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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Tuesday 31 January 2023

2.30 pm

Prayers—read by the Lord Bishop of Manchester.

Reading Clerk and Clerk of the Journals

Motion to Approve

2.36 pm

Moved by ***The Lord Speaker***

That the House do approve the appointment by the Lord Speaker, pursuant to the Clerk of the Parliaments Act 1824, of Dr Christopher Johnson to be Reading Clerk and Clerk of the Journals of the House in place of Jake Vaughan, appointed Clerk of Committees.

Motion agreed nemine dissentiente.

Horizon Europe: UK Participation

Question

2.37 pm

Asked by ***Viscount Stansgate***

To ask His Majesty's Government what renewed assessment they have made of the possibility of the United Kingdom participating in the Horizon Europe research and innovation programme in 2023.

Viscount Stansgate (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper; it is not the first time that I have asked it.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): The noble Viscount is getting ahead of himself. The Government have been pushing the EU to implement our association to EU programmes, including Horizon Europe, but the EU has delayed our association, to the detriment of researchers and businesses in both the UK and the EU. If this situation persists, we will be ready to introduce a comprehensive alternative programme, which will include a new long-term talent offer, a single innovation programme uniting industry and academia, a global collaboration programme and support for world-class infrastructure.

Viscount Stansgate (Lab): My Lords, I thank the Minister for his Answer. He will surely agree that, for decades, the UK benefited hugely from our association with EU research programmes, but will he not grudgingly accept that, three years after Brexit, real damage has been done to British science by being out of it? The Royal Society wants to know, as do I: first, what will happen to the Horizon Europe guarantee fund when it runs out in March; secondly, what about the £2 billion that has been set aside for future association; and, thirdly, do the Government recognise signs of a brain drain caused by the uncertainty? In short, while we all want the UK-EU negotiations on the Northern Ireland protocol to succeed, we do not want plan B; we want plan A, as promised. When will the Government deliver it?

Lord Callanan (Con): The noble Viscount needs to take that message to the EU. The Government stand ready to implement the agreement that we freely entered into; it is the EU that is refusing to do so. I agree with the noble Viscount that Horizon Europe has been very valuable. That is why we entered into an agreement—the TCA—to continue our association, but the EU refuses to progress it.

Lord Krebs (CB): My Lords, first, does the Minister recognise that, when we were members of Horizon, we took out more money than we put in because of the excellence of our proposals? Does the Government's plan B—if we do not associate with Horizon—include the extra money that we got from the European Union from other EU countries? Secondly, does the Minister agree that, when we were members of Horizon, we gained membership from our leadership role in designing research programmes and shaping the future of Horizon? What is the Government's estimate of the loss to UK science of the lack of that leadership role?

Lord Callanan (Con): My Lords, the Government need no convincing about the benefits of association with Horizon Europe. We benefited from it. The UK has eight universities in the top 50 globally; the EU has only six. It is a multifaceted programme; exchanges benefit both sides. We were of the view that association would be a good idea; that is why we entered into the agreement. We still hope that the EU will have second thoughts.

Lord Hamilton of Epsom (Con): My Lords, the noble Viscount, Lord Stansgate, has apologised for asking the same question twice. I will do the same thing and ask why we cannot be associate members of Horizon, like Israel and Tunisia.

Lord Callanan (Con): I think my noble friend has asked that question three times. He gets the same answer every time but he is welcome to ask it again. The point that he makes is very valid. There are 15 countries in addition to the EU that have associated to Horizon, including Israel, Kosovo, Turkey and Tunisia, but, for reasons known only to itself, the EU refuses to continue the agreement.

Baroness Walmsley (LD): My Lords, the Government's plan B will not help the situation, as the Science and Technology Committee found in its report on the Government's ambition to be a scientific superpower. Our work and scientific visas and upfront health costs are up to six times as high as those of other leading scientific nations. Will the Government implement our recommendation to reduce visa fees in line with those of our competitors? If not, we will carry on losing scientists.

Lord Callanan (Con): We remain very proud of our scientific efforts and researchers continue to come from all over the world to study in the UK and to continue their research here. We want that to continue but I will certainly pass on the noble Baroness's comments to the Home Office.

Lord Winston (Lab): My Lords, something that is not mentioned enough in this argument is the collaboration between people individually within a large laboratory. In my group there were speakers of 15 European languages. We made long-term relationships with people that we could carry on while we were still in the EU. That has now been lost. How can the Government replace that?

Lord Callanan (Con): If it proves not possible to associate with Horizon, as I said—although we continue our efforts to try to persuade the EU otherwise and to fulfil the agreement that it entered into—we will have to put in place alternative arrangements involving scientists from EU countries as well as from across the world. I agree with the noble Lord, and I know he has tremendous experience in this, that research collaboration across countries and across continents is always useful.

Lord Cormack (Con): My Lords, are we not in this position because we threatened to abrogate an international treaty into which we had willingly entered? I very much want to see the protocol negotiations succeed. Where do they stand at the moment?

