Vol. 825
No. 80

Wednesday
30 November 2022

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Wednesday 30 November 2022

3 pm

Prayers—read by the Lord Bishop of Gloucester.

UEFA Euro 2020 Final

Question

3.07 pm

Asked by ***Lord Bassam of Brighton***

To ask His Majesty's Government what assessment they have made of the conclusions of the report by Baroness Casey of Blackstock *An independent Review of events surrounding the UEFA Euro 2020 Final 'Euro Sunday' at Wembley*, published on 3 December 2021; and what plans they have to publish a full response to that report.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the safety of spectators at sporting events is of the highest importance to His Majesty's Government. We continue to work closely with all relevant authorities to ensure that football fans can continue to enjoy the sport while attending matches safely. This review was commissioned by and reported to the Football Association, and the Government were referred to in four of its recommendations. Our approach with respect to those recommendations is outlined in our evidence to the DCMS Committee inquiry into safety at major sporting events, a copy of which I have placed in the Library.

Lord Bassam of Brighton (Lab): My Lords, I had to introduce the current football banning order system as emergency legislation some 22 years ago. It works well to punish offenders identified by the police and football clubs, and they work well with the CPS. Stakeholders believe that a refresh is needed. They want us to intervene early. They want to better educate fans, improve advice for stewards and create a new offence tackling turnstile tailgating. Do the Government have a plan to bring forward these revisions to tackle increases in football-related disorder, or is this another issue that will be put on the back burner?

Lord Parkinson of Whitley Bay (Con): My Lords, the Home Office has already implemented a series of changes in relation to the existing football banning order legislation, building on the work that the noble Lord took when in government. This includes adding football-related online hate crime to the list of offences for which a banning order can be imposed on conviction, amending the threshold for the imposition of a banning order, extending the legislation to the women's domestic game, and adding football-related class A drugs crimes to the list of offences, but we continue to keep all this under review.

Lord Addington (LD): My Lords, can the Minister give us a little more advice about what this reaction will mean? Have the Government identified when the next football match of national significance will be? That should have happened with the Euro finals. Have we got an intelligence profile in place to give us a better chance of spotting this in future?

Lord Parkinson of Whitley Bay (Con): The match at the centre of the noble Baroness's report was clearly of national significance and an unparalleled situation. The current system for designating risk levels for football matches is determined by the police, so the Government believe that this is rightly an operational matter. It is not for us to create a separate system for classifying those matches and going over the heads of the police. However, we continue to ensure that appropriate resources are available to the police and others to ensure the safe delivery of major sporting events.

Lord Bellingham (Con): My Lords, there was a highly aggressive crowd on that night back in July. Two thousand people gained access without tickets; there were 17 mass breaking-of-security incidents. Can the Minister explain exactly what lessons can be learned by the police and what will be done in future to prevent this sort of incident?

Lord Parkinson of Whitley Bay (Con): There were lessons for a number of parties in the noble Baroness's report. The action taken by the Government includes extending football banning orders in the way that I have described and commissioning the Sports Grounds Safety Authority to conduct and act on research about stewarding capacity throughout the live events sector. We have led the relevant authorities in considering the recommendations that the noble Baroness made on "Zone Ex" and designations.

Lord Londesborough (CB): My Lords, one of the conclusions of the independent review was the over-reliance on inexperienced and poorly paid stewards. What is the Government's response to this now that the UK and Ireland are pitching for the Euro 2028 tournament, which requires safety and security for 10 stadiums across five countries?

Lord Parkinson of Whitley Bay (Con): The Sports Grounds Safety Authority commissioned on behalf of DCMS research on the sustainability of stewarding—not just in relation to football matches but live events more generally—looking at challenges such as recruitment and retention as well as training and experience, as the noble Lord mentioned. The authority is now working with football's governing bodies and others to address the challenges identified in the research, and the Government continue to review challenges in the stewarding sector in light of the successful summer of sport that we have just enjoyed.

Lord Harris of Haringey (Lab): My Lords, what assessment have the Government made of their own activities in respect of that particular football match—for

[Lord Harris of Haringey]
example, the very late decision, pressed on everybody by the Government, to increase the numbers who could attend?

Lord Parkinson of Whitley Bay (Con): On the points which the noble Baroness, Lady Casey, raised in relation to the Government and the four recommendations which had action for us, we have outlined our response in our evidence to the Select Committee inquiry, which I have placed in the Library. The noble Baroness's report was not a report to the Government but to the Football Association, but we have carefully considered the recommendations for us and acted on them in consultation with interested parties.

Lord Kamall (Con): My Lords, about 30 years ago, I was a volunteer steward. The deal was that you were not paid, but you got to see some of the good gigs and games in return for also stewarding some of the bad or less interesting games. You took that as a deal. But when it came to it, there was very little training, following the noble Lord's question earlier. Is my noble friend the Minister aware of what training stewards are provided with, whether they are volunteers or paid?

Lord Parkinson of Whitley Bay (Con): This falls into the work that the Sports Grounds Safety Authority has conducted in light of the noble Baroness' review. My noble friend makes important points: I think that a lot has been done since the days he worked as a steward, but there is a lot more still to be done.

Lord Pannick (CB): Does the Minister agree that one of the major problems last summer at the final was alcohol? Does he further agree that although there are many reasons for criticising the Qataris in relation to the World Cup, they may have discovered that to exclude alcohol from the vicinity of the ground—apart, of course, from executive boxes—helps to ensure a tolerable atmosphere for those who want to watch the football in a family-friendly environment?

Lord Parkinson of Whitley Bay (Con): Certainly, as I have done when we have previously discussed this, I condemn the actions of a minority of people—in lots of instances, fuelled by alcohol—which spoiled the day for the law-abiding majority who wanted to go and enjoy the match. Of course, alcohol consumption at football matches has been considered by Tracey Crouch and the fan-led review, which also made the point that allowing clubs in the lower leagues to sell alcohol might give them an important sustainable income stream. We are considering the recommendations that she has made, and will bring forward views in due course.

Baroness Uddin (Non-Afl): My Lords, it is a pleasure to follow the noble Lord. Has the Minister considered ensuring that we share some intelligence and data from the games that have been played in Qatar, from their impactful management of fans, and apply that to lessons for our application for 2028? Can I also take the opportunity to congratulate England on a wonderful win last night?

Lord Parkinson of Whitley Bay (Con): I certainly echo the noble Baroness's final comments—I see that she is sitting next to a noble Lord who might take a different view; diplomatically, I shall not intrude on that. She will be pleased to know that we continue to work with our international partners to ensure that we share the expertise that the police and other operational partners have in delivering major events. We had a good record of doing that this summer.

Lord Watson of Invergowrie (Lab): My Lords, as a Scot, I had no dog in the fight last night, but I none the less congratulate England on qualifying. Further to the point about alcohol at that final in July last year, a big issue also was supporters using cocaine, of which there was photographic evidence. Has the Minister had any discussions with the Football Association about ensuring that the use of such drugs is at the very least limited among those entering the stadium?

Lord Parkinson of Whitley Bay (Con): As I said, the Government have taken action to extend football banning orders to cover offences including the selling and taking of class A drugs at football games, which certainly had an effect on some of the disorder that we saw. We are taking forward action both as a Government and with policing partners.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, I recall many years ago policing a match at Feethams in Darlington. I caught three youths climbing over the fence. I made them go back in to watch the end of the match, which I thought was a suitable punishment.

Lord Parkinson of Whitley Bay (Con): A punishment that fits the crime.

Lord Lexden (Con): Would it be possible for the noble Lord, Lord Pannick, to undergo some rigorous training as a steward, with specific responsibility for discouraging the consumption of alcohol at football matches?

Lord Parkinson of Whitley Bay (Con): My Lords, pending the outcome of the review by the Sports Grounds Safety Authority, there might be roles as stewards for Members from across your Lordships' House, not just for my noble friend Lord Kamall.

Baroness Walmsley (LD): My Lords, is the Minister aware that rugby fans drink a lot of beer, but you do not have problems at rugby games? Does he know why that is?

Lord Parkinson of Whitley Bay (Con): The noble Baroness makes an important point. Consumption of alcohol in a responsible manner is an important part of an enjoyable day out for many people. For other sports and lower down the leagues, it can be an important source of income for clubs. That is why we want to encourage the responsible consumption of alcohol and adherence to the law, so that everybody can enjoy a safe day out when going to a sporting match.

Financial Inclusion in England

Question

3.17 pm

Asked by ***Lord Holmes of Richmond***

To ask His Majesty's Government what steps they are taking to increase financial inclusion in England.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): The Government want to ensure that people, regardless of their background or income, have access to useful and affordable financial products and services. To increase financial inclusion, the Government work closely with regulators, industry and consumer groups. Since 2019, we have allocated £100 million of funding from dormant assets towards this. The Government are also promoting financial inclusion through the Financial Services and Markets Bill, for example by introducing legislation to protect access to cash.

Lord Holmes of Richmond (Con): My Lords, when it comes to financial inclusion, cash still matters materially to millions. Would my noble friend agree that it is not just about access to cash? Acceptance of cash is equally important. Further, as we move increasingly towards digital, would she agree that it is time for the Government to undertake an access to digital payments review to ensure financial inclusion for all?

Baroness Penn (Con): My Lords, our approach is that accepting cash is a decision for the firms involved. We have taken action to ensure that people can access cash through ATMs and elsewhere. My noble friend also makes an important point about digital inclusion and digital payments. We are looking at how we can promote that alongside financial inclusion in our work through the Financial Inclusion Policy Forum and other avenues.

Baroness Tyler of Enfield (LD): Will the Minister say which Minister has formal lead responsibility for financial inclusion now? Under the previous arrangements, it was not one but two Ministers: one in Treasury and one in DWP. It is not clear to me who is currently leading. The Minister just referred to the Financial Inclusion Policy Forum. What is going to happen moving forward and how frequently will it meet?

Baroness Penn (Con): The noble Baroness asks a very good question, and I am afraid I will have to double-check and get back to her. The reason that it has traditionally been a DWP and a Treasury Minister is their joint role on that policy forum. It is not me in the Treasury, but I will find out who it is. The Government and others have found it a useful forum to drive forward action in this area and I am sure they will want it to continue with its good work.

Baroness Bull (CB): My Lords, will the Minister say what the Government are doing to tackle poverty premium issues in financial services? We know that people on the lowest incomes pay more for credit and insurance, for instance, but issues such as this seem to be kicked between the Treasury, which says it needs more data in order to take action, and the regulator, which says that it is not within its remit to collect that data. How does the Minister expect that the new FCA consumer duty and consumer vulnerability guidance will help tackle the poverty premium, given that they deal primarily with existing customers and do not address the needs of those consumers whom the market finds more expensive and therefore less profitable to serve?

Baroness Penn (Con): The Government are conscious of the poverty premium. We have used the Financial Inclusion Policy Forum as somewhere that we can bring together different actors on this. I will give some examples of action that we have taken in this area. The FCA, the regulator, has taken action on motor and home insurance to stop customers who are renewing being charged more than new customers. We have also seen the age agreement put in place for older customers to be able to access travel and motor insurance, and some work has been done with the Association of British Insurers looking at the poverty premium, specifically in the rented sector, and it has provided some recommendations to the Government that we are considering how best to take forward.

Lord Young of Cookham (Con): My Lords, I applaud my noble friend Lord Holmes's campaign to ensure that physical currency is available and valid, but what are the Government doing to ensure that the currency is fit for purpose? Many noble Lords may recall the farthing. The farthing was withdrawn in 1960 because it was redundant. The 1960 farthing is worth 2.8p today, but the halfpenny was withdrawn in 1984 for the same reason. So what is the life expectancy for the 1p coin languishing in saucers up and down the country?

Baroness Penn (Con): I am afraid to say to my noble friend that I do not recall the farthing myself. The Government had a consultation on cash and digital payments in 2018 and the responses strongly supported not changing the denominational mix of coinage at that time. However, as with all areas of policy, we keep this under review.

Lord Sikka (Lab): My Lords, I have met many people who are visiting pawnbrokers, putting down their everyday things just to get a few pounds to enable them to survive. They are paying interest rates of 160% upwards. Does the Minister consider that to be affordable? If not, what is she proposing in order to help these people?

Baroness Penn (Con): I do not consider that to be affordable at all. We are taking a number of actions in this area. We work closely with Fair4All Finance, the organisation set up to distribute funding from dormant assets. One of its projects is working on the no-interest loans pilot scheme to try to provide a different route and access to credit for those who need it. At the Autumn Statement, we heard from my right honourable friend the Chancellor the action we are taking to direct our support this winter and next year to the most vulnerable households.

Baroness Sater (Con): My Lords, the Money and Pensions Service has highlighted that children's attitudes to money are well developed by the age of seven. According to the CBI, prioritising financial education could add nearly £7 billion to the UK economy each year. Does the Minister agree that the Government should consider making financial education a statutory part of the primary school curriculum?

Baroness Penn (Con): My Lords, financial education in England is covered within both the citizenship and mathematics curricula. The Money and Pensions Service has also published financial education guidance for both primary and secondary schools in England to support school leaders and education decision-makers to enhance the financial education currently delivered in their schools. More broadly, after Covid and other disruptions there has been a commitment by this Government not to make any changes to the national curriculum for the remainder of the Parliament.

Lord Tunnicliffe (Lab): My Lords, access to bank accounts and other financial services is vital, but so is better protecting people from financial scams and fraud. The Government currently have the economic crime Bill, the Financial Services and Markets Bill and the Online Safety Bill before Parliament; we will shortly see a data Bill too. Can the Minister assure us, perhaps in writing, that the final versions of these Bills will include clear and consistent measures to tackle the scams and other forms of fraud that blight so many people's lives?

Baroness Penn (Con): The noble Lord is right to point to the range of Bills before Parliament that will address this issue. We will not be able to address fraud and scams through financial services regulation alone. For example, many fraudsters access people through online platforms, so we need to look at that approach too. Those Bills will contain measures to tackle this, and the Government are also committed to bringing forward a fraud strategy that will bring together work from regulators, government and law enforcement to get a grip on this issue.

Lord Flight (Con): My Lords, financial involvement is important because it represents people being willing to invest in British businesses and help them to grow. Unfortunately, the volume of direct citizen investment has fallen rather than increased in recent years. I am afraid that the increase in dividend tax and other investment expenses will also discourage this. Can the Government think about methods of encouraging people to invest in this country?

Baroness Penn (Con): We absolutely want citizens to invest more and we have products, for example to help those on lower incomes form saving habits. We also want institutional investors to invest more in this country, which is why we are taking action on things such as Solvency II.

Baroness Lister of Burtersett (Lab): My Lords, the primary cause of financial exclusion is poverty. What exactly is the Government's anti-poverty strategy?

Baroness Penn (Con): My Lords, as I said earlier, in the Autumn Statement we set out the significant support that this Government are providing to the most vulnerable households. In fact, in the analysis of that Autumn Statement, it was those in the lowest income deciles who stood to gain the most from the policies we announced.

Education System

Question

3.27 pm

Asked by ***Lord Lexden***

To ask His Majesty's Government what plans they have to improve the education system.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, our reforms over the last 12 years are reflected in our highest ever scores in international tests in primary maths and reading, which are the building blocks for attainment. We have set out our ambitious plans for reform of education in the schools White Paper, the *Skills for Jobs* White Paper and the Skills and Post-16 Education Act, and we will publish a full response to the SEND and AP Green Paper early in the new year.

Lord Lexden (Con): My Lords, I remind noble Lords of the important report published by the Times Education Commission in June, which has attracted widespread support—not least in this House, as a debate last month showed. Should we not continue to bear in mind the powerful case the commission makes for the introduction of a British baccalaureate offering broader vocational and academic qualifications at the age of 18, with parity of funding for both routes? Will the Government now put such bold educational reform at the centre of their strategy, drawing on the ideas in this landmark report?

Baroness Barran (Con): The Government very much welcomed the report. Our strategy is ambitious in all these areas. My noble friend will be aware that my right honourable friend the Prime Minister has challenged the department to consider how we can go further to ensure that every young person receives the benefits of a broad and ambitious education, so that every child has

"the best chance in life"

and can prepare

"to enter … a rapidly changing world."

Lord Blunkett (Lab): My Lords, the decision announced this week to reclassify further education for borrowing and investment purposes into the public sector has caused real concern. The £150 million allocated by the Government for capital spending on the back of that is very welcome, but perhaps the Minister can tell us whether that is new money, and was it not extraordinary that two weeks ago the Chancellor allocated no new money to learning and skills?

Baroness Barran (Con): The department is working very closely with the further education sector to manage the transition that the noble Lord refers to. In terms of

funding for skills, we are investing £3.8 billion more in further education and skills over the Parliament as a whole.

The Earl of Clancarty (CB): My Lords, does the Minister agree that without both a supportive system, as the noble Lord, Lord Lexden, has mentioned, and proper funding we are in grave danger of losing those practical subjects—not just art and design, music and drama but science subjects, including chemistry—which require designated spaces and equipment but are nevertheless an essential aspect of a child's educational experience?

Baroness Barran (Con): I would be happy to discuss this further with the noble Earl, but when we look at the data on uptake of some of these practical subjects, we can see very strong growth in computer science and design and technology, particularly at A-level.

Lord Storey (LD): My Lords, the Minister will be aware that for every child to have the opportunities that she talks about it is important that we identify those children with special educational needs at an early age. She will also recall the Children and Families Act 2014, which we thought was going to be ground-breaking. Yet in terms of special educational needs we see long delays, tribunals or appeals systems costing millions, and Health not engaging. Can the Minister tell us why a comprehensive post-legislative review of the Act was eight years after it received Royal Assent?

Baroness Barran (Con): I am not aware of the details of the timing of the post-legislative review but I point the noble Lord to the special educational needs and disabilities and alternative provision Green Paper, which the Government published and have consulted on, in which we really strive to address many of the issues that the noble Lord has raised; namely, that we should have a trusted, non-antagonistic system that is fair and transparent that parents feel confidence in and children can flourish in.

Lord Balfe (Con): My Lords—

Lord Pearson of Rannoch (Non-Afl): My Lords—

Lord Baker of Dorking (Con): My Lords—

Viscount Stansgate (Lab): My Lords—

Baroness Williams of Trafford (Con): My Lords, I think it is the turn of the noble Lord, Lord Pearson, followed by the noble Lord, Lord Baker.

Lord Pearson of Rannoch (Non-Afl): My Lords, I am most grateful. Can I ask the Minister whether the Government are impressed by the ideas and achievements of Katharine Birbalsingh? If so, what are they doing to see that her methods are more widely followed in our state education system?

Baroness Barran (Con): Obviously, the Government appointed Katharine Birbalsingh as the social mobility tsar, so I think that perhaps answers the noble Lord's question. More broadly, the principles she espouses of aspiration for every child are upheld by the Government and delivered in many of our schools and trusts.

Lord Baker of Dorking (Con): Does the Minister recall that in the two debates we had recently on education and the curriculum in schools, every Peer who spoke said there should be more technical and cultural subjects in the curriculum next year? The Minister did not accept that at the time but now that she has had time to reflect on it and to discuss it with her colleagues, is she prepared to say that at the beginning of the school year next September all children in all schools will be taught lessons in computing, data skills, coding, cybersecurity and artificial intelligence? That is where all the jobs are and this is a programme that would help to fill job vacancies, which the Government are not doing anything about.

Baroness Barran (Con): I really cannot accept what my noble friend has said about the Government not doing anything about it. As I pointed out in the recent debate, computing is part of the national curriculum. I have already alluded to the rapid growth in the adoption at A-level of computer science. My noble friend is aware of the pioneering work that we are doing in relation to T-levels, which are equipping children for the future.

Baroness Chapman of Darlington (Lab): My Lords, all children need to be taught in a building that is safe, warm and dry, but in May this year leaked documents revealed that £13 billion of repairs to the school estate were needed to rectify the deteriorating condition of some sites, which present "a risk to life". Does the Minister recognise reports that the Treasury's failure to invest in school repairs is putting children's lives at risk?

Baroness Barran (Con): The department continues to work extremely closely with the Treasury on these matters. We have a substantial school rebuilding programme and funding for capital and condition. Any school that has urgent capital requirements can approach the department, and we are very active in supporting them.

The Lord Bishop of Gloucester: My Lords, the Schools Bill was partly intended to remove barriers to enable church schools to fully embrace the journey towards academisation. Given that there has been no further progress on that Bill, what plan do the Government have for introducing the legislative parts of that Bill that were broadly agreed and are needed to secure the development of all schools?

Baroness Barran (Con): I will be able to update the House on the progress of the Schools Bill in due course, but I agree with the right reverend Prelate. The Government are very supportive of the faith sector, the schools within it and their wish to academise in the most constructive way possible.

Lord Patel (CB): My Lords, is the Minister aware of the Law Society report calling for a greater uptake of mathematics teaching to over-16s, only 15% of whom

[LORD PATEL]
take mathematics? The same applies to science subjects, where there is poor education for over-16s. If this country has ambitions to be a science superpower, the teaching of these subjects to over-16s is important.

Baroness Barran (Con): The Government are aware of the report and are committed to developing all aspects of the STEM subjects. We are doing that particularly in areas where recruitment is difficult, through the provision of significant, £27,000 tax-free bursaries and levelling-up premiums for staff working in those areas.

Viscount Stansgate (Lab): My Lords—

Lord Balfe (Con): My Lords—

Baroness Williams of Trafford (Con): My Lords, we have run out of time but the noble Viscount, Lord Stansgate, has been waiting for some time.

Viscount Stansgate (Lab): I thank the noble Baroness for that invitation. I endorse everything that the noble Lord said in the previous question. My question is: can the Minister explain to the House how the Government justify a continuing policy of charitable status for private schools, when the effect of that policy is to deny the public purse much-needed money for all the points made by my noble friend on the Front Bench?

Baroness Barran (Con): I repeat what my right honourable friend the Prime Minister said earlier today when asked about this point. The Government have just put an additional £4 billion into the core schools budget over the next two years. We are absolutely focused on school standards, and that is seen through the percentage of schools that are good or outstanding, which now stands at 87%. We remain committed to opportunity, not resentment.

Care Homes: Severely Disabled People

Question

3.39 pm

Asked by ***Baroness Pitkeathley***

To ask His Majesty's Government what assessment they have made of reports that some care charities have been forced to evict severely disabled people from their care homes because of disputes with local authorities about fees.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): The disruption of care where it negatively impacts vulnerable service users is unacceptable. Under the Care Act, local authorities have a duty to shape their markets and provide services to those with eligible needs. The Government are providing up to £7.5 billion over the next two years to support adult social care and discharge. This historic funding boost will help local authorities to start addressing waiting lists, low fee rates and workforce pressures in the sector.

Baroness Pitkeathley (Lab): I thank the Minister for that Answer, but I cannot say that any of it was a surprise to me. Will he acknowledge that this is just the latest manifestation of a long-standing problem? For years, the social care system for adults with complex disabilities has been held together by charities and not-for-profits that have poured literally millions from their reserves into subsidising the services they provide for the NHS and local authorities. Now these organisations are in financial trouble and can no longer afford to do so. Those who are suffering are those in greatest need. Does the Minister agree that the whole system of funding for social care is broken and that the only solution is complete root-and-branch reform, not the piecemeal solutions offered by the Government?

Lord Markham (Con): I thank the noble Baroness and echo the sentiment of thanks to the charitable sector for the work it is doing in this vital space. We have shown that we have listened in this area through the £7.5 billion—a 22% increase over two years, which I think everyone would agree is substantial. At the same time, we are in touch with these bodies; we reached out to the charity Leonard Cheshire, which is involved in this, to try to understand the issues. If there are ways in which we can directly help, we will do so.

Lord Laming (CB): My Lords, does the Minister agree that there was a time when, if the local authority asked to see the parents, they assumed that this was for a review of what progress had been made by their offspring in residential care? More recently, parents are saying that they fear any approach by a local authority, because it may say that it will have to move their child to a different arrangement because it cannot afford to pay the fees now being set.

Lord Markham (Con): As I say, we are working on this. The CQC has a vital role to play and we had a discussion recently with the Association of Directors of Adult Social Services, which welcomed the relief the Autumn Statement brings in this area. I can only reiterate that we have listened and acted.

Lord Wigley (PC): My Lords, I draw attention to my registered interests. Do not these cases underline the need to ensure that the additional costs of severe disability, whether incurred in charitable establishments, commercially run accommodation or at home with families, should be met consistently from central sources rather than falling on local authorities, which may have neither the expertise in the degree of disability nor the resources to meet them?

Lord Markham (Con): As ever in these areas, there is a debate to be had on centralism versus localism. I happen to believe that local authorities and healthcare systems are best placed to understand the needs of the people in their area, and I will continue to support that. Clearly, where help is needed, we are there. I reiterate that we have funds to support them from the centre, including a £2.3 billion increase for mental health, to give one example. Generally, I would keep to the principle that it is best that local people and authorities identify and meet local needs.

Baroness Brinton (LD): My Lords, the Minister just referred to mental health funding and referred earlier to the increased funding to cover delayed discharges and get more people coming out of hospital into social care. Neither of those affects severely disabled adults; funding for them from central government to local government has not been increased. I repeat the question of the noble Baroness, Lady Pitkeathley: does the Minister think that the provision and arrangements for this particular group of people are broken?

Lord Markham (Con): No—it is for local authorities to decide how best to use the funding we have put in place, as I said. That means looking at the needs of local people and how best they will put this in place. The 22% increase in funding can be channelled to exactly these types of places and people if a local authority believes that that is in the best interest.

Baroness Browning (Con): Does my noble friend accept that many disabled people in residential and nursing care are of an age such that there are no parents or close relatives left and there is no one with a lasting power of attorney? How can that vulnerability be coped with by the state in a way we would all approve of?

Lord Markham (Con): My noble friend identifies an ageing demographic, the challenges that brings to all of us and the pressure on adult social care and the centres. As I have said, this is a challenge, but there are high levels of satisfaction in the sector: 89% of people are satisfied and 64% are very satisfied. So, although we have not got this right in every case, we are broadly on the right track and getting good results.

Baroness Wheatcroft (CB): My Lords, eight out of 10 of the largest providers of care for the disabled and children are at least in part private equity owned and, in many cases, wholly so. Their interest rates are already their major concern, and these are going up. Is the Minister concerned that these private equity-owned homes will be forced either to cut what they do and serve their customers less well, or close? If he is concerned, what is he doing about it?

Lord Markham (Con): The financial health of this sector is an area of interest; we all of course recall some of the problems and failures about 10 years ago. I had a meeting on this subject just this week, identifying the health of the providers to see if that is of concern. The margins made in this space are fairly typical of other industries, so they are not indicative of an area under particular stress. But I have my mind on this issue and will keep an eye on it.

Baroness Wheeler (Lab): My Lords, ADASS reports that in the past four months,

"64% of councils … reported that providers in their area had closed, ceased trading or handed back council contracts"

either through an inability to recruit staff or escalating care home running costs. We all know that the extra funding to councils, which the Minister repeats in almost every response, just about props up existing services and does not provide the sustainable and long-term funding that was promised to commence with the again delayed social care cap. When will the Government fulfil their pledge to fix social care?

Lord Markham (Con): My Lords, the 200,000 extra care places that this funding provides is a solid example of an expansion of supply, and I hope all noble Lords agree that that is a substantial number. I hope they also agree with the work we are doing to recruit from overseas to increase the workforce in this sector, which is indeed increasing. Areas such as these show that we are committed to expanding the supply, and we are seeing that rewarded in the increase in the last few months.

Lord Forsyth of Drumlean (Con): My Lords, has my noble friend yet had an opportunity to read the Economic Affairs Committee report on social care, a "national scandal", which points out that in care homes in both the private and the charity sectors, people who pay their own costs subsidise others to the tune of 40%? The local authority rates are simply unsustainable, and this issue is therefore urgent and needs to be addressed. Simply talking about inputs all of the time is no good; we need to see what is happening to the outputs, which is a tragedy.

