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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

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House of Lords

Tuesday 22 November 2022

2.30 pm

Prayers—read by the Lord Bishop of London.

Child Hunger in Schools

Question

2.36 pm

*Asked by **Baroness Lister of Burtersett***

To ask His Majesty's Government what steps they are taking in response to research on increased child hunger in schools, including that published by Chefs in Schools on 18 October, which found that 83 per cent of primary school teachers said that children were coming to school hungry.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I thank Chefs in Schools for commissioning this survey. Under the benefits-related criteria, the Government provide a free healthy meal in term time to around 1.9 million children. Eligibility has been extended several times, and to more groups of children than under any other Government over the past half century. This has included the introduction of universal infant free school meals and further education free meals. We continue to keep eligibility under review.

Baroness Lister of Burtersett (Lab): My Lords, when so many teachers are reporting children coming to school hungry, with heartbreaking accounts of hungry children in tears or even stealing food because their parents cannot afford enough food, something is going very wrong, despite what the Minister said. Does she accept the evidence that hunger adversely affects children's ability to learn and their health and well-being? Given all the evidence, why do the Government reject the growing calls for free school meals to be extended to the 800,000 children in families on universal credit who do not qualify? At the very least, why do they not inflation-proof the net earnings eligibility limit of £7,400, set in 2018?

Baroness Barran (Con): Well, of course the Government accept that, if children are hungry, it makes it harder for them to learn. But I point out that the survey looked at a relatively small number of teachers—around 520—while there are 250,000 primary school teachers in our schools. To reiterate my first Answer, the number of children receiving free school meals is the highest that it has ever been, and the Government's strategy has been to support the disadvantaged in this cost of living crisis. There are ways of doing that; the noble Baroness is familiar with the energy support package and other measures that we have taken so that no child should have to go hungry.

Baroness Armstrong of Hill Top (Lab): My Lords, has the Minister noticed the appalling rise in the number of children who are now below the poverty line in the north-east of England? Up until 2010, there was a decrease in the number of children who were in that category in the north-east, but the number has risen more than in any other region and is now the highest in the country. This is shocking and of course affects their school performance and future prospects. Along with going hungry, that is something no Government should accept. What will the Government do about it?

Baroness Barran (Con): Since day 1, the Government have been clear that our absolute priority is levelling up opportunity across the country, including, of course and importantly, in the north-east. I understand the noble Baroness's concerns, which are shared by my ministerial colleagues. But I point her to the £12 billion in direct support that we are targeting to the most vulnerable families in 2023-24.

Lord Bird (CB): The point that more people now have school dinners is actually wrong because, when I was a young boy in the 1950s and 1960s, we had free school dinners, olive oil capsules and milk—all the things that children need now. So could the Minister consider going back to those old days?

Baroness Barran (Con): The noble Lord reminds a number of us of our schooldays, although I cannot remember the olive oil capsules—anyway, they sound very healthy. More seriously, the Government are thinking about this, not only in term time but in the holidays with our holiday activities and food programme, making sure that the children who need it most get the support that they need.

Lord McLoughlin (Con): Can my noble friend the Minister—not wanting to go back to the 1960s, when people were given free school meals, but looking to the future—say how schools have expanded the breakfast clubs that are available? Can she also say a little more about this survey? Did I hear correctly that she said it was based on 500 teachers out of about 200,000?

Baroness Barran (Con): We genuinely welcome every bit of research that helps us understand the issues that families are facing. As my noble friend picked up on, I was making the point that, in this case, the survey sample was just over 500 teachers in primary schools—and, overall, we have about a quarter of a million of them. In relation to breakfast clubs, we have invested £24 million over the last two years in supporting school breakfast provision. That again is targeted absolutely at the most disadvantaged children, making sure that it reaches those who need it.

Lord Newby (LD): My Lords, the Minister said in answer to an earlier question that no child should have to go hungry. I am sure that the whole House agrees with that, but the truth is that, every day, tens of thousands of children go hungry because they come from poor households but are not eligible for free

[LORD NEWBY]
school meals. Unless eligibility is extended to children from families in receipt of universal credit, there is no way that, in many cases, children will be going to school without being hungry. Would the Minister accept that that is the truth and use it for the basis of future policy development?

Baroness Barran (Con): I will say two things in response. First, of course we will keep the policy under review. But I am sure that the noble Lord would accept that you cannot take funding for free school meals separately from other elements of support for vulnerable families. Secondly, the point that I have been making is that the support for those families, under this Government, has been targeted and extensive.

Baroness Wilcox of Newport (Lab): My Lords, the food strategy of just this year said that it hoped it would spark a school food revolution. This has not happened. The Chefs in Schools report makes for stark reading and includes shocking revelations about the sheer scale of child hunger. When will the UK Government follow the Welsh Labour Government's lead in providing breakfast clubs and investing in all our children?

Baroness Barran (Con): I have already referred to the point about breakfast clubs. The Government are already investing in breakfast clubs and we remain open to new evidence, but our focus is on the most vulnerable.

Lord Laming (CB): The Minister well understands that the children who are hungry at school may well have other vulnerabilities, and therefore the one point of contact between the child and the state is their school. Could the Minister continue to do all that she is doing—I know she is doing a lot—to make sure that schools are aware of looking at the whole child and not just thinking about academic subjects, important though they are?

Baroness Barran (Con): The noble Lord, as ever, makes an important point. We really are looking at that closely, not just in a school setting but, as importantly, in relation to early years and nursery settings. He will be aware that, post Covid, many children are arriving at school who are not school-ready in the way that we expected, and we are looking at that.

Baroness McIntosh of Pickering (Con): My Lords, locally sourced food could be served in schools and other local authority institutions such as prisons and hospitals. If 50% of all the food served in school meals was locally sourced, would this not reduce the cost of production?

Baroness Barran (Con): I am more than happy to take that back to the department to look at. We are very focused on the standard of school food and supporting schools to give children a truly nutritious lunch each day.

Lord Browne of Ladyton (Lab): My Lords—

Lord Storey (LD): My Lords—

The Lord Privy Seal (Lord True) (Con): If I may, I will point out that we have heard only once from the Liberal Democrat Benches; others have been heard twice.

Lord Storey (LD): My Lords, of course no child should go starving. Would the Minister not consider extending the coalition's policy of giving free school meals to all key stage 1 children to key stage 2, and at secondary school—key stage 3—ensure that every pupil whose parents are on universal credit gets a free school meal?

Baroness Barran (Con): I think I have tried to answer that question in a couple of ways. It comes down to: should the Government be funding a number of separate things to support parents or should the Government be putting money in the hands of parents so that they can make the choices that are right for their families? This Government believe in the latter.

NHS Waiting Times
Question

2.46 pm

Tabled by ***Lord Hunt of Kings Heath***

To ask His Majesty's Government what steps they are taking to improve NHS waiting time performance.

The Lord Speaker (Lord McFall of Alcluith): For the second time in a week or so, I do not notice the noble Lord in his place but I believe that the noble Baroness, Lady Merron, will kindly step in again.

Baroness Merron (Lab): With the permission of my noble friend Lord Hunt of Kings Heath, and on his behalf, I beg leave to ask the Question standing in his name on the Order Paper.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): In February 2022, we published the elective recovery plan, setting ambitious targets to recover services, backed by more than £8 billion in funding from 2022-23 to 2024-25 and supported by a £5.9 billion investment in new beds, equipment and technology. We are providing an additional £3.3 billion in 2023-24 and 2024-25 to ensure that the NHS can take rapid action to improve performance, including urgent and emergency care and getting elective performance back towards pre-pandemic levels.

Baroness Merron (Lab): My Lords, last week's report from the National Audit Office laid waste to the idea that all of the NHS's current woes are down to the pandemic. By 2019, NHS England had not met the elective waiting time performance standard for four years, nor its full set of eight operational standards for

cancer services for six years. Following the Government's announcement last week of a review into NHS efficiency, can the Minister confirm whether the Government are still committed to their 18-week target between GP referral and consultant-led treatment, as well as their other targets around A&E waiting times, ambulance responses and cancer treatment?

Lord Markham (Con): I thank the noble Baroness. With reference to past performance, that is what the spending increases were all about. They were an acceptance that we need to do more in this space, and we are doing more. The pandemic clearly brought unprecedented circumstances and that is why we have announced more funding to get on top of that in the next few years, tackling all the areas that the noble Baroness mentioned in terms of A&E wait times, GPs and all the rest.

Baroness Chisholm of Owlpen (Con): My Lords, we know that part of the problem is that ambulances are going to A&E departments but are not able to deposit their patients in A&E. We know that there is a blockage at the other end in social care, with people not being able to be discharged fast enough back into the community or into care homes. Until that is sorted out, I cannot see how we are ever going to sort out the waiting lists. Can my noble friend the Minister tell me what might happen that will perhaps make those problems better?

Lord Markham (Con): I thank my noble friend. Adult social care, as many have heard me say before in this House, is a crucial part of this, because it is all about the flow. That is why I was delighted that, in addition to the £500 million discharge fund for this year, we have secured up to £2.8 billion of funding for next year. That is in addition to the 7,000 extra beds and the tailored help for the 15 worst-performing hospitals with the ambulances, so we have a complete answer to all these areas.

Lord Patel (CB): My Lords, patients with complex and long-term conditions are finding it increasingly difficult to access the care that they need, resulting, as the British Heart Foundation report indicated, in 10,000 excess deaths in people suffering from chronic cardiac conditions. The Minister referred recently to the system being a failure. Does he agree that we need a system that develops care for these patients, one that is accessible and timely, in community and primary care settings?

Lord Markham (Con): I agree with the noble Lord that cardiovascular is one important area in which, over the last few years, patients have not received the number of check-ups that we want, so it is an area on which we want to focus—not just through checks in GP centres but in the community. We all know that it is very easy to take blood pressure and have blood pressure machines. As a team, we are looking at precisely those kinds of measures to make sure that we can get the preventive screening in up front, so we can identify these people before problems occur.

Baroness Brinton (LD): The Minister referred to the worst-performing hospitals and ambulance trusts, but news from the *Health Service Journal* today has shown that the longest waiting times are mainly in rural, deprived areas, with an elderly population that is much higher than in the rest of the country. Can the Minister say what special resources will be provided for those areas—rather than just using words like "worst", which punish them unnecessarily?

Lord Markham (Con): I thank the noble Baroness. If I have used a poor choice of words, I apologise. What we are looking at is identifying the areas where we most need to focus resources to solve wait times. That might be because it is a rural area or it might be, candidly, because it is not performing so well. The point that I was trying to make is that there is targeted support. We spent £150 million on ambulance performance and new facilities last year, and it is something that we will continue to do if those rural areas and other areas need the spend.

Lord Watts (Lab): My Lords, will the Minister deal with the issue of 18 weeks? Are the Government still committed to that policy? If they are, when does he think it will be achieved?

Lord Markham (Con): We are committed to timely appointments. The whole point about the community diagnostic centres that were set up—and we have set up more than 90—is so that patients can be referred straight to those centres and get their screening and tests straightaway, getting them more quickly and, I hope, getting peace of mind more quickly as well.

Baroness Meacher (CB): My Lords, I very much welcome the recent change, which enabled GPs to refer patients direct for assessments instead of having to refer to a consultant, and for the consultant then to refer, which I think saved about 30 days. What other procedural changes are the Government considering that would further reduce waiting times, without actually costing more money, and save doctors time—for example, patient self-assessments in the home, which we pioneered in east London 30 years ago?

Lord Markham (Con): I thank the noble Baroness. There are a number of areas where we can do this. I point to the possibility for home testing a lot more. Covid was a perfect example, whereby it became commonplace. Rather than samples being sent away to a laboratory, we came up with lateral flow devices and were able to do it cheaply and pretty accurately, although not quite as accurately. That is a perfect example of using technology to do more home-type diagnosis.

Lord Kamall (Con): My Lords, in learning from best practice in other countries, are my noble friend, the department or the NHS aware of the pioneering work of Dr Shetty in Bangalore, who has pioneered production-line surgery for certain procedures? Are the Government considering that at the moment? If not, why not?

Lord Markham (Con): I thank my noble friend for that. While I am not familiar with that exact case, I saw a very good, probably quite similar, example in

[LORD MARKHAM]
Chase Farm Hospital, which has four operating theatres in a sort of barn. It has a complete production line for elective hip replacements and so on to get that capacity and efficiency.

Lord Kakkar (CB): My Lords, I draw noble Lords' attention to my registered interests. The Minister will be aware that innovation, be it therapeutic or in models of care, is essential to improve efficiency and efficacy in the delivery of NHS services. Is he content that there is sufficient protection in the NHS budget to drive that adoption of innovation and ensure that staff are properly trained for its application?

Lord Markham (Con): I thank the noble Lord. As I have said previously, innovation, and being able to back that up with investment, is key. The House will see that we have protected a lot of the research funds so that we can do exactly that. That is the direction of travel. The new hospital programme, which I look after, is very much about looking at best practice and innovation around the world and making sure that we employ the best in our new hospitals and across all our trusts.

Lord Reid of Cardowan (Lab): My Lords, the Minister is relatively new to his department, but even in the number of weeks he has been there, he must recognise that, whatever statistics on inputs he announces at the Dispatch Box, it is not working. There was a time, two decades ago, when we managed as a Government to reduce the maximum waiting time from three years to 18 weeks and the numbers on the waiting list from 1 million to 500,000. There are now 7.2 million on the waiting list—incidentally, there were 4.2 million before Covid. Whatever the Government have been doing for 10 years is not working and people are remaining in pain for prolonged periods, quite apart from the effect on the economy. Will the Minister institute an immediate review centred particularly around patient choice, which is the only thing that will drive down waiting times and waiting lists? It should never have been abandoned in the way it has been by the Government.

Lord Markham (Con): I believe that customers—call them patients—should drive performance and improvements. Inputs are important, but I totally agree that in a performance culture outputs are very important. I give credit to the work done in the early 2000s, from which I have tried to learn in the short time I have been here, to really bear down and create a performance culture to get waiting lists down by holding trusts, and now the new ICB CEOs, to account. That is definitely the direction of travel, and I am very happy to learn from things that have worked well in the past.

Renters Reform Bill

Question

2.58 pm

Asked by ***Baroness Thornhill***

To ask His Majesty's Government when they will be bringing forward the promised Renters Reform Bill based on the White Paper *A fairer private rented sector* published on 16 June.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): The Government's consultation on introducing a decent homes standard to the private rented sector closed on 14 October. We are considering the responses carefully and will publish our response to the consultation as soon as we can. In the meantime, the Government have committed to ban Section 21 no-fault evictions to protect tenants and will introduce a renters reform Bill in this Parliament.

Baroness Thornhill (LD): I thank the Minister for that definitive Answer. As we were promised it in 2022-23, this definitely feels like a disappointing push-back of the much-needed reform of the private rented sector, which I and many others look forward to, as there is much work to do. For example, last week in the Budget the Chancellor said that rent hikes of 11% were unaffordable and acted to cap rent rises faced by social tenants. However, private landlords are still free to charge the going market rent and, according to Zoopla, this has increased nationally by 12% in the past year. In the same Budget, the Government chose to freeze—

Noble Lords: Oh!

Baroness Thornhill (LD): I will get to my question; I note that noble Lords have been more liberal with other speakers. In the same Budget, the Government chose yet again to freeze housing benefit and local housing allowance levels. Does the Minister believe that this is fair, as it disproportionately affects private renters? Are there plans to review these levels? Given that private tenants are likely to pay higher rents than their social sector counterparts, does she agree that they too deserve protection from unaffordable rent rises?

Baroness Scott of Bybrook (Con): My Lords, the Government do not support the introduction of rent controls in the private rented sector. Historically, evidence suggests that this would discourage investment in the sector and lead to declining property standards as a result, which would not help either landlords or tenants. Recent international examples also suggest that rent controls can have an invertedly negative impact on the supply of housing and may encourage more illegal subletting.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, I am aware of many landlords who own one property which they use for letting purposes, and it amounts to their sole income. Does the Minister therefore agree that a one-size-fits-all rent freeze could damage those who rely on rental income to service their ever-increasing mortgages, thereby damaging the rental sector altogether?

Baroness Scott of Bybrook (Con): My Lords, I think that is exactly what I have said. We need a balance here, in order for landlords to still provide this sector, which is an extremely important sector, and in the renters reform Bill that is coming forward I am sure that we will discuss that in further detail.

Lord Carrington (CB): My Lords, whilst welcoming an enormous amount that is in the proposed legislation, I am very concerned about the capacity of the courts to undertake the justified evictions under Section 8. Currently, the waiting times are simply enormous, and this is putting off a lot of private landlords.

Baroness Scott of Bybrook (Con): The noble Lord makes a very good point. When court action is needed for landlords to gain possession of their properties, the courts should provide fair and efficient access to justice. We are working with the judiciary, the Ministry of Justice and HM Courts & Tribunals Service to introduce reforms to make the possession process much more efficient for landlords, while maintaining essential protections for tenants built into the court processes.

Lord Blackwell (Con): My Lords, I declare my interest as an owner of rented properties. Following on from that last question, will my noble friend undertake that, in seeking to protect tenants from a minority of unscrupulous landlords, they will not make it impossible for proper landlords to regain their properties from tenants who may be behaving inappropriately?

Baroness Scott of Bybrook (Con): My noble friend is right that we need a balance in this, and the way we are going to get a balance is through good debate on the Bill that is coming forward in this Parliament. We will have all those discussions and, hopefully, we will get something at the end which is balanced—for landlords but also, most importantly, for tenants.

The Lord Bishop of London: My Lords, rents in London are up to double the level of rents elsewhere in the UK. Crisis has warned that the number of people sleeping rough in London has risen by a quarter in just one year, and more than half of those spotted on the streets are sleeping rough for the first time. What are the Government doing to prevent those who are struggling to pay their increasing rents from falling into homelessness?

Baroness Scott of Bybrook: My Lords, we have a number of interventions that can be used that the Chancellor brought in, both for people that are struggling with their rents and people who are struggling with household bills as a whole; that was all laid out in the Chancellor's Statement last week. As far as homelessness is concerned, we are providing local authorities with £316 million in the homelessness prevention grant funding, and we are encouraging local authorities to use that flexibly, because it will not be the same in London as it is in other areas of the country.

Baroness Hayman of Ullock (Lab): My Lords, the Government's own White Paper admits that the private rented sector

"offers the most expensive, least secure, and lowest quality housing"

to nearly 4.5 million households. Will the Government introduce a new renters' charter to give tenants more choice and more control over their homes?

Baroness Scott of Bybrook (Con): My Lords, if it is in the White Paper, we will see whether it comes through into the Bill and will discuss that. I am sure that if the noble Baroness tables any amendments, we will discuss those in full.

Lord Best (CB): My Lords, I recognise that the Government are not going to introduce a freeze for the private rented sector or the social housing sector, but there is a cap on rents for social housing landlords, housing associations and councils. That cap means that they will not be getting the revenue they expected if they have the full increase in their rents. The main beneficiaries of this are the Government and Treasury, because housing benefit will be reduced—so the autumn Statement tells us—by £650 million. Will this windfall gain of £650 million for the Treasury over the next five years be recycled or reinvested back into social housing, where it is very badly needed, to upgrade the stock and build new homes?

Baroness Scott of Bybrook (Con): The Government are already investing in social housing; we are putting £11.5 billion into building social housing. Some of the money from the windfall, as the noble Lord called it—I would not call it that—will go into that. There is also support going to local authorities to support those in the private rented sector who might have problems this winter and whom we might need to help out.

Lord Leigh of Hurley (Con): My Lords, following the tragic death of Awaab Ishak due to fungus growing in a family apartment, will my noble friend the Minister agree to a review of the Homes (Fitness for Human Habitation) Act 2018 to stop this ever happening in the private rented sector?

Baroness Scott of Bybrook (Con): As we discussed in a lot of detail last week, this was an extremely sad and very disturbing case. On whether we will look at the healthy homes standard again, I think we will now wait to see if it is going to be in the renters reform Bill. In the meantime, the Secretary of State wrote to all local authorities this week to insist that they look at their stock, so that we as a department and a Government know exactly what is happening in our social housing stock as far as mould and damp are concerned.

Baroness Lister of Burtersett (Lab): My Lords, one reason why low-income tenants are struggling with their rents is that the local housing allowance has been frozen. Can the Minister explain why?

Baroness Scott of Bybrook (Con): We have to understand that this country is in an economically difficult time, and very difficult decisions have to be made. If we look at what was given to very vulnerable groups of people in the Statement last week, I think noble Lords will agree that the Government are doing all they possibly can—

Noble Lords: Oh!

Baroness Scott of Bybrook (Con): No—the Government are doing all they can to support these people and help them, both now and if they have problems as the winter goes on.

NHS: Waiting Lists and Increased Spending
Question

3.08 pm

Asked by ***Lord Balfe***

To ask His Majesty's Government what assessment they have made of the statement by the Institute for Fiscal Studies on 15 November that NHS waiting lists have risen in 2022 alongside increased spending on NHS England.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): The Government continually assess data and reports on waiting lists from a wide range of sources, including the Institute for Fiscal Studies. The IFS statement confirms that the Government are right to support and challenge NHS England to continue to identify and address factors that constrain further activity, and to reduce waiting lists. The Autumn Statement announced a further £3.3 billion for 2023-24 and 2024-25 to enable rapid action to improve emergency, elective and primary care performance.

Lord Balfe (Con): My Lords, I thank the Minister for his reply. Last week, the Institute for Fiscal Studies said that

"NHS spending in England is, in real terms, 12% above its 2019 level. Yet it is getting fewer people off waiting lists and into hospital treatment than it was … in 2019."

We used to have a slogan: "Labour isn't working". The NHS is no longer working. The Royal College of Obstetricians and Gynaecologists has asked me whether we could ring-fence its money. I do not think we can. Can some of the hundreds of civil servants on six-figure salaries in his department get down to sorting out what is clearly a dysfunctional department?

Lord Markham (Con): My noble friend is correct. Efficiency is very important, as pointed out in a previous Question. I have done some work in this space, and there are some trusts that are absolutely on the path to the 130% increase in elective treatments compared with 2019, for which the funding is in place. There are other trusts that are not. Clearly, my job and the job of all the department's civil servants is to understand why that is and to challenge those trusts that are not; to support them where they need that support; and to ensure they are introducing best practice and innovation in order to make sure they all get back towards that level. There are some very good performers and others that are not so good.

Lord Stirrup (CB): My Lords, we hear a lot in this House about the recruitment of doctors and nurses. However, any organisation facing the kind of challenges confronting the NHS would ordinarily be doing its utmost to retain its talent. The NHS, in many ways, seems to be doing the opposite. When will it develop a comprehensive strategy for the retention of its experienced clinical personnel, without whom it would simply be unable to function?

Lord Markham (Con): I thank the noble and gallant Lord for his question. I was delighted to see in the Chancellor's Statement a commitment to a workforce strategy for five, 10 and 15 years, something that all of us in this House have been asking for. It will look at all the needs in respect of recruitment and, crucially, retention. That is very much part of the agenda.

Lord Woodley (Lab): My Lords, the current shortage of 60,000 nurses is devastating, and its impact on waiting lists even more so. It is obvious—to me, anyway—that the main cause of this staffing crisis is low pay, with many nurses opting to leave for jobs in supermarkets and other sectors for better wages. Does the Minister accept that the best way to tackle these problems is to allow more qualified nurses into the UK from the EU and beyond, grow the economy and fill the gaps in the skills that the NHS needs? Most importantly, we need to pay our heroes, who we all clapped for, a decent living wage to live on.

Lord Markham (Con): I thank the noble Lord. For the record, there are 29,000 extra nurses since 2019-20, so we are well on course for the 50,000 increase. At the same time, we do need to recruit from overseas, and that is very much part of the plan. Again, this will go into the workforce strategy, but I completely agree that we should be looking to recruit from around the world, which we are. I am delighted that we are adding more and more people to the essential workers list, so to speak, to enable us to do that, because we all know that the workforce plan will show that we need to recruit people and retain them.

Baroness Brinton (LD): My Lords, the last time the figure of 92% of patients being seen within 18 weeks was achieved was in 2016. Since then, the numbers who are waiting have doubled: it is now 7.1 million. What does the Minister say to the 16 year-old in Shrewsbury who has just been told that he has to wait nearly three years for a first appointment at his local hospital? The hospital says that it has recruitment problems. When will we see the details of this workforce plan, particularly for rural areas?

Lord Markham (Con): I thank the noble Baroness. As I say, we have committed to that workforce plan, and it will be detailed. We will look at every place in every part of the country because we understand that that is needed, and it is part of the critical plan to get on top of the 7.1 million waiting list. As I think we have accepted, it is not a quick win; it will get higher before it gets lower again. Clearly, however, we need to get on top of it, and we are focused on it. It is very much about the plan and the new spending plans that we put in place to address it.

Baroness Wheatcroft (CB): My Lords, last year NHS trusts paid an interest bill of almost £500 million on PFI hospital contracts. This year, that bill will rise

again. Can the Minister tell us what proportion of the increase in NHS budgets will go just to pay interest charges on these dreadful contracts, and what plans he has to try to renegotiate them?

Lord Markham (Con): I thank the noble Baroness; I will need to get back to her in writing on the detail of that. However, looking into the PFI contracts is very much part of my agenda; I had a meeting on that just last week, and we are reviewing it.

Lord Brownlow of Shurlock Row (Con): My Lords, with the increasing conflict between inputs and outputs that the noble Lord, Lord Reid, mentioned earlier, does my noble friend the Minister agree that the need and time for a royal commission on the NHS is fast approaching?

Lord Markham (Con): I thank my noble friend. To be honest with him, I am hoping we can act quicker than that—that is absolutely the plan. I can tell him that we know the areas where they are performing and they are on the elective recovery plan, and we know those that are not. I do not need a royal commission to tell me that. To my mind, it is about understanding what those hospitals are doing well and putting in place focused action and support to help those that are behind the plan.

Baroness Merron (Lab): My Lords, on an earlier Question, I and other noble Lords asked the Minister if the Government were still committed to their target of 18-weeks between GP referral and consultant-led treatment, and their other targets for A&E waiting times, ambulance responses and cancer treatment. I offer the Minister another opportunity to say to your Lordships' House whether this is the case.

Lord Markham (Con): I thank the noble Baroness. As I am sure the House is aware from the statements of the Chancellor and the Health Secretary, in a lot of areas we are trying to make sure that we place fewer targets on the health professions and GPs and allow them to manage. At the same time, we make sure that if they are not performing, action is taken, but generally we trust them to manage. The beauty of Google is that I have been able to check the 18-week target, and it is a statutory commitment, so I can give that assurance. However, on the others, we are making sure that we look at the performance measures that really matter.

Lord Howarth of Newport (Lab) [V]: My Lords, whatever efficiencies are achieved, given that the growth in demand for NHS services will continue to exceed the growth of our ailing economy, should not the Government be making a major commitment to preventive strategies to stop people becoming ill or injured in the first place? With the Government's reversion to austerity, however, has not the prospect deteriorated for the investment needed in public health and non-clinical approaches such as the successful warm home prescription pilot? How can we hope that the Government will systematically address the social determinants of health, such as poor housing?

Lord Markham (Con): I thank the noble Lord, and I agree that prevention is better than cure. I refer to the earlier Question and analysis by Chris Whitty, the Chief Medical Officer, who pointed out his concerns about cardiovascular health arising from people not having had the check-ups they should have had during the pandemic. I completely agree that there are some very cost-effective measures which can really help with the prevention agenda, such as heart blood pressure machines and lateral flow screening devices that can be sent to homes. We are looking at that issue, because I agree that prevention is better than cure.

Newport Wafer Fab

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 21 November.

"On 25 May, the then Secretary of State for Business, Energy and Industrial Strategy called in Nexperia's acquisition of Newport Wafer Fab for a national security assessment under the National Security and Investment Act 2021. Following further detailed and thorough consideration, on 16 November, I exercised my powers under the Act to make a final order requiring Nexperia to divest of at least 86% of its shareholding in Nexperia Newport, formerly Newport Wafer Fab.

My decision follows a quasi-judicial process that ensures that all relevant matters are taken into account and that the decision is made fairly. I am sure that the House will understand that I am unable to go into further detail about the national security assessments and implications that informed the decision, nor can I go into further detail about the final order.

What I can say is that the final order requires Nexperia to follow a set process leading to divestment within a specified period. This order has been shared with Nexperia and I published a notice summarising it as well. My officials, with the support of other Departments, will actively monitor compliance with the requirements set out in the final order and ensure that the national security risks continue to be mitigated effectively.

The National Security and Investment Act enables us to continue to champion open investment while protecting national security. Hon. Members can be assured that although we are unashamedly pro-business, the Government will not hesitate to act where there is a risk to UK national security. The UK has a number of strengths in the semiconductor sector, including in south Wales, and the Government aim to set out our semiconductor strategy soon to enable this technology to further support the global economy and national security."

3.19 pm

Lord Lennie (Lab): My Lords, the House of Commons Foreign Affairs Committee found no evidence to suggest that a review into the acquisition of Newport Wafer Fab had taken place, yet Politico reports that the Government's National Security Adviser concluded that there were not enough security concerns to block it. Will the Government confirm on the record whether the review that was promised by the then Prime Minister

[LORD LENNIE]
Johnson took place or not? The same Foreign Affairs Committee warned that the sale of Newport Wafer Fab potentially compromises national security and is the loss of a prized asset to a competitor amid a global shortage of semiconductors. Given the sale has not been blocked, what steps are the Government taking to mitigate these risks?

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, obviously, there is a limit to what I can say about this, but I will endeavour to be as helpful to the House as possible. I certainly can confirm to the noble Lord that the review did take place and was one of the factors that the Secretary of State took into consideration when he made his decision. It was made in a quasi-judicial manner and the Secretary of State considered that a risk to national security had arisen from the trigger event, which is why he made the order that he has.

Lord Fox (LD): My Lords, I think we welcome this decision. When it comes to the National Security and Investment Act, the Minister is the best authority because, while Secretaries of State have come and gone, the Minister took it through this House and he is still here. Perhaps he can add some perspective, because at the outset of this case the Minister stood up and said that the technology in Newport Wafer Fab was not worthy of being called in through the National Security and Investment Act. Over time, that has evolved, so what has changed? Is it the Government's view of Newport Wafer Fab or the Government's view of China?

Lord Callanan (Con): I am not sure that I said that, but I will certainly look back through the record. This has been going on for a long period. The Secretary of State has taken into account all the relevant factors, as he is obliged to do under the legislation. The noble Lord is right; we debated it extensively, but this decision has been taken purely on the grounds of national security. That is what the Secretary of State is required to do. That is what he has done, taking all the relevant factors into consideration, and he has made a final order in this case.

Lord Wigley (PC): My Lords, which is the greater security threat: that the technology at Newport goes into Chinese hands or that we lose the overall capacity to be able to manufacture in this sector?

Lord Callanan (Con): The noble Lord will know that I cannot go into specific details of this case, but I am delighted to say that we have an extensive range of companies in the UK manufacturing and producing in this area. South Wales is one of the notable success stories with the catapult acceleration plans that we have there.

Lord Patel (CB): My Lords, with the sale of a major semiconductor company of the United Kingdom and with no gigafactory for the manufacture of batteries, what effect will this have on our ability to manufacture electric vehicles?

Lord Callanan (Con): I am looking forward to the proper debate we will have on the report on electric battery vehicle manufacturing from the noble Lord's committee later this week. We have over 100 companies active in this area in the UK and some excellent research and development and manufacturing facilities. This decision was not taken on any industrial policy matter. As is required under the legislation that we debated extensively and that the noble Lord, Lord Fox, referred to, the decision was taken on national security grounds alone.

Lord Pickles (Con): My Lords, this is an unusual case in so far as it is retrospective. My understanding is that the National Security and Investment Act came into being only in January. In another place the prospect was raised of other companies being in the control of hostile countries. What process is in place to review that, in terms of not only future hostile takeovers but ones that might currently exist?

Lord Callanan (Con): My noble friend is right that the Act came into operation in January. There were some retrospective elements in that. A trigger event occurred and therefore the Secretary of State could exercise his power. When future trigger events occur, we will look at every transaction based on national security implications, as is required under the Act.

Lord Purvis of Tweed (LD): My Lords, the final order stated that the security risk was the reintroduction of semiconductor production at that site. Now that have a £39 billion trade deficit with China, what are the Government's assessments of the key sectors of the UK economy which are vulnerable to Chinese technology on the same basis as this final order?

Lord Callanan (Con): As was printed in it, the final order was based on the technology and know-how that could result from a potential reintroduction of compound semiconductor activities at the Newport site. The noble Lord has read the final order. As I said in a previous answer, this has no implication for any other policies. Every one of these transactions is looked at on national security grounds in the context of the legislation that was passed giving quasi-judicial power to the Secretary of State. It has no implication for any other sectors of the economy. Every transaction is looked at on an individual basis.

Lord Forsyth of Drumlean (Con): My Lords, I bought a new Land Rover in July, and I am still waiting for a second key because of the shortage of chips. Given the Chinese aggression towards Taiwan, and given its dependency, surely this decision is to be welcomed. We should aim for a degree of self-sufficiency, as far as is possible, in the production of chips, given our determination to be a country which is secure against totalitarian states and their aggression.