Lord Callanan (Con): I cannot comment on the protocol negotiations in detail. As far as I am aware, they are going well. I realise that my noble friend wants to link the two issues, but they are entirely separate. They are entirely separate agreements. Justifying the EU's unreasonable position on this helps no one.

Lord Mair (CB): My Lords, time is running out. Every university and research organisation in the country will provide examples of projects that are now in limbo. They are not being included in new EU projects because they are seen as a risk. Last week the Science Minister, George Freeman, announced that if the UK does not associate to Horizon Europe, the Government will be ready with a "comprehensive alternative" to ensure strong international collaboration opportunities—the so-called plan B—both transitional and in the longer term. How soon will more details, especially for the longer term, be announced? Does the Minister agree that there is an urgency to ending the uncertainty that is so damaging to our universities and research organisations?

Lord Callanan (Con): I agree with the noble Lord. There is a limit to how long this period of limbo can go on. We have provided guarantees to researchers, and we are funding them in the meantime. The time is approaching when we will need to make a final decision on this.

Lord Cunningham of Felling (Lab): My Lords, since the Minister has considerable experience of the European Union and its institutions, why does he think that the European Union is behaving in this remarkably unkind way? Is there some explanation or is it just a question of the EU using this issue to try to succeed in some other way in the negotiations?

Lord Callanan (Con): I think the Commission has been very clear in intimating that the issue is linked to the Northern Ireland protocol, but, as I have said, this is a separate issue. They are separate legal agreements, and we stand ready to continue the discussions about association, which is part of an agreement we already have with the EU.

Lord Bassam of Brighton (Lab): My Lords, I think we would all, on our side, feel more convinced if it was not always the case that the Government think it is someone else's fault. Surely this is the time to engage in more meaningful negotiations with our former EU partners because the time by which a decision has to be made on this is fast approaching. As I understand it, we need to agree a guarantee scheme by the end of March. That being the case, can the Minister confirm whether that is the cut-off date, and that the Government will bring forward a plan B to ensure that we have the right levels of international co-operation in research that this country urgently needs so that our businesses thrive in the future?

Lord Callanan (Con): I always stand ready to receive advice from the noble Lord about how we can meaningfully enter into negotiations with someone who does not want to meaningfully enter into negotiations with us. Obviously, the Labour Opposition know better than we do on this.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend not think that the Government might be more successful in delivering what everyone wants if the Opposition do not keep taking the side of the EU, which is responsible for this?

Lord Callanan (Con): My noble friend gets the Opposition riled more than I do sometimes. Criticism of the EU is almost blasphemy in some parts of this House, but the reality is this is the fault of the EU. We stand ready to continue the negotiations and to associate as soon as the EU is prepared to talk to us about it.

Lord Patel (CB): My Lords, not only are we not a member of Horizon Europe but we are not part of Euratom. I believe that has led to supply problems of radioisotopes imported for both treatment and measurements in medicine. What are the Government doing about that?

Lord Callanan (Con): Indeed. The noble Lord is correct. We are working to overcome those difficulties as quickly as we can.

Lord Foulkes of Cumnock (Lab Co-op): This is one of the many disasters of Brexit. What are the benefits? Could the Minister tell us what the benefits are?

Lord Callanan (Con): I do not know how long the noble Lord has got, but there are huge amounts of benefits. I could talk about all the trade agreements we have entered into or the newfound regulatory freedom we have—

Noble Lords: Oh!

Lord Callanan (Con): If the House will listen, I am prepared to spend as much time as needed on this. From financial services regulation to gene editing and gene modifications, animal rights legislation and environmental legislation—all of this is now possible, and it was not when we were members of the European Union. In this case, we have entered into an agreement with the EU. All we want it to do is implement it.

Integrated Review: Update

Question

2.48 pm

Asked by ***Lord Coaker***

To ask His Majesty's Government what progress they have made with the update to the 2021 Integrated Review of Security, Defence, Development and Foreign Policy.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, Defence is supporting the refresh of the integrated review. We must ensure that the UK remains ready to deter adversaries in the new era of strategic competition. Taking lessons learned from the past year, we will continue to modernise, build resilience and promote prosperity both domestically and across our global partner network. Any specific policy changes will be determined once the update to the integrated review is concluded. We expect this work to be completed ahead of the Treasury's Spring Statement.

Lord Coaker (Lab): My Lords, at the weekend a senior US general said that the British Army was no longer a top-tier fighting force. Yesterday the Defence Secretary said:

"I am happy to say that we have hollowed out and underfunded" —[*Official Report*, Commons, 30/1/23; col. 18.]

in reference to troop and spending cuts. Does the Minister agree with the Secretary of State? Is that really a summary of the Government's policy? Will the update of the integrated review see an end to this policy, or will it continue?

