I apologise if that seems rude in any way.

Make no mistake: I would be doing this if it was my party in government or whoever's party in government. Sometimes, when it comes to civil liberties, whoever you vote for, the Government get in. As legislators we have duties to be a little more careful and forensic before adding to the very expansive public order statute book, with people concerned for their basic protection—yes, from each other, but also from abuses of power. With that, I do not have to say anything more.

Lord Carlile of Berriew (CB): My Lords, it is a pleasure to follow the noble Baroness, Lady Chakrabarti, and in the widest sense I agree with her—but I come at it from a rather different angle. I am concerned about the integrity of the legal process.

I do not want to repeat what I said earlier. The Minister heard me referring to a very recent statute that came into force in August, I think from memory, which in my view covers all the conduct we are considering here. One has to consider the effect on the legal process of having different provisions, with very different consequences, which are not alternatives to one another; they have to be charged separately. It is not like wounding with intent under Section 18 of the Offences against the Person Act, where Section 20, unlawful wounding, is always an available alternative. These are quite separate offences, in totally separate Acts of Parliament, separated by a little time—though oddly, in this case, if the Bill is enacted, both introduced in the same year by the same Government.

We have to think about the way the process operates. The biggest Crown Court in London has a backlog, partly because of Covid, of nearly 4,000 cases, and we should consider the case management that is placed on the judges there. I have a particular interest in that Crown Court, which I place on the record. My interest in that court leads me to the view that the judges, the prosecutors and probably the defenders there are unlikely to be aware of the alternatives. However, as I suggested earlier, in another Crown Court another charge might be brought under the other Act of Parliament, and the judges there would know about the offences with the lower imprisonment maximum but would not know about the other statute. We will end up with a crowded calendar, with the Court of Appeal eventually having to say, "Why do we have two Acts of Parliament that deal with the same conduct but have totally different consequences?" I am sure that the noble Lord, Lord Ponsonby, who is an experienced, busy and highly regarded lay magistrate,

[Lord Carlile of Berriew]
has similar experience of backlogs in the courts in which he sits in London, and the same is true in all the cities around the UK.

9 pm

I ask Ministers to do a reasoned piece for us before Report that explains why we need what looks like a completely otiose piece of legislation. We need to be persuaded. Ministers know that they will run into difficulties in this House if they do not absolutely justify this and persuade us on Report that it is needed. There will be votes on Report, and there is a real possibility that the Government will lose if the explanation is not very persuasive.

At the moment, if there were a vote tonight, I would vote that Clause 1 should not stand part of the Bill. I am sure there will not be such a vote, but we need that level of persuasion.

Lord Paddick (LD): My Lords, I have the greatest respect for the noble Lord, Lord Carlile of Berriew, and completely agree with him that the Government have not made the case for any of the provisions in the Bill.

I agree with many of the points that other noble Lords have already made in this debate on all sides of the House. The Government should take note of the strength of feeling, particularly among the influential Members of the Cross Benches, who are opposing the provisions in the Bill and are likely to persuade their colleagues to vote with them against it on Report if we do not have sufficient clarity and answers to the proper questions that many Members of the House have put to the Ministers but to which they have not received answers today.

I will not repeat what I have already said, particularly in relation to the first group. I am grateful to Liberty for its briefing on the Bill. Based on that briefing, I say that case law confirms that we have a right to choose how we protest, and the diversity of protest tactics throughout history demonstrates the deeply interconnected nature of free expression, creativity and dissent. The offence of locking on under Clause 1 not only defies those principles but criminalises an innumerable list of activities—not only what we would typically understand as lock-on protest, where people lock themselves to one another via a lock-on device or chain themselves to Parliament, but any activities involving people attaching themselves to other people or to an object or land, or attaching objects to other objects and land.

The Government claim that the wording of this offence is sufficiently precise to be foreseeable and that the provisions are in accordance with the law. As noble Lords will have noted from discussions on previous groups, I disagree. I am concerned that the offence under Clause 1 risks disproportionately interfering with individuals' rights under Articles 10 and 11 of the European Convention on Human Rights.

As the noble Baroness, Lady Jones of Moulsecoomb, said on a previous group, the broad and vague nature of "attach", which is not defined in the Bill, means that this offence could catch people engaged in activities such as linking arms with one another, or locking their wheelchairs to traffic lights. The recurring themes throughout our debates today have been the risk of disproportionality and the risk of uncertainty.

As I have stated before, this proposal is not supported by the police. When consulted on a similar proposal by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, police respondents said:

"most interviewees [junior police officers] did not wish to criminalise protest actions through the creation of a specific offence concerning locking-on."

Even the police are against it.

Turning to the new offence of being equipped for locking on, I reiterate my concerns that the vague and potentially unlimited list of activities covered by this offence are exacerbated by the ambiguity of the drafting of Clause 2. I note that the object in the offence of locking on does not have to be related to protest at all. It must simply be established that a person intended it to be used in a certain way. Nor does the object have to be used by the person who had it in their possession. The offence refers to

"the commission by any person of an offence".

The phrase

"in the course of or in connection with"

casts an extremely wide net as to what activities might be criminalised under the offence. So wide is the net cast by this clause that effectively any person walking around with a bike lock, a packet of glue, a roll of tape or any number of other everyday objects could be at risk of being found to have committed this offence. As we have heard, the possibilities are endless. It is also significant that, unlike the substantive offence of locking on, there is no reasonable excuse defence in the wording of this offence, which means that individuals will find it even more difficult to challenge.

The Just Stop Oil movement has called off its protests because too many of its members are behind bars under existing legislation—particularly the favourite of the noble Lord, Lord Carlile of Berriew, Section 79 of the Police, Crime, Sentencing and Courts Act 2022. If current legislation has effectively put a stop to the disruptive Just Stop Oil protests, why on earth do we need this Bill?

Baroness Hamwee (LD): My Lords, as we now have both Ministers on the Front Bench, I will repeat the point I made earlier about explanations being made in the Chamber. I will add a sentence to what I said before about explanations being given in writing, by letters to individual Members of the House, generally copied to other interested Members: they kind of float though and one loses a grip on how much has been answered. Explanations that are part of the justification for a piece of legislation are not easily available to those who need to know them. We have a parliamentary website with a webpage for each piece of legislation. That is where people will go to see what the debate has been on particular amendments and how amendments have changed as a Bill has progressed. That is where they should be able to see the answers that Ministers were not able to give at the time when a matter was raised. Either through *Hansard* or some other mechanism, these answers should be lodged on the public record, and they have to be given in the Chamber in order to progress. This is immensely important, and I am making the point here because it is on the point of principle that other noble Lords have spoken about on this group.

Lord Coaker (Lab): My Lords, my noble friend Lady Chakrabarti has allowed us to have a very important short debate. Again, I was interested in the remarks of the noble Lords, Lord Paddick and Lord Carlile. The whole point, which I repeat as it is really important, is that the constitutional position of the House of Lords is to review and improve legislation, and sometimes to say to the House of Commons—which, as the elected body, in the end has the constitutional right to have its way—that we think, in this instance, they may have got it wrong. That is a perfectly reasonable thing for this House to do.