Lord Callanan (Con): I am sorry to hear about my noble friend's Land Rover key; I hope it is restored to him as quickly as possible. We have a very active semi-conductor manufacturing and research and development

facility in this country. We have over 100 companies actively working with compound semiconductor devices. Around 5,000 UK companies, 90% of which are SMEs, are designing and making electronics components devices, systems and products. The Chancellor announced an increase in funding in this area. The south Wales cluster is particularly important. We are spending hundreds of millions of pounds promoting it. We are very proud of it. This has no implications beyond that specific transaction, which was considered on national security grounds under the legislation, as the Secretary of State is required to do.

The Earl of Erroll (CB): Does the Minister agree that it is not just a matter of intellectual property or the number of research and development staff, but that we must manufacture stuff and not be totally reliant on foreign supplies? Reinforcing what the noble Lord, Lord Forsyth, just said, it is a bit like being unable to grow crops and feed your people. If we cannot manufacture, we will collapse because we cannot import the stuff. It could be bog standard chips or bog standard anything. We need to get our manufacturing capability up in this modern world, where there will be a shortage of all this stuff.

Lord Callanan (Con): I agree with the noble Lord. That is why in 2016 we set up the Compound Semiconductor Applications Catapult, with £50 million of funding. Since then, it has initiated over £100 million of projects and collaborative projects which have generated or saved over 4,700 jobs in the UK. Therefore, we are very active in this space. This decision has no implications for that investment, which will continue. It was a quasi-judicial decision on national security grounds, which is what the Secretary of State is required to do.

Lord Adonis (Lab): Are there any other national security investigations of this kind under way?

Lord Callanan (Con): The noble Lord knows that I cannot comment on other live cases until final orders are made. I can give him some figures from the National Security and Investment Act report, published in March. The NSI unit received 222 notifications and 17 applications were called in. Since then, we have made 10 final orders, and acquisitions have been unwound or blocked on three occasions.

Lord Howell of Guildford: My Lords, there has been some change of view over time about this case, so might we expect further changes of view in other areas where the Chinese are deeply involved—for instance, in civil nuclear power, where they are embedded? There have been doubts about that all the way along. Can the Minister assure us that when and if a change of view is beginning to develop, or new facts come to light, he will keep us informed on this change in policy in the way that our entire nuclear programme is going?

Lord Callanan (Con): I do not accept that there has been a change in policy. The policy is the National Security and Investment Act, which this House passed. If and when other trigger events occur, there will be a full investigation by the NSI team in my department and the Secretary of State will take a quasi-judicial decision, as he has done in this case.

Fleet Solid Support Ships
Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Friday 18 November.

"On 16 November, my right honourable friend the Secretary of State announced that Team Resolute—consisting of Harland & Wolff, BMT and Navantia UK—has been appointed as the preferred bidder in the competition to build the fleet solid support ships. Having appointed Team Resolute as the preferred bidder, the Ministry of Defence expects to award it a contract around the end of this year. That appointment follows on from the award to BAE Systems in Glasgow of the £4 billion contract for five Type 26 frigates earlier this week. Both are excellent news for UK shipyards and the shipbuilding skills base in our country.

Those crucial vessels will provide munitions, stores and provisions to the Royal Navy's aircraft carriers, destroyers and frigates deployed at sea. Ammunition and essential stores will ensure that the mission can be sustained anywhere around the world. The contract will deliver more than 1,000 additional UK shipyard jobs, generate hundreds of graduate and apprentice opportunities across the UK, and a significant number of further jobs throughout the supply-chain. Team Resolute has also pledged to invest £77 million in shipyard infrastructure to support the UK shipbuilding sector.

The entire final assembly will be completed at Harland & Wolff's shipyard in Belfast to Bath-based BMT's British design. The awarding of the contract will see jobs created and work delivered in Appledore, Devon, Harland & Wolff, Belfast, and within the supply chain up and down the country. This announcement is good news for the UK shipbuilding industry. It will strengthen and secure the UK shipbuilding enterprise as set out in the national shipbuilding strategy, and I commend this decision to the House."

3.31 pm

Lord Coaker (Lab): My Lords, the Defence Select Committee said that Ministers should ensure that warships are built in UK yards and that this designation continues to include fleet solid support ships. Welcome as these new ships are, why did the Government not accept the Team UK bid? Team UK's bid showed 6,000 more UK jobs. How many jobs have been lost as a result of not accepting that bid, and how many of the ships will be made and associated work done in Spain? Time and again, Parliament has called for the UK Government to fully support our sovereign defence capability. Is not this just another missed opportunity to fully support the British defence industry?

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): I do not agree with the noble Lord's assessment of a very exciting opportunity for British shipbuilding. The bulk of these ships are going to be

[Baroness Goldie]
built within the UK, particularly in the shipyard of Harland & Wolff. It is a tremendous coup for Team Resolute that they have succeeded in this. There will be extensive investment in infrastructure in Harland & Wolff's yard. They are warships, but that is precisely why the majority of these ships will be built in the UK. He suggests that all these complex programmes and platforms are built entirely in a single country, but that is not the case, such is the technical complexity nowadays. For example, the F35, a US aircraft, is partly built in the UK. Our Dreadnought submarines and the US Columbia-class submarines will share a common missile compartment, built in both the United States and the UK. We should be celebrating what is very good news for the British shipbuilding industry.

Lord Wallace of Saltaire (LD): The Minister in the other place put great emphasis on the extent to which the partnership with the Spanish shipbuilder would provide technological transfer and additional skills for Harland & Wolff and other British shipyards. Can the Minister here say a little more about that? If that is indeed part of the package, that is useful for the British in rebuilding our shipbuilding capacity. If it is not, we are perhaps being sold a pup. She said that in future we have to build things jointly with our partners. The Commons Minister went further than that and said that an obsessive and excessive concern with sovereign capacity and sovereignty as such—Britain doing everything alone—is

"some sort of prehistoric antediluvian approach".—[*Official Report*, Commons, 18/11/22; col. 965.]

Does the noble Baroness agree? If so, would she perhaps like to say that to a few members of the European Research Group?

Baroness Goldie (Con): What I would say is that Navantia is a globally acknowledged shipbuilding expert. We are very pleased to be able to draw on its skills. For example, the agreement we have reached with Team Resolute means a vital skills and technology transfer. A small team of Spanish shipbuilding experts will transfer to Belfast, and Harland & Wolff will benefit from that. On the wider issue of how we build warships there is a desire to ensure that, where there are sensitive security issues, the majority of warships will be built in the UK. That is what is happening here. The majority of the blocks and modules from which the ships will be assembled will be built in the UK at Harland & Wolff's facilities in Belfast and Appledore. Interestingly, some components will be manufactured at its sites at Methil in Fife and Arnish in the Isle of Lewis. I hope they have got their thermal vests out to prepare for the Isle of Lewis.

Lord Faulks (Non-Afl): My Lords, I wonder if the Minister could help the House with the position about the intellectual property in the design of these vessels.

Baroness Goldie (Con): The ships have been designed in the UK by BMT, a leading firm of naval architects. Intellectual property in the design rests with it. The Ministry of Defence does not generally seek to acquire ownership of intellectual property created by contractors undertaking work for the department. Rather, we seek to acquire free user rights that permit the department to use, modify and manage equipment as it sees fit through life, without infringing IP rights or incurring fees.

Lord West of Spithead (Lab): My Lords, while I am always pathetically grateful when we get an order for some ships, there are some real risks here. How big is the workforce at Harland & Wolff at the moment? When did it last build a ship there for the Royal Navy? Is it true that 60% by value of this contract will go to the Spanish firm, which effectively established its UK office just a matter of months ago?

Baroness Goldie (Con): As far as I understand it, Harland & Wolff currently expects the contract to support 1,200 shipbuilding jobs across its yards in Belfast and Appledore. As everyone is aware, Harland & Wolff has a strong reputation. It has been having a challenging time. As I said earlier, the extensive £77 million infrastructure investment will make a big difference to it and put it in a position where it will be poised to bid for future contracts.

Lord Browne of Ladyton (Lab): My Lords, before leaving the European Union and since, we have been told repeatedly that one of the advantages of coming out is that British ships will be built in British yards. The use of the active verb in these sentences is important. I looked closely at the Minister's answer to this Question in the House of Commons. He said that the ships would be assembled at Harland & Wolff. Where are these ships to be built? They are built in modules. Is the work to be in Britain or elsewhere? Is the bulk of this contract going to be abroad? The £77 million is welcome, as are the jobs, but what proportion of the contract is coming to the United Kingdom and what proportion is going to Spain? What other G7 country does this? None.

Baroness Goldie (Con): I can only repeat what I said in response to earlier questions: that the majority of these ships will be built in the UK. As I understand the technical situation, the majority of the blocks and modules from which the ships will be assembled will be built at Harland & Wolff's facilities in Belfast and Appledore. Again, I repeat that this is very good news for British shipbuilding, particular on the back of the recently announced Batch 2 of the five frigates at Govan. This is all indicative of the very good state of the British shipbuilding industry. I refer the noble Lord to what the chief executive of Harland & Wolff had to say:

"I am pleased to see the Government seize the last opportunity to capture the skills that remain in Belfast and Appledore before they are lost for good."

That is testament to the strength of this decision.

Lord Campbell of Pittenweem (LD): My Lords, is it a fact that the Government's dispute with the DUP had something to do with the choice of Harland & Wolff?

Baroness Goldie (Con): As the noble Lord is aware, when it comes to the procurement of complex contracts such as those in which the MoD is frequently engaged,

what matters is who has the skills, what the design looks like, and what offers to deliver well for the MoD and as a warship for the British shipbuilding industry.

Lord Hamilton of Epsom (Con): My Lords, surely the noble Lord, Lord Browne, is right: ships assembled in this country are made up of components from all over the world. This has been the case for some time now.

Baroness Goldie (Con): I observe to my noble friend that the vast majority of the build work will take place in the UK. There will be an element of the aft blocks built in Spain, but by far the majority of the shipbuilding work will be here. We should celebrate this. It is a matter of commendation not depression.

Baroness Hoey (Non-Afl): My Lords, I very much welcome the awarding of the contract to Harland & Wolff in Belfast. This was welcomed right across communities in Northern Ireland. Can the Minister give us an assurance that this will be the first of many contracts?

Baroness Goldie (Con): I thank the noble Baroness for her encouraging remarks and for accepting the real world in which we live. Her aspiration is laudable. It is always our intention in the MoD to support the indigenous industry as best we can. We have a good reputation and record for doing that. Let us see what the future holds.

Lord Mountevans (CB): My Lords, it behoves us all to share the Minister's view at the outset that this is very good news for British shipbuilding. We can nibble around the edges about what might be but we have to start from where we are. We have a national shipbuilding plan now; we are taking steps; we have had important new orders announced in recent weeks. This is all part of the strategy, and I hope the Minister will agree with me that the Royal Navy's part in developing the shipbuilding industry is very welcome, as indeed are the growing links between commercial maritime and the Royal Navy that we have seen across the land.

Baroness Goldie (Con): I thank the noble Lord for his contribution. He identifies the underpinning wisdom and strength of the shipbuilding strategy, which Sir John Parker originally conceived with the specific intent of creating a sustainable indigenous British shipbuilding industry. We are now well on the way to doing that, and I thank the noble Lord for his recognition of that progress.

Heritage Railways and Tramways (Voluntary Work) Bill [HL]

Order of Commitment

3.41 pm

Moved by ***Lord Faulkner of Worcester***

That the order of commitment be discharged.

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

Motion agreed.

Product Security and Telecommunications Infrastructure Bill

Commons Reasons

3.42 pm

Motion A

Moved by ***Lord Parkinson of Whitley Bay***

That this House do not insist on its Amendment 17, to which the Commons have disagreed for their Reason 17A.

17A: Because it would give rise to a new head of public expenditure, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, it is a great pleasure to be back at the Dispatch Box to take this Bill, I hope, through its final stages in Parliament. I am very pleased to see how much progress has been made, and I take this opportunity to pay tribute and extend my thanks to my noble friend Lord Kamall, who carefully steered the Bill through Report and Third Reading in your Lordships' House.

The Government have listened carefully to the points raised in scrutiny on this Bill, both in this House and in another place. We have taken on board recommendations made in both Houses of Parliament and have tabled amendments where those recommendations have strengthened the legislation. I am confident that the Bill is now in a form that will meet its objectives. Importantly for the debate before us today, that includes preserving a balance between landowners' rights and the wider public interest in delivering telecommunications networks.

As I shall set out now, I hope that your Lordships will agree with Members in another place that Amendment 17 should not remain part of the Bill. The amendment in the name of the noble Baroness, Lady Merron, would add a new clause to the Bill requiring the Secretary of State to commission an independent review of the effect of the Electronic Communications Code, and of the Telecommunications Infrastructure (Leasehold Property) Act 2021, on the deployment of telecommunications infrastructure. Her amendment understandably aims to provide transparency, accountability and ongoing evaluation of the legislative framework that underpins digital deployment in the UK. As the noble Baroness knows, I fully appreciate the sentiment behind it, and I commend noble Lords in all parts of the House for their efforts to improve connectivity. I am grateful for the time given by the noble Baroness and others yesterday to discuss this ahead of our debate today. It is clear that we share the same goal, although our opinions in some instances differ about how to achieve it.

3.45 pm

Your Lordships will have seen that the reason given by another place for disagreeing to the inclusion of this amendment is that it would give rise to a new head of public expenditure. This is certainly true, and the financial privilege of the Commons must be respected. However, this is not the only, nor the primary, reason why the Government do not accept the amendment. We believe that the amendment is unnecessary for a number of reasons, which I will set out briefly.

The amendment would seek to impose obligations to review and report on progress towards government connectivity targets and on competition in the market. However, monitoring of these is already in place, and the Government are committed to keeping a very close eye on the impact of the legislation in the future. I will give some examples. Ofcom's annual *Connected Nations* report already gives a snapshot of mobile coverage and broadband availability across the United Kingdom. BDUK also publishes quarterly updates on the progress of Project Gigabit, with the latest coverage information available on thinkbroadband. Government connectivity targets and the success of government interventions to increase our connectivity, including through this Bill, can therefore be measured against regular existing reports.

DCMS will continue its engagement with all interested parties once the Bill receives Royal Assent. That will, among other things, help inform a robust implementation strategy, which I know landowner representatives in particular are keen to be involved in. The department will also continue its involvement in regular workshops, attended not only by industry representatives but by members of landowner organisations, including the CLA, NFU and CAAV. These are not just talking-shops; they are producing practical tools, including agreement templates, as well as a pilot communications framework. I will gladly talk a bit more about the great collaboration they are encouraging, and they are also an invaluable insight into how the market is functioning.

I recognise your Lordships' keenness to see a report on the impacts of the legislation. I hope that noble Lords will be reassured to hear that the findings from this engagement and monitoring will be reflected in an update on how the changes made by this Bill have worked in practice. In line with our existing commitments, the Government will submit this to the relevant Select Committee of Parliament. If that update highlights anything which has a significant impact on delivery or connectivity, the Government will of course see what action can be taken to address this to ensure that our crucial connectivity goals are met. I know that noble Lords will rightly hold us to account on them.

Let me say a little more about why we believe this amendment would not be a better way of going about this. The Government have frequently set out the opinion that the market is settling and that operators and site providers are working together in an increasingly collaborative manner. Though I am grateful to them for their time and their conversations with me and officials at the department, I know that some noble Lords remained unconvinced about this. However, over the last two years, the department has chaired the regular workshops I have just mentioned. One aim of these workshops is to encourage greater collaboration between stakeholders, and they are open to everyone across the industry. As I have said, these workshops provide valuable insights into how the code is working in practice, while supporting better ways of working for everybody in relation to the code.

I emphasise that the Government fully expect telecommunications operators in particular to recognise the contribution made by those whose land is used to host apparatus. Operators have a responsibility to show fairness, to behave co-operatively and, above all, to treat landowners with respect if real connectivity is to happen. One of the key outcomes has been the creation of a national connectivity alliance, which will officially be launched later this week. That is not a government initiative but has been created by representatives from across the industry. It is an independent body, which will be led by a steering group comprising an equal number of operators and landowner representatives. It will co-ordinate working groups to examine and make recommendations on a wide range of issues of mutual interest, including Ofcom's code of practice. The alliance's aim is for these working groups to produce best practice guidelines which can then be used across the industry.

The Government strongly support the creation of this body and believe it can do much to build on the improvements we have already seen in relations between operators and site providers, as encouraged by the workshops, which in turn will help to speed up connectivity. This improved collaboration is reflected in the number of agreements being concluded, which is increasing year on year. For example, in 2018 only 39 renewal agreements were completed, but by 2021 this figure had increased to 1,015. If the market were not settling, we would not be seeing increases such as this.

The Government are concerned that imposing a time-bound statutory review requirement would not only undo much of the progress that has been achieved since 2017 but would, in fact, lead to market stagnation and increased litigation. The prospect of a further review into the code would make landowners understandably reluctant to enter into agreements until the outcome of the review was published, which would leave operators with little choice but to take legal action to obtain the rights needed to improve and expand their networks. This would inevitably slow down deployment generally, and the hardest-hit places are likely to be those where deployment is already commercially unattractive, such as rural areas, with operators likely to focus their attention elsewhere. I am thinking in particular of the shared rural network programme, which aims to deliver 4G connectivity to 95% of the UK's land mass by June 2025.

For the reasons I have set out, therefore, the Government firmly believe that the proposals contained in this amendment, although undoubtedly well-intentioned, are unnecessary and risk being a hindrance to the better connectivity and delivery that I know the noble Baroness wants to see. I therefore hope that your Lordships will agree that it should not remain in the Bill.

Lord Northbrook (Con): My Lords, I welcome Amendment 17, which had not even made it to the internet section of the Bill when I looked an hour ago. I also welcome the Minister's mention of the national connectivity alliance as a good co-operation between site providers and operators.

The reforms in the Digital Economy Act 2017 have resulted in lengthy legal disputes, causing significant delays to rollout. Small businesses and local sports clubs, many of which host telecoms infrastructure on their land, have lost thousands of pounds in income, with no commensurate boost to digital connectivity. This was foreseen by the current Prime Minister during the debate on the Digital Economy Bill in 2016, when he warned:

"Interfering with property rights, as the code does, is a major step for this House to endorse. I therefore urge the Government to ensure that the Bill benefits not just the network operators' balance sheets, but the public interest."—[*Official Report*, Commons, 13/9/16; col. 828.]

Overall, I am disappointed at the lack of compromise elsewhere by the Government and the absence of rigorous evidence for the Bill. It appears that its policy development has been entirely reliant on the telecoms operators. It is vital that the Government use all the tools still at their disposal to limit the most egregious effects of this legislation, including through the use of transitional arrangements.

On preventing backdated payments, the Bill as drafted will allow the courts to impose lower rents on site providers—I meant to declare an interest as a site provider—and this can be dated to years before the court issues its order. This will have the effect of courts imposing backdated payments of thousands of pounds on site providers, despite those rent levels having been agreed between partners in good faith. The Government have promised to consider addressing this issue through transitional provisions, and it is vital that they do so and consult properly with affected parties to ensure that their measures are effective.

The Government have not heeded the significant disquiet on transitional relief on valuation throughout the Bill's passage through Parliament. I would like to put on the record the significant damage that will be caused to the market by extending the "no scheme" valuation into the Landlord and Tenant Act 1954. If the Government are set on not revisiting them, the changes to the regulatory framework and expansion of the 2017 reforms proposed by the PSTI Bill should be brought in gradually to avoid significant financial shocks for site providers.

I turn to the government evidence base. The impact assessment for the legislation at the time showed that the Government anticipated a reduction in rents of 40%. I have heard stories from site providers who have seen rent reductions of more than 90%, but even the operators accept that the rent reductions have been 63%. Although this is an unsourced and untested figure, it is still a huge reduction.

It is also concerning that the Government have refused to accept other sources of evidence. Last week, following a very useful meeting with the Minister, I received a document from DCMS expressing its concerns over a report produced by the CEBR, an independent and well-respected economic analysis organisation. It made a number of assertions which I believe are incorrect. First, it states that the CEBR report over-emphasises the interests of landowners. This is not borne out by the evidence cited in the Government's report, which includes research funded or written directly by operators themselves. Secondly, it states that the CEBR report assumes that HMG's policy will not reduce the number of delayed negotiations. This misses the point of the CEBR critique: the Government's purpose should not be to expedite disputes but to prevent them arising. The view of the CEBR and the Law Society is that the PSTI Bill does not address this.

Thirdly, the document states that the CEBR assumes that reverting to the pre-2017 regime will not impact operator behaviour. This is based on the false assumption that the CEBR recommended a reversion to the pre-2017 status quo. It does not. Instead, it suggests an alternative code based on the Law Commission's 2013 report. Finally, it states that delays to code reform will slow the shared rural network rollout. The post-2017 code reforms were already available to operators on all existing sites, and money saved from reduced rents has not been reinvested into the rural rollout. There is no reason to think that the savings from the PSTI Bill will be reinvested, and therefore rent reductions—or their absence—are not linked to the pace of rollout.

I am concerned that the Government are willing to dismiss independent evidence on spurious grounds simply because it does not align with what appears to be a pre-cooked policy direction. It is even more concerning that the Government describe their evidence as uncontested when there has been such widespread and cross-party opposition to this policy. During its consultation on the reforms that would become the PSTI Bill, the Government received over 1,000 responses, and later admitted that the vast majority related to the valuation regime. It is therefore highly inaccurate to suggest that their evidence has not been challenged, or that their position is widely accepted.

Ministers have also disputed factual evidence of the sheer scale of cases being taken to court, asserting instead that, as the Minister has just said, the market is settling and consensual renewal numbers are increasing. It is concerning that the Government see hundreds of court cases each year as the market settling; certainly, in my dealings with the operators, it was not a very calm operation. The lack of proper evidence has created unnecessary risks for the future of this market. I hope that, through Amendment 17, the Government will be open-minded and display more responsiveness to all available evidence in future.

Lord Cromwell (CB): First, I thank the Minister and his officials for corresponding and meeting with me to discuss the Bill. That said, it is a shame that the Government in Motion A have set their face against Amendment 17, which is seeking a review of the Bill within three months, particularly as the festering problem at the heart of the Bill is the valuation method, which was not even a subject of consultation in preparing the Bill.

This legislation legalises extortion. It allows operators to strip site owners of their property rights and to confiscate their incomes, in some cases even retrospectively clawing back site rents paid under legally binding agreements. The Digital Economy Act 2017 has not led to the market being "settled down", as the Government claim; it has, in fact, produced a steep rise in long and expensive tribunal cases. That rise would be far steeper but for the inequality of rights and resources between telecoms companies and the site owners, meaning that

[LORD CROMWELL]
very few can afford to fight their cases. The Government's claims that agreements are consensual, or can be solved by voluntary alternative dispute resolution, ring hollow when the law is so one-sided and the site owner is threatened by operators throughout any so-called negotiation with expensive court action. The fact is that the pendulum of power has swung way too far in favour of the operators.

4 pm

DCMS claims that the money the telecom companies save by imposing rent reductions using this legislation is essential to achieving 5G rollout. It bases this claim on some shaky, secretive and one-sided evidence provided by the operators. The Government's own predicted fall of 40% in rents, which the previous speaker referred to, has, by their own admission, been a 63% fall and, in some cases, 90% or more. As to whether this money is actually needed by the operators, when I asked DCMS even to estimate how much this sum would be for the large and profitable telecoms companies—how much they would actually save—DCMS had no idea of the amount, nor was it able to identify any guarantees that these savings would be passed on to consumers rather than simply enriching the telecoms companies.

This money, which had a huge impact on the site owners, is being removed from communities, small enterprises and farming families, thereby depriving them of much-needed funds to invest in their own businesses and activities locally. Are these operating companies really so hard up that they need to rob site owners in this way? I see in the *Financial Times* today that one of them is selling half its sites to a global private equity company. That should certainly raise a pretty tidy sum.

The House should also take note that the operators empowered by this legislation are not even regulated. At the heart of the problem is an absurd site valuation process that urgently needs to be reviewed and rebalanced so that site owners and operators can work as willing parties to achieve 5G rollout. As mentioned earlier, the House should note that this illogical valuation process was not included in the earlier consultation on this Bill.

I urge the Minister to listen to the concerns from all sides, notably from his own Benches in this House and the other place, as well as professional bodies in support of a review or at least to bring forward a meaningful government amendment to review the valuation method towards some valuation middle ground. He has not done so and no single amendment has so far been accepted by the Government. The telecoms operators which have lobbied so successfully for this opportunity to enrich themselves must be delighted with this early Christmas present. The families and the organisations being plundered may have a rather different view.

The Earl of Lytton (CB): My Lords, I greatly support this amendment, as I did at an earlier stage of the Bill. Therefore, I have to say that I do not agree with the Motion in the name of the noble Lord, Lord Parkinson.

I detect in the brevity of the reasons given for why the Government were not able to accept any of the matters put forward—and mentioned just now by my noble friend Lord Cromwell—the same endeavour to deny due process. Blocking the evidential basis in what has been brought before this Bill will then affect the process of getting a fair deal at the end. Exactly the same process will be relied on in any tribunal case or in any alternative dispute resolution forum. This is why proper access to an independent adjudicator is, in my estimation, already prejudiced by the processes in this Bill.

Seen in the context of the transfer of private rights from individuals and small property owners to an influential and well publicly funded band of corporate middlemen, the site companies, this, I am afraid, bodes ill. Certainly, I as a property professional and valuer can see this very much in the economic context—of course, valuers do not make the rules; they simply interpret what others are doing outside. This is why I have consistently said that this is something that will adversely move the goalposts, if not the whole playing field.

The measure in this Bill rolls back 60 years of compulsory acquisition and compensation practice. I am not clear that the subsequent need, as will occur as a result of the Bill, to claim damage occurring at a later date does anything other than reverse the burden of proof in favour of the state—or, in this case, the operatives of the state, and against the individual. I think that alters the parameters of fair compensation.

I wish the proposed alliance that the Minister referred to every good fortune, but I do not believe that it will do anything to improve on what has been nothing short of a land rights grab. I predict that a great number of the claims made in support of this will not be borne out by the facts when we look back in due course. On the delivery of the demonstrable public interest benefits, also referred to by the noble Lord, Lord Cromwell, where is the objective evidence? I predict that it will not even be visible in the corporate operation of the telecoms industry. So it is no good looking for that particular needle in that particular haystack.

What about the public utility performance by those not subject to public utility oversight and objectives? That was a point mentioned by the noble Lord, Lord Fox, at an earlier stage in our deliberations. If there is an impression of site providers being turned over, to use the cant of the trade, I am equally certain there will be a similar attempt to turn over the public interest in due course, which will be equally devoid of any evidence base or provable cause and effect. From a valuation standpoint, the absence of evidence, cloaked as it is often in confidentiality, forms a useful basis neither for the processes of this Bill nor for ADR or before a tribunal.

The basic premise of altering the valuation principle from market value to, effectively, land value—or, to put it in my terms, existing use value—is undefined as a concept. It is haphazard in practice, because it will relate simply to the actual use at any given time, so there will be very little consistency involved there. It is a basic denial of core transactional philosophies that sit behind all valuation and all transactions in the marketplace, and all confidence in the handshake that I have mentioned before in this House that is between the parties. The consideration is always—has to be, by definition—worth more to the recipient than the asset itself. It cannot be otherwise. I see this as a denial of that principle.

This has significance. Although outside people may think this is a wonderful idea, when it comes to the individual deals that needs to be done, it will have a chilling effect—I think it can be no other than that. I believe that sentiment is already actively moving against it. I do not know, because the Minister has not come up with it, where the evidence of the deals being successfully done has come from. For all I know, it may be generated by housebuilders keen to get good 4G coverage for their latest new housing development. That is fine, but it does not make the daisy chain of 5G connectivity across the country successful, and I think we really have to consider that.

I would still be very supportive of a review. If anything, I would like it to start a bit later and be more searching. That is essential, because we are sleepwalking into the unknown in terms of valuation technology, market sentiment and, above all, the evidential base. I would not be doing my duty in this House if I did not say that that fills me with considerable concern. This is no way to produce results that command universal buy-in, bearing in mind that everybody agrees that 5G and the better rollout of 4G are desirable in their own right. If what is happening before us is not snatching defeat from the jaws of victory, dissent and disillusionment from what should be a common purpose, I do not know what is.

The Earl of Devon (CB): My Lords, I will briefly add my disappointment to that voiced by a number of other noble Lords. I note, as previously, my various interests relevant to this legislation. I also welcome the noble Lord, Lord Parkinson, back to his seat and thank him for the time he took to meet me and the noble Lord, Lord Cromwell, last week.

I asked in Committee, as long ago as June, for the data on which the Government were basing their approach to valuations in this legislation. I was promised it nearly six months ago. We finally received it last week—two pages of rather thin A4 paper which say that the Speed Up Britain campaign presented evidence to the House of Commons committee that average rent reductions are in the region of 63%. That is it—the evidence on which the entirety of this valuations issue is based. It is incredibly disappointing that it took so many months to get it and that there is really no evidence whatever.

I note also, as the noble Earl, Lord Lytton, just stated, that we are given numbers of 39 agreements in 2018 and 1,015 in 2021. To what extent do those agreements fulfil the Government's connectivity and Project Gigabit ambitions? Where are they taking place? Are they rural or urban agreements? It is of no use simply to give us bare numbers.

The noble Lord, Lord Parkinson, undertook from the Dispatch Box that the Government would provide regular updates to relevant committees. I would like a bit more specificity, if he can, on exactly which committees the Government will provide updates to, how regularly they will be provided, what their content will be and whether they will be published to the whole House, as I imagine they should be. Just undertaking to provide updates is simply not sufficient.

Lord Clement-Jones (LD): My Lords, I am grateful to the Minister for his earlier engagement on the issues represented by this amendment and for outlining why the Government will not accept it. It was rather fuller, I am glad to say, than the embarrassingly short set of reasons set out, as he almost admitted himself.

The noble Lords, Lord Northbrook and Lord Cromwell, and the noble Earls, Lord Lytton and Lord Devon, have very cogently explained why they believe—as we do on these Benches—that an independent review of the Electronic Communications Code is needed to get our telecoms legislation to the right place. Indeed, the noble Baroness, Lady Stowell of Beeston, said on Report that

"the case for Parliament imposing this independent review is compelling."—[*Official Report*, 12/10/22; col. 834.]

I absolutely agree. We have heard powerfully today why there is such a strong view that this Bill is unfairly skewed against site owners, many of which are small societies and clubs. We must get the balance right for the Electronic Communications Code between operator and landowner and ensure that it is fit for purpose in delivering broadband and 5G rollout targets.

These targets have changed markedly over time. There has been a continual shifting of the Government's gigabit target, which it seems has now shifted from over 99% to 85% of premises by 2025. There is a continuing rural/urban divide, and real problems with latency in rural areas.

4.15 pm

Both the noble Lord, Lord Kamall, in his brief tenure as the noble Lord's predecessor and successor, and the noble Lord, Lord Parkinson, have asserted that everything is starting to settle following the 2017 reforms to the Electronic Communications Code. Indeed, the noble Lord, Lord Kamall, promised to make the evidence available as soon as possible, but such evidence as we have heard to today, as has been received, is highly questionable; the source, Speed Up Britain, is actually the operators themselves, as the noble Earl, Lord Devon, has said. The fact of increasing numbers of renewals does not show that the market is necessarily operating properly, when the objective of the Bill after all is to bring forward new sites and thereby increase rollout.

The CEBR report referred to by the noble Lord, Lord Northbrook, was commissioned by Protect & Connect, but was researched independently, unlike the research for Speed Up Britain. It points to far higher rent reductions than those of 63% cited by the Government, and a much wider market impact, as well as a reduction in the pace of rollout. The Government have not properly explained why they reject the evidence of the CEBR report.

As regards litigation, I believe that the Minister has indeed read the recent article in the *Times* headlined "Telecoms cases swamp tribunals", which starts off:

"Fears are growing that land tribunals are being inundated by a rising tide of telecommunications cases since ministers amended rules to boost the country's drive towards faster broadband."

That seems to be stronger evidence of problems with the post-2017 ECC than anything the Government have produced. How does the Minister see the number of cases being reduced as a result of this Bill? The lack of official, proper evidence strongly underpins the arguments for an independent review.

[LORD CLEMENT-JONES]

The noble Lords, Lord Kamall and Lord Parkinson, have also asserted that the amendment overlooks the substantial review and reporting mechanisms that are already in place. Indeed, the noble Lord, Lord Parkinson, today mentioned Ofcom, BDUK and the DCMS, but what specific review of the operation of the Electronic Communications Code will be in place regarding the KPIs—key performance indicators—to actually deliver the Government's strategy? The Minister has promised rolling workshops and he tried to explain what they were designed to achieve. As for a "pilot communications framework", I am not sure I quite understand what that is designed to achieve. The key issue is whether the Government will look at how the market is functioning and whether the workshops will be designed to make sure that changes are made so that the market does function properly.

The Minister also prayed in aid the very newly created national connectivity alliance. He gave some warm words about the interests of landowners, and I hope that it is a fully representative body, but surely best practice guidelines, which have no enforcement mechanism, are not going to cut it either in ensuring how the Electronic Communications Code operates in light of the amendments made by this Bill. Will the national connectivity alliance specifically be asked to report on the functioning of the market? That is an extremely important aspect.

