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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Wednesday 18 January 2023

3 pm

Prayers—read by the Lord Bishop of Carlisle.

Wales: Additional Financial Resources

Question

3.07 pm

Asked by ***Lord Wigley***

To ask His Majesty's Government what additional financial resources they have made available to the government of Wales, over and above the Barnett formula consequential provisions, to meet unforeseen financial needs for which no provision was made in Wales 2022-23 expenditure plans.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): The Welsh Government are well funded to meet their devolved responsibilities. The 2021 spending review set out the largest annual settlement in real terms since the devolution Act. This is still growing in real terms this year. The Welsh Government also have their own tax and borrowing powers. On top of this, the UK Government are supporting households UK-wide with the cost of living, and supporting businesses, charities and the public sector with their energy bills.

Lord Wigley (PC): My Lords, is the Minister aware that Wales Fiscal Analysis, at Cardiff University, has shown that, even after taking into account the additional allocations made to the Welsh Government, the higher levels of inflation since the coming year's budget was set could amount to an impact of £800 million in 2023-24, and that, consequently, real-terms spending on public services in Wales will fall by that amount? Will the Government now allocate an additional £800 million to the Welsh Government for the coming year, to avoid real cuts in essential services in Wales?

Baroness Penn (Con): My Lords, we have a difference of opinion on the figures. That might be because government budgets are routinely translated into real terms using the GDP deflator, by both the Treasury and independent bodies such as the OBR and the IFS. Using those figures, we see that the Welsh spending settlement is still growing in real terms this year and over the spending review period, even after the higher costs, and we believe that the Welsh Government are well funded to meet their obligations.

Lord Morris of Aberavon (Lab): My Lords, have the Government any intention at all of reforming the Barnett formula in this Parliament? Would such a reform not be a levelling up that the Government aspire to?

Baroness Penn (Con): My Lords, the fiscal framework between the UK and the Welsh Governments was agreed in 2016; that added a needs-based factor into the Barnett formula to ensure that Wales receives fair funding. It receives at least 15% more funding per person than the equivalent UK government spending in the rest of the UK. In fact, in the current spending review period, that additional amount is 20%.

Baroness Randerson (LD): My Lords, the lack of Barnett consequentials from the HS2 rail project—a railway not a foot of which will be built in Wales—is a glaring injustice. The recently confirmed extension of the project means that additional Barnett formula funding was confirmed for Scotland and Northern Ireland. Why not Wales?

Baroness Penn (Con): As the noble Baroness will know, the Welsh Government do not receive Barnett on HS2 spending because rail infrastructure in Wales is a reserved matter and the UK Government continue to invest in rail infrastructure in both England and Wales.

Lord Touhig (Lab): My Lords, perhaps I can help the Minister. She might care to suggest to her right honourable friend the Secretary of State for Wales that he has a word with my noble friend Lord Murphy of Torfaen, who, when Secretary of State for Wales, working with the then Chancellor Gordon Brown, invented something called "Barnett-plus". In truth, with a little imagination you can put as much money in as you want with Barnett.

Baroness Penn (Con): My Lords, I believe that the fiscal framework agreed in 2016 does that, and I am sure the noble Lord will welcome the fact that the latest spending review set the largest annual block grant in real terms of any spending review since the devolution Act of 1998.

Lord Forsyth of Drumlean (Con): My Lords, has the time not come to get rid of the Barnett formula and to fund the devolved Administrations on the basis of need, which is how they distribute the money themselves? I know my noble friend is very busy, but could she read the report of the Select Committee of this House, which was initiated by the late Lord Barnett, which showed clearly that Wales lost out as a result? I say that as a Scot, and Scotland benefits in addition to parts of the north of England, Wales and other devolved parts of the United Kingdom.

Baroness Penn (Con): My Lords, I am aware of the views of Lord Barnett, to whom the formula's name relates. The point my noble friend makes about needs is exactly what we tried to build into the fiscal framework in 2016. There was an assessment of additional needs in Wales. It said that, on a needs basis, it should be at least 15 % more than the equivalent in the UK. That was recommended by the independent Holtham commission, and that is something that the UK is taking forward.

Baroness Wilcox of Newport (Lab): My Lords, while I would not wish necessarily to disagree with the Minister, I got my figures directly from the Welsh

[Baroness Wilcox of Newport]
Government. Their overall budget this year, and in 2024-25, will be no higher in real terms than it was in 2022. Their capital budget will be 8.1% lower. With post-EU funding arrangements, Wales has been left with a £1.1 billion shortfall, and it is no longer able to fund three key areas: apprenticeships—Wales used to fund 5,000 apprenticeship places every year; practical support for those furthest from work through the communities for work scheme and ReAct for those in need of redundancy support; and higher education has been shut out of the levelling-up process, and hundreds of jobs are now at risk. Why is Wales being underfunded by the UK Government?

Baroness Penn (Con): I have to disagree with the noble Baroness on most of the points in her question. As I have set out to this House, Wales receives 20% more funding per head than the UK equivalent, and that is over its needs-based assessment as recommended by the independent Holtham commission. The spending review set out the largest annual settlement in real terms since the devolution Act and the Welsh Government also have their own tax and borrowing powers. It is important that the Welsh Government are well funded, and that is what the Government have done.

Lord Shipley (LD): My Lords, are the Government going to keep their promise to Wales to match EU funding through the shared prosperity fund?

Baroness Penn (Con): My Lords, the Government have set out their plans for the shared prosperity fund and how they intend to keep that commitment. Taking into account the tail of EU contributions and then the UK top-up, the levels of funding remain those we committed to in the election manifesto.

Lord Kirkhope of Harrogate (Con): My Lords, I am following on from my noble friend Lord Forsyth's point. While we are discussing the Barnett formula, a considerable number of people in England, particularly in parts of England quite close to the Scottish border, have always been concerned about the preferential treatment given to Scotland through the Barnett formula in terms of public spending. Does the Minister not think it is time for the Government to review that, but also look at other areas of England, when they look at improving expenditure?

Baroness Penn (Con): I do think it is important that, when we look at our public spending, we take into account the needs of the various areas. I have described how we do that when it comes to the Welsh Government. We also have that process when we look at, for example, funding for local government. That is a principle that the UK Government will continue to support in our approach.

Lord Morgan (Lab): My Lords, in addition to the excellent financial points that have been made on both sides of the House, would the Welsh Labour Government not benefit from having greater powers, of the kind of "devo-max" proposed in Gordon Brown's excellent proposals on the constitutional settlement?

Baroness Penn (Con): My Lords, there was a considerable extension to the Welsh Government's powers relatively recently, and I would put the emphasis on those powers being used to their fullest effect before we return to this question again.

Lord Watts (Lab): My Lords, is it not the case that the allocations to Scotland, Wales and Northern Ireland were made before the Tory Government wrecked the economy? Is it not time that we reviewed those allocations and, at the same time, the pay issue, which was also set before the Government wrecked the economy? That has had a dramatic effect on both.

Baroness Penn (Con): My Lords, if the noble Lord is talking about levels of inflation, they have been largely driven by external factors such as Russia's invasion of Ukraine. As I have already reassured the House, in addition to the fact that the 2021 spending review settlement was the largest since the devolution Act, it is also growing in real terms this year and over the spending review period, even taking into account that higher level of inflation.

Lord Howell of Guildford (Con): My Lords, the late Lord Barnett of course disliked the Barnett formula intensely; he realised it had many faults and clearly needed improving. How do the Government feel about suggestions from some quarters that there should be much more fiscal devolution and that the devolved nations and areas should raise their own funds through new taxation? Is that a good idea?

Baroness Penn (Con): My Lords, in the latest round of devolution to the Welsh Government, I believe they were given greater powers to raise taxes than previously. As I said to noble Lords, making use of those existing powers before looking to extend them further would be a sensible way forward.

National Parks

Question

3.18 pm

Asked by ***The Earl of Clancarty***

To ask His Majesty's Government what support they will provide for the continuing preservation and maintenance of national parks, and in consideration of their role in fighting climate change.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I declare my interests as set out in the register. The Government's response to the *Landscapes Review* was accompanied by a public consultation. We will publish a response to the consultation shortly, setting out plans to support national parks and areas of outstanding natural beauty, including helping them deliver climate mitigation and adaptation. Our Farming in Protected Landscapes programme is a key delivery mechanism and provides funding for farmers and land managers to work in partnership with protected landscapes teams to deliver projects on climate, nature, people and place.

The Earl of Clancarty (CB): My Lords, does the Minister agree that national parks are flagship assets in the fight against climate change, but that that fight has been made much harder through cuts to funding of 40% in real terms in the last 10 years? Does he believe that the national park authorities and the AONBs together require fresh powers, as the Glover review recommended, and new funding in order to effect nature recovery and, crucially, increase biodiversity, and that farmers too need to be a properly effective ally in that fundamentally important ambition?

Lord Benyon (Con): I entirely agree with the noble Earl about the value that our protected landscapes bring to our policies, not only on climate mitigation but on reversing the tragic decline in species. We have increased spending on areas of outstanding natural beauty by 15% this year. I concede that inflationary pressures are challenging for all protected landscapes but I urge him to look at the other areas of funding that we are providing. As I mentioned earlier, the Farming in Protected Landscapes programme has 1,800 projects, benefiting climate and nature right across our protected landscapes. Large amounts of our £750 million Nature for Climate Fund will be spent in our protected landscapes, because that is where 60% of our peat is and where 50% of our SSSIs are. That is where the focus of that fund will go. In addition to that, we have private and blended finance that national parks are very well able to get.

Baroness McIntosh of Pickering (Con): Does my noble friend accept that one of the difficulties at the moment is that the "have regard" clause is weakening the potential input that national parks might face? Could that be amended through the process of the levelling up Bill? What steps have the Government taken to lever more private funding to ensure that there are greater powers for water companies, for example, to fund nature-based solutions in future?

Lord Benyon (Con): We hugely admire Julian Glover's report and have already implemented large portions of its measures. One of those centres on governance, and that is where it will fit into our green finance strategy, which is about to be refreshed in March to bring in all the different players, and different parts of government, to make sure that we are responding to the huge potential that lies in ESG money and other offsets that can benefit our landscapes. These are the most treasured landscapes in these islands, and we want to make sure that they are getting the lion's share of this kind of finance.

Lord Teverson (LD): My Lords, I congratulate Defra on the Farming in Protected Landscapes scheme, which has worked extremely well. But the fact is that biodiversity in AONBs and national parks is no better than in the rest of the UK as an average, which is extremely poor compared with international examples. What is Defra going to do to improve the situation beyond that scheme to ensure that there really is a difference? Surely these days our protected areas should be better on biodiversity than the rest of the country.

Lord Benyon (Con): Our ambition is to reverse any decline in species. We have policies that will see, across the country, an end to the decline of species by 2030 and an uptick in the populations that we see across our islands. On the particular point, we want to see 35,000 hectares of peat restored by 2025 and 280,000 hectares by 2050. AONBs and national parks will be fundamental to that, because they are where most of it lies.

Baroness Jones of Whitchurch (Lab): My Lords, I declare an interest on national parks as in the register. Returning to the 40% cut in real terms that national parks have received over the last decade—at a time, I should say, when they have never been more popular or had more demand on their services—the Minister has talked about other funds that are going into the national parks, but does he accept that that is not core funding and is going to other organisations in the parks? It is the national parks themselves—the rangers, the services and the visitor centres—that are core to providing a good visitor experience and encouraging more people to go into the parks. Does he accept that we should be more ambitious about the role that national parks can play? If we are to do that then they will need more core funding, not the supplementary funding that the Minister is talking about.

Lord Benyon (Con): I think national parks are very good at getting that money in, whether from the private sector or blended finance. There is a very good arrangement with Palladium called Revere, which sees some money going into supporting, for example, core personnel in national parks to do projects right across those parks. All areas of government have challenges at the moment, particularly in the light of inflationary pressures. The national parks have proved themselves very resilient. I want to make sure that we can find more for money for them in the future. That is a key part of our decisions into the next spending round.

The Lord Bishop of Carlisle: My Lords, some of our national parks believe that they could better address climate and nature emergencies if they were added to the list of authorities which have a general power of competence under the Localism Act 2011. Can the Minister tell us whether His Majesty's Government have any plans to bring that about?

Lord Benyon (Con): I might have to write to the right reverend Prelate on that. As we look as implementing the recommendations of the *Landscapes Review*, and through the biodiversity duty that we are imposing on public bodies through the Environment Act, I think we will address that. I hope we are seeing the determination of this Government to tackle issues which simply did not exist when national parks were created 70 years ago. Climate change was not talked about then and biodiversity was stable or rising; those emergencies need to be reflected in the policies they take forward.

Baroness Hayman of Ullock (Lab): My Lords, national parks across the country are losing thousands of trees because of disease. In the Lake District, Forestry

[Baroness Hayman of Ullock]
England is cutting down large trees in the Ennerdale valley and Whinlatter, across many hectares of land. What assessment has been made as to the impact on wildlife from this loss of trees, including red squirrel populations, and what plans are in place, including the timescales for replanting with native species?

Lord Benyon (Con): I cannot give the noble Baroness an accurate assessment of what impact tree disease has had, or indeed Storm Arwen in Northumberland, which saw probably millions of trees blown down. Undoubtedly, that has an effect on wildlife, but wildlife can benefit from different ages of woodland being in a landscape. I hope the replanting schemes that are happening, whether because of disease such as ash die-back or events such as Storm Arwen, will see those areas planted as quickly as possible. It is not the national park doing that; it is the landowners and land managers within those areas, and Forestry England will be assisting them and giving grants for that to happen.

Lord Carrington (CB): The *Landscapes Review* recommended that there should be an upgrade in the current duty to foster economic and social growth in national parks and AONBs. Please can the Minister confirm that the farming and other economic activities going on in those areas are not limited to tourism or sporting and other activities?

Lord Benyon (Con): The noble Lord is absolutely right that it should not be restricted to what one might term the visitor economy. It is about keeping people living in these landscapes. It is about ensuring that they have the opportunities to conduct businesses of all kinds and that there are skills and opportunities for young people. When we talk about levelling up, I always feel that we should also talk about levelling out, into some of the more remote places, to make sure that the opportunities for families, young people and entrepreneurs exist in those landscapes as well.

The Lord Speaker (Lord McFall of Alcluith): My Lords, we now have a virtual contribution from the noble Lord, Lord Campbell-Savours.

Lord Campbell-Savours (Lab) [V]: My Lords, with climate change being the root cause of flooding of property in towns such as Keswick in the Lake District National Park, instead of imposing flooding remediation costs on property owners, why not amend the law by placing legal responsibility on companies such as United Utilities to more effectively manage their water assets, and for them to community block insure against the risk of flooding damage to residential, commercial and community assets in areas designated at risk from their companies' operations? Flood Re is inadequate.

Lord Benyon (Con): As the Minister who brought Flood Re into being, I think it has been an enormous success. I do not know the exact circumstances that the noble Lord is referring to in that part of the world, but there are a number of levers on United Utilities to make sure that it is fulfilling more than just its statutory duty to provide clean water and get rid of sewage. I will look into the matter and, if necessary, write to the noble Lord.

Avian Influenza: Game Birds

Question

3.30 pm

Asked by ***Lord Colgrain***

To ask His Majesty's Government what progress they have made in determining a link between avian influenza and game birds; and in respect of any such link, what plans they have to ban the rearing and release of game birds, given the impact that this could have on the rural labour market.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): I again declare my farming interests as set out in the register. We have strict biosecurity rules in place to limit the spread of avian influenza, including for the catching up and release of game birds, which are not permitted to be released in disease control zones or in avian influenza prevention zones with housing measures. The Government will keep the policy regarding future game bird releases under review and will take into consideration the outcomes of the risk assessments beyond risk levels and the ongoing avian influenza outbreak.

Lord Colgrain (Con): I am grateful to my noble friend the Minister for his reply, which in large part is reassuring. Nevertheless, he will know that plans need to be made over the next few weeks to decide whether many shoots, and the direct and indirect employment that goes with them, will continue for the new season. The financial contribution of shooting to the rural economy has been put annually at over £2 billion, with the hospitality sector in particular being a major beneficiary. Thousands of full-time jobs are at risk, as well as many part-time jobs. Can my noble friend the Minister indicate when he thinks any formal guidance on other issues affecting shooting can be given, such as the banning of the import of eggs or poults? Given the recent pandemic experience gained from the autumn migration, to what extent does he think that the spring migration arrivals will make a difference to current avian influenza levels?

Lord Benyon (Con): Because this outbreak was originally brought by migrating birds, we follow the patterns of migrating birds very closely. The noble Lord is right that there is a concern in the autumn as migrating birds come in and move either south to north or west to east. We continue to monitor that. The increase in cases in poultry settings is slightly below what we feared it would be and we hope that trend continues. On the noble Lord's other point, he is absolutely right that the businesses will want to de-risk as much as they can. We are trying to support them by giving as much information as we can. That is why we have just given guidance, on the basis of scientific evidence, on the practice of catching up birds to breed from later this year. That is now published.

The Earl of Caithness (Con): My Lords, would my noble friend confirm that, when decisions are taken, they will be made on the best scientific evidence and not emotion or by those who shout the loudest? Has he seen the latest thorough scientific research which shows that shooting is beneficial to biodiversity in the same area?

Lord Benyon (Con): My noble friend is right to raise this point. My department will make decisions on the basis of evidence. We will not be swayed by those who say we should allow activities like shooting regardless of the risks or by those who use this tragic outbreak as a hook on which to limit shooting or even ban it. We will make evidence-based decisions. However, we better make sure we are thinking of the counterfactuals as well, such as £2 billion of investment to some of the most remote parts of the country and 74,000 jobs. These are factors we also have to consider. If a shoot no longer exists, there will be no predation control, and cover crops being planted and other activities which are of massive benefit to wildlife in this country will no longer take place. That needs to be remembered.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, once game birds have been released, they are classed as wild birds for bird flu purposes. The person who releases the game birds is no longer their keeper. Currently, game birds may not be released into the wild if in a disease control zone or an avian influenza prevention zone with housing measures. Does the Minister think these provisions are sufficient?

Lord Benyon (Con): We constantly monitor that, and we understand that people will want to make decisions about the release of game birds later in the summer. We want to ensure that we are providing them with information so that they know whether to invest or not. This is a very worrying time for the industry, and we want to try to support it. People in the industry will not be able to move birds from one area to another if one of those is a protection zone. That must be the case, because we cannot allow anything that would put at risk the spread of this disease. Our information about many of those activities is that the vast majority of outbreaks in wild birds, particularly shore birds, happened before the pheasant releases last summer—that needs to be considered as well.

Lord Trees (CB): My Lords, I am very grateful to the Minister for his answer on avian flu. However, putting that to one side, given that some 30 million to 45 million pheasants and some 10 million red-legged partridges are released in England and Wales every year, what assessment have His Majesty's Government made of the effect that that might have on ecological balance, the prevalence of other pathogens and parasites, and biodiversity in the habitats which those birds share with other birds and other wildlife?

Lord Benyon (Con): Some work has been done with Natural England and the British Association for Shooting and Conservation to try to assess the impact. For the vast majority of cases, the birds disperse among other wildlife in a way which does not affect it, but there may be certain areas where there is an impact. We want to learn more about that, and we are working with shooting organisations to ensure that we are getting the best possible evidence.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, will the Minister confirm that all the grouse moors and pheasant shoots to which the noble Lord, Lord Colgrain, and others referred are up in Scotland? Following his answer to the previous Question, a large number of national parks are also in Scotland. That is not surprising, because Scotland represents one-third of the land area of the whole of the United Kingdom, which Lord Barnett, in his wisdom, took account of when deciding his formula.

Lord Benyon (Con): The noble Lord is dexterous and ingenious at trying to wangle the previous Question into this one. Lots of those kinds of activities take place in England, and an enormous proportion of our uplands are in England as well as Scotland, so that has absolutely nothing to do with the Barnett formula.

Baroness Bennett of Manor Castle (GP): My Lords, returning to the evidence on avian flu, figures from the US, Japan and across Europe show that the outbreaks of avian flu are not in any way reducing in either virulence or scale. Is it not clear from the figures we heard from the noble Lord, Lord Trees, that there is no way that we can continue, into the future, releasing those massive numbers of reared birds into the natural world? Is it not the case, for the sake of both public health and animal health, that we cannot continue that industry certainly on anything like the current scale?

Lord Benyon (Con): Given the absolute assurance that we will follow the science, and that it will be evidence-led and neither anecdotal nor the sort of knee-jerk reactions of people coming from both ends of the issue, the noble Baroness must also agree with me that she wants to see—she is shaking her head already, but she has not listened to what I have to say, and she might actually agree with me—a reversal in the tragic decline in farmland birds and an increase in biodiversity in this country. Some £250 million a year is spent by private individuals on conservation, because of activities such as shooting, so she must think of the counterfactual when she argues her point.

Lord Selkirk of Douglas (Con): Is the Minister aware that a tremendous number of gannets have died from avian flu? Most of those birds have a wing-span of six feet, and there is a considerable danger that, instead of having a life expectancy of 70 years, they are transmitting the illness to game birds and other species. Can something more be done, either through vaccination or other preventive measures?

Lord Benyon (Con): What is happening to shore birds is a tragedy. There is a slightly different strain affecting shore birds and poultry—and pheasants I class with the latter. It is a tragedy that is apparent

[Lord Benyon]
when you look at Bass Rock, which for centuries has been white and is now black, because there are not the sea-birds on it. We are working across government to make sure that we address the disease in wild as well as domestic birds.

Baroness Hayman of Ullock (Lab): My Lords, following on from the question about vaccination, we know that researchers are confident that they will make progress down this route—potentially through gene-editing techniques. Obviously, that is going to take some time, so in the interim the disease is going to continue to mutate, with all the risks that that brings for animals and, potentially, even humans. Given the cross-border nature of the problem, what steps are the Government taking to ensure an international research effort similar to that which we saw during the Covid pandemic?

Lord Benyon (Con): I can absolutely assure the noble Baroness that this is happening. As she says, this is a global issue, and there are many forums in which we deal with it. The World Organisation for Animal Health is one of them, and our chief vet and her team are completely embedded in this. If we can find a vaccination solution that is both effective and practical, I assure her that we will take every measure to see it implemented here, and we are working hard to achieve that.

Ukraine: Challenger 2 Tanks
Question

3.41 pm

Asked by ***Lord Lancaster of Kimbolton***

To ask His Majesty's Government whether the budget of the Ministry of Defence will be increased to compensate for the donation of 14 Challenger 2 tanks to Ukraine.

Lord Lancaster of Kimbolton (Con): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I remind your Lordships' House of my interest as a serving member of His Majesty's Armed Forces.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the Autumn Statement has already made clear the Government's recognition that defence spending needs to increase. The department continues to work closely with the Treasury on plans to replenish individual capabilities, including Challenger 2 tanks, and the Chancellor has committed to sustaining the level of support this year that the Government provided to Ukraine in 2022.

Lord Lancaster of Kimbolton (Con): My Lords, first, the donation of the Challenger 2 tanks and AS-90 artillery pieces is the right thing to do, but they are but the tip of an iceberg. Beneath the waterline there is an incredibly complex logistical chain required to make them effective. Can my noble friend assure me that, away from the headlines, this logistical chain is in place? Secondly, on money, the Secretary of State has acknowledged that we need to invest in the Army, but we need to do it now. While any new money is welcome, what will the profiling be of that money? Will it be available now, or will we be subjected to the trick of many a Government, whereby it will not be available for some years to come, when, frankly, it will be too late?

Baroness Goldie (Con): Let me first reassure my noble friend that the donation of the Challenger 2 tanks will be accompanied by an armoured recovery vehicle designed to repair and recover damaged tanks on the battlefield, but my noble friend will be aware of the very impressive record of the Challenger 2 in resisting attack. In addition, the AS-90 self-propelled guns will follow; there will be one battery of eight immediately battle-ready, and three further batteries in varying states of readiness to be provided to the Ukrainians to refurbish or exploit for spares. In addition to that, as my noble friend will be aware, hundreds more armoured and protected vehicles will be included. The Ukrainian Government have responded very positively to this announcement.

On the matter of money, as my noble friend will be aware, there is a fairly closely woven tapestry of timelines, which includes a combination of the integrated review refresh and the Autumn Statement of November 2022 being built on. Negotiations are currently going on between the MoD and Treasury. The Spring Budget has been announced by the Chancellor for 15 March. We await confirmation from the Secretary of State for Defence about the defence command plan publication date, when more information will be available.

Lord Trefgarne (Con): My Lords, is not it the case that Challenger tanks require a unique kind of ammunition? Are we supplying ammunition with the tanks, or will the Ukrainians have to buy their own?

Baroness Goldie (Con): My understanding is, and I can reassure my noble friend, that tank ammunition is part of what is being provided. The exact quantities, he will understand, I am unable to comment on, for reasons of security.

Baroness Stuart of Edgbaston (CB): My Lords, this support by the United Kingdom for Ukraine is part of the sustainable support it requires. When our Secretary of State for Defence meets the German Defence Minister Boris Pistorius for the first time in Ramstein, will he push for a German commitment to provide Leopard 2 tanks to Ukraine? Without a contribution that is comprehensive, Ukraine will not get the response it needs and deserves.

Baroness Goldie (Con): Yes, there is a lot of sympathy with the point the noble Baroness makes. She is perhaps aware that engagement is going on. The Chief of the Defence Staff is meeting NATO CHODs today and tomorrow. The Secretary of State will be in Estonia tomorrow and the noble Baroness is quite correct that at the donor conference being hosted by the United States at Ramstein, the Secretary of State and the

Chief of the Defence Staff will be present. There is a recognition that, despite the donation of tanks to date —and I think I am correct in saying that the United States, the United Kingdom, France and Poland have been donating tanks—there is a quantum step that could be taken with the addition of the Leopard tanks.

Lord Campbell of Pittenweem (LD): My Lords, the Minister knows that the House supports, without qualification, the supply of arms to Ukraine, but are we not entitled to credible evidence that the Government are even now replenishing our own stocks of military equipment so as to maintain, now, the credibility and the capability of our own Armed Forces?

Baroness Goldie (Con): I know that the noble Lord takes a keen interest in this and has posed similar questions before. I can reassure the House that the Secretary of State is cognisant of this and indeed commented in his Statement in the other place on Monday that we are very closely engaged with industry, as are our allied partners, because we are not in a silo in respect of industry supply and security of the supply chain. We are having to work with partners to ensure that, holistically, industry is able to understand demand and plan accordingly to supply it. Certainly, we are confident that we have retained sufficient equipment and ammunition so that we are able to undertake our primary responsibility to the security of the United Kingdom.

Lord Houghton of Richmond (CB): My Lords, in pursuit of a more precise answer on this issue of funding, will the Minister answer two questions? First, does the aggregate of all our activities in support of Ukraine meet the formal title of a military operation? If that is the case, do the NACMO procedures apply; that is, that the net additional costs of military operations are met not from the defence budget but from the Treasury reserve?

Baroness Goldie (Con): My understanding in relation to the donation of munitions and equipment granted in kind to Ukraine out of our own stocks is that replenishment of granted assets is managed under a standing arrangement between the MoD and the Treasury, and funding is provided from HMT reserves.

Lord Coaker (Lab): My Lords, the Defence Secretary tells us:

"Even as we gift Challenger 2 tanks, I shall at the same time be reviewing the number of Challenger 3 conversions, to consider whether the lessons of Ukraine suggest that we need a larger tank fleet."—[*Official Report*, Commons, 16/1/23; col. 36.]

When will that review report, and have we the capability to deliver a larger tank fleet quickly?

Baroness Goldie (Con): Although the Secretary of State in the other place did indeed indicate that he would be reviewing the number of conversions and considering the lessons of Ukraine, I think that remark did not constitute a formal review of the process; rather, it is his understandable discretionary right as Secretary of State to look at that issue. Interestingly, he also said later on, in response to questions:

"I am always happy to keep under review the number of tanks"—[*Official Report*, Commons, 16/1/23; col. 42.]

and the nature of these tanks. I think that the Secretary of State is absolutely realistic, as many of us are, and I know the noble Lord is, that the conflict in Ukraine is constantly educating us and instructing us, as it is our allies and partners, but we are trying to respond to that in a sensible and pragmatic way.

Earl Attlee (Con): My Lords, how are the Ukrainian armed forces to develop and generate highly sophisticated first- and second-line support for a complex range of NATO armoured fighting vehicles?

Baroness Goldie (Con): I am not a military strategist or a military technician, but my noble friend is aware that part of the training that we are engaging in with the Armed Forces of Ukraine is to ensure that they can be as professional and strategic in military thinking as possible. My noble friend will be aware that what was announced on Monday in the other place was a very extensive list of additional equipment—another important indication of the fundamental need to work in partnership with other allies. The Secretary of State made it clear, for example, that the merit of the donation of the Challenger 2 tanks will depend on these being able to work with United States Bradley equipment. I think that is an important example of trying to work in tandem to let the armed forces of Ukraine operate to best effect.

Viscount Stansgate (Lab): My Lords, if the provision of these Challenger 2 tanks is thought to be a success, however that is defined, do the Government intend to provide further such tanks to Ukraine?

Baroness Goldie (Con): We constantly review the assessed need through a combination of the Ukrainian armed forces telling us what they think they need and, as the noble Baroness, Lady Stuart, indicated, consultation among different countries. Part of this is, in a sense, about what we can achieve in aggregate through individual contributions. As the noble Viscount will be aware, other countries are donating tanks but the noble Baroness made the important point that the addition of Leopard tanks would be a significant step forward.

Lord Cormack (Con): My Lords, do not the questions asked this afternoon, particularly those from the noble Lord, Lord Lancaster, and the noble and gallant Lord, Lord Houghton, underline the need for a proper debate in your Lordships' House on Ukraine? In a few weeks, we will mark the first anniversary of the opening of the invasion. We have a great deal of expertise in your Lordships' House—far more than in the other place—so will my noble friend please talk to my noble friend the Chief Whip and make sure that, rather than considering some of the very unnecessary legislation being brought to this House, we have a full-scale debate on the most important international crisis since the Second World War?

Baroness Goldie (Con): Trying to answer questions on defence issues at the Dispatch Box is quite onerous enough for me to undertake without understanding

[Baroness Goldie]
the labyrinthine workings of the usual channels, but I am sure that my noble friend's plea is heard by my very good friend the Chief Whip and that the usual channels will be interested in his observations.

Online Safety Bill
First Reading

3.52 pm

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

Transport (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2023
Motion to Approve

3.52 pm

Moved by ***Lord Offord of Garvel***

That the draft Order laid before the House on 22 November 2022 be approved. *Considered in Grand Committee on 17 January.*

Motion agreed.