Lord Markham (Con): Funnily enough, the meeting on the sector's financial health that I mentioned was precisely in response to the Question last week, so that I can make sure that proper work is being done in this space. I will not pretend to have the answers to that yet because, as my noble friend mentioned, a long-term review needs to be done. But rest assured that I am working on this.

Bank Holidays (Wales) Bill [HL]

First Reading

3.50 pm

A Bill to amend the Government of Wales Act 2006 and to devolve powers to set bank holidays.

The Bill was introduced by Baroness Humphreys, read a first time and ordered to be printed.

Northern Ireland (Executive Formation etc) Bill

First Reading

3.50 pm

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

Arrangement of Business

Announcement

3.51 pm

Baroness Williams of Trafford (Con): My Lords, following the introduction of the Northern Ireland (Executive Formation etc) Bill, I wonder if I could update noble Lords on the arrangements for this

[Baroness Williams of Trafford]
House to consider the Bill. Second Reading and all remaining stages will take place next Monday, 5 December. The speakers' list for Second Reading is already open and will close at 6 pm tomorrow. Noble Lords will be able to table amendments for Committee once the Bill is printed later today. The deadline for doing so will be an hour after Second Reading. To assist noble Lords in preparation for Committee, the Public Bill Office will publish an interim Marshalled List on Friday. Any amendments tabled before 4 pm this Friday will be included on that list. The final Marshalled List will be published after Second Reading, once the tabling deadline has passed. Report and Third Reading will also take place on Monday. Arrangements for those stages will be announced throughout the day.

Higher Education (Freedom of Speech) Bill

Order of Consideration Motion

3.51 pm

Moved by ***Baroness Williams of Trafford***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 11, Schedule, Clauses 12 to 14, Title.

Motion agreed.

Telecommunications Infrastructure (Leasehold Property) (Terms of Agreement) Regulations 2022

3.52 pm

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

That the draft Regulations laid before the House on 19 October be approved. *Considered in Grand Committee on 24 November*.

Motion agreed.

Electronic Trade Documents Bill [HL]

Second Reading

3.52 pm

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, a Second Reading Committee considered the Bill in the Moses Room on 7 November.

Bill read a second time and committed to a Special Public Bill Committee.

Ballot Secrecy Bill [HL]

Third Reading

3.53 pm

Motion

Moved by ***Lord Hayward***

That the Bill do now pass.

Lord Hayward (Con): My Lords, I made my comments previously, thanking all those who contributed. I therefore do not intend to delay the House by making a speech this afternoon.

Bill passed and sent to the Commons.

Covid-19: PPE Procurement

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Thursday 24 November.

"Sourcing, producing and distributing PPE is, even in normal times, a uniquely complex challenge. However, the efforts to do so during a pandemic, at a time when global demand was never higher, were truly extraordinary. Early on in that pandemic, our priority was clear: to get PPE to the frontline as quickly as possible. All of us in this House will remember that moment, and how desperate we all were to see PPE delivered to the frontline.

During the course of the pandemic—nearly at its peak—400 staff were working on sourcing protective equipment, and tens of billions of items were sourced. We worked at pace to source new deals from around the globe, and we always buy PPE of the highest standard and quality, and at the best value for money. Over the course of the programme, due diligence was done for over 19,000 companies, and over 2,600 companies made it through that initial due diligence process.

With huge demand for PPE all across the world, and with many countries introducing export bans, our risk appetite had to change. We had to throw everything behind our effort to protect those who protect us and those who needed it most. We had to balance the risk of contracts not performing and supplies being priced at a premium against the crucial risk to the health of frontline care workers, the NHS and the public if we failed to get the PPE that we so desperately needed.

As well as due diligence checks, there was systematic price benchmarking. Prices were evaluated against the need for a product, the quantity available, how soon it was available and the specification. Many deals were rejected or renegotiated because the prices initially offered were not acceptable.

There are always lessons that we can learn from any crisis, but we must not lose sight of the huge national effort that took place—I thank the officials who worked on it—to protect the most vulnerable while we tackled one of the greatest threats to our public health that this nation has ever seen."

3.54 pm

Baroness Smith of Basildon (Lab): My Lords, I have raised the issue of fraud in PPE contracts previously. Apparently, PPE Medpro was awarded contracts via the VIP lane amounting to £200 million, despite it not even existing when Ministers were first contacted. Then, just over a year ago, the noble Lord, Lord Bethell, then the Health Minister, admitted that the department was engaged in ongoing

"discussions (potentially leading to litigation) in respect to 40 PPE contracts with a combined value of £1.2 billion covering 1.7 billion items of PPE."

The following January, the noble Lord, Lord Agnew, resigned, criticising the Government's track record in countering fraud across government. In relation to the PPE contracts of £1.2 billion, will the Minister update the House on how much of that money has now been returned to the taxpayer? Can he say what amount is outstanding, either where negotiations continue or where legal action is now being taken or is pending? If he does not have that information immediately to hand, will he commit to write to me and place his letter in the Library?

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): I thank the noble Baroness, and I commit to write with the precise figures. To put it into context, we should remember that this was at a time when unprecedented action was required. Of the 38 billion PPE items ordered, 98% were delivered and just 3% were unfit for purpose. Within that, clearly there is action that needs to be worked on and action is being taken to pursue those damages. I will put those in writing, so that the noble Baroness can understand them all. As I say, it is good if noble Lords recall that the priority at the time was clearly getting equipment to help protect and save lives, and that was what was done. Were mistakes made? Of course. Are we seeking to address those now by going back to take action against those people? Yes, of course we are, but we need to keep it in the context that the undoubted priority was to buy PPE and protect lives.

Baroness Brinton (LD): My Lords, from these Benches we echo the questions that the noble Baroness the Leader of the Opposition has asked. We note that at least 71 PPE deals were awarded to firms, of which at least 46 were put into the VIP lanes by Conservative Ministers and officials during the Covid pandemic, as well as by some MPs and Peers, before a formal eight-stage due diligence and checking process was put in place. There were also deals made not for PPE during that period, including for testing and some non-health ones.

I think we all agree that the wastage and profiteering should never happen again, but we warned from these Benches, as did other Members across the House, in the early stages of the pandemic that all the right contracting arrangements, protocols and scrutiny needed to continue. The Minister has said that the pandemic posed problems, so will he push for a separate, independent-led inquiry able to examine the whole procurement process, including the VIP lanes, and analyse forensically the bids, profits, wastage and catalogue of links to Ministers, MPs, Peers and others who had influence on them?

Lord Markham (Con): I thank the noble Baroness. My understanding is that there have already been three NAO reports and three PAC reports on this, so it has been covered in depth. I think people have accepted that mistakes were made and that the high-priority lane, so to speak, should not have been on the basis of referrals but more burden of proof should have been put on the applicants, so we could get more information and sift it that way. Again, to put it all into context, there were 19,000 applicants at the time. This was led by officials, and they put the high-priority lane in place to try to sift those. Also, of the 430 that went into the high-priority lane, only 13% actually ended up in contracts. Are there lessons to learn from this? Of course, but the NAO and PAC reports have outlined those lessons.

Lord Browne of Ladyton (Lab): My Lords, experience tells us that the best deterrence against fraud and corruption are the twins of transparency and accountability; in the absence of such transparency and accountability, the reporting of the saga of PPE Medpro risks tainting others by association. So, for transparency if nothing else, will the Minister agree that relevant correspondence between PPE Medpro or its representatives, and Ministers or their officials, should be published and placed in the House of Lords Library, perhaps soon after the current investigations are concluded? Also for transparency, surely the public are entitled to understand what due diligence was conducted on this company and other similar ventures that emerged, apparently from nowhere, during the initial stages of the pandemic?

Lord Markham (Con): I thank the noble Lord. As I am sure we are all aware, this is subject to a criminal investigation at the moment, so in terms of paperwork we need to let that take its due course. What I can talk about is what we are doing as a department on that, particularly in terms of the contracts for gowns which were defective, and it is in that area that we are in dispute with them. We have made a claim and put in place a process so that we will take it to court, and we will pursue that if we do not come to a negotiated settlement which is satisfactory.

Lord Alton of Liverpool (CB): Can I take the Minister to the present rather than the past, and to two Written Answers which he gave to me yesterday on the 120 million items of PPE which are currently still stored in the People's Republic of China and costing taxpayers £770,000 every single day—three-quarters of a million pounds, daily? I asked the Minister how much this has cost to date, but in telling me that the cost has been £16.3 million, he simply took the period of April to September. I would be grateful if he could produce a more complete set of figures and say how much longer we are going to go on paying £770,000 every day to companies linked to the People's Republic of China, to the Chinese Communist Party, and to goods that have been made by slave labour in the Xinjiang region.

Lord Markham (Con): I will happily provide those updated figures in writing; I thank the noble Lord for his question because it sparked a number of inquiries on my front. As he will be aware, I am only two months into this job. But one of those very questions—a hard question for us to think about—is the cost of storage versus, dare I say, scrapping it, because we have tried to donate all we can from it, and, God forbid, having to buy it again if there is another pandemic. In many cases it is cheaper right now to scrap it and buy it again at current prices. Of course, you cannot be certain whether prices could then get inflated again, but I hope your Lordships can tell from this answer that I am very much looking into the cost-benefit of the best approach.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend pay tribute to Industrial Textiles & Plastics of Easingwold which, together with Barbour and Burberry, submitted an application to the Cabinet Office for a number of gowns, and are still waiting for a reply? They donated these gowns free at the point of use to local hospitals. I believe that they should have had a contract from the Government and am at a loss to understand why they did not. Is there any reason that the Cabinet Office failed to reply to them?

Lord Markham (Con): I do not know why they did not reply. What I do know is that there were many companies like the ones mentioned who wanted to do their bit. They stepped up to the mark and provided all sorts of goods and services, sometimes at no cost and for no profit, because they all wanted to be part of the wartime effort. I will find out why they did not get a response.

Lord Allan of Hallam (LD): My Lords, there is considerable public interest in understanding whether businesses were stepping forward at a time of crisis, sourcing PPE helpfully and passing it on to the NHS, with a minimum mark-up to cover their costs, or rather seeking to maximise profit. Will the Minister agree to publish sufficient information about the distribution of profit margins made across the community of suppliers for us to make that determination?

Lord Markham (Con): I do not believe we could possibly have that information; obviously, we would need to know the cost base of these companies to supply it. I am afraid that I do not believe we can do that. Further to my last reply, some companies supplied things at a very reasonable margin and did a great job, but unfortunately, as we have seen in some of the examples, others were not so publicly spirited—let me put it that way.

Independent Adviser on Ministerial Interests

Commons Urgent Question

4.05 pm

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, I shall now repeat in the form of a Statement the Answer given by my honourable friend to an Urgent Question in another place. The Statement is as follows:

"Mr Speaker, the Government welcome the opportunity to stress again the importance of the role of the independent adviser and this Government's commitment to it. The Prime Minister has been very clear that the appointment of a new independent adviser is a priority and that the appointment process is under way. Honourable Members will understand that an appointment of this nature is significant and has to be done well. Much as honourable Members might wish me to, it would not be appropriate for me to comment further on the specifics of what is an ongoing appointments process. Let me assure honourable Members: the adjudication of issues of ministerial conduct does not stop because the independent adviser is not yet in post. Conduct matters and conduct issues will be dealt with quickly and appropriately, irrespective of that appointment process.

That is what honourable Members will have seen with regard to the complaints made against the Deputy Prime Minister. On receipt of formal complaints by the Cabinet Office, the Prime Minister requested that an independent investigation be conducted by an individual from outside government, and Adam Tolley KC has been appointed to conduct the investigation. The terms of reference have now been published. The process is under way, and Mr Tolley will provide his report to the PM in due course. It is right that these matters are investigated fully, but it would not be right to comment further on them with that process ongoing.

I would also like to reassure honourable Members that the process of managing the interests of Ministers continues in the absence of an independent adviser. The Permanent Secretary, as the policy expert on each department's remit, leads the process in their department in the absence of an independent adviser. The Cabinet Office is able to provide advice in line with precedent. All relevant interests are declared by Ministers upon taking office and are kept up to date at all times. The publication of the list of Ministers' interests is the end point of the ministerial interests process, and it takes place at regular intervals to make the public aware of the relevant interests of Ministers.

I end by reiterating that as soon as there is an update on the process to appoint an independent adviser on Ministers' interests, the Government will update the House."

4.08 pm

Baroness Smith of Basildon (Lab): My Lords, I do wonder how many times Ministers can tell us that this is such an important issue and that it is a priority without appointing anyone. There is a queue of outstanding, incomplete investigations at present, and the Government have already had to draft someone in to investigate the alleged behaviour of the Deputy Prime Minister in a separate process. What are the estimated costs of this delay? King's Counsels will not come cheap for such an investigation. Why does the Minister think candidates are refusing even to consider taking this appointment up? I understand that several have been approached. Could there be a problem with the Government's definition of independence, which appears different from that of the rest of us?

Baroness Neville-Rolfe (Con): The noble Baroness refers to the cost of the King's Counsel hired to help on the Raab inquiry; it is obviously the usual process that costs will be accounted for in the Cabinet Office annual report and accounts. However, I understand that in the other place my honourable friend Minister Burghart has committed to write on the issue and I will ensure that this letter is shared with the noble Baroness. Could she remind me of her second point?

Baroness Smith of Basildon (Lab): It was only a couple of seconds ago. Why does she think good candidates are refusing to take up the position? Could it be to do with the Government's definition of independence?

Baroness Neville-Rolfe (Con): It is an important role, so we need to take time. The new Prime Minister has been with us for only 31 days—I hope he will be there for many years. The post needs to be filled by a person of integrity and credibility with the experience and judgment to win the confidence of Ministers, Members of Parliament and the public. I believe that this is right in order to find the right person; we are determined that the appointments process being conducted should do that. I would not want to comment on speculation or specifics—noble Lords are always trying to encourage me to do this. They should be assured that it is a priority. An independent adviser will be appointed and we are getting on with it.

Lord Wallace of Saltaire (LD): My Lords, is the problem not that the title "independent adviser" is an oxymoron? It is very clear from the experience of the last two advisers that the role is that of a "dependent adviser"—dependent on the Prime Minister taking any notice of what they recommend. Does the Minister recognise that the key element of the Ministerial Code here is the chapter on relations between Ministers and civil servants, and that the current problem we have in Whitehall is partly that a large number of senior civil servants are beginning to lose confidence in the Ministers with whom they work? That is partly because the turnover is far too fast; there have been five Ministers in various posts in the last year—the Secretary of State for Education, for example. If Ministers lose the confidence of their civil servants, the quality of government will go down further. What are the Government going to do to reassure Whitehall that Ministers will continue to treat civil servants with respect, listen to reasoned arguments and evidence, and on that basis, take decisions that can carry their civil servants with them?

Baroness Neville-Rolfe (Con): I have two points. First, it is right that, under the British system, the Prime Minister appoints the independent ethics adviser. He is accountable to Parliament for that appointment. If parliamentarians do not like the appointment, they can raise it in Parliament. I used to be a civil servant, as the noble Lord knows. I think the Civil Service has worked magnificently to deal with the changes of ministerial office that we have seen in recent months. Those of us who are now fortunate enough to be Ministers are working hard and respectfully with the Civil Service.

Lord Evans of Weardale (CB): My Lords, I declare an interest as chair of the Committee on Standards in Public Life. The Minister may recall that 12 months ago, we issued a report, *Upholding Standards in Public Life*, which made a number of recommendations for improving and reinforcing the role of the independent adviser. We have not yet had a full response from the Government on that report. Does the Minister agree that it might be easier to find strong candidates if there had been agreement from the Government that the independent adviser should be able to initiate their own investigations, and that that would be reassuring to the public?

Baroness Neville-Rolfe (Con): I thank the noble Lord for his work in this important area. I remind the House that in May 2022, partly as a result of this report, changes to the role of the independent adviser were announced. The current terms of reference for the independent adviser, which I am happy to share if need be, allow them to initiate an investigation following consultation with the Prime Minister. The consultation process ensures that any public interest reasons not to proceed are raised, should they occur. In such an event, the independent adviser may require the reasoning for that to be made public, unless doing so would undermine the grounds that led to the investigation not proceeding. Other points were made in May and there was also a statement in July. Noble Lords will understand that there have been changes of Government and therefore some things have gone a little slower than they perhaps might in the future.

Lord Cormack (Con): My Lords, does the Minister accept that we really do need action, if not this day, then at least before 44 days are up from when the Prime Minister took office?

Baroness Neville-Rolfe (Con): I can only repeat the point that the Prime Minister has been in office for only 31 days; he has had a hugely demanding agenda to deal with, not least on the economic side. He has made clear that he is appointing an independent adviser. That process is in hand; noble Lords need to give us some rope.

Viscount Stansgate (Lab): My Lords, the Minister has told the House that the delay in appointing an independent adviser has not interfered with the existing ongoing investigations. Nevertheless, do the Government not understand the damage being done to the credibility of government and the democratic process by not having an independent adviser?

Baroness Neville-Rolfe (Con): My Lords, the machinery of government goes on. As I explained in my Statement, managing ministerial interests, including the management of those on the appointment of new Ministers, is continuing with the Permanent Secretaries in the Cabinet Office and with the head of the Civil Service. I do not think there is a lot more that we can do than appoint an independent adviser of the right kind. As somebody who has worked in many different parts of the British state and business, I know that it is important to take time to make appointments of this sort. We need somebody experienced and credible who wins the trust of the Prime Minister, who is ultimately responsible.

Lord Grocott (Lab): My Lords, can the Minister throw a little light on what seems to me, at any rate, a pretty opaque process? Is there a job description for this new job and is it publicly available? Was the post advertised so that people could apply for it? What is the salary or payment attached to it? All these things would be normal for making the most junior of appointments in the Civil Service or relating to the Civil Service. For this very senior post, therefore, perhaps we could be told whether people have been independently applying for the job. How many people have been considered by the Government but turned the job down? I am sure that all these points would be of great interest to us all to understand precisely how the Government go about this business.

Baroness Neville-Rolfe (Con): It is a prime ministerial appointment. The postholder is required to observe the seven principles of public life and helps the Prime Minister on Ministers' interests and on investigations of alleged breaches of the Ministerial Code. It would be unusual for the details of a confidential appointment process to be published, but I can assure the noble Lord that work is in hand and I look forward to announcing the name of the new independent adviser once appointed.

Lord Pannick (CB): May I suggest to the Minister that her inability to answer any of the questions asked by the noble Lord does not encourage confidence in this process? More excellent candidates would be likely to come forward and confidence in the process would be enhanced if the Government would commit to accepting the advice of the independent adviser when it is given on these important matters of integrity. Will the Government do that?

Baroness Neville-Rolfe (Con): The noble Lord is trying to push me into a different direction but, like my noble friend Lord Howard of Lympne, I am keeping to the same answer. That is because I completely believe that this independent ethics adviser has to be appointed by the Prime Minister and has to be accountable to Parliament. It is important that we stick to that principle. People who are going to take up this important post will understand that, but they will also want to ensure that they have the confidence and trust of our Prime Minister.

Procurement Bill [HL]

Report (2nd Day)

4.20 pm

Clause 40: Direct award to protect life, etc

Amendment 72

Moved by ***Lord Scriven***

72: Clause 40, page 26, line 22, at end insert—

"(3A) Provision under subsection (1) must not confer any preferential treatment on suppliers connected to or recommended by members of the House of Commons or members of the House of Lords."

Member's explanatory statement

This amendment is intended to prevent the future use of "VIP lanes" for public contracts.

Lord Scriven (LD): My Lords, I will also support Amendment 113 in this group in the name of my noble friend Lord Fox, which I have put my name to.

Imagine this House's response to a public sector procurement Bill or statutory instrument that came before your Lordships' House with the following provisions. The Government could, without reference to anyone, set up a new procurement channel that was mainly for people who knew Members of the Houses of Parliament, and particularly government Ministers. The companies offering the items would not have to be trading, or could just have a few weeks' incorporation, and would still be included in the special channel. Normal scrutiny and due diligence would not be required of such contacts. These contacts would have preferential treatment over existing and trusted suppliers. They would be 10 times more likely to get a contract, many running into multi-millions of pounds, than other companies not in that special channel, many of which would have had a trading history of years of supplying relevant, safe and reliable goods and services. In addition, those on the special channel would be able to make three times the normal profit margin before the usual and rigorous value-for-money checks were carried out.

Quite rightly, we would be outraged and would see that as unethical and an unacceptable way to spend billions of pounds of taxpayers' money. I hope that a fatal Motion would be put so that such provisions were stopped in their tracks. However, that is exactly what happened with the VIP channel set up for PPE in 2020. The findings of the National Audit Office and other reports that have been investigating the VIP channel paint a picture that is not acceptable and should never be part of an ethical public sector procurement process. The National Audit Office reported that companies referred to the VIP channel lane by Ministers, senior MPs and Peers had a success rate for gaining PPE contracts 10 times greater than other companies, many of which had a history of supplying reliable PPE in the other procurement routes. Parliamentary Questions show that 41 out of 111 contracts awarded through the high-priority lane by May 2020 had not gone through the formal eight-stage due diligence process.

If speed is required in public sector procurement, the normal rules of probity and ethical standards cannot and must not be ditched. We know that it leads to some with access to government Ministers' personal WhatsApp contacts, telephone numbers or email addresses ending up making many billions of pounds for nothing more than having those contacts, and the door is open to the public sector market with the ability to supply goods and services. It is reported that some individuals have made over £29 million in personal gain from a company that was not even incorporated when they were lobbying government Ministers to get in the VIP lane, and indeed, when they eventually landed a multi-million-pound contract, they provided some goods and services that were not fit for purpose and could have put our NHS staff at risk had they been used.

Amendment 72 prevents another VIP lane from being set up that creates special and lucrative routes to market for those with privileged access to Members of the Houses of Parliament, and particularly to those in the Government. It will still allow the Government to procure in an emergency but would ensure that one route to getting to market exists—one doorway, with the same due diligence and rules applied regardless of who made the recommendation of the individual or company, rather than a fast-track and light-touch scheme for those who have a contact who is a senior politician or government Minister.

Without this simple amendment, there is nothing in the Bill to prevent another unethical procurement scandal that could set up a VIP lane and become another get-rich-quick scheme for some who have personal access to government Ministers and senior politicians. As the National Audit Office said, contracts

awarded by the department through the parallel channel made up only 3.6% of all contracts awarded but accounted for 52% of expected contract value.

With this in mind, I ask the Minister: what in this Bill would prevent another VIP channel from being set up that is predominantly populated on contracts from senior politicians and government Ministers? I look forward, as I am sure many noble Lords do, to hearing what the Minister has to say to reassure the House that the Bill has provisions that will prevent the kind of scandal that the country saw with the VIP lane set up. It was mainly populated by those who had contact with senior politicians and government Ministers, who made millions of pounds in personal gain for those contracts while going through a regime of much lighter touch than that for those not in the VIP lane. If the Minister cannot convince the House that provisions in this Bill will prevent this from happening again, I am minded to test the opinion of the House.

As a matter of objective, Clause 11 is meant to ensure that, in carrying out public sector procurement, bodies are

"acting, and being seen to act, with integrity".

Amendment 72 will do exactly that, and ensure probity and integrity, so that never again will taxpayers see their money used in such a cavalier and unethical way as they did with the PPE VIP channel. I beg to move.

Lord Wallace of Saltaire (LD): My Lords, I have tabled Amendment 97 for two reasons. First, it is to ask for an assurance from the Minister that the procurement review unit will be set up, and secondly, it is to put down a strong marker on the reasons that the Minister's department presented for attempting to exclude my amendment as constitutionally improper.

The Minister will recall that, in the responses to the Green Paper, there was a warm and widespread welcome to the proposal that an autonomous unit should be set up within the Cabinet Office to oversee contracting authority compliance with the new procurement rules and so help to realise the benefits intended from the transformation of public procurement legislation. In turn, the Government's response gave a clear commitment to set up what it now labelled the procurement review unit. This is not in the Bill, however. Therefore, will the Minister Pepper v Hart that commitment, so to speak, by stating in the House that this remains the Government's clear intention, and that during the passage of the Bill an effective PRU will be established, along the lines indicated by the Government's response to the consultation?

On the second issue, the slide presentation to the briefing given to Peers on the PRU between Committee and Report, which I was unfortunately unable to attend, stated that the principle of indivisibility of the Crown means providing statutory powers to Ministers whereby they can direct action to be taken by central government departments—in other words, another part of the Crown—and is not usually provided for in legislation. To do so also risks fettering the non-statutory powers Ministers already hold.

I had not previously heard the principle of the indivisibility of the Crown, nor that this principle inhibited Parliament from including specific instructions to Ministers in legislation. It is, after all, an assertion of prerogative—executive sovereignty against parliamentary sovereignty—although oddly qualified by including the adjective "usually" in its attempted exclusion of legislation.

4.30 pm

Under Boris Johnson as Prime Minister, we suffered a number of attempts to assert executive authority against parliamentary sovereignty, but I and others had hoped that, under Prime Minister Sunak, we might return to a better observance of our constitution's constraints and conventions. I therefore consulted a number of experts and the Lords Library. I was struck by the puzzlement on the face of a senior clerk when I asked how familiar he was with this principle—a puzzlement that increased when he was unable to find any reference to it in the volume on public law that he then consulted. The noble Lord, Lord Lisvane, told me that this is a doctrine "of some antiquity" and that he had not previously come across any occasion when it had been cited as a reason for resisting an amendment. He referred me to an article in the *Cambridge Law Journal* of 2018 which firmly states:

"The … doctrine … must be abandoned—the Crown is plural and divisible".

The Library pointed me to a government paper, presented to a Commons Select Committee in 2003, which stated:

"It is long established law that Parliament can override and displace the prerogative by statute."

The Minister's written reply to my questioning of the relevance of this principle nevertheless stated that

"Ministers hold non-statutory powers of authority derived from common ways of working and according to the hierarchy of government … The award of powers in legislation for oversight purposes could challenge that common authority."

I will not detain the House with further references to treatment of this issue in Supreme Court and Law Lords cases, beyond adding that the noble and learned Lords, Lord Mance and Lord Scott, once disagreed in a case on whether this principle was still applicable, and that the court's conclusions in Miller 1 in 2017 seemed to be definitive. It therefore seems appropriate for me to bring this to the attention of the House's Constitution Committee for further consideration.

I remind the Minister that page 48 of the Conservative manifesto in the last election pledged to set up a constitution, democracy and rights commission and specified:

"After Brexit we also need to look at the broader aspects of our constitution: the relationship between the Government, Parliament and the courts

and

"the functioning of the Royal Prerogative".

That is only one of the many pledges that have now been broken.

I do not expect the Minister to accept my dismissal of the relevance of this arcane, antiquated constitutional doctrine, but I hope that the House and outside constitutional experts, on further consideration, will unite in rejecting this attempt to limit parliamentary sovereignty over the Executive.

Lord Aberdare (CB): My Lords, I shall speak briefly on Amendment 97, which the noble Lord, Lord Wallace of Saltaire, has just introduced, concerning the procurement

[Lord Aberdare]
review unit. I am grateful to the Minister for organising a very helpful meeting recently outlining the Government's thinking on the role of the PRU. This is not envisaged as a statutory body, so does not currently feature in the Bill, but it will have some important functions relating to SME engagement in public procurement, such as fostering much-needed culture change in the construction sector and promoting SME access through means such as training, transparency and, above all, better payment practices for public contracts.

These include making 30-day payment terms apply throughout the public sector supply chain, with the 30-day period measured from when an invoice is first received rather than when it is deemed valid. Contracting authorities will be required to publish their payment performance every six months. The payment performance review scheme, PPRS, run by the Cabinet Office, which has been underresourced in the past, will be given extra capacity, staffing and weight. The current system, based on reporting the volume of invoices paid within 30 days, can allow late payment of large sums to be drowned out by a high volume of lower-value instant payments. To give a truer picture, I hope the Minister might consider requiring the value of payments made within 30 days to be reported, as well as the volume.