This is in the context of the Government continually failing to hit targets on broadband connectivity and digital deployment. I am sorry to say that their reluctance to agree to a review of this nature is just another example of their unwillingness to be scrutinised. I hope that the Minister can give us a better answer, but so far it has been extremely disappointing.

Baroness Merron (Lab): My Lords, I am sure the Minister has picked up on the mood of your Lordships' House today, as I know he will have done in previous debates. I am grateful to him for outlining the Government's approach on infrastructure rollout and the concerns regarding a review. However, like other noble Lords who have spoken today, I feel that the department is still missing the point. It is appreciated that the Minister acknowledged the sentiments behind the original amendment. In common with other noble Lords, I am also grateful for the time that he and his officials have given to the discussion and consideration of the points that have been raised.

However, the original amendment before this House, which we are looking at again today, was intended to help the Government—something I emphasised in the meeting with the Minister—not least because it is an attempt to bring together balance, fairness and efficiency and to take a rather different approach from the one we have seen thus far, which the noble Lord, Lord Clement-Jones, has just referred to, of a trajectory of continually watering down ambitions because the regime is simply not delivering at the required pace. It would be better to tackle the root problems to find a way forward than moving the goalposts, which is what has been happening so far.

The creation of new stakeholder bodies could prove to be a positive step, but we need to acknowledge that this is not the first time we have seen such an initiative. DCMS already runs a number of working groups, and the discussions within them have rarely led to any significant breakthroughs. It would be of interest to hear why the working groups in this setting will be any different. While wishing the national connectivity alliance well in its efforts, establishing new groups or structures will be of little use if they become—as other noble Lords have said—talking shops, or, very significantly, if underlying regulation becomes ineffective.

We welcome both sides of the rent debate getting around the table, but it is important to say that our concerns about rollout go beyond issues around the valuation of land. In any event, as the Minister has said, Parliament will not have a full role in the upcoming discussions. As the noble Earl, Lord Devon, has indicated, we could do with some more detail about the reference the Minister made to the way in which Parliament will be referred to in the deliberation. I would also appreciate the level of detail that has been requested.

These problems are not going away—if anything, the situation is likely to get worse before it gets better, particularly given the increased volume of tribunal cases and the Government's refusal to make their new arbitration process mandatory. It seems that the Government hide behind existing processes, claiming that an independent review would unnecessarily duplicate Ofcom's role, but the fact remains that the current system is not working, and that is what we have to address. The disputes and regulatory ambiguity mean that we are not delivering the upgrades that millions across our country so badly need.

I am sure we all agree that better connectivity is crucial to future economic growth—which is supposed to be the Government's priority—but with every delay to our rollout and every problem that is being faced, we are losing ground to international partners. Yes, the Bill will deliver progress in some areas, which is why we will not delay its passage any further, but without concerted efforts, we are likely to simply rerun these very same debates again and again in the years to come. There was a window of constructive opportunity here, and I put on record my great disappointment that the Government have not recognised this.

Lord Parkinson of Whitley Bay (Con): My Lords, I am grateful to noble Lords for the points they raised in the debate today. I will try to respond to the questions that they have asked. I understand your Lordships' desire to ensure that the Government are held accountable, as we should be, for the legislation that we enact, and that we are taking appropriate steps to monitor its impact. I would certainly not disagree with that sentiment.

I will start with the comments on the valuation regime, raised particularly by the noble Lord, Lord Cromwell. This, of course, has been debated at length throughout the passage of the Bill, both in your Lordships' House and in another place. I am grateful to the noble Lord and others for their time to discuss this in more detail, but we are now reaching the point where we are at risk of repeating ourselves. There are no new points to be added at length. I ask noble Lords to bear in mind that the valuation regime was introduced through the Digital Economy Act 2017. In the intervening period, the public interest in access to digital services

has only increased—a fact underlined, of course, by our reliance on those services during the Covid-19 pandemic. The case for a framework which encourages investment has, therefore, never been stronger, and we think the statutory valuation regime is an important part of that framework.

My noble friend Lord Northbrook and others mentioned our scepticism about the CEBR report. This is not to denigrate the CEBR itself, and I will not expand on the points contained in the note that he and other noble Lords have seen, to which he referred. I underline, however, that it was commissioned by the campaign group Protect and Connect, as the noble Lord, Lord Clement-Jones, acknowledged, and there are certain campaigning groups that have been, throughout the passage of this Bill, seeking to influence the debate, which have vested interests in the matter. They are perfectly at liberty to make their points in the way that they wish, but it should be borne in mind that the organisation funding this campaign stands to make significant financial gains if the changes to the 2017 valuation framework are reversed.

I hope I can give greater reassurance to my noble friend Lord Northbrook on the point he raised about transitional measures. The Government are considering the implementation strategy for this Bill very carefully, including possible transitional provisions. I reassure noble Lords that the implementation of the Bill will be discussed with all interested parties, including those representing the interests of landowners. The Government are committed to ensuring that the Bill is brought into force not only in a timely manner but in a sympathetic and responsible way, taking into account the range of impacts that different approaches may have on different groups.

The noble Earls, Lord Lytton and Lord Devon, the noble Lord, Lord Cromwell, and others flagged the evidence base on which the Government's conclusions are based. The Government's position is based on a wide range of information. That includes data on coverage and connectivity, which is collated by Ofcom and which demonstrates that substantial progress has been made since 2017. I repeat my apology to the noble Earl for the delay in sending him the data during our debates on this Bill, partly because of the interruption in service on my part. It is true that we have taken into account data provided by the industry on the number of agreements completed since 2017, but these are data that can be supplied only by the industry. If the valuation framework had stalled the market or slowed down deployment, it would not be in the sector's interests to try to maintain that framework.

A number of noble Lords talked about the reduction in rent, which we have seen since the 2017 reforms. It sounds as though we might not come to an agreement on the precise figure, but rent is only one element of the financial package that operators may offer to landowners. Within the legislative framework, separate sums can be offered as compensation to cover potential loss and damage; other variations might occur in practice within the market. For example, as part of the financial package, operators might choose to offer an early completion incentive payment. I am concerned that some of the case studies that have been drawn to noble Lords' attention may ignore the overall package offered to landowners or fail to acknowledge that figures presented might have been an opening offer, when ultimately very different terms might have been agreed once proper negotiations have taken place. The amount of rent received will, in practice, often depend on the much wider circumstances in which financial offers are made and final terms are agreed.

4.30 pm

The noble Lord, Lord Clement-Jones, mentioned the report in the *Times* this week about the burden on the courts. It has been suggested, including in that article, that the 2017 reforms have caused courts to be overloaded and that that will delay the rollout of 5G services. If litigation backlogs were having an adverse impact on digital targets, that would certainly be a cause for concern, but we do not agree that is the case. The industry reports year-on-year increases in agreements being completed, and significant progress continues to be made towards the Government's coverage targets.

Importantly, the figures which the DCMS has received from the Ministry of Justice show that only a fraction of cases commenced go all the way to a final hearing; the vast majority are resolved at a much earlier stage and without the intervention of the courts. This strongly suggests that effective and timely use of the alternative dispute resolution where appropriate can reduce litigation. For example, in the year starting 1 April 2020, 102 Electronic Communications Code court applications were received by the Upper Tribunal but only 11—around 10 %—were determined at a hearing.

The noble Lord, Lord Cromwell, asked whether the cost savings made by operators since 2017 are being passed on to consumers, and he is right to do so. We have always been clear that we do not think it is reasonable to expect the sector to provide pound-for-pound accounting to demonstrate that savings from code agreements translate into network investment or reduced pricing for their consumers. However, since 2016, the Government have set challenging coverage and connectivity targets demanding a level of industry investment which we believe requires us to maintain a legislative framework which makes deployment as cost effective as possible. For example, the shared rural network which I mentioned in my opening remarks will be underpinned by £530 million of industry investment.

As regards passing on savings directly to consumers, the department also works with the industry on measures to ensure that services can be made available to as many families as possible: for example, our work with broadband and mobile providers to bring high-quality, low-cost social tariffs to the market for as little as £10 a month. Available to people claiming universal credit as well as other means-tested benefits, social tariffs are available in 99% of the UK and from a range of providers, including BT, Virgin Media, Sky and Hyperoptic. DCMS continues to work with operators and consumer groups to help increase awareness of these low-cost offers to ensure that support reaches those who need it.

The noble Earl, Lord Devon, asked me to say a bit more on our commitment to report to the Select Committee, which was echoed by the noble Baroness, Lady Merron; I am very happy to do so. The Select Committee to which I referred was the cross-party

[LORD PARKINSON OF WHITLEY BAY]

Digital, Culture, Media and Sport Committee in another place. Different parts of the Bill will commence at different times, and in order to gain the maximum benefit and insight from the process, it is important that all the provisions are given an opportunity to bed in. It is therefore a little difficult at this stage to say as precisely as I think the noble Earl hopes me to when the report will be prepared and submitted, as it just is not possible to say that for each of the provisions in that detail at this stage. However, the Government are of course aware of the current expectation contained in the *Guide to Making Legislation*, which is that this will be done between three and five years after commencement. For the same reasons, neither would it be appropriate to pre-empt exactly what the report might contain, but it will provide a preliminary assessment of how the Act has worked in practice, taking into account its objectives and supporting documentation, such as the impact assessment.

The need for faster and more secure connections is constantly growing, making this legislation ever more vital to support the UK's infrastructure. I am grateful to noble Lords and to Members in another place for their efforts to improve the legislation, as indeed they have done—I have certainly learned more about things such as telegraph poles and internet-connected smart toasters than I could ever have imagined. The Bill is in a fit state to proceed to the statute book. It will help people up and down the country to access the digital services they need and with greater confidence about their cybersecurity. I beg to move.

Motion A agreed.

Public Order Bill

Committee (2nd Day)

4.35 pm

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

Clause 9: Offence of interference with access to or provision of abortion services

Amendment 80

Moved by ***Baroness Fox of Buckley***

80: Clause 9, page 10, line 28, after first "who" insert ", without reasonable excuse,"

Member's explanatory statement

This amendment provides for a defence where the person has a reasonable excuse for being within a buffer zone and has access to that defence prior to charge.

Baroness Fox of Buckley (Non-Afl): My Lords, I shall speak to a range of amendments associated with Clause 9: Amendments 80, 81, 82, 83, 86, 89, 92 and 94. I have also put my name to Amendments 88 and 90 in the name of the noble Lord, Lord Beith, and have some sympathy with Amendments 98 and 99 in the names of the noble Lord, Lord Farmer, and the right reverend Prelate the Bishop of St Albans.

Clause 9 creates a new criminal offence of interfering with

"any person's decision to access, provide or facilitate the provision of abortion services"

in a designated buffer zone. The most contentious aspects of the clause centre on the definition of "interfering with", which criminalises a wide range of activities usually associated with free speech and the right to assemble.

However, Clause 9 also makes any gathering outside an abortion clinic or a hospital providing abortions the subject of criminal law. Currently, where there have been problems outside a building facilitating abortion services, the mechanism for dealing with them has been locally decided and designed through public space protection orders—PSPOs. Police and local authorities have the ability to set up zones in response to complaints over gatherings around specific abortion providing facilities. Clause 9, in contrast, introduces a catch-all blanket ban across all service providers, regardless of whether there are problem protest activities taking place. This seems to me to be totally disproportionate.

Although I am no fan of PSPOs per se—councils carving ever more public space away from public use is not a positive trend—none the less, the aim of my Amendments 88, 89 and 90 is to repose the solution in relation to abortion protests as localised PSPOs based on consultation and reviewed annually, so as not to normalise prohibitions.

Because Clause 9 focuses on the issue of abortion, which we know is an emotional and morally challenging issue, it is worth taking a step back. The Government's reason for bringing forward the Bill overall is to deal with the new protest tactics of Extinction Rebellion and its offshoots. Many of us have noted in previous debates that we do not support these anti-social tactics and some of us have even been clear that we have no sympathy with the nihilistic, catastrophising philosophy behind the eco-guerrilla warfare that activists have been waging against the British public.

Despite that, there have been widespread concerns across the House querying whether these new laws are necessary or proportionate, and noting that we already have laws on the statute book to deal with aggravated disruption, even if these laws are not being used effectively by the police, which is a different problem. There has also been widespread unease, which your Lordships have illustrated in myriad ways, about how various clauses in the Bill might have unintended draconian consequences for the general right to protest, far beyond Just Stop Oil activists or our attitudes to them.

For me, the same concerns are absolutely true of Clause 9. However, the difference is that many opposing the Government on the rest of the Bill are supportive of this clause. Seemingly, this is because noble Lords want to be unconditionally supportive of every woman's right to access abortion facilities without hassle or hostility. As a passionate advocate of women's reproductive rights and bodily autonomy, I am very sympathetic to this view. However, this is not the key prism that should inform our approach to Clause 9. I urge your Lordships to scrutinise Clause 9 with similar dispassionate and impartial eyes as have assessed the rest of the Bill in relation to Just Stop Oil—that is, beyond our attitudes to abortion.

Stella Creasy, the MP who effectively authored this clause, was quite right when she said in the other place that this new clause is not about the abortion debate. However, she argues that it is about ensuring safe access to abortion healthcare, and this is where the dispute starts. All the evidence indicates that the activity happening outside clinics, while undoubtedly unsavoury, does not threaten safe access. What is more, if there are any instances of women's safe access being obstructed, which is totally unacceptable, many pieces of legislation already exist to protect women if they face intimidation or harassment, as Home Office Minister Kit Malthouse pointed out in the Public Bill Committee debate in June. For example, the Public Order Act 1986 prohibits causing harassment, alarm or distress, and includes a specific power to impose conditions on assemblies that seek to intimidate others not to do an act they have a right to do.

As with other parts of the Bill, the police have the powers to target specific instances of behaviour or activity if they constitute blocking safe access to abortion facilities. In 2018, the then Home Secretary, after concluding an in-depth review of the abortion clinic buffer zones, stated that he was

"adamant that where a crime is committed, the police have the powers to act so that people feel protected."—[*Official Report*, Commons, 13/9/18; cols. 37-38WS.]

Given the importance of the rights at stake here, it seems particularly important that the police use their resources and their existing powers appropriately, to protect staff at abortion facilities and service users alike—but for that to happen, none of this requires Clause 9.

Do not get me wrong; I have very little sympathy for those who think that it is appropriate to gather outside abortion clinics. It is wholly unpleasant to target any individual woman going into hospital to access a legal termination. Waving gruesome images of dismembered foetuses, following women and medical staff doing their jobs, calling out, "your baby loves you" or "murderers", hanging clothes around clinic entrances—this is crass insensitivity rather than compassion.

However, to be balanced, pro-life activists who attend these vigils will dispute these anecdotes and claim to be simply offering crisis pregnancy support, giving women choices by offering help financially, in raising a child, et cetera. There are, I concede, two competing narratives. I am conscious of the 2018 Home Office review, which found that those gatherings largely comprise passive activities such as prayers, leafleting, placards, singing hymns and so on. Regardless of which narrative you buy, it is wholly insensitive and intrusive to try to engage individual women at such a time, effectively demanding that they account for their personal moral decisions to strangers at a rally. I have no doubt that this would upset most women. It would upset me.

But whether it is upsetting is not what we should be talking about. The key question is whether it should be illegal and whether it constitutes a threat to safe access. My problem with Clause 9 is that it does not distinguish between activities causing actual objective harm and harassment, which threaten safe access, and activities with which we may disagree or which we might find disagreeable. Therefore, we must resist the temptation to create a law that criminalises otherwise legal activities based on a distaste for those activities. How the Bill defines "interferes with" will make an extraordinary range of activities in a particular area punishable by lengthy stints in prison or unlimited fines.

Some of the most egregious and censorious parts that my Amendments 88 to 90 seek to strike out are,

"seeks to influence … advises or persuades, attempts to advise or persuade or otherwise expresses opinion … informs or attempts to inform about abortion services by any means, including, without limitation, graphic, physical, verbal or written means".

In other words, Clause 9 outlaws leafleting, holding placards, expressing opinions, persuading and informing. Some will say, "Don't worry; this is only to be used in very specific instances of access to abortion, and it is only confined to designated areas". But as Big Brother Watch points out, creating prohibitions on protest on an issue-by-issue basis is not an appropriate way to make law. It sets a precedent that will inevitably lead to attempts to prevent speech, expression, information sharing, assembly or the holding of protected beliefs around other sites or in relation to other controversial or unpopular causes.

4.45 pm

If we pass Clause 9, why will other institutions not demand buffer zones around their special case facilities? If we consider that in Clause 9 a buffer zone is defined very broadly as

"150 metres from … any access point to any building or site that contains an abortion clinic",

does that not make protests of all sorts at hospitals potentially unlawful? What if you wanted to organise a vigil outside a hospital in which, for example, babies died due to negligence, such as in the maternity services scandal recently? What about a rally against the use of puberty blockers on teenagers? Would that be banned too? Note that when Labour introduced an amendment to the Police, Crime, Sentencing and Courts Bill for fast-track PSPOs to be used against gatherings in the vicinity of vaccination centres, it also made a special case and extended the precedence for another medical procedure to be protected from protest—a veritable slippery slope.

To those who say that the slippery slope argument is scaremongering, we were reminded in Liberty's briefing for this Bill that protest banning orders were based, practically word for word, on football banning orders. I remember speaking against football banning orders and warning then that they set a precedent. I was told, "Oh, no; they are aimed at football hooligans only". Well, guess what?

To conclude, I am very conscious that this clause was voted in with 297 votes for and 110 against in the other place and was supported by MPs across all parties, and I am always concerned about the democratic dilemma of unelected Lords challenging what happens in the other place. But these are probing amendments to at least ask to strengthen the burden of proof required to establish offences, to limit the range of acts potentially criminalised, to bring some proportionality to sentencing and to try to limit the illiberal, if unintended, consequences of what is undoubtedly a well-intentioned clause. I hope that when the Bill returns to the Commons, we at least give it a chance to think again.

[Baroness Fox of Buckley]

I finish with Liberty's comments in 2020, which I think are apt:

"Interference with protest rights should also be kept to a minimum. Liberty's view is that legislation should only go as far as necessary to enable people to access abortion services safely."

That is exactly right. The problem with Clause 9 is that it is redundant on this basis because safe access to abortion services is not threatened by people gathering outside.

Baroness Sugg (Con): My Lords, Amendment 80A is in my name. I will also speak to the other amendments in this group. I welcome the Government's commitment at Second Reading to introduce zones around all clinics in England and Wales to ensure that women are able to access their legal right to abortion without harassment or intimidation. As the noble Baroness, Lady Fox, said, this clause was added in the other place by a majority of Members across seven political parties.

This clause will protect the women who have made the decision to have an abortion and now wish to access the service in peace and privacy without somebody trying to tell them to rethink what is often a very painful, personal and difficult decision. My amendments are supported by the noble Baronesses, Lady Barker and Lady Watkins, and by the noble Lord, Lord Ponsonby. They have been tabled in response to the debate at Second Reading to provide clarity around the description of these zones and to tighten the definition of what constitutes interference.

Amendments 80A, 82A and 82B would change the term used in this clause from "buffer" zones to "safe access" zones. This terminology better reflects the purpose of the zones—to ensure that women can safely access care. It would also bring the description of the zones into line with that used in the law in Northern Ireland and in the proposals in Scotland, as well as around the world, including in Australia and Canada. Amendment 84 would clarify the intent behind the drafting so that sites such as multiple-use buildings and hospital grounds which contain an abortion clinic are also included in these zones.

Amendments 87 and 93 would tighten the description of banned activities, so that they very clearly apply only to people interfering with abortion services and not to any other protests, such as some of those referred to by the noble Baroness, Lady Fox. Following concerns raised at Second Reading about the breadth of these banned activities, Amendment 91 would remove "or otherwise expresses opinion" from the list.

Amendments 95, 96 and 97 would add exclusions to the safe access zones. Amendment 95 covers everybody attending a clinic with a service user with their consent. This is often a friend or a loved one—someone who anti-abortion literature sadly and inexplicably refers to as "an accomplice". Amendment 96 would exempt any activities taking place,

"inside a dwelling where the person affected is also inside that or another dwelling."

Amendment 97 would exempt activities taking place inside a church or other,

"place of worship where the person affected is also inside that" place of worship. I hope that noble Lords and the Government will agree that, taken together, these amendments address many of the concerns raised at Second Reading and provide clarity and a tightening of the definitions in the clause.

I turn to other amendments in this group. I am afraid that I do not agree that there needs to be a "reasonable excuse" defence in the clause. This is about harassment and intimidation, not protest. I do not believe there is a reasonable excuse for the harassment or intimidation of women seeking to access their legal right to medical care. They are often in a vulnerable situation, having made a difficult decision—a decision which is theirs to take.

Amendments 81, 83 and 86 concern the universal application of the zones. Universality was debated in detail and agreed in the other place. It is a core requirement of this clause. Removing it would undermine its very point, which is about protecting women before harm occurs.

A method already exists to apply for locally based public space protection orders, or PSPOs, but their nature means that evidence about impact has to be gathered locally and for a prolonged period. They require women to be subjected to abuse and intimidation for months—even years—before they can be introduced. They place a burden of proof on these women, who are in a vulnerable situation. They are expensive and complicated. The process also requires significant time and resources from providers and local councils, which often do not have resources to spare. This is why, despite regular protests at clinics across the country, we have so few PSPOs—only five, despite regular protests at more than 50 clinics. This creates a patchwork of protection, so that women across the country face a postcode lottery as to whether they will face harassment when they go to a clinic. Once a clinic is successful in getting a PSPO, groups simply move to another site and the whole process begins again.

The introduction of "intentionally or recklessly" by Amendment 82 would likely make it harder to implement and enforce the clause. It would increase the likelihood that this measure would not be adequate to deliver on its aim.

Amendments 88, 89 and 90 relate to the list of banned activities that the previous amendments in my name seek to clarify and narrow. They would leave intact the other essential aspects of advising and persuading. "Seeking to influence" is at the core of the amendment inserted by the House of Commons. It is needed to cover the activities we are seeing outside abortion clinics around the country. The list in Clause 9 is based on these reported activities and their impact, which many women accessing care at these clinics report as being the most distressing.

Finally, Amendments 98 and 99 would remove Clause 9 entirely and instead require the Home Office to undertake another review into activities around abortion clinics. A review would undermine the vote in the other place to support the immediate addition of Clause 9, disagreeing with the clearly settled will of elected Members. Another review would delay stopping the harassment of women around abortion clinics.

Since the last review four years ago, protests have evidentially increased. BPAS's database of abortion clinic activity currently includes nearly 3,000 accounts

of service users, those accompanying them and clinical staff. Half of those have been received since the Home Office's last consultation closed, and this is in no way an exhaustive list. Understandably, only a small proportion of women affected are willing and able to share their experiences when asked.

Since the review, the number of hospitals and clinics in England and Wales that have been targeted has increased by 20%. Just today, an abortion clinic in Doncaster has reported having people outside for the first time in years. We have seen an increase in co-ordinated activities. Tactics have evolved, groups are actively recruiting and are very well funded, often by American groups emboldened by Roe v Wade, which are now looking to sow division on our shores. Largely American-funded campaign groups with deep pockets are opposing our local councils when they seek to bring legal orders to protect women from harassment.

It is not right that this influence impacts the right to access healthcare in this country. As the former Home Office Minister, Victoria Atkins, said in the other place, new, immediate law is needed because of the failure of existing legislation to address the problem. Some 100,000 women a year in England and Wales have to attend an abortion clinic that is targeted by anti-abortion groups, which cause harassment, alarm, and distress to these women. Some 50 sites have been targeted in the last three years. It is clear that the existing law is not enough and this piece of legislation is needed. We must safeguard a woman's right to access healthcare.

Lord Farmer (Con): My Lords, I will speak to Amendments 98 and 99, to which my noble friend Lady Sugg just referred. We need to stand back. Our constitutional responsibility in this House is to scrutinise, amend and, where necessary, push back on legislation that is unwise or uncompliant. We have particular leeway to do this about an issue not included in the Government's election manifesto.

Clause 9, which makes it an offence to interfere with

"any person's decision to access, provide, or facilitate the provision of abortion services"

is fundamentally flawed and should never have been added to the Bill. It is quite simply not about public order. It chillingly polices access to the idea contrary to pro-abortion orthodoxy that there are other ways to approach this most difficult of decisions.

Those pushing the clause took advantage of parliamentary maelstrom at a time referred to, to me, by one very seasoned, senior MP in the other place as "discombobulating daily turmoil". The imposition of nationwide buffer zones would have been whipped against when it came up previously in the passage of the Police, Crime, Sentencing and Courts Bill. However, this time the whipping confusion was exploited and it was made the subject of a conscience vote—the first in relation to public order in 203 conscience votes since 1979.

We need to be clear-eyed about the significant majority for this new clause, which was accepted in the other place. Many MPs spoke and then acted on their unwillingness to let women seeking health services be harassed and intimidated, but the very many abstentions indicate that this was not straightforward. The law already protects women's rights to access abortion facilities without hindrance, harassment and intimidation.

More fundamentally, the inaccurate assumption that harassment and intimidation are the hallmarks of vigils undermines the arithmetic of the other end. Hence my Amendment 98 calls for a review of current law and practice outside abortion clinics before making a major incursion into civil liberties. The 2018 Home Office review, which we have heard much about, found that people on vigils, not protests, are typically there to offer information and support, including but not exclusively if women want to continue with their pregnancy.

5 pm

The review also found far less benign practices. The Written Ministerial Statement said that it found

"upsetting examples of harassment and the damaging impact this behaviour has had on individuals … However, what is clear from the evidence we gathered is that these activities are not the norm, and predominantly, anti-abortion activities are more passive in nature".

Some noble Lords at Second Reading claimed that unpleasant activities and the dissemination of inaccurate information have been stepped up recently, so the 2018 review is behind the curve.

However, since 2019, when the Court of Appeal upheld the legality of the first buffer zone, allowed in Ealing, under the Anti-social Behaviour, Crime and Policing Act 2014, many of the pro-life vigil groups have, out of caution, softened their approach outside abortion centres. None shows pictures of foetal development or of aborted foetuses, and the norm is not to carry devices that could fuel accusations that they are recording women.

The organisation 40 Days for Life emphasises the need for its activities to be non-intrusive and volunteers are required to sign a statement of peace. It rarely uses images but those it does are of live babies. Similarly, the Good Counsel Network now displays only helpline phone numbers. When one walks past, one sees that vigils are often small groups of harmless, mainly female, pensioners. Why should they be banned and silenced?

Yet buffer zones can provoke an inappropriately aggressive response. A priest in Birmingham inside a buffer zone was questioned by police for silently praying, warned that a fine might be issued and told that he would be arrested if he repeats the action. Outside the Bournemouth buffer zone, one lady was told by police to stop praying and handing out leaflets. A veteran was warned that if he prayed silently again, action would be taken against him. This shows the dangers of broad powers.

Others may dispute my characterisation of vigils, illustrating why Amendment 98 is needed. I cannot see why any reasonable person should not agree to a review before we impose such draconian legislation.

Amendment 99 follows the proposed new Clause 9 in Amendment 98 and would enable secondary legislation to be brought forward to impose buffer zones if deemed necessary by the review without the need to find another legislative opportunity. This would respect the vote in the other place to introduce nationwide buffer zones. However, its being consequential upon a review would better ensure such legislation is evidence-based, compatible with fundamental rights and prosecutable.

[LORD FARMER]

In conversations with other noble Lords, I have been challenged on why I am proposing regulations rather than primary legislation. Regulations function as a means through which government can act quickly and nimbly. The complexity of the human rights issues at stake, and the potential differences from region to region, mean that the Government will need to tailor any restrictions to reflect local needs.

Regulations also allow for sunset and review provisions to be included so that legislation can, if appropriate, cease to have effect. These may apply to all or part of the legislation or to its application in particular circumstances. I am, in fact, not averse to proportionate primary legislation which does not criminalise peaceful activity, and includes sunset and review provisions, if the review required by my proposed replacement for Clause 9 shows that it is needed.

Regulations which require consultation with key stakeholders and need approval by both Houses improve on the current public spaces protection order system, which allows a local authority to impose buffer zones with scant transparency.

Viscount Hailsham (Con): Would the noble Lord address the point that regulations are unamendable?

Lord Farmer (Con): I thank the noble Viscount for the intervention. I would have thought that regulations are amendable by a debate in this House.

Viscount Hailsham (Con): They are not, and they never have been.

Lord Farmer (Con): These regulations would allow for sunset and review provisions to be included, so the legislation can cease to have effect if appropriate, as I said.

I was talking about how regulations that require consultation with key stakeholders and need approval by both Houses improve on the current public spaces protection order system, which allows a local authority to impose buffer zones with scant transparency. The decision to introduce PSPOs is often initiated, drafted and implemented by one person or a group of council officials, with very little scrutiny and awareness of what factors they have taken into account.

I will speak briefly to other amendments. Those tabled by the noble Baronesses, Lady Fox and Lady Hoey, engage with the civil liberties and rights issues. However, they accept that interference with a decision can be disallowed, which would be a first in criminal law and very hard for the individual to defend themself against. A woman could simply claim that a choice made in the privacy of her mind had in some way been influenced by a message or person.

However, the tidying-up changes that my noble friend Lady Sugg proposes do not speak to the disproportionality of Clause 9, and in some ways worsen it. For example, Amendment 84 would ensure that a buffer zone also applies where an abortion clinic is embedded within a hospital or GP surgery, as we heard. This would vastly increase the footprint affected by buffer zones. Even if only all 373 abortion clinics were included, this would leap from the current 225 square metres to 26 square kilometres, and it would single out the issue of abortion for wildly disproportionate restrictions in comparison with other health areas. A person providing false information on a leaflet about any other medical issue would be free to do so, but someone providing accurate information on abortion would be criminalised.

I could say a lot more, but this is a big group with many speakers, and I know at least one noble Lord who was dissuaded from speaking because time is not limitless. As my noble friend the Minister will know from his many conversations, there is strength of conviction on both sides of this argument. I urge him to adopt the evidence-based policy route. There is again clamour for reform of this House, but the importance of our scrutiny and revising role is not clearly understood. We would be lax in our duty if we merely rubber-stamped or gently tweaked this inadequate and ideologically inspired clause.

Lord McAvoy (Lab): My Lords, I will speak to Amendment 98 in the name of Lord Farmer, and Amendments 88 and 90 in the names of the noble Lord, Lord Beith, the noble Baronesses, Lady Fox and Lady Hoey, and the right reverend Prelate the Bishop of St Albans.

Amendment 98 would correct one of the most egregious aspects of the addition of Clause 9, which was originally added to the Bill in the other place. Amendment 98 would review why this law change is needed. This policy was reviewed just four years ago, and the then Home Secretary's conclusion was that

"national buffer zones would not be a proportionate response".

Those who support this clause have not demonstrated what has changed since that review.

I looked through the Home Office review from 2018, and it is interesting to note how little evidence is provided there that these buffer zones are needed. The review also sets out why the policy is unworkable, stating:

> "There have been several cases where particular buffer zones have been successfully challenged on the basis they disproportionately infringe on civil liberties and freedom of speech ... buffer zone legislation has not always delivered exactly what service providers and pro-choice activists had hoped for."

At the very least, before any law change is taken forward, we should understand what is alleged to have changed and why current laws are not sufficient. At present, the proponents of Clause 9 have not met that threshold so I support Amendment 98, which seeks to address this.

I turn to Amendments 88 and 90, which would arguably take out the most pernicious aspects of Clause 9. Amendment 88 would stop the proposed buffer zone, including criminalising a person who "seeks to influence". This wording is sinister, impossible to enforce and an assault on our most basic freedom of speech. The same is true of Amendment 90, which would remove from the clause the provision to criminalise a person who

"advises or persuades, attempts to advise or persuade, or otherwise expresses opinion".

Noble Lords and colleagues from the other place who support this clause tell us that they do so to protect women from harassment and intimidating behaviour. I again place on record my declaration that any harassment or intimidation should be subject to the law; something should be done about it. The sentiment is both worthy and correct in terms of its intent but that is a wholly different intention from seeking to stop people expressing opinions or attempting to persuade. Free societies are built on expressing opinions and attempting to persuade. Some might say that this should not take place at an abortion clinic but the Home Office review I mentioned earlier

"pointed out that the Chief Executive of BPAS"—

the abortion provider—

"had stated that 15% of patients change their minds about having an abortion at the BPAS clinics."

I think noble Lords from across the Chamber would argue that it is plainly a decision for those women about how to proceed in those circumstances, so to deny them advice and explicitly block the expressing of opinions would rob those women of making an informed choice.

I add my support to the other amendments tabled to this clause, namely Amendments 80 to 83, 86, 89, 92 and 94. I hope that the Minister will recognise that there is concern from across this House for the consequences of Clause 9 and that he will allow a pause to think about it in more detail, avoiding a rushed change to the law that will have profound consequences for both women and freedom of speech in this country.

Lord McColl of Dulwich (Con): My Lords, I understand that the Minister has already concluded that freedoms will be curtailed by an over-emphasis on the problems surrounding abortion clinics. Before we embark on legislation, it is essential to have accurate information about what people are complaining about. Clearly, people attending abortion clinics should not be harassed or intimidated in any way. However, as the noble Baroness, Lady Fox, mentioned, there already exists sufficient legislation to ensure this, such as the Public Order Act 1986, which, as has already been mentioned, stipulates that it is an offence to display images or words that may cause "harassment, alarm or distress". New legislation is required only if we are absolutely convinced that the current legislation is failing. We do not have sufficient evidence that this is the case.