All the way through the first day of this Committee, the Government have been asked to justify the Bill. Why is it necessary? What evidence do the Government have to show that this legislation is required? As I said, there is no difference between the vast majority of us in this House in deploring the tactics of Just Stop Oil, and believing that it went far too far in the pursuit of its agenda and beliefs. That is not the point; the point is how we deal with protests in this country.

Many of us are asking: why was existing legislation not used as quickly as it might have been? Why was existing legislation shown to be inadequate? As the noble Lord, Lord Paddick, has just reminded us—I reminded the Minister of this earlier on—on the Radio 4 "Today" programme last week, a Just Stop Oil protest organiser said that one of the reasons it called off its protests was because of the number of arrests that had been made. It was the number of its members who, as organisers, would have been out on the M25 or wherever but were in prison or on remand. That was not done with the Public Order Bill; it was done with existing legislation. I think it was last week when the Minister told me that, in the month of October, 677 arrests had been made of Just Stop Oil protestors under existing legislation.

It is not good enough for the Government simply to say, "We think that this needs to be done". What is the evidence and who is demanding this? The Minister has been reminded time and time again during debate that the police themselves have not asked for it. Regarding Clause 5 on being equipped for tunnelling, the National Police Chiefs' Council said in its evidence:

"There is current legislation, such as that contained in the Criminal Damage Act 1971, that creates offences of damaging property and having article to damage property. With the associated powers of search these allow the Police to find articles or equipment intended to cause damage."

That is what the police are telling the Government with specific reference to tunnelling. Yet the Government turn round and say, "We need a new offence because the police do not have enough power to do the things we say they need to do." The police have turned that around and said that they have. They cannot both be right. Is the evidence that the police have given about tunnelling wrong?

The police raised another concern, on which it would be interesting to hear the Minister's response. They have another significant concern

"that any specific offence relating to tunnelling would apply to private land. This again could place a significant responsibility on policing."

They have asked why the Government decided to apply it to private as well as public land; that was a specific request.

The demand from noble Lord after noble Lord has been: can the Government point to how the existing legislation has or has not been used, and where are the specific gaps in legislation that meant the Government have been unable to deal with the protests that we have seen and which the Bill we are debating seeks to fill? As yet, we have had no answer.

In regard to the stand part debate on Clause 1, which deals with locking on and being equipped to do so, locking on is not a new phenomenon. I pointed out to the Minister last week or the week before that there was guidance on police action with respect to locking on between 2008 and 2010. It had pictures of people being locked on to various fences, buildings or whatever.

It looks to me as though the Government have panicked in the face of what is happening. They think, "We have to be seen to be doing something; we can't have a situation where we seem powerless". In fact, what is needed is for the Government to get a grip, sit down and talk to the police and magistrates about how to resolve this situation in a way that is consistent with the democratic values of our country but does not allow a reckless minority to overstep the mark and put the majority through unnecessary disruption.

9.15 pm

The Government have failed time and again in this debate—we hope they will not on our second day next week or on Report—to say what they mean by a whole series of definitions. That cannot be right. The Government cannot abrogate their responsibility to define what serious disruption means or to talk about the whole range of other points in the Bill where they "may" do this or that. They must have legislation tight enough to allow the courts to interpret the law on the basis of the intention of the Parliament of this country. At the moment, the Public Order Bill fails that test.

It is not good legislation, even by the Government's standards. Even if you think the Public Order Bill is a fantastic piece of new legislation that will solve the problems we face, it is not tight enough in definition or objective. That is unacceptable. On Report, a number of amendments will be made—I think they will be passed—and the Bill will, quite rightly, be sent back to the House of Commons to ask Members to think again. Of course, the House of Commons has a constitutional right to pass its Bill, but we have a constitutional right to tell it when it is wrong and to try to put right some of the inadequacies in the Bill as it stands.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, once again, I thank all noble Lords for their contributions to the debate this evening. It has been a very lively and thoughtful discussion generally. I look forward—I think—to continuing to discuss these important issues next week. I first reassure the noble Baroness, Lady Chakrabarti, that I do not think she is rude. I may not agree, but I think the position she is coming from is highly principled. I also say to the noble Lord, Lord Coaker, that I do not think we have failed when it comes to definitions. We have committed to take that matter away and it is ongoing work.

[Lord Sharpe of Epsom]

The amendments in this final group take issue with the some of the offences listed in Clauses 1 to 8. Clause 1 is a key part of the Government's plan to protect the public from the dangerous and disruptive protest tactic of locking on. Recent protests have seen selfish individuals seek to cause maximum disruption by locking themselves to roads, buildings, objects and other people. This has seen traffic disrupted, public transport delayed and the transport of fuel from terminals grind to a halt—to name just a few examples. Such tactics cause misery to the public, with people unable to access their place of work or their schools, or to attend vital hospital appointments.

I turn next to Clause 2, which is inextricably linked to Clause 1. During fast-moving protest situations, the police must be able to take necessary proactive action to prevent lock-ons occurring. Along with the associated stop and search powers, which the Committee will scrutinise later, this new offence will allow the police to prevent lock-ons before they occur and deter others from considering doing so.

Lastly, Clause 5, along with Clauses 3 and 4, is designed to make clear that the protest tactic of building tunnels to disrupt legitimate activity will not be tolerated. I am afraid there is a degree of repetition here, but projects such as HS2 have been targeted on multiple occasions by tunnels which have contributed to an enormous cost of £146 million to the project. Aside from the cost, these tactics are enormously reckless, putting not just protesters themselves at risk but those called upon to remove them and repair the damage inflicted.

There is one further amendment in this group: Amendment 69, in the name of the noble Baroness, Lady Chakrabarti, which seeks to remove the delegated power for the Secretary of State to amend, add or remove the list of infrastructure in the legal definition of "key national infrastructure". Throughout the debate, we have heard about ever-evolving protest tactics, targets and technology. We therefore see it as entirely right that Clause 7 is accompanied by a delegated power that will allow us to respond effectively to emerging threats. But I reassure the House that the power is subject to the draft affirmative procedure, thereby facilitating substantive parliamentary scrutiny.

Before concluding tonight's debate, I will respond to speeches made by many noble Lords, but specifically the noble Lords, Lord Paddick, Lord Coaker and Lord Carlile of Berriew, and the noble Baroness, Lady Chakrabarti, about the necessity of the powers taken in the Bill. I have spoken about the three key general differences between the Bill and existing public order offences and legislation. First, it is about sentencing lengths; secondly, it is about offences that take place on private land; and, thirdly, it is about introducing more pre-emptive powers, providing the police with the ability to stop serious disruption before it happens.

It would be appropriate to acknowledge at this point that some of the commentary from the police is a little contradictory. Chief Constable Chris Noble, the National Police Chiefs' Council lead on protests, said:

"There have been some very novel—without giving them any credit—and highly disruptive tactics; that is reflected on the contents page of the Bill. If we look across the breadth of protest organisations and groups, we see that they are very aware of some of the legal gaps, inadequacies and shortcomings; that is very clear from their engagement with police, as well as their tactics."—[*Official Report*, Commons, Public Order Bill Committee, 9/6/22; col. 5.]

Of course we work with the police, and we will obviously continue to do so.

I will try to address some of the key existing offences that have been mentioned and talk about how the Bill differs and builds on these important offences. I turn first to Sections 12, 14 and 14ZA of the Public Order Act 1986, as amended by the Police, Crime, Sentencing and Courts Act 2022, which allows the police to place necessary and proportionate conditions on public assemblies and processions to prevent certain harms occurring—namely, serious disruption to the life of the community. These powers are for the safe management of large protests where many people assemble or march. They do not provide the police with the means to tackle non-violent direct action of the sort that Just Stop Oil engages in.