The PRU will also carry out proactive spot checks to assess compliance with payment terms throughout the supply chain. The Minister might explore the possibility of using technology to track payment times, which might ultimately lead to more real-time transparency of payment performance. I understand that many construction firms already use technology to produce their payment reports.

These are all very welcome aspects of the Government's plans for the procurement review unit. I hope the Minister will put them formally on record in her response, thereby averting, or at least reducing, the need for Amendment 97 to include the PRU in the Bill.

I end by congratulating the Minister on her piece in the *Times* on Monday confirming her commitment to making it easier for small firms to compete for and win public sector contracts. I hope the *Times* readership will actively support us in holding her and the Government to that commitment.

Lord Alton of Liverpool (CB): My Lords, I can be brief. I thoroughly support everything that the noble Lord, Lord Scriven, said to us in moving his amendment. I do not need to repeat arguments that I placed before your Lordships earlier this week on Monday, in December last year, and then again in January and March this year, and even in the Question that we had just before our proceedings on PPE, which continues to be stored in the People's Republic of China at a cost to us of some £770,000 every day.

I am extremely grateful that the Minister responded so quickly after our debate on Monday with a letter that I received this morning. For the purposes of the record, I will read out one paragraph. She wrote:

"You made a number of points about PPE contracts which have been found to have underperformed. I also understand you have asked written questions … on these matters. I appreciate your desire for more information on this and I will be writing to the Secretary of State highlighting both your views and those expressed by others in the House."

That is a very welcome response and I am grateful to the noble Baroness for going to that trouble.

I have sent a copy of our *Hansard* from Monday to my noble and learned friend Lady Hallett, who is chairing the public inquiry to which the Minister referred during our debate on Monday. The Minister said that lessons would be learned, and that the Covid inquiry would

"cover procurement and the distribution of key equipment and supplies, including PPE".—[*Official Report*, 28/11/22; col. 1593.]

I am grateful to her for that.

I have only one other point. On Monday, I raised the issue of repayments. That is not something that can wait for the several years it might take the public inquiry to make its recommendations. I refer the Minister to my two questions about defaulting PPE suppliers and the actions that will be taken through the faulty contract PPE recovery unit. I also asked about individual settlements, which, as she said, are protected by commercial secrecy. I asked

"how will Parliament and the public be notified about money returned to public funds by defaulting PPE suppliers through the actions of the faulty contract PPE recovery unit?"—[*Official Report*, 28/11/22; col. 1581.]

How will that work? Can the Minister illuminate us a little further? If she cannot, would she be prepared to put pen to paper in a follow-up letter to me as a result of today's debate? I am grateful to the noble Lord, Lord Scriven, for giving us the opportunity to explore this issue further.

Baroness Bennett of Manor Castle (GP): My Lords, it is a great pleasure to follow the noble Lord, Lord Alton, and indeed the noble Lord, Lord Aberdare, who raised such important points about payment terms for small and medium-sized enterprises. That is a long-term issue that has not been addressed. There is a real opportunity here, as the noble Lord outlined.

I will speak briefly to Amendment 72, in the names of the noble Lord, Lord Scriven, who so comprehensively introduced it, and the noble Baroness, Lady Brinton. I confess that I attached my name to it at the absolute last minute because I expected a rush of Members from around your Lordships' House doing so. I thought it was important to demonstrate that there was a breadth of support.

I should perhaps warn the Minister that that support appeared to come from the Government Front Bench earlier, when the noble Lord, Lord Markham, responding to the PPE Urgent Question repeat from the other place, said that the earlier procurement

"should not have been on the basis of referrals".

It would appear that this amendment delivers exactly what the noble Lord said should happen in future. That is a very interesting reflection of what is happening in your Lordships' House.

Briefly, we know that the Government would like to treat all this as ancient history, but I and, I am sure, other Members of your Lordships' House have seen that for members of the public this is still a source of very deep anger and concern. This morning I was on Radio 5 Live's politicians' panel and a caller raised this issue, albeit in the context of Matt Hancock's appearance on "I'm a Celebrity".

There were a couple of powerful letters in the *Guardian* this week. I do not know either of the correspondents. Dr Tristram Wyatt noted that in 1919, after the First World War, the President of the Board of Trade introduced a profiteering Bill to ensure that profiteering by suppliers would never happen again. In the same paper Dr Jeremy Oliver questioned why all these PPE contracts were not let on a full cost plus margin basis. This is of great concern to the public. I am hearing from all quarters again and again that people are simply saying, "Never again." What happened in the Covid-19 pandemic with the VIP channel must not be allowed to happen again. This clear, simple amendment delivers just that.

I will also briefly express concern about government Amendment 116. We had an extensive discussion about this in Committee, which I will not revisit, but this appears to be a significant weakening of the protection of public concern about potential conflicts of interest. I look forward to the Minister's explanation of that.

Lord Lee of Trafford (LD): My Lords, I rise briefly to strongly support Amendment 72. There is absolutely no need for a VIP channel or similar. Surely, it just encouraged opportunistic entrepreneurs—to be charitable—rather than genuine experienced manufacturers. Will the Government publish a list of all MPs and Peers who used the VIP channel and on whose behalf they were lobbied?

Lord Moylan (Con): My Lords, I rise to strike a jarring note, although I do not intend to wander into the potentially treacherous waters of the divisibility or otherwise of the Crown. I think the Government have rather got it right on these amendments and noble Lords are barking up the wrong tree.

As I said in Committee and at Second Reading, noble Lords in some cases appeared to have misconceived this Bill throughout as if it were an enforcement measure against criminal or quasi-criminal activity, but it is not and it has never been intended as such; nor does it have that effect.

We come to an amendment that says explicitly that no preferential treatment may be conferred on

"suppliers connected to or recommended by members of the House of Commons or members of the House of Lords".

To the extent that that is already a criminal act, and corruption is involved, criminal proceedings would be the right thing to undertake and not proceedings under this Bill, which is essentially administrative in character and carries no punitive clauses. The remedy for breaches under this Bill in most cases is for a supplier to sue for damages and the fact that they have been treated badly or unfairly. This is not a Bill intended to combat corruption.

If noble Lords feel it is required to explicitly exclude Members of this House and of another place, why is it not required to explicitly exclude giving preferential treatment to your first cousins, or your family in a broader sense, or your best friends, or people you were at school with, or all sorts of other persons who perhaps should be listed on the face of the Bill?

I briefly come to the procurement review unit—

Baroness Brinton (LD): Does the noble Lord not agree that Clause 40 allows the Government to set up such a preferential channel?

Lord Moylan (Con): I think it has been agreed by all Members of the House that in certain emergency circumstances the Government need to be able to take action outside the normal procurement channels. If Clause 40 has that effect, that is fine, but Clause 40 also allows channels to be set up that include someone with whom you were at school, with whom you are best friends, who was your best man, who attended your wedding or whatever. How would we know? These things cannot be set out comprehensively in the Bill. This is a classic case of shutting a stable door after the horse has bolted.

4.45 pm

There seems to be a notion that the procurement review unit needs to be on a statutory basis because it will have some enforcement capacity. I doubt the need for a procurement review unit at all, but if the Government choose—among their many, multifarious activities—to ask a number of civil servants to monitor the way in which the Bill, if it becomes an Act, is being implemented, that is a perfectly legitimate thing for the Government to do. But it is a decision by the Government to ask their own civil servants to do something that appears relevant and important to them at the time, and the circumstances may change.

For example, the noble Lord, Lord Aberdare, mentioned that the unit could monitor late payment. That would be a perfectly worthy thing to do, because late payment of invoices is currently an important matter. It might not be an important matter in future. It would be very strange to have this set in statute in this way. This is just a civil servant department; it does not require this statutory basis, because it will not have the enforcement powers that noble Lords seem to suggest.

Similarly, on Amendment 113, the desire to spell out an ever-longer list of persons covered by conflicts of interest has the same tendency, as I mentioned in relation to Amendment 72, to exclude—and, so to speak, exonerate—those not specified in the list. It is a potentially endless list by the time you have thought of everybody you might want to include.

I have spent more than 30 years in public life in one capacity or another; I do not boast about it, because many noble Lords have spent as long or longer. Throughout all that, I have understood that conflicts of interest will arise in the course of one's activities. The key question is how one manages them in a way that requires sensitivity, flexibility and responsibility in each case. If I had intended to enter public life and conduct myself dishonestly—I assure noble Lords that I have endeavoured not to do so—I would have managed to achieve a degree of dishonest advantage, whether or not this had been spelled out in this essentially procedural Bill. If I had done so in a way that was clearly a breach of the criminal law, I hope I would have been prosecuted under the criminal law, under a wide range of offences available to prosecutors relating to corruption in public life. I would not look to this Bill, which would not be used in my case. I have made this point on several occasions: I think noble Lords are misconceiving the purpose and nature of the Bill as, in essence, a large enforcement framework.

I will make one final point before I sit down. A sense of proportionality is required as well. One has to remember that the Bill is intended to apply not only to

[LORD MOYLAN]
multi-billion contracts let by central government departments but to modest contracts let by local authorities and other, smaller public bodies that are caught within its net. One has to bear that degree of proportionality in mind at every stage.

I very much hope that these amendments are not pressed to a Division and that my noble friend will stand firm and not allow the Bill to be further distorted in this way.

Lord Fox (LD): My Lords, this has been an interesting debate that covered a wide range of interests. It is always a pleasure to follow the noble Lord, Lord Moylan, and the case he made in favour of Amendment 72 was strong and subtle because by acknowledging the role that Clause 40 plays in this Bill, he also acknowledges the need for Amendment 72.

The noble Lord mentioned Amendment 113. The purpose of having the list in it is to make it clear that in the past, NHS staff have not been included and there are very real examples of problems in this area. Its purpose was to draw your Lordships' attention to the need to include that cadre of people, who are making very large public procurements, in the realm of this Bill. He will be no doubt delighted to know that it is unlikely that I will press the amendment to a vote.

Baroness Hayman of Ullock (Lab): The noble Lord, Lord Scriven, ably and clearly laid out why he has tabled his amendment and the concerns in this area. They partly remain from the debate we had in Committee, but they have also been raised on a number of further occasions, including earlier today. We have heard why people are concerned and why they think this amendment is needed. There are concerns around the VIP lanes and the way that different contracts were awarded during the Covid pandemic.

Listening to the debate today, earlier debates and other discussions, including in the media, as the noble Baroness said, it is clear that we have a real problem with a loss of trust in the procurement system, particularly government contracts. For me, this Bill is an opportunity to restore that trust. The Minister will no doubt say that the Government have listened and heard what was said, and the VIP lanes will not happen again. I trust what the Minister says, and we know that other people have said the same, but my concern is that if you do not close loopholes in legislation, they are still there for others to exploit. In my opinion, this opens a loophole because it makes it possible to hand out contracts in the way it was done before.

It is incredibly important that we retain the ability to procure when the usual channels need to be speeded up, for example, or if there is a need to do things in a slightly different way. Importantly, this clause allows that, but at the same time we must not allow this loophole to exist going forward. That is why we support this amendment and if the noble Lord wishes to press it to a Division, he will have our full support.

The noble Lord, Lord Aberdare, who has been extremely clear in putting across the concerns all the way through the progress of this Bill, made some really important points about late payments. Again, I know the Minister is keen to do what she can to resolve that problem, so I look forward to her response.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, I thank noble Lords for their contributions to this debate and thank my noble friend Lord Moylan for his general point about the purpose and effect of the Bill; it was a point well made. I also agree with the noble Baroness, Lady Hayman of Ullock, that we need to restore trust in procurement. I will come on in a minute to explain what we are doing to avoid a repetition of the VIP lane problems.

I shall speak first to the government amendments. The Bill strengthens existing obligations on conflicts of interest, and I think everyone will agree that it is crucial that the requirements are clear. I am therefore tabling Amendment 116 to Clause 78(4), which will avoid a contracting authority being required to address all circumstances that a reasonable person "might" consider a conflict, a potentially impossible feat. Instead, the Bill will require the authority to address those circumstances the authority believes "likely" to cause a reasonable person to consider there to be a conflict.

I do not accept that this is a problem. The noble Baroness, Lady Bennett, spoke on this issue, and it is always good to have her challenge. This amendment narrows the scope of the obligation, but in a way that makes it deliverable. Sensible, practical ways of doing things are an issue that I have been concerned about, and when I get feedback on these points, we try to make changes.

Part 10 of the Bill allows Ministers to undertake investigations of contracting authorities' compliance with the Act and issue recommendations that contracting authorities must have regard to when considering how to comply. Without government Amendment 139, Ministers could investigate the House of Commons, the House of Lords and the devolved Administration equivalents, which we believe would create a constitutional impropriety.

Government Amendment 153 ensures that a Minister of the Crown may issue statutory guidance, as a result of a procurement investigation, to Northern Ireland departments only with the consent of a Northern Ireland department, in order to be consistent with the requirement for consent from Welsh Ministers.

The Bill has improved obligations regarding conflicts of interest that apply to all procurement procedures, including direct award. I accept that concern remains over conflicts of interest in Covid procurement, partly because of the history we have all been debating, and these are being addressed by the Government. The concerns expressed from a public procurement perspective are around failings in due diligence and contract management. The noble Lord, Lord Alton, eloquently raised some of these issues on Monday, and I am very glad he found our letter useful. That letter is of course in the Lords Library.

I reassure noble Lords that the Department of Health and Social Care is continuing to investigate contracts and to work through resolution processes with companies that provided PPE which cannot be used. There is a confidentiality issue, as we have heard several times, but I appreciate that there is a desire for more specific information on this. That is why I will be raising it with Health Ministers, as the noble Lord has mentioned. However, I hope I can also reassure the Committee in relation to this group of amendments.

Amendment 72, a key amendment in this group, has been tabled by the noble Lord, Lord Scriven, to help prevent the future use of parliamentary VIP lanes for public contracts. I do not believe the amendment is right or necessary, as I will explain. The Bill contains safeguards ensuring that if a conflict of interest puts a supplier at an unfair advantage, and if steps to mitigate cannot avoid that advantage, the supplier must be excluded. That is laid out clearly in Clause 77(3). Noble Lords should note that this is not at the contracting authority's discretion; it "must" exclude in those circumstances.

The noble Lord asked what we are doing to prevent VIP lanes in future. Perhaps it is worth reiterating two or three points for the convenience of the Committee. Yes, we will be preventing VIP lanes in future. Our direct award provisions have clear and narrow parameters for use. They include new transparency obligations, requiring contracting authorities to publish a notice before making a direct award, and retain obligations to publish contract details once awarded. So we are getting sunlight and transparency.

Conflicts provisions also make a clear requirement in relation to conflicts assessments which are applicable to direct award. If a situation like Covid-19 were to occur again—I heartily hope it will not—pursuant to Clause 40, the Government could set out in advance what types of direct awards were required to address the situation, meaning advance transparency to the market and suppliers. Finally, the equal treatment obligation in Clauses 2 and 3 will ensure that VIP lanes cannot happen again.

The conflicts of interest provisions in the Bill are intentionally broad to capture any person who influences a decision made by or on behalf of a contracting authority, and cover direct and indirect interests. Furthermore, outside the Procurement Bill, the ministerial and Civil Service codes provide that conflicts of interest must be avoided in the exercise of official duties. Elected officials in local government also need to adhere to the rules around keeping a register of interests—as the noble Lord, Lord Moylan, said, this is also in relation to such things as corruption. As we know, parliamentarians also have to register all their interests.

5 pm

We take all this very seriously. In July 2022, the Cabinet Office published further guidance to Ministers on participation in commercial activity. It is very important to ensure a level playing field for suppliers, to ensure fair and open competition and protect against corruption. That is what the Bill and the associated transformation and training programme will do. The wider publication of notices for all direct awards to be made, including in emergencies, will bring further transparency into the system. I repeat the point only because it is important.

This demonstrates that highlighting this particular potential of parliamentarians, as Amendment 72 does, is not required. It might even be counterproductive, because it suggests that other potential conflicts such as connection with procurement officers, who may know unpublished details of contracts or contract prospects, are less significant to good governance or should be less of a focus, which is just not the case. Parliamentarians can bring helpful commercial insights, expertise and experience of innovative business practices. It is important that we retain this while implementing a robust procurement framework to ensure that outside interests do not lead to suppliers receiving preferential treatment. I believe our Bill achieves this.

Amendment 113, tabled by the noble Lords, Lord Fox and Lord Scriven, seeks to broaden the range of people in respect of whom conflicts of interest should be identified and to prescribe further actions on suppliers in this area. The provisions in the Bill that specify the people in respect of whom conflicts of interest should be identified are broad. Clause 76 includes anyone acting for or on behalf of the contracting authority in relation to a procurement, including those who influence a decision made by a contracting authority related to the procurement. Therefore, all the persons listed in proposed new paragraphs (a) to (g) of this amendment who have influence in respect of the relevant procurement decision will already be caught by the current provision.

Nobody has raised this, so I will not go into detail, but we had two reports from Nigel Boardman into the circumstances around Covid and VIP lanes. We have accepted those recommendations and made changes, including in *Procurement Policy Note 04/21*. One point worth making is that a key theme in Boardman and the NAO reports mentioned was the lack of record-keeping and audit around decision-making. The Procurement Bill strengthens the requirements on conflicts of interest compared with the current law. A new duty has been introduced in Clause 78(5) to require contracting authorities to confirm that a "conflicts assessment" has been prepared and then reviewed and revised as necessary when publishing a procurement note. I remember speaking against this at an earlier juncture, but I now draw it to the attention of noble Lords.

As I said on Monday, the Covid inquiry will cover procurement, as the noble Lord, Lord Alton, mentioned, and the distribution of key equipment and supplies such as PPE. It will identify the lessons to be learned and inform future pandemics across the UK, reminding us all of the often tragic events of that period in our lives.

Amendment 97, tabled by the noble Lord, Lord Wallace, refers to the procurement review unit. We all agree that the oversight regime that will be provided by the unit is a critical aspect of the new procurement rules and will be critical to its success. Noble Lords should be assured—I think this is the assurance the noble Lord is seeking—that the Cabinet Office is committed to establishing an effective procurement review unit for this purpose and an advisory panel of sector experts to assist it. I previously gave this assurance in Committee and in the constructive meeting I chaired with noble Lords from across the House with Cabinet Office experts on 15 November.

The key objective of the PRU will be to oversee contracting authorities' compliance with the new procurement Act. It will also investigate suppliers who may need to be added to the statutory debarment list. We will continue the work of the Public Procurement Review Service in investigating individual complaints.

The noble Lord, Lord Wallace, returned to the argument about the indivisibility of the Crown and why that means that powers are not needed to investigate government departments. This long-held legal principle

[Baroness Neville-Rolfe]
provides that the Crown is one legal entity, and it still applies. I have a long note, which I have already communicated to the noble Lord, Lord Wallace. Unless he feels that he will press his amendment, he may prefer that we continue the debate over a cup of tea, given his constitutional expertise—I very much look forward to that.

I have a little time to answer the noble Lord, Lord Aberdare, who has almost become a friend—

Noble Lords: Oh!

Baroness Neville-Rolfe (Con): I meant a noble friend. We intend to issue guidance recommending that contracting authorities include provisions allowing spot checks on the payment performance of supply chain members through their terms and conditions. This does not need to be done in legislation; we are currently exploring options to include it in the model government contract and terms and conditions. As I have made clear throughout, digital tech is integral to these reforms, as the noble Lord said, and we will use it.

I apologise for speaking like this, but I feel passionately that we have learned from the past and that it is important not to overreact to past problems. I have felt this in many areas that I have dealt with in my long life. I respectfully request that the noble Lord withdraws his amendment and the other noble Lords do not move theirs.

Lord Scriven (LD): My Lords, I thank all noble Lords who have taken part in this debate, which is a continuation of what we have spoken about in Committee and on Report. It is about ensuring that, if the Bill—which concerns spending billions of pounds of taxpayers' money—is to go through, trust, fairness and integrity are central to everything that happens and every penny of taxpayers' money spent. Every amendment in this group is about that.

I have listened intently and diligently to what the Minister said on my Amendment 72, but the noble Lord, Lord Moylan, made a very important point. In answer to my noble friend Lord Fox, Clause 40 gives exactly the same powers that previous Ministers have had through statutory instruments, and this will get us to the same potential mess that the VIP lanes got us to with PPE. I note everything that the Minister said, but Clause 40 could do away with nearly everything in the Bill because it gives the Government unfettered discretion to set up a fast-track lane, as we have seen before. Giving that amount of power to a Minister in a time of crisis, when all power reverts to the Minister and those who are close can have privileged access to contracts, as we have seen, means that I wish to test the opinion of the House on this occasion.

5.09 pm

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Clarke of Nottingham, L.
Colgrain, L.
Cormack, L.
Courtown, E. [Teller]
Craigavon, V.
Crathorne, L.
Cromwell, L.
Cruddas, L.
Cumberlege, B.
Davies of Gower, L.
De Mauley, L.
Dobbs, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Effingham , E.
Erroll, E.
Evans of Bowes Park, B.
Evans of Rainow, L.
Fairfax of Cameron, L.
Falkner of Margravine, B.
Fall, B.
Farmer, L.
Faulks, L.
Finn, B.
Fleet, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Frost, L.
Gadhia, L.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Godson, L.
Gold, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Hamilton of Epsom, L.
Harlech, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hintze, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Hogan-Howe, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Janvrin, L.
Jenkin of Kennington, B.
Johnson of Lainston , L.
Johnson of Marylebone, L.
Jopling, L.
Kakkar, L.
Kamall, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lansley, L.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lingfield, L.
Livingston of Parkhead, L.
Lucas, L.
Lytton, E.
Macpherson of Earl's Court, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marland, L.
Maude of Horsham, L.
Mawson, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Meyer, B.
Minto, E.
Mobarik, B.
Montrose, D.
Moore of Etchingham , L.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrissey, B.
Morrow, L.
Morse, L.
Moylan, L.
Moynihan, L.
Murray of Blidworth, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
Pannick, L.
Parkinson of Whitley Bay, L.
Patel, L.
Patten, L.
Penn, B.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Ravensdale, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Robathan, L.
Roberts of Belgravia, L.
Roborough, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Soames of Fletching , L.
St John of Bletso, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Swire, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Trefgarne, L.
True, L.
Tugendhat, L.
Tyrie, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Verma, B.
Warsi, B.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wolfson of Aspley Guise, L.
Wolfson of Tredegar, L.
Wrottesley, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

5.21 pm

Amendment 73 not moved.

Clause 43: Frameworks

Amendments 74 and 75

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

74: Clause 43, page 27, line 40, at end insert—

"(5A) A condition set under subsection (4)(a) may not—

(a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;

(b) require insurance relating to the performance of the contract to be in place before the award of the contract."

Member's explanatory statement

This amendment would prevent contracting authorities from requiring audited accounts from suppliers that do not otherwise prepare audited accounts (for example, small companies), or insurance to be in place before award.

75: Clause 43, page 28, line 18, at end insert—

"(11A) In this section, a "competitive selection process" means a competitive selection process for the award of a public contract in accordance with a framework.

(11B) This section does not apply to a framework that is a light touch contract."

Member's explanatory statement

This amendment would add a definition and exception as a preliminary step to dividing Clause 43.

Amendments 74 and 75 agreed.

Amendment 76

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

76: After Clause 43, divide Clause 43 into two Clauses, the first (Frameworks) to consist of subsections (1) to (3) and (12) to (17) and the second (Frameworks: competitive selection process) consisting of subsections (4) to (11B).

Member's explanatory statement

This is a motion to divide Clause 43 into two Clauses and make it easier to follow.

Amendment 76 agreed.

Clause 48: Standstill periods on the award of contracts

Amendment 77

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

77: Clause 48, page 31, line 40, at end insert—

"(ba) awarded under section 39 or 41 (direct award and switching to direct award) by a private utility;"

Member's explanatory statement

This amendment would mean that a private utility would not have to wait until the expiry of a mandatory standstill period before directly awarding a contract.

Amendment 77 agreed.

Clause 49: Key performance indicators

Amendment 78

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

78: Clause 49, page 32, line 7, leave out "£2" and insert "£5"

Member's explanatory statement

This amendment would mean that a contracting authority is only required to set key performance indicators for a public contract if the contract's value is more than £5 million.

Baroness Neville-Rolfe (Con): My Lords, forgive me; I thought I could move this amendment formally too. I try to find a sensible and reliable pathway through, as your Lordships know. I look forward to debating this group, which discusses the single digital platform and transparency.

Transparency has been central to the development of this Bill, and it should be noted that there is a significant extension to transparency under the regime. The publication of documents and notices that follow the award stage will allow interested parties to see how contracts are being implemented. While we have stated publicly that it was always the Government's intention to create a central digital platform to host this data, we acknowledge the concerns raised by noble Lords during Committee around the importance of the online platform. Amendment 129 therefore creates a new duty requiring a Minister of the Crown to provide an online system for the purpose of publishing notices, documents and other information under this Act.

In addition, the duty requires that the platform has to be accessible to people with disabilities—a point we were debating on Monday—and provide access to procurement information that is published under the Act, free of charge. This means everyone will have access to public procurement data and can track contracts as they progress through the commercial lifecycle from tender to award and delivery. Citizens will be able to scrutinise contracting authority decisions; suppliers will be able to identify new opportunities to bid and collaborate; and buyers will be able to analyse the market and benchmark their performance against others, for example on their spend with SMEs.

In addition to the principal amendment, Amendment 132 is a technical amendment which removes an existing statutory power as this platform is expected to be delivered through common law powers. Since becoming the Minister responsible for this Bill, I have been keen to ensure that it strikes the right balance between transparency and not imposing undue burdens on contracting authorities. Contracting authorities will continue to be bound by the obligation to publish opportunities for all advertised procurements that are above a threshold of £12,000 for central government authorities or £30,000 for others. This will ensure that there is a high degree of transparency for SMEs, so that they can bid.

However, at the other end of the commercial process, the Bill introduces additional transparency requirements after the award of the contract. I have reflected on these, and Amendments 78, 80 and 104 all seek to raise the original threshold for the publication of contract key performance indicators, public contracts and modifications to a public contract from £2 million to £5 million. This will reduce the administrative requirements for contracting authorities while ensuring transparency of the public sector's larger contracts. I am pleased to say that these amendments have been welcomed by the Local Government Association in the briefing note it published on 25 November.

I will turn to the other amendments tabled in this group in closing, having heard the points raised by noble Lords. Meanwhile, I beg to move Amendment 78.

Lord Clement-Jones (LD): My Lords, I rise to speak to Amendment 130 to government Amendment 129. Many of us will be pleased that the Minister has decided to put the new online system for procurement information on the face of the Bill. At the same time, however, we need some assurance that it will be fit for purpose and achieve the objectives set for it, otherwise

the Government seem to have carte blanche to construct whatever system they see fit to inflict on the vendor community, without any required standards or reporting duty. Let us face it: even the modest database under the Subsidy Control Act is subject to a form of reporting duty, and this system will be of far greater significance.

The amendment in my name and that of my noble friend Lord Fox is designed to provide assurance but in very simple terms. There would be the requirement for a report, first, on the performance standards expected and, secondly, on the standards achieved in the relevant period, including metrics on satisfaction and the accessibility experience of stakeholders. This is a modest proposal; how can the Minister possibly argue against it?

Baroness Noakes (Con): My Lords, I support the single digital platform which is now covered by government Amendment 129 in this group, but I have one caveat. The benefits of the platform, in terms of efficiency—having all the procurement details in one place—will be undermined if contracting authorities are required also to publish tender information in other ways. That is what lies behind my Amendments 166 and 168 in this group. Like some of the amendments I spoke to on our first day in Committee, these have been suggested by the Local Government Association. I am grateful to my noble friend Lord Moylan for adding his name to them.