As has been mentioned, a detailed review was conducted in 2018 on this issue. The Home Secretary at the time concluded that

"introducing national buffer zones would not be a proportionate response, considering the experiences of the majority of hospitals and clinics, and considering that the majority of activities are more passive in nature."—[*Official Report*, Commons, 13/9/18; col. 37WS.]

The review also found:

"The vast majority of the pro-life activities reported through the call for evidence do not meet the threshold of being classed as criminal."

5.15 pm

So what has changed since then? It should not be illegal or an offence for any member of the public simply to have a conversation with an individual entering an abortion clinic. To threaten them with imprisonment for doing so is rather reminiscent of a totalitarian state. Clearly there needs to be accurate information checked on the extent of the present abuses that are alleged. Surely those who support Clause 9 would welcome a detailed consultation seeking the views of abortion providers, law enforcement, pro-life organisations, businesses, churches, residents and other interested stakeholders. Only after such information has been collected should a law be put forward to cope with real, as opposed to imaginary or exaggerated, problems.

A consultation is the best way to address any problems that arise in terms of intimidating or harassing behaviour at abortion clinics. That is a much more proportionate and reasonable response than introducing mandatory blanket zones which attempt to regulate essential free speech. This consultation will provide accurate information on whether there has been a change since the last report. I fully support the amendment put forward by my noble friend Lord Farmer to which my name is attached.

Lord Beith (LD): My Lords, I speak to my Amendments 85, 88 and 90 to this clause. I make it clear that, although I have regularly voted to secure more protection for the unborn child under abortion law, I am opposed to the kind of protest outside clinics and hospitals to which Clause 9 is directed. I am deeply troubled by the extent to which this clause restricts free speech, indeed abolishes it within 150 metres of a clinic or hospital. I cannot vote to write into English law a clause which, as presently worded, makes it a criminal offence to seek to influence, persuade or even to express an opinion. I note that the noble Baroness, Lady Sugg, has an amendment which deals with the complaint I made at Second Reading in respect of the last of those words but not the others.

This clause as it stands is clearly inconsistent with the European Convention on Human Rights and imports into our law the dangerous concept that to express an opinion can constitute interfering. Once that concept has found its way into our law, such language would be welcomed by the anti-free speech brigade and we would find it sought after in other areas of legislative restriction. Those who advance the so-called right not to be offended in student union politics would latch on to such wording with enthusiasm.

I turn first to Amendment 85, which has the support of the right reverend Prelate the Bishop of St Albans. It seeks to protect the normal activities of a church, chapel, mosque or temple that finds that it is within the 150-metre zone of a clinic providing abortion services. I will come on later to how wide a range of areas that could be. In such a church, mosque or temple, what if a debate is organised on the arguments for and against abortion in the light of the religious convictions of those who worship there? What if a poster is put up outside the church to state that such a debate is to take place on a particular date with a brief indication of the points of view of the different speakers? What if a campaign meeting designed to enable the church to play a greater part in the public debate on this issue takes place there? These are normal activities of churches.

Let us remember that these churches and mosques have been sitting in these places for many years and, all of a sudden, the area they are in is determined to be one in which they cannot do what they did previously.

[LORD BEITH]
They cannot have the kind of discussions and conversations which are normal to them. That is a point that the noble Baroness, Lady Sugg, also sought to cover in her Amendment 95 and I appreciate that.

I turn to my Amendments 88 and 90, which take out some of the words in this clause, to which I have referred, but they do not affect the provisions covering intimidation and harassment, which none of us favours at all. Amendment 88 takes out the ban on a person who "seeks to influence" within the 150-metre zone, while Amendment 90 removes the words

"advises or persuades, attempts to advise or persuade, or otherwise expresses opinion".

I am astonished that that wording could ever have got into the draft of the clause. That there could be any part of the United Kingdom in which it is a criminal offence to express an opinion is, to me, quite extraordinary. This cannot be made consistent with the ECHR or historic rights of free speech. I hope that by Report the Government will be able to bring forward a significant redraft of this clause.

The noble Baroness, Lady Sugg, made some helpful suggestions but they are not enough. Amendment 95 relates to "persons accompanying". I am glad that she has included that amendment, because it deals with a situation in which somebody is accompanying someone to an abortion clinic, and they are having a discussion about whether she should or should not go through with it—the pros and cons. That would be a criminal offence under the legislation, unless her amendment is accepted. It illustrates what dangerous territory we are in and how close we are to the cliff edge of losing our free speech.

I shall look at some other instances. What if a member of staff, perhaps a whistleblower, questioned some aspect of the policy or practice of the clinic and sought to get it changed, potentially affecting and limiting the provision of abortion services? What if that discussion was taking place, and the person thought that they could rely on a conscience clause, because in a certain case they thought that the wrong decision had been taken or a practice was dangerous? Is that person going to be guilty of a criminal offence for doing so? I find that extremely worrying. What about a picket in an industrial dispute, such as a nurses' strike, which interrupted abortion services or access to some extent? That would appear to be covered by these provisions.

Amendment 84 from the noble Baroness, Lady Sugg, and Amendment 93A from my noble friend Lady Hamwee, also worry me, because they would extend the term "clinic" to any

"place where advice or counselling relating to abortions is provided".

That is every doctor's surgery in the land—a huge extension of the potential scope of this legislation. The free speech restrictions that it imports would seem inexplicable to somebody simply walking along the street in the vicinity of a doctor's surgery, having a conversation about the rights and wrongs of abortion, who is overheard by somebody who reports them. Before long, a police officer is pursuing the case.

As to the amendments proposed by the noble Lord, Lord Farmer, I am very sympathetic to Amendment 98, which seeks to make the review the basis for action, which seems quite logical, but I am afraid I am not sympathetic to his Amendment 99. As he conceded, the amendment passes over to statutory instruments and delegated legislation the whole substance of this legislation. As the noble Viscount indicated in an intervention, that would deny the possibility of amendment of whatever was put forward. Those are very serious issues. I think on all sides we can agree that what the scope of the criminal law should be in this area is fundamental. It should be decided by primary legislation and, although I appreciate the reasons that the noble Lord, Lord Farmer, has felt obliged to use this mechanism, it is not the right one for such fundamental issues.

I hope that colleagues on all sides of the Committee, whatever their views on abortion, will address this issue so as to ensure that the criminal law is not so extended that historic rights of free speech are damaged and legitimate action by innocent people is neither prevented nor made the subject of criminal offences and prosecutions. I hope Ministers will look very carefully at my amendments and others and produce some workable and practicable redraft on Report, which we will also want to look at with the greatest of care.

The Lord Bishop of Manchester: I rise to address Amendments 85 to 88, 90 and 92, to which my right reverend friend the Bishop of St Albans has added his name. He regrets that he is unable to be in his place today. I also have sympathy with a number of other amendments in this group.

It is a heated and emotive debate on this clause, and it was heated and emotive when it was added in the other place. The danger is that we get dragged into debates about whether abortion is morally right or wrong. Indeed, I have had plenty of emails over the past few days, as I am sure other noble Lords have, tending in that direction. As it happens, I take the view that the present law on abortion strikes a reasonable balance; in particular, it respects the consciences of women faced, sometimes with very little support, with making deeply difficult decisions.

Moreover, history teaches us that the alternative to legal abortion is not no abortion but illegal abortion, with all the evils that brings in its train. Others, including people of my own and other faiths, may disagree with me on either side but that is not the focus of your Lordships' deliberations this afternoon. Rather, as the noble Baroness, Lady Fox, reminded us, we are seeking to weigh the rights of women to access legal health services alongside the rights of others to seek peacefully to engage, persuade or simply pray.

However much we may disagree with the causes and tactics of those protesting, we need to remember that in a democracy not everything that is unpleasant should in consequence be made illegal. Harassment and abuse of the kinds to which the noble Baronesses, Lady Fox and Lady Sugg, and others have alluded must be condemned in the strongest possible terms. The use of legislation, including on harassment, to confront inappropriate behaviour is absolutely legitimate, but it already exists. If such behaviour is becoming more widespread, let us see the police and local authorities use those current powers more extensively so that they can create a safe and respectful atmosphere for vulnerable women.

I understand that no one has ever demonstrated that widespread abuse is prevalent or that new powers are necessary. At the least, we need clear research, as the noble Lord, Lord Farmer, proposes, to underpin such extensive new measures. In line with other provisions of this Bill, many of which we have already discussed, there is a need for the Government and police to take proportionate action while maintaining the strongest possible safeguards for freedom of speech, expression and assembly. Those are at the core of our nationhood. I do not think that Clause 9, as drafted, takes that proportionate approach.

I respect the views of those noble Lords who take a harder line against abortion and the many who reject the position from a more liberal standpoint. However, I cannot accept that it is desirable to legislate against expression of opinion on the matter or providing advice and guidance, even if one is in one's own home or a place of worship. I cannot believe or accept that seeking to provide information could be met with a six-month prison sentence. I believe Amendments 88, 89 and 90 would help set a better balance on these provisions around freedom of speech. They would leave those things that are genuinely egregious in the clause and extract those things that are not.

Amendment 85 clarifies that Clause 9 cannot apply within an area

"wholly occupied by a building which is in regular use as a place of worship".

Again, I do not expect or demand that religious positions on abortion are respected any more than others, but I worry that a minister of a religion holding views that are mainstream within his or her faith tradition—and are demonstrably legal to hold—could be barred under this legislation from expressing that view within their own place of worship.

Viscount Hailsham (Con): I have some difficulty in understanding the thinking behind this amendment. If a sermon was being preached in a church or mosque, which is what we are being asked to contemplate, that sermon would not in any way impact on the person visiting the abortion clinic some distance away.

The Lord Bishop of Manchester: I thank the noble Viscount for his intervention. As the noble Lord, Lord Beith, said a few minutes ago, you might have a poster outside the church, mosque or temple saying that you are having a particular event on a particular day. It appears that would be caught by this legislation, but let us have the matter clarified by Ministers.

I thank the noble Baroness, Lady Fox, and others for their principled note that good powers must protect those who hold views with which you disagree or even find deplorable. Abortion is contested and emotive. I do not dispute that, as a result, there may on occasion be actions and levels of disruption that fail the test of Christian or any other charity. I deplore it when that happens.

However, there is a point of principle here going far beyond matters of abortion. Clause 9 is so broad and non-discriminate in its approach that it sets unfortunate precedents. I have real concerns that if we pass this clause into law in anything like its present wide form, we will see demands arise for exclusion zones, buffer zones or whatever they may be called in all manner of other locations and for all manner of purposes. I will listen with care to the rest of this debate, but I urge further concern in the approach to this part of the Bill. I hope Ministers will reflect on this and bring back some revised wording at a later stage.

Baroness Watkins of Tavistock (CB): My Lords, I rise to support many of the people who have spoken today but in particular the amendments, which I have co-signed, in the name of the noble Baronesses, Lady Sugg and Lady Barker. However, having listened to the debate very thoroughly, and being a believer in free speech, I have become increasingly of the opinion that we need to find a good resolution as a result of this debate, rather than a fast and rapid one.

5.30 pm

I want to say as a nurse that contraception is always preferable to abortion, but women who attend abortion services do so to discuss their options, and to make difficult decisions about their pregnancies. Staff who work in abortion clinics are highly trained and seek to provide abortion healthcare that assists the person to understand their options and to provide confidential support during the process of making a decision about either maintaining the pregnancy or sadly proceeding to a safe abortion; and safe abortion is something that our country should be proud of.

People attending these clinics are often highly vulnerable, distressed, and their situation, in some cases, is made worse because they are pregnant as a result of coercive sex, which nobody else has mentioned. These women therefore need to be able to attend the services without intolerant public voices outside the clinics. I do not know what the ultimate solution is, but I do not think that we should support such behaviour outside any healthcare clinics, including abortion clinics. I therefore hope that the Minister is able to express, at the end of this group of amendments, the Government's support to find the best solution we can to this issue.

Baroness Eaton (Con): My Lords, I am in agreement with the Clause 9 amendments put forward by the noble Baroness, Lady Fox of Buckley, and the noble Lords, Lord Farmer and Lord Beith. As these amendments highlight, there are several severe problems with Clause 9, and it will take more than mere window dressing to resolve them. I would like to concentrate my remarks on Amendment 86, in the name of the noble Baronesses, Lady Fox of Buckley and Lady Hoey, because it introduces crucial changes that seek to make Clause 9 more proportionate.

It should be noted that the regime created under new subsections (2A) through to (2D) is not new, this is entirely consistent with Part 3 of the Police, Crime, Sentencing and Courts Act 2022 and the consultation process set out for the public spaces protection orders it creates under Section 72B of the Anti-social Behaviour, Crime and Policing Act 2014. Amendment 86 ensures that buffer zones can be established where and when necessary, according to the unique local circumstances and the evidence. This amendment addresses the fact that Clause 9, in its current form, is not proportionate because it creates a mandatory regime that discounts these factors.

[Baroness Eaton]

The clause as it stands is a catch-all approach which will inevitably sweep up behaviour which is not criminal. Indeed, this is what the Home Office found when it reviewed the situation in 2018, finding that

"The vast majority of the pro-life activities reported through the call for evidence do not meet the threshold of being classed as criminal."

The needs of an abortion clinic in Ealing may diverge dramatically from those of a clinic in Birmingham, for example. Given that the Home Office review found that

"Pro-life activity is reported as taking place outside a relatively small number of abortion facilities (36/406)"—

Baroness Sugg (Con): My Lords, a lot of reference has been made to the 2018 Home Office review. Does my noble friend not recognise this 20% increase in clinics that have been targeted, or that over 50% of women have to attend clinics that have been targeted? I am not sure how many more women need to be affected before we take action. I am happy to share that evidence with my noble friend.

Baroness Thornton (Lab): Does the noble Baroness think that these women are lying about how they feel about the approaches they get outside those clinics?

Baroness Eaton (Con): No I am not, but it is a different thing than finding people guilty of allegedly interfering and charging them with criminal activity.

Amendment 86 is particularly important in light of the available evidence, which shows that buffer zones are not needed outside every abortion clinic. The 2018 review commissioned by the Government found that protest activities were the exception, not the norm. Rather, anti-abortion activities were

"predominantly more passive in nature"

and included

"praying, displaying banners and handing out leaflets",

with a low number of reports of the use of more aggressive tactics involving approaching staff and patients". How do noble Lords who support this clause feel about the antics of the Just Stop Oil protestors who continue to bring traffic on the M25 to a halt? I am thinking particularly of some of the Members opposite who oppose the whole of the Public Order Bill yet support this clause.

Proposed new subsections (2A) through (2D) create a flexible approach uniquely tailored to the specific needs of each abortion clinic, while carefully balancing the rights and freedoms of those who wish to pray or hand out leaflets—which, I must stress, are lawful activities in this country. We cannot cherry pick which causes enjoy fundamental rights according to our personal preferences. It is an abuse of the criminal law to use criminal force to ban activities we find distasteful. As the noble Baroness, Lady Fox of Buckley, noted at Second Reading, the right to protest peacefully includes both the protestors we admire and also those that we despise. To say otherwise, and to let this clause stand, betrays the English democratic traditions of liberty and the rule of law.

Baroness Hoey (Non-Afl): My Lords, I rise to support the amendments standing in the name of my noble friend Lady Fox of Buckley and particularly the amendments that I have added my name to. These amendments go to the root of the problem with Clause 9—it is a very blunt instrument, which I think everyone in this House would accept. The amendments tighten up, very importantly, the definition of the phrase "interferes with" in Clause 9, so that it will conform to the principle of legal certainty, and the dictates of freedom of expression. It is very important that, at the moment, it does not distinguish between activities causing harm and activities with which people may disagree —and even disagree very strongly.

These amendments will remedy the obvious problems with how Clause 9 defines "interferes with". As it currently stands, the definition, I believe, is so broadly worded that it can mean anything to anyone. Not only does that language make the law vague and ambiguous, but it also makes it practically impossible for the police to enforce the law. Phrases such as "seek to influence", as has been mentioned, "advises", "persuades" or "informs" can have as many meanings as there are people in the world; these phrases do not draw clear lines of criminality. The wording is so broad that individuals cannot know if their actions cross the threshold of criminal behaviour. With so many interpretations available, how can the police know when the threshold of criminality has been crossed? More to the point, is not the very purpose of freedom of expression and protest to "influence", "advise", "persuade" or "inform"?

We must not permit lofty aspirations to interfere with the basic freedoms safeguarded by the right to freedom of expression, nor must we allow a law to be so broad that it encompasses basic activities of everyday life. These amendments will help to properly restrain Clause 9, if it is going ahead in its entirety, so that it achieves its intended aims without running roughshod over the fundamental rights of ordinary citizens.

I emphasise that the Bill, as I understand it, is about public order, yet I believe that this clause is about political opportunism at the expense of fundamental freedoms. It is telling that the clause's sponsor in the other place, Stella Creasy, voted against the whole Bill on the grounds that it went too far in policing legitimate protest but voted for a clause that introduced sweeping limitations on the right of freedom of expression for a select group of individuals, who often—I accept that there are some who will not—engage in peaceful, passive conduct and, predominantly in certain parts of Northern Ireland, in very deep prayer. There is already a law here to deal with those people who behave in a manner that we would all find abhorrent. I urge noble Lords to support the amendments in my name and those in the names of the noble Lord, Lord Beith, and the noble Baroness, Lady Fox, to ensure that Clause 9 goes no further than absolutely necessary.

Briefly, on Amendments 98 and 99 in the name of noble Lord, Lord Farmer, and the right reverend Prelate the Bishop of St Albans, the noble Lord, Lord Farmer, identified well that Clause 9's fundamental deficiency is that it introduces wide-ranging law changes, which would set significant precedents in other areas of the public realm, without demonstrating evidence that such a change is needed based on empirical evidence. The noble Lord has spoken of stepping back and reviewing, and I think he is right. Surely the only responsible course of action for the Minister and the

Government is to properly consult on these proposals before introducing such sweeping and, I believe, reckless changes to the law.

The amendment in the name of the noble Lord, Lord Farmer, would give the Secretary of State powers to introduce buffer zones around clinics only after a thorough consultation process has taken place and determined that there has been a significant change in the nature of protest since the last review, which took place only in 2018. I remind noble Lords that we have had two years of a pandemic and lockdowns since that review. As we have heard from many other noble Lords, at the time of that review the Home Office found that buffer zones would be disproportionate. At the very least, it is incumbent on Ministers to consult on what has changed since 2018 before introducing sweeping changes to the law in the way that Clause 9 will legislate for; that is very similar to what the noble Lord, Lord McAvoy, said.

We do not need this whole Clause 9. However, if we are going to have it, no matter how supportive some Members of this House are of a woman's right to choose, I believe that this is just not the way to go. In the long term, it will really affect freedom of speech and civil liberties in this country.

Baroness O'Loan (CB): My Lords, I fully support the amendments tabled by the noble Baroness, Lady Fox of Buckley, and the noble Lords, Lord Farmer and Lord Beith—with the exception of Amendment 99, because this is a matter for primary, not secondary, legislation. Others have addressed various of those amendments, but I will focus on Amendments 98, 92 and 85.

Amendment 98 seems to me a way forward in addressing concerns that do exist about the way in which people exercise their right to freedom of expression in the vicinity of abortion clinics in England and Wales. There has been no review, no consultation and no assessment of the impact of Clause 9, yet it will have a disproportionate effect—as noble Lords have said—by criminalising those who seek to provide in a compassionate manner counsel, support and assistance, including financial assistance, to mothers who fear that they cannot afford to give birth to the baby they are carrying or look after them after birth. Existing laws provide for offences in relation to the harassment of individuals; I spoke of those at Second Reading. We have been provided with no evidence to support the necessity or proportionality of what is proposed in this clause.

Amendment 98 provides for the carrying out of a review. This seems to me a proper manner of contemplating a change in the law, rather than the Bill, which will result in the inability of individuals to bring support to women at a time when they may most need it, in a manner which does not constitute harassment, and which may give a woman the choice and opportunity to give birth to her baby rather than to abort it.

Amendment 92 would maintain the ability to provide information so that women can make informed choices. The use of text and other information about the irreversible step she is about to take is an exercise of the right to freedom of expression. Of course, in the context of abortion, there may be disagreement about the use of some images, but there has been no consideration about how we define what is and is not acceptable. For example, would a leaflet showing a pregnant woman the support she could receive if she continued her pregnancy count as graphic imagery merely because it had a photograph of a baby on it? These are fundamental matters of freedom of expression.

5.45 pm

Finally, I will address two additional vulnerabilities of Clause 9, which Amendment 85 seeks to address—though in my view it does not go far enough. We do not live in a totalitarian state which arbitrarily removes the right of freedom of expression, yet what we have in Clause 9 is a total silencing of freedom of expression, within a fairly extensive and arbitrary limit around a range of facilities, with no consideration of other buildings that may exist in the vicinity of an abortion clinic. The overreach of Clause 9 is of breathtaking magnitude. The amendment is very simple: it would disapply the buffer zone where it extends to private property used as a place of worship.

Clause 9 applies to all private property within 150 metres of an abortion clinic. Such an intrusion into the private lives of British citizens is unprecedented. Other countries, such as Canada, carve out exemptions for private property. As has been said, 150-metre buffer zones would start at the point of access to the abortion building, which may be situated in a very extensive site, so that the public area affected by the buffer zone could be much greater than 150 metres.

A simple example is—

Baroness Sugg (Con): I agree with the noble Baroness on her point about private dwellings. We have tabled Amendment 96, which will, I hope, deal with that. Will the noble Baroness support that amendment?

Baroness O'Loan (CB): If I may continue, I have a simple example on private dwellings. A woman leaving her home on her driveway, which is adjacent to a public right of way within the 150-metre buffer zone, with her pregnant friend who is contemplating an abortion but is not quite sure about it, would commit a criminal offence by talking to her about her options.

We believe in freedom of speech. This clause is so completely disproportionate that your Lordships cannot accept it. After all, there has been no prior consultation about this complete restriction on the right to freedom of expression. The 2018 Home Office review—I am sorry; I know noble Lords have said we should not talk about this, but I think that it is important—said:

> "There have also been reports of verbal and physical abuse by pro-choice activists against pro-life activists."

Do noble Lords who support Clause 9 have a view on that and how the clause would address it? The failure to address this is one of the many failings in this debate.

Baroness Barker (LD): If the noble Baroness were to listen carefully to what the noble Baroness, Lady Sugg, said and to read the amendments that have been tabled, the clause is about any interference—no matter the motivation of it—within that 150-metre zone. It would apply exactly to the point she has just made.

Baroness O'Loan (CB): I am debating the amendments to which I am speaking.

Clause 9 is unworkable in its current form. That is why I support these amendments and will vote for them should a Division be called.

Lord Cormack (Con): My Lords, we need a little calm in this situation. I thought that the noble Lord, Lord Beith, made a very wise, temperate speech, and we would all benefit from reflecting upon what he said.

There is an extraordinary irony behind this. As this Bill goes through your Lordships' House, we are also debating the Higher Education (Freedom of Speech) Bill. Only yesterday I noticed a very interesting account in the *Times* of what the retiring vice-chancellor of Oxford University had said about free speech. She said that her students—all students—must be able to listen and reflect upon things of which they deeply, instinctively disapproved. She made the point that if they did that, they could strengthen their own views or maybe, on occasions, change them.

This clause is disproportionate. We debated freedom of speech in your Lordships' House when I raised it many months ago, when there was an attempt to muzzle Members of this House. People were complaining to the commissioner, and the commissioner, very rightly, discounted the claims. The committee led by the noble Baroness, Lady Manningham-Buller, decided that we needed to tighten up the rules in our House to further protect freedom of speech. We must not claim for ourselves that which we would deny to others. It is important that freedom of speech is protected.

There are many laws that deal with those who abuse freedom of speech. One of my reasons for having doubts about the Higher Education (Freedom of Speech) Bill stemmed from the advice I was given by a wise parliamentarian who talked to me when I first came into the other place some 52 years ago. He said: "Before you form an opinion on any Bill, ask yourself if it is necessary." I am not sure that this clause is, in any form, necessary. What certainly is necessary, however, is that, if the clause is included in the Bill—I hope it will not be, but if it is—it must be in a form amended along the lines advocated by the noble Lord, Lord Beith, in his very wise speech.

There is a danger—some of us are guilty of this occasionally—of indulging in slogans. A slogan is not the same as a principle. A slogan is not something that should drive Members of your Lordships' House when we are jealous of our reputation of being able to scrutinise with objective care the Bills that are placed before us. In a way, the noble Baroness, Lady Watkins of Tavistock, was making a similar point in her brief speech when she said that we really had to reflect on what was being said. My own suggestion to the Minister, which I hope he might act on, is that he should invite in those who have tabled amendments—I am not seeking an invitation, but I would readily accept one—such as the noble Baroness, Lady Fox of Buckley, who made a very interesting and thoughtful speech in introducing this debate, and see whether there is not some common ground. My own recommendation would be that we remove this clause, have a proper conference on this issue, and see what is necessary to protect the proper freedom of women while not inhibiting freedom of speech, especially of those who have deep religious convictions on this matter.

Baroness Thornton (Lab): I hesitate to intervene on the noble Lord, who is very wise on these matters, but given that he is a huge champion of the other place, I wondered what his opinion was of the enormous majority that there was in favour of the clause there.

Lord Cormack (Con): I am delighted to tell the noble Baroness what my opinion is. My opinion is based on real sadness that, since 1997, the other place has progressively ceased to be a House of scrutiny. MPs devoted just two hours to the Report stage of this Bill. What happened in 1997 was that there was an exuberant Conservative who tested the patience of the Labour Government with their great majority. The noble Baroness deserves a proper answer to her question. His name was Eric Forth; he is, sadly, no longer with us. I begged him, and so did my noble friend Lady Shephard of Northwold, because we were shadow Leader and Deputy Leader of the other place, to be a little bit selective, but he was not. Night after night, he kept up the Labour Party, so what did the Labour Party do? In exasperation, it brought in programme Motions, which means that every Bill has a limited amount of time. What did the Conservatives do? They protested, saying, "We won't allow that to happen when we come back into government." Of course, it is such a convenience for the Executive that they did allow it to happen when they came back into government. That is why every Bill is subjected to inadequate scrutiny in the other place, so it is incumbent on us to give it the proper scrutiny that our lack of timetable Motions enables us to give it.

Viscount Hailsham (Con): I agree with what my noble friend is saying about timetables, but in response to the noble Baroness, perhaps he would address this point. The truth is that Members of Parliament voted for Clause 9 in very large numbers. They did so because they were aware of the very considerable concern in their own constituencies about what was going on outside abortion clinics.

Lord Cormack (Con): They might have voted for all sorts of reasons. We have already heard that Stella Creasy refused vote for the Bill because it had gone wrong as far as she was concerned. Of course I will give way.

Baroness Watkins of Tavistock (CB): I want to clarify that I am not suggesting that we should not stop problems outside abortion clinics. I am trying to find the best solution so that women are protected, but understanding that not everybody who wants to express an opinion should be guilty of a public order offence. I think that is the difficulty. I would like the noble Lord to comment on that issue of how we find the rational ground, because I believe that the people who voted in the other House are much closer than some of us in this House to constituents who are having these challenges.

Lord Cormack (Con): I was a constituency MP for 40 years, so I have a bit of knowledge of it. We must make sure we do not inadvertently criminalise large

numbers of people. As for the large majority in the other place, I have talked about the scrutiny and that is all entirely accurate. If this House has any point or purpose—and some are suggesting at the moment that it does not, but I believe passionately that it does—then we have to go into things in a little more detail and to have the opportunity to ask the other place to reconsider, to think again. At the end of the day, we must not forget that the other place has the final say, and that is entirely right.

As somebody who believes passionately in both Houses, I recognise that that is the elected House; I do not want us to be replaced by an elected House because then we will build in the sort of conflict that we are seeing across the Atlantic at the moment. I want us to be able to live up to our reputation of being a House of experience and expertise. That may mean that we send certain things back, and I have practised what I preach because I have voted many times against clauses in government Bills, and I am prepared to do so again because I believe that is my duty if I think they are not right. At the end of the day, however, they will have the final say. I have gone on long enough, but I have been slightly provoked; I hope I have answered the interventions that have been made. I hope that we will think again before we pass this clause in its present form. That is our duty.

6 pm

Lord Shinkwin (Con): My Lords, it is a pleasure to follow my noble friend and to be educated by him.

I speak in support of the amendment in the name of my noble friend Lord Farmer and those listed on the Marshalled List. I should reiterate at the outset, lest anyone be in any doubt, that I do not take a position on abortion per se. However, as a disabled person I take a position on equality and, I am afraid to say, absolutely object to human beings diagnosed with my condition—brittle bones—being denied their equal right to grow up to be strong women and men on account of their diagnosis. That those who supposedly champion equality can reconcile such a claim with such lethal disability discrimination is something I will never understand.

My reason for speaking in support of Amendment 98 is not dissimilar. For me, as a disabled person in particular, Clause 9 simply does not make any sense. It is perhaps worth remembering that Christians were prepared to be torn limb from limb by lions in defence of their faith, so the idea that some will not see this as an opportunity to take a stand and go to prison for their beliefs, and to bear witness to freedom of conscience, as other noble Lords have mentioned, strikes me as completely unreal. For me to pretend that this is not an inevitable outcome of Clause 9 would be the height of naivety; of course they will do so.

For me, the question is twofold. First, as other noble Lords have touched on, is this really what we want? Do we really want to put the state in the wholly invidious position of locking people up for exercising their freedom of conscience when their only crime would be to bear witness to the serious belief that two hearts beating equates to two lives, interdependent and interconnected but no less individual for that? Since when has that been a crime? I thought it was a medical fact that a beating heart was a giveaway sign of a live human being, and the absence of a human heartbeat, conversely, a clear indication of death. I suggest that the state does not want to go anywhere near Clause 9 and would be much better off conducting a review, as set out in Amendment 98.

Secondly, there is another party in this debate which I suggest has no interest in this clause becoming law: those who support abortion. After all, why risk making martyrs of one's opponents? We should be in no doubt that, if passed into law, this clause will deserve to be known as the "own goal clause", because that is precisely what would result: a spectacular own goal. I spent all my career before I came to your Lordships' House campaigning, much of it in the charity sector, and I would never in a million years have advised any of the organisations for which I worked to pursue such a counterintuitive, counterproductive strategy as Clause 9 encapsulates. No matter how passionately one believes in the clause, giving your opponents both the moral high ground and the oxygen of publicity—because the media will inevitably cover the story of people going to prison for their beliefs—simply does not make sense. It is surely what is known as a lose-lose situation. I wholeheartedly support this pragmatic, common-sense amendment as a way out of the minefield created by Clause 9.

Baroness Hamwee (LD): My Lords, I have Amendment 93A in this group. In the spirit of scrutiny, I wondered what "an abortion clinic" and "abortion services" actually meant. To me they include professional counselling which puts both sides of an issue and all the options. I say that because it seems as if we have got into a rather binary state where this is just about the abortion procedure.

I am convinced that there is a serious problem for women attending some clinics who are seeking an abortion. I am also aware of how activities can move around geographically. I understand that there is not a problem now with the activities that we have been talking about outside places where abortions do not take place but counselling does. However, as the noble Baroness, Lady Sugg, said, activities have moved to new sites; she mentioned one that has been affected for the first time in many years. My amendment is to raise that issue, bothered that what is a problem now could be displaced and become a problem elsewhere. Obviously it is probing the position, but as we are seeking to tackle this, we should do so comprehensively.

Viscount Hailsham (Con): My Lords, I am in general opposed to those of the amendments which are designed to reduce the impact of Clause 9. As I said at Second Reading, I support the concept of buffer zones around abortion clinics. Of course I accept the two propositions eloquently expressed by the noble Baroness, Lady Fox: first, that the right to demonstrate and freely express views is of great importance in a democratic society; and secondly, that the provisions of Clause 9, as many of your Lordships have articulated, impose serious restrictions on such abilities. But again, as I said at Second Reading, these rights are not absolute. They have to be balanced with the rights of others, and the correct balance is often not easy to identify

[VISCOUNT HAILSHAM]
and can be the subject of legitimate disagreement—it usually is. However, in the context of abortion clinics, Clause 9 gets the balance about right.

I will identify occasions where the balance falls the other way: in favour of the demonstrator. Some of your Lordships will think that the examples are trivial. I have often hosted meets for our local hunts, both before the ban and after it; after the ban, our local hunt acts fully within the law. The saboteurs come and demonstrate, and they are often very tiresome. However, provided they operate within the law, I would not for one moment seek to ban them. There is another example. Pacifists sometimes demonstrate outside military recruitment offices. I disagree with that and think it is wrong in principle, but again it would never occur to me to seek to prohibit that activity.

The motives of those demonstrators and those who demonstrate outside abortion clinics have something in common. It is not that they are just expressing their own opinions, which of course they are absolutely entitled to do, but they are trying to induce a change of attitude on the part of others. It is when I come to those who protest outside abortion clinics that I am conscious of why the balance tips. Those who attend abortion clinics have come to a very painful and serious decision, and often an anguished one. I think it is very wrong to subject them to what is often intemperate bullying of an extremely nasty kind.