I turn now to public nuisance and obstruction of the highway offences. We are pleased to have put the public nuisance offence on to a statutory footing, and noble Lords are quite right that it can be used to deal with some of the highly disruptive protests that we have seen recently. As the noble Lord, Lord Coaker, indicated, both these and other criminal offences are currently being used to arrest and charge Just Stop Oil protesters.

But we have to remember that there are offences that can cause serious disruption but do not meet the threshold for the public nuisance offence, which is extremely high. At the moment, such protesters manage to find loopholes to get acquitted or are subject to low penalties. These new offences are therefore essential to give the police the powers that they need to deal with these offenders. Although many Just Stop Oil protesters have been arrested for public nuisance and obstruction of the highway, these offences do not necessarily apply to tactics such as those that have targeted HS2 Ltd. Therefore, new criminal offences covering tunnelling and locking on are necessary.

I turn to the offence of aggravated trespass, which criminalises intentionally obstructing, disrupting or intimidating others carrying out lawful activities on private land. The maximum penalty is three months' imprisonment or a £2,500 fine, or both. This broad offence captures many activities that trespassers, protesters or others may engage in. The maximum penalty is not proportionate to the seriousness of some of the tactics used by protesters, which can put lives at risk. This is a broad offence that covers many non-protest behaviours, and it would not be appropriate to increase the maximum sentence for it. Therefore, new criminal offences that apply to private land are needed: locking-on, tunnelling and infrastructure-related offences.

I turn to stop and search. Section 1 of the Police and Criminal Evidence Act 1984 allows a constable to search individuals whom they reasonably believe are carrying something that could be used to commit specific criminal offences, including criminal damage. Furthermore, the police can search individuals after having arrested them. For example, after arresting Just

Stop Oil protesters for conspiracy to commit public nuisance, the police searched their car and seized items suspected to be used in the course of the offence.

Finally, the noble Lord, Lord Paddick, queried the necessity of the measures given that HS2—which has experienced significant protest action at huge cost, as we have discussed many times—was able to secure a nationwide injunction. We agree that injunctions can be helpful for preventing the types of serious disruption we have seen, which is why we have introduced our own measure which provides a specific mechanism for a Secretary of State to seek an injunction against protest activity where it is in the public interest to do so. However, this is only one piece of the puzzle and we have seen from the M25 protests that injunctions do not necessarily stop people breaking the law.

I have tried to set out how the measures in the Bill will bolster the police powers to respond more effectively to disruptive and dangerous protests, to protect our key national infrastructure and major transport works from interference, and to better balance the rights of protesters with the right of the general public to go about their lives free from serious disruption and harm. For those reasons, I respectfully ask noble Lords not to press their amendments.

Baroness Chakrabarti (Lab): I am grateful to all noble Lords for sticking it out and will try to be brief, given the hour. I am also particularly grateful to the Minister for reminding me that I did not speak to my Amendment 69, which, as he rightly said, would remove the ability to change the criminal offence of interfering with national infrastructure by adding further infrastructure. I stand by my concern that this kind of thing should not be done by way of secondary legislation, because it has such a profound effect on the rights and freedoms of people in this country to dissent peacefully. It would be very easy to abuse that power and it is not appropriate for secondary legislation. We will no doubt return to issues of powers of that kind at a later stage.

Once more, I must thank the noble Lord, Lord Carlile of Berriew, for pointing out what the courts are having to grapple with: a burgeoning statute book with more and more offences, which police forces must deal with too. This menu of potential powers and offences just gets bigger by the year. The idea that, every time there is an innovative or novel protest, something must be done and there will be a new offering of legislation is not a coherent way to operate the rule of law in a constitutional democracy. Lots of dangers will come from this.

I take the point about the police service not speaking as one on any of these issues, and maybe it should not. I was particularly grateful to the noble Lord, Lord Paddick, for pointing out, as a former police officer, that there is quite a strength of police opinion and scepticism about the powers in the Bill. I was also grateful to him for reminding me that the offence of going equipped for locking on is, in a way, even worse than the offence of locking on. Locking on is incredibly broad, as I think the Minister accepted in some of his earlier responses. Yes, linking arms is sometimes terribly disruptive too, but going equipped for locking on is a proper thought crime and one of the reasons I am particularly concerned about that offence. It is a thought crime that is supportive of a crime that is, in itself, incredibly broad and will, theoretically, capture some activities that some people think are just natural to humans and innocent.

I was grateful to the noble Baroness, Lady Hamwee, for addressing a very important process point. I totally understand the need for Ministers to write to noble Lords later, particularly in answer to the Questions we have each day. However, writing later should not be a central tactic of defending and promoting a Bill that has been some time in gestation. I was grateful to the Minister and his colleagues for coming up with a little more about the existing statute book in the latter part of this evening, but that will require a lot more examination. I know that noble Lords in Committee will be reading *Hansard* very carefully tomorrow and there will be more to discuss about that.

Ultimately, there are some protesters who, rightly or wrongly, care so much about the climate catastrophe, race equality, Brexit or whichever other issue that they are prepared to go to prison. There are some in that category for whom there is no new offence that will prevent their actions. So be it; that is life.

What I am concerned about, with the ever expanding public order statute book, are the people who are not in that category and who will get caught up in this kind of thing, as happened last week to the journalist who was detained for, in total, about seven hours, with five in a police cell, just for reporting on the protests. When you keep adding to police powers, adding to the public order statute book and catching more and more innocent activity, more injustice will follow. It will not be about catching the people who we all agree are going too far sometimes—and who are prepared to go too far for their cause; that is their conscience. There will be more and more innocent bystanders—journalists, people from racial minorities—who get caught up in this very broad blank cheque that noble Lords and Ministers are proposing to hand to the police. The police are from us; they are a part of our community and are imperfect as we are. It is not fair to hand this blank cheque to them and, when it goes wrong, to blame them. We have that on our conscience if we pass these powers.

9.30 pm

This is not a piece of the puzzle. We will never totally stamp out with a draftsman's pen some bad behaviour in the name of peaceful dissent. We never will; we just have to take a balanced approach. I am not convinced that this Bill is that. For the moment, however, I will give everyone a collective sigh of relief at 9.30 pm and sit down.

Clause 1 agreed.

Clause 2: Offence of being equipped for locking on

Amendments 18 to 22 not moved.

Clause 2 agreed.

Amendment 23 not moved.

Clause 3: Offence of causing serious disruption by tunnelling

Amendments 24 to 33 not moved.

Clause 3 agreed.

Clause 4: Offence of causing serious disruption by being present in a tunnel

Amendments 34 to 47 not moved.

Clause 4 agreed.

Clause 5: Offence of being equipped for tunnelling etc

Amendments 48 to 50 not moved.

Clause 5 agreed.

Clause 6: Obstruction etc of major transport works

Amendments 51 to 58 not moved.

Clause 6 agreed.

Clause 7: Interference with use or operation of key national infrastructure

Amendments 59 to 69 not moved.

Clause 7 agreed.

Clause 8: Key national infrastructure

Amendments 70 to 79 not moved.