Pensions Appeal Tribunals (Late Appeal) (Amendment) Regulations 2022
Motion to Approve

3.53 pm

Moved by ***Baroness Goldie***

That the Regulations laid before the House on 17 November 2022 be approved. *Considered in Grand Committee on 17 January.*

Motion agreed.

Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Amendment) Regulations 2022
Motion to Approve

3.53 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

To move that the Regulations laid before the House on 6 December 2022 be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 17 January

Motion agreed.

Execution of Alireza Akbari
Statement

The following Statement was made in the House of Commons on Monday 16 January.

"With permission, Mr Speaker, I will make a Statement on the execution of a British national in Iran.

On Saturday morning, Iran's regime announced that it had executed Alireza Akbari, a British-Iranian dual national. I know that the thoughts of the whole House will be with his wife and two daughters at the time of their loss. They have shared his ordeal—an ordeal that began just over three years ago when he was lured back to Iran. He was detained and then subjected to the notorious and arbitrary legal process of the regime. Before his death, Mr Akbari described what was done to him and how torture had been used. Let there be no doubt: he fell victim to the political vendettas of a vicious regime. His execution was the cowardly and shameful act of a leadership that thinks nothing of using the death penalty as a political tool to silence dissent and settle internal scores.

In February last year, Mr Akbari's family asked the Foreign, Commonwealth and Development Office for our support, and we have worked closely with them ever since. I want to pay tribute to them for their courage and fortitude throughout this terrible period. In line with their wishes, the Minister of State, my noble friend Lord Ahmad, lobbied Iran's most senior diplomat in the UK as soon as we learned that Mr Akbari's execution was imminent. We maintained the pressure right up until the point of his execution, but, sadly, to no avail.

When we heard the tragic news on Saturday morning, we acted immediately to demonstrate our revulsion. I ordered the summoning of Iran's chargé d'affaires to the Foreign, Commonwealth and Development Office to make clear our strength of feeling. Our ambassador in Tehran delivered the same message to a senior Foreign Ministry official. Ten other countries have publicly condemned the execution, including France, Germany and the United States, and the European Union has done the same. I am grateful for their support at this time.

We then imposed sanctions on Iran's Prosecutor General, Mohammad Jafar Montazeri, who bears heavy responsibility for the use of the death penalty for political ends. His designation is the latest of more than 40 sanctions imposed by the UK on the Iranian regime since October, including on six individuals linked to the revolutionary courts, which have passed egregious sentences against protesters, including the death penalty. In addition, I have temporarily recalled from Tehran His Majesty's ambassador, Simon Shercliff, for consultations, and we met and discussed this earlier today. Now we shall consider what further steps we take alongside our allies to counter the escalating threat from Iran. We do not limit ourselves to the steps that I have already announced.

Mr Akbari's execution follows decades of pitiless repression by a ruthless regime. Britain stands with the brave and dignified people of Iran as they demand their rights and freedoms. Just how much courage that takes is shown by the appalling fact that more than 500 people have been killed and 18,000 arrested during the recent wave of protests. Instead of listening to the calls for change from within Iran, the regime has resorted to its usual tactic of blaming outsiders and lashing out against its supposed enemies, including by detaining a growing number of foreign nationals for political gain. Today, many European nationals are being held in Iranian prisons on spurious charges,

including British dual nationals, and I pay tribute to our staff—both in Tehran and here in the UK—who continue to work tirelessly on their behalf.

Beyond its borders, the regime has supplied Russia with hundreds of armed drones used to kill civilians in Ukraine. Across the Middle East, Iran continues to inflict bloodshed and destruction by supporting extremist militias. And all the while, the steady expansion of the Iranian nuclear programme is threatening international peace and security and the entire system of global non-proliferation. In the last three months alone, Britain has imposed five separate packages of sanctions on Iran, and today we enforce designations against more than 300 Iranian individuals and entities. We have condemned the regime in every possible international forum, securing Iran's removal from the United Nations Commission on the Status of Women and, alongside our partners, creating a new UN mechanism to investigate the regime's human rights violations during the recent protests.

The House should be in no doubt that we are witnessing the vengeful actions of a weakened and isolated regime obsessed with suppressing its own people, debilitated by its fear of losing power, and wrecking its international reputation. Our message to that regime is clear: the world is watching you and you will be held to account, particularly by the brave Iranian people, so many of whom you are oppressing and killing. I commend this Statement to the House."

3.53 pm

Lord Collins of Highbury (Lab): My Lords, the execution of Alireza Akbari is a barbaric act of politically motivated murder at the hands of the Iranian regime. I am sure the whole House will express condolences and solidarity with his family at this time. Mr Akbari's execution is a direct message to the British Government. Such executions are, in the words of Volker Türk, the UN High Commissioner for Human Rights, state-sanctioned killings.

I am sure the Minister knows that he and the Government will have the support of all sides of the House and from all parties to proscribe the Islamic Revolutionary Guard Corps. Does he agree with the Independent Reviewer of Terrorism Legislation, Jonathan Hall, that the National Security Bill could contain a power to proscribe state bodies on the basis of their hostile activity? If so, could this be an opportunity to proscribe the IRGC?

The IRGC's brutal actions are designed to silence the protests of the Iranian people by striking fear into their hearts both inside and outside Iran. James Cleverly said on Monday that the United Kingdom will continue to work on a cross-department basis and internationally on the most effective ways of curtailing Iran's malign activity—within Iran, in the region and globally—and to hold it to account for its brutality and atrocities.

I have raised before the plight of the BBC Persian service staff. Can the Minister reassure the House that the FCDO is working closely with the Home Office and the BBC on measures to protect them and their families?

During the Commons exchange on this Statement, the chair of the Foreign Affairs Select Committee asked about the existence of the IRGC's operating centres within the United Kingdom. What assessment have the Government made of those reports? On curtailing the regime's malign activities, can the Minister tell us what recent discussions have been held with the United States and the EU to achieve the objectives of James Cleverly without isolating the more moderate voices within Iran?

Lord Purvis of Tweed (LD): My Lords, I share the sympathies the noble Lord extended to the family of Alireza Akbari. As the Statement from the Foreign Secretary indicated, the family welcomed the support from the Foreign Office. I also welcome the Foreign Secretary's response: there should be no impunity for those who have been responsible for both human rights abuses within Iran and the mistreatment of British dual nationals.

Can the Minister state how many dual nationals there are in Iran? Can we guarantee consular access for them? Are there routes for their safe exit from Iran if they need to leave, as well as for those who are vulnerable to the human rights abuses of the regime? On a number of occasions, I have asked for preparations to be made for such safe and legal routes, primarily for vulnerable women who have been persecuted and oppressed by the Iranian regime to an alarming degree.

A Norwegian NGO has suggested that 481 people have been killed by the Iranian regime directly, including 64 children and 35 women. Will the Government work hand in hand with our EU and other allies to ensure that new suites of sanctions—both targeted and general—on the regime are fully co-ordinated so that there are no gaps in their operation?

I have also raised concerns that while we have seen some progress in the commissioning and establishment of an inquiry to investigate the abuses of the Iranian regime, unfortunately, some of our Gulf allies did not support that route. What work are the Government doing with our friends and allies in the Gulf to ensure that even if the UK, the US and the EU have a joint position, it is not undermined by them?

Can the Minister clarify the position of the Government on the proscription of the IRGC? There is absolute merit in its proscription. However, unlike with non-governmental organisations, the proscription of a government organisation will inevitably bring about other consequences, especially if there are repercussions on dual nationals, or indeed on UK interests. Of course, there would be an impact on UK relations with Iraq and neighbouring countries which have predominantly Shia populations and which the IRGC is operating within.

Greater information is usually provided on proscriptions; if we do see the proscription, I hope we can have a full debate in the Chamber on not just the statutory instrument but the UK's relations with Iran, which are fundamental, given the gross abuses of human rights of that regime.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I join the noble Lords, Lord Collins and Lord Purvis, in condemning unequivocally—as all did when this Statement was debated in the other place—the abhorrent practice of using executions as a means to

[Lord Ahmad of Wimbledon]
suppress communities and citizens, as well, of course, as the abhorrent actions last weekend, which bring us to this very sad occasion today. Of course, our thoughts and prayers are with the family.

I assure noble Lords that we worked to the last hour on this. I can say that with some conviction, because while I was abroad, I called directly the highest diplomat of the Iranian Government here in London to again implore him and to make clear in the strongest terms that, while we deplore every execution in Iran, this was a very different case, because it involved a dual national who had lived in Britain for a number of years. Indeed, members of his family are here in the United Kingdom.

I can share with noble Lords that we continue to work very closely with the family. Indeed, any direct engagement we have had with the Iranian authorities and the Iranian regime has been based on the direct co-operation of and requests from this family, just as we have acted previously at the request of other families.

The noble Lord, Lord Purvis, asked about the number of dual nationals in Iran. While there is no requirement to register, some will no doubt make themselves known to us as events evolve. The noble Lord will be aware that our excellent ambassador was called back to London and has been here this week for consultations. It was a temporary callback to understand fully the implications of the situation on the ground and to address certain key issues. I met with our ambassador to Tehran earlier today and yesterday to consider all options.

On the point the noble Lord, Lord Purvis, raised concerning co-operation, we are working very closely with our European allies and friends. Our ambassadors are engaging in a very co-ordinated fashion in Tehran; that will continue, and it includes engagement on sanctions. Noble Lords will be aware that we immediately took action to sanction Iran's prosecutor general, Mohammad Jafar Montazeri, who is one of the most powerful figures in Iran's judiciary and is responsible for Iran's unacceptable use of the death penalty. On his watch, we have seen the number of death penalties increase, including this current tragic case.

The noble Lord, Lord Collins, asked about the United States and our strong partnership and work. My right honourable friend the Foreign Secretary has been in Washington and, as part of a broad range of discussions on our priorities, will undoubtedly discuss the situation in Iran regarding this tragic case.

We welcome the fact that many countries—10, as well as all the countries of the European Union—have condemned the execution. We are working on sanctions and whatever further levers need to be used. As my right honourable friend the Foreign Secretary said, we are working in co-ordination, and we are also looking at all the options available to us.

It is not the first time we have talked about proscribing the IRGC in your Lordships' House. As the Foreign Secretary said yesterday, the steps we have taken do not preclude further action. We are working in a very co-ordinated fashion with all colleagues across His Majesty's Government, and we will continue to do so. I am fully aware of the strength of sentiment on the issue of proscription, and the Government are not ignoring that. I assure noble Lords that we are keeping all options under review, including further sanctions and other actions we could take, and that everything we do will be done in a co-ordinated fashion.

These condemnations matter to the Iranian regime; you see it in its reaction, as I have through direct engagement. However, it is important that we remain persistent and consistent in keeping the focus on the appalling and abhorrent situation in Iran.

We are working very closely with the family, and I was shocked to learn about the accessibility issues for members of the deceased's extended family in retrieving his body. They were told different things: that the execution may have taken place at a different time, and that the body of the deceased had already been taken to a cemetery and buried. One can only imagine the horror of not only having to deal with the execution, but the shock of then finding that even the last rites could not be guaranteed.

My direct challenge to the Iranian Government is this. Often, they say that in certain countries the death penalty is permitted under their own laws and jurisprudence. Even if we accept that for a moment, under what law or moral principle have the Iranian Government discarded the rites which are guaranteed by every faith and community to the deceased? Clearly, that has not happened, which adds to the abhorrence of this barbaric attack.

The noble Lord, Lord Purvis, pointed out the number of civilians who have died, which is getting closer to 500. Tragically, that includes 64 children, which is a cause for further abhorrence. Some 18,000 Iranian citizens have been arrested, yet the protests continue. We are working with our other Gulf partners. I note what the noble Lord, Lord Purvis, says; as the Minister for the Middle East, I am acutely aware of the situation and I can assure him of my good offices in raising these issues consistently to ensure that we have the widest possible condemnation. Equally, however, we support the civilians of Iran, who have no hand in this tragic situation. It is important that they are able to hear that we stand with them.

The noble Lord asked about BBC Persian. Again, we work closely to ensure that we safeguard all British interests when it comes to Iran. The services provided are essential. A smaller number of people are now reliant on the radio service; nevertheless, while decisions are being taken, I recognise totally the importance of communication at this extremely challenging time.

I further assure all noble Lords, particularly the Front-Benchers, that as the situation evolves—it is quite dynamic, even over the last 48 hours—I will seek to update them on events. I will of course reach out to both noble Lords to update them on further issues as they arise, and I will return to the House as the situation evolves.

The clear message has been given to the Iranian regime that, while we have our differences, different perspectives and disagreements in this House and the other place—and indeed in the challenges we pose to each other across the country—when it comes to abhorrent issues such as this, we are at one. That is an important message to communicate.

4.08 pm

Lord Lamont of Lerwick (Con): My Lords, I draw the House's attention to my entry in the register of interests. Is my noble friend aware that it is almost impossible to find words strong enough to condemn this outrage—this judicial killing? Is he also aware that the Iranian regime has suggested that Sir Richard Dalton, our former ambassador in Tehran, was the British key point of contact with Mr Akbari? When I spoke to Sir Richard 48 hours ago, he told me that to the very best of his knowledge, he has never met Mr Akbari in his life, either here in London or in Tehran. Is this not just yet another lie by the Iranian regime, designed to impress on the Iranian people the myth that somehow, their problems are caused by foreigners rather than by their own brutal incompetence?

Lord Ahmad of Wimbledon (Con): My Lords, I totally agree with my noble friend and I could not express my abhorrence of this in clearer terms than those he has outlined. What is becoming increasingly clear is that these abhorrent executions take place on trumped-up charges, often relating to people who are perhaps seeking through their own good will to provide hope for Iran and to bring some semblance of normality to the future of Iranian communities and the Iranian people. Shockingly, this goes from bad to worse.

If I may, I missed a point that I wanted to raise with the noble Lord, Lord Collins, about activities here in the UK. I know of a particular centre in Maida Vale into which the Charity Commission is working on an inquiry. We are working closely with the Home Office and across government on all these issues to ensure that, as I said, all the levers that we have in our hands are exercised effectively.

Baroness Coussins (CB): My Lords, the noble Lord, Lord Collins, referred to the vulnerability of BBC Persian staff. What can be, and is being, done to support the family members of those staff, who have also been targeted with threats and violence—in particular, the family members of BBC staff who are London-based and, by definition, cannot offer their family members in Iran any personal or direct support?

Lord Ahmad of Wimbledon (Con): My Lords, there are those who are based here in the UK and receive threats, including those who work for British interests and are receiving threats. When I say "British interests", I mean British companies such as BBC Persian, in terms of the important work that it does on the ground in providing communication. Although the service is operationally and editorially independent, the support that we give it is important. We are providing both that support and the information that is needed.

Of course, as the noble Baroness pointed out, the threat goes much wider than Iran itself. We have an unprecedented situation—it is certainly unprecedented in my time in Parliament—where Members of both Houses have had to be directly advised about the nature of a threat from a foreign state actor, in this case Iran. That puts into context the gravity of the situation and the actions that the regime may resort to in order to cause further disruption, challenge and misery not just to its own citizens but elsewhere. We are clear in our stance on this, which is why it is important that we work closely with all departments across government and equally important that we work closely with our international partners as well.

Lord Browne of Ladyton (Lab): My Lords, the violent repression of protests and the callous execution of Alireza Akbari expose further the barbarism of a regime that has no regard for human rights or the international rules-based order. Given this, what are the prospects of getting the JCPOA back on track? If the FCDO believes the JCPOA to be irretrievable, what alternative steps will the Government and our allies take to ensure that Iran cannot develop a nuclear weapon, which would only give the worst elements of this regime even greater latitude in this and many other regards?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord speaks with incredible experience of and insight into the work going on in defence and the JCPOA. Frankly, Iran's escalation of its nuclear activities threatens not just stability in the region. Even putting the JCPOA aside, we have seen the steps that it is increasingly taking—for example, the explicit and direct support that it has extended to Russia in supporting UAVs, which have then been used in Ukraine—which demonstrate Iran's intention not just to cause the suppression of its own citizens and cause instability in the region but to cause and fuel division and conflict further afield. The actions that it has taken recently put any kind of diplomatic solution highly at risk. We supported the JCPOA at a time when the previous US Administration pulled back because, even with all its faults, there was no other deal on the table. Last year, on two occasions, there was a big opportunity for Iran to sign the deal, but it did not do so. Recent actions make this much more difficult, but we are clear, which is why I stress the importance of working with our international partners, that we must do all that we can to prevent Iran from ever attaining a nuclear weapon.

Lord Polak (Con): My Lords, I acknowledge the leadership of my noble friend the Minister on this issue. Through him, since he just mentioned them, I thank the security services for the advice that they have given me. Failure to deliver IRGC proscription will weaken Britain's standing and signal a lack of political resolve. Can we really afford to be left out of the growing consensus among western capitals that the IRGC be held accountable for its appalling behaviour? Can my noble friend help me and describe what else the Iranian regime needs to do for us to take the right action and proscribe the IRGC?

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend's security and that of every Member of your Lordships' House and the other place remains extremely important. I cannot stress enough the importance of immediately letting the authorities know if any Member of either place or further afield feels threatened. As a Minister, I sometimes receive emails that—how can I put it?—are not most favourably disposed to the work that I am doing or what I have

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said. Nevertheless, there is a tendency to say that this is the normal course of business. I cannot stress enough the importance of ensuring that those threats are communicated. We have an incredible team within Parliament who can advise appropriately.

We have already sanctioned the IRGC and its many officials through our sanctions regime in its entirety. However, the separate list of proscribed terrorist organisations is kept under constant review. I cannot go any further on this now, but I reassure my noble friend that the strength of the sentiments that we have heard in most of the contributions clearly indicates the will of your Lordships' House.

Lord Alton of Liverpool (CB): My Lords, I add to the condolences and sympathy that others, including the Minister, have expressed to the family of Alireza Akbari and thank the Minister for the tone that he has struck in delivering the Statement and answering questions this afternoon.

Given the role of Iran in executing British and many of their own citizens, in torturing and in oppressing its own courageous people, especially women, and in sanctioning United Kingdom parliamentarians, I pursue the point made by the noble Lords, Lord Collins and Lord Polak, as well as many others, and urge the Minister to convey back to his Secretary of State the widespread opinion in your Lordships' House that the IRGC should be designated as a terrorist organisation. What must happen before that occurs? What must happen before the Iranian ambassador is expelled from this country?

Why have we not stopped the cuts to the BBC Persian service, as raised by the noble Lord, Lord Collins? I repeated many of the sentiments and remarks about this in a debate that we had in your Lordships' House quite recently on the BBC World Service. As recently as today, I have been told that it will lose at least 2 million of its audience in Iran as a result of the cuts to the radio services to Iran. At this time, that is quite unbelievable. Will the noble Lord not call a meeting with Tim Davie of the BBC, bring people together and ensure that the decision is reversed?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Lord's first point, as I have already stated, the strength of views on the issue of proscription is very clear and I will take those feelings back to my right honourable friend. I assure all noble Lords that, on every element of the Iranian regime that is acting in this very oppressive manner to its own people and against dual nationals, the trajectory is clear to us. While the protests continue, we have seen ever-increasing suppression and, worse still, executions taking place. On the issue of the BBC, I commend the noble Lord for his persistence and, while we remain fully supportive, I am aware of the challenges that the BBC has faced and the operational decisions that it has made. Sometimes, circumstances mean that it is good to review things and I will discuss the suggestion made by the noble Lord with officials.

Lord Campbell of Pittenweem (LD): My Lords, is not the most sinister element of this matter that Mr Akbari was encouraged to return by a so-called friend? We also remember that Mrs Ratcliffe was on holiday. That makes it clear that any person with joint citizenship is at risk from elements in Iran who are prepared to do anything that they believe to be either in their narrow interests as part of the Government or on behalf of the Government as a whole. Do we know or are our Government aware of how many people have joint citizenship with Iran? If these people have not already realised the risk that they run, would it be possible to provide them with additional information to encourage them to ensure that they do not innocently put themselves at risk, as happened in both the case that we are discussing and that of Mrs Ratcliffe?

Lord Ahmad of Wimbledon (Con): My Lords, as I said to the noble Lord, Lord Collins, it is not normal practice when nationals go to a particular country to make their dual nationality known, and certain dual nationals who are currently resident in Iran may not have made that known. The risks to any dual national are now abundantly clear. The noble Lord talked of Alireza Akbari's return and, as I said, many who have a particular heritage, who were born in a particular country or who have an association with a particular nation, may feel that there is perhaps a positive role that they can play in changing the trajectory of travel of that country. I am sure there are many noble-intentioned British people with Iranian heritage who think exactly that.

Yet it is very clear that the regime—forget respecting or valuing that—has no intention whatever of leveraging that opportunity to bring itself back to a form of respect from the international community. I can tell the noble Lord that all matters were discussed with our ambassador, including welfare, because the first important duty of any Government or embassy is the welfare of its citizens. Anyone who is a dual national, as Mr Akbari was, is regarded as a British national.

Lord Cormack (Con): My Lords, I endorse everything that the noble Lord, Lord Alton, and many others said. I welcome the tone of my noble friend's replies and we are all very much in debt for the responsible way in which he approaches his very onerous duties. But this is an evil regime, presiding over good people in a beautiful country. We must surely be able to do something beyond what we have already done, which has had very little effect, to show that this is a pariah state that has no place within the United Nations. Should we not begin by severing diplomatic relations ourselves?

Lord Ahmad of Wimbledon (Con): My Lords, I thank my noble friend for his kind remarks but, on the actions we have taken, even in the last three months an additional 40 individuals or organisations have been directly sanctioned by the United Kingdom Government. As I alluded to earlier, in reply to the noble Lords, Lord Collins and Lord Purvis, we do this in conjunction with our key partners and allies, including the European Union, the United States, Canada and others.

My noble friend also raised the issue of what more can be done. While we have been acting decisively—about 300 individuals and organisations have now been sanctioned—we have also acted at the United Nations. I thank my noble friend Lord Polak for his comments

on the UN Commission on the Status of Women; talk about a total and utter contradiction of representation to have Iran sitting on the CSW. We acted with our American partners and this demonstrated to me—here I commend your Lordships' House—that, although it is sometimes not recognised—that issues raised here have a direct consequence on British policy and, more importantly, on the actions we take. That is one such example of recent action we have taken to send a very strong message to Iran that its actions will not be tolerated and, equally and importantly, working in conjunction with the international community.

Lord Ricketts (CB): My Lords, on the issue of what practically can be done, is there no way of having further sanctions on Iran to constrain its capacity to build these kamikaze drones, which have been supplied to Russia and which Russia has been using to kill thousands of civilians? Might the British Government take the initiative in that area and bring the international community together to constrain this traffic in terror?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord has great insight on these matters and I agree with him. We are looking at how we can further constrain Iran's ability to provide such ammunition to countries such as Russia, including through stopping of some of the supply chains. But the noble Lord will know from his own experience that the destabilising effect of Iran—particularly on situations of conflict such as Yemen, where the supply of weapons continues—continues to this day, although through direct co-operation we have had many interventions.

Lord Pickles (Con): My Lords, we all appreciate the very robust response that my noble friend has given, and the measured way in which he has approached this problem. I think we understand the importance of the safety of our staff in Tehran, and also the importance of keeping some kind of message open. Nevertheless, given that they are murdering girls for inappropriately wearing or not wearing a scarf, are judicially murdering protesters who in any other country might face a fine at worst, are supplying drones, as we have just heard, to Russia to affect Ukraine, and now have just hanged a British citizen, what more do they need to do for us to proscribe the Iranian Revolutionary Guard cadre? Surely, given that they have not adhered to the nuclear deal, there must now be a strong case for us to initiate snapback sanctions?

Lord Ahmad of Wimbledon (Con): My Lords, I again hear what my noble friend says very clearly. He mentioned snapback sanctions: of course, in the light of the long co-operation we have seen with the JCPOA, I cannot go into further details, but, as my right honourable friend said—and I stand by this— we are in no way saying that the actions that we have taken will be the last that we will take in the current situation against Iran.

Lord Kerr of Kinlochard (CB): I congratulate the Minister on the tone and content of his remarks. I think that he has encapsulated very well the feelings of the whole House: the revulsion of the House at this action in Tehran. I would, however, counsel him against the advice given by the noble Lord, Lord Cormack: it is important to retain diplomatic relations with one's foes, perhaps even more important than retaining them with one's friends. Such influence as we have may be limited, but if we withdraw our embassy, we bring such influence to an end and we betray our friends in the country in question.

I have, however, one question for the Minister. If an Iranian citizen, not a dual national, feeling under threat from the regime and having connections to this country, were to ask me how he could seek asylum and sanctuary here, what advice should I give? What legal and safe route is available to him? I know of none.

Lord Ahmad of Wimbledon (Con): My Lords, the noble Lord, Lord Kerr, has great insight and, of course, anyone who has been involved with diplomacy will know that quite often there are occasions when you are sitting across the table from people whose views, policies and perhaps their own regime or Government you find pretty unpalatable. There are many occasions when I have sat and faced the irony of the Human Rights Council, where we have countries who clamour for membership and election to the council, but where one quick reflection on their human rights record would put it in total contradiction. The noble Lord, again, offers wise advice.

On the issue of safe routes et cetera, while it is very much the remit of the Home Office, the important thing is that the United Kingdom—certainly, this is something that I have always felt passionate about—has, throughout Governments of whatever political colour over many years, been a sanctuary for those seeking asylum and escaping the brutality of regimes around the world, and has provided support. That has to be at the core of who and what we are. In terms of the specifics of the situation that has arisen with Iran, I am sure that the noble Lord will respect that I cannot given chapter and verse here, but I note very carefully what he has suggested and, if there is more detail I can provide to him, I will certainly seek to do so.

Stamp Duty Land Tax (Temporary Relief) Bill

Second Reading (and remaining stages)

4.30 pm

Moved by ***Baroness Penn***

That the Bill be now read a second time.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, the aim of the Bill before us today is to support the property market and reduce costs for first-time buyers and home movers during a difficult period for the economy. The Government have a long commitment to supporting home ownership. Since 2010, we have helped more than 800,000 households purchase a home through government-backed schemes such as Help to Buy and the right to buy. We have made sure that the UK is building the high-quality homes that we need. In 2019-20, more than 242,000 homes were built, the highest number of net additional

[Baroness Penn]
homes in 30 years, but we need to do more, and remain committed to the 300,000 new homes target. We have invested in the affordable homes programme, with an £11.5 billion commitment through this Parliament leading to 180,000 affordable homes, including thousands for social rent. We have removed the housing revenue account cap for local authorities to support them to build more social homes. This Government also supported social renters at the Autumn Statement by limiting social rent increases to 7% in 2023-24, saving the average social renter £200 next year, and we remain committed to abolishing Section 21 evictions.

However, the tax system needs to work for those looking to get on to or move up the housing ladder, and the Government have previously made changes to support their objectives on home ownership and the property market. Stamp duty land tax must work for all. In April 2016, the Government introduced higher rates of stamp duty for purchases of additional dwellings and recognised the impact that buy-to-let investors and purchasers of second homes were having on the ability of first-time buyers to get on the housing ladder. The following year, in the Autumn Budget 2017, the Government permanently introduced first-time buyers' relief. This increased the threshold before which those buying their first home started paying stamp duty to £300,000. It was under this Government that first-time buyers gained a permanent comparative advantage over other purchasers, and this relief has supported almost 700,000 purchases since its introduction.

The Stamp Duty Land Tax (Temporary Relief) Bill builds upon this context. First, it will increase the nil-rate threshold for stamp duty land tax for all purchases from £125,000 to £250,000 until 31 March 2025. Secondly, it will increase the nil-rate threshold for first-time buyers from £300,000 to £425,000. A first-time buyer couple in the south-east buying an average new-build property worth £490,000 will see their bill reduced from £9,500 to £3,250—a saving of £6,250 which they can put towards their deposit or new furniture. Thirdly, the Bill will raise the maximum purchase value for first-time buyers' relief from £500,000 to £625,000, something which will help those in places where affordability problems are most acute. Together, these measures mean that around 43% of all purchasers will pay no stamp duty whatever.

As part of this Government's commitment to fiscal responsibility and to getting debt falling in the medium term, these changes to stamp duty will end on 31 March 2025. The tax cut will remain in place until then to support the property market through difficult times and to continue our support for first-time buyers. Hundreds of thousands of jobs and businesses rely on the property market, and the Government are committed to supporting them with these measures.

The stamp duty cuts will mean that more than half of all transactions in the east Midlands, the north-west, and Yorkshire and the Humber will pay no stamp duty until 31 March 2025, with six in 10 transactions in the north-east having no SDLT liability. A pensioner in the east Midlands downsizing to an average-priced semi-detached house worth around £230,000 will now save £2,100 in stamp duty costs. They will pay nothing because of the Government's actions.

The Government are lifting families, home movers and first-time buyers out of stamp duty and continuing their record of support for home ownership. They are supporting the market and ensuring that this support remains responsible. This is a significant reduction in the cost of moving home for many in the country and will make getting on the ladder far easier.

Importantly, while it is right that people should be free to invest in or buy a second home, the Government believe it is right that those buyers pay higher rates of stamp duty. The higher rates for additional dwellings introduced in 2016 apply three percentage points above standard residential rates of stamp duty. This 3% surcharge will remain in place. It is important to note that no one purchasing an additional property will be taken out of paying stamp duty.

To conclude, the Government believe that stability is the bedrock on which we build growth. The Bill is a fiscally responsible way to support the property market through challenging times and open up the dream of home ownership to more people, to give them a stake in the success of the British economy. Some 90% of those claiming first-time buyers' relief will no longer pay any stamp duty until 31 March 2025—a significant and meaningful addition to the Government's record on home ownership. For those reasons, I beg to move.

4.36 pm

Lord Greenhalgh (Con): My Lords, I thank my noble friend the Minister for that very articulate exposition of government policy around the desire to increase home ownership and how important it is to remove the barriers, not only for first-time buyers but for people who own their homes to be able to move. I thank noble Lords who have remained in the Chamber; it is always nice to have at least a few people here on what I consider a seminal topic.

The herd, if you like, gathered around the Levelling-up and Regeneration Bill—I would have been one of about 75 Back-Bench Peers speaking if I had participated in that Second Reading debate—but the key to housing is often what we would call the second-hand market. Some 90% of transactions in housing are, essentially, as with motor cars, in second-hand homes.

If you tax mobility, as you do through the stamp duty land tax, people tend not to move. My parents' generation moved every seven years, but now people typically do not move at all. That often means that elderly people reside in homes bigger than they feel comfortable in. They may want to stay in the family home, but as you age it becomes harder to climb the stairs and so forth; even with housing adaptations, it is inappropriate for them, and they might like to downsize. That is often harder than we think because of an absence of retirement community homes. Mobility generally has shrunk over the decades. It is important that we bring about changes to increase mobility so that people can get on to and climb the housing ladder of opportunity.