Lord Farmer (Con): I mentioned at Second Reading that the BBC did a poll which found that 15% of women who went to abortion clinics had been coerced into doing so. We do not have the information as to how many partners have said, "I don't want this child, go and have an abortion". We need to establish that by finding the evidence. We hear all the time that the people outside the abortion clinic are against abortions. We do not see the intimate pressure that women are often under in the home—not only from male partners but perhaps from their families—to do with shame and other things. This needs to be looked into before we make a decision on this.

Viscount Hailsham (Con): Parliament is in a position to make a judgment about these matters. I was in the House of Commons for nearly 30 years—not as long as my noble friend Lord Cormack—and I was well aware of, in many circumstances, from evidence which came from many quarters, the kind of abuse to which women seeking an abortion were subjected by those who demonstrated outside abortion clinics. I strongly suspect that is why the House of Commons voted for Clause 9 in such substantial numbers, because it knew it was happening and that it was wrong. We do not need a further review to establish those basic judgments.

Baroness Fox of Buckley (Non-Afl): My Lords, my difficulty is this. In interpreting things in the way he is, the noble Viscount is suggesting that he knows why people did something. I have no idea why people in the Commons voted in the numbers they did. The noble Viscount has a view on what might have driven that; others might have another view. Generally speaking, since I have been in this place, the House of Commons has voted in huge numbers for things I have disagreed with, and unless the Opposition is going to go home, what am I supposed to do? I cannot keep saying, "I think they really did it because they were really motivated —we do not know, do we? Will the noble Viscount clarify why he keeps stressing that? Is it relevant to us?

Viscount Hailsham (Con): It is, because we are being asking what the evidence is. I was telling the noble Baroness that, when I was a Member of the Parliament, for a very long time, I was conscious of some of the abuse that was going on from speaking to people coming to my surgery. In the House of Commons, we get a reflection of the views of Members of Parliament who are encountering the same response from their own constituents.

Baroness O'Loan (CB): Is the noble Viscount aware of any statistics on the number of people now who are being prosecuted or who have been convicted of harassment of people at abortion clinics? I am completely unaware of that, and none of those who are promoting this clause has produced any such evidence.

Viscount Hailsham (Con): I am not, but what I am telling the Committee is that those who have a great many dealings with the public, particularly Members of the House of Commons, have passed by a very substantial majority the view that Clause 9 is necessary. That accords with my own personal experience, after 30 years or so in the House of Commons.

6.15 pm

Lord Cormack (Con): May I remind my noble friend that he and I cast many votes during the debates on Brexit, regardless of what the House of Commons was doing, because we thought we were right?

Viscount Hailsham (Con): I agree with that, but I think my noble friend is overlooking the fact that, in the House of Commons, it was not a whipped vote when they were talking about Clause 9; it was what is sometimes laughingly referred to as a free vote. I personally always took the view that, when I was not a Minister, a vote was a free one, but I am conscious that that was not always the view—perhaps not even of my noble friend. If my noble friend wants to intervene again, of course he can.

I would like to say a word about one or two of the amendments. I start with Amendment 80. The substantive offence is that provided in Clause 9(1). I ask rhetorically what can be the reasonable excuse for an interference? I agree with the view expressed by my noble friend Lady Sugg. I suspect that I know the intended purpose of the amendment: to allow the defendant to introduce the defence of free speech before the courts. However, if Parliament decides that Clause 9 should not have the defence of free speech—and that is what the clause provides—then such a defence should not be available in a court.

On Amendments 81 and 86, in my view the matters are of far too much importance for the designation of zones to be left to local authorities, as advocated,

I think, by the noble Baroness, Lady Fox. The abrogation of the right of free speech and the abrogation of the right of association should be left to Parliament and not to local councillors.

The phrase "intentionally or recklessly" in Amendment 82 is wholly unnecessary, with one exception. It seems to me that the concept of intent is incorporated in the definition of interference as contained in Clause 9(3). The exception is the word "impedes" in paragraph (c), because I acknowledge that an act of impeding could perhaps be committed without intent. Ministers should clearly reflect on the criticism that has been expressed as to the scope of what is included in the definition of interference. I agree very much with what my noble friend Lady Sugg said about the expression of opinion. I am sure she is right about that, and it has been supported by others in the Committee.

Amendment 85 is in the names of the right reverend Prelate the Bishop of Manchester and my friend the noble Lord, Lord Beith. I almost always agree with him but on this occasion I am bound to say that I think he is wrong. With the exception of the point he made about the poster outside the church, I have very great difficulty in seeing anything that could be said within the church that could interfere with somebody seeking access to an abortion clinic, save for that which has been addressed by Amendment 97, in the name of my noble friend Lady Sugg.

As to the penalties provided in Clause 9(4), I am much more relaxed and would not seek to argue against some amelioration of the sentences set out in the Bill. In general, I think that Clause 9 is a proportionate response to a very serious mischief, and I hope that we will not water it down substantially.

Baroness Thornton (Lab): My Lords, I did not expect to say how much I agree with the noble Viscount, Lord Hailsham. It means that I do not need to say an awful lot. I regret that the people moving the amendments which seek to water this down very significantly, starting with Amendment 80, have not addressed the amendments moved by the noble Baroness, Lady Sugg, which seek to turn this into a reasonable working clause.

Lord Beith (LD): My Lords, I quite openly accepted that the noble Baroness, Lady Sugg, sought in a number of respects—though not in all—to reflect the issues raised at Second Reading. I gave credit for that.

Baroness Thornton (Lab): I accept that. However, others who support this suite of amendments have been asked about the amendments tabled by the noble Baroness, Lady Sugg, and have clearly not read or addressed them. That is a great shame. I support the noble Baronesses, Lady Sugg, Lady Barker and Lady Watkins, and my noble friend Lord Ponsonby, in seeking to make this clause acceptable. I hope the Minister sees this as a positive step forward for the next stage of the Bill.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I will speak to Amendment 94, lest it be overlooked in considering the broader issues in this debate. I accept that the issue before us in this section of the Bill is a sensitive one that deserves our most earnest consideration.

I agree in principle with the amendments to Clause 9 tabled by the noble Baroness, Lady Fox of Buckley, and the noble Lord, Lord Farmer. Amendment 94 relates to the criminal punishment attached to the proposed criminal offence. Given that the clause potentially criminalises people for praying quietly or offering support and advice to people in a public area, this is no small aspect of the clause. Making it illegal to quietly stand outside an abortion clinic or compassionately express one's genuinely held belief about the sanctity of human life and the value of an unborn child, as proposed in this Bill, is surely a major step backwards for our country.

The right to enjoy freedom of speech and the right to peaceful protest have been hard fought for and should not easily be given away. Yet, as a result of this clause, anyone who influences, advises or persuades, who attempts to advise or persuade, or who otherwise expresses an opinion outside an abortion clinic, could be liable even in the first instance to a prison sentence. Surely this runs contrary to our basic freedoms. A former Home Office Minister said in March 2021:

> "The right to protest is the cornerstone of our democracy and the Government is absolutely committed to maintaining freedom of expression."

Can the Minister confirm that this new law as drafted would criminalise someone who accompanies a woman having an abortion who says to her, "Are you sure?", even if the woman seeking the abortion is happy for that to be asked—that they would fall foul of this legislation? If so, what kind of a country are we living in?

I heard a lot of talk about the other place, and like two noble Lords who spoke—

Lord Macdonald of River Glaven (CB): Does the noble Lord understand that prosecutors, in authorising and not authorising charges, have discretion in whether to prosecute a case? No prosecutor I have met would ever prosecute a case on the facts the noble Lord has just set out.

Lord Paddick (LD): Is the noble Lord also aware that one of the amendments tabled by the noble Baroness, Lady Sugg, addresses exactly this issue, making somebody voluntarily accompanying a person to a clinic exempt from this clause?

Lord McCrea of Magherafelt and Cookstown (DUP): The noble Lord, Lord Beith, did say that it went some way in this regard, but that it did not deal with all the issues that he and I expressed concern about.

It has been bandied about in this debate for quite some time that the other place voted by a large majority for this legislation. According to certain interpretations, that could be correct. Like the noble Lord, Lord Cormack, and the noble Viscount, Lord Hailsham, who spoke recently, I was in the other place, for 25 years. There are 650 Members of the Commons. Of those, 297 voted for this legislation—46%—while 110 voted against and 243 abstained, meaning that 54% of the other

[LORD MCCREA OF MAGHERAFELT AND COOKSTOWN]

place did not vote for this clause. So often in this debate it has been said that there was a vast majority in the other place and that we must submit to its will, yet 54% did not vote for this clause. It is good to be factual on percentages and numbers in the other place.

It is a fundamental and widely accepted principle of sentencing that the punishment must fit the crime—that is, if you feel that freedom of expression and peaceful protest are a crime, which I do not. However, the fines envisaged in Clause 9(4) are grossly disproportionate to the types of protest activities that often occur outside abortion clinics. A six-month prison sentence for a first offence, which could be the result of a volunteer offering support to a pregnant woman, surely strikes most people as neither reasonable nor proportionate, and nor does a two-year sentence for someone who offends multiple times.

The Government reviewed this in 2018. People have dismissed the review as if it does not matter today, but mind you, if it had said something different, they would be happy to mention it. It found that the vast majority of these activities are passive in nature; that they involve everyday lawful activities such as silent prayer and handing out leaflets offering help and support to women who may not want an abortion, but who may feel they have no other choice; and that they occur outside a small number of abortion clinics. Inside this buffer zone, to stand in silent prayer could get you six months' imprisonment. What country are we living in? This is not China, and it is not Iran. It is the United Kingdom. I have heard the Prime Minister and previous Prime Ministers, and Ministers in this House, say at the Dispatch Box that the most persecuted people in the world today are Christians. But to express your Christian opinion, even in silent prayer to God, can be regarded as an offence inside a buffer zone and you could find yourself in prison.

6.30 pm

It is very clear that these are not the types of activities that the 2018 review recommended should be punished with unlimited fines or two years in jail. The penalties introduced by Amendment 94 more closely resemble the level of fines imposed for a breach of a public spaces protection order, which is also a criminal offence. Amendment 94 ensures that those who find themselves on the wrong side of this law receive a proportionate and reasonable sentence. I hope that noble Lords correct some of the many wrongs and injustices in this clause, which is not needed, given that the current laws on harassment and public order are more than sufficient to deal with any problems that may occur.

I am sure that even noble Lords who support the intention of these so-called buffer zones—in reality, zones of censorship for basic free speech—would not want a scenario where people are subjected to unlimited fines and six months, or even two years, in prison for merely expressing opinions. There are those who quite often—daily—are protesting and holding the city of London and the travelling public along the motorways to ransom, with even ambulances and patients proceeding to hospital to get emergency operations or treatment being stopped in those protests, thereby threatening life and limb, yet the courts give those participating in such actions a slap on the wrist. When was the last time you ever heard, on a first offence, of six months' imprisonment or two years or five?

Lord Balfe (Con): My Lords, this has been a fascinating debate, has it not? We have spent almost as much time debating this clause, which was not, of course, part of the Bill in the first place, as the House of Commons spent debating the entire Bill. I broadly support my noble friend Lord Farmer's amendment, but I support it because I want the Minister to go back and have a serious look at this clause, which was not a government clause in the first place.

I came into politics in the 1960s, and one of the first things I was involved in was supporting David Steel's Act, so let there be no doubt as to where I stand on this issue, but I think we are getting two things mixed up. We are mixing up the need to protect people who decide to take advantage of a law that is on the statute book with harassment and other offences. The first question we need to ask is: do we need an extra law? Do we need it at all? Do we need Clause 9? It came in as a private Member's initiative in the other place. I am not sure we need it. I think that in this past 70 years we have managed reasonably well on policing this.

I also draw attention to the fact that this whole wretched Bill, which we have now lost sight of because of this clause, is actually a fairly fundamental attack on many civil liberties which we cherish and believe in. I reflect that in the past couple of years, during the Covid epidemic, we have accepted restrictions on freedom which, in my view, were unwise, unwelcome, unwanted and unnecessary. We are now in a position where expressing statements—and you have only to look at some of the things online about Covid—is no longer acceptable. We are in a position where we have a very authoritarian undertone in the way in which public discourse in Britain is being conducted, and this is part of it. Unfortunately, these two things have got mixed up together.

I think that we probably do not need this clause at all. If we do need it—this is one of the jobs the Minister has—it needs to be sorted out substantially. I would like to think—and I do not wish to be part of it—that he calls together the various protagonists and tries to get some common sense out of this. I do not hold the other place in quite the same reverence as my good and noble friend Lord Cormack does. I think MPs probably saw something that was a very good press release come along and they voted for it. I think that was probably half the aim.

I hope that after tonight, before we get to the next stage, we will be able to look at this in cool sort of way, and we will then get back to the rest of the Bill, which has some points in it that I find deeply regrettable and is not the sort of Bill that I would like to see passed by this House, but this is not part of it. This was a bit of private initiative written on top of it, and it is fundamentally mixing up two things: the right of the citizen to protest and the right of another citizen to make use of a law that has been there a long time and is working. Of course, we do not want people to be harassed and the like, but we also want to keep a sense

of proportionality in all of this, and we need to remember that a calm head is probably a very useful thing to have when you are faced with an emotive issue such as this.

Baroness Bennett of Manor Castle (GP): My Lords, I am acutely aware of the time and, having spoken extensively in favour of Clause 9 at Second Reading, I rise briefly to express the Green group's support for the amendment in the names of the noble Baroness, Lady Sugg, and the noble Baroness, Lady Hamwee, who made an important point. I will also speak in opposition to the other amendments in this group and address some points in the debate that I think may have been perhaps rather pointedly aimed in our direction.

There has been some discussion about how other elements of the Bill are aiming to restrict protest and this is seen to be restricting protest, but there is something profoundly different here. There is nothing in Clause 9 that stops people who are opposed to abortion or the provision of abortion services protesting on the high street, outside Parliament or on the M25. They could choose to do that; there is nothing in Clause 9 that would stop that happening. That is calling for system change, that is directed at our politics, at the way our society and our law work, but there is a profoundly different situation where protest is directed at an individual person, a patient who is seeking healthcare or advice about healthcare, to discourage them from receiving that healthcare. One point that has not been raised tonight, that I think really should be, is the fact that there is a risk if someone is driven away by this protest, they then seek to access irregular services, which are now broadly available on the internet, at potentially great cost to their health and well-being.

The noble Baroness, Lady Fox, said that this is a catch-all amendment in that it is seeking to have broad coverage across the country. That is the alternative, as the noble Baroness, Lady Sugg, said, to having a postcode lottery, where some people whose councils can afford to take action have protection and other people, often in poorer areas of the country where councils do not have the money, do not have protection.

The noble Lord, Lord Farmer, was concerned about intimate pressure. Let us look at where pressure for an abortion comes from. The noble Baroness, Lady O'Loan referred to mothers who fear not being able to pay for a baby. It is not just fear; the practical reality is that the greatest pressure for abortion in this country comes from an inadequate benefits system. I note that the right reverend Prelate the Bishop of Durham, has been prominent in campaigning for the end to the two-child limit. I will join him and anyone else who wishes to campaign against this inadequate system.

I have one final point which I think has not been addressed. The noble Lord, Lord Cormack, questioned necessity. A number of noble Lords asked what has changed since 2018. What has changed is this. A huge amount of what we see in the UK has been imported from the United States of America. We have seen an extremely well-funded and emboldened movement coming from the US to the UK. The noble Lord, Lord Cormack, referred to his experience as a constituency MP. That was some time ago. Since then, and certainly since 2018, the levels of funding and pressure have changed. A movement started in the US is aiming to act around the world. I do not say that your Lordships' House should stand up against this movement if it seeks to campaign to change the law in the UK—personally, I want to see full decriminalisation of abortion. I accept their right to campaign against the law and the system, but I will not accept their right to target individual patients seeking healthcare.

Lord Hope of Craighead (CB): My Lords, I do not want to prolong this debate, which has been extremely interesting and very rewarding in many ways. I want to make one or two short points, both relating to amendments in the name of the noble Baroness, Lady Fox of Buckley. I agree with one and disagree with the other.

In Amendment 89, the noble Baroness asks the Committee to take out paragraph (b),

"persistently, continuously or repeatedly occupies".

I have some problems with this paragraph because I am not sure to what the word "occupies" refers. The grammar of this paragraph needs to be looked at very carefully. Unless the territory being referred to as being occupied is clear, this phrase is extremely broad. That is why I support all the amendment proposed by the noble Baronesses, Lady Sugg, Lady Barker and Lady Watkins of Tavistock. These are in line with the Constitution Committee's report, which said that the phraseology of this clause should be looked at carefully to ensure that it is not any wider than it needs to be. Paragraph (b) should be looked at again because the word "occupies" raises questions which need to be carefully looked at and properly defined.

Amendment 80 in the name of the noble Baroness, Lady Fox, asks us to insert the words "without reasonable excuse". In a previous debate, I expressed quite a few views on the use of the words "reasonable excuse". We need to take a decision about this ourselves. The trouble with putting this in as a defence is that it would be passed to the police on the spot to decide whether or not trying to express one's opinion or what motivates the individual to say or do what they are doing is a reasonable excuse. That is the problem. We need to take a decision and not leave it to the police or the courts.

The Court of Appeal—I beg the pardon of the noble Baroness—has been doing its best to soften the Ziegler case, which we discussed last time, to make it clear that there are certain offences, of which the Colston case is one, where damage is done or the activity is sufficiently serious that make it impossible to sustain a reasonable excuse defence. This is probably one of these cases. With great respect to the noble Baroness, these particular words should not go in. Otherwise, we are just creating more problems than we are trying to solve.

6.45 pm

Baroness Fox of Buckley (Non-Afl): The query about "reasonable excuse" has come up before. It has been suggested that free speech would be used as a "reasonable excuse". I will try to clarify what I was trying to explain, and perhaps the noble Lord will come back at me. There are many ways in which you could be found

[Baroness Fox of Buckley]
to be breaching the criminal law—it is so broad. The noble Lord, Lord Beith, illustrated the variety of things you might be doing that might mean you inadvertently broke the law. I wanted there to be some excuse, such as "I am accompanying someone and having an argument with them". There are problems with the wording of the clause, and I would be more than happy to be advised how to tighten up my amendment so as to not use this phrase or look as if I am giving the police too much power.

Lord Hope of Craighead (CB): The noble Baroness is wrestling with the same problem I had in dealing with "reasonable excuse" in relation to locking on. There seemed to be cases where people might have had a genuine reason for locking on because it is so widely defined.

One might say that the "reasonable excuse" defence would be suitable if it were sufficiently qualified so that it did not provide the police and the courts with the problem of having to decide whether or not the pro-life argument was a reasonable excuse. If one looked at the offences, one would say that this kind of argument would not stand up to what this legislation is all about. There are other instances where one might find that there was an excuse for what was done which was quite detached from what this clause is really driving at. If the noble Baroness could find a way of expressing this, I should be delighted. That is what I was trying to do in the earlier debate.

I hope I have made my position clear. As it stands, this would not be acceptable. I think that paragraph (b) raises a very interesting point of definition.

Lord Hogan-Howe (CB): My Lords, I rise briefly to support Clause 9. During this debate, I found myself challenged by our preference for not regarding this as a surrogate for talking about whether people are for or against abortion. At times I have noticed that there seems to be a link between those who oppose this clause and those who oppose abortion. This will not always been the case, but noble Lords who have spoken have often mentioned it. My heart finds it hard to contemplate abortion, but my head says that it is probably reasonably pragmatic in our society, and we have to accept it.

The reason for this clause seems to be the inconsistent application of police discretion around the country. The resources of each institution affected by the protests mean that they cannot always approach a civil injunction or remedy. As the noble Baroness, Lady Sugg, mentioned, it ends up being a lottery as to whether or not women in different parts of the country are protected. This is not good for anyone.

I support Clause 9 and I will reject the review, not because reflection is inherently a bad thing, as the noble Lord, Lord Cormack, said, but because I take this to be a wrecking amendment rather than something which is intended to develop the proposal. If I am wrong, that is my error, but that is how I felt the argument was being developed.

The basic proposal is about stopping interfering with women as they go to an abortion clinic. I do not understand the argument about needing to offer them advice at the point at which they approach a clinic. If the point is to offer advice on whether there are alternatives or whether they should even be contemplating abortion, this must be the least efficient process that anybody has ever devised. There has to be a better method than standing in the street, potentially shouting—we have seen examples of this—to engage with a woman at the point at which she is very vulnerable, just before she is potentially going to receive treatment, to try to persuade her not to do it. There has to be a better way. If this is the only way in which any protester can think to engage, they are in error. It is not a reasonable approach. It causes the majority of people to think that carrying out this type of protest in this way should be stopped.

People have described it as a conversation. I do not accept that. It is not a conversation—it sounds like a one-way monologue; it usually sounds like intimidation and, certainly, like bullying. For me, it is something that should certainly not be tolerated in a just society. I cannot support that.

There have been examples offered of where the police have intervened when people were merely praying; I think the noble Lord, Lord McCrea, mentioned this. I would be surprised if a police officer did that but, if there are examples, we ought to examine them. Let us get to the bottom of it. That would have required a member of the public to complain and then for the officer to attend. I do not think they would just have turned up of their own volition to intervene in an event around an abortion clinic that someone had not complained about in the first place. I would like to understand more about that, but I do not think this clause is designed to stop people praying. It might be designed to stop people congregating together in such a way that it intimidates people at what may be their most vulnerable time.

The argument about this being an absolute prohibition of protest in just one very small part of the country is a fair argument. I think all of us would say that, if that is going to happen, it should be in a very small part—and perhaps no part—of the country. It is an absolute argument. I could have accepted that, but my reasons for not doing so in this case, and why I believe Clause 9 is a reasonable approach, is that the harassment that is being suffered is gender-specific. Only one half of society will generally be affected by this type of influence or advice: the women of our society. It is also time-specific; it is a point at which women need this advice and at a time when they are in most peril, either personally, by conscience, or physically, and that seems to me to be a time when we should give them most support. Finally, it is at a place about which they have no discretion; they have no discretion about where they will seek support. They have to go to a hospital or a clinic. These places are identified and the women become vulnerable because they are identified as they approach them.

I would generally support an absolute prohibition of stopping protest—but in these places, at these times, for the women of our society, I support this clause. It deserves our support in protecting the women who need it.

Baroness Barker (LD): My Lords, I made an extensive speech at Second Reading so I shall confine myself to just a few points of reflection on the debate today.

First, the rest of the Bill is about protest; this is about the harassment of people seeking a legal health service to which they are entitled, as the right reverend Prelate the Bishop of Manchester reminded us. There are those of us who believe that women have the right to access those services freely and safely. Our amendments try to ensure that this whole clause addresses just that and, indeed, narrows it down. There are those who do not believe that such a service should exist or that people should be able to access it. They have very much exaggerated what this clause is about and its potential implementation. The noble Baroness, Lady Fox of Buckley, said in her introduction that all the evidence is that this activity does not stop access. I have no knowledge of any such evidence, and she did not give us any, but I have to ask: if it is not effective, why do people continue to do it, day after day?

A number of noble Lords rested their cases on the 2018 review. The amendments tabled by the noble Baroness, Lady Sugg, and myself have been informed by the providers of services and the thousands of women who attend those services and report to us that the current system of local PSPOs is not working, and they are continuing to suffer harassment as a result. So we need to be quite clear about the motivation behind the amendments but also their effect.

The noble Baroness, Lady Eaton, was one of the many people who gave a passionate defence of free speech. She said you cannot pick and choose. I say to her that, uniquely among all healthcare services, abortion services are targeted specifically. That is why we have to seek remedies, which we would not otherwise wish to do. The reason we are doing this is that, over the last two years, influenced by America, and influenced and funded by the same organisations that overturned Roe v Wade, there has been a change and an escalation.

I listened carefully to a number of noble Lords who made emotive comments suggesting that we wish to "criminalise prayer". In the case of a single person in silent prayer, no, we do not; in the case of a church where every member turns up, week in week out, to stand directly in the path of women trying to access a service with the avowed intent of frustrating their access, yes we do.

One amendment that nobody has talked about at all is our Amendment 87, which talks about the definition of interference. I urge noble Lords to go back and look at that. I include the noble and learned Lord, Lord Hope of Craighead, because, when he objects to the phrase about "persistently and repeatedly" occupying something, that again comes from the experience of clinic staff and users. People come day by day to undertake their activities in the doorway of a clinic.

Lord Hope of Craighead (CB): I am not objecting to the idea behind that clause; all I am saying is that the wording seems to me a bit defective because the word "occupies" does not have a target. I am sure that it could be better expressed; if it were better expressed, I would be content.

Baroness Barker (LD): I very much welcome the noble and learned Lord's help in trying to find a suitable wording for what we are seeking to do. I want to inform your Lordships' House of what is happening: there are individual acts that, one by one, may not be intimidating but, put together in a pattern with a deliberate aim, they are.

I say to the noble Lord, Lord Balfe, that I am glad he was there with my colleague David Steel in 1967, but we are in a very different place now. Back in 1967, clinics were not having to deal with harassment as they are now.

Lord Macdonald of River Glaven (CB): Does the noble Baroness agree with me that there is clear evidence of a concerted effort by well-funded, extremist United States—sometimes religious—groups to replicate in this country the situation that exists outside abortion clinics in the United States, in which women are routinely abused and threatened for trying to access medical care?

Baroness Barker (LD): I do not think there is any doubt about that; the evidence is—

Lord Farmer (Con): On the point about evidence, we are hearing people's opinions about what the evidence is. Surely this requires a review so that we can involve the police, churches, abortion users—everybody—to get real evidence that is satisfactory to this House. At the moment, it is the kind of evidence where we are saying, "We know about and maybe you don't." I have not seen any 100% documentary evidence that these things are going on. I am going on the word of the noble Baroness and others.

Baroness Barker (LD): The noble Lord, Lord Farmer, raised a question about the intimidation of women in clinics. He knows that clinics are regulated by the Department of Health and Social Care and the CQC and that it is expressly against the terms of their licence to do that; if they were found to be doing that, they would not be able to carry on.

I want to deal with the point raised by the noble Lord, Lord McCrea, about penalties. The penalties provided in Clause 9 are equivalent to those for other cases of harassment in other statutes. Amendment 94 would introduce a penalty at the same level as for skateboarding in the wrong place. I happen to think that the abuse of women is a lot more serious than a skateboarding offence.

Lord McCrea of Magherafelt and Cookstown (DUP): Accepting that there should be a penalty for harassment, can I ask the noble Baroness whether she really believe that compassionately asking a person "Are you sure?" deserves a six-month, or 12-month or two-year sentence?

7 pm

Baroness Barker (LD): I suggest that the noble Lord goes back and reads the clause and the terms of interference. I do not think that what he describes comes under that, which is why the noble Baroness, Lady Sugg, and I are trying to make sure that this law is as explicit and clear as possible. We do not want to do what the amendment in the name of the noble Baroness, Lady Fox of Buckley, does and create loopholes

[BARONESS BARKER]
whereby those who are currently harassing people can move around the country and continue to do so in different ways.

The fact is that we need this law because the current patchwork system does not work. It does not protect staff or women at all. It is a proportionate measure which, I accept, can be refined further through the amendments put forward by myself and the noble Baroness, Lady Sugg, and those that may be put forward in a similar spirit.

Baroness Fox of Buckley (Non-Afl): I have an inquiry about PSPOs which has been raised. When PSPOs were originally advocated by pro-choice people, I was unsure about their use. My colleagues in BPAS, for example, were keen on PSPOs as a good, targeted way of stopping problems outside specific clinics, and they assured me that it was at specific clinics where problems were occurring. Is the argument of Clause 9 that things have got so out of hand that the original arguments in defence of PSPOs are redundant? The noble Baroness would not be against one who was not against PSPOs as a remedy in the past.

Baroness Barker (LD): The answer is that the situation has moved on, so what was an answer before the existence of PSPOs is no longer relevant.

I have said enough. I think we all know where we are on this and the positions we came from. I would like to work with those Members who want to, and with the Minister, to make sure that we get to where the vast majority of us, and of the public, want to be: women being able access a service legally and safely, and 150 metres down the road you can be as extreme in your opposition as you like.

Lord Paddick (LD): We on these Benches accept that many people have strong views both on abortion and on this clause, on both sides of the argument, as reflected in our debate. I want to say two things at the outset. First, my understanding is that organisations that provide abortion services, such as the British Pregnancy Advisory Service, talk through the options available in the case of an unwanted pregnancy, including continuing with the pregnancy and arranging adoption or fostering, becoming a parent and ending the pregnancy with an abortion. The second is that it must be one of the most difficult, life-changing decisions anyone has to make.

To be subjected to one-sided opinions by well-meaning, passionate but in some cases fixated individuals at such a vulnerable moment cannot be right, whether outside or inside an abortion clinic. As the noble Baroness, Lady Bennett of Manor Castle, said, this is about targeting an individual seeking medical services. Many noble Lords have talked about free speech. There is a difference between offering advice and support, and forcing advice and support on those who do not want it. By all means, campaign, demonstrate and provide advice, help and support on the internet, for example, but not when someone is on their way to an abortion clinic.

What is said inside an abortion clinic is regulated and controlled; what is said outside by campaigners against abortion is not. There is a series of amendments in the name of the noble Baroness, Fox of Buckley, supported the noble Baroness, Lady Hoey. Amendment 80 brings us back to the debate we had last week about "reasonable excuse". I am very grateful to the noble and learned Lord, Lord Hope of Craighead, for that debate and for his contribution today.

This brings us back to the potential argument that the more important the issue, the greater the excuse to break the law. Last week, we debated whether anything could be more important than saving the planet from catastrophic climate change and therefore, there could be a "reasonable excuse" to do anything, however unlawful, if saving the planet was the intention. I am sure there are some who feel that nothing is more important, as they see it, than "saving the life of an unborn child", so any means justify the ends. Such an amendment would render buffer zones ineffective.

Amendments 81 and 86 lead potentially to the whack-a-mole scenario—or, as my noble friend Lady Hamwee more eloquently put it, the displacement of protests from one clinic to another—whereby those wanting to get those wanting an abortion to change their minds at the last minute would travel around the country until every local authority had a buffer zone around every clinic. Either there is a right to abortion without last-minute interference, or there is not. I am not clear from the wording of Amendment 86 whether it would amount to a maximum of a two-year buffer zone, or simply the expensive and bureaucratic process of having to renew the buffer zone every year.

Amendment 82 introduces the concept of "intentionally or recklessly" interfering, which no doubt would result in endless arguments about whether the offering of advice, or whatever form the interaction takes, amounted to interference or not. Amendment 89, also supported by the right reverend Prelate the Bishop of St Albans, would allow "silent witness" by those who persistently, continuously or repeatedly picket abortion clinics. That sounds to me like quite intimidating behaviour, even if it is silent prayer. We cannot support these amendments. Either the Committee supports this clause or it does not; creating uncertainty about whether the interaction is reasonable, which clinics have a buffer zone or what amounts to interference is unhelpful.

On Amendment 94, I can understand why the noble Baroness, Lady Fox of Buckley, has drawn a parallel with Part 3 of the Police, Crime, Sentencing and Courts Act 2022 and public space protection orders, but the latter refers to things like banning the drinking of alcohol in a local park—otherwise innocuous activities that are causing a particular problem in a specific area. This measure is about interfering with a person's right to choose to access abortion services. They are very similar in terms of protecting public space, but very different in terms of the kind of activity they are trying to prevent.

We support Amendments 80A, 82A, and 82B in the names of the noble Baronesses, Lady Sugg and Lady Watkins of Tavistock, and my noble friend Lady Barker, which would bring the phrase "buffer zones" into line with similar legislation in other jurisdictions. We support the amendments in the name of the noble Baroness, Lady Sugg, supported by the noble Lord, Lord Ponsonby of Shulbrede, and my noble friend Lady Barker.

On Amendment 84, if we are going to have buffer zones, they need to be around every place where abortion services are provided. Amendments 87 and 91 helpfully clarify that the proposed offences apply only in relation to abortion services. Amendments 95, 96 and 97 also usefully exempt anyone invited to go along to the clinic with the person seeking abortion services, and anything said or done when all parties are in someone's home or a place of worship.

We also support the clarification provided by Amendment 93A in the name of my noble friend Lady Hamwee, supported by my noble friend Lady Barker and the noble Baroness, Lady Sugg: that an "abortion clinic" should include places where advice and counselling related to abortions is provided.

Baroness O'Loan (CB): Is the noble Lord saying that we should have buffer zones outside every location at which somebody can get, for example, the medical intervention for abortion, such as Boots the chemist, or every facility offering counselling?

Lord Paddick (LD): My noble friend's amendment is a probing amendment for the House to consider what sort of premises might be included in buffer zones to ensure that places where women go to get advice are included. The noble Baroness makes an important point, but this is a probing amendment so that the House can consider between Committee and Report whether an amendment in line with the wording that my noble friend has provided is right.

I understand the intention behind Amendment 85 in the name of my noble friend Lord Beith and supported by the right reverend Prelate the Bishop of St Albans, but I think it is now covered by Amendment 96. If someone decides to go into a place of worship on their way to an abortion clinic, that is their decision.