Clause 8 agreed.

House resumed.

Oaths and Affirmations

9.34 pm

Lord Rana took the oath.

House adjourned at 9.36 pm.

Grand Committee

Wednesday 16 November 2022

Arrangement of Business

Announcement

4.15 pm

The Deputy Chairman of Committees (Lord Palmer of Childs Hill) (LD): My Lords, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Energy Bill Relief Scheme Regulations 2022

Considered in Grand Committee

4.15 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Energy Bill Relief Scheme Regulations 2022.

Relevant document: 17th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, these regulations were laid before the House on 31 October. The EBRS GB and EBRS NI schemes are necessary in response to exceptional global circumstances affecting energy prices. Putin's illegal war in Ukraine has led to an unprecedented rise in energy prices, affecting businesses and vital services right across the UK. The Government have moved swiftly to introduce emergency legislation to protect consumers from these inflated prices, which will stop businesses collapsing, protect jobs and limit inflation. I am grateful to the opposition parties for helping us speed the legislation through the House. The wider negative effects of this economic pressure, including on the businesses of gas and electricity suppliers themselves, would be severe and would materialise very quickly in the absence of an intervention of this kind.

The Energy Bill Relief Scheme Regulations 2022 and Energy Bill Relief Scheme (Northern Ireland) Regulations 2022—the EBRS regulations—have been created under the Energy Prices Act, which, as the House knows, gained Royal Assent on 25 October 2022. The Energy Prices Act, introduced in Parliament on 12 October, provided the legislative footing needed to ensure that businesses across the UK receive support with their energy bills this winter through this EBRS. The regulations are essential secondary legislation, needed to implement and operationalise the ERBSs.

The regulations reduce the charges for electricity and gas supplied by licensed energy suppliers to eligible non-domestic customers and make payments to suppliers in respect of those reductions in Great Britain and Northern Ireland. The schemes represent significant and bold action by the Government to protect all eligible non-domestic customers—including businesses, charities and the public sector—such as hospitals and schools, from excessively high energy bills over the winter period. As a result, the scheme will run for a six-month period from 1 October 2022 to 31 March 2023.

Turning to the detail of the regulations, the EBRS GB and EBRS NI regulations set out that, with few exceptions, all non-domestic customers with electricity and gas contracts from licensed non-domestic energy suppliers will be eligible for a discount. The discount will be applied to the wholesale price element of bills, and the regulations set out how this discount has been calculated. The regulations cover the process by which the energy supplier is reimbursed by the Secretary of State for the discount. Regulations give powers to the Secretary of State to delegate this function where he considers it appropriate. Further provision is included to prevent suppliers or customers deriving greater benefit than is intended, in order to protect the integrity of the schemes.

The regulations also provide for an additional reduction to be applied for qualifying financially disadvantaged customers who are supplied under so-called "deemed" or "out-of-contract" contracts. The EBRS NI regulations prevent end-users who are outside Northern Ireland receiving the discount to their bills. The regulations also cover essential operational matters, including information and reporting obligations, enforcement powers and powers to impose civil penalties in respect of missing or defective declarations.

To accompany the regulations, we have published a suite of legally binding rules and non-statutory guidance, which provides further detail on how the schemes work in practice. Given the urgency of ensuring that organisations receive the support they need this winter, we have not been able to launch a formal consultation. Instead, we have had extensive informal consultations with energy suppliers, regulatory bodies and delivery bodies. We commit to reviewing these instruments as necessary following their implementation, based on stakeholder feedback. Additionally, separate pass-through requirement regulations were laid in Parliament to ensure that intermediaries such as landlords, who have received energy price support, pass through the benefit obtained to end-users—for example, non-domestic customers in rented properties. This also includes the laying of separate regulations to ensure the pass-through of EBRS benefits to heat network customers.

The regulations' objectives are to support economic growth and to limit inflation, and we expect their most significant impact to be the avoidance of the closure of many firms, and therefore of redundancies. The benefits of avoiding closures will accrue to business, while the benefits of avoiding redundancies will of course provide broader benefits to society. Our aim is that the support delivered through these schemes will enable public services such as schools and hospitals to continue to operate this winter.

The EBRSs remain a source of critical support for non-domestic customers across the United Kingdom. Let me emphasise that the measures in these regulations are crucial for the effective operation of the schemes. The schemes will complement the other large-scale support the Government are providing with energy and the cost of living. I hope the House will be able to support these measures and their objectives. I commend the draft regulations to the House.

Baroness McIntosh of Pickering (Con): My Lords, I take this opportunity to congratulate the Government and my noble friend the Minister on bringing through the enabling Act and in particular the regulations before us this afternoon. I commend the support the Government are giving both to non-domestic and domestic customers. If my noble friend will permit, I have a number of questions I would like to press him on, but that does not detract from my overall support for the scheme.

The Secondary Legislation Scrutiny Committee prepared a very helpful brief, which states that the instruments are made to delegate powers to enable the Secretary of State to make technical rules for the effective operation of the EBRS, including rules for the calculation and recovery of accounts. Paragraph 7.1 of the helpful Explanatory Memorandum appended to the regulations states that the Secretary of State

"can reimburse licensed non-domestic energy suppliers applying price reductions on customers' bills representing the wholesale energy price element of the bill. This will allow non-domestic customers to receive the benefit of such a discount."

I welcome what my noble friend said about landlords passing this on to those who operate the businesses; that will be very welcome indeed.

Paragraph 7.2 of the Explanatory Memorandum say that the Secretary of State is required,

"within 14 days of the schemes' introduction date, to make rules about further reductions".

The rules will apply to the supply of gas and electricity for the period referred to by my noble friend. Will there be an opportunity for the Committee or the House to see them in advance and to scrutinise them? Will they be laid before the House? I realise they are technical rules, but it would be helpful for us to see them.

Paragraph 11.1 refers to stakeholders, individual organisations and so forth. I would like to make plea for the plight of publicans in pubs, restaurants, bars and cafés, who will benefit from this scheme until the end of March. It is particularly welcome in the run-up to Christmas, and in January and February, which tend to be slow months, as it recognises their need to incur high energy and electricity costs to make a welcoming atmosphere. My noble friend is probably not in a position to tell us today—we will have to wait until tomorrow or even the March Budget—what will happen after this scheme expires. I do not want to be like Oliver Twist and ask for more, but it would be helpful for businesses to know what the future will be. My noble friend has rightly identified that the regulations and the enabling legislation under which they fall are intended to prevent closures and job losses resulting from high wholesale energy costs, which we know are largely global in nature.

I also make a plea for non-domestic customers and businesses that operate in rural areas. The Minister and I are from the north-east of England. I grew up there and represented part of North Yorkshire for 18 years in the other place. In about a week's time, we will have the first anniversary of Storm Arwen, when a number of businesses closed. Those who were not fortunate enough to have generators were heavily penalised. As part of learning from that, I met our local director of the NFU, which is keen to work with the Government and other bodies to see how we can enhance infrastructure and the grid in rural areas where we are heavily dependent on off-grid fuels such as oil, solid fuel and LPG, and to look at what prospect there might be for developing those off-grid resources. It is basically about lessons learned from Storm Arwen, in what was a very difficult time.