I went to the House of Lords Library. I had never used it for research before, but I really wanted to see whether the Laffer curve applied—that if you cut stamp duty land tax, your tax take would increase. I thought that maybe it would, but I was absolutely wrong. It is obvious when you think about it; I have

about 65 charts I could share with noble Lords but I do not think that would be particularly helpful. Essentially, the housing market is driven by the wider economy, but what you do see from the statistics is this: if you increase stamp duty, as we have done remorselessly in the decades from 2000 to the present day—except for this brief respite, and a previous respite for a period of time under Chancellor George Osborne—you will see a reduction in the number of transactions overall. That comes through very clearly. As soon as the first relief was introduced because of Covid, transaction levels in London rose from 4,800 to 5,300, and in the rest of the United Kingdom transactions also rose dramatically. While the tax take may not have, people were moving more, which I think is a good thing.

My first question to the Minister is: is there a longer-term commitment to reduce this tax on mobility so that we can see people moving and can get closer to the era when people could move more easily—rather than building sideways, upwards and downwards—to homes that are appropriate for their needs, so they have a bigger home when they have a family and then can downsize in their older years?

My next point is the other side of what the noble Baroness said about the north-east. Okay, six out of 10 properties do not pay any stamp duty at all, but this is a tax that falls on London. As a Londoner, I am conscious of the fact that, until recently, two-thirds of stamp duty was raised in London alone. That has dropped a little with the tax reduction to 55%, but we have to be cognisant that jamming up the London market is not necessarily good for our capital city or for the wider economy. We need to be aware that stamp duty is simply much higher than what we were used to. In the first decade of the 2000s, the highest you could pay on a property transaction was 3%, but we have seen that balloon over time.

I am delighted to support the Government on this. As someone who started in a town hall and worked through to City Hall, I know that it is important to create that housing ladder of opportunity: out of public housing into part-owning your own home to fully owning your own home. That is a noble thing to encourage, and I am delighted that the Government are setting forward, with a sense of consistency, the need to reduce stamp duty to land tax levels.

I have one last question, which was raised with me by the noble Baroness, Lady Watkins, about a nurse. We know that nurses struggle, but this nurse got a shared-ownership property, owning 25% of her home and paying rent on the remaining 75%. That tenure is not full-blown home ownership; it is not on the last rung but, if you like, the first rung of the ladder of home ownership. She is now looking to purchase a home further away but to fully own it with a mortgage. Does the relief that has now increased from £500,000 to £625,000 still apply to that move? Will she be seen as a first-time buyer? I ask the Minister to find out the particulars of that.

I congratulate the Government. Whether you are the right honourable Member for Spelthorne or the right honourable Member for, I think, somewhere in Surrey, both Chancellors are absolutely behind the idea that, over time, we must bring down the burden of this tax on the ability to move home.

4.42 pm

Baroness Kramer (LD): My Lords, we shall obviously not oppose the Bill. It extends stamp duty relief until March 2025 to a larger group of first-time buyers and raises the lower-rate threshold for all buyers, helping a limited number either of better-off people or people living in higher-priced regions.

I should note that the Chartered Institute of Taxation has drawn attention to loopholes and anomalies in the drafting of the Bill. While this House can do nothing to tackle that, I hope the Government will follow up what the institute has said because one of our curses is poorly drafted legislation that then has to come back to this House. However, the Bill will do little to achieve its main purpose as outlined by the Government: stimulating the housing market and increasing residential investment and spending on durable goods.

Mortgage interest rates are the issue, alongside the cost of living, as everyone in this House knows. According to Nationwide, UK first-time buyers' mortgage costs are the highest since 2008—on average, 39% of full-time salary after tax, despite a 2.5% fall in house prices, and the Bank of England is not expected to be done in raising interest rates. A modest change to SDLT does not compensate for the surges in interest rates driven by the Government's economic mismanagement.

According to the NAO, 1.4 million households face higher interest payments this year as their fixed-rate mortgages expire. The lucky households with good credit will see their mortgage interest more than double, from 2% to more than 4.5%, and the proposals to help—for example, by offering interest-rate-only deals—provide only temporary relief. The Financial Conduct Authority said last week that 200,000 households had fallen behind on their home loans by mid-2022, while another 570,000 households were

"at risk of payment shortfall"

within the next two years because their mortgage costs would be more than 30% of their income.

The housing market requires more housing supply, not short-term temporary fixes. The Government are nowhere near their 300,000 new homes target and affordable homes are in even shorter supply. Shelter reports housing waiting lists of 1.2 million, with over 120,000 children in temporary accommodation. The construction industry is suffering huge workforce shortages and economic uncertainty is discouraging investors.

Members in the Commons, especially my colleagues the Members for Westmorland and Lonsdale and for North Shropshire, argued for amendments that would have provided far greater protection against the unintended consequences of advantaging second home buyers. In areas such as the Lake District and north Shropshire, second home buyers consistently outbid local people and the drop in full-time occupancy is undermining communities. In some areas, purchases of second homes now amount to 80% of total purchases. In rural England, as my colleagues pointed out, there are 132,000 fewer young home owners than there were in 2010. The stamp duty cut of 2020 fuelled a second home boom and house price distortion.

We need a proper housing strategy: one consistent with our net-zero and sustainability goals, so that it really tackles housing inequality for the long term.

[Baroness Kramer]
Research for the *Homelessness Monitor* report showed that 300,000 households across Britain could be homeless this year. This, together with the cost of living crisis, is the issue that the Government must resolve, and urgently.

4.46 pm

Lord Tunnicliffe (Lab): My Lords, I am grateful to the Minister for introducing today's money Bill. As the noble Baroness knows, we do not support this legislation but, given its status, we accept that it is destined for the statute book. With that in mind, and with important matters to be discussed on the National Security Bill, I will keep my remarks brief.

The Bill represents the last remaining output of the failed Truss-Kwarteng project. It is now some time since those individuals set fire to the British economy and then retreated to the Back Benches, claiming they had been the victims of global events. They will no doubt attempt to rebuild their reputations in the months and years to come. However, as they seek to rewrite history, the British public will continue paying for their costly mistakes—and for what? A time-limited reduction in stamp duty which, given increasing borrowing costs and the Government's poor record on housing supply, is most likely to benefit second home owners and landlords rather than first-time buyers. We do not view this policy as a sensible use of taxpayers' money.

I note the Government's assertion that stamp duty savings will support the property industry and boost money going elsewhere, such as to removal services and do-it-yourself stores, but believe they are flimsy at best. The current Chancellor's decision to make this a time-limited measure, rather than the permanent one envisaged by his predecessor, suggests that the latest Administration agree. Households across the country are still dealing with the disastrous consequences of the Truss Government's failed mini-Budget through higher mortgage payments and rents. That month of madness, coupled with the Conservative Party's wider mismanagement of the economy over 13 years, means the property market has cooled in recent months. There is no doubt that this presents challenges for many, but there are far bigger housing-related issues for the Government to address than the rate of stamp duty.

Late last year, in an attempt to avoid an embarrassing early defeat at the hands of his Back-Benchers, Rishi Sunak agreed to water down housebuilding targets for local authorities. Nobody wants homes to be built in locations that are not suitable, but we are not going to solve our ever-worsening housing crisis if the Government continually duck challenges around supply. A stamp duty reduction scheme which offers a discount to those buying second, third and fourth properties does not increase supply. Instead, it is likely to have a similar effect to that of the last reduction: pushing up prices and preventing first-time buyers getting on the ladder. We are aware of steps being taken in other legislation, such as the Levelling-up and Regeneration Bill, to discourage ownership of multiple dwellings, but these two policy initiatives appear to be in conflict.

This Bill provides further evidence that the Conservative Party is out of ideas. The last stamp duty cut did not provide as much help to first-time buyers as promised and its overall effect on the market put many starter homes out of their reach. Ministers are seemingly repeating the same failed experiments, desperately hoping the outcome will be different.

Taken alongside other government decisions, this Bill will do nothing to improve the serious issues with our housing market. It will not boost supply or make mortgages more affordable for young people. It does not represent value for money for the taxpayer. People want security, stability and affordability, not costly gimmicks which fail to deliver results. Only the Labour Party has plans to boost housebuilding and support more people into home ownership.

4.50 pm

Baroness Penn (Con): My Lords, I thank all noble Lords for their contributions to this short debate on the Bill today. In particular I thank my noble friend Lord Greenhalgh as the only Back-Bench speaker in the debate. My noble friend asked a number of questions. First, he talked about the need for mobility in the housing market. That is something I agree with him on. That can be delivered in a number of ways. Having better and more suitable homes for people to downsize to is one element of it; supporting Build to Rent and having longer-term tenancies is another. My noble friend is far more of an expert in these areas than I am.

While we support mobility overall, and there are a number of government measures aiming to do that—stamp duty is part of it—we have to balance action in that area against the fact that it is also an important source of government revenue. We think the action we have taken in this Bill strikes the right balance, providing temporary support during a difficult time for the economy, in particular the housing market as we see higher interest rates, with the need for fiscal responsibility too.

We made some other reforms to stamp duty. For example, in 2014 there was the move from slab to slice. This aimed to improve the fairness and efficiency of the tax system, as each new SDLT rate is payable only on the portion of the property value falling within each band. That removes some of the cliff edges from the system.

My noble friend also spoke about the higher property values in London meaning that it disproportionately contributes in terms of stamp duty land tax, and I acknowledge that. In the temporary reforms we have put in place, increasing the threshold at which you can claim first-time buyers' relief helps first-time buyers in the capital facing those higher rates.

My noble friend also asked a specific question about shared ownership. First-time buyers' relief is available on shared ownership purchases. Relief would then not be available on subsequent purchases. However, where someone intends to staircase up the shared ownership ladder, the option is available to them to pay 100% of the stamp duty up front and therefore claim the first-time buyers' relief and not pay it again as they staircase up. I think that is a useful element of the system.

Turning to some of the points made by the Chartered Institute of Taxation and raised by the noble Baroness, Lady Kramer, the Government are aware of those points and the ones raised by the Stamp Taxes

Practitioners Group, which relate to the technical detail of the existing first-time buyers' relief legislation. We have asked officials in HMRC and the Treasury to work with those groups to discuss their comments.

More broadly, both the noble Baroness, Lady Kramer, and the noble Lord, Lord Tunnicliffe, made points about mortgage costs, interest rates and housing supply in general. As a Government, we are doing everything we can to hold increases in mortgage rates down as much as possible, in so far as we have an influence on them through our actions. That is why we have taken very strong steps to demonstrate Government's commitment to fiscal balance and sound money. There is a longer-term trend of interest rates and mortgage rates rising since last autumn in response to global trends, including the illegal invasion of Ukraine. Interest rates are not rising solely in the UK; the US Federal Reserve has been raising its base rate since March 2022. The pricing of mortgage products is a commercial decision for lenders, and interest rate decisions are taken by the independent Bank of England.

On the noble Baroness's and the noble Lord's point about where there are existing mortgage borrowers who may now move on to higher rates, we have more resilience built into the system through the affordability assessments, but the Financial Conduct Authority regulations are already also very clear on the requirement that firms must deal fairly with customers and consider a variety of tailored forbearance options, including measures such as a payment holiday, partial payment or an extension of mortgage terms. Before Christmas, the Chancellor met with, I think, the regulator and banks to discuss the issue around higher mortgage rates and customers who may fall into difficulty as a result.

More broadly on housing, yes, we must do more to build more homes; that has been a consistent theme throughout this Government's tenure. We have been doing more to build more homes: as I said in my opening speech, the figure for 2019-20 of 243,000 net additional dwellings was the highest in nearly 30 years, but we have a target of 300,000 and need to do more. I talked in my opening speech about some of the measures we took. Other areas are on SME housebuilders, which are an indispensable part of the housebuilding sector, and we have put in place a range of financial measures to support SMEs and to encourage systemic change in the lending environment, including over £2 billion of development finance under the home building fund, which will deliver approximately 60,000 new homes, and the £1 billion ENABLE Build guarantee scheme. I will not go into further detail on what the Government are doing to support further housebuilding, suffice it to say that we are committed in that area and that it will take a number of different initiatives to deliver it.

The noble Baroness, Lady Kramer, also raised the issue of second homes. We have the additional rate of stamp duty for people to pay on any additional homes they buy. We think that that is right, in recognition of some of the issues that she raised, but we also need to be cognisant of the impact that that has—or may have had—on the buy-to-let market and on the availability and affordability of homes to rent. We think that that was the right measure and that it has struck the right balance. We are also taking action in the Levelling-up and Regeneration Bill with the new 100% council tax premium on second homes and by strengthening the existing premium on empty homes.

To conclude, there is a lot to do to support home ownership and housebuilding more generally. We need to support more mobility in the market, as my noble friend pointed out, and the measures before us will support those wishing to buy or to move home in the current economic climate and the housing sector more widely. That is balanced against the need to ensure fiscal responsibility and to acknowledge that stamp duty is a source of revenue for the Government. We have struck the right balance in the measures, so I beg to move.

Bill read a second time. Committee negatived. Standing Order 44 having been dispensed with, the Bill was read a third time and passed.

National Security Bill

Committee (5th Day)

5 pm

Relevant documents: 10th Report from the Constitution Committee, 20th and 21st Reports from the Delegated Powers Committee, 5th Report from the Joint Committee on Human Rights

Clause 77: Publication and copying of information

Amendment 105

Moved by ***Lord Murray of Blidworth***

105: Clause 77, page 52, line 20, leave out "copying" and insert "the disclosure"

Member's explanatory statement

This amendment clarifies that the power in clause 77(1)(b) relates to the onward disclosure of information provided to the Secretary of State under clause 72 or 73.

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): My Lords, Clause 77 allows the Secretary of State to make regulations about the publication and sharing of information provided through the foreign influence registration scheme. Amendment 105 clarifies that power at Clause 77(1)(b) and provides for the Secretary of State to make regulations about the onward disclosure of information registered or provided under the foreign influence registration scheme. The amended provision will enable the Secretary of State to provide clarity in respect of what data can be lawfully shared where necessary. I therefore ask the Committee to support this amendment. I beg to move.

Lord Carlile of Berriew (CB): My Lords, we are being asked to approve something that relates to regulations that we have not seen, and we would ask the Government to review the way in which they are approaching the passage of this part of the Bill. We need to see not just draft practice or draft regulations but the regulations themselves.

The way in which this part of the Bill has been generated—and I do not want to repeat a discussion that we had two days ago—means that there is a great

[Lord Carlile of Berriew]
deal of uncertainty about what is intended. I hope that the flexibility that was indicated by Ministers on Monday will be extended to how such information is disseminated. I hope that we will get an undertaking that, before Report, and not on the day that Report begins, we will see the regulations and other documents that will indicate the architecture and detail of whatever parts of FIRS are going to be retained.

Lord Coaker (Lab): My Lords, I agree with what the noble Lord, Lord Carlile, has just said, and I shall say a bit about it myself, in a few remarks on the government amendment. As the Minister said, the amendment clarifies the power in Clause 77(1)(b) and deals with the publication and disclosure of information provided by the Secretary of State under Part 3 on registration. Can the Minister say a little about what is not to be published? As the noble Lord, Lord Carlile, has just pointed out to the Committee, all this is to be done by regulations—and, I emphasise, done by regulations under the negative procedure.

Information provided by the Minister about foreign activity arrangements and foreign influence arrangements could, as the DPRRC said, be both politically and commercially sensitive. There will also be practical matters of significant political interest around these matters, given their relationship to national security. What sort of thinking is going on about what may or may not be published? Will those whose information is to be published be told in advance of publication and have any right of appeal? Again, as the noble Lord, Lord Carlile, said, why should Parliament not be able to have a more direct say in what sort of information should be published? That point was made by the DPRRC, which called for these regulations to be made, at the very least, under the affirmative procedure, to give at least some degree of scrutiny for this Parliament. I ask the Minister again to reflect on why negative procedure is being used for these regulations and not, at the very least, affirmative.

Lord Murray of Blidworth (Con): I thank both noble Lords for those contributions. I can, of course, reassure the noble Lord, Lord Carlile, who will be aware that my noble friend Lord Sharpe committed in this House that a policy statement would be published ahead of Report.

On the points raised by the noble Lord, Lord Coaker, clearly the drafting of the regulations will necessarily follow the shape of the scheme, which is reflected in the final version of the statute. Therefore, it would not be appropriate at this stage to have draft regulations to consider. As to the appropriate method by which the regulations should be approved, it is the Government's view that the negative procedure is appropriate for these minor and technical regulations, given what they do to enable the disclosure of information provided to the department in accordance with the scheme.

Therefore, for all those reasons, we submit that this is a minor and technical amendment that simply clarifies the purpose of the power, and that it is intended specifically to enable the Secretary of State to make provision through regulations for the onward disclosure of information registered under FIRS, and I therefore ask the Committee to support this amendment.

Lord Pannick (CB): Perhaps I could press the Minister on this. He said that there will be a policy statement before Report. The noble Lord, Lord Carlile, was asking whether we can see the draft regulations. I entirely understand the Minister's point that the final version of the regulations will need to await the passage of the statutory scheme, but why can the department not produce draft regulations which will inform discussion on Report?

Lord Murray of Blidworth (Con): At the moment I fear I cannot commit to providing draft regulations. It may be that there are some, but it may be that to draft regulations prior to Report would be too time-consuming.

Lord Carlile of Berriew (CB): I am sorry to intervene again, but does the Minister not see that this is illustrating the whole mistake in producing important legislation arising from amendments made in Committee in the House of Commons? If this part of the Bill had been drafted in the normal way, by parliamentary counsel with time to develop it and to consult, it would have been perfectly simple to produce draft regulations in time for Report in the House of Lords, which is nearly at the end of the legislative process. Is this not really just a guilty plea to having had insufficient time to prepare a Bill that came to this House based on an idea which was not even government policy?

Lord Murray of Blidworth (Con): I note the noble Lord's views on the topic, but we are where we are. Obviously, the department will take away what he says and endeavour to meet his reasonable request.

Lord Coaker (Lab): I say to the Minister, before he sits down, that in view of what the noble Lords, Lord Pannick and Lord Carlile, have said, it is not satisfactory. We do not have a policy statement, we cannot see the regulations and, when the regulations are passed, the Government will pass them through the negative procedure. I would have thought, at the very least, given the worries and concerns that have been raised, that the affirmative procedure, as the Delegated Powers Committee said, in these circumstances in particular, might be something the Government would consider. I ask the Minister to reflect on that.

Lord Wallace of Saltaire (LD): I hope the Minister will agree to draw the attention of his department to the debate held in this House last week on delegated legislation and to the very strong sense across the whole House, including on his Benches, that this House is meeting a Government who give us less and less information about regulations and prefer to leave more and more out of Bills so that Ministers may act as they are. This is an abuse of Parliament and should not be pursued further. That message is particularly important for a Bill such as this, and the Government should consider it.

Lord Murray of Blidworth (Con): I have no doubt that the department will reflect on those points. We are all very aware of last week's debate, in which the Leader participated.

Amendment 105 agreed.

Clause 77, as amended, agreed.

Clauses 78 to 81 agreed.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): A decision has been taken through the usual channels to combine the next two groups, commencing with Amendment 105A and including the following list commencing with Amendment 106.

Clause 82: National security proceedings

Amendment 105A

Moved by ***Lord Marks of Henley-on-Thames***

105A: Clause 82, page 55, line 20, at end insert "provided that such evidence or submissions are not merely incidental to the principal issues in the proceedings"

Member's explanatory statement

This amendment restricts the definition of 'national security proceedings' to correspond with the ordinary meaning of that phrase, and not merely because some national security-related evidence has been adduced. It also prevents a public body from avoiding accountability by categorising proceedings as 'national security proceedings'.

Lord Marks of Henley-on-Thames (LD): My Lords, I am grateful for the explanation that these two groups have been combined. I spent some time today wondering why they could possibly have been separated, since they both concern the topics of a reduction in damages and freezing powers and damages. We are now dealing with all the amendments to Clauses 82 and 83 and the stand part objections to Clauses 82 to 86.

I have Amendment 105A in group two. It is what I might call an exemplar amendment, by which I mean that it is directed at one of the issues on which these provisions on the power to reduce damages under Clauses 82 to 86 are unacceptable. I say at the outset that I fully support the objections to any of these clauses standing part of the Bill, advanced by my noble and learned friend Lord Wallace of Tankerness, my noble friend Lord Purvis of Tweed and the noble Lord, Lord Pannick. I shall therefore speak at this stage on the amendments in group three as well, which relate to the reduction, freezing and forfeiture of damages proposed by Clauses 82 to 86.

I will make three points. First, these clauses are vindictive, because they are not clearly targeted towards achieving the end at which they are aimed but instead represent a far wider knee-jerk attack on the civil rights of those affected. Secondly, they are unnecessary, because existing statutory powers and legal principles are already in place to achieve that end. Thirdly, they would represent an insidious restriction of the rule of law and an unwarranted grant of effective immunity for government from legitimate action taken by citizens to recover damages for proven unlawful actions by government agencies.

I turn to my first point: that the provisions are not targeted at the end which they are intended to achieve. The aim of these provisions is described in the impact assessment. Based on the Conservative manifesto commitment to

"do all we can to ensure that extremists never receive public money",

the impact assessment says that, to achieve this aim,

"civil damages reforms will address the risk of awards of large sums of damages paid out in civil court claims being used to fund and support acts of terror and whether damages are appropriate where a claim in a national security case concerns a claimant's involvement with terrorism."

The first of those aims concerns the use of damages awards, which we say can be addressed by freezing orders under existing legislation, to which I will turn in due course. But the second presupposes a link between the claimant's conduct and the award of damages.

5.15 pm

That brings me to my Amendment 105A, which would restrict the ambit of national security proceedings under the Bill for the reduction of damages provisions. As drafted, the definition would encompass any proceedings where any party has at any stage presented any evidence or made any submissions to the court relating to national security, so it would apply whether the evidence or submissions were germane to the issues in the case or not. For example, where at an interim stage in proceedings the Government have resisted disclosure of government documents for a reason of national security and the parties have adduced evidence and submissions in respect of that objection, the proceedings would come within the definition and the provisions relating to reduction of damages would apply. In no sense are these provisions restricted to claims concerning a claimant's involvement with terrorism; in that sense, they are simply not restricted to addressing the mischief at which the Government say they are aimed.

The Joint Committee on Human Rights made this point in trenchant terms at conclusion 35 of its report, which said:

"Damages should not be reduced based simply on factors identifying the claimant as unworthy of compensation or excusing the Government for actions that have been found to be unlawful. Before any reduction in damages should be made in the widely defined 'national security proceedings', the defendant should be required to satisfy the court that the damages are likely to be used for terrorist purposes."

It is wrong in principle that damages should be reduced for a reason that is unconnected with the conduct for which they are awarded.

That brings me to my second point. Where the conduct of the claimant is in full or in part responsible for the Government's unlawful conduct which gives rise to the award, the existing law gives the courts ample power to reduce or refuse any award of damages. The age-old Latin maxim—I apologise for quoting Latin—"ex turpi causa non oritur actio" prevents a wrongdoer from succeeding in an action which essentially arises as a result of that wrongdoing, and the maxim "volenti non fit injuria" bars a claimant who essentially willingly takes a risk of harm from recovering for the consequences of that risk-taking. Furthermore, the contributory negligence Act 1945 is not confined to negligence but gives the court power to reduce damages

"Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons … to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage".

So where claimants bring damage on themselves, the courts have ample power already to reduce their awards.

Reprieve, in its excellent briefing on behalf of a number of organisations, for which I am grateful, made the point that these clauses would give the UK

[Lord Marks of Henley-on-Thames]
Government protection against entirely legitimate claims brought to recover damages arising out of the UK Government's complicity in torture. It points out that victims' rights to redress for torture, which are enshrined in international law, would be restricted by these provisions. It cites the case of Jagtar Singh Johal, who has a case against the British Government arising out of their allegedly sharing intelligence with the Indian authorities which led to his detention and torture.

It also cites the case of Abdul Hakim Belhaj and Fatima Boudchar, which arose out of their detention and torture in Thailand, their rendition to Libya and Mr Belhaj's further torture there; and to whom Theresa May publicly apologised in 2018 after years of civil litigation because she accepted that:

"The UK Government's actions contributed to your detention, rendition and suffering."

Claimants' pursuit of such cases against the Government would be threatened by these provisions. That is the third point I make about the rule of law.

Turning to the powers to freeze or forfeit damages, Jonathan Hall KC, the Independent Reviewer of Terrorism Legislation, set out in his note on these clauses in May 2022 a detailed analysis demonstrating that the Government have ample freezing powers, appropriately circumscribed, under the Anti-terrorism, Crime and Security Act 2001. He is highly critical of the powers the Government propose to take, particularly of them being available on the basis of a "real risk" that they will be used for terrorism, rather than requiring it to be established that they are "intended to be used" for terrorism. He says that this is an unjustified lowering of the threshold—I agree. He concluded that

"this measure not only makes it easier to deprive individuals of damages to which a court has found they are entitled, but it passes an advantage to the authorities who are most likely to be the defendants in proceedings in which these measures are invoked."

He went on to say that the measures risk

"the impression that if the government is sued, it will have a special advantage in keeping hold of monies which is not available to other unsuccessful parties in civil proceedings."

That elegantly encapsulates, in modest terms, my third objection to these clauses. They are inconsistent with the principle that the Government are subject to the law and so are inimical to the rule of law. I therefore support the objections to Clauses 82 to 86 standing part of the Bill.

The amendments in the third group are alternatives to the stand part notices. I support Amendments 106 to 111. Amendment 106 introduces a requirement that for the duty to consider a reduction in damages to bite, the court would have to be satisfied that any damages awarded would be used for the purposes of terrorism. I have made the point that a principal objection to these provisions is the failure to include such a required connection between the damages and the use for terrorist purposes.

Amendment 107 would remove subsections (3)(a)(ii), (3)(b) and (4) from Clause 83, dealing with the claimant's involvement in terrorism, short of the commission of a terrorist offence. They would be removed as a national security factor to be considered in reducing damages. Amendments 108 to 110 are alternative amendments, which would remove subsections (4)(a), (4)(b) and (4)(c) respectively.

Amendment 111 enlarges the exclusion under Clause 83(6) in respect of damages awarded for breach of human rights, by adding

"or which it would award under section 8 of that Act had the claim been brought under it".

That was an amendment recommended by the JCHR in paragraph 34 of its report, on the basis that:

"It is important that remedies for human rights violations are not reduced by the courts, simply because they have been identified through claims brought otherwise than under"

the Human Rights Act. That is the basis for the amendment proposed by my noble friend Lady Ludford.

I have Amendment 111A in this group, which adds another reason for not reducing damages—I note that an "(a)" should have been inserted before the human rights exception. My amendment would add the exclusion of a reduction in damages

"where such a reduction would be inconsistent with granting the claimant appropriate access to justice."

Therefore, where a claimant establishes an entitlement to damages that was independent of any wrongdoing, I suggest that it would be an obvious affront to access to justice to deny that claimant the right to go to court to claim damages to which they would otherwise be entitled. That is my justification for my amendment. However, all these amendments are plainly subsidiary to our wholesale objection to all these clauses which restrict access to justice for claimants in these cases on grounds that we say simply do not pass muster. I beg to move.

Lord Pannick (CB): My Lords, I have added my name to many of the amendments in these groups. I declare an interest as a practising barrister in public law cases, occasionally in cases concerning natural security.

I entirely agree with the powerful speech that the Committee just heard from the noble Lord, Lord Marks. The award of damages for civil wrongdoing is one of the primary means by which the court remedies the wrongdoing and deters future wrongdoing. That the award of damages is central to our system of justice is confirmed by Clause 83(6), which recognises that the court may not decide to reduce damages to a claimant under the Human Rights Act. By seeking to allow a reduction in damages for non-human rights cases, these clauses would introduce a lesser standard of justice.

I am very unclear why what is unacceptable for a human rights case should be thought acceptable for other civil litigation. That is especially so when the concerns which the Government have about paying damages when they are found to be liable are most likely to arise in cases which do concern human rights violations: cases where the allegation is made—and for the purpose of this clause we must assume is proved to the satisfaction of the court—that the state has been complicit in acts of torture or murder, perhaps by undercover officers. Such grave acts can be and are pleaded as human rights violations.

I appreciate that the Government are keen to remove legal liability, including human rights liability, for claims based, for example, on UK military action

abroad, but if liability were to be excluded for such alleged conduct, there would be no need for provisions on damages. Why deal with this by reference to the remedy rather than to liability?

These clauses are not even concerned with a case where the terrorist's wrongdoing had a causal connection with the Crown's conduct, which forms the basis of the Crown's liability for its wrongdoing. Clause 83(4)(a) makes it clear that there is no need for such a causal connection. In any event, as the noble Lord, Lord Marks, correctly explained to the Committee, existing legal principles would apply in such circumstances. Therefore, I need to be persuaded by the Minister that there is any principled basis for these clauses.

Lord Purvis of Tweed (LD): My Lords, the noble Lord, Lord Pannick, and my noble friend have comprehensively outlined why both these clauses are unnecessary in law but also go far beyond what is necessary and will be damaging in practice. I need not add very much other than to say that I have put my name to the amendments that my noble and learned friend Lord Wallace of Tankerness, who was unable to be with us today, has put down with regard to Clauses 82 to 86 stand part and, as my noble friend indicated, the other amendments that would seek to reduce the impact.

The clauses undermine considerably mechanisms for holding government to account, as the noble Lord, Lord Pannick, said, through civil claims. In addition to seeking a remedy, such claims have been positive in changing policy and practice. Therefore, the impact of the clauses, as Reprieve together with the other bodies referred to by my noble friend have indicated, could be to allow Ministers and officials to avoid paying damages to survivors of torture and other abuses overseas.

5.30 pm

The concern about this is compounded by the previous debates that we had on Clause 28. There is now a considerable way because of the removal of the extraterritorial nature of the Serious Crime Act 2007 in Clause 28, which we debated earlier in Committee. In addition, it seems as if, together, the Government are seeking deliberately to move towards a very high level of impunity for our intelligence services, especially when it relates to some extremely serious cases.

That is why the elements in Clause 83(4) require careful consideration. The national security factors that the Government seek to put into statute would, as we have heard, include "conduct having occurred overseas", under Clause 83(4)(a)(i). Here, it is important to raise the case of Mr Belhaj with regard to the Libyan Government, and that of Mr Johal and the Indian Government, because the practical effect of using this sub-paragraph would be to place the UK's foreign intelligence service outside the scope of civil legal claims if any of those activities had happened abroad and, indeed, as the Government themselves so defined.

Secondly, Clause 84(4)(c)(ii) refers to

"the conduct having been carried out in conjunction with a third party."