Similarly, I understand the intention behind my noble friend's Amendments 88 and 90, supported by the right reverend Prelate and the noble Baronesses, Lady Fox of Buckley and Lady Hoey: they want to protect free speech. But freedom of speech is a qualified right, and this restriction of it applies only in this very specific and limited scenario in relation to abortion services and clinics. I am not a lawyer, but my understanding is that the European Convention on Human Rights contains qualified rights, as the noble Viscount said. If a country believes that restrictions need to be placed on a qualified right because there is a justification for it, it is open for it to do so—that is exactly what we are considering here. Whether something is clearly contrary to European Convention on Human Rights, as my noble friend suggested, will be for the courts to decide. I understand—not least following discussions with the Minister and officials—that there is an expectation that, if Clause 9 were passed in its original form, it may be subject to legal challenge. But that is the proper place for a decision to be made on whether the qualified right should be restricted by this clause.

There are other places and other times when those opposed to abortion can make their views known and can seek to influence others. If freedom of speech is to be protected at all times and in all places, why are only noble Lords allowed to speak in this debate? Advise and persuade someone not to have an abortion all you like—for example, by talking to the providers of abortion services to ensure that they include "pro-life" choices in clinics—but do not do so when someone has decided to go to an abortion clinic and is about to enter.

Similar arguments apply to Amendment 92 in the name of the noble Baroness, Lady Fox of Buckley, supported by the noble Baroness, Lady Hoey. Amendments 98 and 99, in the name of the noble Lord, Lord Farmer, and supported by the right reverend Prelate the Bishop of St Albans, helpfully point out the Home Office review conducted in 2018, which many noble Lords have quoted. It concluded that buffer zones would be disproportionate, which is at least helpful in understanding the Government's reluctance to support this clause, as it might be portrayed as yet another U-turn. The then Home Secretary explained his decision in a Statement about the 2018 review, which a number of noble Lords have selectively quoted from. He actually said:

> "The review gathered upsetting examples of harassment and the damaging impact this behaviour has had on individuals. This behaviour can leave patients distressed and has caused some to rebook their appointments and not follow medical advice in order to avoid the protestors. In some of these cases, protest activities can involve handing out model foetuses, displaying graphic images, following people, blocking their paths and even assaulting them. However, what is clear from the evidence we gathered is that these activities are not the norm, and predominantly, anti-abortion activities are more passive in nature. The main activities reported to us that take place during protests include praying, displaying banners and handing out leaflets. There were relatively few reports of the more aggressive activities described above. Nevertheless, I recognise that all anti-abortion activities can have an adverse effect, and I would like to extend my sympathies to those going through this extremely difficult and personal process … Through the review, we also found that anti-abortion demonstrations take place outside a small number of abortion facilities. In 2017, there were 363 hospitals and clinics in England and Wales that carried out abortions. Through the review, we found that 36 hospitals and clinics have experienced anti-abortion demonstrations … Having considered the evidence of the review, I have therefore reached the conclusion that introducing national buffer zones would not be a proportionate response, considering the experiences of the majority of hospitals and clinics, and considering that the majority of activities are more passive in nature."—[*Official Report*, Commons, 13/9/18; col. 37WS.]

Even if "passive activities" is not a contradiction in terms, passive activity can leave patients distressed and cause some to rebook their appointments and not to follow medical advice in order to avoid protesters.

7.15 pm

The noble Lord, Lord Farmer, quoted BBC research about 15% of women attending abortion clinics saying that they had encountered anti-abortion protesters. My understanding was that it was 15% of clinics, not women, and that those clinics carry out 50% of the terminations, so we are actually talking about 50% of women, not 15%. It is 15% of clinics, perhaps, but 50% of women are subjected to this sort of behaviour.

Since the then Home Secretary made that Statement, eight more clinics have been targeted and, despite public space protection orders being used, only five of the 50 targeted clinics are protected. The situation is undeniably worse than it was in 2018, which is why we need Clause 9 in one form or another.

Lord Ponsonby of Shulbrede (Lab): My Lords, this has been a wide-ranging debate that has re-run a lot of the points from Second Reading. I added my name to all the amendments in the name of the noble Baroness, Lady Sugg, who ably introduced that group, which I of course agree with. She opened her speech by talking about the large majority in the other place, which we have heard about, but she made the additional point that each political party had a majority in favour of passing the amendment. She then went on to talk about the argument regarding a "reasonable excuse", and she did not think that there could be an argument for harassing women seeking a legal service.

We also heard some figures, which the noble Lord, Lord Paddick, has repeated, about there being only five PSPOs currently operating in the country but about 50 targeted clinics where there are regular protests. This creates a patchwork of provision, which a number of noble Lords have spoken about. So tactics have evolved, and there has been an increase in protests.

I want to mention one particular Conservative Minister, Victoria Atkins, who I always think is very perceptive and who has been an active defendant on domestic abuse issues in her previous roles in the Ministry of Justice. She supports this legislation. That has particular significance for me.

I also refer to my noble friend Lady Thornton, who made a central point: the amendments from the noble Baroness, Lady Sugg, try to address in a reasonable way the points raised at Second Reading—that was the spirit in which she put forward that suite of amendments. The vast majority of noble Lords who have spoken against them have not addressed any of the points that she made when she introduced them. I accept that the noble Lord, Lord Beith, is an exception to that, but the vast majority of other speakers did not acknowledge her points.

I turn briefly to the speech by the noble Baroness, Lady Watkins, in which she made the particularly telling point that many of the women going to seek an abortion may have been subject to coercive sex. For that reason, they may be particularly vulnerable to intimidation as they are going to get advice on whether and how to progress with an abortion. This was a perceptive comment, especially as it came from a nurse; it is something I recognise from the courts in London in which I sit as a magistrate. I also acknowledge her point that she wants a good resolution of these issues rather than a fast resolution.

The noble Viscount, Lord Hailsham, gave an absolutely excellent speech; I agreed with every word he said, which is quite unusual from these Benches. Nevertheless, he made a very good point about demonstrators, whom he comes across in other contexts where he would not dream of trying to limit their ability to protest. However, here we are of course talking about an individual, often in a vulnerable state, trying to access a legal service, and that changes the argument about whether demonstrators should be allowed to influence them. As the noble Baroness, Lady Bennett, said, Clause 9 does not prevent anybody protesting against abortion; it only prevents them protesting against abortion within

"150 metres … of an abortion clinic".

I will now pick up the point made by the noble and learned Lord, Lord Hope, on the argument regarding reasonable excuse. As he said, we have had a debate about reasonable excuse in other contexts—for example, in relation to the protests by Extinction Rebellion and the other protest groups which would use that argument for the types of protest they undertake. My understanding of his argument is that basically it is for Parliament itself to take a decision on this sort of thing, rather than pushing these decisions down to courts, judges and magistrates. That was a powerful argument against Amendment 80.

The other speech which resonated with me was that of the noble Lord, Lord Hogan-Howe, which I am sure came from absolute front-line experience. He said that we are not talking about a discussion on abortion occurring as people—women, of course—try to receive these services; rather, it is a monologue and bullying which is meant to be intimidatory. He was absolutely right in pointing that out.

In conclusion, I will say something that is so obvious that nobody seems to have said it in this debate: the Government agree with, and accepted, Clause 9. I accept that there are debates about the wording, the compliance with the ECHR and all the rest, but clearly the Government believe that the situation has moved on since the 2018 review. They clearly believe that there is an advance in the tactics and the money deployed to intimidate women as they are trying to access these legal services. If the Government believe that, we should pay attention. It is not often from this Dispatch Box that I say that we need to listen to the Government because they have clearly taken a decision, but the response by the Minister will perhaps be the most important speech that we will hear in today's debate.

Lord Paddick (LD): No pressure.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I thank the noble Lord, Lord Ponsonby, for his closing words; as the noble Lord, Lord Paddick, said, "No pressure". I thank all noble Lords for their impassioned contributions to what has obviously been a very substantive debate.

Clause 9 seeks to establish buffer zones outside abortion clinics in England and Wales to ensure that persons accessing or providing abortion services are free from harassment or intimidation. As the Committee will be aware, this clause was inserted into the Bill on the basis of a free vote in the other place. I will not get involved in second-guessing the motivations of those who voted, but the result was 297 votes in favour to 110 votes against. As I have said before, and I am very happy to say again, the Government respect the will of the House of Commons.

It is obviously clear—today's debate makes it even clearer—that there are very strong views on both sides of the argument. Many noble Lords want the clause to become law, and many want to alter or to delay it. Amendments 80 to 97—tabled by the noble Baronesses, Lady Hoey, Lady Fox, Lady Watkins, Lady Barker and Lady Hamwee, my noble friend Lady Sugg, the noble Lords, Lord Ponsonby and Lord Beith, and the right reverend Prelate the Bishop of St Albans—all

seek to make an array of changes to Clause 9, be that by raising the threshold for the new offence or by seeking to clarify the clause in some way.

Amendments 98 and 99 tabled by the noble Lord, Lord Farmer, seek to introduce buffer zones pending the outcome of

"a consultation … to determine if there has been significant change in"

protests "outside abortion clinics since" the Government's last review. Amendments 87 to 93 look to ensure that only activities relating to abortion services within a buffer zone constitute an offence, while Amendments 88, 96 and 97 seek to ensure that activities within private dwellings and places of worship are exempt. Amendments 80 to 82 seek to provide a person within a buffer zone with the opportunity to defend their actions and

"to strengthen the burden of proof required to establish an offence."

As I said before, I thank all noble Lords for their interest and ideas to amend the existing clause in its current form, particularly their well-intentioned attempts to tighten what was described in the other place by the Minister as a "blunt instrument". It remains the Government's view, based on legal advice, that this amendment does not meet our obligations under the European Convention on Human Rights and would require a Section 19(1)(b) statement to be provided. That said, after having been brief, I am now even more keen to meet noble Lords in the coming days, and I encourage them to meet me so that we may discuss the next steps for the clause. For now, I invite noble Lords not to press their amendments.

Baroness Sugg (Con): Does my noble friend the Minister agree that the clause as inserted by the other place calls for universal zones around all clinics in England and Wales?

Lord Sharpe of Epsom (Con): I say again to my noble friend—I have said it before, and I am happy to say it again—that the Government respect the will of the House of Commons.

Baroness Fox of Buckley (Non-Afl): My Lords, I thank all Members of the Committee for a wide range of speeches, ensuring that we have covered a lot of ground on this important issue. Contributions have been thoughtful, sometimes tetchy but largely civil; it is important to have these arguments out. I listened to what everybody said, and one thing I noted was that all speakers on all sides have condemned the harassment and intimidation of any woman going into a clinic or a hospital for an abortion. It is important that we note that we have that in common, because sometimes it can be presented as though people who are against Clause 9 are indifferent to the intimidation or harassment of women. Everybody has said that it is wrong; this is a question of how you deal with it.

The dispute is also about exactly what happens outside clinics. We have heard the clash of narratives in the contributions that I referred to, which makes the call for a new review from the noble Lord, Lord Farmer, all the more appealing. Indeed, the noble Baroness, Lady Sugg, herself suggested—backed up by the reply to me from the noble Baroness, Lady Barker—that the situation has got a lot worse since 2018, and particularly very recently. That is disputed by people so, for the clause to have legitimacy, maybe we need a public discussion to get the evidence—that would be important.

7.30 pm

I was challenged by the noble Baroness, Lady Barker. She asked where my evidence was that access to abortion was not hindered. I am rather confused by it being that way round. Surely, those promoting Clause 9 need to show the evidence that the numbers who were accessing abortion have been stopped by these demonstrations. Maybe there is lots of evidence that shows that there has been a dramatic decline in the numbers seeking terminations, but I have not seen it. Certainly, the onus ought to be on those putting forward Clause 9 to show the evidence about why it is necessary, even if it is argued that this stops safe access to abortion facilities.

Instead, what we have tended to hear, not just in this House but in the other House and in the broader debate happening in society, is the idea that those people demonstrating outside clinics are distressing the women going in. I concede that they are. Indeed, the noble Baroness, Lady Thornton, asked at one point whether women were lying about how they feel when they pass these protests. Of course women are not lying. They are not lying about how they feel when they walk past the protests; it is just that I am not sure that we should be legislating for feelings. If you get cornered by anti-abortionists in the bar or anywhere, you will find that they feel very strongly about the issue and about walking past abortion clinics because they say that it upsets them. Many students say that they feel traumatised by walking past symbols of colonial rule, et cetera. Should that feeling be made illegal? That is the point. I am worried: let us not make everything that makes us feel upset illegal.

I hate finding myself on the opposite side of the debate to the noble Baroness, Lady Sugg, as she is someone whose work on reproductive rights I greatly admire, have cheered on and am in awe of. But I have to push back against the notion that maybe this is all American money escalating the issue due to Roe v Wade; that has been echoed here. It all sounds very sinister and slightly conspiratorial, but it is important that we note that the UK is not the US, that what is happening in the UK is not what is happening in the United States, and that we are not legislating for things that we worry might happen because we have seen it on the TV happening in America.

If anything, I think this is an irony. One of the things that has escalated or certainly polarised this discussion over recent months is not just Roe v Wade, which has had an impact, but this amendment. A lot of people have panicked that they are going to be banned, which consequently has agitated the situation. I thought that the noble Lord, Lord Shinkwin, made an excellent point about this being an own goal. Turning the pro-life protesters into free speech martyrs would seem counter-productive.

The noble Baroness, Lady Watkins of Tavistock, reminded me when she spoke—even if she was not intending to—that it is not just women seeking terminations who are affected by these vigils; often, health workers are traduced and besmirched and called horrible

[Baroness Fox of Buckley]
names. I consider those who provide reproductive healthcare in this atmosphere as nothing short of heroes and heroines; I want to state that. I really admired the maturity of her comments, calling on us not to rush this clause through—although she thinks there is a problem, she is supportive of many aspects of the clause—and saying that we need to consider the inadvertent consequences for free speech, freedom of conscience, freedom to be obnoxious in certain places and say things that I do not agree with or what have you. She suggested that we should have some balance.

I have a lot to think about when I reread *Hansard*. Of course I will withdraw my amendment now, but I think that I will be back—that is not a threat—to ensure that the intentions of those responsible for Clause 9 do not actually damage civil liberties in this country.

Amendment 80 withdrawn.

Amendments 80A to 98 not moved.

Clause 9 agreed.

Amendment 99 not moved.

7.37 pm

Sitting suspended Committee to begin again not before 8.08 pm.

8.08 pm

Clause 10: Powers to stop and search on suspicion

Debate on whether Clause 10 should stand part of the Bill.

Lord Paddick (LD): My Lords, I intend to oppose the question that Clauses 10 and 11 stand part of the Bill, and I shall speak to the other amendments in this group. It is not particularly helpful to have a clause stand part notice beginning a group rather than an amendment, but there we are.

This group of amendments relates to the new police powers of stop and search in relation to protest. Noble Lords will know the intrusive nature of being stopped and searched by the police, but I respectfully suggest that the full impact on a totally innocent member of the public being detained and searched by a police officer on the street, in full view of passers-by, can only be imagined by those of us who have never been subject to such an experience.

Imagine, then, being black. During a round-table discussion held by the Home Affairs Committee, a black child said that

"we know the police treat Black people differently… it means that we do not feel safe ever."

Black people are seven times more likely to be stopped and searched than white people, if the stop and search is allegedly based on suspicion. However, according to the latest Home Office data, black people are 14 times more likely to be stopped and searched under powers that require no suspicion.

In relation to tackling knife crime, prohibited objects are limited and obvious, and the consequences of carrying such weapons can be fatal. In relation to these new powers and related offences, the prohibited objects can be almost anything, and the consequences of carrying them can be completely innocuous. What exactly is an item

"made or adapted for use in the course of or in connection with"

highway obstruction, or

"intended by the person having it with them for such use by them or by some other person,"

or an item

"for use in the course of or in connection with"

causing a public nuisance, or

"being present in a tunnel"?

I do not need nor intend to come up with ever more ludicrous suggestions as to what completely innocent objects might be caught up in such an offence. Even if there were noble Lords without much of an imagination, they would still be able to do that for themselves. The noble Baroness, Lady Jones of Moulsecoomb, has a few suggestions in her Amendment 101. I do not know about Amendment 101—this is Room 101.

The Government say that these powers are needed in order to prevent these types of offences, but in recent weeks the police have made arrests prior to offences being committed under existing legislation, based on intelligence and targeted at specific individuals. These powers are disproportionate to the outcomes they seek to achieve. Even if stop and search to combat knife crime were effective in reducing crime, which Home Office research shows, at least above a certain level, it is not, the argument that saving young people's lives justifies the damage to trust and confidence in the police in some communities caused by badly targeted stop and search does not hold water in relation to peaceful protest. The number of instances where an arrest follows a without-suspicion stop and search is four in every 100, by the way.

Secondly, the right to freedom of expression, assembly and association—the right to protest—is likely to be impacted by such powers, disproportionately affecting those who feel disfranchised and for whom peaceful protest is an important safety valve: not just black and minority ethnic people but, per the letter noble Lords will have received from the Body Shop, young people, who disproportionately take part in protests because they feel that the democratic process does not represent their views.

If you fear the police, not least because of your lived experience, supported by the data which demonstrates that you are likely to be targeted by the police for stop and search—seven or 14 times more likely depending on whether suspicion is required—if you are black, you are likely to be dissuaded from exercising your human right to protest. It is not just me or the usual suspect NGOs saying this; His Majesty's Inspectorate of Constabulary and Fire & Rescue Services set out in its report on public order policing

"the potential 'chilling effect' on freedom of assembly and expression in terms of discouraging people from attending protests where they may be stopped and searched … Such powers could have a disproportionate impact on people from black, Asian or other minority groups."

I am not claiming that some offences of highway obstruction, locking on, public nuisance, tunnelling, being present in a tunnel or any of the other offences in this Bill might not be prevented by these stop and search powers. I am arguing that, whether with suspicion, which is bad enough, or without suspicion, which is outrageous, to give the police these powers is disproportionate in terms of the harm that is likely to be caused compared with the benefit that is likely to result.

8.15 pm

Can the Minister confirm that this is exactly why these powers were not included along with the other public order measures in the original Police, Crime, Sentencing and Courts Bill introduced into the other place? What has changed in the past year and a half to make these powers, which even the Home Office felt were disproportionate 18 months ago, acceptable now? There is already an offence of obstructing a police officer in the course of their duty in existing legislation. To have a separate offence of obstructing a police officer in the exercise of their stop and search powers under this Bill, with an enhanced penalty, is unnecessary and disproportionate.

Can the Minister tell the Committee what the Government's estimate is of the projected increase in the prison population resulting from the increase in the number of offences for which a term of imprisonment can be given and increases in maximum penalties, brought about by measures such as this, since the Conservatives have been in power? How much is the resultant building of additional prison places costing the UK taxpayer? These are not rhetorical questions. Will the Minister write and place a copy in the Library? These police stop and search powers in relation to protest should not stand part of the Bill.

Baroness Jones of Moulsecoomb (GP): My Lords, I do not know if I am breaking the rules of the House in saying this, but I feel that some of the speakers in the last debate were slightly self-indulgent. I am appalled that we are still only on group 2. Would the Minister and the Whip take that back to the Chief Whip and the Leader of the House and suggest that people show a little more restraint in their agonising over certain bits of the Bill while somehow not agonising over the rest of it, which is plainly very similar to what they were arguing against?

The noble Lord, Lord Paddick, has summed up extremely well. He often says things that I wish I had said. He was absolutely right to raise both the inherent potential racism in these measures and the prison population. We are already one of the most imprisoned nations in the world, even with Iran having corralled 15,000 or 16,000 protesters against its repressive regime. Adding to the prison population will be a complete folly.

I also oppose Clauses 10 and 11. I am very worried about Clauses 10 to 14, because they give the police extensive new powers to stop and search anyone in the vicinity of a protest and confiscate items from them. Under Clause 11, a police inspector can designate a whole area in which the police can stop and search anyone without suspicion. That means people taking part in a protest, people walking past, journalists—anyone in the area. That is ludicrous and repressive. It beggars belief that the Government think this is okay to include. It also includes stopping vehicles and searching them, again without suspicion.

My Amendment 101 exposes some of the risks. With this offence of locking on, any cyclist who has a bike lock in the vicinity of a protest could have it confiscated. This could even include a random person cycling past. Anyone cycling past is likely to have a bike lock on them, because if they are not cycling then the bike lock is likely to be on their bike. This exposes endless innocent cyclists to being stopped, searched and having their bike locks confiscated. There are similar risks for anyone who has glue, Sellotape or presumably anything that police do not like the look of—jam sandwiches or anything.

Like the other protest clauses in this Bill, this one is far too broadly drafted. The Government are so obsessed with fighting climate activists that they will expose anyone to being stopped and searched and having things confiscated. The Government are seeking in this Bill to make protest a crime instead of a right. That simply is not just.

The Lord Bishop of Manchester: My Lords, first, I declare my interest as co-chair of the National Police Ethics Committee for England and Wales, though I am speaking on my own behalf. I want to focus my remarks on the amendment opposing the question that Clause 12 stand part of the Bill, to which I am a signatory, but also on those opposing the questions that Clauses 10, 11, 13 and 14 stand part of the Bill. I am grateful to the noble Lord, Lord Paddick, and the noble Baroness, Lady Jones, for the way they have introduced this debate.

It is deeply concerning that the Bill seeks to extend suspicion-less stop and search powers to the context of protest. If brought forward, such measures would open a Pandora's box for the further misuse of such powers that have in many contexts caused trauma, both physically and mentally, particularly to those in marginalised communities. The proposers of these clauses may have in mind the current environmental protesters, who appear, somewhat unusually, to include a large proportion of those from white, middle-class backgrounds, notably one of my own clergy. But history tells us that such powers, after a short time, are almost invariably and disproportionately used against minorities, especially ethnic minorities.

I would not be involved with the police in the way that I am if I was not passionate that our forces should gain and hold the confidence and respect of all sections of our society. But I know all too well how fragile that respect and confidence are. Police powers that are not grounded in suspicion create suspicion, and they create suspicion in those parts of society, as the noble Lord, Lord Paddick, has so eloquently indicated, where we can least afford it.

We must note when considering the Bill's creation of a new stop and search power in relation to specified lists of protest offences that there is—as has been referred to—no agreed position among police forces that such a power is either necessary or wanted. When

[THE LORD BISHOP OF MANCHESTER]
you add to this the fact that the definition of "prohibited objects" is so broad—the noble Baroness, Lady Jones, has referred to bike locks, but it could be posters, placards, fliers or banners—I am not sure about jam sandwiches, but I suspect it fits in somewhere; all could become suspect. How would the police ascertain that such objects were in fact for use at a protest? There are lots of legitimate reasons why you have household objects with you. The Joint Committee on Human Rights states:

"A suspicion of such an offence, even a reasonable one, in the course of a protest represents an unjustifiably low threshold for a power to require a person to submit to a search."

There are serious risks here for people's ability and willingness to exercise rights that are fundamental in a democratic society.

The Bill attempts to address what it refers to as "public nuisance". But its scope is too broad—arguably, any form of protest risks "public nuisance". Indeed, in these very halls of Parliament, four suffragettes chained themselves to statues to bring attention to their demands for votes for women; we must ask ourselves whether our contemporary context allows space for similarly important issues to be protested on. As things stand, these clauses risk a disproportionate interference with people's Article 8, 10 and 11 rights as set out in the Human Rights Act.

This country has long prided itself on being a democracy, this Parliament is at the heart of that, and one of our duties is to ensure that the rights and freedoms necessary to such a system of governance are not undermined. Those rights and freedoms include the right to peaceful protest. Therefore, should these provisions remain at a future stage, I will vote to oppose the questions that Clauses 10 to 14 stand part of the Bill.

Lord Coaker (Lab): My Lords, I rise to speak to the clause stand part amendments in my name. In doing so, I thank the noble Lord, Lord Paddick, the noble Baroness, Lady Jones, and the right reverend Prelate the Bishop of Manchester for their supportive remarks and the views that they have expressed, which I very much support.

Stop and search can be a frightening experience; it can be intrusive and intimidating. There are real concerns, as the noble Lord, Lord Paddick, outlined, about disproportionality, and a point that nobody has yet made is that it can be used against children, worries which matter so much in any democracy.

I am going to spend a few minutes going through this. The Chamber is not packed, but a lot of noble Lords will read our deliberations in *Hansard*, and this is one of the most important parts of the debate in Committee that we are going to have, as the right reverend Prelate the Bishop of Manchester outlined.

Despite these concerns, Parliament has given police the power to stop and search with suspicion for items such as offensive weapons, illegal drugs and stolen property. In its recent report, the Joint Committee on Human Rights accepted that stop and search with reasonable suspicion was appropriate in certain circumstances. However, as the noble Baroness, Lady Chakrabarti, and the noble Lord, Lord Paddick, are arguing through their Clause 10 stand part notice, is it right that these stop and search powers should be extended to peaceful protest? For example, new paragraph (g) inserted by Clause 10—I urge noble Lords to reread that clause—extends stop and search powers to an offence of

"intentionally or recklessly causing public nuisance",

when we know how wide the scope of "causing public nuisance" can be. Can the Minister explain what, in the Government's view,

"intentionally or recklessly causing a public nuisance"

actually means? We would be passing this in new paragraph (g).

By creating a risk of causing serious inconvenience or serious annoyance through your actions in the course of a protest, or preparation for or travel to a protest, you would have to submit to a search under the Bill. How would an officer know my intention? Extending the stop and search powers to cover searches for articles connected with protest-related offences risks encounters between the public and the police where there is little or no justification. Does the Minister agree with that? People on their way to protests, marches, rallies or demonstrations are at risk of being searched in case they are equipped to commit one of those offences—or so the police believe.

As the noble Baroness, Lady Jones of Moulsecoomb, has just articulated with reference to her Amendments 100 and 101—this is the purpose of a Committee—what on earth do the Government mean by "prohibited" items? It is incumbent upon us to give some indication of what we consider prohibited items to be. It is easy to scoff when the noble Baroness, Lady Jones, asks if that includes a bicycle lock—but does it? I think it is quite right to ask that question.

This takes us to Clauses 11, 12, 13 and 14. Even if one thinks that stop and search with reasonable suspicion may be appropriate, to stop and search for prohibited items without suspicion, looking for articles with respect to peaceful protest, is not where this country should be going or what this Parliament should be legislating to allow the police to do. The application of suspicionless stop and search powers was previously reserved for use in the most serious circumstances, such as the prevention of serious violence, gun and knife crime, or indeed terrorism. Is this where we want our democracy to go—to use stop and search powers that we have previously said should be used only in relation to the prevention of terrorism or serious violence? We are now saying that they are appropriate to be used to search people going to a peaceful demonstration for prohibited items.

The Minister needs to explain—this is the purpose of my clause stand part notices, even though we are in Committee—why the Government think that is appropriate, whether the Minister agrees that it is appropriate, and why the Government believe it is necessary to give terrorist-related powers to the police to deal with peaceful protest. That is the purpose of my clause stand part notices for Clauses 11, 12, 13 and 14 on the creation of the suspicionless stop and search power in relation to a list of specified protest offences. I am grateful for the support of the noble Lords, Lord Paddick and Lord Anderson—who is not in his place—the noble

Baroness, Lady Chakrabarti, and the right reverend Prelate the Bishop of Manchester. I know there are others; the noble Baroness, Lady Jones, has just said that she supports it. My reason for opposing these clauses is to ask the Government to justify such an extension of power to the police in the context of peaceful protest.

8.30 pm

Let us create a scenario under Clauses 11 to 13. A police officer of the rank of inspector or above believes that certain protest offences will be committed in their area, and initially exercises the power for a 24-hour period. If he or she believes that certain prohibited items are being carried related to these protests, that can be extended to 48 hours if the superintendent or above deems it appropriate. As we are in Committee, will the Minister tell us how the rank of inspector was decided upon for the decision on 24 hours? How was the rank of superintendent decided on for the 48 hours? Is it possible to go beyond 48 hours? For example, could I, as an inspector, allow it for 24 hours, a superintendent extend it for another 24 hours, then we have a gap of a day, and a day later we come back for another 24 hours? Is the 48 hours within a specific period or can it be continually renewed? Is it 48 hours within a week, 48 hours within a month, or does it just carry on, so that we can have suspicionless searches within an area?

Noble Lords should think about what this means. If the designated area was this Parliament and the area around it, any person, any family, any MP, any civil servant, any Peer, any tourist, any individual, or any person working in this Parliament could be searched without suspicion. Can noble Lords imagine that happening in the vicinity of protests starting in Parliament Square? Thousands upon thousands—tens of thousands—would be subject to stop and search without reasonable suspicion.

Clause 11 talks about a specified locality. What on earth is a specified locality? How big can a specified locality be? The Bill talks about an area that is regarded to be appropriate. What on earth does that mean? How big can it be? Are there any constraints on the size of the area? Can it be the whole of Southwark, or just a bit of Southwark? Can it be Southwark and Lambeth? There is no detail in this at all. We are giving the police the power to stop and search without suspicion, and yet the Government are not giving us any indication of how wide an area that could be.

Can you imagine some of those encounters? I say it is a disproportionate panic response to concerns about the protests that we all agree are appalling, such as Just Stop Oil, as we have seen recently. In their panicked response, the Government are undermining the rights of protestors to demonstrate freely in our democracy. In what circumstances would the Government expect suspicionless stop and search to be used? If I was walking through Parliament Square as a tourist, how would I know that the police have the power of suspicionless stop and search? If I was in a vehicle driving through Parliament Square, how would I know that the police had the power to stop me without suspicion? How would I or the passengers in the car know that the police had not only the power to stop me but to search me? How would anybody know that? What on earth would happen if people in that area did not know that, and they were stopped and searched without suspicion? That is the sort of detail that we need, and that is why I have called for these clauses to be removed from the Bill.

The JCHR, rather than recommending amendments as it usually does, has actually called for the removal of this from the Bill. Why is it wrong? As the noble Lord, Lord Paddick, mentioned, can noble Lords imagine suspicionless stop and search going on in some parts of big cities but people having no idea that the area has been designated stop and search? I believe that a police officer—the Minister can confirm this—has to be in uniform. If a plain-clothes officer could stop a car while not in uniform, how would anybody in the car know that that person was a police officer? If there were then to be a collision of some sort, what would be the consequence of that?

I know I seem to be going on but this is Committee, which is where detail is looked at. The detail of the legislation here is unclear, and I am asking the Minister for detail about what happens in certain circumstances with respect to stop and search. Is it a uniformed officer? Can it be an officer out of uniform and if so, how on earth does that work if you are in Lambeth, Southwark, Manchester or wherever?

The harms of suspicionless stop and search are further exacerbated. If noble Lords have not already done so, I suggest that they read Clause 14—hence my stand part debate on it. It creates a specific offence of intentional obstruction during the course of a suspicionless protest-related stop and search: a search for objects only prohibited because of the creation of the new protest offences. However, the penalty for obstruction has been dramatically increased from one month's imprisonment, a fine or both, to 51 weeks' imprisonment, a fine, or both. Therefore, if there is a suspicionless stop and search during which I strike the officer—whatever that means—even if I am not aware that he has the power, because no one has told me, I am potentially liable to be imprisoned for up to 51 weeks. How have the Government arrived at that? Why is it suddenly appropriate that we now have this huge increase in both the possibility of 51 weeks' imprisonment, a fine, or both?

As the noble Lord, Lord Beith, and the noble Baroness, Lady Blower, highlighted at Second Reading—I am glad they are both in their places—questioning the actions of a police officer, which was actively encouraged following the Sarah Everard case, will be seen as obstruction under this proposal. I had not thought of that, but the noble Baroness and the noble Lord are absolutely right. As we were told after the Sarah Everard case, if people are concerned—particularly women in certain situations—even about a uniformed officer showing his warrant card, they should question them to make sure they are who they say there are. The Government told women to do that. Yet in the Bill we are saying that that could be construed as obstructing an officer in the exercise of their stop and search powers. The Government need to get this sorted out.

Suspicionless stop and search is one of the biggest compromises we made to tackle the most serious of crimes, and we agreed to it because we know that if we

[LORD COAKER]

want to stop terrorism or gun crime, sometimes it is appropriate and necessary in a particular area. Nobody expected suspicionless stop and search to be applied to protest-related offences. I just do not believe that the majority of people, if they stop and think about it, want that.

This is such a serious part of the Bill: serious legislation which fundamentally undermines the traditions of democratic protest in this country. Indeed, the Constitution Select Committee said, in the very measured terms of the majority of highly rated barristers who are part of its ranks:

"We invite the House to consider whether the extension of these powers to protest-related offences is proportionate, having regard to the fact that an individual officer does not need grounds for suspicion to conduct a search and the effect their use may have on public confidence in the police."

I know what barristers mean when they say:

"We invite the House to consider".

I have been here long enough now to know that that means they do not agree with it. It is a shame that the noble and learned Lord, Lord Hope, is not here to confirm that. They think it will undermine confidence, and I totally and utterly agree with them.

I suggest to noble Lords and to those who read these remarks that suspicionless stop and search for protest-related offences is a step too far in a democracy. It undermines protest and, to be frank, I will be very surprised if the Government are able to say anything to stop us bringing this back on Report and saying to a wider audience that suspicionless stop and search for protest-related offences is a step too far, and we are against it.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords for their contributions to this debate. In answer to the question from the noble Baroness, Lady Jones, about the duration of the previous debate, we are of course a self-regulating House.