These amendments propose two additional repeals within Schedule 11, the repeal schedule. Subsections (4)(b) and (5) of Section 89 of the Transport Act 1985 require local authorities to issue notices of tender individually to anyone who has given written notice that they wish to be notified. Amendment 166 would repeal that, because it should no longer be necessary. Amendment 168 would repeal Regulations 4 and 5 of the Service Subsidy Agreements (Tendering) (England) Regulations 2002 so that information on tenders will no longer be required, for example, to be published locally, including in local newspapers.

I hope my noble friend will see these two amendments as supporting the importance of the digital platform. I also hope that she will be able to assure the House that the Government will ensure that later legislation will not be allowed to undermine the platform by adding new and additional requirements, once it is up and running.

Lord Aberdare (CB): My Lords, I suggested earlier that the Government might explore the greater use of technology to track payment times. I also very much support the proposals in government Amendment 129 regarding a single digital platform for publishing notices, documents and other information, and I wonder if it might in due course be extended to provide a mechanism for monitoring and tracking payment performance.

While I am on my feet, I thank my new noble friend the Minister for her kind words earlier. I also point out to the noble Lord, Lord Moylan, that I was not earlier proposing an amendment to the Bill for improving payment practice, but merely speaking in support of the Government's plans for the procurement review unit and seeking confirmation of those plans on the record. I am sorry that he is unfortunately not in his place here for me to draw that to his attention.

5.30 pm

Baroness Hayman of Ullock (Lab): My Lords, I have some amendments following on from the government amendments. They are simple probing amendments on the figure that the Government have come up with in their amendments. Amendment 79 seeks to delete from Clause 49 the figure of "£2" and insert "£3". All I am doing here and in my further two amendments is trying to probe where the figure that the Government put into their amendments came from. I appreciate that in her introduction the Minister said that a lot of this was based on reducing admin requirements and addressing concerns raised by the Local Government Association, for example, but it seems quite a big jump. We are seeking to understand why the threshold has jumped from £2 million to £5 million. If the Minister could give some explanation as to where the figure came from, we would be very grateful.

I welcome government Amendment 129 on setting up the online system. That was raised by a number of noble Lords and discussed at length in Committee, so it is good that the Government have acted and produced this amendment. The noble Lord, Lord Clement-Jones, raised the important point that anything that is introduced has to be seen to be fit for purpose, so again it would be very helpful if the Minister could provide noble Lords with assurance as to how the system will work. If there is no annual report on the operation of the system, what is the overview process? How is it being assessed and monitored to ensure that it is fit for purpose?

I shall comment very briefly on the two amendments in the name of the noble Baroness, Lady Noakes. She introduced them clearly and succinctly, as she always does, for which I am very grateful. I am aware that the LGA had concerns about these areas, as it raised them with us, so I thank her for tabling the amendments. They address a very legitimate concern, so I hope the Minister has listened and will revisit this area of the Bill.

Baroness Neville-Rolfe (Con): My Lords, Amendments 79, 81 and 105 have been tabled by the noble Baroness, Lady Hayman, and the noble Lord, Lord Coaker, to amend to £3 million the financial threshold above which contracting authorities would be required to publish contracts and contract modifications, and set and publish KPIs. The government amendments raise these thresholds to £5 million. The intention of this is to reduce the administrative burden on contracting authorities, while still providing increased transparency on larger contracts. Redacting contracts for publication where they contain commercially sensitive information is particularly burdensome for smaller contracting authorities, requiring detailed and costly checking by legal teams that they may not have or expensive legal advisers.

Where does the figure come from? I do not know exactly; that is the honest answer. I was offered options of £50 million, £10 million and £5 million. I chose £5 million because that is quoted in the *Sourcing Playbook*, which seemed a reasonable point. I believe that a threshold of £5 million balances the benefits of transparency with the costs and burdens of implementation.

The higher threshold in the government amendment has been welcomed by the Local Government Association. We want the arrangements to work, so we will monitor

[Baroness Neville-Rolfe]
them carefully. We have powers to change the thresholds if we need to do so—for example, to bring in extra contracts as the system grows and matures—and if analysis of the new data gathered allows us to better understand how to ensure that the obligations are effective and proportionate; or, to go the other way, if we end up with a lot of difficulties. It seems a reasonable approach.

Amendment 130 tabled by the noble Lords, Lord Clement Jones and Lord Fox, seeks to require the Minister of the Crown to report annually on performance standards and feedback on the online system, including stakeholder satisfaction and accessibility. The data on the platform will be available in real time, and interested parties—of which there will be many—will be able to access information by using the tools available on the platform and by downloading the data for external analysis, such as statistics on the publication of notices and the progress of contracts. The platform will be accessible, as I have said, and will comply with the relevant legislation, including the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018, on which I am not, I fear, an expert. The Government are continuously monitoring the existing online platform that supports noticing under the current regulations and will continue to do so under the new regime and make changes as they are needed, so we are not inclined, on this occasion, to write in a review clause.

Lord Clement-Jones (LD): What mechanism will there be for feedback from vendors and so on?

Baroness Neville-Rolfe (Con): We have talked several times about the PRU and the role it will have in looking systematically at things. It seems to me that one of the main sources of information for it will be this online system. It has the merit of largely being an all-singing and all-dancing system. I will come on to my noble friend Lady Noakes's amendment in a minute. I think, therefore, that this is going to work well, but if the noble Lord discovers in the fullness of time that it is not doing so, I am sure he will come back and ask the Cabinet Office what it is up to.

Amendments 166 and 168 in the names of my noble friends Lady Noakes and Lord Moylan have been tabled to remove provisions in two pieces of transport legislation, both relating to contracts for subsidised public passenger transport services. The first repeals two subsections from Section 89 of the Transport Act 1985—that is a long time ago—dealing with the obligation to invite tenders for such contracts. This change would remove the requirement to issue invitations to tender individually to anyone who has given a written notice requesting this. The second amendment revokes two regulations from the Service Subsidy Agreements (Tendering) (England) Regulations 2002, dealing with information to be published regarding accepted tenders and where no tenders are accepted. These amendments were raised in Committee and, while both rightly seek to reduce the burden on contracting authorities, there are further considerations for the Department for Transport.

Not all transport is covered by the Bill, and we have carved out certain public passenger transport services under Schedule 2. The Department for Transport is reviewing procurements that fall under this separate regime as part of its review of retained EU law and its legislation more widely. It is important that what we do in our schedules does not impinge on that review. We are therefore unable to accept my noble friend Lady Noakes's repeals today, but I have asked my officials to work with the Department for Transport to see whether it is possible to sort this out and bring forward a government amendment in the Commons to address her concerns. In the light of those various assurances, I respectfully request that noble Lords do not press their amendments.

Amendment 78 agreed.

Amendment 79 not moved.

Clause 50: Contract details notices and publication of contracts

Amendment 80

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

80: Clause 50, page 32, line 36, leave out "£2" and insert "£5"

Member's explanatory statement

This amendment would mean that a contracting authority is only required to publish a public contract if the contract's value is more than £5 million.

Amendment 80 agreed.

Amendment 81 not moved.

Clause 53: Technical specifications

Amendment 82 not moved.

Amendment 83 not moved.

Clause 54: Meaning of excluded and excludable supplier

Amendment 84

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

84: Clause 54, page 36, line 19, after first "a" insert "covered"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendment 84 agreed.

Schedule 6: Mandatory exclusion grounds

Amendments 85 to 88

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

85: Schedule 6, page 95, line 38, after "steal," insert "uttering, embezzlement,"

Member's explanatory statement

This amendment would ensure that additional relevant Scots common law offences are contained in the mandatory exclusion ground in paragraph 4.

86: Schedule 6, page 96, line 2, leave out "7" and insert "1"

Member's explanatory statement

This amendment would clarify that the offence of theft is covered under the mandatory exclusion ground in paragraph 6.

87: Schedule 6, page 96, line 9, leave out "7" and insert "1"

Member's explanatory statement

This amendment would clarify that the offence of theft is covered under the mandatory exclusion ground in paragraph 7.

88: Schedule 6, page 101, line 21, after "4," insert "5,"

Member's explanatory statement

This amendment would ensure that the new mandatory exclusion ground inserted in Committee (conspiracy to defraud) is reflected in paragraph 43(3).

Amendments 85 to 88 agreed.

Schedule 7: Discretionary exclusion grounds

Amendment 89 not moved.

Amendment 90

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

90: Schedule 7, page 104, line 14, leave out paragraph 6

Member's explanatory statement

This amendment would remove the discretionary exclusion ground relating to a supplier being unable to pay their debts.

Amendment 90 agreed.

Amendment 91

Moved by ***Lord Hunt of Kings Heath***

91: Schedule 7, page 106, line 41, at end insert—

"Involvement in forced organ harvesting

15A (1) A discretionary exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person has been, or is, involved in—

(a) forced organ harvesting,

(b) unethical activities relating to human tissue, including anything which involves the commission of an offence under sections 32 (prohibition of commercial dealings in human material for transplantation), 32A (offences under section 32 committed outside UK) or 33 (restriction on transplants involving a live donor) of the Human Tissue Act 2004, or under sections 20 (prohibition of commercial dealings in parts of a human body for transplantation) or 20A (offences under section 20 committed outside UK) of the Human Tissue (Scotland) Act 2006, or

(c) dealing in any device or equipment or services relating to conduct mentioned in paragraphs (a) or (b).

(2) "Forced organ harvesting" means killing a person without their consent so that their organs may be removed and transplanted into another person."

Member's explanatory statement

This amendment is designed to give a discretionary power to exclude suppliers from being awarded a public contract who have participated in forced organ harvesting or unethical activities relating to human tissue, including where they are involved in providing a service or goods relating to such activities.

Lord Hunt of Kings Heath (Lab): My Lords, in moving Amendment 91 I will support all the other amendments in this group.

In the Prime Minister's speech to the Lord Mayor's Banquet two days ago, he said that China posed a

"systemic challenge to our values and interests … a challenge that grows more acute as it moves towards even greater authoritarianism."

I want briefly to draw the House's attention to one aspect of that country's behaviour in relation to the appalling forced organ harvesting from prisoners of conscience and to ask the Government to accept my very modest amendment as a small but important measure towards, I hope, ending this practice. This would give a discretionary power to exclude suppliers from being awarded a public contract who have participated in forced organ harvesting or unethical activities relating to human tissue, including where they are involved in providing a service or goods relating to such activities.

Forced organ harvesting in China is the removal of organs from a living prisoner of conscience for the purpose of transplantation, killing the victim in the process. It is state-sanctioned and widespread throughout China, with the Chinese Communist Party targeting individuals because of their religion, spiritual beliefs or ethnicity. The victims are known to be primarily Falun Gong practitioners and Uighur Muslims. There are also several lines of evidence to show that Tibetans and house Christians are likely victims of forced organ harvesting.

With regard to the Uighurs and other minorities in Xinjiang, the Office of the UN High Commissioner for Human Rights published its report into Xinjiang in August this year, which stated:

"Allegations of patterns of torture or ill-treatment, including forced medical treatment and adverse conditions of detention, are credible, as are allegations of individual incidents of sexual and gender-based violence."

Both Uighurs and Falun Gong practitioners are arbitrarily arrested, detained in camps, tortured, face sexual violence, disappear while in detention and are murdered on a vast scale for their organs.

The evidence is now explicit. In April this year, a paper by Matthew Robertson and Dr Jacob Lavee was published in the *American Journal of Transplantation* titled "Execution by Organ Procurement: Breaching the Dead Donor Rule in China", which was cited in the *US Congressional-Executive Commission on China Annual Report 2022*. Their paper found that, in 71 different Chinese medical studies published between 1980 and 2015 and sourced to 56 hospitals in 33 cities, brain death could not have properly been declared, and therefore the removal of the heart during organ procurement must have been the cause of the donor's death. The authors state in a recent article in the *Tablet* that

"the act of execution was joined with the act of heart removal, and was carried out by surgeons on the operating table."

5.45 pm

In Committee, the Minister resisted my amendment, although she appreciated the seriousness of the issue that I raised. She said that the Bill is clear that any serious breach of ethical or professional standards applicable to the supplier would meet the discretionary exclusion ground for professional misconduct. But she also argued that while the exclusion ground of professional misconduct is intended precisely to cover all the ethical issues arising in different industries and sectors, the grounds for exclusion cannot and should not list every issue within a particular industry.

I understand the argument about lists in legislation, but sometimes there is a strong reason to list a particular practice. This practice is so appalling that there is a

[Lord Hunt of Kings Heath]
strong case for listing it. It is a discretionary ground. It is not mandatory. I have made my amendment as mild as possible, to encourage the Government to accept it. If the Minister continues to say that it is not necessary to list organ harvesting, I would point her to Schedule 7, which specifies a number of grounds for discretionary exclusion, including labour market conduct and environmental misconduct. The organ harvesting that I am talking about fits that strength of criteria.

I return to the Prime Minister's very important speech on Monday night about our relationship with China. It was nuanced, of course, and it recognised some of the economic realities of that relationship, of which the Minister will be well aware. However, he affirmed that the media and parliamentarians must be able to highlight issues in China without sanction, including calling out abuses in Xinjiang and the curtailment of freedom in Hong Kong.

Last year, the House agreed an amendment to the Medicines and Medical Devices Bill to include consent provisions for imported human tissue for use in medicines. Earlier this year, we amended the Health and Care Bill to prohibit the commercialism of organ tourism. They may be small steps, but internationally they were regarded as a visible sign of this country's concern and as significant. I hope that tonight the House will go one step further. A discretionary power is a modest ask of the Minister. I really hope that we can take one small step towards ending these abhorrent practices. I beg to move.

Lord Alton of Liverpool (CB): My Lords, as in Committee, the noble Lord, Lord Hunt of Kings Heath, has made a very eloquent, powerful and compelling case for supporting this modest Amendment 91. I am happy to be a signatory to this amendment again.

In Committee, the noble Lord and I, with the noble Baroness, Lady Northover, asked the Government about a hospital being built in China in connection with a British company. I thank the Minister for the parliamentary reply about that hospital, which she gave me on 29 November. But I am concerned to learn that the company involved, International Hospitals Group, has a continuing hospital partnership in the People's Republic of China.

I draw the House's attention to the words of the British Medical Association, which describes China as a country where there is

"evidence of medical involvement in the Chinese state's genocide against Uyghur people",

and the statement of the China Tribunal, chaired by Sir Geoffrey Nice KC, which describes the "significant scale" of enforced organ harvesting throughout China, all of which should surely encourage us to think very seriously about what more we can do, as we did on the Health and Care Bill, as the noble Lord, Lord Hunt, said. All of us who heard the arguments then went into the Lobbies to support him, and I hope that if it becomes necessary—which I hope it will not—we will do the same tonight.

I am also a signatory to Amendment 141, tabled by the noble Baroness, Lady Stroud. This is an argument, again, that we have had in previous legislation—again in the health Bill—about the use of slave labour in Xinjiang. I draw attention to my being vice-chairman of the All-Party Parliamentary Group on Uyghurs. It is an issue that I have raised again and again, and mentioned here again during debates on this Bill on Monday last. I will not try to curtain-raise for the noble Baroness—she is more than capable of doing that for herself.

My purpose, therefore, in rising, is to specifically draw attention to and speak to the cross-party Amendment 94, which is in my name and, not for the first time, in the name of my noble friend Lord Blencathra—to use a phrase the Minister used earlier on. I do so because the noble Lord, Lord Blencathra, is my noble friend in so many respects, and we have joined common forces. Old Chief Whips should stand together on such matters, and I am always pleased to be in the same Lobby as the noble Lord. I am pleased that the noble Lord, Lord Coaker, who has been so formidable, and the noble Lord, Lord Fox, who again has been formidable on these issues throughout, are also signatories to this amendment.

The amendment would require the Government to set out a timetable. In a way, we have already been given half a cake, and I want again to be grateful to the noble Baroness. She was able to say to me that she accepts the substance of our case, but what she has not been able to accept—I hope we will convince her to do so this evening—is that there should be a timetable determining when we will prevent further surveillance cameras entering the United Kingdom and being placed often in very sensitive positions, as I will describe. This amendment would remove them from the Government's procurement supply chain where there is established evidence that the supplier has been involved in modern slavery, genocide or crimes against humanity.

It is particularly topical, as we read reports today of the use of surveillance technology in arresting, imprisoning and re-educating protesters caught up in the wave of unrest in China. There are reports in British and American newspapers today about how surveillance technology—some of the very things we are debating in this amendment—has been used to arrest young people, who then have the whole of their personal histories seen through the devices that they own. Some of their friends have been arrested as a result of access to that information and been arraigned in police stations.

As a result of the hangover from the Government's so-called "golden era" of relations with the PRC, which the Prime Minister said in his Mansion House speech on Monday was over, we have allowed our surveillance and technology supply chain to be dominated by Chinese surveillance companies with credible links to the genocide taking place in the Uighur region. I am not using that word in a rhetorical way. It was a word used by the former Foreign Secretary and Prime Minister, Liz Truss; it was her word that "genocide" was under way in Xinjiang. It is a word that Secretary of State Blinken has used in describing events there, and many others have, too.

Both Hikvision and Dahua Technology, two of the companies in question, have been blacklisted in the USA for their links to the internment camps in Xinjiang and their role working hand-in-glove with the CCP to construct the largest authoritarian surveillance state,

which has surpassed even George Orwell's wildest dreams. There is little distinction between these Chinese technology companies and the state that they serve. They not only work on behalf of the PRC but receive generous state subsidies to do so, which allows them to undercut their rivals and dominate the domestic UK market.

It is therefore little surprise that the Chinese Ministry of Foreign Affairs has attacked any notion of the United Kingdom Government banning the use of Hikvision and Dahua cameras as "unreasonable suppression" of Chinese companies. I appreciate the engagement from Ministers on this topic, from the noble Baroness but also the noble Lord, Lord True, who met with me privately on this matter on a couple of occasions. During one of those meetings, we were told that there are now 1 million—I repeat, 1 million—Hikvision cameras in the United Kingdom alone.

The announcement last week, then, by the Chancellor of the Duchy of Lancaster that the Government are following the example of the Department of Health and Social Care in banning Hikvision cameras from sensitive areas and removing existing cameras from the network, which mirrors the action from the US that I have just referred to, and has just finalised a permanent ban on the sale and import of Hikvision and Dahua Technology cameras, is a welcome one. This is an issue which the noble Lord, Lord Clement-Jones, and I have raised on the Floor of the House in regret Motions, in months gone by and in previous debates.

Now that the Government have finally recognised the security and human rights concerns of having Hikvision and Dahua cameras in government departments, the question arises: will they commit to a plan for their removal from the public sector supply chain in its entirety? That is what the amendment is about. As the Government will note, successive freedom of information requests from IPVM, Big Brother Watch and Free Tibet, and Parliamentary Questions, have revealed that Hikvision and Dahua are deeply entrenched in our public sector supply chain. Local councils, NHS trusts, schools, prisons, jobcentres and our railway network all have Hikvision and Dahua cameras in their supply chain and their physical infrastructure.

Do we really want the prying eyes of an authoritarian state that has been accused of genocide, and which, as the Prime Minister, Rishi Sunak, said just last month, is the

"biggest state based threat to our economic security",

in our schools, hospitals, and local council buildings? Similarly, how can the Government justify public contracts and taxpayers' money going into companies where there are credible links of complicity in genocide and the internment camps in Xinjiang? This requires more than "robust pragmatism", whatever that may mean.

The Government urgently need to come forward with a strategy to remove Hikvision and Dahua Technology cameras from the whole of the procurement supply chain. In the words of the Biometrics and Surveillance Camera Commissioner, Fraser Sampson, whom I met last month, these cameras are built on "digital asbestos". We need a serious government-led plan for their removal. That might take several years. It is the same issue that we had to face with Huawei. We should also develop technology to mitigate the risks these cameras pose in the meantime. We can do that by looking at issues such as connectivity through software, which Canadians are developing at the present time, which might not require the physical removal of all cameras.

Such a plan could emulate a similar timetable that Ministers set out in the then Telecoms (Security) Bill—to which I moved amendments—for the removal of Huawei from the UK's 5G network. This would include setting a hard date to phase out and remove Hikvision and Dahua technology and hardware from the procurement supply chain; looking at provision and support that can be offered to cash-strapped local authorities to help with the removal; and considering following the USA in banning the sale and import of these cameras in the United Kingdom.

I welcome the leadership that Ministers have shown recently in banning the use of Hikvision and Dahua cameras in government departments, but I urge them to consider applying that same leadership to the rest of the procurement supply chain. The Government are no longer saying that they are unaware of the security and ethical concerns of using these cameras and they cannot wish away the existence of these cameras in the wider procurement supply chain. We need an urgent timetable and a plan to remove Hikvision and Dahua from the UK supply chain in its entirety. I hope the Minister will further consider accepting the entirety of this amendment so that such a timetable and plan will be put in place.

Baroness Stroud (Con): My Lords, I will speak to Amendment 141, which is in my name and those of the noble Lords, Lord Alton and Lord Coaker, and of the noble Baroness, Lady Smith, demonstrating cross-party support for it. I add my support to the other amendments in this group.

I also underline my gratitude to the Government and my noble friend the Minister for seriously engaging with the amendment over the summer. I know that we share a desire to mitigate the two key risk areas in public procurement that the amendment covers: first, the possible UK dependency on authoritarian states; and, secondly, the risk of modern slavery in government supply chains. I covered these areas in Committee, so I will keep my comments brief and seek to address any concerns that my noble friend might have raised.

To recap, proposed new subsection (1) would place a burden on the Secretary of State to create regulations that reduce public bodies' dependency on authoritarian states. As we know, there is no agreed definition of what constitutes an "authoritarian state" in UK law or regulation. Therefore, proposed new subsection (2) would adopt the categorisation contained in the integrated review of security, defence, development and foreign policy, allowing the legislation to adapt to contemporary geopolitical developments in line with the latest iteration of the review. The countries the amendment would currently apply to as "threats" are Iran, Russia and North Korea, and, as a "systemic competitor", China. As we have heard, this perspective on China was reiterated by the Prime Minister only this week.

6 pm

Proposed new subsection (3) sets out what must be included in the regulations. Questions raised by my noble friend the Minister in Committee and now

[Baroness Stroud]
included concern about whether this amendment would place an obligation on the Government not to procure from these nations. The answer is no. The amendment enables the Government first to identify where we are dependent on authoritarian regimes for key supplies; then to define acceptable levels of dependency across industries; and then to publish an annual review of dependency. It does not prohibit procurement from these nations.

The real question we should be asking is why, given all that we have experienced with Covid and Ukraine, we would not want to do this. With this information, the Government are then in a position to manage down risk to the British people in key sectors. Had Germany undertaken such an approach to its dependencies, it would never have allowed itself to develop such a dependency on Russia for energy. The entire amendment has been framed to give the Government regulation-making powers, meaning that they have the ability to ensure that there are no unintended consequences and to draft the regulations in line with the wider strategy for public procurement.

Another question raised by my noble friend the Minister was whether this would impact on our procurement flexibility. There is no evidence for this; rather there is clear international precedent for this proposed new clause. For example, the EU Commission staff working document *Strategic Dependencies and Capacities* provides mapping of EU dependencies in the most sensitive ecosystems and provides a range of policies that could be taken to address these issues. The United States also publishes a similar regular review.

The risks of economic dependency, however, are not the only relevant matters here. The second part of the amendment proposes new subsections (4) and (5), which address a separate issue: modern slavery in the supply chains of publicly procured goods. The presence of modern slavery in supply chains is clearly unacceptable. This has rightly been acknowledged by the Department of Health and Social Care, which has already taken steps in the Health and Care Act to eradicate from its supply chains goods "tainted"—a Department of Health word—by slavery.

Proposed new subsection (4) in this amendment adopts substantially the same language as Section 81 of the Health and Care Act, passed earlier this year. The requirement to bring regulations to, in the words of the Department of Health and Social Care, eradicate

"from all public contracts goods or services that are tainted by slavery"

now stands as part of that Act.

As things stand, when the Health and Care Act regulations are drawn up and passed, those procuring health equipment will have to apply different human rights standards from those procuring goods and services on behalf of other government departments. The main intention of this amendment is to align procurement standards across government so that the UK Government speak with one voice. It seems odd for us to be unwilling to procure goods from Xinjiang for the NHS but comfortable doing so for the Home Office. This is about correcting a loophole in the law and seems a matter of simple common sense.

From my conversation with the Minister, it would seem that Department of Health officials are already in conversation with Cabinet Office officials about how to draft these regulations to implement them for the Department of Health. This enables those same officials to work to draft regulations that would work for the whole of government.

I know the Minister has some concerns about aspects of this amendment and its potential chilling effect on business, but where this has been operationalised in, say, the US, it has not had such an impact. I will address the Minister's potential concerns, the thrust of which, if I understand them correctly, is that the amendment could increase the compliance burden on small and medium-sized businesses. We are not seeking to create extra burdens above and beyond what is necessary, but this amendment is about fine-tuning our existing system to bring it in line with best practice.

As I have stated, proposed new subsection (5)(a) to (c) focuses on ensuring that there is one consistent standard of regulation for modern slavery across government. Rationalising the standard so that the Department of Health and Social Care is not an outlier seems sound. The regulation-making powers lie in the hands of the Government to ensure that small businesses do not suffer.

Proposed new subsection (5)(d) requires businesses to know the sources of their products. Businesses that do not know the origins of the products they are selling, or their constituent parts, are unable to offer assurances about labour standards in their supply chain, but they also face major business barriers to guaranteeing supply and implementing product control and recall. This means that most businesses can map out their supply chain. Calling for transparency to ensure that we do not have modern slavery in supply chains is relatively uncontroversial.

Ultimately, the two risk areas of dependency and modern slavery cut to the heart of our character as a nation. We want to stand as a beacon for liberal democratic values around the world. To do this we need to ensure we retain the autonomy to act in line with our values by reducing our dependency on authoritarian states. We also need to ensure that we are living consistently within our values by ensuring that there is no modern slavery in our supply chains. The Department of Health and Social Care has shown the way. This amendment enables the rest of government to come into line.

Lord Blencathra (Con): My Lords, I rise to speak to the cross-party amendment in my name, alongside those of the noble Lords, Lord Alton, Lord Coaker and Lord Fox. I fully support the strong case that my noble friend Lord Alton has made regarding the links between Chinese surveillance camera suppliers Hikvision and Dahua Technology and the gross human rights violations taking place in Xinjiang. I congratulate my noble friend Lady Stroud on an excellent speech setting out all the answers to the questions the Government have posed as to why our amendment would not be acceptable. She made a compelling case.

I also congratulate my friend the noble Lord, Lord Alton, who, for the last few years, has been nibbling at the heels of government Ministers in every department

and moving these similar amendments dealing with genocide in Xinjiang province. We did it on the Trade Bill, the NHS procurement Bill, an education Bill and others. Of course, in some cases there had to be a compromise amendment in the Commons. Eventually, a few months later, the Government would then announce their own initiative going partly along the road the noble Lord suggested. I care to bet that even if we lose the vote in this House tonight, or if we win tonight but it is removed in the Commons, in six months the Government will come along and suggest something partly along the lines of his amendment.

Rather than go over his arguments again, I will use my remarks to discuss the security concerns regarding the prolific use of Hikvision and Dahua cameras in the UK procurement supply chain. Those concerns are not isolated. Our closest partners—real strategic partners, including the USA, Australia and the EU—have expressed their own worries about the use of Chinese technology suppliers, particularly in sensitive areas such as government buildings and the European Parliament.

The USA has taken swift and strict action to blacklist the sale and import of Hikvision and Dahua cameras, has ordered their removal from government buildings and is actively considering placing them on a sanctions list, which would have a substantial impact on the ability of the companies to operate worldwide. The US Department of Homeland Security warned as early as 2017 about the potential for a back door into Hikvision camera software that it deemed "remotely exploitable"—a view subsequently backed up by security researchers, who warned in September 2021 that Hikvision cameras have the

"highest level of critical vulnerability".