This opens up the valid concern raised by Parliament's Intelligence and Security Committee in its investigation into alleged UK complicity in torture during the early years of the so-called war on terror. The committee said that the British resorted simply to the

"outsourcing of action which they knew they were not allowed to undertake themselves",

including torture and extraordinary rendition. That element of this clause would therefore mean a high degree of impunity with regard to that.

The triggering element of this issue is in Clause 83(3)(a), which refers to

"wrongdoing involving … the commission of a terrorism offence, or … other involvement in terrorism-related activity".

A concern has been raised that this is so broad that arguably it means that anyone accused of terrorism by a foreign state can be captured by it. I would be grateful if the Minister could clarify whether that is the case because it is significantly concerning.

We have heard about the Independent Reviewer of Terrorism Legislation's concerns regarding the restriction of victims' right to redress. These clauses provide significant concern, not only standing alone with regards to civil law; together with Clause 28, they would be a retrograde step and should not be part of the Bill.

Lord Hacking (Lab): My Lords, I am also in receipt of an excellent briefing from Reprieve, which was covered excellently by the noble Lord, Lord Marks—so much so that I am left with nothing further to say on that issue.

However, as I am currently the only Member on the Labour Back Benches, I want to put on the record that I wholly oppose the concepts contained in Clauses 82 to 86. They would allow Ministers and officials to avoid paying damages to survivors of torture and other abuses overseas; they would also give Ministers certain rights to reduce those damages under Clause 83. I just want to put a stake in the ground, as it were, behind the noble Lord, Lord Coaker. I hope that I speak for my colleagues on these Back Benches in saying that I wholly support what the noble Lord, Lord Marks, described to your Lordships so excellently. That is my stake in the ground.

Lord Faulks (Non-Afl): My Lords, I add a couple of queries which I hope that the Minister can help with.

Clause 83(5) provides that:

"Where the court would award damages … of a particular amount, the court must decide whether, in light of its consideration of the national security factors, it is appropriate for it to reduce the amount of damages (including to nil)."

How is a judge supposed to decide whether it is appropriate? The national security factors are listed but perhaps, by way of an example, some illustration can be given to the Committee to help us understand what this legislation has in mind. Incidentally, I note at Clause 83(7)(b) the various other defences in common law to which the noble Lord, Lord Marks, referred—that is, ex turpi, volenti and contributory negligence—are reserved anyway. The question is whether anything further is needed. An explanation of why these provisions are needed would certainly help the Committee.

Lord Coaker (Lab): My Lords, I thank the noble Lords who have spoken. I very much appreciated the introduction by the noble Lord, Lord Marks. It was

[Lord Coaker]
very carefully explained and helpful to the Committee. The only thing that I will disappoint him with is that, having heard his Latin pronunciation, I have decided that mine is not as good and so will leave it out.

Some of my remarks will be more general but none the less will ask the Government for justification—with respect to the clause stand-part debates rather than the individual amendments. The noble Lord, Lord Faulks, is absolutely right to ask what the court should take into consideration when determining what the level of damages should be, if it is to reduce them, even down to nil. The Minister in the other place talked about care costs. That is my point. It would be interesting to know what the Government's thinking is. My remarks are mostly not as specific as those of the noble Lords, Lord Marks and Lord Pannick, but raise some of the more general points that the Government need to justify these clauses and to clarify why we must agree them in their current form. I am very grateful to my noble friend Lord Hacking, whose stake in the ground gives me hope for the future and makes me realise that I am not alone when I stand here. I appreciate his support.

Amendment 105A, moved very ably by the noble Lord, Lord Marks, raised a number of important concerns around the provision—or reduction in provision—of damages in national security cases, including, as the amendment probes, whether a public body could avoid accountability by categorising proceedings as national security. As I said, I want to address the clause stand parts but also Schedule 15, to get some clarity around the Government's thinking.

Before anybody reading this in *Hansard* categorises it in a way that it should not be categorised, I make it clear that none of us in this Committee or indeed in this Parliament wishes to see damages used to finance terrorism or in any way to allow individuals or groups to benefit from them. That is the motivation behind Clause 83 and one that none of us could disagree with. However, it is important to consider how we do that. As the noble Lord, Lord Pannick, said, it is particularly important for us to do this because many people read our proceedings and so it is important that they understand the debate. The Explanatory Notes point out in stark terms, and more clearly than the Bill does, that:

"Clause 83(1) provides that the duty applies where the liability of the Crown has been established".

The JCHR report uses even more strident language. It says this applies where the Crown, Government or state—whichever you want to call it—has been proven in court to have "acted unlawfully". We are talking about a situation in which damages are reduced in cases where the guilt of the Crown has been proven. That is no doubt why many of us will tread carefully in this area: the state has been proven guilty and we are passing legislation that would enable the Government to further reduce damages. This is difficult territory but, with respect to terrorism and damages, it is none the less territory that we need to go to. It is true that certain human rights cases are excluded—those brought under Section 7(1)(a) of the Human Rights Act 1998—but other cases are not. As I have said, even where the court has established that the state is in the wrong and the state has been found guilty of wrongdoing with respect to an individual, and the clause applies, the state can seek to reduce those damages.

How can the Government reassure the Committee that this clause cannot be used to allow the state to avoid accountability? As I have said, of course public money should not be used to fund terrorism via the damages awarded but, as the noble Lord, Lord Marks, pointed out, the clauses seem to be drawn so broadly that potentially deserving victims may be excluded. How will the Government avoid that and ensure that the limitation of damages applies only to those who have committed wrongdoing involving terrorism, which I understand to be the point and purpose of the amendment of the noble Lord, Lord Marks, and the amendments of others?

We do not wish to see innocent bystanders caught up in a terrible situation to be excluded, but the current drafting of these clauses at the very least implies that, if there is any evidence related to any unspecified national security or intelligence services issue, the damages could be reduced or taken away completely. The Law Commission points out that this could lead to the state introducing national security evidence to avoid paying damages under the provisions of the Bill laid out in Clause 82(2)(a). Can the Minister detail for the Committee why these provisions are necessary? What additional powers do they make available to a court? Can a court not already take into account whether a claimant is deserving or not and whether there are concerns about the potential misuse of any such moneys or damages awarded to them? A point raised in the other place is that this must not be a slippery slope. Could the requirement to reduce damages from terrorism, because of our obvious horror, ever be extended to other areas where we are also horrified—for example, paedophile cases?

I have other points and questions for the Minister on Schedule 15 and other clauses in this group. Are these provisions based on experience from some existing cases, where the Government think this has happened and needs to be stopped, or are they being introduced in anticipation of it happening in the future? If they are not based on existing cases, what are the limitations of the existing legislation, on which the Government have evidence that they can present to the Committee to show why we need this new legislation?

In the other place, for example, the Government were asked what the problem is with existing legislation related to the financing of terrorism. We already have legislation that deals with reducing or removing damages that are used to finance terrorism. I think the noble Lord, Lord Pannick, also made that point, unless I misunderstood.

The freezing orders under Schedule 15 are possible for two years and can be renewed for a further period, before leading to potential forfeiture. Can the Minister explain what the term "real risk" means, for example in paragraph 1(4) of Schedule 15? If it is a standard of proof, as real risk is in the future, how will the court determine it? Will the court require actual proof to allow freezing orders to be made, or will it make a subjective judgment about something that may happen, the real risk that may occur, in the future?

5.45 pm

Can the Minister explain the standard of proof that will be required in forfeiture cases? Again, is it the threshold of real risk which would be used for any such order, or is there a different standard of proof between freezing orders and forfeiture? In terms of freezing orders and forfeiture, what cases have shown that there is a problem? What problems are there with the existing legislation that already deals with proceeds of crime and the ability of courts to freeze bank accounts if they believe that they are to be used for criminal purposes? What is the problem that the Government are trying to fix?

On the question of proof, we are asking the courts to look into the future: they will have to determine whether there is a real risk in the future. Who will help them come to that conclusion, and with what evidence? If it were the intelligence services, would having to present evidence to a court not incur a risk for the intelligence services?

Can the Minister also outline the other factors that would need to be taken into account in any potential reduction of damages? This is the point that the noble Lord, Lord Faulks, made. We have heard that the court will have to consider this notion of real risk in the future, but in what cases, if you thought that there was a real risk of the money being used for terrorism, would you not seek to stop all of it—in other words, forfeit the whole amount immediately, rather than for a short period or only part of it? There have to be other reasons that you would say that. If this money is to be used for terrorism, or there is a real risk of it being used for terrorism, why would the court not say it would have the whole lot? Why would you only take a little bit away or half of it away, and leave the other half, potentially to be used for the purpose that you froze the first part or half of the money?

This is where it gets to the point made by the noble Lord, Lord Faulks, because the Minister in the other place said that there may be other things to take into account—for example, care costs. The noble Lord, Lord Faulks, made this point better than me: what is it, apart from the real risk of terrorism, that a court would take into account to reduce the amount of damages to be forfeited to less than the whole amount? If you think that there is a real risk of terrorism, why would you not take the whole amount away straightaway, rather than leave half of it because the other half is needed for something else? If it is needed for something else, what is that something else? Again, that is the point, if I have understood it right, that the noble Lord, Lord Faulks, is making.

Are these clauses essentially the same for wrongdoing by the intelligence services and the Armed Forces? Is it the same framework within which they operate?

Finally, I will conclude by saying that we all wish to see those who commit terrorism prosecuted with the full force of the law. There is no difference between any of us on that. None of us wants to see damages used to finance terrorism, but the Government need to explain why the new laws are needed, what the gaps are in the existing legislation that they are seeking to fill, and whether some clarification and amendment to tighten these provisions—as in the amendment, for example, of the noble Lord, Lord Marks, or maybe others—may actually improve the Bill. None of us seeks to destroy the Bill. What we are seeking to do is to improve and tighten it. As always in this Committee and in this Chamber, we wrestle with important principles, but even in this most difficult of areas, we must get the balance right between those of the state and those of the individual.

The Parliamentary Secretary of State, Ministry of Justice (Lord Bellamy) (Con): I thank noble Lords very warmly for their contributions, which were pertinent and challenging as ever. I shall make three introductory points. First, there is perhaps—and I put this as lowly as I can—a tension between those who say that this approach is wrong in principle and, on the other hand, those who say it is already covered by the general law. If it is covered by the general law, it cannot be wrong in principle. There seems to the Government to be an opposition in those two propositions.

Secondly, it is said that these provisions are intended to introduce a high level of impunity for the security services, generally reduce their accountability and effectively put them beyond the law. That is not the case, because in this legislation the decision is for the court—it is for the court to decide what to do. It does not give immunity to officials, the security services or the Government. It is a matter for the court. Essentially, this legislation is spelling out what the position is in relation to persons who have been involved in terrorist wrongdoing. It is saying in explicit terms that, where that situation arises, the court should consider—and I emphasise the word "consider"—whether damages should be reduced to reflect that wrongdoing. It is perfectly true that, at common law, such an argument could already be made, at least in theory; depending on which Latin tag you chose to use or whether you refer to the contributory negligence Act or other general principles, the argument can be made. But the point of these provisions is to spell that out in very clear terms so that the general public and potential claimants know what the position is, and one is not left to argue what can sometimes be obscure and difficult questions of common law in particular cases.

Thirdly, the overriding purpose—we can discuss the exact wording—is to convey a message. The message is that the United Kingdom is not a soft touch for those involved in terrorist wrongdoing when they come to claim civil damages. That is a message particularly directed to those beyond the seas who may be tempted to bring, and have in the past brought, proceedings in the UK courts when these kinds of situations have arisen. It is to make the civil position clear. By the same token, we have provisions relating to freezing and forfeiture which protect any damages that are awarded from subsequently being used for terrorist purposes. That is the overriding framework, as it were.

On behalf of the Government, I entirely reject the suggestion that these provisions are intended to introduce a high level of impunity for the security services or to avoid accountability, because it is ultimately for the court to decide. This is limited to national security proceedings, and the conduct of any public bodies will still be fully subject to scrutiny by the court.

With that general description, I shall try to deal with the various points which have been raised. I come first to Amendment 105A, put forward by the noble

[Lord Bellamy]
Lord, Lord Marks, which seeks to introduce an exclusion in cases where the evidence or submissions to the court about national security are merely incidental to the civil claim in question. While completely understanding the objective behind the amendment, the Government believe that it is not necessary, for three reasons.

First, national security proceedings are very clearly defined in Clause 82(2), and it is very hard to construe that definition as including a case where national security was for some reason de minimis to the proceedings concerned. Secondly, it is, in the Government's view, hard to imagine in practical terms a situation in which a person involved in terrorist wrongdoing brings a case against the Crown, and the Crown has presented evidence or made submissions about national security, but national security is merely incidental to the issues in the case. It seems to the Government that it is most unlikely that such a situation would arise. Thirdly—this is a fundamental point that I have already made—

Lord Marks of Henley-on-Thames (LD): The Minister simply has not answered the point that this provision in the Bill refers to "at any stage" of the proceedings, and any stage of the proceedings could be a disclosure stage, an interlocutory stage or an interim stage, where documents are sought to be withheld for reasons of national security that do not go to any major issue in the proceedings and are merely incidental. The Minister has simply not answered that. If he would like to do so, I would be grateful.

Lord Bellamy (Con): I will further reflect on the question, but it seems to the Government that that specific example is unlikely to bite, as it were, on the duty of the court in the particular circumstances that we are considering, because ultimately it is up to the court to consider whether a reduction of damages is appropriate. If it were the case that, technically speaking, you could argue that national security proceedings on the face of the statute were in some way involved because there had been an earlier discovery application but it had no material impact on the remainder of the case, one could reasonably assume, and the Government do assume, that the court would not proceed to reduce damages on the basis of something that had nothing to do with the real issues.

We will always reflect and consider further, because it is very important to get the drafting right, but at the moment the Government are unconvinced that this amendment is necessary and believe that the protections, and in particular the role of the court, are sufficient to deal with the concern that the noble Lord, Lord Marks, has raised. That, I think, is the answer to Amendment 105A.

Lord Anderson of Ipswich (CB): The Minister rightly emphasises the very high degree of discretion that is given to judges under Clause 83. The core of it is Clause 83(5), which allows a judge to take a view on whether it is "appropriate" for the amount of damages to be reduced. I wonder what the Minister thinks of the point that to give judges such a wide discretion is perhaps to give them a poisoned chalice. Judges did not, so far as I know, ask for this power. Does the Minister agree that they could be strongly criticised were they to fail to exercise the power to reduce damages, even in cases where it would be consistent with normal legal principles, including the principle of fairness, not to reduce them?

Lord Bellamy (Con): The question asked by the noble Lord, Lord Anderson, highlights the tension I referred to a moment ago. It is very difficult to say on the one hand, as is being said, that the courts have this power already and that they are perfectly capable of exercising it, whether under the 1945 Act or ex turpi causa, et cetera, and on the other hand to say that it puts them in a difficult position and that they will be criticised if they do not exercise it. I think I can say this: the overall intention of this legislation is not to alter or downgrade a principle of law that is already inherent in the common law and in our various jurisdictions; the purpose is to spell out that principle in this legislation so that no one has any doubt that it applies in terrorist cases. That is the main purpose of this clause. We are, to an extent, simply reflecting where we are, but clarifying where we are.

Lord Pannick (CB): Can I press the Minister a bit further on this pivotal point? I respectfully suggest to him that he is asserting two conflicting principles. If I understand him correctly, he is saying, first, that the purpose of these provisions is to convey a message but, secondly, that we do not need to worry about it because it is all a matter of judicial discretion. But the judges will have to decide these cases. How are they to decide? How are they to apply their discretion? What message are they expected to convey? While I am on my feet, I remind the Minister that it was, I think, Samuel Goldwyn who said that if he wanted to convey a message, he used Western Union. That is perhaps a relevant principle for Ministers to bear in mind in relation to legislation.

6 pm

Lord Faulks (Non-Afl): Before the Minister answers, and so that he does not have to go over old ground, I will intervene. In the Government's case, the judges will have a new power that is needed because the existing defences of ex turpi and volenti are not adequate. I think that is the case the Government are making, but I respectfully submit that a judge needs a bit of help as to how he or she is to approach this case. When judges are given discretionary powers—for example, under the Limitation Act—they are given a long list of things to take into account or something that makes their job easier. I am putting myself in the position of a hypothetical judge looking at this clause, knowing that it apparently adds something to the existing common law and asking myself how I would approach this. I wonder whether there might be reflection and a judge will be given more guidance as to how he or she should approach this very difficult and delicate task.

Lord Bellamy (Con): My Lords, perhaps I can take this point under advisement, because it is not yet spelled out in the statute and I am reluctant—on the hoof, as it were—to put words into the mouths of judges who would go about it in due course. One can

imagine that one would draw inspiration from certain aspects of the existing law, but that is to go further than the statute already provides, so perhaps the Government can consider this point further.

I return to the broad thrust of the Bill and come to the stand part notices. I have tried to explain the importance of the message. Western Union is perhaps a slightly outdated way of conveying a message these days, but there are times when primary legislation is important to clarify the legal position, and this is one of those cases.

Before I pick up the specific points that have been made, in relation to the freezing and the forfeiture, the essential point is that these provisions bite at the moment the freezing order was made. You do not have to go to Horseferry Road Magistrates' Court or Highbury Corner to get an order. It bites straightaway and is done by the same court that was dealing with the damages in the first place. It is more efficient to deal with the same court. Although there are other powers, as noble Lords rightly point out, in the Government's view this is the right mechanism.

To come to the point made by the noble Lord, Lord Coaker, about why we do not just take the whole lot straight off, these exceptions for care costs and so forth, this is intended to be a measured structure. You start by simply freezing for the first two years, then you have another go at it after a second two years, then, finally, if after four years there is still "a real risk"—I will come to real risk in a moment—that is the moment when the forfeiture power kicks in. It is to give people time to persuade the court that there is no risk, as it were. That is thought to be a measured and proportionate approach to this problem.

The Bill provides that the freezing and forfeiture apply only in part to the damages if the court so orders, so that if, for example, medical expenses or care costs have to be met out of the damages, the court can provide for that. It does not have to take away the whole lot all at once. It can have regard to the needs of the claimant in that context.

That is the essential structure. It is to remove the risk of the money simply being spirited away at the press of a button, down a hole to an offshore haven before the courts can move to make sure that the money remains safe. Again, that is a power of the court, not of the Government or the security services. Therefore, in our view it does not lead to an undermining of the principle of access to justice or any other relevant right. To take another important point raised by your Lordships, it certainly does not take away the human rights damages. There are no circumstances in which it affects human rights damages in any event; that is a sort of entrenched position under the Human Rights Act. But that does not prevent a court taking into account circumstances in relation to other claims where the court considers that a reduction would be justified. Even in relation to human rights cases—I am sure plenty of people here will immediately put me right if I am wrong—the European Court of Human Rights reduces damages in certain circumstances when it does not think that the claimant is fully deserving of a particularly large award because of the conduct of the claimant in question.

That is the general outline and why we say that the whole structure is balanced but proportionate. It extends to involvement in terrorist-related offences. It is not limited to terrorist convictions because of the quite obvious difficulty, particularly in terms of parties that are abroad, in managing to apprehend them, bring them to this country, prosecute them and secure a conviction. Cases have been brought by persons abroad known by the security services to have been involved in terrorist activities but not subject to a conviction in this country. That is why we have to make this a little wider than people who have been convicted of terrorist offences.

For the reasons I gave in relation to the message, the provisions are not limited to circumstances in which one should confiscate the damages because of the risk of them being used in terrorist activities. One should reduce the damages because of the conduct of the claimant, which is a normal, civil law situation. I do not mean civil law in the sense of continental civil law, but it is the normal situation in the common law.

Lord Carlile of Berriew (CB): I must admit that I was more favourably disposed towards some of these provisions, but the Minister has convinced me that I was wrong. He has told us that these provisions are unnecessary. They are in effect a very long text message, which apparently the public are going to consider over their breakfast tables, reminding judges of what the existing law is. Is he comfortable with using this House and this legislation for that purpose?

Lord Bellamy (Con): My Lords, I feel that this is the first time that I have ever convinced the noble Lord, Lord Carlile, that he is wrong. The answer to the question is yes, the Government are entirely comfortable with the need to make explicit what to a large extent is implicit but rather undefined and diffuse in our legal system. This measure gives us a clear code in terrorism cases to provide a framework for the judge to consider what he should do about damages. I accept that the question of guidance for the judges is an open point, but let us reflect on that. The purpose is to provide a clear framework in terrorism cases.

Lord Faulks (Non-Afl): With respect to him, the Minister is quite right: the application of ex turpi is very uncertain. There is a great deal of authority, and it is difficult to predict in particular cases whether they are going to rely on it. However, if there is going to be a statutory scheme then I return to my point: it needs to be a lot clearer so judges know how they are supposed to apply it.

Lord Hope of Craighead (CB): I wonder if I may add a thought. One of the words that strike me in Clause 83(5) is "must". If I were a judge at first instance, I would have to explain my decision, so I would have to say that I had applied my mind to the various factors. Having looked at the factors, I am still left in the dark as to what principle I should apply. I can look at them and understand them, but why should they affect the award? I do not think a list of factors is needed if the Government can explain the principle that should be applied. Is it that a kind of

[Lord Hope of Craighead]
quasi-immunity should be given because of these various factors—some sort of overriding principle in favour of the Government's security measures and so on that should be applied? I cannot devise that myself, but a list of A, B, C and D is not going to be helpful. We already have the factors there; it is the trigger, what the principle is that leads to the decision that the damages must be reduced, that is important. Otherwise, a first-instance court might say, "I've considered the factors and I can't see any reason why the damages should be reduced", and an appeals court will say, "Well, that's perfectly right", and we are left without any significant advance in this legislation. I hope I have made my position clear. I do not like lists of factors very much, but I like to have guidance as to principle.

Lord Bellamy (Con): I can say that the principle is certainly not for the judge to be asking himself, "Should I be protecting the Government or the security services from actions for damages?" I am not drafting the Bill, and I will further consider the matter, but I would imagine that it is something like how far the claimant brought the situation on himself. That would be an ex turpi causa or contributory negligence type of consideration. However, I do not want to pre-empt the discussion any further, standing on my feet thinking aloud, because I hear what is being said: we want further precision as to how the courts are to go about this.

Lord Purvis of Tweed (LD): I think the Committee is now in a bit of a bind. The Minister stated a few moments ago that the Bill is now a clear code and explicit, but he is unwilling to tell the Committee even some basic elements of what guidance for a judge might exist. We do not know now how to proceed on the basis of this before Report, especially in the case of the specific question that I asked.

The Minister has also stated, exactly from the Government's perspective, what the guidance for judges is. He talked at the opening of his remarks about demonstrating that

"the UK is not a soft touch for those involved in terrorist wrongdoing".

It is very clear from what the Minister said at the Dispatch Box what the intent is. If the judge is not to take into consideration what the Minister stated, we are in a bit of difficulty.

My specific question here, and I hope the Minister can be specific in an answer now, relates to the concern that was raised that the national security factor in Clause 83(3) is broad, and that a foreign power can state that the claimant was involved in terrorist activities in a foreign country. If that is used by a party under the national security factor, my reading of that is that the judge must now take that into consideration. Surely that cannot be right.

6.15 pm

Lord Bellamy (Con): My Lords, on that last point, I would need some notice of that question. It is not a point that I have so far had to consider.

It is the case that the court would have to be satisfied on the civil standard that that the claimant had been involved in terrorist wrongdoing. In accordance with normal statutory principles of construction, there would have to be some nexus between the United Kingdom and the terrorist wrongdoing. It is hard to imagine a case in the UK courts where there was terrorist wrongdoing without any nexus to the UK. That is as far as I can go.

I will see if I can get a bit further, if your Lordships will permit me. As far as the general position is concerned, when I said the Government wanted to say that the UK was not a soft touch, I meant that the provision makes it clear that in civil proceedings against the security services of the United Kingdom one has to be aware that the judge will consider whether the damages should be reduced. That is all I meant by that. I did not mean to say, and I do not think I can reasonably have been construed as saying, that the intention was to protect the security services from unwarranted claims for damages. The underlying principle is, I think, that if a terrorist person has brought it on himself then that should be considered, but let me reflect further on the relevant questions that noble Lords have asked.

Lord Hope of Craighead (CB): Would the Minister consider the wording in Clause 83(4)(a) that says there

"need not be a causal connection"?

You can find that there is a connection, but it need not be a causal connection. I can understand that if there were a causal connection then one might get around to thinking that the damages should be reduced but, if there is not a causal connection, why should you consider a reduction in damages at all? That is one of the reasons why I am looking for a principle that gets over the point that a causal connection is not necessary. What else is there?

Lord Bellamy (Con): The causal connection point is to do with whether there are national security factors in the first place. As to general question of what the court is to do, and whether we should have further guidance or precision in statute, that is perhaps a matter that we will need to come back to on Report to see whether we can get any further clarity.

Lord Pannick (CB): May I test the Minister's patience by asking him to reflect on one other matter? He said, rightly, that in assessing damages in human rights cases the court is entitled to have regard to the conduct of the claimant, yet this clause does not feel it necessary to provide any message or guidance to judges in human rights cases. I ask him to reflect on why the Government nevertheless think it necessary to send a message to provide guidance in non-human-rights cases.

Lord Bellamy (Con): I certainly undertake to reflect on what further guidance can be given on how the courts should go about this exercise.

I have taken up too much of your Lordships' time and am conscious that I have not perhaps dealt with everything I should have. As I think I have said, the overall intention is not in any way to undermine mechanisms for holding the Government to account, or to allow Ministers and officials to evade scrutiny. I fully agree with the noble Lord, Lord Coaker, that we

absolutely have to tread carefully. I hope that this package is a balanced one, and I invite noble Lords not to press their amendments.

Lord Marks of Henley-on-Thames (LD): My Lords, we have had a worthwhile and detailed debate in which the Government have been pretty hard pressed on the detail of these clauses. I am bound to say that nothing I have heard suggests to me that these clauses are in fact defensible. They introduce a very important and, we say, objectionable new power. It is not merely a power but, because of their mandatory nature, a duty to consider reduction in damages—the power being to reduce damages where there is no connection required between the conduct of the claimant and the reduction in damages. That is entirely novel.

If I may go on from there to consider a point made by the Minister fairly early in his speech, he said that those of us who criticise these provisions must face the fact that there is a tension between that criticism and the reliance we place on existing law. The reason why his position falls and why there is a tension is precisely that, under the existing law—as in the point made a moment or two ago by the noble Lord, Lord Pannick—it is the claimant's conduct that leads to the reduction in damages. The point made by the noble and learned Lord, Lord Hope, was that there is express exclusion of the requirement for the claimant's conduct to be responsible in these provisions before a reduction in damages is ordered. The security factors may be entirely irrelevant conduct, as far as the award of damages is concerned, but nevertheless lead to the requirement to consider reducing damages.

I suspect that the noble Lord, Lord Bellamy, because of his being so conversant with the common law, got into some difficulty when answering my question on disclosure. He said it is unlikely that consideration of evidence that came to light in a disclosure application would have any bearing on the claimant's conduct and therefore would lead a court to reduce damages. That is to fall into the trap of ignoring the effect of these provisions where no causal connection is required.

In answer to the other central point made by the Minister, that this is not about giving impunity or immunity to the Government because it is for the courts to decide, that leads the Government directly into the difficulty that these provisions are mandatory. As has been said a number of times, if a judge is faced with a mandatory provision that requires him to consider a number of factors and decide whether to reduce damages, he cannot blithely go on to say, "Well, I looked at the factors and I'm simply going to ignore the legislation". He then either gets into the point the noble and learned Lord, Lord Hope, made—that he is giving no effect to the legislation at all and it is a cypher, because a Court of Appeal might agree with that—or he is simply falling into error because he is not applying the legislation. It is a very difficult conundrum to face.

The central point made where the Government have got into such difficulty is that originally raised by the noble Lord, Lord Faulks. He said that there is no guidance whatever in Clause 83(5) as to how and on what principle the judge is to approach the question of whether damages should be reduced. Ultimately, the Minister was forced into the position of saying, "I'm not quite sure—I'll take it under advisement and we may come to some conclusion about it". Frankly, and with the greatest respect to the Minister, that is simply not good enough. This Committee needs to know what principles are to be applied to the exercise of an entirely new and, we say, entirely objectionable power.

The reality is that this point cannot be escaped from, as was said by the noble Lords, Lord Anderson, Lord Pannick and Lord Faulks, and the noble and learned Lord, Lord Hope. My noble friend Lord Purvis has again said that in an intervention. The problem is that this legislation is to be aimed at using damages to fund terrorism. That would be properly achieved, as the noble Lord, Lord Coaker, pointed out, by using the powers to freeze damages in a responsible way when there is an actual intention to use the damages to fund terrorism. It is exactly the point that the independent reviewer, Jonathan Hall KC, made: that it was dealt with by the existing legislation under the 2001 Act.

I cannot for the life of me therefore see why lowering the threshold achieves anything meaningful that is just, because it is unjust and the threshold under the existing legislation is the proper one to apply for something as serious as depriving somebody of damages or even freezing their damages. This legislation is weakening and altering other legislation in an unnecessary way, by introducing new powers that are objectionable, and therefore it ought to go.

The Minister has said that he is going to take this away and think about it. At this stage, therefore, I could not sensibly press my amendment and we would not ask for votes at this stage on clauses standing part. However, I really suggest that the Government are now under an obligation to consider whether any of these provisions are necessary at all or whether they wish to abandon them. In saying that, I beg leave to withdraw my amendment.

Amendment 105A withdrawn.

Clause 82 agreed.

Clause 83: Duty to consider reduction in damages payable by the Crown

Amendments 106 to 111A not moved.

Clause 83 agreed.

Clauses 84 to 86 agreed.

Schedule 15 agreed.

6.30 pm

Clause 87: Legal aid for individuals convicted of terrorism offences

Debate on whether Clause 87 should stand part of the Bill.

Baroness Ludford (LD): I will speak to the question of whether Clause 87 should stand part of the Bill, which is in my name. I am grateful to the noble Lord, Lord Pannick. I will also speak to the question of whether Clause 88 should stand part.

[Baroness Ludford]

Many aspects of this Bill are problematic. This Committee on Monday debated one of the biggest aspects—the proposed foreign influence registration scheme—and has just been debating another on damages. I apologise for my unavoidable absence, which meant that I did not speak to the amendment in my name, but it was very adequately covered by my noble friend Lord Marks and subsumed in a very interesting global debate. I venture to suggest that no aspect of this Bill is so lacking in validity or is so stupidly—if I may say so and that word is not unparliamentary—counter- productive as the proposal to deny for 30 years civil legal aid to anyone convicted of a terrorist offence.

The first problem is that in their ECHR memorandum to the Bill, the Government claim that Article 7 of the ECHR, which bans retrospective penalties, is not breached because this is an administrative measure only. However, their argument involves an acknowledgement that the aim of this denial of civil legal aid is symbolic. They say:

"the aim of the measure is symbolic, in that the purpose of the restriction is to reflect the significance of the bonds with the State and society that are broken by the commission of terrorist offences."