We believe that stop and search is a vital tool to crack down on crime and protect communities. The Bill extends both suspicion-led and suspicionless stop and search powers, enabling the police to proactively tackle highly disruptive protest offences by searching for and seizing items which are made, adapted or intended to be used in connection with protest-related offences, such as glue, chains and locks. The powers can also act as a deterrent by preventing offenders carrying items for protest-related offences in the first place because of the increased chance of being caught.

The suspicion-led powers in Clause 10 will help the police manage disruptive protests more effectively, as police officers will have the power to stop and search anyone they reasonably suspect is carrying items that could be used for locking-on, obstruction of major transport works, interference with key infrastructure, public nuisance, obstruction of the highway and the tunnelling offences.

The suspicionless powers in Clause 11 build on the Government's plan to give the police the powers they need to prevent serious disruption at protests from happening in the first place. In high-pressure, fast-paced protest environments, it is not always possible for officers to form reasonable suspicion that individuals may be about to commit an offence. That is where suspicionless powers are important, and reflect the operational reality of policing.

The noble Lord, Lord Coaker, asked about the wording in Clause 10(g). Of course,

"intentionally or recklessly causing public nuisance"

are legally well-understood terms which are found in much other legislation.

The suspicionless stop and search power will be usable only if certain conditions are met, and in cases where a police officer of or above the rank of inspector authorises its use in a specified locality for a specified period. This power uses a similar framework to that found in Section 60 of the Criminal Justice and Public Order Act 1994 to ensure consistency in police powers and safeguards. The rank of inspector aligns with existing stop and search powers to ensure consistency.

In answer to the earlier question of the noble Lord, Lord Coaker, a Section 60 order cannot be extended beyond 48 hours. PACE Code A is also clear that a suspicionless stop and search should be reasonable and no bigger than needed.

In terms of the size of the area that designations would cover, as I said earlier, our intention is to mirror the approach used in Section 60. The geographical extent of a Section 60 order depends on the situation that led to the order being authorised, so it is for the authorising officer to determine. PACE Code A states that the authorising officer should specify a fixed location for the boundary of the search area, whether that is a street name or a divisional boundary, and not make the area wider than is necessary for the purpose of preventing these suspected offences.

Lord Coaker (Lab): Will the Minister reflect on his remarks about a specified locality and his analogy with Section 60? That deals with terrorism. Suspicionless stop and search may well encompass a huge area, as this Parliament has accepted on the basis that a terrorist may travel hundreds of miles to target people. This is about protest and protesters. Is the Minister saying that the Government see that as analogous? I find that difficult to comprehend.

Lord Sharpe of Epsom (Con): The fact is that the search area should not be wider than necessary for the purposes of preventing the potential offences. I do not believe it is analogous to terrorism, but that is quite clear.

The noble Lord also asked how the geographical extent of a no reasonable suspicion stop and search order is communicated. It is for police forces to determine how and whether to communicate the geographical extent of such an order under Section 60, and this will be the case for the new suspicionless powers in the Bill. But although forces are no longer required to communicate whether a Section 60 order is in place, many continue to do so where they judge it to be operationally feasible, to help deter criminals and enhance community trust and confidence. It is very common for forces to use their social media channels or websites to communicate the extent of a Section 60 order.

The noble Lord also asked about officers in plain clothes. This power only extends to those in uniform.

8.45 pm

When speaking at the Bill's evidence session in June, Chief Constable Chris Noble, the lead for protest on the National Police Chiefs' Council, said:

"We can see greater risk of harm to communities and protesters if things are left to run"

without additional pre-emptive police powers to handle disruptive protests. He explained that one of the senior commanders of the G7 operation described

"a lack of powers around stop and search for people with items that could only have been used for generating a lock-on device. They had to intervene later in the day, with more significant powers, on a wider group of protesters, therefore interfering with more people's rights."

He concluded that

"whether it is a suspicion-led or suspicionless power, we see real value in being able to intervene and ensure that the rights of everyone impacted by protest, as well as the rights of those expressing their views through protest, are protected."

This view was also shared in HMICFRS's report into the policing of protests and was reaffirmed by Matt Parr of that organisation at the Bill's evidence session.

I hear and seek to allay some of noble Lords' concerns about the potential disproportionate use of these powers. As with all stop and search powers, no one should be stopped based on a protected characteristic, and safeguards, such as statutory codes of practice and body-worn video, exist to ensure that these powers are used proportionately. The Home Office also publishes extensive data on police use of stop and search and will expand this publication to the use of the new powers provided for in the Bill.

I thank the noble Baroness, Lady Jones, for tabling Amendments 100 and 101, and assure her that we have carefully considered them. Amendment 100 seeks to ensure that an individual could be stopped and searched only where it is clear that they intended for such items to be used in the context of a protest. In many cases, individuals who intend to cause serious disruption by locking on seek to disguise their intent, so it cannot be proved until they carry out the act. Increasing the threshold for the police when identifying prohibited items will ultimately undermine the purpose of stop and search and may create instances where an officer is able to find items that will be used for offences without being able to prevent this occurring.

Amendment 101 seeks to explicitly exclude certain items from being regarded as prohibited. It is important to note that, where an individual has a reasonable excuse for carrying an item, such as glue, it will not be regarded as prohibited. However, some of the items included in this amendment, such as glue, are those which have often directly been used for acts such as locking on. Therefore, the amendment may have the effect of undermining the effectiveness of the measure. With that, I respectfully ask noble Lords to allow Clause 10 to stand part of the Bill.

Baroness Blower (Lab): I invite the Minister to comment on the remarks that I and the noble Lord, Lord Beith, made at Second Reading, which my noble friend Lord Coaker referenced.

If a police officer attempts to stop and search a woman who clearly knows that she is not carrying anything unreasonable, given what the police themselves said about how single women walking alone at night might respond to this, there is every chance that a suspicionless stop and search could result in the woman—young or old—obstructing a police officer in the course of his or her duty. I did not hear the Minister respond to that. It is a very significant concern. It would be a concern anyway but it is an aggravated one, given what the Metropolitan Police and other authorities have said in the light of what we know only too well happened previously.

Lord Sharpe of Epsom (Con): Obviously, I understand where the noble Baroness is coming from, but asking an officer for proof of identity is not in and of itself an obstructive thing to do. That is very clear.

Baroness Blower (Lab): If I might just press the point: of course, if the young woman has the presence of mind to simply ask for proof of identity, that may very well not be obstruction, but she may be frightened by this and seek to move away or to respond in some other way, but not to assault the police officer. I just see that there is a danger in this situation, and I am not hearing anything that I could tell women who are asking me about what we are doing in the Public Order Bill so that they do not need to have any concern about suspicionless stop and search. We heard before about it being perfectly reasonable to respond in such a way that you can categorically assure yourself that a person is a police officer. Frankly, I have never seen a police identity badge, so I do not know what they look like. The previous Metropolitan Police Commissioner talked about flagging down buses if you are not happy about what is going on. I want to press the Minister on this point, because although I absolutely accept that asking to see a badge is not necessarily chargeable with obstruction, other things could befall.

Baroness Jones of Moulsecoomb (GP): To add to that, women were also told to consider refusing to get into a police car, and even if you did see the badge, Wayne Couzens was carrying a perfectly legitimate police badge, whether or not you recognise it is beside the point. While I am on my feet, will the Minister answer my point about the prison population already being incredibly high?

Baroness Hayman of Ullock (Lab): This is so important. I do not think the Minister or the Government appreciate how vulnerable women can feel walking, particularly in the dark or on their own, and it gets dark very early in the winter. This is really serious. I also do not think they realise how much young women, particularly if they are attractive, can get hassled. If you have been hassled a lot, you can snap because you are sick and tired of it. I really do not think this has been thought through.

Lord Paddick (LD): Before the Minister responds, he may also wish to think very carefully about what he said about these powers not being exercisable by officers in plain clothes. I am prepared to apologise to the Committee for misleading it when I say that these powers alter Section 1 of PACE, which has nothing in it about an officer having to be in uniform to exercise

[LORD PADDICK]
powers of stop and search. So what the Minister said about these powers not being exercisable unless the officer is uniformed is not true.

Lord Sharpe of Epsom (Con): If I am incorrect I will most certainly correct my statement. That was the information that I was given. If it is incorrect in any way, I will of course come back and apologise. It was inadvertent if that is the case.

I think we are getting slightly off topic, but I say to the noble Baroness that the Minister certainly appreciates that women and girls can feel very vulnerable, particularly at night, and I understand the level of hassle. However, a road where one is likely to be alone is not likely to be subject to the Section 60 power, so we are in the realms of the hypothetical to some extent. I accept and understand the concerns that have been raised, but I reiterate that it is everyone's right to ask a police officer for identification, and I believe that under the suspicionless basis the officer has to be wearing uniform, but I will confirm that later with the Committee, certainly if I am incorrect. I do not have an answer for the noble Baroness, Lady Jones, so I will have to write to her.

Lord Paddick (LD): My Lords, I thank all noble Lords who have participated in this debate. The noble Baroness, Lady Jones of Moulsecoomb, questioned the area in which suspicionless stop and search could be operated. Marches that occur in central London traditionally start at Marble Arch, go down Park Lane and sometimes through Oxford Street and Regent Street. The number of people who could be subject to suspicionless stop and search as the result of that sort of demonstration is mind boggling.

In his real-world experience as adviser to the police on these issues, the right reverend Prelate the Bishop of Manchester talked about these powers being invariably used disproportionately. The Minister has said nothing to reassure the Committee that the powers will not be used disproportionately, with the damage that will be caused to the reputation, trust and confidence in the police.

The noble Lord, Lord Coaker, made the valid point that the powers can be used against children. Public nuisance is such a wide offence. I also raised the offence of being present in a tunnel. How can someone go equipped to be present in a tunnel? There was no answer about that.

Before this, there were two elements to suspicionless stop and search. The Minister talked about Section 60 of the Criminal Justice and Public Order Act, which is to do with serious violence. The other was Section 44 of the Terrorism Act, which the Conservative Government repealed because it was being used disproportionately. The Government withdrew suspicionless stop and search in relation to terrorism because they considered that its impact on trust and confidence in the police was disproportionately negative. It does not exist any more in relation to terrorism, but this Government want to introduce it in relation to people exercising their lawful right to protest.

The Minister made no reference to what HMIC said was likely to be a chilling effect on people exercising their human rights under Articles 9, 10 and 11. There was not a word about this, even though HMICFRS raised it. There was nothing about the disproportionate impact on minority communities. Minority communities and young people are more likely to be engaged in protest because they do not feel that the parliamentary process represents their views. As the noble Lord, Lord Coaker, said, we will return to these issues on Report. I am sure we will vote on them.

Lord Sharpe of Epsom (Con): My Lords, I should like to clarify my remarks about uniforms. Section 60—which is what I was talking about—applies only to officers in uniform. Section 1 powers can apply to all officers.

Lord Paddick (LD): Can the Minister clarify whether these powers—not Section 60 powers—to stop and search people in relation to protests can be exercised by officers in plain clothes?

Lord Sharpe of Epsom (Con): As I think I explained, we are basing these powers on Section 60.

Lord Coaker (Lab): Is the Minister telling this Chamber that a plain clothes officer in the middle of Lambeth, Manchester, Newcastle or Cardiff can stop a car without suspicion, without anybody knowing that there is a suspicionless stop and search operation going on?

Lord Sharpe of Epsom (Con): Our intention is to mirror the approach used in Section 60. I said that very clearly earlier. I have already explained its geographical extent.

Lord Paddick (LD): Can the Minister point to the part of the Bill that says that suspicionless stop and search powers are restricted to officers in uniform?

Lord Sharpe of Epsom (Con): I am afraid I cannot.

Lord Coaker (Lab): This is extremely serious. It is exactly the point that the noble Lord, Lord Paddick, is making and what we are trying to clarify. When can a non-uniformed officer use these powers and when can they not?

Lord Sharpe of Epsom (Con): I apologise to the noble Lords, but I have nothing more to say on the subject. I have tried to explain how this relates to the Section 60 powers. Our intention, I say again, was to mirror that approach.

9 pm

Baroness Blower (Lab): This is of very great significance; not just to me, not just to women, but to everyone who is trying to understand the Government's intention with this legislation and in what position people will find themselves. Does the Minister not agree that, if it is the Government's intention that only uniformed

police officers may exercise these powers—frankly, I do not think that they should do so either—then that should be made explicit in the Bill, as there is clearly the possibility of ambiguity?

Lord Sharpe of Epsom (Con): I am grateful to my noble friend for pointing out that Clause 11(6) says:

"This section confers on any constable in uniform power … to stop any person and search them or anything carried by them for a prohibited object."

Clause 10 agreed.

Clause 11: Powers to stop and search without suspicion

Amendments 100 and 101 not moved.

Clause 11 agreed.

Clauses 12 to 15 agreed.

Clause 16: Assemblies and one-person protests: British Transport Police and MoD Police

Amendment 102

Moved by ***Lord Davies of Gower***

102: Clause 16, page 16, line 3, leave out "in England and Wales"

Member's explanatory statement

This amendment and the amendments in the name of Lord Sharpe of Epsom at page 16, line 12, page 17, line 20, page 17, line 35 and page 18, line 4 have the effect that in Clause 16 the amendments to sections 14 and 14A of the Public Order Act 1986 in relation to the British Transport Police apply in relation to Scotland as well as England and Wales.

Lord Davies of Gower (Con): My Lords, Clause 16 closes a gap in existing powers at Part 2 of the Public Order Act 1986 for policing public processions and assemblies which may result in serious disorder. It does this by harmonising the position between on the one hand the territorial police forces—that is to say those covering a geographical force area—and on the other hand the British Transport Police and Ministry of Defence Police.

The present position is that the territorial forces are able to exercise these powers, but the British Transport Police and Ministry of Defence Police are not. Clause 16 extends to the British Transport Police and Ministry of Defence Police some of the powers at Part 2 of the 1986 Act in relation to their respective jurisdictions, where there is an operational case for doing so.

For example, the power may be used in a situation where a trespassory assembly is planned or is occurring on the railway or on railway property. This could be within a station, outside a station or in a retail area owned by the railway. In this case, the British Transport Police may be the most appropriate force to exercise the power. The railway is a unique and complex environment with specific risks which British Transport Police specialise in managing while minimising disruptive impact on the operation of the rail network.

To be clear, Clause 16 does not create any new powers, nor does it broaden the existing ones. It simply serves to close a potential gap in jurisdiction by extending certain existing powers to those two additional, non-territorial police forces. The powers contain various limitations and safeguards; for example, there is provision that only the most senior of the officers present may exercise the powers and a requirement that the officer must reasonably believe that the assembly may result in certain forms of serious disorder. Clause 16 reads these across, with necessary transpositions for the jurisdiction and functions of the British Transport Police and the Ministry of Defence Police.

While the provisions concerning the Ministry of Defence Police are reserved, as policing and railway are devolved matters, the provisions concerning the British Transport Police have practical application only in England and Wales. Following discussions, the Scottish Government have requested these powers be extended to the British Transport Police in Scotland. We have therefore tabled minor, technical amendments to the clause to facilitate the extension of the powers to Scotland.

Lord Beith (LD): My Lords, the Government are stretching credulity if they say this creates no new powers; it creates new powers for the British Transport Police and Ministry of Defence Police. It is mostly on the British Transport Police that I want to concentrate.

This police force is not locally accountable. It is the police force of the operators of the railway system. It has its own structures and is essentially a nationally organised force with certain centres of activity. There are many cases where police support is needed, and we certainly see this in Berwick. The local police have to come on the scene some time before British Transport Police can come from 70 miles away to take part in whatever problem there may be. We have to be a bit careful about so readily extending powers to a very different kind of police force, which does not have the chain of local accountability that our civil police forces have.

If anyone thinks that the arrangements are all very smooth and there is not a problem in relations between local police and British Transport Police, they should read the proceedings of the Manchester Arena inquiry. They will discover some pretty uncomfortable things about how co-ordination between British Transport Police and other agencies is meant to work but does not always work in practice. I was slightly surprised that Scottish Ministers decided they wanted to extend the powers included here, but it is with the approval—if the case is in Scotland, it is not to the Secretary of State—of Scottish Ministers.

I will take the Minister back to an incident in the 1960s which he is too young to remember. It shows that these are not new problems requiring drastic new powers. A railway line called the Waverley route between Edinburgh and Carlisle was closed. Before it managed to get itself closed—it has since been partially reopened—people in the village of Newcastleton between Hawick and Carlisle protested vigorously. One night, when the night sleeper was heading towards Carlisle, the minister of the local kirk and some of his congregation and others gathered on the crossing and stopped the train. On the train at the time was Lord Steel of Aikwood,

[LORD BEITH]
then the young MP for the Borders area. This incident was handled by the police quite smoothly and locally, without any involvement of the British Transport Police—I doubt very much that they ever got there.

Local police are used to dealing with these situations. I fear from the provisions we have now that, given the nature and scope of this Bill, someone proposing to have either a group of people in a station protesting against imminent cuts to the service, or a single protestor in the station building by the ticket office saying "Your service is going to be halved from next week—join me in a protest", will find themselves subject to the powers of the Public Order Act. There will be an unnecessary level of police involvement by the British Transport Police. Without the powers here, they would be able to deal with it in the normal way, as the local police would. We are in some danger if we get the British Transport Police into the state of mind that they are policing protest. It is really not what they are good at and not what they are supposed to be good at.

Lord Paddick (LD): My Lords, I support the comments of my noble friend. The only observation I was going to make about the powers being given to the British Transport Police is that it is primarily funded by the rail industry and whoever pays the piper calls the tune. Can the Minister confirm that the BTP is accountable to the British Transport Police Authority, the members of which are appointed by the Secretary of State for Transport? What does the Minister believe to be the consequences, for example, for protests at railway stations, of such funding and accountability mechanisms?

Lord Coaker (Lab): My Lords, Clause 16 covers the British Transport Police in England and Wales. It is reasonable that, as the Minister explained, the government amendments also cover the BTP in Scotland, since that has been requested by the Scottish Government. We disagree with the premise of the Bill, as was visible in many of the groups, not least the last one, but we understand recognising the specific roles that the MoD and British Transport Police play as part of the wider policing family. Can the Minister confirm—this is part of what the noble Lords, Lord Paddick and Lord Beith, said—that the use of their powers is strictly limited to the areas under their jurisdiction?

Prior to today's debate, I asked the Minister why the Civil Nuclear Constabulary was not referenced in the clause. Helpfully, he responded. I received a letter that said:

"we have not seen assemblies outside civil nuclear establishments and … the public do not have access to this land, so any assembly outside them … falls under the jurisdiction"

of the usual territorial force. I take that to mean that it is not included because no need has been identified for it to have these powers, which is welcome. It would be handy if the Government had applied that logic elsewhere in the Bill.

Does the Bill allow the Government to extend these powers to the Civil Nuclear Constabulary, should they wish to do so? In other words, we have just seen the Government announce and give the go-ahead to the building of Sizewell C, and the Civil Nuclear Constabulary would presumably be involved in and around that sort of site. Would the Government have to come back to Parliament to get primary legislation through in order to give the Civil Nuclear Constabulary similar powers to those in the Bill? Is some secondary legislation tucked away that would allow them to do that, without us being able to properly scrutinise that to determine whether we believe the Civil Nuclear Constabulary should have these protest-related powers?

Lord Beith (LD): I remind the noble Lord that the Civil Nuclear Constabulary is armed. It was armed by the late Anthony Wedgwood Benn, when he was Secretary of State for Energy.

Lord Coaker (Lab): That is a very good point—I was going to make that point and ask whether that made any difference. What makes this even more important is whether, tucked away in the Bill, there is some mechanism by which the Government could extend these protest-related powers to the Civil Nuclear Constabulary. The Government are saying that, at the moment, there is no need for it to have these powers because there have been no protests and it has not been appropriate—that is the information I received. All that I am asking—this is particularly relevant given the point of the noble Lord, Lord Beith, about it being armed—whether the Bill gives the Government the opportunity to do that, should they so wish, or whether they would have to come back and pass primary legislation to do that. It would be useful to find that out.

On Amendment 106 of the noble Lord, Lord Beith, which probes the breadth of the powers, can the Minister give us more clarity on the power to make an order prohibiting specified activities for a specified amount of time? What is the amount of time in scope, and who grants the order?

The clause references assemblies

"on land to which the public has no right of access or only a limited right of access".

Would that activity therefore be covered under existing trespass offences? I am just asking for clarity on one or two of the specifics with respect to these amendments.

Lord Davies of Gower (Con): I am grateful to noble Lords for their speeches in this group. I turn to Amendment 106, in the name of the noble Lord, Lord Beith, who explained that it is intended to avoid excessively wide use, at railway stations, of the power for a chief constable to make an order prohibiting a trespassory assembly if certain conditions are met. This is an outcome that we can all support: the Government are clear that public order powers should always be used proportionately and should have appropriate safeguards and limitations. However, I hope I will be able to provide him with assurances that his amendment is not necessary to achieve that outcome and indeed that it would not have the effect of limiting the use of this existing power at or around railway stations.

9.15 pm

The noble Lord, Lord Beith, asked about governance. The Transport Secretary is accountable to Parliament for the British Transport Police. The British Transport

Police Authority is an arm's-length body of the Department for Transport and is responsible for overseeing the work of the British Transport Police. The main responsibilities of the authority include setting British Transport Police objectives, recovering its costs through charges to the rail industry for policing services, and recruiting senior officers and staff. Each year, the British Transport Police Authority sets the annual budget for the force. It must also obtain the consent of the Secretary of State for an order in England and Wales, or the Scottish Ministers for an order in Scotland. An order may be made only in relation to a specific area and a specified period of time.

The noble Lord's amendment would remove from the Bill the operative provisions that extend this power—found in Section 14A of the Public Order Act 1986—to the chief constable of the British Transport Police in relation to a trespassory assembly to be held on railway land. In doing so, the Bill does not create any new power and does not, in any way, broaden the existing one; it simply closes a gap in the police forces which may exercise the existing power, which will continue to be subject to limitations and safeguards of the kind that have avoided its excessive use since it was introduced by the Criminal Justice and Public Order Act 1994. In particular, the chief officer of the BTP must reasonably believe that the assembly is likely to be trespassory in nature and is likely to result in serious disruption to railway services. They must also obtain the consent of the Secretary of State in England and Wales, or of the Scottish Ministers in Scotland. In addition to these statutory limitations, use of the power must of course be reasonable at common law and must be ECHR-compliant, and this is subject to review by the courts. I am not aware of any body of cases in which its use has been found to be unlawfully excessive.

The Section 14A power is currently available only to chief officers of the territorial forces; that is, those covering a geographical force area. At present, it is they who will exercise it where appropriate in relation to a trespassory protest to be held within the BTP's jurisdiction. There is, routinely, close co-operation at both operational and senior level between the territorial forces and the BTP, including when responding to public disorder on and around the railway. However, the railway is a unique and complex environment, with specific risks which the BTP specialises in managing, while minimising disruptive impact on the operation of the rail network.

It is the Government's view, and that of the BTP itself, which has requested this measure, that the BTP is the more appropriate force to exercise this power in relation to a protest within its jurisdictions. So the inclusion of this measure in the Bill will not increase the number or extent of orders prohibiting a trespassory assembly made by a chief constable under the Section 14A power. Similarly, removing it from the Bill, as the noble Lord proposes, will not decrease their number or extent. The measure is intended simply to address an anomaly by ensuring that a power which is already used on the railway can continue to be used in the same circumstances—but by the police force best placed to do so.

I turn to the question on the nuclear establishment raised by the noble Lord, Lord Coaker. It cannot extend to the CNC; if it wished it to, that would require primary legislation. I know that he asked a couple of other questions, but I will have to come back to him in writing on them.

I hope your Lordships will agree that this is a sensible and desirable outcome, and that, while I recognise his admirable intention, the noble Lord can be persuaded to not move his amendment.

Lord Beith (LD): The Minister asked me whether I would be kind enough not to move the amendment. I am not entirely satisfied; he has promised to write on a couple of issues. The evidence that has not been brought forward is any inability of the local police forces to manage these situations if they arise. It does not appear to me that there have been situations where the lack of British Transport Police powers has made it impossible to deal with the situation. My worry is that giving it new powers will lead it to use them in circumstances that are not really envisaged by the Bill. At this stage, I am happy not to press the amendment.

Lord Coaker (Lab): The Minister said, quite rightly, that he will write to the noble Lord, Lord Beith. For the benefit of the Committee, it would be useful for it to be put in the Library. The letter writing is fine but I sometimes worry about it because it means it is not in *Hansard*. For those people who read our deliberations, I think that could be a bit of flaw in them being able to understand what is going on. The answers often are in a letter or in the Library and not as widely available as they would be if they were in *Hansard*. It is a point that has increasingly bothered me, to be frank.

Lord Davies of Gower (Con): I recognise what the noble Lord says and will make sure that the letter is placed in the Library.

Amendment 102 agreed.

Amendments 103 to 105

Moved by ***Lord Davies of Gower***

103: Clause 16, page 16, line 12, leave out "in England and Wales"

Member's explanatory statement

See the explanatory statement for the amendment in the name of Lord Sharpe of Epsom at page 16, line 3.

104: Clause 16, page 17, line 20, leave out "in England and Wales"

Member's explanatory statement

See the explanatory statement for the amendment in the name of Lord Sharpe of Epsom at page 16, line 3.

105: Clause 16, page 17, line 35, leave out "in England and Wales"

Member's explanatory statement

See the explanatory statement for the amendment in the name of Lord Sharpe of Epsom at page 16, line 3.

Amendments 103 to 105 agreed.

Amendment 106 not moved.

Amendments 107 to 109

Moved by ***Lord Davies of Gower***

107: Clause 16, page 17, line 42, leave out "Secretary of State" and insert "relevant national authority"

Member's explanatory statement

This amendment and the amendment in the name of Lord Sharpe of Epsom at page 18, line 10 have the effect that the consent of the Scottish Ministers is required in order for the chief constable of the British Transport Police to make an order under section 14A(4D) of the Public Order Act 1986 prohibiting trespassory assemblies in an area in Scotland.

108: Clause 16, page 18, line 4, leave out "in England and Wales"

Member's explanatory statement

See the explanatory statement for the amendment in the name of Lord Sharpe of Epsom at page 16, line 3.

109: Clause 16, page 18, line 10, at end insert—

"(4EA) In subsection (4D) "the relevant national authority" means—

(a) in relation to an area in England and Wales, the Secretary of State;

(b) in relation to an area in Scotland, the Scottish Ministers."

Member's explanatory statement

See the explanatory statement for the amendment in the name of Lord Sharpe of Epsom at page 17, line 42.

Amendments 107 to 109 agreed.

Clause 16, as amended, agreed.

Clause 17: Power of Secretary of State to bring proceedings

Amendment 110

Moved by ***Lord Paddick***

110: Clause 17, page 19, line 26, leave out "reasonably believes" and insert "has reasonable grounds for suspecting"

Member's explanatory statement

This amendment is intended to raise the threshold for the Secretary of State to bring civil proceedings.

Lord Paddick (LD): My Lords, in moving Amendment 110 in my name, I will speak also to my Amendments 111 to 113 and 116 and the other amendments in this group. These amendments are about a power to be given to the Secretary of State to bring civil proceedings to curtail or prevent protest, including potentially with a power of arrest attached, if the Home Secretary "reasonably believes" that activities are causing or likely to cause disruption to the use or operation of any key national infrastructure or have a seriously adverse effect on public safety in England and Wales.

Amendments 110 to 112 in my name would increase the evidential test to

"has reasonable grounds for suspecting"

to ensure that the Secretary of State has to set out before the court the exact evidential grounds for her application. In meetings with the Minister and officials on the Bill, it was explained that protests could affect a number of different operators or local authorities and that it would be in the public interest to have an overarching injunction in such cases.

The HS2 nationwide injunction seems to prove that such an overarching injunction is available to those concerned without the intervention of the Secretary of State but, in any event, Amendment 113 is designed to ensure that the power is used if, and only if, it is not reasonable or practical for a party directly impacted by the activity to bring civil proceedings, and to ensure that the Secretary of State does not use the power where any party directly impacted does not consider such proceedings to be necessary. My Amendment 116 is designed to ensure that a power of arrest cannot be attached to an injunction simply on the basis that the conduct is merely

"capable of causing nuisance or annoyance".

This is in Clause 18(2)(a), which the amendment removes from the Bill.

We wholeheartedly support the additional checks and balances proposed by the noble Baroness, Lady Chakrabarti, in her Amendments 114 and 115. I beg to move Amendment 110.

Baroness Chakrabarti (Lab): My Lords, during Second Reading a number of noble Lords, including those who do not share my views of the Bill more generally, expressed significant scepticism about the new Clause 17 provision for the Home Secretary to bring civil proceedings against protesters, instead of being brought by directly affected oil, gas or transport companies, and so on. I share these concerns at the politicisation of both policing and civil disputes, and therefore oppose Clause 17 standing part of this Public Order Bill.

Not only is it constitutionally dubious for a politician to be standing in the shoes of the police in relation to the criminal law, or of affected companies in relation to the civil law; it also raises questions about this use of considerable sums of taxpayers' money in expensive litigation that could and should be brought by those who profit from fossil fuel or other carbon-intensive development, and no doubt factor legal fees into their budgeting. The lack of transparency required by the new Clause 17 also brings a risk of corruption, in the event that the relevant firms should choose to donate to or otherwise "promote" a Home Secretary amenable to seeking civil legal proceedings on their behalf.

It should be noted that under Clause 17(5), the Secretary of State must only

"consult such persons (if any) as the Secretary of State considers appropriate, having regard to any persons who may also bring civil proceedings in relation to those activities."

No transparency in the Secretary of State's discussions, or non-discussions, with these "persons"—namely, large companies—or consideration of why they should not finance their own legal proceedings, is required. Never has the word "must", in a provision supposedly creating a duty upon a Secretary of State to consult, constituted such a toothless tiger or illusory protection from the potential abuse of public money and political power.

In addition to supporting the amendments proposed by the noble Lord, Lord Paddick, I propose Amendments 114 and 115, which would create safeguards against corruption and abuse. They require the Secretary of State to publish the reasons for any decision not to consult; the results of any consultation; any representations made to the Secretary of State as to a proposed exercise of

the new power; an assessment of why other parties should not finance their own proceedings; and assessments of why any proceedings have been brought by the Secretary of State at public expense, rather than by private companies themselves. Such publication will occur both each time an exercise of the power is considered, and annually on an aggregate basis.

Clause 17 is both unnecessary and undesirable. If it really must stand part, so must the vital safeguards previously referred to, but also those in Amendments 114 and 115, which I commend.

9.30 pm

Baroness Jones of Moulsecoomb (GP): My Lords, Clause 17 is very dubious. It is bad enough when private companies use civil injunctions, which have become quasi-criminal private tools against protesters. I was up at Preston New Road and I saw this in action by fracking companies. The fact is, of course, that the protesters who had injunctions brought against them were proved to have been entirely on the right side of history, yet they were targeted by the fracking companies, very unfairly, because their trying to halt the companies' damage to the environment was perfectly appropriate. We have seen injunctions used against tree protectors as well. Of course, breach of an injunction is contempt of court, with the risk of fines and imprisonment. It is actually quite onerous, and it is bad enough when a private company chooses to do it, but it is pretty concerning when a Secretary of State decides to do it.

I think we have all agreed that, if not completely overcome by corruption, this Government do at least have filaments of corruption winding their way through the whole body politic. Therefore, we have to be very careful that we do not introduce other ways for corruption to happen within government. Clearly, the Government should review the situation and propose reforms, because this really is not how injunctions are supposed to be.

Baroness Blower (Lab): My Lords, not being a lawyer, I would never have dreamed of writing amendments of the technical nature of Amendments 114 and 115. None the less, having heard the speech of my noble friend Lady Chakrabarti and having discussed it with her before she made it, it is evident to me that these are vital amendments should Clause 17 stand part—which, of course, it absolutely should not. If there is any sense, as my noble friend Lady Chakrabarti has powerfully persuaded me there is, that Clause 17 is constitutionally dubious, that really should give the Government pause for thought. I genuinely believe that anyone—the person on the Clapham omnibus—who read this and found that the Government can substitute a prosecution for a private company at the public expense would, frankly, be rather appalled and find it very odd legislation.

Clause 17 (5) states:

"the Secretary of State must consult such persons (if any) as the Secretary of State considers appropriate, having regard to any persons who may also bring civil proceedings in relation to those activities."

That just does not seem appropriate. Surely, the purpose of the law is to make sure that the onus for things lies in the proper place, and the onus for proceedings such as those conceivably envisaged here cannot possibly lie with the Government and the public. Amendments 114 and 115, in the name of my noble friend Lady Chakrabarti, at least tighten up the possibilities here. The Secretary of State would be required to publish a range of things, as she has already said, including

"the reasons for any decision not to consult, the results of any consultation, any representations made to the Secretary of State as to a proposed exercise of the power, an assessment of why other parties should not finance their own proceedings".

It seems to me that we are allowing the Secretary of State to do something which, if I had just read this myself and come to a view on it, I would have considered to be ultra vires, if that is the correct term, because this is not something we should be spending public money on. Amendments 114 and 115 would go some way towards tightening up Clause 17, but as other noble Lords have said, those of us who have read this in detail and given it some consideration genuinely believe that it should not stand part of the Bill.