As the noble Lord, Lord Alton, mentioned, the Government's own Biometrics and Surveillance Camera Commissioner, Professor Fraser Sampson, has repeatedly warned us that Hikvision and Dahua cannot be trusted as procurement suppliers. Not only have they refused his requests to publish further information about legitimate human rights and security concerns, but Professor Sampson rightly points out that we require considerable caution when it comes to involving foreign suppliers of surveillance technology.

After all, Hikvision and Dahua cannot be considered to be anything like normal private business companies operating in a free-market economy. Both not only receive generous subsidies from the Chinese state but under Article 7 of China's national intelligence law they are expected to work hand in glove with the state. This law requires that:

"Any organisation and citizen shall, in accordance with the law, support, provide assistance, and cooperate in national intelligence work, and guard the secrecy of any national intelligence work that they are aware of."

That is the obligation on Hikvision and Dahua. In effect, these companies are not only required by China's national intelligence law to help assist with national intelligence work, but they are bound to secrecy not to reveal the extent of their collaboration with Chinese intelligence services.

I fully welcome the announcement last week by the Chancellor of the Duchy of Lancaster that he has instructed government departments to remove Hikvision and Dahua technology cameras from sensitive areas

"in the light of the threat to the UK".

Now that the Government have admitted the security threat posed by these companies' cameras in government departments, I hope that Ministers will be honest about the threat they pose to our procurement supply chain generally.

After all, how can it be consistent for the Government to direct departments to remove these cameras on security grounds but not offer similar guidance and a timetable for local authorities, NHS trusts, schools, our transport network and all other vital infrastructure to follow suit? Surely, the threat of authoritarian state-sponsored snooping from a Government many consider to be a systemic threat, alongside Russia, requires swift action.

The cross-party amendment in my name and that of other noble Lords would give Ministers a mandate to publish a timetable for the removal of Hikvision and Dahua cameras and technology from the whole procurement supply chain. It would allow the Government to consider a timetable similar to the one we currently have in place for the removal of Huawei from our 5G telecommunications network, and it would signal to the public at large that the Government take the security threat posed by Chinese technology companies very seriously indeed.

I fully support what the Prime Minister said in his speech on Monday evening. He said that the

"so-called golden era is over"

with the PRC and that the UK must focus on dramatically improving our national resilience and economic security. In my opinion, there never was a golden era, at least, not for the UK. But, of course, China had one—a massive trade surplus, infiltration and theft of our commercial secrets on a massive scale, our political and business elites kowtowing to any Chinese demands and our universities grubbing for Chinese money at the expense of freedom for their students.

In January 2021, the Foreign Office in a Written Answer to me called China a "strategic partner". Can you believe it: China called a strategic partner by the Foreign Office, in the same category as the US and our loyal NATO allies? Perhaps that is all I have come to expect of the Foreign Office. While I acknowledge the speech of my right honourable friend the Prime Minister in part, perhaps the Foreign Office has struck again and inserted those words—that China will be treated with "robust pragmatism". What on earth does that weaselly phrase mean? My noble friend the Minister—the Lady in red—with her tremendous intellect will no doubt be able to give us a definition. In fact, I reckon she could probably give us 10 different definitions of "robust pragmatism". But let me give you mine. The pragmatic part is that we will continue buying billions of pounds-worth of goods from China because it is cheaper, more convenient and easier than starting to onshore them. The robust bit is that we will criticise them a bit when we hand over the cheque: "Naughty, naughty Communist Party of China. We deplore some of the things you are doing in parts of China." Of course, we will not mention what is really happening—slavery and genocide—because that would be too robust.

In conclusion, let us implement the Government's new policy on China tonight. Let us be robust and pragmatic, pass this new clause and start with a

[LORD BLENCATHRA]
commitment from the Government to remove Hikvision and Dahua cameras from the whole of the UK procurement supply chain. It is the only way to give credibility to the Prime Minister's speech on Monday night.

6.15 pm

Lord Fox (LD): My Lords, as other speakers have alluded to, we have been in this place before, but the things we hear are no less shocking or important for us to debate. I am speaking to Amendments 91, 95 and 141 and, as stated, my name is on Amendment 94.

It is worth thinking about how we got to where we are, as alluded to by the noble Lord, Lord Blencathra, in his stirring speech: we bought on price. We ended up with Huawei because we bought on price and eroded our own switchgear industry. On the point made by the noble Baroness, Lady Stroud, about resilience in our supply chain, we narrowed our options by simply buying on price.

The point of the amendments, whether together, separately or blended, is to put values into the purchasing process as well as price. All the way through the debate, in different ways, the purpose of what we have heard from colleagues is to put values into what we do. Public purchasing is not just about price; it is about extending the values of this country across what we do. Unless we are doing that, we are spending the money badly. We may be spending it cheaply in the short term but it becomes very expensive in the long term, not necessarily for the citizens of this country but for those of the country from which we purchase. That is why I am supporting the amendments.

I have some technical observations. We have talked about potential back doors in technology. During the early days when the Government were trying to make Huawei work, there was a group of people—in Banbury, I think—who spent their time looking closely at Huawei's technology in order to determine how dangerous or otherwise it was to the UK. If they are not still there, we need that group of people doing that not just with surveillance cameras but with network routers and all the other technology that supports networks in everyone's homes in this country. We need to have a strong feeling of the security danger right across our information networks. The people who were doing that originally should be reformed. I understand that they are not the Minister's group and that they probably come under the Home Office or indeed DCMS, but I hope she can carry that message from here.

To respond to the first part of the amendment by the noble Baroness, Lady Stroud, on supply chain resilience, the Bill will provide a very good database from which to do the sort of analysis she is talking about, so that we can determine just how resilient the supply chain is. How dependent are we on two or three suppliers? I hope, whether or not the noble Baroness's amendment is accepted or voted through, that that is what the Government are doing. Are the Government going to use that sort of information, which will be much more readily available from the digital platform, to understand our resilience or otherwise? If they are, where in government will that be done and by whom, and who will be accountable for doing it? We will have the means to do it, whereas before it was almost impossible without a tremendous amount of work to establish who was buying what from where. Now we will have that information to hand.

These are three really important amendments. If their proposers choose to move them, we on these Benches will certainly support them.

Lord Coaker (Lab): My Lords, often in this House there are important occasions when there are really good debates. On this set of amendments, we have heard some brilliant speeches from all who have spoken: the noble Baroness, Lady Stroud, the noble Lords, Lord Blencathra, Lord Alton and Lord Fox, and my noble friend Lord Hunt. Why have these speeches been so good? Because, as the noble Lords, Lord Fox and Lord Blencathra, have just said, this is the chance for this Chamber to put in the Bill the procurement policies we want this country and this Government to pursue. It is a chance, through those policies, to stand up for what we regard as the international values that are important to us. That is why it is important that it goes into the Bill.

We have had this debate all the way through considering the Bill—at Second Reading, in Committee and now on Report. Time and again, we have said it is important that this country stands up and says, "This is what we think the £300 billion or so we spend on procurement should do to bring about the sort of community we want", not only domestically but internationally. That is why it is so important. Each noble Lord who has spoken has been so inspiring, because they are speaking from the heart.

The Minister will not disagree with many of the values that have been stated. The disagreement comes in our wanting to see them in the Bill, so that it makes a statement of intent for our country. The noble Baroness, Lady Stroud, said of her Amendment 141, to which I am pleased to have put my name, that the Government are concerned about it having a chilling effect. I hope it does have a chilling effect on those who seek to use procurement to deliver policies and values that we do not support, as it is quite astonishing.

I will spend a couple of minutes on my noble friend Lord Hunt's Amendment 91. I know we want to get to a vote, but sometimes it is worth stating what is important in this great democratic Chamber. Let me read out what he wants to be in the Bill through his proposed new sub-paragraph (2), which I fully support. Why would we not state, regarding procurement, that forced organ harvesting—this is what we seek to oppose; the amendment also mentions human tissue—

> "means killing a person without their consent so that their organs may be removed and transplanted into another person"?

I understand that thousands of occurrences of such organ harvesting are alleged to have taken place. Nobody in this House is in favour of that, but my noble friend Lord Hunt's amendment says that that should be in the Bill as a statement of what we want our procurement to achieve. I fully support my noble friend, who deserves the thanks of the House for bringing forward that amendment, which is supported by many others, including my noble friend Lady Hayman and the noble Baroness, Lady Northover.

The same is true of the amendment from the noble Baroness, Lady Stroud, against modern slavery. Nobody here is in favour of modern slavery or human trafficking, but we know that procurement policy should seek that objective. It should be laid out and pursued as something we stand up for, as an international example to countries across the world. That is inspiring. It is worthwhile and important for us to do. The Government will say that it is unnecessary—"Of course we are against modern slavery and human trafficking"—but I say we should put it in the Bill as this amendment, along with others, would do.

The noble Lord, Lord Blencathra, gave a fantastic speech. He got excited and emotional; sometimes we should do that—with logic, which is extremely important—and wake up to these things. Sometimes we need to get emotional. The sorts of policies and decisions that we debate in this Chamber affect millions of people in our country but hundreds of millions across the world. They are worth getting emotional and upset about, because they make a difference. It is not playing tennis on a Sunday; it is about international law and what makes a difference to huge numbers of people's lives.

As the noble Lord, Lord Blencathra, said, the Government themselves have said that there is concern about the security of the country in relation to the use of these surveillance cameras, which the noble Lord, Lord Alton, mentioned. The Government say that government departments should not use Hikvision or Dahua cameras and take them out, so they admit that there is a security risk and say that something should be done about it. But, as the noble Lord, Lord Blencathra, said, what about all the other cameras within local authorities, such as street cameras and cameras in hospitals? Do they not pose a security risk? If they do in a government department, I cannot see why they do not when they are outside one but happen to be run by Westminster council. This is ludicrous and illogical, and the Government need to take account of it.

That is why Amendment 94 of the noble Lord, Lord Alton, is so important. It says that we need a timeline to ensure

"the removal of physical technology … from the Government's procurement supply chain"

because this will tackle modern slavery, genocide and crimes against humanity. Everybody in your Lordships' House agrees with that; no one is opposed it. The Government will say that it is unnecessary and we do not have to do this because they will, of course, have no procurement policy that does not take all these things into account.

We will certainly support my noble friend Lord Hunt, should he push his amendment to a vote, as well as the noble Lord, Lord Alton—we will see where we get to with others. But the difference between us and the Government is that sometimes you need to say what you mean. Legislatively, we should say that we, as a UK Government and Parliament, believe these things are so important that they should be put in the Bill, that we hold to these international values, and that we will set an example for other countries to do the same and that our procurement policy will reflect this. That is our opportunity in these votes.

Baroness Neville-Rolfe (Con): My Lords, I am grateful for the debate on this issue, and I hope that the House will forgive me if I take a little time to address the important matters that have been raised. As always, there has been much emotion, and there have been some strong speeches, for which I am grateful. However, I need to take the House back to the Bill.

On Amendment 91, tabled by the noble Lord, Lord Hunt, and the noble Baroness, Lady Northover, on forced organ harvesting, I pay tribute, as I have done before, to the tenacity with which the noble Lord has pursued this important issue. It is right that this abhorrent practice is exposed and confronted. The Government have taken action, both at home and abroad, to make clear that complicity in the abuses associated with the overseas organ trade will not be tolerated. As the noble Lord said, the Health and Care Act made it an offence to travel outside the UK to purchase an organ, and the Government have urged the World Health Organization to consider the findings of the China Tribunal on organ harvesting. I confirm to the noble Lord, Lord Alton, that the hospital he referred to in China will not carry out organ transplants. Moreover, it did not receive any government funding.

However, I am afraid it remains the case that the Procurement Bill is not the right place to take action on this issue. Every exclusion ground, whether mandatory or discretionary, must be considered for every supplier on every procurement—that is thousands of contracts every year. Each additional ground will add a burden for contracting authorities that, however marginal, will add up to a significant amount of time and money overall. I am reminded of my noble friend Lord Maude's comments on Monday about the risk of trying to include too many wider public policy objectives in the Bill. If we add this, what else do we need to add? This is why I have sought to limit the grounds, particularly those that, like this one, require an assessment of factual circumstances, to those where there is a major and particular risk to public procurement. I am not aware of any evidence that any supplier to the UK public sector has been involved in forced organ harvesting.

Moreover, the scope of the proposed exclusion ground is very broad, covering not just organ harvesting but also any

"unethical activities relating to human tissue".

The third limb of the amendment permits exclusion simply for

"dealing in any device or equipment or services relating to conduct"

covered by the first two limbs. This would seem to extend so broadly as to cover even the use of ordinary surgical equipment, where the supplier might have had no prior knowledge that it was previously used for the prohibited purposes. For these reasons, I am concerned that this ground would be extremely difficult for contracting authorities to apply in practice. While I sympathise with the noble Lord, Lord Hunt, I cannot see a way of including organ harvesting in the Bill, although I am glad that we have focused on it this evening.

6.30 pm

I turn now to Amendments 94 and 95 tabled by the noble Lord, Lord Alton. In response to his comments on the situation in Xinjiang, I say that of course the Government are concerned about the widespread use

[Baroness Neville-Rolfe]
of invasive and systematic surveillance there that disproportionately targets Uighurs and other minorities. In line with the Prime Minister's speech on Monday, which has been much referenced, the UK has led international efforts to hold China to account for its human rights violations in Xinjiang. We have imposed sanctions, provided guidance to businesses, announced measures to tackle forced labour, and led statements at the United Nations. The Government have spoken out publicly, and will continue to do so.

I am glad there has been a warm welcome for last week's announcement in relation to the use of Chinese surveillance equipment on the government estate. This is a significant step; all government departments will be expected to remove such equipment from sensitive sites, and to avoid procuring it in future. I confirm that this applies to both Hikvision and Dahua. This is a clear demonstration that the Government are prepared to act to protect the integrity of our security arrangements. We recognise that action taken should be proportionate to the risk. We encourage all organisations to follow national cybersecurity guidance when selecting a technology supplier, and this guidance clearly sets the security standards that suppliers should meet and the considerations that organisations should be making during the procurement process. We will continue to keep this risk under review and will take further steps if they become necessary.

In addition, we have taken action in the Bill to introduce an exclusion ground for suppliers that are considered to pose a threat to the national security of the UK. Combined with the new powers for a centralised debarment list, this will mean that where the risk is sufficiently serious, Ministers can act quickly to ensure that suppliers who threaten national security face exclusion from all contracts across the public sector. We have shown our determination only last week, as I said, and the Bill strengthens our powers in this space.

I turn now to what Amendment 94 actually does. In mandating a timeline for the removal of existing physical technology or surveillance equipment from the Government's supply chain, the amendment seeks to interfere directly with security arrangements on the government estate. I am afraid this is out of step with the Bill, which is principally about setting rules for the fair and open procurement of contracts by the entire public sector. The Bill is not concerned with existing equipment or kit which has already been installed, or with the termination of existing contracts by central government. On that basis, while I sympathise with the points made by noble Lords, and will ensure they are shared more broadly, I believe that we are taking the right approach in the Bill and I am very uneasy about this amendment.

I turn now to Amendment 95 on product labelling; there has not been much discussion of it.

Lord Alton of Liverpool (CB): My Lords, if it is helpful to the noble Baroness, I say that, because of the time and because we did have a preliminary debate about this in Committee, it would not be my intention to test the opinion of the House on Amendment 95. I am quite happy for her to write to me with any remarks that she might have liked to have made.

Baroness Neville-Rolfe (Con): I think that would be extremely helpful. I am grateful to the noble Lord.

I turn finally to Amendment 141 tabled by my noble friend Lady Stroud and others. I am grateful to her for tabling it and for the debate today. The amendment covers two distinct issues: supply chain resilience and modern slavery. I congratulate her and others on all they have done in recent years to promote awareness and encourage change on these important issues—a great deal has changed in the last 15 years. I am also grateful to her for a very useful meeting on the amendment, to help me understand how it might work in practice. While I admire her campaigning on modern slavery, discussion revealed the impracticality of some of the details of her amendment, as I shall try to explain.

The Government have publicly stated the importance of strong and resilient supply chains to our economic and national security. The Ukraine war and the shortages and economic challenges it has precipitated have really brought that home, and the decision announced last week in relation to ownership of the Newport microchip plant demonstrates how seriously these issues are being taken. As the noble Lord, Lord Fox, said, our plan for transparency and the new online platform will help us to assess the risk. Through our trade agreements and market access work, we support British businesses and contracting authorities to build more diverse and resilient supply chains.

Supply chain resilience considerations are now embedded in the work of every government department. A global supply chains directorate has also been established in the Department for International Trade to strengthen the supply of critical goods to the UK. I will be happy to facilitate a meeting with the Minister responsible, so that my noble friend can bring her knowledge and challenge to that important work: I believe that would be helpful in progressing matters, having spoken to her about these issues. Strong and resilient supply chains have a diverse base, which relies on an effective trading system. I know this from my own practical experience of diversifying retail supply from China to Vietnam, Bangladesh and Ethiopia. As far as possible, this means promoting a market-led approach to supply chain resilience and encouraging a range of import sources.

From time to time, there can be a crisis or an issue, such as modern slavery, in any market and with almost any supplier, so we need options. The appropriate proportion of supply from an overseas market can go up or down, but the proposal in the amendment to set dependency thresholds across all categories of public procurement would be a major exercise and a market-distorting measure.

While I welcome recent trends towards western manufacturing in certain strategic industries, such as battery technology, the UK continues to trade with China to support British jobs and growth in non-strategic areas and keep inflation down—which noble Lords do not seem to be worrying about—but I emphasise that we will uphold our values and ensure that our national security, freedom and democracy are protected as we work with allies to hold China to its international commitments.

Lord Alton of Liverpool (CB): Before the noble Baroness leaves that point, it is important to put on the record that we currently have a trade deficit with the People's Republic of China of £40 billion. Dependency, resilience, and the destruction of our own manufacturing base because we are outcompeted through the use of slave labour and goods that are priced much more cheaply than people on a living wage can produce in the United Kingdom—these are issues that the Government need to take rather more seriously than she has just done.

Baroness Neville-Rolfe (Con): I do take these issues seriously and I commented on diversification, which I have personally been involved in. It is because there is a large amount of trade with China that this cannot be changed overnight—and there might not be a case to do so in non-strategic areas. Inflation is very important and the opening up of Asia has historically been helpful in this country. The Prime Minister said in his speech that we must be realistic and clear about China, but that obviously does not mean we should abandon our values.

It goes without saying that practices such as slavery and human trafficking have no place in government supply chains. We have shown our determination to address modern slavery in many ways, including in the Bill. I draw my noble friend's attention to the fact that under Clause 27, contracting authorities must ask suppliers to provide details of their intended supply chain for the contract. Authorities can consider whether a subcontractor is subject to a ground for exclusion such as modern slavery. If they conclude that this is the case and that it has failed to self-clean, the lead supplier itself is liable to be excluded from the procurement if it does not take the opportunity to remove the subcontractor from its supply chain. However, we must recognise the complexity of the issue.

My noble friend's amendment says that

"The Secretary of State must … make provision"

in procurements and contracts to eradicate slavery and human trafficking, and that this is to be done by secondary legislation, but I fear that the amendment fails to reflect the sheer complexity of the matter. Regulations cannot specify precisely which award criteria might be appropriate to address the risk of slavery and human trafficking in every different procurement: this depends on the nature of the particular contract being tendered, including what is being purchased and the likely nature and location of supply chains. The right vehicle to help contracting authorities address slavery and human trafficking risks is in guidance, and there is already comprehensive guidance setting out the action that departments must take. This is 46 pages long and includes sections on managing risks in new procurements, assessing existing contracts, taking action when victims of modern slavery are identified, supply chain mapping, useful tools, training and questions to ask.

My noble friend will know that I have committed to put the matters addressed in the guidance on a statutory footing as part of the national procurement policy statement, provided for under Clause 12 of the Bill. This would mean that all contracted authorities would have to have regard to that guidance, which I think the noble Baroness can see is a significant step forward.

Finally, I note that the draft provisions in the amendment go significantly beyond the language in the Health and Care Act with which it was my noble friend's stated intention to bring the Bill into alignment. Amendment 141 also creates a strong expectation that the Minister will make regulations, and that they will cover the matters referred to in the amendment, so it is effectively a must.

I know that people are looking forward to getting to the end of this debate, so I will not go through the problems with proposed new subsection (5)(d) to (f), but I will ask noble Lords to note that this will be burdensome to contracting authorities as well as small businesses. I know that my noble friend does not much care about the latter, but there might be wider concern about the gumming-up of contracting authorities in this matter when we have already made arrangements in the Bill to give modern slavery much more focus, and have added that to the relevant schedules.

We believe that proposed new subsection (5)(f), for example, is disproportionate and contrary to the open principles of our procurement regime, as well as to the interests of efficiency, value for money and common sense. Moreover, countries and regions that pose risks change over time, and that is another reason to use guidance, and not this Bill, on this matter.

Finally, I say to my noble friend Lord Blencathra that we should remember that the new regime will give broader exclusion powers to contracting authorities—he referenced Huawei—which will have primary responsibility for applying the exclusions regime.

In closing, I respectfully ask the noble Lord, Lord Hunt, to withdraw his amendment, but I emphasise the progress that this Bill has made, and I therefore find some of the comments on this group a little disappointing.

Lord Scriven (LD): Just before the Minister sits down, so we understand, because some may want to press this to a Division, I ask: what would the Government's intent be if this Bill was to pass with a debarment list, particularly with regard to companies that the Government no longer wish to deploy their surveillance equipment in the UK? Would such companies go on the debarment list, or would it just be down to guidance to determine whether such equipment is purchased by non-central government bodies?

Baroness Neville-Rolfe (Con): If the noble Lord looks at Schedule 6, which is the criteria for the debarment list, he will see that it includes modern slavery and security, so there is no reason why those could not be used in an appropriate way. I hope that helps.

Lord Scriven (LD): My question was: is it the Government's intention to use the debarment list for these types of companies, or is it still going to be down to guidance?

Baroness Neville-Rolfe (Con): They are mandatory grounds for exclusion, so if you find that you have a security issue—as we obviously found in relation to Hikvision—those become mandatory exclusions. On modern slavery, again, they are mandatory exclusions.

[Baroness Neville-Rolfe]
Clearly, if a company is able to self-clean and has shown that it has changed the arrangements, it will not necessarily stay on the debarment list. I do not want to mislead the noble Lord.

Lord Hunt of Kings Heath (Lab): My Lords, this excellent debate has been both moving and profound, because it has dealt with horrific human rights abuses in China but has also attempted to develop an argument about our strategic relationship with that nation.

The Minister said that she was disappointed by some of the remarks. She gave us a full reply, which I am very grateful for, but I too was rather disappointed by her response. Essentially, she said that our concerns are legitimate but that this Bill is not the right place for them to be expressed. But, as the noble Lord, Lord Fox, and my noble friend Lord Coaker both suggested, this is a Procurement Bill, setting the regime for government procurement for a number of years ahead. Where better to place values—not just the issue of the lowest common denominator price—than in this Bill, which sets the parameters under which billions of pounds are going to be spent by government and government agencies over the next decade?

The arguments that the Minister put forward were technical, and the Government could have come back and tabled their own amendments, which might have met the technical issues she faces. However, ultimately, the Government have set their face against expressing some profound values in this legislation, but I think that we should do so. I would like to test the opinion of the House on Amendment 91.

6.46 pm

Division on Amendment 91

Contents 191; Not-Contents 169.

Amendment 91 agreed.

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6.58 pm

Amendment 91A not moved.

Amendments 92 and 93

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

92: Schedule 7, page 107, line 20, at end insert—

"(da) paragraph 13(4) (adverse information about supplier published by contracting authority), where the information is published in relation to a breach of contract;"

Member's explanatory statement

This amendment would ensure that the discretionary exclusion ground in paragraph 13(4) (publishing of adverse information) is reflected in paragraph 16(3), so far as that ground is triggered by the publishing of information in relation to a breach of contract by a supplier.

93: Schedule 7, page 107, line 28, at end insert—

"(ca) paragraph 13(4) (adverse information about supplier published by contracting authority), where the information is not published in relation to a breach of contract;"

Member's explanatory statement

This amendment would ensure that the discretionary exclusion ground in paragraph 13(4) (publishing of adverse information) is reflected in paragraph 16(4), so far as that ground is not triggered by the publishing of information in relation to a breach of contract by a supplier.

Amendments 92 and 93 agreed.

Amendment 94

Moved by ***Lord Alton of Liverpool***

94: After Clause 61, insert the following new Clause—

"Timeline for removal of suppliers

(1) Within 6 months of the passing of this Act, the Secretary of State must publish a timeline for the removal of physical technology or surveillance equipment from the Government's procurement supply chain where the Secretary of State is satisfied there is established evidence that a provider has been involved in—

(a) modern slavery,

(b) genocide, or

(c) crimes against humanity.

(2) The Secretary of State must lay the timeline before Parliament."

Lord Alton of Liverpool (CB): My Lords, I would like to test the opinion of the House.

6.59 pm

Division on Amendment 94

Contents 178; Not-Contents 158.

Amendment 94 agreed.

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Taylor of Holbeach, L.
True, L.
Tugendhat, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Warsi, B.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wrottesley, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

7.10 pm

Amendments 95 to 97 not moved.

Clause 63: Implied payment terms in public contracts

Amendments 98 and 99

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

98: Clause 63, page 42, line 27, leave out from "by" to end of line 28 and insert "a school"

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted by the Government amendment to clause 114.

99: Clause 63, page 43, line 16, leave out subsection (11)

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted by the Government amendment to clause 114.

Amendments 98 and 99 agreed.

Clause 64: Payments compliance notices

Amendment 100

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

100: Clause 64, page 44, line 8, at end insert "or in relation to a public contract awarded by a school"

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted by the Government amendment to clause 114.

Amendment 100 agreed.

Clause 65: Information about payments under public contracts

Amendment 101

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

101: Clause 65, page 44, line 21, leave out from "by" to end of line 22 and insert "a school,

(d) awarded by a transferred Northern Ireland authority, unless it is awarded as part of a procurement under a reserved procurement arrangement or devolved Welsh procurement arrangement, or

(e) awarded as part of a procurement under a transferred Northern Ireland procurement arrangement."

Member's explanatory statement

This amendment would exclude transferred Northern Ireland authorities and procurements by a school (as defined in the Government amendments to clause 114) from the duty to publish information under this clause.

Amendment 101 agreed.

Clause 68: Implied payment terms in sub-contracts

Amendment 102

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

102: Clause 68, page 46, line 22, leave out from "by" to end of line 23 and insert "a school"

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted by the Government amendment to clause 114.

Amendment 102 agreed.

Clause 70: Contract change notices

Amendment 103

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

103: Clause 70, page 48, line 12, after "awarded" insert "as part of a procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendment 103 agreed.

Clause 72: Publication of modifications

Amendment 104

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

104: Clause 72, page 48, line 29, leave out "£2" and insert "£5"

Member's explanatory statement

This amendment would mean that a contracting authority is only required to publish a modification of a public contract if the contract's value is (or becomes as a result of the modification) more than £5 million.

Amendment 104 agreed.

Amendment 105 not moved.

Amendments 106 and 107

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

106: Clause 72, page 48, line 35, after "awarded" insert "as part of a procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

107: Clause 72, page 48, line 37, after "awarded" insert "as part of a procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendments 106 and 107 agreed.

Clause 74: Terminating public contracts: national security

Amendments 108 and 109

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

108: Clause 74, page 50, line 25, before "contracting" insert "relevant"

Member's explanatory statement

This amendment and the other Government amendment to this clause would ensure that the House authorities are not required to seek the approval of a Minister of the Crown to terminate a contract with a supplier on the basis of national security.

109: Clause 74, page 50, line 32, at end insert—

"(2) In this section, a "relevant contracting authority" means a contracting authority other than—

(a) a Minister of the Crown or a government department,

(b) the Corporate Officer of the House of Commons, or

(c) the Corporate Officer of the House of Lords."

Member's explanatory statement

This amendment and the other Government amendment to this clause would ensure that the House authorities are not required to seek the approval of a Minister of the Crown to terminate a contract with a supplier on the basis of national security.