Should we be making law on such a basis? How can it be legal to make law which is to achieve a symbolic purpose? Surely a clash with the ECHR would beckon. Perhaps that is one that this current Government, unfortunately, might welcome.

The second problem is the rule of law challenge regarding access to justice. The report of the Joint Committee on Human rights cites the evidence from the Law Society:

"It is fundamental to the rule of law that our justice system rests on the clear principle that every judgment relies on the merits of the case brought before the court. We should not automatically be excluding people from legal advice and support because of unrelated convictions. To do so will diminish access to justice in our country and could affect the objectivity of our legal system."

I suggest that that is a very important point. It is not as if the cohort to be affected is simply those convicted of serious terrorist offences, because it is defined broadly, catching some more minor and historic offending—indeed, some which might not be considered terrorist activity at all. It could include the offence of failing to disclose a suspicion that another person is fundraising or money laundering for terrorist purposes. As it covers any conviction, it could also affect individuals given less severe sentences, such as a referral order. It could also bar from accessing civil legal aid individuals convicted of an offence which has since been abolished. The Law Society highlighted to the JCHR that it could affect

"a person fleeing from domestic abuse who is prevented from accessing an injunction against their abuser, and protection for their human rights, because of a twenty-year old conviction for a terrorist offence."

The ramifications are very wide. The former Attorney-General Sir Jeremy Wright said during the Second Reading debate in the other place:

"I do not think we have ever before contemplated determining someone's eligibility for civil legal aid based on previous criminal behaviour."—[*Official Report*, Commons, 6/6/22; col. 603.]

That was a previous Attorney-General. This sets out a serious question about the basis for these proposed provisions denying civil legal aid.

The third point is about the practical implications. These were raised by the current Independent Reviewer of Terrorism Legislation, Jonathan Hall KC. He said:

"Even symbolic restrictions may have practical consequences. No released terrorist offender is going to reoffend merely because their access to civil legal aid is restricted. But legal advice and assistance is relevant to securing help on housing, debt and mental health. A homeless terrorist offender, or one whose mental health needs are unaddressed, will present a higher risk to the public. There is a risk of unintended consequences."

Do we want to seek to reintegrate people who have committed offences in the past? If we do, denying civil legal aid perhaps 20 or 30 years later for something like housing or debt problems does not seem the right way of going about it. As Jonathan Hall said, it is highly counterproductive. He said:

"A terrorist offender who goes back into society and lives quietly presents a rosier prospect than one who needs perpetual monitoring."

Those are the practical consequences. This may be some great symbolic declaration, and I am afraid we are a bit too familiar with that sort of symbolism from this Government. In practice, it is counterproductive.

My fourth and last point is that it is counterproductive as it will create more bureaucracy. This was also highlighted by the Law Society. It is going to create large volumes of bureaucracy for the Legal Aid Agency. As far as I know, the Legal Aid Agency is under the remit of the Ministry of Justice. There are certainly other Ministry of Justice agencies affected too. I think before recess we discussed the probate service. I unfortunately have had experience of that myself in the last few years when I was bereaved. There are other agencies under the Ministry of Justice which are seriously struggling to deliver a decent service to the public. Is it a good idea in those circumstances to create more bureaucracy for another agency in the justice family?

It creates more bureaucracy because the Legal Aid Agency will have to confirm whether every applicant for civil legal aid has a previous conviction for terrorism and do lots of digging to find out information about this person. As the JCHR says,

"This may significantly increase the cost to the public purse, while it is unclear how this measure would contribute to public security and safety … Clauses 62-63 do contemplate a lesser form of legal aid, Exceptional Case Funding",

but this is, in the view of the Law Society

"a very bureaucratic process"

which

"puts in place a significant obstacle to access to justice given the extra work and uncertainty".

It is not much of a safeguard or a backstop.

All in all, I hope that I have persuaded the Committee that, on four grounds, the denial of civil legal aid to people because they have been convicted of a terrorist offence—I am not saying that they are good people—is against the rule of law principles and has practical consequences which are counterproductive, bureaucratic, costly, and so on. We are driven to the conclusion that their whole purpose, as with so much of what the Government seem to be doing these days, is to send some kind of symbolic message, but it does not withstand examination as having any merit at all.

Lord Pannick (CB): I have added my name to the proposal from the noble Baroness, Lady Ludford, that Clause 87 should not stand part of the Bill. I am very grateful to her for so clearly setting out objections to the clause. I declare my interest as a practising barrister acting in public law cases, including representing clients on legal aid.

Noble Lords will know that civil legal aid has been much reduced in scope over many years by successive Governments of different complexions, and many of us regret that that is the case. But where civil legal aid is still available, it helps to ensure the protection of the vital legal rights of individuals and their families; for example, in relation to community care, debt where your home is at risk, homelessness, domestic violence and welfare benefits. It therefore follows that a proposal by the Government to exclude eligibility for legal aid, for reasons that are wholly extraneous both to the nature and merits of the litigation you are seeking to bring and to the financial needs of the individual, need to be very carefully scrutinised.

Under Clause 87, a terrorist conviction, which is a very broad concept indeed, leads to the exclusion of eligibility for legal aid irrespective of whether the court that sentenced the terrorist conviction considered the offence sufficiently serious to merit a lengthy custodial sentence or, indeed, any custodial sentence at all. I appreciate that there are some exceptions in Clause 87, but not by reference to the gravity of the terrorist offence. Clause 87 would also exclude eligibility for legal aid irrespective of the relevance of the terrorist conviction to the legal proceedings for which the individual seeks legal aid.

Can the Minister explain to the Committee why the Government think it is appropriate that a woman who has, some years earlier, received either a non-custodial sentence or a short custodial sentence for a terrorist offence should thereafter be precluded from obtaining legal aid if she claims to be the victim of domestic abuse or if she is homeless? How can that possibly be justified? The Government have previously said that the provisions are justified because they impose consequences for people who have broken their bond with society—that is the phrase used by the Government. Murderers, rapists and paedophiles are not excluded from legal aid for their housing or domestic violence proceedings because of their previous conviction, so how can it be justified to exclude on this absolute basis a person who has been convicted of a terrorist offence, irrespective of the gravity of that offence?

There is a reason why murderers, rapists and paedophiles are not excluded from legal aid and it is very simple: we recognise, and have done so since the legal aid system was instituted by the Labour Government in 1949, that legal aid is vital to the effective protection of basic rights for individuals. I would not normally associate the Minister with crude gestures, because he is far too civilised for that, but this provision is a crude gesture which is inconsistent with basic concepts of the rule of law. It is quite indefensible and has no place in a government Bill.

6.45 pm

Lord Anderson of Ipswich (CB): My Lords, I have very little to add to the powerful speeches the Committee has already heard, but, as a supplement to what the noble Lord, Lord Pannick, has just said, I will remind the Minister of two other facts.

First, terrorist offences are by no means all at the top end of seriousness. Schedule A1 to the Sentencing Code includes offences such as

"inviting … support for a proscribed organisation"

which may no longer be concerned with violence, as a number are not, and

"failure to disclose professional belief or suspicion about"

the commission of terrorist offences by others. Those are offences on which the clauses bite.

Secondly, even for those offences which are serious enough to merit a period of imprisonment, recidivism rates for released prisoners are—I think in most developed countries, and certainly in this one—very much lower than the recidivism rates for ordinary crime. Professor Andrew Silke calculated in 2020 that the recidivism rate was around 3% for those who had committed terrorist offences and been released between 2013 and 2019.

I hope that the question the Minister will address is why that particular category of offence merits the removal of a right enjoyed by everybody else, including people convicted of murder, rape and the other most serious crimes that our law knows.

Lord Marks of Henley-on-Thames (LD): My Lords, there is one simple principle that everybody has referred to in the debate: access to justice. I will be brief.

If the principle still stands that cases that are still in scope of legal aid with sufficient merit ought not to be restricted by lack of means to bring them—that principle underlies the availability of legal aid—it should not be undermined by the removal of legal aid from cases that have merit and ought to be brought. What is particularly invidious about these clauses is that the restrictions on the grant of legal aid apply to all cases that might be brought by an individual to whom the clauses apply. As has been pointed out, that is entirely irrespective of whether the cases have any connection with any past terrorist activity or whether they are good or bad, and irrespective of who might be affected by them; for example, members of an individual's family might lose their rights in a housing case brought against a defaulting landlord where housing conditions were making that tenant's children ill. These are blanket restrictions that are entirely inappropriate.

As the Committee will know, eligibility for legal aid is governed by a merits test in every case. If a case does not stand a reasonable chance of success, legal aid is not available. There is a financial eligibility test, which means that legal aid will be available only if an applicant is unable to fund litigation. These provisions are positively designed to deprive of legal aid a claimant who might otherwise secure it. A claimant who, by definition, has a good case, would otherwise be eligible on the basis of the merits test, and who cannot afford a lawyer would be deprived, under these provisions, of any legal representation before the courts, even though, as the noble Lord, Lord Pannick, said, the claimant's case may be utterly irrelevant to any present or past wrongdoing and vice versa. As the noble Lord, Lord Anderson, pointed out, the gravity of the terrorist offence relied on may be low. That is a denial of access

[Lord Marks of Henley-on-Thames]
to justice which we simply should not countenance, and I suggest that the Minister should not countenance it either. It is, quite simply, wrong.

Lord Ponsonby of Shulbrede (Lab): My Lords, I will speak briefly to Amendment 115 in this group, where we call for an assessment of the impact of Clauses 87, 88 and 89 to be published before they come into force.

It has been a powerful but relatively short debate. I shall not repeat the points that have been made, mostly by the noble Baroness, Lady Ludford, with her four grounds for opposing the clauses standing part. I wanted to reinforce the point made by the noble Lord, Lord Anderson, when he said that the gravity of the offence may be low. I can talk directly to that because, as a sitting magistrate, I have dealt with terrorist incidents that involved graffiti. The defendant in the case pleaded guilty to graffiti but, because of the nature of the graffiti, was charged under the Terrorism Act. We went ahead and fined that offender, but it was an offence under the Terrorism Act.

We have been relooking at Clause 87. Would that sort of example of a terrorist conviction be caught under the provisions, and would that individual who pleaded guilty to a terrorism offence of graffiti lose his right to civil legal aid in the decades to come?

Lord Bellamy (Con): My Lords, perhaps I can briefly explain, first, the Government's view of the principle behind the provision, then come later to the detail of how it operates. In the Government's view, looking at it as a matter of principle, through their actions individuals who commit acts of terrorism seek to threaten and undermine the very democratic institutions that are at the heart of our democracy in this country. It is right that persons who have committed acts of terrorism against democracy should be subject to a different approach when it comes to granting civil legal aid. The different approach is, in this case, that these provisions do not entirely deprive a "terrorist" of civil legal aid, because exceptional case funding remains available. That is granted in around 75% of the cases in which it is applied for, so we have a safety net there. The practical effect of what is proposed is that those with the relevant terrorist convictions follow a different route from others. In other words, the automaticity of legal aid is somewhat different if you have committed a terrorist offence.

Apart from the question of principle—and that is the principle that the Government are advancing—the questions that have arisen in this debate essentially focus on two issues, or sub-issues. First, have we drawn the definition of terrorist offence too widely, catching very minor incidents, such as the graffiti incident put forward by the noble Lord, Lord Ponsonby, or the relatively minor terrorist offences to which the noble Lord, Lord Anderson, drew attention? Secondly, are there particular circumstances, of which domestic abuse is one, where there should be some exception to be made, and where it is going too far to have this blanket restriction, and there are obvious cases where there could be a fully justified grant of legal aid on the normal procedure, rather than forcing someone to go for exceptional case funding? On both those points, I shall undertake to reflect and to look at the underlying impact of these provisions—but the general principle is as I have outlined.

Lord Purvis of Tweed (LD): The Minister makes his case as to the general principle but, if that is so strong from the Government's position, why does it relate only to England and Wales?

Lord Bellamy (Con): The noble Lord, from a Scottish perspective, asks a relevant question. I shall have to take that under advisement and see, but I suspect that it is because there is a different legal regime in Scotland.

Lord Purvis of Tweed (LD): I look forward to the Minister's letter. This Bill applies to everywhere—but, of course, there is separate legal aid legislation in Scotland, which I scrutinised when I was on the Justice Committee in the Scottish Parliament. If the case is so strong for the whole United Kingdom, I am not sure why this is. If he is writing to me, could he add something on the concern about whether this provision is consistent with the commitments in the Good Friday agreement? Does this provision also apply to Northern Ireland, with regard to the permanent removal for all those who previously were beyond the restrictions before the convictions were made, as in the Bill?

Lord Bellamy (Con): As far as I know, it is not the intention to apply this measure to Northern Ireland, but I shall write to the noble Lord to confirm the Government's position.

Lord Hacking (Lab): Many years ago, I used to sit on a legal aid committee. What worries me is the responsibilities that will be placed on all legal aid committees that will have this provision in front of them. One wonders, therefore, whether there should be special representation for the person applying for legal aid, and how that is going to be run. But this is a practical problem, and I ask the Minister to reflect on the practical side of the issue.

Lord Bellamy (Con): My Lords, I shall certainly reflect on the practical side. This would be a decision for the director of casework at the Legal Aid Agency. The noble Baroness, Lady Ludford, rightly raised the question of the practical "bureaucracy" associated with the proposal, and we are working with the Legal Aid Agency to see how it can be most conveniently implemented, with minimum disruption.

Baroness Ludford (LD): My Lords, I shall be brief, because I know that noble Lords are waiting for the Statement. I thank the Minister for his reply. His first point was that the Government wanted to address the unique situation where, they contend, the people envisaged —those who have committed terrorist offences—have threatened to undermine our democracy. Other noble Lords who have contributed to the debate and who I very much thank, including the noble Lords, Lord Pannick and Lord Anderson, talked about other extremely serious offences such as murder, rape and, I think, manslaughter. Why just terrorism? Personally, I think

that the offence of rape undermines the principle of our modern society, which should exist, about equality between men and women, the dignity of women and our rejection of abuse of women. Apart from very serious terrorist offences, I might judge a rapist on a more serious basis than someone who gets a fine for graffiti, for example, presumably in support of some proscribed organisation. Therefore, I do not think that the argument is very sound, if I may say so.

7 pm

Secondly, I do not think it is sufficient to tinker at the edges. The Minister asks if we have drawn this too widely in covering minor terrorist offences as well as major ones, and whether a blanket restriction is inappropriate. I do not think that that will cut the mustard, quite honestly. We have a serious, fundamental issue here, which, quite apart from the practical consequences that I and others addressed, is one of access to justice, the rule of law and the integrity of our legal system. I am afraid I am not persuaded that the Minister has made the case for Clauses 87 and 88 to stand part of the Bill. I hope we may be able to come back to the matter because it does not seem to me very sound policy. I am not sure that the Minister thinks it is very sound, actually—I think he was struggling a bit there.

Clause 87 agreed.

Clause 88 agreed.

Lord Davies of Gower (Con): My Lords, I advise noble Lords to keep an eye on the annunciator for further information regarding the resumption of the Committee.

House resumed.

Scotland Act 1998: Section 35 Power

Statement

The following Statement was made in the House of Commons on 17 January.

"Today I will make an order under Section 35 of the Scotland Act 1998 preventing the Gender Recognition Reform (Scotland) Bill from proceeding to Royal Assent. This order will mean that the Presiding Officer of the Scottish Parliament will not submit the Bill for Royal Assent. This Government believe, however, that trans-gender people deserve our respect, our support and our understanding.

My decision is centred on the consequences of the legislation for the operation of reserved matters, including equality legislation across Scotland, England and Wales. The Scottish Government's Bill would introduce a new process of applying for legal gender recognition in Scotland. The changes include reducing the minimum age at which a person can apply for a gender recognition certificate from 18 to 16, and removing the need for a medical diagnosis and evidence of having lived for two years in their acquired gender. The Bill would amend the Gender Recognition Act 2004, which legislated for a single gender recognition system across the United Kingdom, and which received a legislative consent Motion from the Scottish Parliament.

The approach taken in the Scottish Government's Bill was the subject of intense debate in the Scottish Parliament. A number of significant amendments were tabled right up until the end of the Bill's passage, and the Minister for Women and Equalities, my right honourable friend the Member for Saffron Walden (Kemi Badenoch), corresponded with and met the Cabinet Secretary, Shona Robison, to discuss the UK Government's concerns before the Bill had reached its final stage.

I have not taken this decision lightly. The Government have looked closely at the potential impact of the Bill, and I have considered all relevant policy and operational implications, together with the Minister for Women and Equalities. It is our assessment that the Bill would have a serious adverse impact on, among other things, the operation of the Equality Act 2010. Those adverse effects include impacts on the operation of single-sex clubs, associations and schools, and on protections such as equal pay. The Government share the concerns of many members of the public and civic society groups about the potential impact of the Bill on women and girls.

The Bill also risks creating significant complications through the existence of two different gender recognition regimes in the UK, and allowing more fraudulent or bad-faith applications. The Government are today publishing a full statement of reasons alongside the order, which will set out in full the adverse effects that they are concerned about.

Let me now address the claims put forward by those who would seek to politicise this decision and claim that it is some kind of constitutional outrage. The Section 35 power was included in the Scotland Act, which established the Scottish Parliament. This is the first time the power has been exercised, and I acknowledge that it is a significant decision, but the powers in Section 35 are not new, and the Government have not created them; they have existed for as long as devolution itself.

We should be clear about the fact that the Section 35 power was included in the Act by the architect of that devolution for a reason. Donald Dewar himself noted that the power struck an important balance. It provides a sensible measure to ensure that devolved legislation does not have adverse impacts on reserved matters, including equalities legislation such as the Equality Act 2010. This is not about preventing the Scottish Parliament from legislating in devolved matters, but about ensuring that we do not have legal frameworks in one part of the United Kingdom which have adverse effects on reserved matters.

We should also be clear about the fact that this is absolutely not about the United Kingdom Government's being able to veto Scottish Parliament legislation whenever they choose, as some have implied. The power can be exercised only on specific grounds, and the fact that this is the first time it has been necessary to exercise it in almost 25 years of devolution emphasises that it is not a power to be used lightly.

I have concluded that the Gender Recognition Reform (Scotland) Bill would have serious effects on the operation of the Equality Act, and, as I set out in my correspondence with the First Minister yesterday, I would prefer not to

be in this situation. We in the United Kingdom Government do all that we can to respect the devolution settlement and to resolve disputes. It is open to the Scottish Government to bring back an amended Bill for reconsideration in the Scottish Parliament. I have made clear to the Scottish Government my hope that—should they choose to do so—we can work together to find a constructive way forward that respects both devolution and the operation of the United Kingdom Parliament's legislation. I commend this Statement to the House."

7.03 pm

Baroness Chapman of Darlington (Lab): My Lords, in politics there are those issues about which we should, and do, fight hammer and tongs across these Dispatch Boxes and in the other place—issues of taxation, health, Brexit, schools or foreign policy. Gender recognition and the rights of trans people does not have to be one of those hot-button issues. I am afraid that watching the exchanges in the Commons yesterday will delight those who seek to use this issue as a political football. Sure, there is disagreement, but disagreeing well, with respect, is what is needed. What we have, far too often, is denigration, name-calling and attempts to shut down or silence others.

It has been obvious for a very long time that the Scottish and UK Governments just cannot and will not work together, and this latest stand-off is not going to resolve anything. The shadow Secretary of State, Ian Murray, reminded us yesterday that Donald Dewar, the father of devolution, designed Section 35 to protect devolution. It was intended as an enabling mechanism, allowing the Scottish Parliament to pass legislation on devolved competences without changing reserved functions. That was the point of it. The memorandum of understanding that was agreed in response to concerns that Section 35 could be used as a veto was clear. It stated that Section 35 should be used as a "last resort" and that the UK Government and the Scottish Government should

"aim to resolve any difficulties through discussion".

Have they? The Secretary of State did not have extensive enough discussions with the Scottish Government before taking this action.

Section 35 has never been needed before, not in a quarter of a century of devolution, despite many disagreements, because, in the end, Governments have known that it is their duty to work together. But now, on this of all subjects, the Scottish and UK Governments have decided to make sure that they are in conflict with one another. The SNP Government in Edinburgh are determined to break devolution; UK Ministers are just not interested in it and are prepared to weaponise it. In the end, it is the public who lose out: trans people suffering devastating discrimination, and women's groups who want their concerns addressed, are put in the middle while a constitutional fight rages on and on. How is it that the Secretary of State can say that there is a version of the GRR Act that the UK Government could support but then not share an outline of what that Act could look like? Perhaps the Minister will do so this evening.

Extensive and clear guidance will need to be issued—of course it will—if the Act is ever going to be implemented, which the Scottish Government say should be provided by the EHRC. Ministers could instruct the EHRC to provide the guidance; why is this not happening? If they genuinely wanted to be helpful and resolve this, Ministers could publish guidance on how the GRR Act would interact with the Equality Act 2010; is this going to happen? The publication of legal advice—I accept that this would be unusual—would assist those who want to see the situation resolved and who want to build trust. Transparency could demonstrate the good intentions that the Government say they are acting on. Will they consider this, in this unique situation?

The Labour Party is proud to be the party of the Equality Act—unlike the Government, I am afraid, who used to laugh at the Act, even though they now rely on it so heavily. Ministers have claimed that they want to protect women and girls, but if the UK Government care so much about this, will the Minister explain why female homicide is skyrocketing and rape convictions have plummeted under their leadership?

We support the principle of updating the Gender Recognition Act; when it was introduced, in 2004, it was world-leading, but it now requires modernisation. But to put this as simply as I can, if there is no discussion about a way forward, this Bill will fall, without any resolution of the issues or any modernisation of the GRA, and those who want to see it fail on issues of substance will not succeed in resolving anything either. This debate will rage on and on, with more vitriol, more anger and less respect, less care and less understanding. Surely the Government can do better than that.

Lord Bruce of Bennachie (LD): Will the Minister accept—I think he has to—that it was a very controversial decision to use this power for the first time since devolution, especially, as the noble Baroness, Lady Chapman, has said, when the Government lack trust in many quarters regarding their respect for devolution? It has generated a predictable response from the SNP, which is itself divided on the issue and struggling to find a way forward in its interminable campaign for a second referendum.

Will the Minister confirm, nevertheless, that the Government accept that the passing of the gender recognition Bill falls entirely within the powers of the Scottish Government? The Scottish Parliament is adamant that nothing in the Bill impacts on the UK Equality Act. The UK Government say that they have legal advice to the effect that it does, although some lawyers—not all—see the grounds as thin and not justifying the scale of this action. However, as the First Minister has indicated, it appears that it will inevitably be referred to the Court of Session and thence possibly to the Supreme Court. Are the Government's legal advisers confident of success?

I agree with the noble Baroness, Lady Chapman, that it is regrettable that trans people are caught in the crossfire of this dispute. I suggest to the Minister that this is a distraction that suits both Governments, because they are failing to deal with the manifold crises we face in the health service, energy, cost of living, education and transport. These are the central issues dominating the worries and concerns of everyone

across Scotland and the whole of the UK. They want their Governments to concentrate on finding ways through the perfect storm that they have helped create. This distraction does not address the needs and priorities of anyone in the UK. Trans people do not deserve to be caught in the middle of it.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Offord of Garvel) (Con): My Lords, it is only after very careful consideration that the Secretary of State for Scotland has decided to make an order under Section 35 of the Scotland Act 1998 to prevent the Scottish Parliament's Gender Recognition Reform (Scotland) Bill from proceeding to Royal Assent. He has considered policy and legal advice and determined that he has reasonable grounds to believe that the Bill would have an adverse impact on the operation of Great Britain-wide equality legislation.

Transgender people deserve our respect, support and understanding. The Secretary of State's decision is about the consequences of the legislation for the operation of GB-wide equalities protections and other reserved matters. He has therefore concluded that this is the necessary and correct course of action. The decision has not been taken lightly, as he said repeatedly in the other place yesterday.

The Government would prefer not to be in this situation. We do all we can to respect the devolution settlement and resolve disputes. This is the first time that the Section 35 power of the Scotland Act has been used. The Government recognise that this is a significant decision, but Section 35 was included by the Act's architects to ensure that, in a situation such as this, devolved law and law throughout the United Kingdom can work together effectively.

If the Scottish Government choose to bring an amended Bill back for reconsideration in the Scottish Parliament, we can work together to find a constructive way forward that respects both devolution and the operation of UK Parliament legislation. We have set out the detailed concerns that the UK Government have with the Bill in the Statement published yesterday. We want to work with the Scottish Government to resolve these issues. The EHRC stands ready to help; its ongoing concerns are on the record.

7.13 pm

Baroness Hayter of Kentish Town (Lab): My Lords, it is not just trans people caught in the crossfire but women. Internationally, women are losing their rights in some countries as to what they wear, how they are educated, where they can work, their reproductive rights and protection against violence. They are even losing their freedom of speech; I sometimes feel the same is true here for us women. We risk here the undermining of our hard-fought rights, as in the Equality Act. Can the Minister confirm that the Government will do nothing to undermine that Act, either in this or in their repeal of the European Union legislation, which also threatens women's rights?

Lord Offord of Garvel (Con): The Equality Act 2010, to which this Government are entirely committed, is a reserved matter. On the basis that we have a unitary state in the United Kingdom, we believe that it is a key matter that must be applied equally across all four nations of the United Kingdom. That is precisely why we are concerned that the Bill passed in Scotland, putting aside the merits of the case, will have an adverse impact on the Equality Act 2010. That is why Section 35 has been triggered.

Baroness Liddell of Coatdyke (Lab): My Lords, this is a very difficult issue to get your head around. In a previous incarnation, I was a non-executive director of the Scottish Prison Service. I saw the terrible vulnerability of women in prison, many of whom had been abused since being babies. They wanted to be in prison because they felt safe there.

In this morning's Scottish edition of the *Times* was the very distressing case of a 22 year-old woman, a sex offender held in Cornton Vale women's prison, who was up on a charge when she was male for attacking somebody in the male division of Polmont young offender institution. The sexual offences she committed were on a 10 year-old and a 12 year-old in supermarkets in Fife. If we look at this legislation as it stands, there is nothing that can give the kind of protection that is needed for those women. She had male genitalia and there was no third-party verification, as there is not in this new Bill.

Let me be political. I have a very real concern that we have been caught in a trap. Nobody in Scotland is talking about the fiasco over the ferries, the fact that the Scottish education system has gone from being one of the best in the world to one of the worst, or the chaos in our National Health Service, despite the fact that the National Health Service in Scotland gets more money than elsewhere because of the Barnett formula. What will the Minister do about it? This is attacking the devolution settlement. I find it quite odd that the First Minister wants to support devolution; she is against devolution—she wants independence. The irony is that she can now say that big, bad Westminster is interfering in good Scottish Parliament decisions. How will the Minister get out of that one?

Lord Offord of Garvel (Con): The noble Baroness's well-informed comments indicate the sensitivities that we are dealing with in Scotland and the wider UK. The Bill as its stands risks creating significant complications from two different gender recognition regimes in the UK, which could allow for more of the fraudulent or bad-faith applications that we are very worried about. Adverse effects could include impacts on the operation of single-sex spaces, particularly for women and children, whether in prisons, clubs, associations or schools. There could be adverse effects on protections for equal pay and single-sex spaces.

The question was on whether the UK Government should have engaged more with the Scottish Government in the process. We set out our concerns. The Minister for Women and Equalities met the Scottish Cabinet Secretary for Social Justice before the Bill moved to stage 3 in the Scottish Parliament. In the last two to three years, the UK Government have consulted widely on the GRA. It remains the Government's view that this legislation strikes the right balance in the protections mentioned by the noble Baroness. This was well known

[LORD OFFORD OF GARVEL]
to the Scottish Government. All the concerns that have been raised on behalf of women's groups and from notable folks—whether the UN special rapporteur, the independent EU expert on protection for violence against women, or the Equality and Human Rights Commission—were put to the Scottish Government, but they have continued to push ahead with this legislation.

We have not been alone in expressing concerns regarding the Bill's impact on the Equality Act and women and girls specifically. This has been a constant issue since these proposals were first published. It is very unfortunate that those ongoing concerns were not given more weight and that the legislation was not paused to allow further discussions between the Governments.

Baroness Stowell of Beeston (Con): Does my noble friend the Minister agree that what the noble Baroness, Lady Liddell, has ably demonstrated in referring to concerns about the fraudulent use of this provision is the importance of the Government and the Official Opposition being united in their position on the steps proposed by the Scottish Parliament, so that we can put on a united front as the United Kingdom Parliament in exposing that the Scottish Government are using something so profound and sensitive for political purposes and, if there is a difference of view on some of the substance of the matter, object to it on those grounds?

Lord Offord of Garvel (Con): Yes, I agree with the noble Baroness. What is happening is that the boundaries of devolution are being pushed to the limit. Perhaps the architects at the time did not anticipate that we would be here on such an issue, but they put Section 35 into the Act for a reason. It was there at the start and it was voted for by the SNP. It is a means to enable devolution and allow it to work, and to allow the Scottish Parliament to act within the Scotland Act on devolved matters, but there is a requirement to examine whether they will have an impact on the rest of the United Kingdom.

When the Gender Recognition Act was passed in 2004—the former First Minister of Scotland at the time, the noble Lord, Lord McConnell, will know this—the Scottish Parliament gave legislative consent, through an LCM, to that Act, because it is a devolved matter. The reason they gave was the desirability of having a single coherent gender recognition regime applying uniformly across the UK, and we have not had any evidence of why the desirability of that has changed.

Baroness Burt of Solihull (LD): My Lords, I reassure the noble Baroness, Lady Liddell, that prisoners are allocated prisons on a case-by-case basis, according to how suitable they are. I wanted to have a word with the Minister; I am quite sad in my heart that the trans community in Scotland is being used as a political football in this way, as several noble Lords have said. Might the Government give some potentially more optimistic news on what is happening? There are suggestions in the press that the Government intend to have talks with the Scottish Government on the legislation. Can the Minister tell us whether that is likely to happen? I think he intimated that earlier. If so, when is it likely to commence?

Lord Offord of Garvel (Con): On one level, we are just in the legal mechanics at this point, because concerns were raised by the UK Government—and by many other credible groups—with the Scottish Government, and those were not taken care of in the passing of the Bill. That now moves into a four-week legal process under Section 35 of the Scotland Act 1998 for us to reject the Bill and for it not to go to Royal Assent. It now goes back to the Scottish Parliament on that basis, and the channels are very open and clear that we are prepared to have a conversation about it. We want to move this forward, but we need to do it on a basis that satisfies the whole of the United Kingdom.