These regulations were debated in the other place by the Delegated Legislation Committee on Monday 14 November. It was asked then why there had not been a greater assessment of the impact of administration and resource costs on Ofgem, which will be heavily involved in monitoring compliance. Has BEIS looked at that? Will it have time to do so in the next few weeks? Secondly, if a company has outstanding debt on bills of greater than 28 days, it effectively does not qualify. For what reason has that benchmark been chosen? With those few questions, I wish Godspeed to the regulations and congratulate my noble friend and his department on the work they have done in this regard, for both non-domestic and domestic customers.

I have one further question, which relates more to domestic customers. What I would identify as sharp practices are being developed by electricity providers on the back of the Government's generosity in this regard. When a customer is in credit, their direct debit payments are going up, which I can see no rhyme or reason for. If a customer is in credit, why on earth would you seek to increase their direct debit, particularly when the Government have lent the generous help that they have? Another such practice happens when, no matter how many meter readings they may give, the customer ends up with an estimated bill. Again, that seems to be a way of bumping up the price. I would welcome any response that my noble friend has to what seem to be developing sharp practices.

Lord Teverson (LD): My Lords, we on our side very much welcome this relief for businesses and commercial operations with regard to energy prices. Again, I very much echo the noble Baroness, Lady McIntosh, on the fact that the evaluation does not take place until three months. I understand the issue of how you would evaluate it before that, but there is no obligation to put forward further plans until the end of the scheme, after six months. I would be interested to hear an answer on that.

4.30 pm

I have just two questions for the Minister—and I will keep it just to two, so I get an answer today. The first is on the issue of second homes sometimes masquerading as holiday lets which are often used by the owners as well. I want to understand where they are in this. In a lot of seaside areas where local residents are not necessarily particularly well off, there would be a concern if homeowners who have had their properties registered as businesses for business rates received these payments. That is quite an issue, and I would be interested to understand how the Government will look at that.

My second question is on the issue of fraud. I cannot remember where it was in the Explanatory Memorandum, but I welcome the fact that that is discussed in these papers. It must be relatively easy to police this scheme to make sure that retail energy companies pass on the

money to consumers. I do not see that as a big issue; it is relatively easy. However, the other area that was brought up is where landlords effectively pass on an electricity cost separately to their tenants. As the Minister will know, often for small businesses the balance of power between landlord and tenant is very much in favour of the landlord, and often tenants do not want to have arguments with their landlords. The paper suggests that the department will keep a close eye on that. I do not understand how that can happen. I am not saying that that will be an easy area of policing, but I would be keen to hear the Minister's opinion on how that would be policed and enforced, given that asymmetric power that often is in that relationship. However, I welcome the secondary legislation.

Lord Lennie (Lab): My Lords, first, I thank the Minister for bringing forward the instruments today and thank the stalwarts of the energy debates, the noble Baroness, Lady McIntosh, and the noble Lord, Lord Teverson, for their questions and comments, which I am sure will be responded to.

These are the first two instruments from the Energy Prices Act, which we debated recently. We supported the Bill during its passage and appreciate the pressing need to have these arrangements in law as soon as possible. As such, we will not be preventing the passage of these instruments. This also means that many of the points that we have made in regard to these instruments have already been debated in passing the Energy Prices Act. I will not spend time dealing with that and repeating points but rather will focus on the specific contents of the instruments before us today, not least as we will be considering more before too long.

As we have heard, between them these two instruments make provision for the implementation of the energy bill relief scheme—the EBRS—for non-domestic customers across the UK, with powers derived from the Energy Prices Act: Section 9 for Great Britain and Section 11 for Northern Ireland. To comment on a point that the noble Baroness, Lady McIntosh, raised, what these instruments do not do is to set out the exact terms of the scheme, neither for the first six months, which is now clear, nor for the following 18-month period that the Act allows these powers to provide for. We now know the Government's plans for the first six months—they were recently revealed—but we have heard little on their plans for the period thereafter. Like the noble Baroness, Lady McIntosh, if the Minister is able to, I would appreciate it if he could elaborate on what is proposed, or at least update us on the progress of their consideration as to what might happen for the latter part of the period that this Act governs.

Part 3 of the instrument relates to discount recovery, on which I have a small item to raise. I understand that Energy UK previously expressed concerns to the Minister about the arrangements in this part. Its interpretation is that energy suppliers would not receive financial cover to cover the difference between normal and capped unit rates, which is inconsistent with what the Energy Prices Act suggested. That issue appears to have been fixed, which is welcome, but it is troublesome that it was not the case from the outset. I am keen to hear an explanation from the Minister of how these issues emerged and some reassurance that, in action, energy companies will have no difficulty receiving their entitlements.

I also understand that the consultation to resolve the issue took place under non-disclosure agreements, which not only is concerning in itself but, as Energy UK raised, often means that not all suppliers are included in talks and that the industry cannot work together with the Government to come to the best solutions. This seems neither a sustainable nor an effective way of creating policy.

Part 5 of the instrument, which relates to qualifying financially disadvantaged customers, requires the Secretary of State to make rules about further reductions that the suppliers must apply to the amounts payable of these customers within 14 days of the scheme's introduction date. As the Explanatory Memorandum says,

> "The current levels of many deemed and out-of-contract tariffs mean that, even with the discounts provided by the rest of the EBRS scheme, these customers … would often still experience particular difficulty in obtaining a supply of energy at a reasonable rate".

It is welcome that additional support will be set out. However, given the situation, waiting until 14 days after the scheme's introduction does little to offer reassurance to these customers and makes it difficult, if not impossible, for your Lordships to scrutinise the plans. Perhaps the Minister could give some advance notice of the Government's plans for this section.

Before I finish, I briefly revisit one broader area from the Energy Prices Act, regarding the powers of the Secretary of State, some of which allow them to escape secondary legislation. Of course, that is not the case here, as we are debating secondary legislation, but I use this opportunity to repeat our regret that other significant powers given by the Act are not subject to parliamentary debates such as this.

Baroness Hoey (Non-Afl): My Lords, could I intervene before the Minister responds? I have carefully gone through the Energy Bill Relief Scheme Regulations 2022 and the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022, which are about the same thickness, to see where the differences are. Obviously, we know that the situation is different in Northern Ireland, so there have to be some differences, but it would be helpful if, in winding, the Minister could clarify any substantial differences between how the scheme is going to work in Northern Ireland and in the rest of the United Kingdom. As the Minister is aware, we in Northern Ireland are always wary of being treated slightly differently for some unknown reason that we find out about later. I appreciate that there have to be separate regulations on this, but I would appreciate clarification on any substantial differences.

Lord Callanan (Con): I first thank noble Lords for their contributions to this debate. As I said, the Government have implemented the EBRS GB and NI schemes to ensure that non-domestic consumers are protected from excessively high energy bills over the winter period. The schemes will make sure that the amount that eligible businesses pay for their wholesale energy costs comes down to a reasonable level, with some saving over 50% on those costs.

[Lord Callanan]

I am sure it is reassuring for the House to know that the schemes are already in force and delivering support to organisations across the UK. I hope this reassures the public that the Government are committed to taking decisive action to alleviate at least part of this energy crisis.

As well as providing immediate relief, these schemes will support economic growth and have the happy effect of limiting inflation caused by increasing energy bills and the knock-on effects on prices, labour, goods and services. As I said at the start, we are confident that the schemes will seek to avoid firm closures and redundancies and will ensure that vital public services and charities can continue to operate over the winter.