Amendments 108 and 109 agreed.

Clause 76: Conflicts of interest: duty to identify

Amendments 110 to 112

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

110: Clause 76, page 51, line 10, after "a" insert "covered"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

111: Clause 76, page 51, line 13, after second "a" insert "covered"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

112: Clause 76, page 51, line 19, after "a" insert "covered"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendments 110 to 112 agreed.

Amendment 113 not moved.

Clause 77: Conflicts of interest: duty to mitigate

Amendment 114

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

114: Clause 77, page 51, line 34, after "a" insert "covered"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendment 114 agreed.

Clause 78: Conflicts assessments

Amendments 115 and 116

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

115: Clause 78, page 52, line 12, after second "a" insert "covered"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

116: Clause 78, page 52, line 23, leave out "might" and insert "it considers are likely to"

Member's explanatory statement

This amendment would mean that the obligation to publish information about mitigating perceived conflicts of interest applies only in respect of those the contracting authority considers are likely to arise.

Amendments 115 and 116 agreed.

Clause 79: Regulated below-threshold contracts

Amendments 117 to 121

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

117: Clause 79, page 53, line 26, leave out paragraph (a)

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted by the Government amendment to clause 114.

118: Clause 79, page 53, line 28, leave out "the award of a contract" and insert "procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

119: Clause 79, page 53, line 28, at end insert—

"(ai) by a school,"

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted by the Government amendment to clause 114.

120: Clause 79, page 53, line 29, leave out "unless it is awarded" and insert "other than procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

121: Clause 79, page 53, line 34, leave out paragraph (c)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendments 117 to 121 agreed.

Amendment 122

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

122: After Clause 80, insert the following new Clause—

"Regulated below-threshold contracts: duty to consider small and medium-sized enterprises

(1) Before inviting the submission of tenders in relation to the award of a regulated below-threshold contract, a contracting authority must—

(a) have regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract, and

(b) consider whether such barriers can be removed or reduced.

(2) Subsection (1) does not apply in relation to the award of a contract in accordance with a framework."

Member's explanatory statement

This new Clause would require a contracting authority, before inviting the submission of tenders for a regulated below-threshold contract (other than under a framework), to have regard to the particular barriers to competing for a contract that small and medium-sized enterprises may have, and remove or reduce them where possible.

Amendment 123 (to Amendment 122) not moved.

Amendment 122 agreed.

Clause 83: Treaty state suppliers

Amendments 124 and 125

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

124: Clause 83, page 56, line 8, leave out ", below-threshold procurement or international organisation procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1 - there, "procurement" includes below-threshold procurement and international organisation procurement.

125: Clause 83, page 56, line 22, leave out paragraphs (a) and (b)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1 - there, "procurement" includes below-threshold procurement and international organisation procurement.

Amendments 124 and 125 agreed.

Clause 84: Treaty state suppliers: non-discrimination

Amendment 126

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

126: Clause 84, page 57, line 2, leave out from "procurement" to end of line 3

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendment 126 agreed.

Amendment 127

Moved by ***Lord Fox***

127: Clause 84, page 57, line 13, at end insert—

"(3A) A contracting authority does not discriminate if it takes into account environmental, social and labour considerations and indicates in the notice of intended procurement or tender documentation how such considerations are defined."

Member's explanatory statement

This amendment allows a contracting authority to take into account environmental, social and labour conditions where a treaty state supplier may be a supplier for a procurement.

Lord Fox (LD): My Lords, I rise to move Amendment 127 on behalf of my noble friend Lord Purvis, who is unfortunately unable to come today due to other constraints. My noble friend wanted me to thank the Minister and her officials for the meetings that they have had, which he found helpful but, needless to say, some questions lingered. I will go through those questions and I hope that, from the Dispatch Box, the Minister will be able to satisfy me in lieu of my noble friend. Perhaps she is lucky that he is somewhere else and I am here.

First, if there was an agreement on a specific need for social, labour and environmental conditions, as long as they are non-discriminatory, in the Australia agreement, why can this not be common across the Bill to make it clear that authorities can write these factors into programmes? Secondly, if we have signed what we signed with Australia—which we have—can we do the same with all other treaty suppliers in the schedule, even if it is not stated in the respective treaties? In other words, there is a carryover to the treaty suppliers in the schedules. We believe that officials have suggested that this is the case, but can the Minister clarify this point?

As so much of our procurement is with the EU, would it not be better if we worked harder to get the same language in our regulations as it has in its regulations, where it does not compromise the Government's principles, so that procuring bodies have a simple and straightforward approach to this?

7.15 pm

My final point comes back to an earlier one: how much time and effort has the department anticipated for each procurement body to have to familiarise itself with each schedule arrangement in each trade agreement? At the moment, each procuring authority will need to check each of the treaty sections on procurement, whereas in the past it was simple and all compiled inside the EU scheme. I do not think we are convinced that it was all GPA anyway, as much as officials have said so; there are deviations. The Minister talks about impediments and blocking up the system. This could well be an inadvertent blocking of the system that the Minister might like to address. I beg to move.

Lord Lansley (Con): My Lords, I am glad to follow the noble Lord, Lord Fox, who has asked some interesting questions to which I will be interested to hear the answers. I suspect the answer is that if a contracting authority has a requirement and sets out various specifications in its award criteria, it would be able to carry on as long as it does not discriminate between potential suppliers from other treaty states.

Lord Fox (LD): With respect, I am not sure that Pepper v Hart works for the noble Lord saying that. We are looking to see what the Minister has to say on this. The noble Lord is very kindly helping on that.

Lord Lansley (Con): Anyway, I am on my feet not to try to answer the noble Lord's question but to explain Amendment 167. Those present in Committee will recall that debate. There was some degree of uncertainty. Again, I appreciate my noble friend's time and attention on the issue in the conversations we have had about it.

[Lord Lansley]

I will just explain the amendment's purpose. Under Section 8 and Schedule 9, there is a process for the future whereby procurement-related chapters in future free trade agreements can be added to the Schedule 9 list and, by extension, give access to UK public procurement opportunities by statutory instrument. I agree with that. Because the Bill will achieve that effect, in the Government's view it can repeal the Trade (Australia and New Zealand) Bill, because the purpose of that Bill is to bring into effect the procurement chapters of the Australia and New Zealand free trade agreements. That will no longer be necessary once this Bill has added them to Schedule 9 and it comes into force.

There are two issues. The first is timing. It was clearly the Government's expectation that the Trade (Australia and New Zealand) Bill would have proceeded more rapidly through the other place—that it would be here and be concluded well before this Bill completes its passage into law, and that the sequencing would therefore work very straightforwardly. That might still be true, although the Trade (Australia and New Zealand) Bill completed Committee in the other place but has not yet been timetabled for Report. It is going more slowly than was originally intended. As I think noble Lords said in our debate on Monday, perhaps the Minister could attempt to explain the delays in the legislative process. Oh no, it was at Questions: my noble friend Lord Markham was not at liberty to explain the delays in the Government's legislative programme, which was very sensible on his part. We cannot be sure that the Bills will be that way round but, in any case, it is more likely that the Trade (Australia and New Zealand) Bill will proceed before this Bill completes its passage. Let us hope that is the case.

The second and, in my view, more important question then comes into play. What if the Trade (Australia and New Zealand) Bill were to be amended? For example, there is an Opposition amendment tabled for Report in the other place, the effect of which would be to include impact assessments for a number of years on the Australia and New Zealand trade agreements—so, in fact, it is not restricted to the question of procurement but is about the overall impact of the two FTAs.

The effect of this Bill, as it is drafted in Schedule 11 on page 117 at the back of the Bill, would be to repeal it anyway. We would be in the unhappy position, if we carried on as we are, that we might amend the Trade (Australia and New Zealand) Bill and then find that that amendment, whatever merit it may have, would be repealed by virtue of the Procurement Act in due course. This is not a satisfactory outcome. Will the Minister tell us that the Government are now aware of this potential problem, subject to the passage of events and that, if it should turn out that the Trade (Australia and New Zealand) Bill is amended, the Government will commit to facilitating that any such amendment is not repealed by virtue of the provisions in the Procurement Act?

My amendment would avoid that possibility, because it would repeal only those provisions that were in the Bill when it was introduced on 11 May this year. If the Government cannot accept that, I hope that my noble friend will at least say that the Government will facilitate whatever measure is necessary—because whichever is the second Bill can change the first Bill, because Parliament cannot bind itself. So, almost by definition, the Government will have a mechanism—if they are willing to use it—to put things right using the second Bill. I hope my noble friend will give that reassurance.

Baroness Hayman of Ullock (Lab): My Lords, both the amendments in this group ask for clarification and information from the Minister on the exact status of the trade agreements and how they are going to operate. I think the loophole that the noble Lord is trying to close is something that we need to think about very seriously, because we do not want to have trade agreements that then start to unravel. That is one of the big concerns around this.

In Committee, we had a quite extensive debate around this. I asked the Minister a specific question on Schedule 7 and I thank her for her detailed response, which I think it is worth drawing to the attention of the House. Schedule 7 says that a discretionary exclusion ground applies to a supplier whether the conduct occurred in or outside the United Kingdom. The question I wanted confirmed was whether Schedule 7 covered procurement opportunities that came through trade agreements.

The response from the Minister was that the conduct overseas, as referred to in Schedule 7, does cover anything that happens within procurement coming out of a trade agreement. I was very grateful for her clarification on this and thought that I should draw it to the attention of the House. It is a very helpful clarification of the remit of the Procurement Bill as far as trade agreements are concerned. However, it would be helpful if the Minister was able to provide reassurance, explanation and clarification on the questions raised by the amendments from the noble Lords, Lord Purvis and Lord Lansley, so that we all know exactly where we are, particularly around the Australia and New Zealand trade agreement.

Baroness Neville-Rolfe (Con): My Lords, I thank noble Lords for their contributions to this short debate, particularly the noble Baroness, Lady Hayman, for repeating the advice we received on the application of Schedule 7 so that it sits on the face of *Hansard*. I hope the other things I have to say will help with her general understanding of the interplay between the trade and procurement Bills under consideration.

I will start by responding to my noble friend Lord Lansley. I understand the point he makes in his Amendment 167: in the coming months there may be important amendments to the Trade (Australia and New Zealand) Bill that will be designed to survive into the new regime. However, I respectfully suggest that an open-ended preservation of unspecified parts of that Bill, as his amendment proposes, is not the right way to deliver what is needed.

As he knows, I also think it would be a legislatively curious way of going about things. I have been consistent in saying that when we are certain of the amendments needed as a result of that other Bill, we will consider the provisions in the Procurement Bill and the best way to retain any such obligations. As I understand it,

the timing should allow for this. Thanks to the eloquence of my noble friend Lord Lansley, we are well aware of the problem. Of course, the Government will have due respect for the expressed will of your Lordships' House.

The noble Lord, Lord Fox, asked about contracting authorities. My response is that they just need to follow the provisions in the Bill. That will mean they are compliant with the trade agreements. I hope this gives the noble Lord some reassurance: they do not need to familiarise themselves with each individual agreement when they are engaged in procurement. If he finds that confusing, I am sure we can talk further on another occasion.

Amendment 127, tabled by the noble Lords, Lord Purvis and Lord Fox, has the effect that a contracting authority cannot be considered to discriminate

"if it takes into account environmental, social and labour considerations"

in dealing with a treaty state supplier. To accept this would create the opportunity for UK contracting authorities to actively discriminate against overseas suppliers. That could place the UK in breach of our international trade agreements, including the GPA. I am sure noble Lords will agree that that would not be acceptable, but I hope they will take some comfort from the fact that the Procurement Bill already achieves the main objective of this amendment. It includes flexibility to structure procurements in a way that furthers these ends. For example, Clause 22 is drafted widely enough that these matters can be used by contracting authorities as part of the basis for determining a winning bid, as long as it is non-discriminatory.

The noble Lord, Lord Purvis, who I think is not in his place, is a great expert in this area. He was concerned that some trade agreements refer to environmental and social criteria and some do not. I can reassure noble Lords that, where a trade agreement does not expressly permit these criteria, it does not mean that a contracting authority in the UK cannot take them into account. The Bill and the UK's international commitments allow contracting authorities to continue to apply these criteria as they have for many years.

Lord Fox (LD): I think the Minister has just confirmed the point I was making. On that basis, contracting authorities need to have knowledge of what is in each different agreement in order to start to discriminate in the way she has just described. If it is in some trade agreements and not in others, surely there will be different options. As the Minister said, my noble friend Lord Purvis is our expert on this. He was concerned about this, and therefore I think I am concerned about it.

7.30 pm

Baroness Neville-Rolfe (Con): I think the point I made is that contracting authorities need to follow the provisions of the Bill and then they will be compliant with the trade agreements. I think the whole point is that we are trying not to require them to familiarise themselves with every trade agreement, and my advice is that that works. The time is late. I hope I have managed at least to reassure the noble Lord, Lord Lansley, and I respectfully urge the noble Lord, Lord Fox, to withdraw his amendment.

Lord Fox (LD): As noble Lords can see by the vexed look across my brow, I am both out of my depth and no comprende. On that basis, that is two good reasons to step back. I think probably there is another conversation when the noble Lord, Lord Purvis, is back in the country to go over this because I trust his instincts on these things. On that basis—

Baroness Neville-Rolfe (Con): I should perhaps make it clear that I do not think this is something we would expect to come back at Third Reading, but of course there will be further discussions in another place.

Lord Fox (LD): That is completely understood. I do not think we will be bringing back an amendment. Do not worry. I beg leave to withdraw Amendment 127.

Amendment 127 withdrawn.

Clause 85: Treaty state suppliers: non-discrimination in Scotland

Amendment 128

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

128: Clause 85, page 57, line 31, leave out from "means" to "by" in line 33 and insert "procurement carried out"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendment 128 agreed.

Clause 88: Notices, documents and information: regulations

Amendment 129

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

129: Clause 88, page 59, line 15, at end insert—

"(4) A Minister of the Crown must make arrangements to establish and operate an online system for the purpose of publishing notices, documents and other information under this Act.

(5) An online system established or operated under subsection (4) must—

(a) make notices, documents and other information published under this Act available free of charge, and

(b) be accessible to people with disabilities."

Member's explanatory statement

This amendment would require a Minister of the Crown to set up an online system for the publication of notices, documents and other information under the Bill.

Amendment 130 (to Amendment 129) not moved.

Amendment 129 agreed.

Clause 89: Electronic communications

Amendment 131

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

131: Clause 89, page 59, line 17, after first "a" insert "covered"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendment 131 agreed.

Clause 90: Information relating to a procurement

Amendments 132 and 133

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

132: Clause 90, page 59, line 36, leave out subsection (2)

Member's explanatory statement

This amendment would remove an unnecessary power to establish and operate an online system, since it can be done using common law powers.

133: Clause 90, page 60, line 3, leave out "procurement under this Act" and insert "covered procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendments 132 and 133 agreed.

Clause 92: Duties under this Act enforceable in civil proceedings

Amendments 134 to 137

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

134: Clause 92, page 60, line 26, after "with" insert "section 11(4) (requirement to have regard to barriers facing SMEs), or"

Member's explanatory statement

This amendment would mean that the duty to have regard to barriers facing small and medium-sized enterprises inserted by the Government amendment to Clause 11 is not enforceable under Part 9.

135: Clause 92, page 60, line 30, leave out from "a" to "procurement" in line 31

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1 - there, "procurement" includes below-threshold procurement and international organisation procurement.

136: Clause 92, page 60, line 32, at end insert ", except in relation to a covered procurement"

Member's explanatory statement

This amendment is consequential on the other Government amendment to this subsection and would ensure that the duty is enforceable in relation to covered procurements.

137: Clause 92, page 61, line 2, leave out subsection (9)

Member's explanatory statement

This amendment is consequential on the Government amendments to this clause.

Amendments 134 to 137 agreed.

Amendment 138

Moved by ***Lord Coaker***

138: After Clause 98, insert the following new Clause—

"Audit of Ministry of Defence procurement

(1) Within one month of the passing of this Act, the Secretary of State must commission the National Audit Office to produce and publish a report setting out any instances of Ministry of Defence procurement in the period of 5 years ending with the day on which this Act is passed that have resulted in—

(a) overspend on initially planned budgets,

(b) assets being withdrawn or scrapped or prepaid services terminated,

(c) a contract being cancelled,

(d) a contract being extended beyond the initially agreed timescale, or

(e) administrative errors which have had a negative financial impact.

(2) The National Audit Office report must include recommendations on how better management of contracts can reduce the loss of public money.

(3) Within three months of the publication of the report, the Secretary of State must report to Parliament on whether its recommendations have been accepted or rejected, with reasoning in either case.

(4) The Secretary of State must commission the National Audit Office to conduct a similar review annually."

Member's explanatory statement

This amendment would require an annual audit of Ministry of Defence procurement to be commissioned by the Secretary of State.

Lord Coaker (Lab): My Lords, I say from the outset that this is a probing amendment to give us the opportunity once again to talk about defence equipment, and I am pleased to see the noble Baroness, Lady Goldie, here. I was minded when I saw her rushing in to do what somebody did to me once. They moved the amendment formally so I had to start responding when I did not have the breath to do it, but I will not do that, partly because I respect her too much.

I am grateful for the support for the amendment from my noble friend Lady Hayman and the noble Baroness, Lady Smith of Newnham. As I say, it is a probing amendment to once again ask about defence procurement. We all have an interest in ensuring that defence equipment is procured efficiently and effectively, because that contributes to the defence of our nation, which is important to each and every one of us.

In particular, I just wanted to ask the noble Baroness a couple of general points and then a couple of specifics. We could have a debate for hours on this, but I do not think that is appropriate at the moment, given that it is a probing amendment. She will know that, in November 2021, the Public Accounts Committee published a report which had significant challenges for the Government. It talked about delays in the Government's defence equipment procurement programme and a net delay of 21 years across the programme. The committee's report also said that:

"the Department failed to assure us it is taking these matters sufficiently seriously".

They are the Public Accounts Committee's words, not mine. The committee called for more transparency and openness, and said that an urgent rethink was needed and that there was waste running into billions of pounds.

As a starting point, can the noble Baroness update us all on the progress the Government have made in the year since the Public Accounts Committee's report into defence equipment spending in the other place in November 2021 and where we are now with that? That is particularly opportune because yesterday the Government published the *Defence Equipment Plan 2022 to 2032*, which I read with interest. While staying

on the generalities, I ask: what did the Ministry of Defence mean when it said in the plan's executive summary:

> "The publication of this report comes at a decisive point for Defence and a period of rising inflation for the country. Although these pressures will have an eventual and significant effect on Defence spending, their full likely impact is not contained in this report"?

The report starts by saying that it does not include the impact of the current inflation level, even while saying that it will have a decisive impact. Frankly, I found that quite bemusing. I would be grateful for clarification from the Minister on what inflation figure was used. If I have read the report right, it was the inflation figure for March 2022. I might be wrong, so I stand to be corrected on that. We know that the current inflation figure is 11.1% and it is not clear whether that is going to go up or down—we hope that it will go down—but how can anyone publish a defence equipment plan, laying out the cost of equipment they hope to purchase, if they do not know what the monetary impact is going to be but they state that it will have a decisive impact? Clarity on that would be extremely helpful for your Lordships' House.

As I say, those are some of the generalities that I wanted to raise. The whole point of an audit, as we have laid out, is to try to get some clarity and understanding of what is going on. The point of my amendment is that it looks at the next five years. The equipment plan looks at the next 10 years, so the Government's projected assumptions about inflation are pretty important regarding what they can and cannot afford during that time.

Since we are looking into the future, what is the future of Ajax? The Ajax programme began in March 2010, intended to transform the Army's surveillance and reconnaissance capability. To say it has gone badly wrong does not really do it justice. The department has a £5.5 billion fixed-price contract with General Dynamics, which was supposed to be for an initial 589 Ajax armoured vehicles. Those Ajaxes were supposed to come into service in 2017. They subsequently missed the revised target of 2021. By December 2021, the department had paid General Dynamics £3.2 billion but had received only 26 out of the 589 vehicles, none of which it can use on the battlefield, so the programme is in absolute turmoil. What is the current situation, and what now is the projection for the numbers of Ajaxes that are finally going to be operational? When will that happen? Given that the Government have put a ceiling on the project of £5.5 billion and have already spent £3.5 billion or so but received only 29 vehicles, what is the future of that programme? What is happening?

Will the Minister take this opportunity to update the Chamber on the important question of the current situation with regard to the "Prince of Wales" aircraft carrier? We are all very proud of our two aircraft carriers and want them to be successful. The "Queen Elizabeth" is performing majestically and fantastically for us and we are very proud of that, but obviously there have been problems with the "Prince of Wales", which has only recently been completed. What is the projection for when it will be fixed and engineered back? What will the cost of that be, and is it factored into the various budgets?

You can see the difficulty with equipment; just the other day, the Defence Secretary said that the Royal Navy's new submarine-hunting frigate would be hit by a year's delay costing £233 million. There are numerous examples that we could look at beyond the couple I have used but, on the general point of my amendment, I want to know from the Minister where the Government are on their response to the Public Accounts Committee report from the other place, published a year ago, and what on earth that sentence in the executive summary of the equipment plan for 2022 to 2032 means, in which the Government say, astonishingly, that inflation is not costed in even though it will have a decisive impact on that plan. We would like some answers to that.

This is said from a position of wanting the defence equipment plan to work and deliver all the requirements of our fantastic, brilliant Armed Forces. To do that, we need certainty. I know the Minister will say, quite rightly, that there are fantastic examples of equipment that has been produced for our Armed Forces. That is true, but budgets continually overrun by billions of pounds and delays happen. Most importantly, have the Government responded—and if not, how will they respond—to the Public Accounts Committee report from a year ago?

Lord Wallace of Saltaire (LD): My Lords, I had to be absent for two and a half weeks in late October and early November and my noble friend Lady Smith of Newnham kindly and generously substituted for me. I now find myself in the same position, as unfortunately she is unwell.

Listening to the noble Lord, Lord Coaker, I remembered that I used to work on defence procurement when I was at Chatham House in the 1980s. It is depressing how few of the issues have fundamentally changed since then. It is part of the culture of our Armed Forces, and one or two former members of the Armed Forces who sit on the Labour Benches, that they like their toys to be of the best US complexity standard and as big and expensive as possible, and they want to change the specification several times while they are being developed. That is how one ends up with two very large aircraft carriers that we are not at all sure we ever wanted.

I sympathise with the MoD on the difficulties of procurement, but I suggest to the Minister that, as we absorb the very considerable implications of the Ukraine conflict for the sort of kit one needs and the sort of wars we may be fighting, it would be very helpful if the MoD took into account those in both Houses who are interested and briefed us as it went along. We are now discovering that a lot of cheap weapons, sometimes commercially acquired, can be as effective—or sometimes more effective—than very expensive ones. The last time I spoke to a group of former members of the Armed Forces, I asked a former colonel of an armoured regiment what he thought about the future of tank warfare. He replied: "You'd never get me inside one of those things again". Our assumptions about the nature of warfare are changing.

This raises large questions for the MoD. We know that there are always tremendous problems with how much you need in reserve, and we are now discovering that we are running short of resupplies for Ukraine. I

[Lord Wallace of Saltaire]
discovered the other year that the Liberal Government of 1895 fell on the issue of inadequate supplies of cordite for the Armed Forces, so here again, things are not entirely new. I see that the Clerk of the Parliaments remembers that occasion very well.

7.45 pm

Members of both Houses all support the greatest possible transparency and recognise that we need to change the culture in all three armed services from one that says, "We have to have equipment that is at least as complex and of at least as high a standard as that of the US" to one that says, "For the many things we need, more things that are slightly less complex and a hell of a lot cheaper would probably be better". So I ask for more transparency—that is where the audit comes from. We are actively concerned about supporting our Armed Forces, but we recognise that the implications of what we have seen between Ukraine and Russia give rise to large questions about the future balance of defence procurement that we have to address.

Lord Alton of Liverpool (CB): My Lords, the noble Lord, Lord Wallace of Saltaire, is right to remind us not just of events in Victorian Britain but of what is happening at the moment and the impact that events in Ukraine and elsewhere will have on our procurement programmes.

I serve on your Lordships' International Relations and Defence Committee. As the noble Baroness, Lady Goldie—it is wonderful to see her in her place—knows, throughout the whole of this year we have been conducting an inquiry into procurement and defence priorities, which the noble Lord, Lord Wallace, touched on. We began it before the second invasion of Ukraine in February. From my discussions with the noble Lord, Lord Coaker, who pressed this issue in Committee, I know how important this is, for all the reasons he described. He has a great sense of patriotism and cares for our Armed Forces, and I strongly associate myself with him and the desire for a probing amendment to test some of these questions.

One reason why I hope the noble Baroness, Lady Goldie, will be able to reply in terms to the noble Lord, Lord Coaker, on Ajax especially, is that the noble Baroness, Lady Anelay, who is chair of our Select Committee, was here during his speech—she was unable to stay—and said that I can tell the House that she strongly agrees with the questions he put. She hopes that the noble Baroness will be able to answer them because they will be part of the terms of our committee's report, which we have to complete before the House rises for the Christmas Recess at the end of December. So it is important that, if the noble Baroness is not able to answer those probing questions this evening, we are given answers in due course.

One of the witnesses to the Select Committee inquiry was Professor John Louth, who was the director of defence, industries and society research at RUSI from 2011 to 2019. When we asked him directly about the way in which we should go about defence procurement, I asked him specifically about the Bill and whether it would be welcome. He said:

"I have tried to read as much of this as possible … It is hard to identify the end state that the Government are looking for".

He said that there are

"lines and lines of rhetoric and legalistic reform",

some of which is incomprehensible even for those of us who are academics.

I asked him specifically about Ajax, which the noble Lord, Lord Coaker, has been raising, and he replied that it has been a "disaster". As we have heard, it was intended to be a state-of-the-art reconnaissance vehicle for the Army, and it has cost a staggering £3.2 billion to date, yet so far not a single deployable vehicle has been delivered—not one. It was of course supposed to enter service in 2017, but it has been subject to what the Commons committee called a "litany of failures", including noise and vibration problems that injured the soldiers testing the vehicles. Can the Minister tell us whether those safety issues have been resolved, or whether they are ever likely to be?

The noble Lord, Lord Coaker, reminded us that the House of Lords Select Committee said the programme had been "flawed from the outset" and also that it was illustrative of a deeper failing, commenting that the Ministry of Defence

"once again made fundamental mistakes in its planning and management of a major defence programme."

Pulling no punches, the Public Accounts Committee accused the department of failing to deliver vehicles which the Armed Forces need

"to better protect the nation and to meet our NATO commitments".

In the current situation, with one eye eastwards to Ukraine, that is a very serious statement by a senior committee of Parliament—and this Bill, of course, is a Bill that will go down to the other place. It will go as a pristine Bill from the House of Lords, but the other place will be able to amend it, and I have no doubt that people from the Public Accounts Committee will want the answers that the noble Lord has gently been asking for this evening.

I will end by quoting Meg Hillier, who chaired the committee inquiry. She said:

"Enough is enough—the MoD must fix or fail this programme, before more risk to our national security and more billions of taxpayers' money is wasted. These repeated failures … are putting strain on older capabilities which are overdue for replacement and are directly threatening the safety of our service people and their ability to protect the nation and meet NATO commitments."

That is good enough reason alone, surely, for the Minister to give the House a comprehensive reply.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, I first thank noble Lords for their contributions. I understand fully that the proposed amendment is well intended, and I accept it in that spirit. I think it has certain implicit difficulties, which I shall move on to. I would never object to the Opposition Benches holding the Government's feet to the fire—that is what the Opposition are there to do—but I hope they will be patient with me as I seek to explain why the precise terms of the amendment confront the MoD with difficulty.