Lord McConnell of Glenscorrodale (Lab): My Lords, I do not recall every individual discussion we had in Cabinet during my time as First Minister, but I do recall this discussion in 2004 in great detail. It was quite possibly the most complex discussion we ever had on a single piece of legislation, and that decision to go for a legislative consent Motion and legislate consistently across the UK was not taken lightly at the time. It was taken primarily to protect the interests of transgender people—not to protect the state or the union, but to protect the interests of individuals who had to live and work across the whole of the United Kingdom. So, this issue needs to be taken very seriously and from a point of principle.

The Scotland Act was designed to make sure that we also did not have conflicting legislation that caused difficulties across the UK; therefore, this does need to be looked at in the detail outlined by the Secretary of State. Will the Government guarantee to have constructive discussions with the Scottish Government about finding a way through the difficulties that have been outlined? Will they publish the minutes of the meetings that took place between the Ministers, because there are conflicting claims about those meetings? If there is an agreement reached that allows this legislation to work across the whole of the UK, will the Government withdraw the Section 35 order in the spirit of unity that this would then mean?

Lord Offord of Garvel (Con): A number of these matters lie fundamentally in another place and in another department. Right now, the Scotland Office is in a situation where, under the architecture, it is pressing the button on Section 35. The Bill now goes back to the Scottish Government, and discussions need to be had with the relevant UK department on this matter. That will require discussion with the UK Minister for Women and Equalities. My understanding is that these channels are open and that a discussion will be had. As to whether minutes are published, et cetera, I cannot comment on that. I guess that if that is the normal procedure, it will be done. There is no attempt to be anything other than fully transparent on this matter. The Scottish Government are within competency in matters of gender. This issue has come to this House and the other place because there is a knock-on effect on the rest of the United Kingdom in relation to the Equality Act.

Lord Hope of Craighead (CB): My Lords, one of the points that has been made clear by the First Minister is that she wants to take this issue to court.

That is a waste of public money, and it is certainly a waste of time. Think of the time it would take to go through the Outer House, the Inner House and then to the Supreme Court—we are talking about something like 18 months before there is a solution. To pick up a phrase from the noble Baroness, Lady Chapman, it is not going to take us anywhere. The solution is to get around the table; I think I am echoing something that the noble Lord, Lord McConnell, has already said. Judging by what the First Minister said last night, I think there is a suspicion that the Government are not acting in good faith. We need a clear declaration from the Minister that the issue the Government take with the Bill is based on thorough research of its effect; there is no question of bad faith here at all. There is an issue to be discussed, but the sooner it can be, the better. Every effort must be made to bring the two parties together so that we can resolve these various very difficult problems.

Lord Offord of Garvel (Con): I thank the noble and learned Lord for his contribution. As a former Supreme Court judge, he knows these matters very well. I completely agree that it would be a waste of public money to go to the courts. In fact, in pressing that button, it was almost as if that was anticipated. Therefore, we need to get around the table and discuss this issue. The UK Government have consulted on this matter, as we have said, over the last two years and believe that the legislation currently provides the right checks and balances. However, the Bill is obviously an attempt to move that legislation forward and therefore should be considered. The Equality and Human Rights Commission has concerns about the Bill, as do many others, and they are on the record. What that says to us is that this is a sensitive issue which requires further consultation.

Baroness Foster of Oxton (Con): My Lords, the Government were absolutely correct in preventing this Gender Recognition Reform (Scotland) Bill gaining Royal Assent. Some 347 Bills have gained Royal Assent in the Scottish Parliament, so to take a step to prevent this one in particular shows that there is a clearly a problem. While MSPs and others fully support it, I do not believe that the majority of the Scottish people support it as it stands. There is an obvious and serious adverse impact on the operation of the Equality Act 2010. To suggest, for example, that a 16 year-old with no parental or medical support should be encouraged and lawfully allowed to change gender in weeks is a catastrophe in waiting.

For too long now, the safety and security of women and girls has been continually undermined. This situation is too important to ignore. Would the Minister agree that this issue needs much more discussion and that, as it stands, the Bill should not be allowed to gain Royal Assent at any cost?

Lord Offord of Garvel (Con): I thank my noble friend, and I agree. We are in a situation now where we cannot proceed, on the basis that the Scottish Government have pushed forward with the Bill, it has come to us and we have to consider it under Section 35. It needs further consideration. That is why Section 35 has been triggered.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I have a very short question—

Baroness Williams of Trafford (Con): My Lords, the Green Benches have been waiting to get in all through these questions, so we will hear from the Greens first, and then I think the House would probably like to hear from the noble Baroness, Lady Kennedy.

Baroness Bennett of Manor Castle (GP): I thank the noble Baroness. This debate has made many references to the Scottish Government and the Scottish First Minister. I ask the Chamber to acknowledge that we are talking about a law passed by the Scottish Parliament by a significant majority—I hope everyone would acknowledge that. I note also that the First Minister of Wales has said that he would like to introduce the same provisions in Wales and will ask the Government for the right to do so.

I entirely sympathise with the desire for compromise and talks expressed by the noble Baroness, Lady Chapman. The Statement says, and the Minister has repeated, that the Government want to talk to the Scottish Government and get around the table to come to a compromise. But they are arguing that it is impossible to have different gender recognition certificate systems in different parts of the UK. If this is the case, what kind of compromise are the Government going to offer? How can the Bill be amended rather than just being thrown out, if that is what the Government are demanding?

Lord Offord of Garvel (Con): That just indicates the sensitivity of the matter we are dealing with. On the face of it, the Scottish Government Bill allows the Equality Act to continue, because the GRC works within the architecture of that Act, but the Bill has changed the criteria for applying for that GRC, and that has a significant impact, as we have discussed. Therefore, it will need to be discussed in detail and sensitively.

At the end of the day, the issue we are dealing with in this Chamber right now is that the Government believe it would be significantly complicated to have two different gender recognition regimes in the UK, and that this would create a lot of problems between Scotland and England. As the noble Lord, Lord McConnell, said, up until now, and at all points through the discussion, it was considered that the Scottish system should remain within the UK system. We do not see any evidence for why that has changed.

Railways (Penalty Fares) (Amendment) Regulations 2022

Motion to Regret

7.33 pm

Moved by ***Lord Snape***

That this House regrets that the Railways (Penalty Fares) (Amendment) Regulations 2022 (SI 2022/1094) increase penalty fares at a time of (1) substantial disruptions on many services, in particular those of Avanti West Coast, and (2) continuing customer confusion over complex and differing ticket pricing arrangements from different train companies, in a

system described as "too fragmented, too complicated, and too expensive to run" by the Department for Transport and the Williams Rail Review in its report, *Great British Railways: The Williams-Shapps Plan for Rail*; and calls on His Majesty's Government urgently to bring forward legislation as part of its promise to simplify ticketing arrangements.

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

Lord Snape (Lab): My Lords, nothing perhaps demonstrates better the Government's tin ear towards the railway system in this country and the problems suffered by passengers on it than the instrument they have put down on penalty fares. To increase the penalty fare from £20 to £100 is somewhat draconian to say the least, and is the reason I have tabled this regret Motion. The Motion talks about substantial disruption to the railway system. Again, to introduce this measure from the Government Benches, given the current situation with the railway system, strikes me as a provocation too far.

Could the Minister define when the penalty fare will be invoked against a passenger? No one would condone people travelling on our railway without a ticket, but the notes on the penalty fare regulations refer to a "valid ticket". The House will be aware of the concern I have raised previously about the number and variety of different tickets on our system. Perhaps the Minister could tell us whether the penalty fare clause will be invoked if someone is bearing a ticket which is not valid on a particular service for any reason.

There are 2,576 stations on Network Rail; 45% of them are unstaffed and an equal proportion are partially staffed. Does the Minister appreciate the difficulty of actually buying a ticket at many of these stations? It will be said, of course, that someone who travels from an unstaffed station to an unstaffed station should purchase a ticket from the ticket machine, but there are 55 million different fares on our railway system; I do not think the machine has yet been invented that could cope with all of them. It is pretty difficult on occasions to get the right ticket from a machine, so I would like to know from the Minister whether the penalty clause will be invoked if someone inadvertently buys the wrong ticket.

I said that 45% of our railway stations are unstaffed. One imagines bucolic rural stations, which it would obviously be impractical to fully staff, but the list of unstaffed stations includes stations such as Barry Island, in Wales, where almost 1 million passengers boarded or alighted from trains in 2020—the latest year I could find figures for to use in this debate.

I live very close to Yardley Wood station, in the Birmingham suburbs. It is partially staffed and, for much of the week, the booking office is open only between 6.30 am to about 1 pm. Many of the other stations on the line to Stratford-upon-Avon, which is where services that go through Birmingham's Yardley Wood terminate, are unstaffed. So if someone taking a train from Yardley Wood in the afternoon, towards either Stratford or Birmingham, finds that the ticket machine is broken or inadvertently purchases the wrong ticket, would he or she be subject to the penalty fare clause?

My regret Motion mentions substantial disruption to our railway system. The Minister is not the Rail Minister; I bet she thinks she is very lucky that she is not, given the current circumstances—she nods in assent. She should have been with me last night at Euston station—I keep inviting her to things, but she never comes—where, between 6 pm and 8 pm, I do not think a single Avanti train either entered or left. In fairness to Avanti—I like to be fair to it, as noble Lords will know —it was not its fault; there was a fatality at Wolverton at 3.30 pm. It is not strictly speaking relevant to my Motion, other than in relation to substantial disruption, but is it really necessary to close four tracks of railway for hours at a time when these fatalities unfortunately occur?

People have been killed on the railway since 1830. It was a Member of Parliament, Mr William Huskisson, who was unwise enough to step down from a train that long ago. If the present circumstances, with the railway closures we have at this time, appertained in 1830, Mr Huskisson would still be somewhere between Liverpool and Manchester, I fear, waiting for treatment. The railways are paralysed when these unfortunate tragedies occur, and the department has to look again at the time it takes to restore normal working.

Again—this is relevant to these regulations and to my regret Motion—thousands of people must have been travelling on trains subsequently and not using the correct ticket as a result of this action. I am sure that common sense would have prevailed, but with my train there was no ticket check at the barrier at Euston, it was impossible for the conductor to get through the train because hundreds of people were on it, in some cases sitting on the luggage racks, and there was a similar situation when we got off at Birmingham. To introduce this fivefold increase in penalty fares given the state of our railway network at present strikes me as not particularly sensible.

The other station that I use regularly to travel to and from London is Birmingham International. Avanti does not just run trains; it is responsible for certain main railway stations, among them Birmingham International. I have to say that travelling to and from Birmingham International does Avanti no credit whatever. Again, if the Minister takes the trouble to travel from there to London, she will find that getting into the station is pretty difficult because the main lift to the concourse has been out of order for months and nothing has been done about it. If she travels after 10 o'clock at night, she will find it impossible to physically buy a ticket on the concourse because there are no staff rostered on the concourse at a main intercity station such as Birmingham International after 10 pm. There are over 20 trains to places such as Bournemouth and London, as well as local trains to Birmingham and Coventry, between 10 pm and the close of play at the end of the railway day, yet there are no staff on duty on the concourse of a major intercity station.

The booking office at Birmingham International has been closed for a couple of years. Far from the booking office staff being deployed, which is the usual ministerial response—"They are deployed out on the platform to assist passengers"—they have been made redundant. Therefore, there are not any staff there, and the only people who sell tickets during the day at

Birmingham International—which is, I repeat, a major intercity station—are usually one person and occasionally two, with an iPad, who also deal with train inquiries. Getting a ticket at Birmingham International means getting to the station at least 15 minutes before your train—although, given the timetabling shambles that is Avanti, it is not always necessary to get there 15 minutes early; one could turn up 15 minutes late and the train will still be somewhere in the dim distance.

It is not a straightforward matter of just buying a ticket or not buying a ticket and, of course, many of the train operating companies do not particularly care whether you buy a ticket or not. Why should they? I used to discuss rail privatisation with one or two of my colleagues. I would say, "There are a couple of good things about it—there is a lot of money coming into the railway industry that the Treasury would never have allowed." Franchisees under the former franchise system were heavily punished for not running trains. Now, in their own eyes, they are heavily punished if they run trains. If they do not run trains, the Government compensate them anyway and pay them a bonus under the current system for, in effect, not running trains. The present system is crazy and is ripping off the taxpayer.

Of course, the Government will say in support of the penalty fares clause that we cannot have people travelling on trains without a ticket, and they are quite right. But on many occasions the train operating companies make no attempt to actually sell tickets. I have a copy of the current issue of *Private Eye*, where there is a story headed "Signal Failures" about the difficulty of purchasing a ticket. It says:

"Even without the government's planned ticket-office cull, buying tickets can be challenging. One *Eye* reader who travelled from Morecambe to London Euston one evening says the ticket offices at Morecambe and Lancaster were already closed; the ticket machine at Lancaster reverted to square one whenever he tried to pay; tickets weren't checked … on the trains; and when he went to pay retrospectively he found the ticket office at Euston (one of Britain's biggest stations) had closed early for the night."

That is by no means a unique experience. It is an example of the failure of the train operating companies to even bother to charge their passengers, and of course it is the taxpayer who picks up the bill at the end of the day.

7.45 pm

Another aspect of my regret Motion refers not only to the disruption but to the number and types of tickets that are on sale in our railway system. In the current issue of *Modern Railways*, there is a column headed "Blood and Custard" which is written about the railway industry generally. Under the sub-heading "Bonkers ticketing" *Modern Railways* said:

"Our lively conference session at Modern Railways EXPO on Wednesday 23 November about revenue, fares and ticketing highlighted some interesting anecdotes about our fares system. Alistair Lees of Independent Rail Retailers emphasised the sheer complexity as he called for a simpler system. He said there are currently 2,822 ticket types, 901 unique ticket names, 655 restriction codes and 1,288 route codes"—

it may even be more because the conference took place, as I say, in November. It continues:

"The number of ticket types has grown at least sevenfold since privatisation, and more than 300 ticket types have been introduced since the start of the pandemic."

That is the complex nature of travelling by train. Early in my railway career I was a booking clerk; I could not cope with the present system. It was fairly straightforward in those days. Somebody came, paid their money, and you gave them a cardboard ticket—it was known as the Edmondson system. Imagine how it is these days.

The Minister will revert, as I am sure the brief will tell her to, to the fact that ticket machines are provided at many stations. I revert to Birmingham International. I cannot work the ticket machines there, they are so complex, and many of the staff cannot get the right ticket out of the machines for the same reason. A few Thursdays ago, every one of the ticket machines was marked "Out of order". As I have indicated, after 10 pm, when no staff are on duty on the concourse, how are people supposed to buy a ticket to travel to London, Bournemouth, Coventry or Birmingham? The answer is that they cannot. Instead of allowing the train operating companies to get away with the nonsense that they do, the Minister and her fellow Ministers should be insisting that they provide a proper service, which they do not do at the present time. I can only foresee things getting worse.

We were told that all this was going to change. As long ago as 2018, whoever was the Transport Secretary at the time—it is probably half a dozen Transport Secretaries ago—promised a simplification of the ticket system, which is as complicated as I have just outlined. Mr Grant Shapps, ever modest, during his spell as Secretary of State for Transport added his name to somebody else's report to show how keen he was to simplify the ticketing arrangements on our railway system. He has been airbrushed out, a bit like the photo he published recently where the Prime Minister had been airbrushed out. He has had more jobs since than he has had aliases over the years. The fact is that since 2018, when his promises were made, nothing has been done to simplify the railway system and there are no signs of anything being done to simplify it in the future. We are committing fraud on the travelling public and fraud on the taxpayer with the current system. I beg to move.

Lord Berkeley (Lab): My Lords, it is a privilege to follow my noble friend Lord Snape. His speech was very interesting but I am afraid that everything he said about the problem with getting tickets is true. It is very tempting to refer to Spain, where I believe they have just announced that they will offer free travel to everyone on the trains. That would solve all the problems except those of the Treasury, so it is probably not worth even talking about. It comes down to the failure of the TOCs. They have no incentive because all the income revenue goes to the Treasury. That is where we are at the moment, and we have to find a solution. It must be a way of encouraging more people to use the trains and it must also, I hope, increase the revenue to the Treasury and to the operators in a way which does not put people off. My noble friend's comments about Birmingham International and everything else were frightening.

We also look forward to hearing from the Minister on where the legislation is; it is part of the SI. She will probably be able to tell us that when she comes to respond.

I have been talking to one or two experts on the ticketing issue. I understand that a year ago, in January 2022, a ticketing system for the whole country was

[Lord Berkeley]
ready to be put in legislation. It is called CORS—the consolidated online retail system. The Department for Transport approved it. It is basically an online system that would allow anyone to buy a ticket between, to and from any station on the network remotely on their iPad. It is guaranteed to give you the cheapest ticket. It means that, with a little bit of checking, it would reduce the need for a large number of ticket inspectors and booking clerks. Obviously, there must be facilities for people who cannot use it—I accept that—but such a system has the great advantage of guaranteeing people the best deal for whatever journey they want to take, and they would be able to check it.

What this system needs, I am told, is for the Department for Transport to put it out to tender. Apparently, it does not need legislation, so why are we bothering to wait for the legislation and other things to come in? If it went out to tender, quite a few companies would want to run it and to make sure that the information they provided was 100% reliable and available to all the different ticket retailers—there are several hundred of them, I think—in this country. One can see that this system would also give people continuous information on their journey, which would certainly help people on Avanti routes, so that they knew what was going on.

During the train strike a week or so ago, I had to come to London from Cornwall, so I caught the National Express bus. The IT system for it was actually rather good. It is probably better than for many of the rail systems that we have because not only does it give you a map of where the bus stop is, saying whether there is a shelter and things like that, but it gives a progress report on where you are going and where you can get off. It was generally very customer-friendly. I believe that something like that, or even better, could be available on CORS. It would also help with something that my noble friend Lord Snape did not mention: if you want to go from, say, Plymouth to Glasgow, it is often much cheaper to buy several tickets for the different sections rather than one complete ticket. There are ways round that if you know them but, again, a computer would in effect do it for you.

There is a solution to this, which would require the Government to get on and put this CORS thing out to tender before the legislation we have all been promised for a long time comes into effect or is even discussed. It needs looking at as a way of not only protecting revenue but doing the most important thing, which is getting passengers back on the train. It is now a year since the system was apparently approved; although the legislation is delayed, there is no reason why this scheme should be delayed. I hope that the Minister will encourage her colleagues to put it out to tender, get on with it and tell us all about it, because I think that it is a really exciting system.

Baroness Randerson (LD): My Lords, I thank the noble Lord, Lord Snape, for giving us an opportunity to debate this issue.

In principle, I fully accept the need to update penalty fares in line with inflation. However, if you look at the £20 fine that was fixed in legislation in 2005, the rates of inflation have been very low in the intervening years since 2005. It is highly unlikely that overall prices have multiplied by a factor of five in the past 18 years. Such a swingeing increase in the level of the fine or penalty fare is tone-deaf in a period of such massive disruption; for example, through strikes on the railway and, leaving the strikes aside, a very poor service from several train operating companies—including TransPennine and Avanti, to name but two. I fear that customers are totally fed up with the service they are getting in some parts of the country. Faced with fines of this size, they are likely to lose their temper with staff; I am not happy with the risks that that might pose.

This is apparently to be called not a "fine" but a "penalty fare". That invites the question of whether the penalty fare should relate to the size of the fare that you should have paid; surely it should. You might have been going to pay a fare of as low as £5 to go from one stop to the next, or you might have been due to pay a fare of much nearer to £50 or £100. So the £100 fine—let us call it a fine because that is what it is—becomes totally disproportionate if you were due to pay only £5, whereas it is very reasonable if you were due to pay £50.

My belief—it echoes the comments made by the noble Lords, Lord Snape and Lord Berkeley—is that the promised reform and simplification of fares must come first. I am frustrated by the delays to government plans. The reform of fares has been promised to us year after year. At the moment, it is only too easy to get the wrong fare by mistake. For example, I believe that there are three different definitions of "peak time" for trains going through Birmingham; Birmingham is featuring largely in our debate this evening.

I draw the Minister's attention to the principles of punishment. When he was about to set up the police force, Sir Robert Peel coined the concept that it is not the severity of the punishment that deters criminals but the certainty of it. He said that at a time when we were deporting people to the other side of the world for minor theft. The police force was supposed to increase the certainty of being caught; indeed, it did so by a considerable amount. The problem on the railways now is the lack of certainty of being caught and the lack of inspectors on trains. Also, in many stations, gates are left open because there are no staff to supervise them; this happens often late in the evening or early in the morning. There is also a lack of staff to ensure that ticket machines are working. I urge the Minister to ensure that the Government incentivise train operating companies to employ additional staff and enforce ticketing rather than imposing what is clearly a haphazard fine regime.

Finally, I want to refer to the complexity of devolution. The Explanatory Memorandum refers to it; however, I have read and reread it, but I do not understand it, so I want to ask the Minister about it. It states:

> "If a passenger is travelling on a train in England but is travelling to Wales … then the penalty fare of £100 … can be issued and an authority to travel for the section of the journey within England only. Penalty fares issued within … Wales are a matter for those devolved administrations to determine."

It goes on to say that:

> "Where a penalty fare is issued within England and the passenger wishes to travel to the next station which the train calls at and this is within Scotland or Wales, they should be issued with the penalty fare of £100 reduced to £50 if paid within 21 days but not an authority to travel as part of the penalty fare."

8 pm

Can the Minister please explain exactly what that means in practice for the member of staff who has to issue the penalty fare? Also, what is the difference in practice between a penalty fare for travelling between Swindon and Bristol Parkway and one issued between Bristol Parkway and Newport? More importantly for me, as someone travelling from Wales—I am interested because this is what people will ask me about—what about people travelling from Newport to Bristol Parkway? Will the penalty fares be issued only when people get through the Severn tunnel on the English side? I can see the noble Lord, Lord Davies of Gower, being interested in this as well. He knows as well as I do that the rail line between Cardiff and, say, Birmingham, goes up the border and threads in and out of Wales—will staff be standing there waiting to decide which country to issue the penalty fare in? To make a serious point about this, what discussions have been had with the Welsh Government about liaising in a way that ensures that life is sensible and bearable for the staff working on trains going between Wales and England?

Lord Tunnicliffe (Lab): My Lords, I thank the noble Lord, Lord Snape, for introducing this very interesting debate.

Under this Government, fares are rising and the promised investment is not being delivered. For Ministers to decide that this should be a priority, rather than the introduction of a Great British Railways Bill, therefore beggars belief. This instrument adds further complexity to the ticketing system. I therefore begin by asking: how have the Government communicated these changes to passengers?

The department has said that it seeks to increase penalties to deter fare evasion more efficiently. Can the Minister confirm whether there has been an assessment of the unintended consequences that this could have on individuals who have been unable, rather than unwilling, to purchase a ticket? Given that this has been introduced to address concerns of operators, can she confirm whether the department has also engaged with trade unions to ask their thoughts on the changes?

The noble Lord, Lord Snape, raises a series of points which I echo. I specifically support his criticism of Avanti West Coast. The Government's decision to extend that contract was seen by the public as a reward for abject failure, and I still cannot understand why the Government chose to hand over millions more in taxpayers' cash to an operator that has so clearly failed.

I share the noble Lord's concerns regarding ticketing too. All this is evidence of the broader problem with the Government's rail policy—a lack of direction. Short-term decision-making has held back long-term planning on the rail network, whereas modernisation, simpler ticketing and guaranteed universal accessibility is clearly not a focus for Ministers. The noble Lord is right to draw attention to the delays in implementing the Williams-Shapps review and the promised legislation. Can the Minister confirm whether a railway Bill will be introduced in this Parliament?

The Government must be far more ambitious about our railways and, rather than tinkering with minor changes to penalties, should bring forward the changes that they have promised.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I am enormously grateful to the noble Lord, Lord Shapps, for giving your Lordships' House and indeed me—

Lord Tunnicliffe (Lab): Snape.

Lord Snape (Lab): I do not regard that comparison as at all flattering.

Baroness Vere of Norbiton (Con): I deeply apologise to the noble Lord, Lord Snape, for getting his name wrong.

This is a great opportunity to be back once again in front of your Lordships' House to discuss trains, train fares, train ticketing and, of course, train services. I very much appreciate all noble Lords' contributions this evening.

The regret Motion tabled by the noble Lord, Lord Snape, is linked to a statutory instrument relating to changes to penalty fares. This was laid in your Lordships' House in October 2022 and comes into force on 23 January 2023. I will provide a little bit more context to ensure that noble Lords are aware of what this SI does. From 23 January 2023, the new penalty fare on the rail network in England will be £100 plus the price of a single fare to the passenger's intended destination on that train. It is not the £100 alone; there is an additional amount, which will take into account the journey travelled. Another thing to understand is that the £100 penalty is reduced to £50 plus the price of the single fare if it is paid within 21 days. I hope that people will take advantage of that opportunity.

As noted, the penalty fare is currently either £20 or twice the full applicable single fare to the next station that the train calls at, whichever is greater. That sounds a bit more complicated than what we will now have, which offers great clarity to passengers. As noted, the value of the penalty fare has not changed since 2005, which is nearly 20 years ago. It was in response to growing concerns about the impact of this real-term decline in the value of the penalty fare that the Government consulted on these changes to penalty fares in March 2021. The consultation indicated that the £20 value of the penalty fare was just too low to be an effective deterrent and that it should be increased.

The change was put into place to ensure a more effective deterrent. This should reduce the cost of fare evasion from passengers travelling without a valid ticket while ensuring that honest, fare-paying passengers are not unfairly penalised. An estimated £240 million is lost annually due to fare evasion on GB railways. This change aims to reduce the burden on the taxpayer while ensuring that it is fair on the travelling public as well.

Staff who issue penalty fares are trained and authorised in the procedure and are allowed to use their discretion on whether to issue a penalty fare. This helps to mitigate the impact on those passengers whose intention was not to avoid paying but, for whatever reason, have a ticket that does not match their intended journey. The noble Lord, Lord Snape, came up with many examples where this sort of discretion would absolutely be used. Therefore, we do have the flexibility under the

[Baroness Vere of Norbiton]
new penalty regime as it was under the old penalty regime. In that regard, not much has changed. We will have to put Peel to one side in this case, because it is not an absolute certainty that if one is on a train with a ticket that does not match your intended journey, you will get a penalty fare. There may be reasons why it would not be appropriate. That is fair on passengers and provides the best experience to the travelling public.

However, should a passenger receive a penalty fare and feel that it is really not appropriate, there is a robust appeals process, which was introduced in 2018. That provides a further level of protection for passengers who feel that they have been treated unfairly. This appeals process has three different levels, and the third appeal is considered by an independent panel of three members, none of whom was involved in the handling of the previous two appeals.

It is for train operating companies to manage fare evasion on their services and there are a number of measures that they can use to do this, including penalty fares and unpaid fare notices. Avanti West Coast, for example—a favourite of the noble Lord, Lord Snape—chooses not to issue penalty fares, but it has alternatives. A passenger on an Avanti West Coast service who is unable to produce a valid ticket while travelling may need to purchase a full-price anytime ticket with no discount. As an alternative, they may be issued with an unpaid fare notice requiring them to pay the fare within 21 days. We are trying to set out here how a bit of flexibility is necessary and that a one-size-fits-all process for every service across England will not work.

There is a bit of flexibility to tailor overall revenue protection activity and adjust the action taken to a single passenger, dependent on that passenger's circumstances. It is not in anyone's interest for a TOC to operate a universally heavy-handed approach to all passengers travelling with an incorrect ticket. However, TOCs have a right and justifiable obligation to target those passengers who knowingly travel without a valid ticket. In those circumstances, it is right that the passenger without a ticket is appropriately penalised. This acts, among other things, as a deterrent.

The noble Lords, Lord Berkeley and Lord Snape, raised the issue of the incentives on TOCs to collect revenue. After all, it is not their revenue in the end. The department works with TOCs to ensure that ticketless travel surveys take place biannually to allow revenue protection teams to target known areas of fare evasion to have the maximum effect. Part of the payments made to operators is based on the outcome of those surveys.

The noble Baroness, Lady Randerson, asked me some questions about Wales. While I have some information about that, I would rather write a letter with a fuller explanation, if that is okay. I will try to include what Wales is doing and any discussions with the Welsh Government.

The noble Lord, Lord Tunnicliffe, raised the issue of communication, and I agree with him that it is really important that passengers know about these changes and so do rail staff. That is already well in hand. The Rail Delivery Group is leading work with the train operating companies on communications materials, which will include posters, signage, leaflets at stations and websites. The Rail Delivery Group will update its guidelines to reflect the new penalty fares regulations.

The noble Lord highlighted the complexity of ticketing, as set out in *Modern Railways* magazine—not a magazine with which I am hugely familiar. But tickets in England are hugely complicated and, sometimes, when one is booking online, one may not get the best option. I will make sure that officials look at the points raised by the noble Lord, Lord Berkeley, about systems that were considered in the past and how we might roll them out.

The Government remain committed to radically reforming and improving the passenger experience of fares, ticketing and retailing on the railways. We want to simplify the current mass of complicated fares and tickets, while protecting affordable turn-up-and-go tickets and season tickets. There is much work in this area and there will be a real transformation in the way rail travel is bought, paid for and experienced. Removing complexity in ticketing systems will allow all related systems to be simplified to help reduce cost.

I reassure noble Lords that no passenger will be left behind. We will make sure that we serve those who use cash or those who do not have access to a smartphone or the internet. We need to make sure that they too can buy a ticket or access help to buy a ticket at the train station. We are working very closely with the Great British Railways transition team and the sector to build this better ticketing system and a better railway. We will take that further in due course.

8.15 pm

Noble Lords will have heard me speak before about the reasons for the challenges that Avanti West Coast has experienced, but I reassure noble Lords that my officials meet its senior management weekly. Since December 2022, in line with its recovery plan, Avanti has been operating an improved 264 daily train services on weekdays. This is a significant step-up from the 180 daily services running prior to the December timetable change. I recognise that there are sometimes disruptions—obviously, industrial action is causing disruption at the moment—and there will sometimes be things outside of the train operating company's control. But we are seeing green shoots of recovery from Avanti trains and I am very keen that they continue. My officials will certainly make sure that the senior management at Avanti is well aware of your Lordships' concerns.

I recognise the point that the noble Lord, Lord Snape, made about fatalities. When a fatality occurs on the railways, or on the roads, one always wants to get the system up and running again, but the police often advise, because the circumstances of the fatality may not be known, that they need to take their time to ensure that they have the evidence that they need so that, if there is any injustice, it is properly investigated.