We will continue to monitor the schemes to ensure that this support is provided to the people and businesses that they are designed to help. We are committed to reviewing the schemes by the end of the year and will continue to work with stakeholders to ensure that their feedback is taken into account. We will use the review to look at how best to offer further support to customers who are most at risk from energy price increases beyond April 2023.

I start off with the contribution of my noble friend Lady McIntosh, who asked whether the House would have the opportunity to review the rules accompanying the statutory instrument. It is worth pointing out that the schemes have been set up at pace, and the House of course helped by passing the legislation at pace, to deal with the crisis. Therefore, it is right that the more technical details of the scheme have been included in statutory rules, which have been published on GOV.UK. The first tranche of EBRS GB and NI rules were published on 1 November; amendment rules relating to discount recovery were published on 4 November; and a third tranche of amendment rules relating to disputes and treatment of financially disadvantaged customers was published on 9 November. Minor changes made via amending rules were published on 10 November. If the noble Baroness wants to check on GOV.UK, she can while away her weekend reading the rules in detail. The business support scheme is intended to give immediate relief to businesses and other non-domestic consumers from the current level of inflated electricity and gas prices.

The noble Lord, Lord Lennie, and my noble friend Lady McIntosh asked the good question about what will happen in six months' time, once these schemes come to an end. I cannot say that I have an answer for the Committee at the moment, because we are still to conduct the review of the scheme, which we have said that we will do by the end of the year. Perhaps if I set out what the review will consider, that will give the Committee some clues as to where we intend to go with this. The review will consider how best to offer further support to customers who are most at risk of energy price increases. By their very nature, they are likely to be those who are least able to adjust—for example, by reducing their energy uses or increasing their energy efficiency. Of course, any further support will begin at the end of the initial six-month support scheme.

My noble friend Lady McIntosh asked something that, I have to say, has nothing to do with these regulations, about lessons learned from Storm Arwen. We have had extensive discussions on that subject in this House. We published a comprehensive review of the recommendations for improvement of the electricity sector in response to Storm Arwen. There were a number of key recommendations covering enhancing system resilience; protecting customers; and additional support, such as compensation. The recommendations are due to be finalised by December 2023, but the majority are already complete, ahead of this winter.

My noble friend also asked about the assessment of the impact of administration and resource costs to Ofgem. Of course, we are working very closely with Ofgem to ensure the effective enforcement of the scheme requirements, and we will ensure that it has the necessary resources to carry out its role in this and many other government schemes operating in the energy sector. Given the pace at which we had to deliver the impact assessments of this time-bound intervention, we have focused on the largest and most significant impact—of course, the direct costs to the Exchequer.

My noble friend also asked about the 28-day disqualification policy. The arrears rule already referred to applies only to the additional discounts that suppliers are required to apply to those qualifying disadvantaged on deemed or out-of-contract contracts. That is in addition to the main EBRS discount.

On the points made about suppliers increasing energy bills, the EBRS scheme is shielding businesses across the country from soaring energy prices. The vast majority of energy suppliers are operating responsibly and within the spirit of the scheme. Of course, we are aware of reports that some companies are being faced with excessively high quotes this winter. I can tell the House that we will take a robust approach to this, and we are working with Ofgem to ensure that the licensing conditions have not been breached and that businesses are able to see the full effects of support offered by the scheme.

My noble friend Lady McIntosh also raised the issue of the UK's energy resilience in winter. We have a secure and diverse energy system, and we are confident of our plans to protect households and businesses in the full range of scenarios this winter, in light of Russia's illegal war.

4.45 pm

My noble friend will be aware that to strengthen this position further we have put plans in place to secure supply, and the national grid, working alongside energy suppliers and Ofgem, will launch a voluntary service to reward users who are able to reduce their demand at peak times. Happily, unlike many other parts of Europe, Britain is not dependent on Russian energy imports, and we are at a strategic advantage through access to our own North Sea gas reserves and steady imports from reliable partners, such as Norway, the second largest LNG infrastructure in Europe in Europe, and a gas supply underpinned by robust legal contracts—and, of course, the enormous investment that we are making in clean energy sources. So, although we are not complacent, we are in fact in a much better position than many other countries in Europe.

The noble Baroness, Lady McIntosh, raised a point about consumers who are in credit—she was talking about consumers, whereas this scheme concentrates on non-domestic customers. I will answer the question now, but it is more appropriate for the next debate

about direct debit payments. Ofgem have looked into this and found no evidence that direct debits are being widely inflated, but it identified some weaknesses in some suppliers' processes that could result in suppliers setting some direct debits incorrectly. It is very important at this time that consumers can trust that their direct debit is an accurate reflection of their consumption and are given enough information to understand why they are paying the amount they are. It is worth pointing out that you can contact your supplier to ask for your direct debit to be reduced. I know that because I have done it myself. My account was in credit and, therefore, I was able to say, "You have put my direct debit up too much. I do not need to be paying this much" and the supplier happily reduced it, so it is possible to do that.

The noble Lords, Lord Lennie and Lord Teverson, both asked about the enforcement of the pass-through requirements, which were in SIs tabled separately. The legislation makes it clear that intermediaries must pass the benefit through to end users and must also ensure that the end user is equipped with the information to understand what benefit they are entitled to and be able to dispute this and/or how it has been applied. We have introduced regulations to allow end users to pursue recovery of benefits as a debt through civil proceedings. End users can recover claims to pass through amounts as civil debts in the county court, in the same way that other outstanding amounts owed to an individual can be claimed.

We have also introduced guidance on the pass-through requirements for energy price support, including a link to how to make a court claim for money. Although I understand the point the noble Lord, Lord Teverson, made about the relative imbalance of power in some of these relationships, we are doing all we can to make sure that people are able to exercise the rights that this legislation has given them. The enforcement system is the same across all the schemes, with a slight nuance for heat networks under the EBRS. The legislation requires heat networks also to pass on the benefits of the EBRS to their end consumers in the form of lower heating bills, and if heat network customers do not receive the pass-through or information from their heat supplier, they will be able to raise a complaint with the energy ombudsman.

In response to the noble Lord, Lord Lennie, who asked how we are ensuring that companies receive these vital discounts, again, we are working closely with energy suppliers on the development of the scheme. Energy suppliers have already submitted their first payment requests to the department and they will be paid shortly. Discounts will start to appear in customers' bills from this month, backdated to cover their consumption from 1 October.

As I mentioned earlier, rules regarding Part 5 of the regulations have now been published. The additional reductions introduced through this new rule will be applied by energy suppliers in line with the savings they are making thanks to EBRS reducing the overall risk that customers cannot pay their bills on time. A further reduction may also apply if the amount charged is considered unduly onerous under section 7.4 of the relevant standard licensing conditions, which is enforceable by Ofgem.

In response to the noble Baroness, Lady Hoey, who asked about the substantial differences between the Northern Ireland and Great Britain schemes, they are essentially similar, but the Northern Ireland scheme's delivery approach diverges slightly from GB's in that it requires suppliers in Northern Ireland to abide by obligations in the regulations enforced by the Northern Ireland utility regulator, UREGNI—I am sure the noble Baroness is more familiar with that than I am. The regulations reflect this and the role of the Northern Ireland utility regulator in enforcing the schemes. There are a number of other technical differences, including an additional contract type, the day ahead index price contract, and there is an extra discount recovery process in Chapter 4 to prevent a Northern Irish recipient of supply eligible for the EBRS NI from then passing on that reduction to an end user in the Republic—which I am sure is something the noble Baroness would strongly support.