The proposed amendment would require the Ministry of Defence to commission and publish a report from the National Audit Office, setting out instances of procurement overspend, withdrawal or scrapping of assets, termination of prepaid services, cancellations

or extensions of contracts, or administrative errors with negative financial impacts. The reason the MoD rejects the amendment is not because it is not in sympathy with what I have identified as a well-intended sentiment expressed by the noble Lord, Lord Coaker, but quite simply because existing processes already ensure robust scrutiny and accountability of Ministry of Defence procurements.

Before I move on to that more detailed exposition, let me deal with a very specific point the noble Lord raised about the defence equipment plan which was published yesterday. He is more ahead than I am because I have been preparing for this. I have referred it to my officials, and I am told that it is difficult to calculate an accurate figure of inflation at the moment, due to volatility. That is an inadequate response to give the noble Lord from the Dispatch Box, so I offer to write to him. We will do further research in the department, and I shall endeavour to expand on what these particular difficulties are.

Lord Coaker (Lab): That is totally acceptable, and I am very appreciative of it. The reason I asked was because the National Audit Office, commenting on the 2022-23 equipment plan, said it was already out of date because of inflation, Ukraine, the economic situation, et cetera. So I very much appreciate the offer from the noble Baroness to write and put that in context for us. I think it would be helpful if that was put in the Library for other Members as well.

Lord Fox (LD): I join the noble Lord in welcoming that and also ask that the Minister includes currency because, while inflation is important, currency is actually more important in some cases. It is absolutely clear that a lot of these purchases are made in dollars and the dollar/pound rate will determine quite substantially the rising costs of equipment.

Baroness Goldie (Con): I hear both noble Lords. To put a little context around this, the MoD has not been sitting in some splendid ivory tower in isolation as volatile economic circumstances swirled around us. Actually, we have built protective measures into many of our contracts to deal with inflationary pressures—or, indeed, to deal with the currency fluctuations mentioned by the noble Lord, Lord Fox. I appreciate that more detail is sought and I shall certainly look at that, with my officials, and endeavour to return to both noble Lords with some more information.

I was going to explain in more detail what we already do and how the National Audit Office already plays a role in all this. The National Audit Office is independent—we should remember that—and it already conducts a yearly audit on the defence equipment plan and undertakes regular audits of defence programmes. Further scrutiny of the performance of defence programmes is undertaken by the Infrastructure and Projects Authority, which tracks the progress of projects currently in the government major projects portfolio, not just that of the MoD. The details of these are published in its annual report. As an independent statutory body, the National Audit Office decides, independently of government, where to focus its resources and determines what projects and public bodies it audits and when.

It is important to emphasise that the Government do not direct the NAO; nor should we, because an essential feature of the importance and value of the NAO is that independence. Although it may not intend to do so, I argue that the amendment would interfere with that statutory independence. In addition, it would force the NAO to use its limited resources on a specific examination each year, irrespective of changing priorities: something might be significant one year and of far less concern the following year. It might even not reflect the continuing value of such an examination to Parliament: this is where we have to be very careful.

To reassure noble Lords, as I indicated, the Ministry of Defence continues to take steps to control the rise in the price of defence goods and services over time, including through improving the communication of longer-term priorities and requirements, including, as noble Lords will be aware, through the publication of pipelines. That is an extremely important development and signals likely demand to industry far better. It lets industry reflect on preparedness, instead of what was before probably a rather stop-start process, with industry asking, "Do you need anything?" and us suddenly announcing, "Yes, we do," and everybody trying to create the thing from new.

The Ministry of Defence is utilising a new approach to industrial strategy. This strengthens supply chains and is driving pace and agility into the acquisition system through a range of transformation initiatives. The department has implemented steps to estimate project costs more accurately, including improving our risk forecasts through the use of reference class forecasts; that is, trying to use procurement as it happens, to inform us—what can be learned from the process? We have risk-costing pilots and we use the analysis of systematic, strategic or operational problems to inform us how the contract is proceeding. The MoD is also driving evaluation into programmes through the use of monitoring and evaluation frameworks and creating a process to capture and share lessons learned.

An important area, perhaps not widely understood, is that the MoD, like everyone else, can be hit by the quality and quantity of skills. That may be a significant impediment to us. Improvements are being delivered through the improved provision of training, initiatives to recruit and retain staff, and audits to identify and fill skills gaps.

The noble Lord, Lord Wallace of Saltaire, said that not much has changed. I think he started with the 1980s, then we seemed to regress further, into the Victorian age, when I am not sure we would recognise very much of what our procurement contracts are delivering. I respectfully disagree with him because, in addition to what I have previously mentioned, including the investment appraisal process, we have made other big changes. For example, all category A procurements, which are valued at £400 million or above, go through an extensive internal MoD process before they even get to the Cabinet Office, the Treasury or the Minister of Defence for approval.

Costs are now independently assured by the cost assurance and analysis team, tender and contract documentation is independently assured through the progressive assurance team, and direct award contracts are reviewed and monitored by the single-source adviser

[Baroness Goldie]
team. If that sounds like just verbiage, let me say that behind that are highly trained expert people who are there to identify the shoals, the reefs and the rocks, bring them to our attention, and make sure that we are not inadvertently drawn into areas of contract weakness where in the past we might very well have gone.

We are content that there are sufficient checks and balances in place to ensure that we achieve best value for money, learning from previous procurements. There are some good examples, and I was very struck by visiting Babcock at Rosyth, where it is building a Type 31 frigate. That really proceeded on a new basis of approach—it was born out of the national shipbuilding strategy. That programme was established in 2017, and following competition a contract was awarded to Babcock in November 2019 for the design and build of the five ships; it is currently under way, with the first ship scheduled for float-off in 2023. With barely three years passed since contract-award, the Type 31 build at Rosyth is well under way, with the first grand block now assembled in the Venturer assembly hall. The build programme is set to meet its deadlines of delivering all five ships off-contract by the end of 2028, and the build contract is on course to deliver the five ships at an average cost of £250 million per ship.

I use that as an example because it seems to me, having seen it at first hand, a very modern illustration of where we have moved to. When I say to the noble Lord, Lord Wallace of Saltaire, that I do not agree with his characterisation, I also try to illustrate that argument by pointing out that there are different practices at play, informed—I fully admit—by a number of sources like the national shipbuilding strategy, which was an innovative change of direction for how we procure ships within the UK. But we have also had a very good example with the Poseidon aircraft programme operating out of RAF Lossiemouth in the north of Scotland on the Moray coast. It is an absolutely fantastic facility. That fleet comprises nine aircraft, which were all achieved on time, within budget, and to a challenging timeline.

It is very easy to be sceptical, and I fully understand why your Lordships rightly have been sceptical of some pretty poor experiences in the past, but all that I am pointing out is that we have moved on to a better way of doing things, and I hope that your Lordships understand from what I have been explaining and describing that there is a far better structure within the MoD to deal with these complex procurement contracts. These defence contracts are often complex, they are required quite often at speed to meet emerging threats, and are often needed to provide much-needed support to our Armed Forces, to ensure that we maintain operational advantage and to reduce the risk to our nation.

The noble Lords, Lord Coaker, Lord Wallace of Saltaire, and Lord Alton, all raised the issue of Ajax, and I think I have said before from this Dispatch Box that it was certainly not one of our proudest moments. Intrinsically, it is actually a very good vehicle, and it will provide an important capability. Following agreement from the Ajax safety panel, work has led to resuming the user-validation trials which were paused earlier this year. Results from these trials are being analysed to ascertain whether it is possible to deliver a safe system of work under which to conduct reliability-growth trails. Your Lordships are aware that there were issues with vibration and hearing, and the one thing that we were very clear about was that we were not going to put people at risk; my former colleague as Minister for Defence Procurement, Jeremy Quin, was absolutely insistent. That is why, despite the embarrassment, we paused what was happening until we had a better understanding of what was going wrong; but I make it clear that the MoD will not accept a vehicle until it can be used safely for its intended purpose.

Your Lordships will be aware that Clive Sheldon KC is leading the Ajax lessons learned review, which is looking at ways in which the Ministry of Defence can best deliver major contracts more effectively in future. That is an important review and we await his analysis, conclusions and recommendations, but I emphasise that any delay to Ajax will not affect our commitments to NATO. That is an important point to observe.

The noble Lord, Lord Coaker, asked about the "Prince of Wales" carrier. Rosyth on the Forth is where good things happen: as well as building the Type 31, that is where the Prince of Wales carrier is currently reposing. She is a state-of-the-art aircraft carrier. She has already proved her capabilities in a number of exercises, but there was an issue concerning the propulsion shaft and investigations are now under way. She is a huge vessel, and it was necessary to take her into dock to have the facilities properly to examine what was going wrong. Timelines for the repair of the shaft are being investigated and further updates will be provided in due course. We want her to return to operations as soon as possible. My understanding is that we have brought forward some routine maintenance anyway, so that can be attended to while she is at Rosyth. I have no more specific information at this time, but I expect we will get a further report when more is known about the underlying condition and how long it will take to rectify.

The noble Lord, Lord Coaker, raised the Type 26, which is a first-class ship. I have visited the programme in the yard at Govan being operated by British Aerospace. It is a fantastic piece of maritime equipment and it will be pivotal for the Royal Navy. It is proceeding very well. We have just awarded the batch 22 contract to the yard because we were absolutely satisfied about the professionalism, commitment and effectiveness of what British Aerospace was doing with the first batch. It is true that there has been a delay, but there are two reasons for that. Covid was one factor; it has created delays for our defence industry partners and their supply chain. I understand that there were also issues with locating the necessary corps of skills, but it now seems well under control and we hope that the new timeline can be adhered to. British Aerospace is certainly very keen to demonstrate that and to commit to making it happen.

The noble Lord, Lord Wallace of Saltaire, raised the issue of levels of munitions. He is quite right that particular demands have fallen on that area due to the conflict in Ukraine. Those of us who listened to the extraordinary, courageous address by Madam Zelenska yesterday—I was among those privileged to be there—could not help but feel huge admiration for her, her

husband and the people of Ukraine, as well as a sense of pride that we have been able to come to their assistance. We have been able not just to support them in what they have been looking for but, I hope, to give them the reassurance of optimism and hope for the future; Madam Zelenska referred to that. I reassure your Lordships that, in our supply of anything we have provided to the Ukrainian armed forces, we have never compromised our own levels of stocks in relation to meeting our national security obligations.

The noble Lord, Lord Alton, referred to someone—that sounds rather disrespectful; it was someone very eminent—who used to be in RUSI who had certain challenges with the Bill. As a former lawyer, I would say in response that I think the Bill is a welcome clarification and consolidation of procurement law in the United Kingdom. For the MoD, there has been carefully researched tailoring of the Bill to meet the unique requirements of defence. Our industry partners have been positive, so I think the Bill has the potential to introduce far greater clarity to industry—both primes and smaller contractors—and give them a much clearer sense of how they engage, what they can do and what the rules are. That is absolutely to be commended.

In conclusion, I am under no illusions about the challenges the MoD faces in relation to large-scale procurement. We recognise these challenges, and that is why we continue constantly to explore additional actions to mitigate the effects of cost escalation and cost growth. I hope I have been able to explain in sufficient detail what we do already—particularly the very specific character of the National Audit Office, which is independent of government—to enable your Lordships to understand why the MoD is unable to accept this amendment, while it does identify with the sentiment with which it was put forward. I ask the noble Lord, Lord Coaker, to withdraw the amendment.

Lord Coaker (Lab): I thank the noble Baroness for her reply and her offer of a letter. I stress how important that letter is, given the quote I am about to read, which summarises the National Audit Office's assessment of the equipment plan that the Government published:

"The equipment plan is based on data submitted by the end of March this year and does not take account of the impact of exchange rate changes, rampant inflation, fuel costs and the Russian invasion of the Ukraine."

It would be helpful to your Lordships' House if the noble Baroness would respond in a letter and put it in the Library. It would be very useful to hear what the Government are saying about the National Audit Office's comments.

I know that there are problems with Ajax; we look forward to continuing discussions on that. We have raised a number of other difficulties. I think all noble Lords here recognised that there are significant successes alongside that and we should recognise those—I certainly do. We all want our Armed Forces to succeed. The noble Baroness is quite right to remind us of the support we have given to Ukraine and the bravery of the Ukrainian people. We are right to recognise that once again this evening. With those brief comments, I beg leave to withdraw the amendment.

Amendment 138 withdrawn.

Clause 99: Procurement investigations

Amendment 139

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

139: Clause 99, page 64, line 42, at end insert—

"(ca) the Corporate Officer of the House of Commons;

(cb) the Corporate Officer of the House of Lords;

(cc) the Senedd Commission;

(cd) the Northern Ireland Assembly Commission;"

Member's explanatory statement

This amendment would add the listed bodies as contracting authorities not subject to procurement investigations.

Amendment 139 agreed.

Clause 100: Recommendations following procurement investigations

Amendment 140

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

140: Clause 100, page 65, line 23, at end insert—

"(ba) comply with section (Regulated below-threshold contracts: duty to consider small and medium-sized enterprises) (regulated below-threshold contracts: duty to consider SMEs);"

Member's explanatory statement

This amendment would mean that the duty to have regard to barriers facing small and medium-sized enterprises inserted by the Government amendment to Clause 80 may not be the subject of a "section 100 recommendation".

Amendment 140 agreed.

Amendment 141

Tabled by ***Lord Alton of Liverpool***

141: After Clause 101, insert the following new Clause—

"Supply chain resilience against economic coercion and slavery

(1) The Secretary of State must by regulations make provision for reducing the dependency of public bodies upon goods and services which originate in whole or in part in a country considered by the United Kingdom as either a systemic competitor or a threat.

(2) A country is "considered by the United Kingdom as either a systemic competitor or a threat" if it was defined as such in the latest Integrated Review of Security, Defence, Development and Foreign Policy.

(3) The regulations under subsection (1) may, in particular, include—

(a) provision for an annual review of the dependency of public bodies upon countries which are considered by the United Kingdom as systemic competitors or threats;

(b) provision for the setting of acceptable dependency thresholds across all categories of public procurement.

(4) The Secretary of State must by regulations make provision for eradicating from all public contracts goods or services that are tainted by slavery and human trafficking.

(5) The regulations under subsection (4) may, in particular, include—

(a) provision in connection with the processes to be followed by public bodies in the procurement of goods or services for the purposes of public contracts;

(b) provision as to steps that must be taken by public bodies for assessing and addressing the risk of slavery and human trafficking taking place in relation to people involved in public bodies' supply chains;

(c) provision as to matters for which provision must be made in contracts for goods or services entered into by public bodies;

(d) provision as to the standards of disclosure and transparency required for all contractors or prospective contractors, which must, at a minimum, include publication and verification of information about the country of origin of all sourcing inputs in their supply chain;

(e) provision for the public disclosure of the names of contractors or prospective contractors whose supply chains are considered tainted by slavery and human trafficking;

(f) provision for the publication and dissemination of a risk register detailing areas from which goods cannot be sourced without unreasonable risk of slavery and human trafficking being present in supply chains.

(6) In this section—

"public body" means a body exercising functions of a public nature;

"slavery and human trafficking" has the meaning given by section 54(12) of the Modern Slavery Act 2015;

goods or services are "tainted" by slavery and human trafficking if slavery and human trafficking take place in relation to anyone involved in the supply chain for providing those goods or services."

Member's explanatory statement

The amendment seeks to improve the UK's supply chain resilience against dependency and human rights abuse by creating a double regulation making power: to enable the Government to develop a plan to address dependency throughout public procurement; and to bring the human rights standards of wider public procurement in line with the procurement standards of the Department of Health and Social Care.

Lord Alton of Liverpool (CB): With the leave of the House, I shall speak for a moment on behalf of the noble Baroness, Lady Stroud, and as one of the four sponsors of the amendment, to say how encouraged we were by the offer made earlier by the noble Baroness, Lady Neville-Rolfe, for a meeting with the sponsors of the amendment. Given that this Bill is not in ping-pong but will be going to another place for further consideration, it is now the intention of the noble Baroness, Lady Stroud, not to move the amendment and to return to this question once we have had the opportunity of meeting the Minister and, in due course, returning to the issues we explored during the debate this evening.

Amendment 141 not moved.

Clause 102: Welsh Ministers: restrictions on the exercise of powers

Amendments 142 to 146

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

142: Clause 102, page 66, line 23, leave out "the award of contracts" and insert "procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

143: Clause 102, page 66, line 24, leave out from "arrangement" to end of line

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

144: Clause 102, page 66, line 37, leave out "awarding a contract" and insert "carrying out a procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

145: Clause 102, page 66, line 39, leave out sub-paragraph (ii)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

146: Clause 102, page 67, line 1, leave out subsection (5)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendments 142 to 146 agreed.

Clause 103: Northern Ireland department: restrictions on the exercise of powers

Amendments 147 to 149

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

147: Clause 103, page 67, line 19, leave out "the award of contracts" and insert "procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

148: Clause 103, page 67, line 20, leave out from "arrangement" to end of line

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

149: Clause 103, page 67, line 36, leave out subsection (5)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendments 147 to 149 agreed.

Clause 104: Minister of the Crown: restrictions on the exercise of powers

Amendments 150 to 154

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

150: Clause 104, page 67, line 42, leave out from "to" to end of line 45 and insert "procurement under—

(a) a reserved procurement arrangement, or

(b) a transferred Northern Ireland procurement arrangement."

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

151: Clause 104, page 68, line 6, leave out from "to" to end of line 9 and insert ", or the guidance relates to, procurement under—

(a) a reserved procurement arrangement, or

(b) a transferred Northern Ireland procurement arrangement."

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

152: Clause 104, page 68, line 12, leave out from "to" to end of line 15 and insert "procurement under—

(a) a reserved procurement arrangement, or

(b) a devolved Welsh procurement arrangement."

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

153: Clause 104, page 68, line 15, at end insert—

"(4A) A Minister of the Crown may not publish guidance under section 101 for the purpose of regulating a Northern Ireland department without the consent of a Northern Ireland department, unless the guidance relates to procurement under—

(a) a reserved procurement arrangement, or

(b) a devolved Welsh procurement arrangement."

Member's explanatory statement

This amendment would ensure that a Minister of the Crown could not issue guidance for the purposes of regulating a Northern Ireland department without the consent of a Northern Ireland department unless it relates to procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement.

154: Clause 104, page 68, line 21, leave out subsection (6)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendments 150 to 154 agreed.

Clause 105: Definitions relating to procurement arrangements

Amendments 155 and 156

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

155: Clause 105, page 68, line 25, leave out from second "a" to "awarded" on line 26 and insert "procurement under a procurement arrangement is a reference to a procurement as part of which the contract is"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

156: Clause 105, page 68, line 29, leave out paragraph (c)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendments 155 and 156 agreed.

Clause 106: Powers relating to procurement arrangements

Amendments 157 to 162

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

157: Clause 106, page 69, line 30, at end insert "devolved Scottish authorities carrying out procurement under"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

158: Clause 106, page 69, leave out line 31

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

159: Clause 106, page 69, line 35, leave out paragraph (b)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

160: Clause 106, page 69, line 37, leave out from "to" to end of line 40 and insert "procurement under devolved Scottish procurement arrangements"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

161: Clause 106, page 69, line 43, leave out "the award of contracts" and insert "procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

162: Clause 106, page 69, line 45, leave out paragraph (b)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Amendments 157 to 162 agreed.

Clause 107: Disapplication of duty in section 17 of the Local Government Act 1988

Amendments 162A to 164 not moved.

Schedule 10: Single source defence contracts

Amendment 165

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

165: Schedule 10, page 113, line 39, at end insert—

"6A_(1) Section 42 (single source contract regulations: general) is amended as follows.

(2) In subsection (4)(b), omit the second "or".

(3) After subsection (4)(b) insert—

"(ba) provision made by virtue of section 15(2)(b) (pricing of contracts), whether alone or with other provision, or"."

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under the new provision in section 15 of the Defence Reform Act 2014 inserted by paragraph 3(3) of this Schedule.

Amendment 165 agreed.

Schedule 11: Repeals and revocations

Amendments 166 to 168 not moved.

Amendment 169

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

169: Schedule 11, page 118, line 8, leave out paragraphs 8 to 11

Member's explanatory statement

This amendment would preserve the Commission Decisions.

Amendment 169 agreed.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, I am about to call Amendment 170. If this is agreed, I cannot call Amendments 171 or 172.

Clause 111: Power to disapply this Act in relation to procurement by NHS in England

Amendment 170

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

170: Clause 111, page 71, leave out lines 11 to 20 and insert—

"(1) A Minister of the Crown may by regulations make provision for the purpose of disapplying any provision of this Act in relation to regulated health procurement.

(2) In subsection (1)—

"regulated health procurement" means the procurement of goods or services by a relevant authority that is subject to provision made under section 12ZB of the National Health Service Act 2006 (procurement of healthcare services etc for the health service in England), whether or not that provision is in force;"

Member's explanatory statement

This amendment would clarify that the power to exclude certain procurement relating to health services may only be excluded from the scope of the Bill if it is the subject of provision under the National Health Service Act 2006.

Amendment 170 agreed.

Amendments 171 and 172 not moved.

Amendment 173

Moved by ***Baroness Brinton***

173: Clause 111, leave out Clause 111 and insert—

"Application of this Act to procurement by NHS England

(1) Omit sections 79 and 80 of the Health and Care Act 2022.

(2) For the avoidance of doubt, the provisions of this Act apply to procurement by NHS England."

Member's explanatory statement

This amendment is to probe the difference between procurement under this Act and procurement by NHS England under the Health and Care Act 2022.

Amendment 173 agreed.

Clause 113: Regulations

Amendments 174 to 186

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

174: Clause 113, page 72, line 17, at end insert—

"(za) section 5 (utilities contracts)"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 5.

175: Clause 113, page 72, line 20, at end insert—

"(ca) section 50 (publication of contracts);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 50.

176: Clause 113, page 72, line 22, at end insert—

"(ea) section 65(3)(a) (information about payments: financial thresholds);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 65.

177: Clause 113, page 72, line 23, at end insert—

"(fa) section 81 (regulated below-threshold contracts: notices);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 81.

178: Clause 113, page 72, line 25, at end insert—

"(ha) section 86 (pipeline notices);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 86.

179: Clause 113, page 72, line 31, at end insert—

"(na) section 114 (interpretation);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 114.

180: Clause 113, page 73, line 12, at end insert—

"(za) section 5 (utilities contracts)"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 5.

181: Clause 113, page 73, line 15, at end insert—

"(ca) section 65(3)(a) (information about payments: financial thresholds);

(cb) section 70 (contract change notices and publication of modifications);

(cc) section 81 (regulated below-threshold contracts: notices);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 65, 70 or 81.

182: Clause 113, page 73, line 16, at end insert—

"(da) section 86 (pipeline notices);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 86.

183: Clause 113, page 73, line 20, at end insert—

"(ha) section 114 (interpretation);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 114.

184: Clause 113, page 73, line 32, at end insert—

"(za) section 5 (utilities contracts);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 5.

185: Clause 113, page 73, line 35, leave out paragraph (c)

Member's explanatory statement

This amendment is consequential on a Northern Ireland department not having the power to make regulations under clause 64 and would remove the power of a Northern Ireland department to amend the thresholds in that clause.

186: Clause 113, page 73, line 39, at end insert—

"(ga) section 114 (interpretation);"

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 114.

Amendments 174 to 186 agreed.

Clause 114: Interpretation

Amendment 187

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

187: Clause 114, page 74, line 24, at end insert—

""pupil referral unit" means—

(a) in England, a pupil referral unit within the meaning given by section 19 of the Education Act 1996;

(b) in Wales, a pupil referral unit within the meaning given by section 19A of the Education Act 1996;

"school" means—

(a) the governing body of a maintained school (see section 19(1) of the Education Act 2002);

(b) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of an Academy within the meaning given by that section;

(c) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of a school that has been approved under section 342 of that Act;

(d) the governing body, within the meaning given by section 90 of the Further and Higher Education Act 1992, of an institution within the further education sector within the meaning given by section 91 of that Act;

(e) the Board of Governors of a grant-aided school within the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3));"

Member's explanatory statement

This amendment would create a new definition of "school" for the purposes of excluding them from certain obligations under the Bill.

Amendment 187 agreed.

Amendment 188

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

188: Clause 114, page 74, line 24, at end insert—

""small and medium-sized enterprises" means suppliers that—

(a) have fewer than 250 staff, and

(b) have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million;"

Member's explanatory statement

This amendment would insert a definition of "small and medium-sized enterprises" for the purposes of the Government amendment to Clause 11 and the Government's new clause after Clause 80 inserting duties in relation to those enterprises.

Amendment 189 (to Amendment 188) not moved.

Amendment 188 agreed.

Amendment 190

Moved by ***Baroness Noakes***

190: Clause 114, page 74, line 30, leave out "paid, or to be paid" and insert "payable or paid, receivable or received, or to be paid or received"

Member's explanatory statement

This amendment would ensure that references to amounts received, receivable or to be received in the Bill include references to those amounts referable to VAT.

Amendment 190 agreed.

Amendments 191 and 192

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

191: Clause 114, page 74, line 31, at end insert—

"(3) In this Act, a reference to a contract awarded by a school includes a reference to a contract awarded wholly for the purposes of supplying goods, services or works to a pupil referral unit."

Member's explanatory statement

This amendment would ensure that the new definition of "school" for the purposes of the Bill inserted into this Clause would apply such that references to contracts awarded by a school are read as references to contracts awarded for the purposes of pupil referral units.

192: Clause 114, page 74, line 31, at end insert—

"(3) An appropriate authority may by regulations change the definition of "small and medium-sized enterprises".

(4) Regulations under subsection (3) may amend this section."

Member's explanatory statement

This amendment would allow the Secretary of State to more precisely define "small and medium-sized enterprises".

Amendments 191 and 192 agreed.

Clause 115: Index of defined expressions

Amendments 193 to 203

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

193: Clause 115, page 74, leave out line 37

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted by the Government amendment to Clause 114.

194: Clause 115, page 75, line 5, leave out "section 10" and insert "section (Procurement and covered procurement)"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

195: Page 75, line 5, at end insert—

"competitive flexible procedure	section19
competitive tendering procedure	section 19"

Member's explanatory statement

This amendment would add definitions to the index of defined expressions.

196: Page 75, line 12, at end insert—

"convertible contract	section 69
covered procurement	section (Procurement and
debarment list	covered procurement)
	section 54"

Member's explanatory statement

This amendment would add definitions to the index of defined expressions.

197: Clause 115, page 75, leave out line 30

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted for the purposes of the Bill by the Government amendment to clause 114.

198: Clause 115, page 76, line 6, leave out "a"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

199: Clause 115, page 76, line 6, leave out "section 10" and insert "section (Procurement and covered procurement)"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

200: Page 76, line 8, at end insert—

"publication of a tender notice	section (Qualifying utilities dynamic markets notices: no duty to publish a tender notice)"

Member's explanatory statement This amendment is consequential on the Government's new Clause on qualifying utilities dynamic market notices.

201: Page 76, line 11, at end insert—

"school	section 114"

Member's explanatory statement This amendment is consequential on the new definition of "school" inserted for the purposes of the Bill by the Government amendment to clause 114.

202: Clause 115, page 76, leave out line 13

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted for the purposes of the Bill by the Government amendment to Clause 114.

203: Page 76, line 13, at end insert—

"small and medium-sized enterprises	section 114"

Member's explanatory statement

This amendment is consequential on the Government amendment to Clause 114 inserting a definition of "small and medium-sized enterprises".

Amendments 193 to 203 agreed.

House adjourned at 8.16 pm.

Grand Committee

Wednesday 30 November 2022

Arrangement of Business

Announcement

4.15 pm

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

Road Vehicle Carbon Dioxide Emission Performance Standards (Cars, Vans and Heavy Duty Vehicles) (Amendment) Regulations 2022

Considered in Grand Committee

4.15 pm

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

That the Grand Committee do consider the Road Vehicle Carbon Dioxide Emission Performance Standards (Cars, Vans and Heavy Duty Vehicles) (Amendment) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, there are two statutory instruments being considered together in this debate. I will begin with the regulations on vehicle type approval, as the carbon dioxide emissions instrument is being made as a consequence of the type-approval instrument.