Lord Berkeley (Lab): I am very grateful to the noble Baroness. She has given us a very interesting response to many of the questions that noble Lords have raised but, so far, has not mentioned what has happened to the Bill that was promised and mentioned in my noble friend's Motion, which we are debating. Can the Minister

give me some indication of why the Department for Transport has had this proposal to simplify ticketing, by using IT and everything else, for a year? It would save a great deal of money and give people a lot of confidence. According to some people I have talked to, this does not need legislation. I believe that the noble Lord, Lord Hendy, has also said that parts of the Bill do not need legislation, so why can we not do that? I appreciate that the Bill is late—we could have a long debate about that—but what is holding this up, if it does not need legislation? I am told it is opposition from the train operating companies, but who is in charge? Minister, you are in charge.

Baroness Vere of Norbiton (Con): Oh, good! I take the noble Lord's point. I was going to spell out a number of things that do not require legislation. We want to legislate and we must do it when parliamentary time allows, but there are many things that we can do without legislation. I will take back the specific point about the ticketing system and maybe write to the noble Lord and all who spoke in the debate to see if I can find a little more clarity on that.

While I am on a roll on this, the noble Lord, Lord Tunnicliffe, mentioned long-term planning, which is one of the things that we do not need legislation for and which we have been thinking about. We are developing for publication the first draft of a long-term strategy for rail. I am sure noble Lords will appreciate the opportunity to debate that when it is published, because it sets out a long-term vision for our rail system over the coming decades.

To conclude, the vast majority of passengers who travel on our railways have the right ticket. If they do not, there are understandable circumstances. We accept that there is flexibility in the services that the train operating companies offer. However, we believe that the increase in the penalty fare is a sensible measure to discourage travel without a valid ticket, because it is simply not fair on other passengers or the taxpayer.

I am grateful to the noble Lord, Lord Snape, for the debate today. I have no doubt that I will be back at this Dispatch Box to discuss the railway system again, and I look forward to it.

Lord Snape (Lab): My Lords, I am grateful to those noble Lords who participated in the debate. My noble friend Lord Berkeley reminded me of my failure to mention split ticketing. I could have said how desirable it is to stop that particular practice, although it is understandable that those in the know know how to do it. The magazine to which I referred set out a case of a passenger who was in the know, who used split ticketing to get from London to Edinburgh and back, but he needed 18 different tickets to do it. Such a system is nonsensical.

The noble Baroness, Lady Randerson, who speaks for the Liberal Democrats on these matters, was right to point out the disparity between the rate of inflation in 2005 and the fivefold increase in penalty fares, to £100, that the Government propose. The Office for National Statistics informs me through my mobile phone that £20 in 2005 was worth £34.52 at the end of 2022. That is a hell of a difference between £20 and £100, plus the cost of the single fare on top of the penalty, as we were reminded. So it is a pretty indiscriminate increase, presumably plucked out of the air. The Minister did say in conclusion that people had been consulted since 2021 about this increase: she did not tell us who had been consulted, and I just wonder whether Mr Anthony Smith from Transport Focus had been, because I do not think that most passengers would approve.

I am grateful again to my noble friend Lord Tunnicliffe from the Front Bench, and beg leave to withdraw the Motion.

Motion withdrawn.

National Security Bill

Committee (5th Day) (Continued)

8.21 pm

Clause 89 agreed.

Amendment 112

Moved by ***Lord Purvis of Tweed***

112: After Clause 89, insert the following new Clause—

"Report on actions taken in response to the ISC report on Russia

Within six months of the passing of this Act, the Secretary of State must lay before Parliament a report on the effect of the action taken by the Government in response to the recommendations of the report of the Intelligence and Security Committee of Parliament on Russia (HC 632 of Session 2019–21)."

Member's explanatory statement

This new Clause requires the Secretary of State to report to Parliament on the actions the Government has taken in response to the report of the Intelligence and Security Committee on Russia.

Lord Purvis of Tweed (LD): My Lords, I move Amendment 112 and will also speak to Amendment 118. I will introduce the amendments, but my noble friend Lord Wallace of Saltaire will also speak on this group. Amendment 118 is a probing amendment designed to be helpful for the Government and to allow the Minister to inform the Committee about what their views are on the interaction of the Bill—what will be the National Security Act—and the work of the highly regarded Intelligence and Security Committee of Parliament. In many respects, it makes absolute sense for the provisions under the Bill to fall within the oversight and scrutiny of the Intelligence and Security Committee. Obviously, as it is a parliamentary committee, and because of its remit, there are ways that it will interact with the Bill, but I would be grateful to know whether the Government would support that.

Amendment 112 links to what was a remarkably prescient report from 2020. When I re-read the recommendations of the Intelligence and Security Committee report on Russia before Committee, I found that it highlighted in an almost spooky way many of the practices and approaches of Russia that have come to bear, a year on since the aggression against Ukraine. The amendment seeks for there to be an update from

[Lord Purvis of Tweed]
the Government, not just as a response to the recommendations of the committee, which were provided in July 2020 and which I read with interest, but on the ongoing actions as a result. The report had a mixture of seeking clarifications and seeking action, so I would be grateful to know where the Government are with some of the recommendations.

It was interesting to note that the committee report sought clarity on the overseeing of the strategic direction and co-ordination by the National Security Council. It has been re-shaped twice in recent months: Liz Truss got rid of it and changed its operation into a standardised Cabinet sub-committee; I understand that Prime Minister Rishi Sunak has now restored it to what it was previously, but this is an opportunity on the record for the Minister to state exactly what the National Security Council is, how it is composed, and how it will interact with the implementation of the Bill. If he wishes to write to me on that point rather than respond today, I would be very happy.

The committee report highlighted in particular some issues directly linked with the Bill on the powers of the Electoral Commission, as we have discussed previously in Committee. We still believe very strongly that the committee's recommendations on enhancing the powers of the Electoral Commission are valid, and an update on the Government's position on that would be helpful. The committee also asked for action to be taken on election material and digital imprints; there has been considerable debate about this, but it would be useful to know how that will be operational. The committee also asked for protocol on social media providers, when it comes to hostile state acts. That was one of the areas where the Government noted the recommendations, but I would be grateful to know what action has been taken.

Finally—I know that my noble friend will be referencing this—the committee went into some detail scrutinising illicit finance and the fact that London has been a laundromat. It highlighted some areas that would be needed for action, notwithstanding that it was positive that the Government, in some respects, have brought forward this legislation in response to the ISC's report. But there are still unanswered questions with regard to how we are operationalising the need to reduce the scope for illicit finance. Now we have economic crime Bill No. 2: the Government dragged their feet somewhat in bringing the first economic crime Bill to us, but we have the first and the second.

I want give one statistic which is illustrative of what I and certainly my noble friend have been highlighting for a number of years regarding the scale of the issue in London. All along the way, the Government said that we were overestimating the impact of illicit finance, not just from Russia but particularly from Russia. I have debated with the noble Lord, Lord Ahmad, all the Russian sanctions that were put forward. I have welcomed them all, and in some respects they have not gone fast enough, but we have worked together collegiately across all Benches, including the Labour Party. The statistic that I have seen, which the Government published in their anti-corruption work, was that the amount of Russian money in September 2021 that was frozen—not seized—was £44.5 million. That is a substantial sum of course, but we felt that there was more illicit finance operating through London. The most recent figures, since sanctions have been put in place against Russia over the last year, show that that figure is now £18 billion. The gap between £44.5 million and £18 billion highlights the scale of the issue that we were warning against; the Government say that those warnings were unnecessary.

I do not expect the Minister to have any of the details to hand, and I would be grateful if he would write to me giving more information and a breakdown of the difference between the £44.5 million and the £18 billion. That is a colossal sum of money. The Government have found a reason to freeze, as a result of the Russian aggression, assets in London, but that is a very clear example of why there is more to know about the extent of illicit finance through London, and I will be grateful if the Minister will provide more information about that. I beg to move.

8.30 pm

Lord Wallace of Saltaire (LD): My Lords, my name is on Amendment 113, and I commend the intentions of the amendments put down by colleagues on the Labour Benches.

What we are talking about here is how we alert the public to the nature of the threat. The Security Minister in the Commons indeed said that one of his greatest concerns in approaching this Bill was to make the public aware of the threats which we face. In the Minister's absence, one of his colleagues on the Bench, the noble and learned Lord, Lord Bellamy, said that the overriding purpose of several clauses in the Bill is to convey a message. He said that this is above all a declaratory Bill, rather than a Bill which actually intends to do things, but these amendments are about the Government failing to send a message and, indeed, preferring not to talk about some of the threats which we face. After all, the Bill should alert us not only to the nature of the threats but to where those threats are most likely to come from. I note that the Minister said very little about Russia and not that much about China, North Korea or Iran but did his best to defend the idea that what we regard as friendly foreign powers should be included in our potential concept of threats, as if the message of this Bill should be "Beware of foreigners, particularly those associated with Governments whether democratic or not". I hope that is not the intention of the Bill, but that is what it looks like at present.

The ISC report states very clearly that there are a number of threats—of course it is concerned with Russia—and that

"it is … the Committee's view that the UK Intelligence Community should produce an … assessment of potential Russian interference in the EU referendum and that an unclassified summary of it be published".

The Government have refused to do that, and the only statement in their response about why not is that they have received no evidence of successful interference in British politics, which means that they are aware of a whole range of attempts to interfere in British politics. It might be quite helpful to inform political parties and the public about what those could be.

The Government's July 2020 response to the ISC's Russia report is very interesting in a range of ways. It has a section which it entitles

"Defending UK Democracy from Foreign Interference"

and flags up the new defending democracy programme, which was established in 2020, about which, so far, Parliament has been told remarkably little. The Security Minister made a speech about it some weeks ago which was not that much more informative, but he assured us that the defending democracy task force had held its first meeting in November last year, two years after July 2020. I think it would be helpful in informing and alerting the public if we were all told a little more about the defending democracy programme and the defending democracy task force.

The Government's response goes on to state:

"The Committee will also be aware that … the Government has concluded that it is almost certain that Russian actors sought to interfere in the 2019 General Election."

The public were not told about that very much either. We all understand that this is mainly because the interference was towards the Conservative Party and the Conservative Party has many links with Russia, Conservative Friends of Russia and so on, which it prefers not to spell out, which may be partly why we are talking about so many other different countries. We remember Boris Johnson's attempt as Prime Minister to hobble the Intelligence and Security Committee. Thankfully, that has now passed, but the issue of foreign interference in UK politics and public life is an important part of what we are focusing on and should receive more attention.

I have on a number of occasions in recent years argued for a proper review of the golden visa scheme—the tier 1 investor scheme. The Government finally closed it last year and promised to conduct a review. Instead of publishing that review, we had a Written Statement on 12 January 2023 with which the Minister will be familiar because the Statement to this House is in his name. It has no reference to national security risks under this programme. It talks entirely about illicit finance and criminal effects, and in a short two pages it says really very little about the problem as a whole. It states:

"The route attracted a disproportionate number of applicants from the countries identified in the UK's National Risk Assessment of money laundering and terrorist financing 2020 as particularly relevant to the cross-border money laundering risks faced and posed by the UK."

The Statement does not say, as the Wikipedia entry on Ben Elliot says, that Ben Elliot raised £2 million in and around the 2019 general election from Russians resident in Britain who were close to the Putin regime. That is something which ought to concern us and about which the Government certainly ought to have been a great deal more concerned. The ISC *Russia* report indeed talks about the growth of a community of "enablers" in London to service the Russians who had penetrated British political and public life. Ben Elliot's company, Quintessentially, was one of the leading aspects of this and declared that it specialised in servicing Russian clients.

I stress this not simply to raise a particular name but, after all, he was co-chairman of the Conservative Party—with James Cleverly, the current Foreign Secretary—for 18 months, so we are getting fairly close in to influence and interference here with someone who was described as the Tories' main fundraiser. Much of this was informal, of course, but the Bill talks a great deal about informal arrangements.

These amendments ask for proper information to Parliament, a stronger role for the Intelligence and Security Committee—which the last Prime Minister but one attempted so ignobly to cut down—and the publication of the review of the golden visa scheme so that we can understand just how far these people penetrated into British public and political life. I remind the Minister that the ISC *Russia* report says at one point that the penetration of rich Russians into British society and public life had gone so far that it was difficult to disentangle and that we now had to be concerned to mitigate those risks rather than to remove them.

All that the Government say on illicit finance and money laundering in their response to the ISC *Russia* report is:

"The Government agrees that the transparency of information about political donations is important."

They then go on to talk about links to Members of the House of Lords. They say nothing about the duties of political parties to ensure that they know where they are getting donations from. No doubt we will come back to this before and during Report.

There are a number of holes in what needs to be done in the Bill to make sure that we strengthen our national security against foreign interference. I trust that the Minister will have some good answers and will come back to us off the Floor to discuss some of these concerns further.

Lord Coaker (Lab): My Lords, I will speak primarily to my Amendment 120A but I thank the noble Lord, Lord Purvis, for his Amendment 112, signed by the noble Baroness, Lady Smith, which raises some extremely important points around the *Russia* report published by the ISC in 2020 and the frustration that many of its recommendations either have not been implemented yet or simply will not be implemented by the Government. It would be helpful for the Committee and for us all to know the Government's intention with respect to all that. As the noble Lords, Lord Purvis and Lord Wallace, said, many important points were raised and it would be interesting to see the Government's view on that. With respect to the noble Lord, Lord Wallace, and Amendment 113, some very important points were made about tier 1 visas, where all that has got to and what progress we have made.

Amendment 116 from my noble friend Lord Ponsonby, which has been referred to in passing by other Members of the Committee, deals with reporting on disinformation originating from foreign powers. I think it was the noble Lord, Lord Wallace, who referred to the issue of how far this country is witnessing attacks from foreign powers that wish to pollute and infect our system, whether businesses or our electoral system. It would be interesting for us to know the extent of that and what the Government are doing about it—as far as the Minister can say within the constraints of this.

It is a question worth asking, because one of the things I think the public want to know is who is responsible for co-ordinating the activity across

[Lord Coaker]
government to ensure that our country is protected. Is it MI5? Is it GCHQ? Is it the various security parts of different departments? Who brings all that together? I think it is legitimate and does not compromise national security in any way to ask who is responsible for that. How is the activity co-ordinated between a national level, a regional level and a local level? The integrity of all our databases requires action not only in Westminster but in a rural village in the middle of nowhere. Those are legitimate questions, and I think the public would like to know about that.

What is the Government's view of how far they can inform the public of the threat, in so far as the public can then help with respect to maintaining their own security and, by doing so, that of our country? That was the purpose of Amendment 116. It is obviously a probing amendment, but it seeks to understand something about the scale of the threat we are facing regarding this information and what can be done about it.

My Amendment 120A—which I should say at the outset is supported by my noble friend Lord West, who for personal reasons is unable to be with us, and, as I understand it, by the ISC—would require the Government to revise the memorandum of understanding between the Prime Minister and the Intelligence and Security Committee to reflect any changes to the intelligence and security activities undertaken by the Government as a result of this Bill. In other words, it seeks to update the ISC's remit to ensure that it has the power to effectively scrutinise intelligence and security activity that will be taking place across government under this new national security regime.

Alongside the Justice and Security Act 2013, the ISC's Mo outlines, among other areas, the ISC's remit and the organisations that it oversees. This includes the expenditure administration policy on operations of the agencies, as well as several organisations that form part of the intelligence community. The Bill modernises the offence of espionage and creates a suite of new tools for the intelligence community and law enforcement to defend the UK against state threats.

8.45 pm

Given the national security focus of the new regime, the ISC already has the remit to oversee much of the intelligence and security work that will take place. Nevertheless, as stated in the ISC's most recent annual report, published in December 2022, intelligence and security activities are increasingly being undertaken by a wider collection of government departments, including those that generally do not carry out national security-related activity, such as BEIS, DCMS and DfT. Those teams are not covered by the ISC's MoU, which therefore could be said to be out of date. It urgently needs updating, since effective oversight of intelligence and security matters has, to an extent, been eroded. If the Government continue with this trend, and establish new teams as part of this Bill that sit outside the ISC's remit, then this amendment would ensure that the ISC's MoU was updated accordingly.

The amendment is therefore important. It would help to reverse the increasingly large gap that has emerged in Parliament's ability to effectively oversee intelligence and security activity. These concerns have been raised repeatedly in this Chamber and in the other place, particularly during Parliament's considerations of the National Security and Investment Act 2021 and the Telecommunications (Security) Act of the same year. Effective oversight of intelligence and security matters can be undertaken only by the ISC, which, as the Minister will know, unlike other Select Committees has the security infrastructure to scrutinise classified material, such as intelligence, that often underpins decisions on national security. In theory, members of the Select Committee may be given sight of sensitive information but they do not have the appropriate office equipment or the cleared staff for reviewing such information, or indeed the security clearance themselves.

The Government provided a clear undertaking to Parliament during the passage of the Justice and Security Act 2013 when the then Security Minister told Parliament of

"the intention of the Government that the ISC should have oversight of substantively all of central Government's intelligence and security activities to be realised now and in the future."—[*Official Report*, Commons, Justice and Security Bill Committee, 31/1/13; col. 98.]

The Security Minister at the time made it clear that the ISC's MoU was designed to be a document that could be updated where necessary to reflect changes in the defence, intelligence and security architecture.

Unfortunately, the National Security and Investment Act 2021 and the Telecommunications (Security) Act 2021 showed the Government's failure to recognise that commitment and to appreciate the importance of such oversight. There have been repeated attempts to provide the ISC with these oversight provisions to cover these recent bits of legislation, with new teams being created, but so far there has been no progress with respect to the Government. The Government have refused so far to update the committee's MoU.

The issue of the committee's statutory remit has been raised with the National Security Adviser on several occasions. At a meeting in January 2022 the then National Security Adviser relayed the Government's position that they did not feel bound by the statements made by the then Security Minister during the passage of the Justice and Security Act. In its most recent annual report, the ISC said:

"We are deeply disappointed and concerned that the Government has taken this view, and is therefore actively avoiding the effective scrutiny by Parliament of national security issues across Government. The absence of proper scrutiny, which can only be carried out by the ISC, is genuinely troubling"—

hence the amendment that I felt it necessary to bring to the Committee.

With that stinging criticism of the Government, I say to them: is it not the case that they should, at the very least, be considering updating the ISC's MoU to reflect what the ISC itself has said? Should they not ensure that the body that was set up by this Parliament to give Parliament, as far as it possibly could, some sort of parliamentary oversight of the intelligence and security matters as they face our country, has the proper MoU for that to happen? I would be grateful to hear the Minister's response to that and what he has to say on my Amendment 120A.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I thank noble Lords very much for contributing to this relatively short debate. Let me first address Amendments 112, 117 and 120A.

Amendments 112 and 117 seek to impose on the Secretary of State a duty to implement the recommendations of the ISC's report on Russia and to produce a report setting out the action taken. The Committee will already be aware that the Government published their response to the Russia report on the same day that the report itself was published, 21 July 2020. All the recommendations that could be identified within the report were addressed.

On the point just made by the noble Lord, Lord Coaker, a majority of the ISC's recommendations had already been implemented by the Government before the report was published: for example, those covering co-ordination of government work on Russia, close working with international partners, and continued exposition and attribution of malign Russian activity. The then Home Secretary reiterated this in a Statement made in the other place on 17 January 2022. I also say that there is ongoing engagement with the committee on these recommendations. The Bill is itself a part of that response, by introducing effective new tools and powers for the police, and security and intelligence agencies, to use against the sophisticated range of threats and actors that we face in the modern day.

I turn to Amendment 118, explained by the noble Lord, Lord Purvis, as a probing amendment. Section 3(2) of the Justice and Security Act already provides, as the noble Lord, Lord Coaker, has just noted, for the ISC to make reports

"as it considers appropriate concerning any aspect of its functions."

This provides the ISC with the ability to report on aspects of the Bill which fall within its remit. Furthermore, the amendment as proposed might be taken to imply that the ISC requires explicit legislative nomination to conduct oversight work on a relevant area of security and intelligence policy. The Government therefore cannot support this amendment.

Amendment 120A seeks to mandate the Prime Minister to update the memorandum of understanding between the ISC and the Government. The Committee will be aware that the MoU is subject to continuous review, as again noted by the noble Lord, Lord Coaker. We welcome the ISC proposing changes that it would like the Prime Minister to consider, whether due to this legislation or other aspects of its security and intelligence remit. The Prime Minister will consider the proposed changes in due course. The MoU itself states that it is important to avoid duplication. Some of the organisations that the ISC has proposed that its remit should include are very new, and there are discussions under way regarding whether they are best overseen by other parliamentary Select Committees.

I am sure that answer will not particularly please the noble Lord, Lord Coaker, but I hope he would accept that it is a reasonable answer, given the current state of affairs.

Lord Wallace of Saltaire (LD): My Lords, I apologise for interrupting. I am sure the Minister recognises the damage which was done to the relationship between the ISC and Parliament, and to maintaining public trust, by the various manoeuvres while Boris Johnson was Prime Minister. There was the delay in the publication of the Russia report and the attempt to have a chair appointed by the Prime Minister rather than elected by the committee, et cetera. We need to be reassured—and by "we" I mean Parliament and the interested public—that the ISC has a very clear and respected role, and is not subject to the whims of changing Prime Ministers.

Lord Sharpe of Epsom (Con): My Lords, with the greatest respect, this is a different Government and we have moved on. The ISC very much has the respect of certainly this part of the Government. If I may say so, I have answered the principal question that was being asked: the Prime Minister will indeed consider the proposed changes in due course.

Lord Coaker (Lab): I understand that the Minister is saying that the Prime Minister will review it, but does he agree with me that it would help if the Prime Minister actually met the ISC? The Intelligence and Security Committee annual report states:

"Since its establishment in 1994, and for 20 years thereafter, the Committee met annually with the Prime Minister to discuss its work, report on key issues … However, the Committee has not had a meeting with a Prime Minister since December 2014. In the previous Annual Report, we stated that we would seek a meeting with the Prime Minister this year; unfortunately, despite requests for suitable dates, we are yet to receive a response from the Prime Minister. The Committee urges the Prime Minister to meet with it as a priority."

May I ask the Minister to take that message to the Prime Minister? If he is looking at reviewing the MoU in due course, it might help him to meet with the committee.

Lord Sharpe of Epsom (Con): The noble Lord makes a very fair point. I will certainly make sure that that message is conveyed. As I have said, the Government do not think it would be appropriate at this point to mandate the Prime Minister to update the MoU as proposed, therefore we cannot support this amendment.

I now turn to Amendment 113. The Committee will be aware that the Government committed to a review of visas issued under the route between 2008 and 2015. The Home Secretary made a Written Ministerial Statement on 12 January setting out the findings of that review, including that the review had identified a minority of individuals connected to the tier 1 investor visa route who were potentially at high risk of having obtained wealth through corruption or other illicit financial activity and/or being engaged in serious and organised crime. The Government have set out the findings of the review of the operation of this route and acted to close it. I think it was in February 2022. I therefore submit that the amendment is not necessary.

I note that the noble Lord, Lord Wallace, was selectively quoting back to me various aspects of the WMS. I might selectively quote back to him—I suppose I am quoting myself here. I also said:

"Given the importance of ensuring the independence of the law enforcement process I am unable to say more on the operationally sensitive work being taken forward in this area. Whilst unable to comment specifically due to operational sensitivity of work - as an example of the range of actions we are taking I can say that we have already sanctioned 10 oligarchs who had previously used this route as part of our extensive response to Russian aggression in the Ukraine."

[Lord Sharpe of Epsom]
I think that gives answers as to why we have perhaps not commented in the detail the noble Lord would like.

The noble Lord, Lord Wallace, has also accused me of not talking enough about certain states and talking too much about our allies. He, I think, suggests that this is for party-political reasons. I am disappointed that the noble Lord, Lord Wallace, would think so little of the Government Front Bench in this House. I gently remind him that, when I am talking about our allies, I am usually responding to questions he has asked me.

I say to the noble Lord, Lord Purvis, that I am afraid I do not have all the stats he asked for about Russian money, but I will endeavour to find them. I do not know if they sit within the Home Office, but I will find out where they are, and I will happily write to him.

Lord Wallace of Saltaire (LD): My Lords, I apologise if I have gone—as the Minister is advising me—a little far. The point I am making is that the lack of distinction in "any foreign power" is one of the fundamental faults in this Bill. The ISC *Russia* report on several occasions refers to the threats mainly coming from China, Russia, Iran and the Democratic People's Republic of Korea. That is what I understand as well, although I am well aware that there are other potentially hostile states. One of my strongest memories is watching a demonstration outside the Libyan embassy and a policewoman being shot. These things happen; there are hostile states out there. However, that does not mean we cannot distinguish between allies with whom we work and open societies, and those from which there are likely to be threats. It is very important that we do so.

Lord Sharpe of Epsom (Con): This Bill does exactly that. We have been talking about FIRS over the last couple of days—the foreign influence registration scheme. There are different tiers specified in that. There is no doubt that this Bill acknowledges where our principal threats come from. Other countries, unfortunately, are also sometimes used as proxies. That is another discussion we have had at considerable length from this Dispatch Box with various noble Lords who have raised that point. I think it has covered very widely exactly what the nature of the threats are and where they come from.

9 pm

Amendment 116 would duplicate existing work being carried forward by the Government to ensure that the threat posed by disinformation spread by foreign states is monitored effectively. The noble Lord, Lord Wallace, asked me for more detail on the Defending Democracy Taskforce, and I am happy to supply it. As he pointed out, it was announced in November 2022. As it has become apparent that the threats to our democratic institutions and wider society are growing, the taskforce's mission statement is to reduce the risk to the UK's democratic processes, institutions and society and to ensure that they are secure and resilient to threats of foreign interference. It will work across government and with Parliament, the UK intelligence community, the devolved Administrations, local authorities and the private sector on the full range of threats facing our democratic institutions. The work of the taskforce will report to the National Security Council and more details will be set out in the update of the integrated review. I have no more details at this point.

That leads nicely to the work of the National Security Council, which the noble Lord, Lord Purvis, asked me about. That is the main forum for a collective discussion of the Government's objectives for national security and about how best to deliver them in the current financial climate. The key purpose of the council is to ensure that Ministers consider national security in the round and in a strategic way, and it is chaired by the Prime Minister. In answer to one of the questions from the noble Lord, Lord Coaker, the National Security Council co-ordinates His Majesty's Government's work on national security policy. Unfortunately, as the noble Lord knows—this answer will disappoint him—the convention is not to speak about the working of Cabinet committees, for which I apologise; I would like to go further, but I cannot.

The Government have robust systems in place to protect UK democracy, bringing together government, civil society and private sector organisations to monitor and respond to attempted interference, in whatever form, to ensure our democracy stays open and vibrant. The Government have amended the Bill in the other place to make the foreign interference offence a priority offence in the Online Safety Bill. That will require companies in scope of the regime to conduct regular risk assessments of the presence of content which constitutes an offence, and to put in place proportionate systems and processes to mitigate the possibility of users encountering that content. That will include disinformation spread by foreign states that is intended to undermine our democratic, political and legal processes. Furthermore, the Online Safety Bill's advisory committee on disinformation and misinformation will provide cross-sector expertise on disinformation and misinformation and provide advice to Ofcom about how providers of regulated services should deal with disinformation and misinformation.

Finally, I will discuss the Electoral Commission recommendation, as that was requested by the noble Lord, Lord Wallace. The Elections Act 2022 introduced a restriction on ineligible foreign third-party campaigning above a £700 minimum threshold. The Government's digital imprint regime, also introduced by the Elections Act 2022, delivers the ISC's recommendations to introduce a requirement to add an imprint on all digital paid-for political advertising. Those proposals represent a significant step forward and will make United Kingdom politics even more transparent.

For all the reasons I have outlined, the Government cannot accept the proposed amendments.

Lord Purvis of Tweed (LD): My Lords, I am grateful for the Minister's thorough reply, notwithstanding some of his responses, which he prefaced by saying that he knew they would disappoint the noble Lord, Lord Coaker.

Lord Coaker (Lab): There's nothing new there. I am joking.

Lord Purvis of Tweed (LD): The noble Lord is a very cheerful person for someone who is disappointed. One of the telling facts he highlighted was the difficulty of the committee having an annual meeting since 2014—that speaks for itself. I am grateful to the Minister for saying that he is going to take that message back.

I am also grateful that the Minister has committed to provide some more information, which is quite helpful. On the issue of the tier 1 visas and golden visas, we are in a slightly ridiculous position where we have a discrepancy between what should be on the public record as to who received them and what is on the public record as to who is sanctioned. However, the Government are refusing to put the two together and to say who they are, which means we will have difficulty learning lessons as to how this came about, why they were able to secure the visas and what they have done. If the Minister is writing to me with more information, I would be grateful if he could state who is currently under sanction by the UK and has received a tier 1 visa. That would be very helpful information to receive.

I am grateful for the information on the co-ordination and the security council, and for the other information that the Minister provided. With Amendment 120A from the noble Lord, Lord Coaker, and my amendment, I think we are aiming for the same destination but with a different route. I think that the Minister said that the ISC would be able to scrutinise the implementation of all national security aspects of this Bill. If I have taken that incorrectly from the Minister, I am happy for him to correct me on the record. However, I think that we will pursue that aspect. As the noble Lord, Lord Coaker, and my noble friend, said, we want national security to work and, for that to be done, proper scrutiny by the committee of Parliament needs to be facilitated, with no gaps across the whole panoply. National security is complex and multi-departmental, and a whole-government function, as the Government say—and I respect that—between BEIS, DCMS, the Cabinet Office, the Treasury and FCDO. This is a complex area, and the committee is best placed to do it, but it must be equipped to do it. We may want to return to this issue after we have reflected on the Minister's responses. In the meantime, I beg leave to withdraw the amendment.

Amendment 112 withdrawn.

Amendment 113 not moved.

Amendment 114

Moved by ***Lord Purvis of Tweed***

114: After Clause 89, insert the following Clause—

"Ministerial appointments: official advice

(1) The Cabinet Secretary must publish a memorandum in respect of any ministerial appointments made by the Prime Minister, where advice or concerns were communicated to the Prime Minister by civil servants that the appointment may be counter to the safety or interests of the United Kingdom including because of potential influence from a foreign power.

(2) A memorandum under this section must set out that advice or concerns were communicated to the Prime Minister by civil servants, and in respect of which ministerial appointments.

(3) A memorandum under this section may not include details of the advice or concerns, where the Cabinet Secretary considers that inclusion of those details may be prejudicial to the safety or interests of the United Kingdom."

Member's explanatory statement

This new Clause requires the Cabinet Secretary to publish a memorandum in circumstances where the Prime Minister made a ministerial appointment and where advice was that the appointment may be counter to the safety or interests of the United Kingdom.

Lord Purvis of Tweed (LD): My Lords, this is an amendment which I really did not think it should be necessary to debate, on ministerial appointments by a Prime Minister, where that appointment may raise issues to do with the safety, security and interests of the United Kingdom. The amendment seeks clarification from the Government on the ability for there to be transparency in the operation of the Ministerial Code, but also where there is concern about ministerial appointments.