Lord McCrea of Magherafelt and Cookstown (DUP): I listened to what the Minister said and return to a point raised by the noble Baroness, Lady McIntosh. Do I take from the Minister's remarks that there is going to be a review after the winter period that is covered by the present legislation? There are many small businesses scattered across the community in Northern Ireland that are totally dependent on electricity and have therefore met this volatility in energy prices. It is hard for them to plan for the future without knowledge of where we will go after the short period covered here. How long does the Minister think the review will take, because these businesses certainly need to plan for the future?

Lord Callanan (Con): The noble Lord makes a very good point. As I said, we will conduct a review as soon as possible with the aim that it will be published before the end of the year. That will inform businesses of where we hope to go with the scheme after its expiry in April. That applies not just to businesses in Northern Ireland but to small businesses across the whole United Kingdom.

In conclusion, the Government remain committed to ensuring that consumers receive help with the rising cost of living and with energy costs. These regulations are vital to ensuring that support is delivered this coming winter. I commend this draft instrument to the Committee.

Lord Teverson (LD): I thank the Minister for his reply to my point on fraud but, as he has not replied on holiday home lets, I assume that, if they are on business rates, they will get this benefit.

Lord Callanan (Con): There are two aspects to this support. The price guarantee applies to domestic consumers and the EBRS applies to business consumers. If it is registered as a domestic premise, the home owner would receive this support in the same way as other owners of multiple homes would receive it—under the domestic scheme. If it is registered as a business, again they would receive a price discount. That applies to all businesses across the UK, with a few exceptions for some generators.

[Lord Callanan]

I take the noble Lord's point about how this will probably go down badly in the areas concerned, but the scheme was rolled out at pace. We saw similar effects with the Bounce Back Loan Scheme during the pandemic. By the very nature of these schemes, if you do not spend years putting the scheme in place, going through every detail and exempting certain groups that might perhaps be undeserving of the support, there will be cases that most people regard as slightly unfair. That is in the nature of rolling something out quickly. We needed to get the support out quickly, which is why this has been done that way.

Motion agreed.

Energy Bill Relief Scheme (Northern Ireland) Regulations 2022

Considered in Grand Committee

4.53 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022.

Relevant document: 17th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Energy Prices (Domestic Supply) (Northern Ireland) Regulations 2022

Considered in Grand Committee

4.54 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Energy Prices (Domestic Supply) (Northern Ireland) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, these regulations were laid before the House on 31 October 2022. They are quite narrow and define the terms "Northern Ireland domestic electricity supply" and "Northern Ireland domestic gas supply" for the purposes of the energy price guarantee Northern Ireland schemes. I will refer to these schemes as the "EPG NI".

Energy is of course an essential and unavoidable expense for households. The economic fallout of the Covid-19 pandemic and the ongoing war in Ukraine have driven a global inflationary surge that is continuing to hit UK households and businesses. A typical household in Northern Ireland has seen its energy costs increase threefold since this time last year, which will put significant financial pressure on Northern Ireland households. The Government have moved swiftly to introduce emergency legislation to protect consumers from these inflated prices and to limit inflation.

The electricity and gas markets operate differently in Northern Ireland. There is a different regulator—the Utility Regulator for Northern Ireland—no price cap and an entirely different set of suppliers. Therefore, Northern Ireland could not fall under the remit of the Great Britain energy price guarantee scheme. The Government have established the energy price guarantee Northern Ireland scheme to deliver much-needed equivalent support.

The EPG NI reduces the unit cost of electricity and gas for domestic consumers in Northern Ireland, via the same mechanism as the energy price guarantee in Great Britain. Energy suppliers reduce consumer bills by a set amount of pence per kilowatt hour, and His Majesty's Government compensate them for that reduction. Electricity costs are being reduced by 20 pence per kilowatt hour and gas by almost 5 pence per kilowatt hour.

Importantly, the EPG schemes in Great Britain and Northern Ireland are intended for customers on domestic tariffs. The energy bill relief scheme is for customers on non-domestic tariffs. The Energy Prices Act 2022 set out that the EPG Northern Ireland schemes are to apply to those with "domestic electricity supply" and "domestic gas supply". These regulations define those terms for Northern Ireland.

These definitions will mean that some non-domestic premises will be in scope of the energy price guarantee electricity scheme in Northern Ireland. This includes some places of worship, which have similar metering and tariff arrangements to domestic premises. These non-domestic premises will receive EPG support. There was no timely way for energy suppliers to disaggregate them from traditional domestic premises with similar metering and tariff arrangements.

The Government want to ensure that energy users in Northern Ireland receive equivalent support to that offered to Great Britain. By a quirk of the electricity market in Northern Ireland, a bespoke definition of domestic electricity supply was required for the timely establishment of a scheme in Northern Ireland. That is what these regulations do, and I therefore commend them to the Committee.

Lord Browne of Belmont (DUP): My Lords, I welcome this instrument. It will go some way towards alleviating hardships in many Northern Ireland households.

Energy supply in Northern Ireland is very complicated because Northern Ireland has a separate energy market from the rest of the UK, with its own rules and regulations, but, as in the rest of the UK, energy costs continue to rise at a very high rate. One problem is that two-thirds of households in Northern Ireland use heating oil but, unlike in Great Britain, the oil market in Northern Ireland is not regulated. Is there any consideration of how those who use oil will be compensated? There is great competition in the oil market in Northern Ireland, and so many suppliers, so the prices can be kept at a reasonable rate.

Turning to gas, in the past 12 months both Northern Ireland gas providers, SSE Airtricity, which supplies Greater Belfast, and Firmus Energy, which supplies townlands, have increased their prices many times. There is a problem here. The gas market is even more

complicated because the Utility Regulator must approve any tariff changes proposed by Firmus Energy in its 10 townland networks, but not in Greater Belfast. SSE Airtricity must also go through the regulator.

The main electricity provider in Northern Ireland is Power NI, which is overseen by the Utility Regulator, but there are other electricity providers in Northern Ireland, which increase their prices. They are not subject to the regulator and can put up their prices at any time. Has that been considered?

5 pm

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I want to reiterate the point raised by my noble friend Lord Browne, that a vast proportion of Northern Ireland is reliant on heating oil and not on gas or electricity for heating their homes. That is the case especially in rural Northern Ireland, which is a vast area. Many of our elderly certainly rely on it, as do those who are disabled. The payment towards heating oil—I think £100 was mentioned—is totally useless and verging on an insult to those in such need, especially as they face the winter.

As the Committee knows, domestic consumers are very concerned about the £400 payment. I trust that the Minister will be able to answer this. The previous Prime Minister confirmed that the £400 energy bills discount would be paid to householders in November and backdated to October. I believe that the Chancellor has also reaffirmed that it will be received by families before Christmas. I heard one Minister say today that you cannot believe everything you read in the papers, when she was speaking about the names of possible Peers in a couple of years' time. There is talk that the payment may not now arrive until January. Could we have some clarification on this? Certainly, two Prime Ministers and past Chancellors and Secretaries of State have confirmed that the payment would be made in November and at the latest before Christmas. Could we have confirmation of that, as it is concerning a lot of people?