Lord Ponsonby of Shulbrede (Lab): My Lords, Amendment 145 in the name of my noble friend Lord Coaker is a probing amendment which would require the Secretary of State to review the use of injunctions for protest-related activity. This is to probe how injunctions are used, what their effects are, how they interact with police powers and responsibilities, and the problems facing their use, such as securing them within a reasonable timescale. The purpose of the amendment is for the Secretary of State to set out a review of injunctions in the widest sense.

We also heard from my noble friend Lady Chakrabarti about her Amendments 114 and 115, which would create safeguards against corruption and abuse. They would require the Secretary of State to publish the reasons for any decision not to consult, the results of any consultation, any representations made to the Secretary of State as to a proposed exercise of the power, an assessment of why other parties should not finance their own proceedings and assessments of why any proceedings have been brought by the Secretary of State at public expense rather than by private companies. Such publication would occur each time an exercise of the power is considered and annually on an aggregate basis so that we can look at the overall effect.

My noble friend Lady Blower, who like me is not a lawyer, expressed incredulity about the situation, which I share. As a layman, it seems to me that the Clause 17 provisions give the Home Secretary powers to bring civil proceedings against protesters at public expense. This is a surprising set of circumstances, and my noble friend's amendments are trying to get the Government to justify that on a continual basis, which seems entirely reasonable.

Amendments 110, 111 and 112 are also in this group. This clause provides that the Secretary of State can use new injunction powers where they reasonably believe the conditions under the clause are met. These amendments would delete "reasonably believes" and strengthen it to

"has reasonable grounds for suspecting".

Amendment 113 would provide that the Secretary of State may bring civil proceedings under this clause only if it is not reasonable or practicable for a party directly impacted by the activity to do so.

[Lord Ponsonby of Shulbrede]

I move on to Amendment 114. The clause provides that, before bringing proceedings under it, the Secretary of State must consult "such persons (if any)" that they consider appropriate. This amendment would require the Secretary of State to publish the reasons if they do not consult, the outcome of any consultation, representations made to the Secretary of State and a reason why the Secretary of State should bring the proceedings at public expense, rather than another party.

As the Minister has heard, there is substantial scepticism about many aspects of Clause 17. There are a number of amendments here seeking to probe the Government's intentions, and we may well return to this at a later stage. I look forward to hearing the Minister's response.

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): My Lords, recently we have seen protestors blocking key national infrastructure, potentially causing delays to the supply of goods and services. Clause 17 provides a Secretary of State with a specific mechanism to apply for an injunction in civil proceedings where it is in the public interest to do so, and where the effect of the activity is to cause serious disruption to key national infrastructure, or to access to essential goods or services, or to have a serious, adverse impact on the public.

Contrary to the speeches that we have heard from noble Lords opposite, there is no constitutional dubiety about such a measure. This provision will support better co-ordination between government, law enforcement, local authorities and private landowners in responding to serious disruptive behaviour. You may say, contrary to that which the noble Baroness, Lady Blower, said earlier, that these provisions mean that the hypothetical man on the Clapham omnibus might actually make it to Clapham, rather than being delayed by roadblocks caused impermissibly by protestors.

The proposal does not affect the right of local authorities or private landowners to apply for an injunction themselves, but gives a Secretary of State an additional route to act—urgently in some cases—where the potential impact is serious and widespread, and where there is a clear public interest to intervene. I seek to reassure noble Lords who have raised concerns regarding this measure that it will ultimately be a matter for the courts and our judges to consider whether or not to grant an injunction application. All that this provision does is simply to allow a Secretary of State to bring a claim and to apply for an injunction; ultimately, the decision on whether or not the injunction is made is one for the judge. As we always would, there would be careful consideration of any such application made by a Secretary of State, and that would involve careful consideration of the evidence provided by the Secretary of State in support of an application for an injunction. This is the ultimate legal safeguard on the use of the powers in Clauses 17 and 18.

As to the point made by the noble Baroness, Lady Blower, I again reiterate that this measure provides an additional mechanism for a Secretary of State to intervene. This device would be most beneficial where protest activity targets multiple sites, and transcends local boundaries and the property of multiple entities. In such circumstances the potential impact would clearly be widespread, and the clear public interest would therefore be that injunctive proceedings are taken by the Secretary of State, rather than a series of separate private entities. It is not in every scenario that the Secretary of State's power to seek an injunction would be utilised, and there is no doubt that the prevailing situation would remain, and businesses would have a major role to play in obtaining their own injunctions.

Turning to Clause 18, where an injunction has been granted by a court, with a power of arrest attached, the powers will support the police in taking action earlier to respond to those who engage in disruptive and dangerous forms of protest. Enabling the court to attach a power of arrest to such injunctions is key to allowing the police to act more quickly to prevent the disruption escalating. Where there is no ability for a power of arrest to be attached to the injunction, the applicant may be able to apply to the court for an arrest warrant where they believe that the perpetrator has breached the provisions of an injunction, as is the case for injunctions secured by private entities and natural persons. However, this creates an additional step in the process of enforcement which can affect the pace at which disruptive behaviour can be curtailed. As such, the power of arrest provision in Clause 18 can prove to be a highly important tool in the available responses to prevent serious disruption happening in the first place.

9.45 pm

Turning specifically to Amendment 110, in the names of the noble Lords, Lord Paddick and Lord Skidelsky, and Amendments 111 and 112, in the name of the noble Lord, Lord Paddick, these are aimed at raising the threshold for the provision for a Secretary of State to initiate proceedings in relation to a protest activity. A Secretary of State would have to prove that they have reasonable grounds to suspect—rather than, as in the present draft, a reasonable belief—that activities related to a protest are causing or are likely to cause serious disruption. As I mentioned earlier, courts will grant injunctions only where it is necessary to do so. It is important that we do not in this statute raise the threshold for intervention such that we create additional evidential burdens to get over to initiate the application for an injunction, especially when we know how quickly disruption can commence and how quickly measures need to be taken to ameliorate it.

Amendment 113, in the name of the noble Lord, Lord Paddick, seeks to limit the ability of the Secretary of State to bring civil proceedings to circumstances where the landowner or body subject to the behaviour the injunction would seek to restrict is unable to apply for an injunction themselves. While it is right that in the first instance the relevant organisation or landowner —if it is just one such person affected—should initiate civil proceedings themselves, it is necessary that the Government reserve the right to do so to protect key national infrastructure, or essential goods or services, in a timely and efficient manner.

I thank the noble Baroness, Lady Chakrabarti, for tabling her thought-provoking Amendments 114 and 115. I understand that the amendments seek to create a requirement for the Secretary of State to publish an annual report regarding the uses of the powers in Clause 17, containing justifications and explanations for decisions taken in the use of such powers. While I agree with the noble Baroness on the need for checks and balances, I am inclined on this occasion to question the necessity of these amendments. There are currently sufficient measures in place to ensure that the powers granted by Clause 17 are used appropriately and proportionately. It is, of course, always for the courts to review the appropriateness of a civil claim and to grant appropriate relief, and we are satisfied that these are sufficient safeguards. There is also a recognition that civil proceedings are done in public and that the judgment of the court would be available. However, I recognise the intent behind the noble Baroness's amendment and will consider whether further clarity around the process whereby a Secretary of State may seek to initiate such proceedings could be provided.

Baroness Chakrabarti (Lab): I am grateful to the Minister for giving way. He made a kind offer to consider this argument; when he is considering it, could he think about transparency versus corruption and the public expense? He has made his arguments about the new co-ordinating role of the Secretary of State, standing in the shoes of a consortium, if you like, of local government, business and central government, but there is still this issue about transparency versus corruption. When he takes this away, will he think about a scenario in which a press baron or an oil baron—whichever noble Baron, or ignoble Baron, it is—says to a Home Secretary, or a putative Home Secretary, "I'm sick of these legal fees, and I think it would be a jolly good idea if the Home Department brought these proceedings against these pesky demonstrators in my shoes"? Will he think about the risks to public trust in the good use of public money that might result if there is not transparency about this new power?

Baroness Jones of Moulsecoomb (GP): My Lords, before the Minister resumes his speech, may I ask him about a word he used? I do not know if I misheard—and I have quite a good vocabulary—but I think he used the word "dubiety". Does that mean dubiousness?

Lord Murray of Blidworth (Con): Yes.

Baroness Jones of Moulsecoomb (GP): Right, I will add that to my vocabulary.

Lord Murray of Blidworth (Con): I thank both noble Baronesses for their interventions. Turning to the question about transparency, we will certainly engage on that, and I appreciate it. It is always important that government actions are transparent. It is clearly an important public principle, and on that we agree.

As to corruption, in this context, it is really not a terribly likely hypothetical scenario. I say that because, if one were an ignoble baron seeking to pursue an injunction to preclude some sort of serious disruption, it is unlikely that the cost of pursuing an injunction would be sufficiently high to warrant seeking the assistance of the Secretary of State in bringing that injunction. It would be more likely that such costs would be borne by the company or person themselves, given the urgency and the much larger costs incurred by the disruption occurring. While I accept that there is a hypothetical concern, therefore, I find it unlikely in reality that such an envisioned scenario would eventuate.

I thank the noble Lord, Lord Paddick, for tabling Amendment 116. Let me start by saying that I, again, recognise the sentiment in this amendment. It is important that the Government intervene only in matters that are serious and proportionate to the public interest. However, I wish to remind noble Lords that causing nuisance or annoyance to the public can have a far-reaching impact when it occurs on a widespread scale. The recent protests targeting the M25 have shown just that. Furthermore, while a Secretary of State may apply for the power of arrest to be attached to an injunction, it is for the courts to decide whether or not this is an appropriate measure.

Finally, I turn to Amendment 145, tabled by the noble Lord, Lord Coaker. Again, I understand and have considered the need for scrutiny and transparency, as I touched on earlier, and therefore I entirely understand the logic of the tabling of that amendment. None the less, it is the Government's view that while a review is not needed to ensure that activity relating to these provisions is necessary, it is important that transparency is carefully considered, and I will ensure that that is done.

There are already several clear provisions in the Bill that serve to ensure that the use of these powers by a Secretary of State will be subject to scrutiny and safeguards. As has already been noted, of course, in Clause 17(5) there is a requirement for consultation as may be appropriate ahead of initiating civil proceedings. Moreover, as we have already touched on, civil proceedings can be issued in the interest of the public only when it is considered expedient to do so in the judgment of the judiciary hearing the claim. As I have already committed to the noble Baroness, Lady Chakrabarti, I will nevertheless consider what further clarity could be provided on the circumstances in which a Secretary of State might seek to initiate such proceedings. I therefore invite the noble Lord to withdraw his amendment.

Lord Paddick (LD): My Lords, I thank all noble Lords for their contributions to this debate. If I can try and get the sense of the House, we on this side feel that this is constitutionally dubious, potentially providing opportunities for corruption, and that it is a very serious step to allow the Secretary of State to apply for an injunction to prevent a protest. On the government side, the Minister thinks it is reasonable if lots of people are affected—different organisations, private and public—and that it would be expedient for the Secretary of State to represent all parties and apply for an injunction on their behalf. Therefore, there is a clear difference of opinion as to whether we are satisfied that there are sufficient safeguards, as opposed to the Minister being satisfied that is the case. As the Minister reflects on

[LORD PADDICK]
what the noble Baroness, Lady Chakrabarti, said, we too will reflect on what the Minister has said, and we will no doubt return to this on Report. In the meantime, I beg leave to withdraw Amendment 110.

Amendment 110 withdrawn.

Amendments 111 to 115 not moved.

Clause 17 agreed.

Clause 18: Injunctions in Secretary of State proceedings: power of arrest and remand

Amendment 116 not moved.

Clause 18 agreed.

House resumed.

House adjourned at 9.57 pm.

Grand Committee

Tuesday 22 November 2022

Arrangement of Business
Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): 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 Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022
Considered in Grand Committee

3.45 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee. Special attention drawn to the instrument.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, in moving that the Grand Committee do consider the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022, I shall speak also to the Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022, and the Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022, all of which were laid before the House on 31 October; and the Energy Bill Relief Scheme and Energy Price Guarantee Pass-through Requirement and Miscellaneous Amendments Regulations 2022; and the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022, laid before the House on 4 November.

Last Wednesday, I set out the details of the Government's energy support schemes: the energy price guarantee, the energy bill relief scheme, or the EBRS, and the energy bills support scheme—the EBSS. I am in front of your Lordships today to explain the pass-through requirements in respect of these schemes.

The Government have responded rapidly to the unprecedented rise in energy prices by introducing emergency legislation on energy support. This support will protect homes and non-domestic consumers across the United Kingdom, so that families and consumers will be supported in their cost of living this winter. These pass-through requirements place a legal requirement on intermediaries to pass any benefits received through the various energy schemes to the end-user, thus ensuring that the support is received by the intended beneficiary.

These regulations have been created under the Energy Prices Act, which noble Lords will know received Royal Assent on 25 October 2022. They are essential secondary legislation to implement the energy schemes.

I am, of course, aware that the JCSI is still considering two of the instruments, and we will not move to approve them until that work has concluded. If that committee has any concerns, the Government will respond to them when we ask for approval, including time for debate if that is useful to the House.

I thank the Secondary Legislation Scrutiny Committee for its views on the pass-through requirements regulations. The committee raises three concerns: the definition of "just and reasonable", inequality of arms, and vulnerable groups.

The committee's first concern is that the meaning of "just and reasonable" is vague and open to interpretation. The pass-through regulations do not prescribe the exact method of the amount passed on by an intermediary. These requirements take into account the diverse range of contracting structures relating to the supply, resale, provision and charging of energy. We do not want any intermediaries to fall outside of the pass-through requirements by limiting the possible contracting scenarios through these regulations.

The definition of "just and reasonable" is long established in law. It essentially means what is fair and lawful under the circumstances. We believe that this would allow for the many different arrangements between an intermediary and end-user that these regulations are designed to police.

The committee's second concern is inequality of arms: where a landlord who has multiple properties and receives all the energy schemes, and how they allocate the financial benefits received to their individual tenants. The regulations take this scenario into account. Where an intermediary receives energy support but has multiple end-users, they should determine a just and proportionate method of dividing the benefit among these end-users, and clearly communicate how they have arrived with the amount allocated to those end-users.

The committee's final concern is the vulnerable groups affected by the pass-through regulations. We are keen to ensure that all end users, including those who are vulnerable, such as older people or people with disabilities, receive the benefits of the schemes where they are entitled to them. We have been delivering and building a communications campaign, which includes engaging with landlords, housing associations and charities, all of which protect those who are most vulnerable. Another statutory instrument will be laid later this month to correct some mistakes in the original heat supplier regulations.

The pass-through regulations ensure that the Government's energy support reaches families and consumers. Rather than expecting intermediaries to act on their own accord, we are requiring that they pass on the financial benefit to their end users. An intermediary is any individual or organisation that is

[LORD CALLANAN]
party to an electricity or gas contract and receives energy price support in relation to that contract, or a pass-through of reductions attributable to that energy price support. The intermediary then passes on the costs of the energy supplied and any reductions attributable to the energy price support to an end user—for example, landlords or property managers of a residential building. This also covers intermediaries supplying a product or service where, contractually, a component of the price relates directly to the use of energy or the supply of heating or hot water: for example, park home managers, heat networks and electric vehicle charging operators. Taken together, the regulations apply to all three energy schemes: the energy price guarantee, the energy bills support scheme and the energy bill relief scheme, including customers who are part of heat networks.

If the intermediary does not pass on the benefit, the end user can pursue recovery of the benefit as a debt through civil proceedings. Should a court rule in the end user's favour, they will be entitled to the payment due, plus interest. The interest is set at 2% above the Bank of England's base rate; this will begin to accrue from 60 days after the intermediary first receives the relevant scheme benefit. The enforcement approach is the same across the schemes, with a slight nuance for heat networks under the EBRS. 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.

We have published guidance on the pass-through regulations to help those affected understand how to comply with these regulations. This government guidance includes advice for landlords on how to meet their pass-through obligations. There are also template letters for tenants, should they wish to raise concerns with their landlords about their energy bills.

These regulations protect those most exposed to high energy costs. The pass-through requirements allow cost savings to reach the people the Government intend to support, such as tenants and other individuals. Importantly, the regulations also provide routes for end users to benefit from the discounts they are entitled to in the scenarios where intermediaries are not meeting their legal obligations. I therefore commend the regulations to the Committee.

Lord Hodgson of Astley Abbotts (Con): My Lords, I am grateful to my noble friend for his explanation and for the way he has addressed some of the concerns of the Secondary Legislation Scrutiny Committee, which I chair. The SLSC, a cross-party committee, is of course not concerned with politics. That is for the House, the Government and, in due course, the electorate to decide.

My remarks now are therefore not about the energy policy but about the administration and process by which it is being delivered. We have quite narrow objectives in our terms of reference. The two that I think apply today are, first, that the instruments are

"politically or legally important and give rise to issues of public policy likely to be of interest to the House";

and secondly, that they may imperfectly achieve their policy objectives. I particularly want to compare the unfavourable treatment of Statutory Instruments Nos. 1102, 1103 and 1125 with the other two in this group, Statutory Instruments Nos. 1101 and 1124. The first lot are about energy and the second lot are about heat.

As my noble friend the Minister has explained, this is about making sure that a fair share of the proceeds are passed on to tenants by landlords. He has gone through the rationale for "fair", "reasonable" and so on and so forth, but it is worth while us putting ourselves in the position of an elderly widow. Let us say that she is in a block of 50 flats. Let us say that the landlord has two or three blocks of flats; they may have a couple of hundred tenants. The landlord may say, "Here is your rebate". She may, for one reason or another, decide that it is not right. She must therefore begin proceedings to recover what she believes her fair and reasonable share is. That is what the committee was concerned about: inequality of arms.

We have to think about a single individual, maybe a vulnerable individual. I accept that I am exaggerating slightly to make a point, by taking one particular angle on the people who might be affected, but I am trying to explain to the Committee that this person is somehow going to have to have the courage, conviction, energy and money to take the landlord on and take them to the county court over what may not be a huge sum of money. Although I am sure my noble friend wishes to find ways of ensuring that tenants are informed and helped and that landlords are required to provide proper shares, records and so on, I am not sure that this is going to work in the real world as happily as the Government, I and the SLSC would wish it to. The inequality of arms—above all, in the power to delay and ask for more particulars; as I said, this should be looked at in a lot of detail—is likely to work in favour of landlords, particularly multiple landlords, against tenants, particularly tenants who are vulnerable, elderly or disadvantaged in one way or another.

When we come to the first three SIs, Nos. 1102, 1103 and 1125, there is no further appeal—that is the end—whereas when we get to Nos. 1101 and 1124, there is an appeal to the Energy Ombudsman and the General Consumer Council for Northern Ireland, in respect of activities in the Province. So, although I quite understand what the Government are doing and wish to do well, they will need to keep a very close eye on what is going on under these regulations to ensure that fairness is not only being sought but being achieved and that, in cases where people are less well equipped to fight their corner, they are properly protected and looked after.

Lord Teverson (LD): My Lords, I would very much like to follow up on a number of the points that the noble Lord, Lord Hodgson, made so clearly. First, I welcome these regulations. Clearly, they are important pieces of secondary legislation. They are really important in terms of making sure that energy contributions, subsidies and public payments reach the people they need to reach. The questions I am going to ask are not a prosecution, if you like; I want to understand how some of this is going to work. I recognise fully the difficulty that the Government might have in finding a way to make this work.

First, what is the size of this problem? Does the Minister have any indication of the number of households that, in effect, have their landlords pay their electricity and energy bills? I do not know whether he has any idea what that is.

4 pm

The next question that tested my knowledge when I read through the instruments is how the domestic electricity retailer that feeds the landlord knows how many subtenancies or households there are to which that payment needs to be distributed. The gap in my knowledge came by taking the example of a mobile home park. I have done some casework in this sector; there are some not very good landlords in it. Those home parks are often not on direct supply; it goes through the landlord. So how does the electricity supplier, which is an intermediary for the Government, know how many units there are and what the payment to the landlord should be? I do not know how we have that information or who would have it. Surely the scheme should make sure that each of those home park owners receives the full amount of money. Many of those parks have 50 to 60 homes; are we going to divide £400 or whatever it is between 60 people? That is what I am trying to understand.

Thirdly—the Minister answered this to a degree—I found the instructions on how the payments are to be allocated or made impossible to understand, if I am honest. I understood the Minister to say that there would be straightforward communication with landlords. I do not know who knows who are landlords and who are not. That would be interesting to understand but I presume that there will be an easy, straightforward explanation of how this disbursement scheme should work.

Coming back to the area where the noble Lord, Lord Hodgson, started, how do we make sure that final consumers know that this scheme exists and that they are entitled to it? You have this asymmetric relationship between tenants, whether industrial or domestic, and landlords.

My final question comes down to how we are going to make sure that this is practically enforced. I come back to the mobile home park; in a certain part of that sector, landlords are very reluctant to pass anything on to their tenants. The history of that sector is not good for a number of landlord owners, some of which are national organisations. It is important that final consumers understand what they are entitled to. I would be interested to learn more about that communication system.

Again, coming back to what the noble Lord, Lord Hodgson, said, the fact is that, if they do not receive this—I read about a six-month time limit somewhere—they have to go through a debt procedure. Even if they win that, there is an interest rate of 2%, which is nothing really. To me, it ought to be a criminal offence if landlords wilfully avoid passing these payments on to their tenants. It is a form of fraud and I have no doubt whatever that there will be many examples of it. I understand the Government's difficulty in delivering this but there needs to be a concentrated effort to make sure that people are aware of their rights and that it is clear how the system works.

Lord Lennie (Lab): My Lords, first, I apologise for being slightly late in attending. I hope you will allow me to make the comments that I want to, in following up those from the noble Lords, Lord Hodgson and Lord Teverson.

I thank the Minister for his introduction to the SIs. They are regulations that seek to put right a substantial loophole in the arrangements set out under the energy price assistance scheme. As we have heard, this concerns customers who do not pay their energy directly but where, for instance, it is paid by an intermediary. These categories of consumer are at risk of not receiving the relief that should be guaranteed under the energy price support or for businesses under energy relief schemes. It is right that we should correct this, and quickly, so our support for these instruments is not in doubt.

The design of the SI to deal with all the problems is, however, somewhat at risk. Generally, the SIs require the intermediary to provide a fair and reasonable pass-through of what has been received for bills in the first instance—not necessarily the full amount but a fair and reasonable amount. This has the potential to give rise to complications. What is a fair and reasonable difference between what an intermediary receives and what it passes through? Perhaps the Minister, in his response, could explain what can be taken into account in establishing what is seen to be a fair and reasonable payment.

I understand that there is no sanction on any intermediary if it fails to pass on what it is supposed to pass on. As we heard from the noble Lord, Lord Hodgson, a customer's redress is through the civil courts, and some draft letters have been provided for that to happen. But in the light of the comments by the noble Lord, Lord Hodgson, about the inequality of arms and so on, does the Minister believe there is any likelihood of a customer taking a landlord to court over a failure to pass through part or all of the payments they should have received? The Secondary Legislation Scrutiny Committee talks about the "inequality of arms", and there is a massive gap in power between landlords and vulnerable tenants.

In the limited cases of district heating schemes, as we have heard, if the pass-through is not sufficient there is a recourse to the Energy Ombudsman, but this is not available in the majority of cases. Why is the ombudsman not available to all customers who do not receive the pass-through from their landlords?

Finally, given that these SIs seem unlikely to resolve all pass-through problems, will the Government commit to monitoring this and establishing exactly what the facts are on the ground—as the noble Lord, Lord Teverson, said, we are not entirely sure how many people will be in this situation? Will they, if necessary, review these SIs quickly thereafter to make them fit for all circumstances and pass-through payments?

Lord Callanan (Con): I thank all three noble Lords who have contributed to the debate for their questions. These regulations are essential to the successful implementation of all the energy support schemes. They will help to ensure that the support reaches the intended beneficiaries. We are all agreed on that.

[LORD CALLANAN]

To continue to empower all energy consumers, we have provided more information via our online guidance, especially to some of the most vulnerable energy end-users, such as older people and those with disabilities. The Government will continue to engage with all relevant stakeholders in this sector, including the energy regulators, energy companies and civil society, on the delivery of the schemes—for example, SSE, Electric Ireland, Ofgem, the Utility Regulator of Northern Ireland, MoneySavingExpert and the Consumer Council. We will also continue to monitor the schemes to ensure that this support is provided to the people and businesses it is designed to help.

In addition—this responds to some of the questions raised—we are committed to reviewing the energy price guarantee and energy bill relief schemes by the end of the year, and of course we will work with stakeholders to ensure that their feedback is taken into account. We will use these reviews to consider how best to offer further support to the customers most at risk from energy price increases beyond April 2023. Looking ahead, the Government are working to deliver the energy bills support scheme alternative fund payments and the increased alternative fuel payment of £200.

My noble friend Lord Hodgson asked a question relating to the so-called inequality of arms—I completely understand the point he is making—and in particular the support for vulnerable people. The noble Lord, Lord Teverson, asked a related question on ensuring that end-users are aware of what they are entitled to. The regulations take this scenario into account. Where an intermediary receives energy support but has multiple end-users, the regulations say that it should determine a just and proportional method of dividing the benefit among those end-users, and clearly communicate how it has arrived at the amount allocated to the end-users.

Of course, we are keen to ensure that all end-users, including those who are vulnerable, receive the benefits of the schemes to which they are entitled. As such, we have been delivering and building a communications campaign. In addition, we have of course engaged with landlords, housing associations and charities that protect those who are most vulnerable.

For example, in developing the energy bills support scheme, we regularly engage with consumer groups and charities precisely to ensure that the scheme reaches the groups most in need and that we reach vulnerable consumers across the UK via a broad suite of communication channels. As well as working with charity and consumer groups, we work with stakeholders including local authorities, faith groups, the rural network and food banks to help disseminate information about the scheme and how it works.

We also recognise that many vulnerable consumers are on traditional prepayment meters. We have a communications campaign outlining the actions that these people need to take to receive their discount. For example, we have made details available via social media posts, radio broadcasts and posters translated into several languages.

In response to the question from my noble friend Lord Hodgson about compliance, the EBSS has a robust compliance and monitoring framework. Data has now been published showing that, in the first month, 97% of payments were successfully delivered to eligible households in England, Scotland and Wales. Where a supplier appears to be falling behind expectations, we will engage directly with them and ensure compliance. We will publish monthly updates until the end of this scheme. The EPG and the EBRS also have robust monitoring and evaluation in place to ensure that the schemes are operating effectively. As I said, they will be subject to review by the end of the year.

The noble Lord, Lord Teverson, asked about how we divide the scheme benefit between end-users. For the EBRS, the obligation is on the intermediary to pass on the benefits of the scheme, not the energy retailers themselves. The noble Lord will recall that the EBRS is a discount that is applied to the unit price of gas and electricity; it is not a direct payment to the suppliers. The energy suppliers will provide the appropriate EBRS price reduction to their customers, some of whom will be intermediaries, based on their contract type. Intermediaries will then be expected to pass on to their end-users a just and reasonable amount. That would be the case in the majority of park homes, where the site owner is on a commercial tariff.

The noble Lord, Lord Teverson, also asked me how park home residents will receive the payment. As I said, the majority of those households receive their energy bill support scheme payment automatically via their domestic energy supply contract. However, a small number of households do not have a domestic energy supply contract and, as such, will receive the £400 in funding through alternative funding mechanisms; it will not be delivered through electricity suppliers. We are currently working with delivery partners to make sure that the £400 support is provided to households at their primary residence. This includes those who do not have their own direct domestic electricity meter or a direct relationship with an energy supplier, including park home residents.

In response to the noble Lord, Lord Lennie, who asked what a "just and reasonable" amount might be, the regulations go further than simply setting out the just and reasonable test: they have been drafted to give examples of what is just and reasonable. Intermediaries are obliged to provide details to end-users setting out why they consider what they have done to be just and reasonable. The guidance published alongside the regulations gives further colour to the concept.

Intermediaries must pass on the discount irrespective of how the end-user pays for their energy use. They can adjust the amount that they pass on based on their charges to end-users; crucially, they have to demonstrate to end-users that this amount is just and reasonable. Intermediaries can take into account the extent to which they have increased their charges to end-users as a result of the energy crisis. For example, if the intermediary has shielded their end-users from the impact of increased energy prices, in those circumstances, it may be just and reasonable for them to retain some or all of the scheme benefit. The circumstances will be very individual.

4.15 pm

The noble Lord, Lord Lennie, also asked how enforcement would work in practice. Ofgem and the Energy Ombudsman regulate energy suppliers. Unfortunately,

most intermediaries are not energy suppliers. Therefore, it would not be appropriate for Ofgem to regulate private landlords, for example.

Ultimately, I am afraid that a court hearing is the best option for enforcement, except in the case of heat networks, where a regulator is in place. That would be the last resort for an end-user pursuing redress. The regulations and the associated guidance clearly set out that the parties must engage formally in writing with each other prior to any claim being considered in court. We are, of course, hopeful that this would resolve most issues. In the case that that is not enough and the court process is initiated, there would be a mediation stage, and so a further opportunity for parties to reach an agreement, we hope without a trial. There is also an option for end-users to make an online claim, which is a simplified and shortened process.

In response to the question from the noble Lord, Lord Lennie, about calculating what amount of benefit would be just and reasonable to pass through, the intermediaries should consider several points. First, if there is equipment which automatically charges a tariff for usage, such as electric vehicle charge points, the tariff must be amended to reflect the full scheme benefit. Secondly, if at the time the scheme benefit was provided to the intermediary it was charging its end-users based on usage or on some other division of the energy, heating or hot water costs, the intermediary must again pass on the scheme benefit in the same proportions. In all other cases where the above considerations do not apply, the intermediary must use the best available information to calculate the amount to pass through.

Finally, in response to the noble Lord's question about debt procedures, as I said, they can go through the county court. The cost and speed of claims through the county court process vary across the UK. On costs, the fee ranges from £35 to £455 in England and Wales; from £19 to £108 in Scotland; and from £39 to £130 in Northern Ireland. That fee is based on the amount that is claimed plus any interest. If the exact amount of the claim is not known, the claimant must estimate the amount they are claiming and pay the fee for that particular amount. The defendant may pay the debt and the claim can be withdrawn. If the claim is disputed, the court may offer mediation. If both sides agree to mediation, the mediator will speak to each party to attempt to negotiate a settlement. In terms of time, a claim to a county court can currently take between six months and a year.

I hope I have answered all the questions.

Lord Hodgson of Astley Abbotts (Con): I am grateful to my noble friend for his very thorough answers. I might have misheard, but I do not think he said why there is an appeal procedure in respect of heat in Statutory Instruments Nos. 1101 and 1124 and not in respect of energy. Clearly, one of the things that answers the inequality of arms is an ombudsman who is there to step in if things go badly wrong. I was not quite clear why it was in one group and not the other.

Lord Callanan (Con): The answer to my noble friend's question is that there is already a regulator in place for heat networks, so it is appropriate to use the regulator. Unfortunately, for most of the other circumstances there is no regulator in place, which is why we have had to default to the court process. I totally accept his point about the inequality of arms. I am not unrealistic about the difficulties that many tenants and others will face in trying to enforce their rights under this, but all we can do is put the regulations in place, publicise them and make sure that people know their rights. We will keep the scheme under constant review. We will ensure that the payments are passed through and that people receive the benefit to which they are entitled. We will not hesitate to act further if there is widescale avoidance of this responsibility.

Lord Lennie (Lab): Following up the point from the noble Lord, Lord Hodgson, is there then a possibility in the review that an ombudsman for the energy sector —not Ofgem—could be established or that the heat regulator could cover energy? I am not saying that that is going to happen, but it is a possibility. Secondly, the Minister kept saying that landlords "must pass on", but if they fail to do so there is no sanction in the legislation; they just do not pass it on and they get away with it. Should there not be some sort of sanction for landlords if they fail to pass on just and reasonable costs to consumers?

Lord Callanan (Con): The sanction is that the person who does not receive the benefit can take the matter to court. That is the point I am making. I am not pretending that this situation is ideal, but many landlords, charities and others involved in the sector are, by their very nature, not subject to energy regulators. Of course, if they are energy supply companies, such as heat networks, they are regulated by Ofgem, which is the energy regulator. All these intermediaries encompass a range of operators, from park home operators to landlords of houses in multiple occupation. It is difficult to see how we could establish an overall regulator for all these different circumstances, particularly as the whole thing is only temporary, for as long as the support scheme lasts.

We have attempted to address the situation as well as we can, by providing the appropriate guidance and by making sure people have access to enforcing their rights. I do not pretend to disagree with noble Lords that the situation is not ideal, but we have addressed it as best we can. I commend the regulations to the Committee.

Motion agreed.

Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022

Considered in Grand Committee

4.21 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee. Special attention drawn to the instrument.

Motion agreed.

Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022

Considered in Grand Committee

4.21 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022

Considered in Grand Committee

4.21 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee. Instrument not yet reported by the Joint Committee on Statutory Instruments.

Motion agreed.

Energy Bill Relief Scheme and Energy Price Guarantee Pass-through Requirement and Miscellaneous Amendments Regulations 2022

Considered in Grand Committee

4.22 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Energy Bill Relief Scheme and Energy Price Guarantee Pass-through Requirement and Miscellaneous Amendments Regulations 2022.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee. Special attention drawn to the instrument. Instrument not yet reported by the Joint Committee on Statutory Instruments.

Motion agreed.

Committee adjourned at 4.22 pm.