As the department responsible for vehicle regulation, we have conducted intensive work to ensure that there continues to be a functioning legislative framework for this crucial sector of the economy. The EU type-approval scheme for road vehicles, such as cars, buses and goods vehicles, is being converted to an independent GB type-approval scheme, replacing the current interim arrangements whereby EU type approvals have been accepted following scrutiny by the Vehicle Certification Agency—the VCA. Alongside this, these regulations continue interim arrangements for motorcycles, agricultural tractors and machinery engines.

The purpose of type-approval legislation is to enforce prescribed safety and environmental standards. EU law previously set out the regimes under which a new vehicle, engine or part was required to be tested. Most of the standards come from an international body, the United Nations Economic Commission for Europe, or the UNECE, and the UK will of course continue to play a prominent role in this organisation.

The Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019, debated in your Lordships' House on 20 February 2019, introduced an interim provisional approval regime lasting two years, until the end of 2022. This required motor vehicle manufacturers to submit an EU type approval to the VCA to permit registration. Trailers, machinery engines and replacement parts continued to need an EU type approval.

Under the withdrawal Act, the EU law on type approval is retained in UK law. There are around 2,500 pages setting out detailed technical standards for cars, buses and goods vehicles. This SI corrects deficiencies and creates a GB type approval, although I emphasise that, at present, the technical standards are essentially identical to those in the EU, so for manufacturers this is initially an administrative exercise.

This SI will require manufacturers of road vehicles to transition into the GB type-approval scheme no later than 1 February 2026, with approval being available from 1 January 2023.

With respect to the Northern Ireland protocol and unfettered access, this instrument will exempt vehicles that meet EU rules, which are made in or approved in Northern Ireland, from the GB type-approval regime.

This SI gives Ministers the powers to amend the retained direct minor EU law on road vehicles; in other words, the detailed technical specifications originally set by the European Commission. There will be a statutory requirement to consult representative bodies, such as the Society of Motor Manufacturers and Traders—the SSMT—and similar groups, whenever Ministers seek to amend the technical standards. This will ensure that the vehicle industry and interested non-governmental organisations will be able to have their say on any proposals that we make.

Machinery engines placed on the market from 1 January 2023 will be required to obtain GB approval under a new provisional approval scheme for machinery engines, which recognises an EU approval. These arrangements are already in place for tractors and motorcycles. For all three groups of product, the provisional schemes will continue until the end of 2027, by which time we expect to have an independent GB type-approval regime available for all these groups of vehicle or engine.

I turn to the second SI, relating to carbon dioxide emissions performance standards. This instrument amends various retained EU new car, van and heavy-duty vehicles carbon dioxide emissions regulations to ensure that they can continue to function appropriately in the UK.

The road vehicle carbon dioxide emissions regulations were retained following EU exit and establish carbon dioxide emissions standards for manufacturers of new vehicles across the UK. For cars and vans, regulations establish how the carbon dioxide emissions framework is to operate, including how carbon dioxide emissions reduction targets will be set, monitored, reported and enforced. They also include several flexibilities to help manufacturers meet their targets, such as reduced targets for small-volume manufacturers and additional credits for producing low-emission vehicles.

Similar regulations for heavy-duty vehicles were also retained following EU exit. However, they do not set mandatory carbon dioxide emissions targets on manufacturers until 2025. Until this time, manufacturers are legally required to annually report specific data points on their vehicles to the enforcement body, the VCA.

[Baroness Vere of Norbiton]

All this instrument does is correct for deficiencies and inoperability within the retained regulations: there is no change in policy. The primary corrections are replacing references to EU type approval with EU, GB and UK(NI) type approval, where appropriate, to reflect these type-approval schemes. As these regulations apply UK-wide, it is appropriate to reference all three type-approval schemes as, due to the protocol, vehicles registered in Northern Ireland will continue to receive EU type approval, or now, UK(NI) type approval.

These corrections will ensure that carbon dioxide emissions from vehicles with GB or UK(NI) type approval are regulated. If these corrections were not made, over time the carbon dioxide emissions of potentially millions of new vehicles would be unregulated, risking legally binding carbon budgets and climate commitments.

Some minor EU exit-related deficiencies were also corrected in this instrument, and a simple typo made by a previous SI was fixed.

These two instruments address EU exit-related deficiencies in retained EU law, enabling the creation of an independent type-approval scheme while ensuring continued effective regulation of carbon dioxide emissions. I commend these regulations to the Committee.

Lord Jones (Lab): My Lords, I thank the Minister for her introduction. It is a matter of supporting the 2022 regulations. It is clean, green and 21st-century. I rise on the principle that the Executive should always be questioned by the Back-Bencher—by the legislature. That is a parliamentary principle of long standing, and I am simply taking this opportunity, knowing that time is of the essence.

Paragraph 7.1 of the helpful Explanatory Memorandum, on the policy background, is very blunt and to the point. Paragraph 12.5, under the heading "Rationale", is a helpful foundation statement, which no doubt the department has worked hard to produce.

What is the department's estimate of the number of vehicles on our roads that now follow the April 2019 regulations of the EU Parliament and the EU Council? I presume that many do not—and legally. I am sure the Minister will tell me in her reply.

The Minister mentioned consultations, which is a big plus. In proposing these regulations, what consultations has she had with the Mayor of London? Maybe there were none.

Looking at the road vehicles EU exit regulations—they are numbered "XXX"—I found them a bewildering plethora of initials. In a way, they are as long as Hilary Mantel's novels and quite bewildering in their detail—but this is a detailed issue. The DVLA is a huge employer in greater Swansea. As a member of my noble friend Lord Kinnock's shadow Cabinet, I recollect that we heard proposals to move the DVLA to England. They never materialised, of course—it would not have been seen as a positive move—but, without a doubt, the DVLA is a major employer. All of Britain much depends on it. Can the Minister say how many people are now employed at the DVLA in Morriston, Swansea?

Lastly, in paragraph 7.8 on page 6 of the Explanatory Memorandum, there are quite a few references, direct or otherwise, to the Secretary of State's powers. Considerable influence is being granted there. The Minister might wish to indicate why that should be so. Also, in paragraph 6.21, we see the word "probably". That is not very exact; perhaps we could have a reply on that via officials, if not directly from the Minister. That paragraph also contains the phrase "in the time available". That seems somewhat up in the air; perhaps it is slipping through without explanation, in that sense. Time is of the essence. The Minister was persuasive and comprehensive. I conclude.

Baroness Randerson (LD): My Lords, I thank the Minister for her introduction. I suggest to her that it should be obligatory for any of her ministerial colleagues who thought that Brexit was a good idea to read through these regulations line by line. I congratulate the noble Lord, Lord Jones, on his determination in managing to do that because it really is a pretty mind-bending process to come to terms with this instrument.

This is a classic case of many hours of lawyers' time having already been spent, and even more hours of manufacturers' and retailers' time being needed in future months and years, to get detailed but essential standards transposed from EU law in UK/Great Britain law and for everyone involved to understand exactly how they will work. The Explanatory Memorandum explains that, for very good reasons, there will have to be delays and waivers for some regulations as manufacturers desperately try to get to grips with a complex new situation.

For that reason, I am amazed that no full impact assessment has been made. This issue affects everyone from major manufacturers to the hundreds of small producers who supply them. Fifteen organisations were consulted and managed to produce 69 responses—that was pretty clever as a response rate, I thought—yet the financial impact of this measure is supposed to be less than £5 million. That is just ridiculous.

There is a side issue among the real pot-pourri of issues in this document, which is a totally different factor: the removal of the maximum height for HGVs. We have discussed this here before and I am aware that Network Rail is very concerned by the impact of bridge strikes on their services. This height relaxation will inevitably mean more bridge strikes. What consultation has been undertaken with Network Rail about the now permanent relaxation of HGV heights?

4.30 pm

I return to the core issue of concern: the creation of a GB type-approval scheme by the end of 2027, with divergence from EU standards. This will apply to a wide range of vehicles and their associated machinery. To start with the principle behind this, can I ask about this date? It is at odds with the end of 2023, which has now been thrown into the melting pot as the date for the end of existing EU law in Great Britain's law. Everything has to be reviewed by the end of 2023 and will either be accepted or rejected by then. How does the 2027 date fit in with the 2023 date?

I ask a basic question: why would one want a separate GB scheme? Has this been agreed as a sensible course of action with environmental regulators and

manufacturers, and what is its policy intention? Is it to achieve higher environmental standards or not to have to raise them every time the EU does? What impact will having separate and different standards in the UK have on the ability of manufacturers to sell overseas? Was there a specific consultation about this or are we just creating a new paper mountain?

Paragraph 6.2 of the Explanatory Memorandum casually refers to 4,500-plus pages

"of retained EU law … in the fields of motor vehicle and machinery engine type approval".

All those pages of details have been reached after painful years of cross-European consultation. I emphasise the point just referred to by the noble Lord, Lord Jones: a great deal of power is being given to the Secretary of State here. This does not or should not just replace the EU regulations without the due process of consultation and verification that has taken place over years in Europe. We cannot have a Secretary of State who simply says "yes" and rubber-stamps something different in Britain. Has anyone drawn this issue to the attention of those people in Government who are pressing for all EU law to fall by the end of 2023? It strikes me that this date is not realistic.

Separately, I am concerned by the plethora of dates in this. I have detected the following dates, and I am not sure this list is comprehensive. Various places refer to December 2022—this is the sunset clause; that is why we have it—the date for revocation in the new Bill is 2023; and passenger, car, bus and goods vehicles have issues referring to 1 February 2024. Some provisional approvals then lapse on 1 February 2026. Then there is the end of 2027, when the Government's GB-type approval scheme will come in, except for trailers, which have two years longer. On top of that, there are a series of waivers for certain situations where manufacturers have basically said, "Help! We can't cope." It is a mess.

Added to that, we have the United Nations Economic Commission for Europe, which covers 75%-plus of approvals. No wonder manufacturers are begging for extra time. All this simply distracts them from the core thing we should be encouraging them to do, which is to work towards ever higher and better environmental standards. I am old enough to remember the mess that our car industry was in in the 1970s and 1980s. In the past 30 years, we have seen a tremendous success story with the rebuilding of our car industry. I fear that we are in grave danger of losing what has been a great success story for Britain with the type of approach that we have here.

I turn briefly to the CO_2 emission performance standards, which do three things. First, they correct an error in the formula. I have a question for the Minister: is there any evidence that that has had a practical impact? Has it been a problem? It illustrates how difficult it is to do all this sort of work at pace in so much detail without making mistakes. Secondly, they update standards according to the latest—2019—EU regulations. Thirdly, they expand the references to include a broader range of types of approval references now needed following Brexit. That is important for the control of CO_2 emissions.

As ever, Brexit has made this more complicated because we now have EU, GB and UK(NI) type approvals. Even if there are changes to the protocol, surely we will need to continue to adhere to EU regulations because the EU is our major export market. These regulations demonstrate the dilemma that the Government face: the need to update to the latest and best standards in order for our manufacturers to compete. It makes the Bill to revoke EU law by the end of 2023 look ridiculous, to be honest.

I have a very specific question about the Department for Transport's progress. I referred earlier to the 4,500 pages. I ask this question because, as the Minister knows, we have been here for many hours in the past couple of years transposing all this legislation, recasting it and, in some cases, going into contortions in order to make it fit. We are now going to have to do it again. I am a member of the Common Frameworks Scrutiny Committee. We had a ministerial letter this week that referred to the fact that the National Archives are being called into play to trace EU law in order to ensure that it is all found. How is the Department for Transport is getting on with tracking EU law and coming to terms with the task it faces in the next year?

Lord Tunnicliffe (Lab): My Lords, I, too, thank the Minister for presenting these two SIs. I welcome these instruments in relation to approval for road vehicles and, specifically, the creation of GB type approval. As a result, cars, buses and goods vehicles will be required to transition into GB type-approval schemes by no later than 1 February 2026.

I begin by asking the Minister to explain what engagement the department is undertaking with manufacturers, particularly smaller businesses, to make them aware of the new approval regime. Similarly, the instrument will make new approvals first available from 1 January 2023. Given that that is now only one month away, is the Minister confident that the DfT is fully prepared? What resources have been allocated?

Turning to a separate issue, the regulations relating to carbon dioxide emission performance standards amend a reference to an EU type approval to reflect the creation of the GB type-approval scheme. Can the Minister confirm that this aims to provide continuity, rather than a separate change of policy?

We will not oppose these regulations but I hope that the Minister can clarify these issues a little further.

Baroness Vere of Norbiton (Con): I am grateful to all noble Lords who have taken part in this short debate. I will endeavour to answer as many questions as possible. As ever, I am fairly sure that a letter will be forthcoming afterwards because I am also fairly sure that there will more information that I need to tell noble Lords.

I will start with the noble Lord, Lord Jones, who asked for an estimate of the number of vehicles now on the road that would be covered by the 2019 regulations. There are about 4 million; basically, anything that entered into service in 2020-21 would have been covered by the 2019 regulations.

The noble Lord went on to talk about consultation, as did the noble Lord, Lord Tunnicliffe. There has been an enormous amount of consultation and engagement with the industry around type approval.

[Baroness Vere of Norbiton]
It is incredibly important so, over the past two years, we have consulted with the industry—including the Society of Motor Manufacturers and Traders, which is very effective in what it does, the Motorcycle Industry Association and the Agricultural Engineers Association—and with both individual manufacturers and their suppliers, because the supply chain for vehicle manufacturing can be long. This has informed the development of the scheme as well as providing the opportunity to help manufacturers to prepare for any changes.

We also consulted formally in the summer. The feedback that we received has been incorporated into the statutory instrument. The main feedback received from the industry was that it needed more time to prepare. We were pleased to give it that; we therefore delayed by seven months the date we had proposed for new models to obtain approval. We also permitted selected waivers to run for a little longer than originally proposed, giving the industry more time to adapt.

We have been engaging with the industry on this for such a long time. For example, the Vehicle Certification Agency—the VCA—has been running workshops throughout the year to ensure that stakeholders understand the approval process and are ready for its implementation. All in all, the vehicle manufacturers are largely content with the approach and the level of continuity—this is in essence continuity—that we have provided. They are familiar with type approval as a regulatory process because they are well aware of the EU type-approval process, and they are keen that Britain continues to regulate via this mechanism rather than other mechanisms that are used elsewhere in the world. We have not specifically consulted the Mayor of London specifically. We have focused very much on consultation with the industry; it is important that we do so.

The noble Lord, Lord Jones, went on to mention the DVLA. As a former Roads Minister of three years standing, I have great respect for the work that happens in Swansea. Indeed, I have been to visit the enormous offices in Swansea where about 6,000 people work. They do a fine job. They have cleared the backlog in all areas, apart from where there are complex medical decisions to be taken; those will rely on some information coming forth from the NHS. I am really proud of the work that they have done; they have worked very hard over a long period of time.

4.45 pm

A number of noble Lords mentioned the powers. We are dealing here with very small technical amendments that often start life in the UNECE. Although the UNECE has the word "Europe" in it, it is actually not very European at all. It is a much broader organisation that includes many countries around the world. In my letter to noble Lords I may perhaps identify some of them that are definitely not European but come under the UNECE. It is in the UNECE that the technical changes are first made; that is the genesis of the technical changes.

I have been privy to some of the conversations at the UNECE and the sorts of things that it talks about are small: the size of the indicator lever or something like that. They are the sort of things that I do not believe should come before your Lordships' House for debate in the Chamber or, indeed, in the Moses Room. They are things one needs to talk to manufacturers about. Technical changes that will be made are agreed at an international level, and then they go into the system. I believe that the Secretary of State having the power to put those technical changes into the system is appropriate.

The noble Lord mentioned "probably" and "in the time available", which unfortunately I did not have time to reference in my Explanatory Memorandum, so I will probably have to write to him on that to provide a little more information.

Turning to the comments of the noble Baroness, Lady Randerson, there has been very little change, apart from the fact that manufacturers will be dealing with a different organisation for their type-approval process. The fundamental testing that a manufacturer has to do and the documents that it needs to provide have not changed, so very limited familiarisation needs to happen because the underlying technical requirements remain exactly the same as previously.

The only costs to the industry will be for British companies that did not previously work with the VCA and will result from the processes of applying for GB type approval. It is assumed that manufacturers that have already done the testing needed for EU type approval would not need to do additional testing, so it would just be the administrative process of taking the papers they had sent to the EU and sending them to the VCA if they are asked for two different type approvals. The costs are purely administrative, and we estimate that they will be not more than around £3 million a year across the entire industry, which is not very significant. We estimate that it will add less than £1.50 to the cost of a new vehicle, given that around 2 million new vehicles are registered every year. The VCA has been preparing for this change for many years. It charges fees to recover its costs from the industry and it is staffed to provide these type approvals. It has a very good record with the industry in terms of the speed with which it has previously been able to do type approvals, and I am content that it will be able to meet the needs of the industry.

The noble Baroness mentioned the height relaxation. This is to align type-approval regulations with the law that already applies to all vehicles in circulation. It is essentially removing administrative red tape around getting lorries and trailers on the road. We do not anticipate it increasing the number of vehicles exceeding 4 metres in height. I accept that bridge strikes remain a challenging issue, and we are always trying to get the traffic commissioners to write to operators to remind them to plan their routes carefully and not strike our bridges.

Turning to the Retained EU Law (Revocation and Reform) Bill, the department is reviewing its catalogue of all retained law, including that for automotive standards, and will decide how best to proceed once the Bill is finalised. On tracking EU law more broadly, I have seen the spreadsheet and it is pretty big. I think we are making good progress, but I will write with a little more information. In the Department for Transport, much of our EU law is safety-related, so it is not the case that vast quantities would be ignored or allowed to lapse because we clearly need it for safety reasons.

Why do we need this scheme? It is simply a duplication? To a certain extent it is. We are taking a scheme that already exists and saying, rather than sending in papers to the EU, send them to the VCA so that you have GB type approval. The key thing is that it also means that the system can be enforced by the VCA and the DVSA when they do their spot checks. Without the SI, we would not be able to enforce it, so it is really important. However, in general not much has changed, because the underpinning for all this is international UNECE regulations.

The noble Baroness, Lady Randerson, also mentioned the impact of the carbon dioxide formula error. We do not believe that there was any impact. No carbon dioxide target calculations have taken place. The typo is replacing NEDC carbon dioxide with NCTP carbon dioxide. I will write if I have any more information, but I do not believe that it has any real-world impact at all.

I accept that there are a number of dates in here, but this is a very large industry that is well aware of the dates by which it has to do certain things.

Baroness Randerson (LD): The noble Lord, Lord Jones, and I mentioned the powers going to the Secretary of State. Can the Minister tell us a little more about the advice that will go to the Secretary of State? It is all fine so long as we are piggybacking on EU standards, but surely the Government are not going to all this effort just to permanently piggyback on EU standards. The Government clearly want to diverge and if we are to do so, there has to be a sound technological basis for it.

Baroness Vere of Norbiton (Con): No, that is not quite right. We are not piggybacking on EU standards, because EU standards are underpinned by UNECE standards and the UNECE has nothing to do with the EU. They underpin EU standards and will underpin our standards. Changing UNECE standards involves lengthy negotiations and discussions and technical experts all getting together to make improvements in our system.

Historically, when we go into UNECE negotiations, advice is provided to Ministers in the normal fashion with various experts saying, "Minister, this should be our negotiating position", and we go in there and try to get our position. We are a leader in that group as we have very strong technical expertise in the field of vehicle manufacturing. When a decision is made, it is a bit like the European Commission: we are not losing any oversight at all here, because that decision would have gone through the European Commission with no oversight by Parliament either.

I am happy to write with more information as to what the process would be should the technical standards change and we need to change our type-approval system, but I cannot imagine that it would be significantly different from what already happens when we approach the UNECE to make technical changes.

The noble Lord, Lord Tunnicliffe, was right when he summed up and said that this is continuity and not a change of policy. There is no change of policy here; there is no change in terms of the carbon dioxide emissions. We are maintaining the standards for carbon dioxide emissions, and we are maintaining the standards within the type-approval system. The simple fact is that this is very technical and many of the names are changed—and no more.

I believe that I have covered engagement, so I hope that I have covered all the questions I am currently able to, but I will write a letter. I beg to move.

Motion agreed.

Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment and Transitional Provisions) (EU Exit) Regulations 2022

Considered in Grand Committee

4.55 pm

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

That the Grand Committee do consider the Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment and Transitional Provisions) (EU Exit) Regulations 2022.

Motion agreed.

Transport and Works (Guided Transport Modes) (Amendment) Order 2022

Considered in Grand Committee

4.55 pm

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

That the Grand Committee do consider the Transport and Works (Guided Transport Modes) (Amendment) Order 2022.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, this order will be made under the Transport and Works Act. The Act is the usual way to authorise the construction or operation of local transport schemes such as a railway, tramway or trolley vehicle system in England and Wales, as well as transport systems using a mode of guided transport prescribed by order. The order is the Transport and Works (Guided Transport Modes) Order 1992, which I shall call the 1992 order. The term "guided transport" is defined as meaning transport by vehicles guided by means external to the vehicles, whether or not the vehicles are also capable of being operated in some other way.

The modes currently prescribed in the 1992 order that can seek authorisation via the Transport and Works Act include road-based and track-based systems, but are limited to those systems guided by physical means, such as cables and tracks. Changes in technology mean that transport systems can now be guided by non-physical means. This might cover simple sensors that detect paint or other road markings to direct a vehicle or more complex sensor systems that read the surrounding environment to direct a vehicle. The draft amendment order being debated today is an enabling

[Baroness Vere of Norbiton]
provision which will amend the 1992 order to extend it to allow applications for public transport schemes using non-physical guidance systems to be authorised via the Transport and Works Act regime.

To provide further context and background on what the Transport and Works Act covers, it is intended to be a one-stop consenting mechanism for all the necessary powers to deliver and operate a transport scheme in England and Wales. Separate legislation covers similar schemes in Scotland. The Transport and Works Act regime applies only to transport schemes that carry people and goods, meaning it does not provide a route to consent schemes exclusively intended for use by private vehicles. Any scheme authorised via the Transport and Works Act will continue to have to comply with all other relevant legislation such as safety, data and cybersecurity legislation.

The power to make the amending order that is the subject of this debate is set out in Section 2 of the Transport and Works Act. The proposed amendment order is an enabling provision that seeks to allow transport systems that are guided by non-physical guidance systems to seek authorisation through the Act. It does this by adding new types of schemes to the existing list of guided transport modes set out in the 1992 order. These are road based with sensor guidance and track based with sensory guidance. Specific definitions of each of these modes are set in the proposed amendment order. This amendment will not change the process that is required to be followed by a promoter in seeking authorisation; it will simply allow a wider and more modern range of schemes to be considered and authorised under the Act.

I cannot think of much more to say about this order—I have run out of words. I beg to move.

5 pm

Lord Jones (Lab): I thank the Minister for her brief introduction. I declare that I shall try to be brief in my remarks.

Is there anywhere in the United Kingdom where these new modes of transport are in operation? Does the Minister know of preparations in any given city, town or region? Is there any estimate of when these modes of transport might come on stream? Following on from that, where does this measure leave batteries and hydrogen—if it does—as means of propulsion for transport?

Paragraph 14.1 on page 3 of the Explanatory Memorandum states:

"There is no formal periodic review of this statutory instrument."

That is somewhat inexact. One wonders whether it is on a departmental wing and a prayer. I do not know; the Minister might illuminate us about the department's intention in this moment.

It is so interesting to see the phrase "guided transport modes". The Minister was exemplary in her brevity but might she, with the aid of her department, define that further?

Baroness Randerson (LD): My Lords, I thank the Minister for her introduction. Planning processes for tram systems have always been notoriously complex and the associated costs have always been high. Are the Government reviewing other aspects of the Act in order to simplify it in line with the new sorts of designs that we will see in future because the costs and complexity deter many local councils, for example, from going ahead with schemes? In time this should be transformational because the built infrastructure required for tramways and busways will be so much simpler than it has been in the past, which should make it much easier to implement.

Lord Tunnicliffe (Lab): My Lords, I welcome this instrument to allow applications for public transport schemes using non-physical guidance systems via a Transport and Works Act order. The advance of non-physical guidance systems using sensory technologies is an exciting development in the future of transport; indeed, it is so exciting that we have been studying it for at least 20 years. I am pleased that this instrument will allow consultation on their implementation.

Automation has enormous potential for increasing productivity. If harnessed correctly, it can improve the lives of people around the world but, if it is not properly regulated, there are inherent dangers. The safety of all those involved must be paramount. We must also consider how this will impact employment in the transport industry.

Software will be an essential part of such technology. When you look into it, software auditing is much more frightening than one might expect. We all know from the number of times we have to update our computer or our phone what a moving feast this is. Considerable authority has been given to software in the aviation industry. What agency will have the responsibility for approving these systems, particularly on the software side? Will a new agency have to be set up or will we look to organisations that work in safety-critical software industries?

Can the Minister confirm that my concerns will be considered as part of the Transport and Works Act order process? Innovation such as this should be welcomed as part of a well-regulated and well-legislated framework. Will the Minister briefly explain the department's wider approach to advancing the use of non-physical guidance systems in transport across the UK? I welcome this order and look forward to its implementation, as well as to the development of new transport systems using this technology.

Baroness Vere of Norbiton (Con): Once again, I am grateful to noble Lords for their contributions to this short debate. This time, I will turn first to the comments made by the noble Lord, Lord Tunnicliffe. He is right that the software can be incredibly complicated, but software is not limited to non-physically guided public transport systems; it is all over our rail and Tube systems. One of our most famous physically guided transport systems is the Docklands Light Railway. There is software all over the place, and I recognise his comment about updating it and making sure it is fit for purpose. That all fits in with the existing safety regime set out for the different transport modes; it is not necessarily connected to granting planning, which is under consideration today. I will write with some more information about how we reassure ourselves that appropriate checks of the software have been made.

I turn to how we are taking this forward across the UK, and this links to the point made by the noble Lord, Lord Jones, about whether or not there are any of these things. We believe this technology has huge potential, with a driver in it or not. At this moment in time, there is not one technology that is at the forefront or that is just about to be built. One might have pods that could be operated on specially built guide-ways, shuttles or higher-capacity vehicles. We know that people are looking at this.

Actually, the trigger for this amendment came from a request we received from a specific local authority that is trying to authorise a new bus transit route. I cannot say any more on that, at the moment. We are trying to take these interventions and spread them across the UK very much by using the leadership of local transport authorities. My view is that the mayors of our big urban cities are a key part of that. They have received significant amounts of funding under the city region sustainable transport settlements, which they can use to investigate these sorts of interventions. Of course, local transport authorities that are not mayoral authorities can do too.

There is none in operation as we speak, but there are physically guided schemes, as I mentioned; the Docklands Light Railway is up and running. The means of propulsion is also key. The noble Lord mentioned batteries and hydrogen, both of which could be used. You could also use a catenary system, charged rails or all sorts of different things. The key is that the schemes we are looking at are going to be sustainable and low-carbon, and good alternatives to the motor vehicle. We very much hope to see some coming through. I will also write to the noble Lord about why we concluded not to review this order.

The noble Baroness, Lady Randerson, asked about other planning changes. She is right: they can be costly and complex. The Government feel there has to be the right balance between the benefits one gets from these transport schemes and the cost. We have to make sure that they are within their environmental targets and that we engage with the local community. Sometimes it feels very sluggish, that it takes for ever and that it is extraordinarily costly, but I feel that the planning you do before you put a shovel in the ground is always to the good. If you can de-risk a project as much as possible by involving the local community and making sure that everything has been thought of beforehand, you will have more chance of a successful build. Work on planning is going on across government, because we want to check that the system achieves that balance between benefits and any potential costs.

Motion agreed.

Committee adjourned at 5.09 pm.