Lord Teverson (LD): My Lords, I thank the noble Lord, Lord Browne, for explaining the details of the Northern Ireland energy market. I did not realise that it was quite so complicated, as it sometimes is here with multiple suppliers, and so on.

I want to make two points. The first has already been covered by noble Lords—the predominance of oil provision in Northern Ireland and how that is dealt with. Despite the strong competition, I suspect that the £100 is far from enough in being able to compensate those rural households for their energy costs.

Secondly, as the Minister will be well aware, there is a single electricity market in Northern Ireland. The grids are integrated. As noble Lords have said, it is separate from the British system. Are there any potential issues in relation to differential charging either side of the border? There may be no issues—

Baroness Hoey (Non-Afl): The noble Lord said that it was different from the "British system". I think he means the Great Britain system. Northern Ireland is part of the United Kingdom; we are British.

Lord Teverson (LD): I absolutely agree with the noble Baroness. There were no implications at all. I was trying not to say "the United Kingdom", because the system is different from that in Great Britain. I thank her for that.

I think that I have made my point. I am interested to understand whether there is any issue between the two sides of the border in terms of what is a single market.

Lord Lennie (Lab): My Lords, I thank the Minister for bringing the regulations before us and the noble Lords, Lord Browne, Lord McCrea and Lord Teverson, for their comments and questions. I thank the noble Lord, Lord Browne, in particular for clarifying the depth and strength of the market in Northern Ireland. I was going to say that the regulations were not contentious, but there is a bit of contention and, no doubt, the Minister will deal with that.

The instrument defines the terms "NI domestic electricity supply" and "NI domestic gas supply" to scope the extent of premises that will be eligible. Specifically, this is to include some non-domestic premises which due to their similar metering and tariff arrangements would receive EPG support. Given there is no way for energy suppliers to disaggregate, it is difficult to disagree with this. I would be keen to hear from the Minister the scope of this impact, both in terms of the number of non-domestic premises and any additional costs incurred.

The Explanatory Notes use places of worship as an example, as did the Minister, but what other types of non-domestic premises are included? Perhaps we could turn to the experts from Northern Ireland to help us with this.

I would like to raise an issue that was brought up in the other place during the debate on this instrument on Monday. There is a scheme document linked to this instrument, headed "Establishment of domestic electricity price reduction scheme for Northern Ireland", which in Schedule 5 states that the Government will require suppliers of electricity to hand all meter data to the Government for the purposes of regulating and discussing the domestic supply scheme.

This data will encompass many things; it will be held by the Government for 10 years and can be shared with other departments, law enforcement agencies, regulatory bodies and others. While it is not pertinent to today's instrument, this is the same for rest of the United Kingdom in the respective document. This appears to be a breach of the data access and privacy framework which was produced when smart meters were first rolled out. It states that smart meter data is the property of the customer and can be disclosed to third parties, including the Government, only with their consent. I understand the Minister in the other place committed to write to Dr Alan Whitehead MP on this issue and I would appreciate it if the Minister could ensure that I receive the same response.

Lord Callanan (Con): I thank all noble Lords for their contributions to the debate. The Government have implemented the EPG Northern Ireland scheme to ensure that consumers are protected from excessively high energy bills over the winter period, and I am sure

[Lord Callanan]
that is something the Committee supports. The Committee will be reassured to know the scheme is already in force and delivering support to households across Northern Ireland. I hope this will also go some way to assuring the public that the Government are committed to taking decisive action to deal with the energy crisis.

As well as providing immediate relief, this scheme, alongside the EBRS, will support economic growth and limit inflation caused by increasing energy bills and their knock-on impact on prices, labour, goods and services. The scheme has been designed to operate robustly and guard against fraud and gaming, and we will continue to monitor the schemes to ensure that support is provided and limited to those people and businesses who it is designed to help. We are committed to reviewing the schemes and we will consider how best to offer further support to the customers who are most at risk to energy price increases beyond April 2023.

In response to the questions raised, I will concentrate first on the point made by the noble Lord, Lord Browne, about heating oil. The noble Lord will be aware—and this was raised also by the noble Lord, Lord McCrea—that the alternative fuel payment will provide £100 to support households who do not use mains gas for heating. This alternative fuel payment is in addition to the £400 that households will receive through the energy bills support scheme. This applies in Northern Ireland and is designed to compensate for the rise in the price of heating oil from October 2022 in a way that is equivalent to the support received by people who heat their homes using mains gas and receive their support via the energy price guarantee. As the £100 alternative fuel payment is designed by reference to the increases in the price of heating oil and other alternative fuels that happened from September 2021 to September 2022, the Government are committed to continuing to monitor the prices over the coming months and we will consider further intervention if it is required to protect UK householders from extraordinary fuel prices.

The noble Lord, Lord Browne, further asked about unregulated electricity providers in Northern Ireland. Of course, the regulation of prices is a matter for UR, the regulator in Northern Ireland. The noble Lord is right that some electricity suppliers in Northern Ireland are not price regulated. It is a competitive market, but the EPG applies to all suppliers equally—the same discount applies to all.

The noble Lord, Lord McCrea, asked for clarification on backdated payments. The £400 EBSS will not be backdated, as it is paid as a flat sum. The EPG is, of course, backdated via an additional pence-per-kilowatt payment on top of the base EPG rate from November to March.

The noble Lord, Lord Teverson, also raised a point about the particular predominance of the oil provision in Northern Ireland; I think that I answered that in response to the noble Lord, Lord Browne. On the point regarding the single electricity market in Northern Ireland, there is no problem here. The measures that we are implementing are designed to support domestic consumers in Northern Ireland at the supply level as they relate to the retail market and do not impact on the underlying wholesale market. Therefore, they have no effect on the workings of the single electricity market.

The noble Lord, Lord Lennie, raised a point about metering and tariff arrangements and the scope of the impact on the number of non-domestic premises that have been brought into the EPG. In addition to places of worship, he questioned what other premises are included. I can confirm to him that some farms and small businesses are included. In respect of small businesses, it is those that are operating from former dwelling-houses. In reality, very few premises are affected—possibly fewer than 100 non-domestic premises are in scope—and the EPG and the EBRS of course provide equivalent support.

The noble Lord went on to ask about meter data. We are continuing to plan for and assess the use of personal data provided under the scheme documents in Northern Ireland and Great Britain. Obviously, as part of this work we will ensure that we comply with any relevant legal duties under the smart meters Data Access and Privacy Framework, so the data will be used only when necessary to calculate support payments and, of course, to ensure the good use of public money, which I am sure the noble Lord will support.

With that, I think I have answered all the relevant questions—

Lord McCrea of Magherafelt and Cookstown (DUP): I do not think I heard a response from the Minister on whether the payment that was promised—the £400—would be coming out to the people of Northern Ireland before Christmas.

Lord Callanan (Con): I cannot give the noble Lord a precise date for that now; we are working to implement it as quickly as possible. As soon as I can provide him with further information on that, I will do so. However, we are working as fast as possible, and we are aware of the urgency of the situation. We know that the money is required, and we will get it out as fast as we possibly can.

I commend the regulations to the Committee.

Motion agreed.

Committee adjourned at 5.13 pm.