This is not a partisan point, because we know as a matter of fact that a Home Secretary was sacked because of a significant security breach. The guidance on security of government business was breached considerably, and Liz Truss sacked Suella Braverman, who admitted a breach of government security guidelines. I recognise that none of the material that was shared on a private email system was marked "secret", so with regard to national security considerations, on the face of what was sent to an incorrect recipient but also what was intended to be sent, it was not secret or top secret. They were not classified documents, and I respect that fact. However, the recipient's employer—because one of the emails was sent to a member of staff of an MP—replied to Suella Braverman saying:

"Simply asking my team to delete this email and ignore it is not an acceptable response to what appears, on the face of it, to be a potentially serious breach of security … You are nominally in charge of the security of this nation, we have received many warnings even as lowly backbenchers about cyber security."

The fact that that Minister was then reappointed for political purposes within a matter of days has been well rehearsed. The Minister has responded to this issue in Questions in the Chamber, and the noble Baroness, Lady Neville-Rolfe, also responded, saying:

"Everyone deserves a second chance."—[*Official Report*, 22/10/22; col. 1558.]

I know for a fact that not everybody who will fall foul of some of the significant offences under this Bill will receive a second chance—or that some officials will receive it. But it would be useful to know whether there are security concerns about the appointments of Ministers.

The second thing I say concerns something that did not happen but could easily have happened. A Member of this House, the noble Lord, Lord Lebedev, was appointed under considerable concern about security situations. He was appointed to Parliament by Boris Johnson. He could very easily have been asked to be a Government Whip or a Minister: that is not a stretch of the imagination. What is the situation then, when security concerns have been raised about the appointment of a Member to Parliament but there is no mechanism for transparency about concerns about ministerial appointments? I do not besmirch any existing Ministers: these are two factual situations; one is regrettable, of course; and the other has not happened but could

[Lord Purvis of Tweed]
easily have happened. Therefore, my amendment seeks clarification as to what mechanisms are in place for it to be transparent when there have been concerns about an individual being appointed to a ministerial position, so that those concerns can be made public. I beg to move.

Lord Sharpe of Epsom (Con): My Lords, I thank the noble Lord for speaking to Amendment 114, which seeks to require the Cabinet Secretary to publish information concerning ministerial appointments in scenarios where officials have indicated that the appointment of a particular individual

"may be counter to the safety or interests of the United Kingdom including because of potential influence from a foreign power".

The Government cannot accept this amendment because the appointment of Ministers is a matter solely for the Prime Minister, in line with his role as the sovereign's principal adviser. It is critical to the functioning of government that any conversations that occur around appointments are able to take place in confidence. There is a long-standing practice to protect that confidentiality. Without the ability to speak freely on matters that will be personal and sometimes sensitive, particularly where they may include matters of security, the ability of officials to provide meaningful advice ahead of an appointment will be critically undermined. The National Security Bill is concerned principally with the conduct of state actors working for foreign powers or with an intention to benefit a foreign power. Not only is the Bill not the appropriate vehicle for such a change but the Government also firmly believe that any information relating to ministerial appointments and procedures is not appropriate for publication. The Government therefore ask the noble Lord to withdraw his amendment.

Lord Purvis of Tweed (LD): I am grateful to the Minister, and I am not entirely surprised by his response. I think the Government's concerns regarding confidentiality and protecting Civil Service advice were addressed in the amendment. In fact, it explicitly states that information would not be provided within the memorandum, but that security considerations had been raised should be in the public domain. I hear what the Minister said; we will explore this in the other avenues. In the meantime, I beg leave to withdraw.

Amendment 114 withdrawn.

Amendments 115 to 118 not moved.

Amendment 119

Moved by ***Lord Coaker***

119: After Clause 89, insert the following new Clause—

"Assessment of interaction with the Official Secrets Act 1989

The Secretary of State must publish an assessment of how this Act relates to the Official Secrets Act 1989."

Member's explanatory statement

This amendment intends to probe to what extent the Bill furthers the government's objective to update the Official Secrets Act 1989.

Lord Coaker (Lab): I will not keep noble Lords too long on this amendment. There are a couple of points I wish to make and a couple of questions to ask. I say at the outset that Amendment 119 is a probing amendment, obviously, but it allows us to discuss reform, or not, of the Official Secrets Act 1989. As we know, this National Security Bill does not deal with that, but earlier Official Secrets Acts of 1911, 1920 and 1939, which deal with espionage. In that sense, this Bill represents a missed opportunity and leaves many unanswered questions which simply cannot be ignored, questions which Amendment 120 in the name of the noble Baroness, Lady Kramer, setting up an office of the national security whistleblower, also seeks to address.

In the Government's consultation document for the state threats legislation reforms, it is clear that changes to the Official Secrets Act 1989 appear to be on their way. Is it correct that they will reform the Official Secrets Act 1989 as soon as possible? If they will, can the Minister give any indication of what "as soon as possible" might mean—other than "as soon as possible"?

9.15 pm

The former Lord Chancellor, Robert Buckland MP, highlighted the two main issues arising from this National Security Bill regarding future reform of the Official Secrets Act 1989. The first is the possible creation of a public interest defence, rather than leaving it up to juries; the second is to raise a statutory commission to allow people to raise their concerns, as the noble Baroness, Lady Kramer, seeks to propose through her Amendment 120 and as was supported by the Law Commission.

I can appreciate the concerns of the security services. No one wishes to undermine them and we have had many good debates on the public interest defence, but the current situation is not satisfactory. Someone who sees wrongdoing either commits a criminal offence, keeps quiet or speaks to superiors, hoping that it will be taken seriously—in some circumstances, I am sure that it is. The Government are worried about this area; as we said earlier, and as the noble Lord, Lord Sharpe, helpfully confirmed, they are looking at strengthening the guidelines to various government departments on how to deal with individuals who feel themselves to be in that situation. An independent office to which you could complain may be the answer; if it is not, the Government need to be clear about how they think we can take this problem forward.

There have been many examples in the past of individuals doing a public service by highlighting various issues which, had it not been for them, could not have been brought to public attention. These have been in security and many other areas of public life, including our Parliament. Would the murders that occurred between 2001 and 2004, highlighted by the ISC in its 2018 report—the Law Commission also makes this point—have been exposed with a better system that people felt confident in at the time? If the Government oppose these amendments, can they outline their policy?

My final point was raised by the Constitution Committee. Can the Minister explain why there is such a significant difference between the maximum sentences proposed for offences created by this Bill and those in the Official Secrets Act 1989, which will remain in force when the Bill is enacted? As the Constitution Committee report says, this may lead to different sentences being available for offences applied

to the same conduct, depending on which Act is used with respect to a particular individual. That will give rise to legal uncertainty. Can the Minister explain why there are different sentences, including life imprisonment, in this Bill, soon to be an Act, and the Official Secrets Act? Does the Minister agree that this is yet another reason to bring forward reform of the Official Secrets Act 1989? The Government need to get on with reforming that Act. They seem to have said that they will do it; it would be helpful if they categorically confirmed to the Committee that that is their intention.

Lord Hacking (Lab): My Lords, I again find myself the only Back-Bencher of my party in the Chamber. This time I cannot claim to be speaking on their behalf, although last time I intervened I felt that I had sufficient support from Labour Members who were not here to be able to speak at large on behalf of the Back-Benchers.

I have an entirely technical point. My noble friend Lord Coaker has tabled an amendment which he described to the House and in the Marshalled List as being intended to probe

"to what extent the Bill furthers the government's objective to update the Official Secrets Act 1989."

Of course, in Schedule 16, at the end of the Bill, we see what the Government are doing about repealing—or otherwise—previous Acts, going right back to the Official Secrets Act 1911, as my noble friend Lord Coaker mentioned.

As I say, this is a technical matter. I do not ask for it to be dealt with this evening, but perhaps the Minister's officials and advisers could look at this. When the Bill was before the House of Commons, the Law Commission gave oral evidence and then submitted written evidence. In that written evidence, it took up the issue of the Official Secrets Acts 1911 and 1920 and commented on their provisions. The Law Commission said, in its recommendation 9:

"The offence of doing an act preparatory to espionage should be retained. Save for that, section 7 of the Official Secrets Act 1920 should be repealed."

If we turn to Schedule 16, we learn that the Bill proposes to repeal those Acts in their entirety. The question is, therefore, why the written report of the Law Commission is not being followed. There are great complications when you start having to sew old legislation into modern legislation, and as I have complained before, the legislative process has become too complicated. This is not something to be answered now. The Minister can be relieved of having to give any explanation at the moment, but I wondered if it could be carefully looked at.

Baroness Kramer (LD): My Lords, I thank the noble Lord, Lord Coaker, for his supportive words on the key aspects of my Amendment 120. Obviously, I have not participated in the broader issues of the Bill, but I think I can say on behalf of my colleagues that we are very impressed by his amendment. The probing character of an amendment, certainly in Committee, is a very important tool to try to get responses from the Government.

Given the late hour, I want to focus specifically on my Amendment 120. We heard at Second Reading—in a sense, it has been repeated at various points in Committee; I have been following this a bit in *Hansard*—how concerned former leading members of the intelligence community are about the consequences of public disclosure. I think the Government have echoed that. There is one very good way to avoid public disclosure, and that is to have an excellent whistleblowing regime and process. That is exactly what my Amendment 120 seeks to do. I understand that my amendment is not ideally drafted, but my goal is to generate a proper and, I hope, fruitful discussion. That is one of the reasons I am rather sad that those former leading members of the intelligence community are not in their places today, but perhaps they will pick up this issue afterwards.

Lord Hacking (Lab): They are not here this evening; they were here earlier.

Baroness Kramer (LD): Yes, they were here earlier.

My preference would be to create an overarching office of the whistleblower covering all public and private activity, as I have proposed in my Private Member's Bill. However, failing that, I suggest that much more immediate action could take place within the security and intelligence services.

Whistleblowers are essential in any and every field of activity. People err and power is abused, and whistleblowing is both the best deterrent and often a necessary step to cure. But organisations so often welcome whistleblowers in their speeches, and perhaps in very general policy terms, but not in the practical reality.

I have to keep a good distance from sources because here in the House of Lords we do not have the power to protect their confidentiality. But over and again, the message comes that, in the security and intelligence services, various schemes—not all, but various and significant ones—are actually dysfunctional. Retaliation happens and is not exceptional, in the form of career destruction and the threat of the use of the Official Secrets Act—it may be entirely inappropriate, but it is a very frightening threat. Follow-up and proper investigation rarely happen. Instead, wagons are circled and retaliation begins.

In this, I have to say that the intelligence agencies are really no different from so many other parts of the public sector. We have to look only at the experience that the Metropolitan Police is currently going through to realise that there is a certain inbred complacency in many organisations. They are certain if you ask them that they have excellent processes in place, but then some event triggers and exposes problems that have lain underneath for a long time.

At Second Reading, I gave an example of a whistleblower who spoke out using the existing systems to expose evidence that key equipment was being sourced from a hostile foreign power. That person is still suffering the price of a destroyed career.

Also at Second Reading, in explaining that he had worked with the intelligence community for more than 40 years, the noble Lord, Lord Ricketts—I think quite unwittingly—gave another, even more serious illustration of the dysfunctional nature of the system. Referring to the earlier speech that day of the noble Lord, Lord Tyrie, and his reminder that in regard to extraordinary rendition

[Baroness Kramer]

"Britain appears to have been involved in at least 70 cases, according to the 2018 ISC report",

the noble Lord, Lord Ricketts said,

"in my experience, the men and women of the intelligence community were profoundly shocked by the revelations of what had happened in those fraught months and years after 9/11."—[*Official Report*, 6/12/22; cols. 137-39.]

I am sure that some people, including the noble Lord, Lord Ricketts, were profoundly shocked, but with at least 70 cases, a significant number of people, including those at senior level, must have known, knew it was wrong and either decided or were persuaded to do nothing, because of misguided loyalty, a culture of cover-up and fear that retaliation would destroy their careers.

Speaking out is frightening, disloyalty being the least of the accusations that typically follow. Each person to pluck up the courage to speak out needs to know exactly who they can go to to speak safely and how they can initially do it—most of them wish to do so anonymously initially. They cannot turn for information or advice to a colleague, as that exposes who they are. They cannot go to a senior person, as that exposes who they are. They should never look on the intranet or internet because that is traceable. Even in the health services, nurses use burner phones to report wrong behaviour. A whistleblower has to be absolutely confident that the person they speak to has both the will and, even more importantly, the authority to follow up and investigate an act. That is what whistleblowers look for.

However, it is much more than that. Confidentiality, which is often seen as the greatest protection for a whistleblower, is almost impossible to sustain once an investigation process starts, because the issue and the information themselves direct anyone who is interested to the identity of the whistleblower. So it is absolutely crucial that any person or body that a whistleblower goes to can provide them with protection or, where things go wrong and there is retaliation, with redress.

9.30 pm

At both Second Reading and in earlier days in Committee, the noble Baroness, Lady Manningham-Buller, for whom I have great respect, and the Minister, the noble Lord, Lord Sharpe, listed reams of people who a whistleblower could go to. Of course, they would have to identify who was the right responsible person, what they would and could do, and, even more importantly, they would have to have their confidential contact details.

Included in the list from those speeches were government departments' internal policies and processes, but, as we heard earlier, even the Government know that many of these are unsafe and are looking to improve their guidance because they are very broad, general concerns, so that is not a terribly good answer. Otherwise named were: a staff counsellor; the external staff counsellor in the Cabinet Office; organisational ethics counsellors—they play an important role but they have limited authority, particularly to investigate, and they have no power of redress as far as I can understand; the chair of the ISC; the Investigatory Powers Commissioner's Office; the Attorney-General's Office, the Director of Public Prosecutions; the Commissioner of the Metropolitan Police; with permission, the PUSS to the Home Office; the National Security Adviser; the Cabinet Secretary; and the Comptroller and Auditor-General. The list itself underscores the fact that this is a farce.

As I said, junior people on that list have relatively little power to act and certainly none for redress. As for the senior names listed—those many senior and important names—I am sure there are some people in this Committee who have the personal, confidential and secure phone numbers for those people, such as the National Security Adviser, but I very much doubt that a mid-level intelligence agent or the junior clerk in a supply chain has that information. Whistleblowers are very often the little people and mid-level people, because they are the least institutionalised.

I am asking the Government to get to grips with this now, and to at least make sure that there is a single place where people can go to to speak out, and that every member of every related organisation has that confidential number and contact information. The office that they go to—it cannot just be an individual, as that is far too narrow—has to have the power to set whistleblowing policies, procedures and reporting structures that include confidentiality and anonymity, the power to investigate and, significantly, because confidentiality is so fragile and so impossible to enforce, the power to redress where a whistleblower suffers detriment. In that way, there would be a system to catch wrong behaviour early. I would like to see it open not just to employees and contractors but to anyone who has relevant information. That information, coming early and going to the right people so that there is guaranteed follow-up, means that misbehaviour and wrongdoing are stopped in their tracks early. There is no better protection for the public interest.

Lord Wallace of Saltaire (LD): My Lords, I wish to stress the importance of how the Bill, when it becomes an Act, will relate to the Official Secrets Act. I am almost in a minority in my own family in not having signed that Act, although I note, looking at the dates, that the version my wife signed in 1979 was the 1939 version, and the version my daughter signed is rather more up to date. It is worth noting that it was 28 years from the first Official Secrets Act to the first revised Act in 1939, and 50 years from then to the second revised version, in 1989. We are now approaching 34 years since the last revision. As the Law Commission suggested, we really need to update the Official Secrets Act.

Part of the disappointment that many of us have with the Bill is that it takes the place of what might have been an effective revision of the entire Official Secrets Act. We all know what happens with legislation in this House. The time taken up for the Bill as it becomes an Act will mean that it will be another four or five years before we get round to a proper revision of the OSA.

I say this to the Minister: part of the argument for taking our time as we complete this Bill is that, for the next four or five years, this is probably it in terms of legislation dealing with this whole area of national security. So we need to make sure that it is well considered; that it addresses our current, changing threats; and that it feeds into and informs the public debate for those who need to understand these things.

It should not be rushed. I hope that, in Committee, the Minister has got a real sense of the disappointment and discontent at the quality of the Bill as it now stands. I look forward to our discussions and hearing about the wider consultations that now need to take place before this Bill finishes its time in this House.

Lord Evans of Weardale (CB): My Lords, I must confess to being rather puzzled by some of the detail in Amendment 120 in the name of the noble Baroness, Lady Kramer. When I got to proposed new subsection (4), I assumed that the office was intended to be a regulatory body ensuring that the whistleblowing arrangements with regard to national security were appropriate; however, it subsequently became clear in proposed new paragraph (b) that it was intended to be the whistle-blowing channel. Those seems like slightly different roles to me.

I am also puzzled as to why there is a proposal here for a whistleblowing channel that is in fact very narrow. It relates only

"to the commission of an offence under this Act".

I would have thought that, if there was a need for a whistleblowing channel—

Baroness Kramer (LD): Perhaps I can help the noble Lord. Amendments must be written to be in scope; it is sometimes quite limiting.

Lord Evans of Weardale (CB): I thank the noble Baroness very much for that clarification; in that case, the amendment certainly needs some amendment itself.

I am also puzzled as to the route proposed that any disclosure, particularly from one of the intelligence agencies, can go to any public authority. Again, that seems a surprising route for a whistleblowing channel for somebody in the intelligence and security agencies.

More particularly, and more importantly, I absolutely fail to recognise the culture of cover-up that the noble Baroness, Lady Kramer, cites. Having worked in the Security Service for 33 years, I am confident in saying that, far from there being a culture of cover-up, there was in fact a strong willingness to speak up, as far as I could see. There was strong and, at times, fairly heated internal debate on some of the ethical matters that have been cited in this debate. So I do not believe that the characterisation of the intelligence agencies we have just heard in any sense accurate. Although the noble Baroness, Lady Manningham-Buller, gave the complete list of everybody to whom a member of the agencies could go, I think that almost anybody in the agencies would recognise their ability to go to the internal ethics counsellor—a role that plays an important part in actively encouraging debate of these issues—who has a direct right of access to the director-general of the day; I am sure that that would still be the case. That role has now extended from the Security Service to the other intelligence agencies. Also, it was clear and straightforward how you obtained the contact details for the external counsellor who acted as a whistleblowing channel directly outside the service. Of course, that was put in place specifically because of previous concerns that there was no such provision, and it was reflected in the legislation of the day.

I feel that the detail of this amendment is not clear —certainly not to me. The need for this amendment has not been made clear, in my view, because it is based on a rather misleading characterisation of the internal culture of the intelligence services. In my experience, there has been considerable focus on ethical matters and the ability internally to debate those.

The Parliamentary Under-Secretary of State, Home Office (Lord Murray of Blidworth) (Con): My Lords, I thank Members of the Committee for all their speeches. Amendment 119 seeks an assessment of how the Act relates to the Official Secrets Act 1989. As we set out in last week's debate, the new espionage offences in Part 1 of the Bill replace and reform the existing provisions in the Official Secrets Acts from 1911 to 1939. They carry strict tests for a person to be caught within those sections. For example, the first two offences apply when a person is acting for, on behalf of, or with the intention to benefit a foreign power. This is distinct from the Official Secrets Act 1989, which covers unauthorised disclosures by Crown servants and government contractors. As the Committee knows, the Government are not reforming the 1989 Act through the Bill, as has been observed this evening. Under the existing law, it is possible that a person making a damaging disclosure could commit both the espionage offence in the Official Secrets Act 1911 and an offence under the Official Secrets Act 1989.

Pausing there, I thank the noble Lord, Lord Hacking, for his contribution in relation to the 1911 Act. The difference, drawn out in the fact that you could commit both an offence of espionage under the Official Secrets Act and an offence under the 1989 Act, will continue to be the case. It is possible that a person could commit an offence under two pieces of legislation simultaneously and be charged in relation to both. That is not a matter unknown in the criminal law. Any overlap between the espionage offences in the Bill and the Official Secrets Act 1989 allows us to prosecute damaging acts in the most appropriate way. Where a person commits both a 1989 Act offence and an espionage offence under the Bill, the charging decision would be taken by the Crown Prosecution Service in accordance with the Code for Crown Prosecutors, as is always the case. CPS prosecutors select the charges that they consider are most appropriate on the facts of each case, and to reflect the nature of the wrongdoing. I hope that this explanation reassures the Committee that the Government have carefully considered the interaction between our new offences in the Bill and those in the 1989 Act.

The noble Lord, Lord Coaker, raised a question regarding reform of the 1989 Act, and I will address it directly. The Government's view is that the Official Secrets Act 1989 is an essential part of our ability to protect national security and sensitive information. However, the views and concerns raised by stakeholders in response to our public consultation for the Bill, including those in favour of not reforming the Act at all, highlight the complexity of the legislation and the wide variety of interests that should properly be considered before pursuing any reform. Given its complexity, we are also concerned that reform of the Official Secrets Act 1989 at this time may distract from the Government's

[Lord Murray of Blidworth]
package of measures in the Bill to counter state threats, and prevent us from providing law enforcement and the intelligence agencies with the tools that they need now directly to tackle these threats. Accordingly, we do not have any immediate plans to pursue reform of the Official Secrets Act 1989, but will continue to keep that position under review. The matters raised by the noble Lord, Lord Wallace, are well considered. Issues such as whether to increase maximum sentences under the Official Secrets Act 1989 would be considered as part of potential reform proposals and would be viewed in the round with the measures of sentences in the Bill.

Amendment 120 tabled by the noble Baroness, Lady Kramer, proposes the establishment of a new office for the national security whistleblower. We are told that the aim of such an office would be to protect whistleblowers who make disclosures related to offences under the Bill where disclosures are considered to be in the public interest. Of course I pay tribute to her in her ongoing work and efforts to champion the important cause of whistleblowing. The Government are committed to ensuring that our whistleblowing framework is robust, and I confirm that the business department intends to carry out the promised review of the existing framework, and that further details will be set out in due course in relation to that.

9.45 pm

However, as the Government outlined last week on the public interest defence—as many noble Lords present will remember—the offences in the National Security Bill target harmful activity by or on behalf of states, not leaks or whistleblowing activity. As the Law Commission said during oral evidence to the Committee for this Bill in the other place, and as the noble Lord, Lord Hacking, noted, the requirements of these offences take them outside the realm of leaks and into the realm of espionage. Consequently, the creation of a whistleblowing office in relation to the Bill is, in essence, a misunderstanding of the aims of this legislation.

Having said that, I welcome the opportunity this amendment brings to outline the Government's commitment to individuals who seek to raise concerns about national security information pertinent to the Official Secrets Act 1989. The Government recognise that there may be situations where an individual has a legitimate need to raise a concern; for example, where there may have been wrongdoing or where they think there is a public interest in disclosing that information.

As we discussed on the previous occasion in Committee, there are already a number of existing internal and external authorised routes in government through which individuals can raise such concerns. The number of routes has increased since 1989 and the Government consider them to be safe and effective. Many were outlined in the powerful speech given by the noble Baroness, Lady Manningham-Buller, during the debate last week on the public interest defence. With great respect to the noble Baroness, Lady Kramer, I find the testimony given by the former director-general of MI5 to be persuasive on what the view of an intelligence officer might be. That appears to have been confirmed in the contribution we just heard from the noble Lord, Lord Evans of Weardale—in particular, his assessment of the culture in the intelligence services being one of honesty and integrity.

Lord Purvis of Tweed (LD): I am grateful to the Minister. He is aware of the point I raised earlier in Committee, which, as he correctly pointed out, pertained more to the Official Secrets Act in respect of the authorised disclosure of information. The Law Commission's recommendation is clear—that there should be an independent statutory commissioner, to which individuals can go, who has investigatory powers—but the Minister says that there are no plans to reform the 1989 legislation.

We heard from the noble Lord, Lord Evans, and earlier from the noble Baroness, Lady Manningham-Buller, that they do not recognise this culture, but the Law Commission came to its own view and its own recommendation. Do the Government accept that recommendation but then say that they are not going to do anything about it, or will we have to find a way to bring together the disclosure of information and the points that my noble friend raised? The Law Commission's recommendation was perfectly clear, and it was not besmirching the culture within the agencies. It was a very clear recommendation.

Lord Murray of Blidworth (Con): Indeed, the Law Commission made a recommendation about a potential reform to the 1989 Act. As I have already said, that is not the purpose of this Bill and will be a matter for a future reform, which will not be conducted immediately, as I already explained in answer to the point from the noble Lord, Lord Coaker. The Law Commission's recommendation will have considerable weight but, at this stage, I cannot prejudge any government decision in relation to the 1989 Act.

In last week's debate, the noble Lord, Lord Coaker, asked about the Government's plans to update internal whistleblowing guidance. I can confirm that the Government regularly keep this guidance under review and, last year, they updated it to include specific reference to how to raise an issue that would require disclosure without breaching the Official Secrets Act 1989. The updated internal guidance has been shared across departments and agencies, with confirmation from all Whitehall departments that a review of their own processes and procedures has been undertaken or is planned.

Across government, organisations have also continued to undertake activities further to develop a safe and supportive culture for raising concerns. Over the last year, the majority, including all 17 Whitehall departments, have undertaken communications through awareness-raising events and campaigns, including an annual "Speak Up" campaign.

We of course understand that journalists have a specific and important role to play in holding government to account in our democratic society. We also understand that responsible journalists do not want unwittingly to put lives at risk or compromise national security. That is why we have robust processes in place which enable journalists to mitigate the harm caused when considering the publication of potentially damaging information.

For example, during the Government's public consultation on the Bill, several media stakeholders commented on the value of the Defence and Security

Media Advisory Committee—the DSMA—which alerts the media to the consequences of disclosing certain types of information and provides advice on how to mitigate damage, while leaving editors to judge whether to publish or broadcast. A number of editors already engage with this valuable process when considering the publication of sensitive information, and we encourage them, and others, to continue to do so.

The Government are committed to ensuring that these channels are safe, effective, and accessible. Accordingly, for the reasons I have just set out, the Government, with regret, cannot accept the tabled amendments and invite their withdrawal.

Lord Coaker (Lab): My Lords, I will be brief, but will start by thanking the Minister for his response and all noble Lords for their contributions to this short but important debate. I am grateful to the Minister for following up on my question from last week about what was happening with the updating of guidance for people in departments across government who wish to raise concerns. But frankly, the headline from what the Minister has said is that the Government have kicked the reform of the Official Secrets Act 1989, which was never particularly on the immediate horizon, into the long grass. That is deeply disappointing because, irrespective of one's view, the issues of the public interest defence and people being able to come forward—whistleblowers, if you want to call them that—will not go away. Reforming the Official Secrets Act would have enabled us to debate that and come up with an Act that is relevant to 2023 and beyond. As I say, it is deeply disappointing that the Minister has effectively kicked that reform into the long grass, and that is the headline from this response to the amendments. With that, I beg leave to withdraw my amendment.

Amendment 119 withdrawn.

Amendments 120 to 120B not moved.

Clause 90 agreed.

Schedule 16 agreed.

Clause 91 agreed.

Clause 92: Regulations

Amendments 121 to 123

Moved by ***Lord Sharpe of Epsom***

121: Clause 92, page 63, line 11, after "63" insert "specifying a foreign power, or a person other than a foreign power, who is not specified immediately before the regulations are made"

Member's explanatory statement

This amendment provides that regulations under clause 63 attract the affirmative procedure only if they specify a foreign power or other person not already specified. Regulations revoking a specification will be subject to the negative procedure.

122: Clause 92, page 63, line 12, leave out paragraph (b)

Member's explanatory statement

This amendment is consequential on Lord Sharpe's amendment to clause 68, page 46, line 30, which omits the regulation making power in clause 68.

123: Clause 92, page 63, line 17, at end insert—

"(fa) regulations under paragraph 27 of Schedule (Public officials);"

Member's explanatory statement

This amendment provides that regulations under the new Schedule inserted by Lord Sharpe after Schedule 13 are subject to the affirmative procedure.

Amendments 121 to 123 agreed.

Clause 92, as amended, agreed.

Clauses 93 and 94 agreed.

Clause 95: Extent outside the United Kingdom

Amendment 124

Moved by ***Lord Sharpe of Epsom***

124: Clause 95, page 64, line 13, at end insert—

"(1A) His Majesty may by Order in Council provide for any provision of this Act other than section 20 to extend (with or without modifications) to the Sovereign Base Areas of Akrotiri and Dhekelia.

(1B) An Order in Council under subsection (1A) may make consequential, supplementary, incidental, transitional or saving provision."

Member's explanatory statement

This amendment confers power to extend the Bill to the Sovereign Base Areas of Akrotiri and Dhekelia. Clause 20 is excluded from the power because clause 20 is extended to the Sovereign Base Areas by clause 95(1)(b).

Lord Sharpe of Epsom (Con): My Lords, Amendment 124 creates the power to extend any provision in the Bill with or without modification to the sovereign base areas of Akrotiri and Dhekelia in Cyprus by way of Order in Council. The provisions of the Official Secrets Acts 1911 and 1920 extend to the sovereign base areas, and this amendment will allow provisions of the Bill to be extended to the law of the sovereign base areas. This would ensure that harmful activity that the Bill addresses can be prosecuted in sovereign base areas when conducted there.

Clause 20, which provides for the aggravating factor to apply to some service offences in the Armed Forces Act 2006, has been excluded from this power given that it is already being extended to the sovereign base areas though Clause 95(1)(b).

I end by putting on record that the Government consider that any references in this Bill to the sovereign base areas will not in any way undermine the provisions of the 1960 treaty concerning the establishment of the Republic of Cyprus between the United Kingdom, Greece, Turkey and Cyprus. I therefore ask the Committee to support the inclusion of this amendment.

Lord Purvis of Tweed (LD): My Lords, I have very little to say with regard to the government amendment. I recognise the Government's sensitivity to the ongoing issue of the politics within Cyprus.

As this is the last group in Committee, I thank the Ministers today, the noble Lords, Lord Sharpe and Lord Murray, and the noble and learned Lord, Lord

[Lord Purvis of Tweed]
Bellamy, for their willingness to engage. As my noble friend Lord Wallace indicated, there is a lot of work to be done in persuading the Committee that the measures in the Bill will meet the Government's intent. There are some key areas of the Bill where we are looking for more information. I think the noble Lord, Lord Murray, indicated on an earlier group that he is reflecting and that there is more to follow. We await the correspondence from the Ministers. We are very happy to meet Ministers before Report. I say from these Benches that it might be advisable for the Government not to be in a rush to schedule Report, so that there can be proper thinking on the many aspects of the Bill about which we have highlighted problems.

Amendment 124 agreed.

Clause 95, as amended, agreed.

Clauses 96 to 98 agreed.

House resumed.

Bill reported with amendments.

House adjourned at 9.58 pm.