Baroness Goldie (Con): The 2021 integrated review and defence Command Paper highlighted that we must focus on capabilities rather than troop numbers per se. Through Future Soldier, the Army will have a whole focus of over 100,000, comprising 73,000 regular service personnel and 30,100 Army Reserve. However, the noble Lord made an important point about hollowness. Over time and under successive Governments, there has been underinvestment in our land capability requirements. We have recognised that and set out a plan. Future Soldier is part of that. We have published an equipment plan of £242 billion over 10 years, and the Army's proportion of that is £41 billion, covering, for example, Challenger 3, Boxer and Ajax.

I remind the noble Lord that this Government were responsible for a record-breaking finance settlement for defence—the biggest since the Cold War—and it should be acknowledged that we have made a serious attempt to try to redress the hollowing-out process over many years.

Lord Stirrup (CB): My Lords, whatever the fresh defence Command Paper has to say, it will be of value only if the Government strike an appropriate balance between ambition and resource. The Minister keeps referring to the largest spending increase on defence since the Cold War. Since virtually all spending reviews since the Cold War have meant a reduction in defence expenditure, that is not a very high bar to clear. Will the forthcoming spending review support the defence Command Paper or undermine it?

Baroness Goldie (Con): The noble and gallant Lord may consider that it is not a very high bar, but it is higher than any of the other bars that have been set, and the facts speak for themselves. He will be aware that the challenge for defence is that we have to balance the operational and remote resource demands of today with the overarching vision to modernise to meet the demands of tomorrow. In the MoD, we are confident that we can reconcile these conflicting tensions.

Lord Robathan (Con): My Lords, will my noble friend go back to the department and tell our right honourable friends the Secretary of State and the Minister for the Armed Forces that it is very welcome that they have expressed the views they have in the last couple of days, realising what a sad state the Army is in. I hate agreeing with the Labour side, but we do know that a great deal more money needs to be spent on defence.

Baroness Goldie (Con): My noble friend will have heard me say to the noble Lord, Lord Coaker, that neither I nor my ministerial colleagues deny that a challenge has confronted our land capability—a challenge spread over many years and created under successive Governments. We are cognisant of that and are doing what we can within the MoD to address it.

Baroness Smith of Newnham (LD): My Lords, following a theme that has been echoing around the Chamber, will the Minister say what assessment the MoD and His Majesty's Government have made of the fact that the IMF is predicting a recession in the United Kingdom? Given the nature of inflation and the unpredictability of the exchange rate, what impact is there likely to be on defence capabilities? In the light of all those things, is it not time to move beyond percentages of GDP as targets for defence expenditure and towards a real focus on actual capability and what the UK can deliver?

Baroness Goldie (Con): The noble Baroness will be aware that a percentage of GDP is the model that has been adopted increasingly by other states in consequence

[Baroness Goldie]
of the approach that the United Kingdom has taken to defence expenditure. In relation to current expenditure, the noble Baroness is right that we face challenges of inflation and fluctuating currency, but we have been able to make greater use of index-linked fixed price contracts, and we use pricing mechanisms where inflation risk sits with suppliers. Indeed, that has prevented higher prices being passed on. We also have forward purchasing of fuels, utilities and foreign exchange—all of which mitigates the corrosive impact of inflationary pressures.

Lord West of Spithead (Lab): My Lords, no matter how it is dressed up, it is quite clear, because even the Government have admitted it—the Secretary of State has admitted it—that we have underfunded our Armed Forces and they are hollowed out. Will we ensure that all three services have an increase in spend? For example, although there is a lot of talk about the Army, when one looks at undersea cables and the huge growth in the Russian submarine force, there is no doubt that there is a maritime threat as well. All three services must be looked at, and there is an absolute need to invest now.

Baroness Goldie (Con): I hold the noble Lord in very high regard, but I do not hold the purse strings of government. However, he sends a consistent message, and I am sure that it is resonating beyond this Chamber.

Lord Udny-Lister (Con): My Lords, the integrated review quite rightly makes the point that international agreements are key, and we are a member of the Five Eyes. As we make a greater tilt to the Far East, can the Minister assure us that there is some consideration of increasing the Five Eyes to include Japan?

Baroness Goldie (Con): I say to my noble friend that I obviously cannot be specific. Five Eyes is a very important collaboration, and it is relevant to our activity in the Indo-Pacific area. My noble friend makes an interesting suggestion. We already have a good bilateral defence and diplomatic relationship with Japan, but I listen with interest to what he says.

Baroness Stuart of Edgbaston (CB): My Lords, there is a legitimate focus on land capabilities, but I return to the question raised by the noble Lord, Lord West. We are a maritime power, and it has been our ambition to be a world-leading one. We should not overlook the threat in the Baltic and North Atlantic, which contribute to the security not just of the UK but of northern Europe.

Baroness Goldie (Con): I reassure the noble Baroness by referring her to the ambitious shipbuilding programme for the Royal Navy. We are watching with interest the emerging development of the Type 26 on the Clyde and the Type 31 at Rosyth. Of course, the fleet solid support ships were recently announced; they will involve Harland & Wolff and will be built principally in Belfast. But the noble Baroness is quite correct: we are a maritime nation, we realise that and I think she will agree that there has been a very healthy investment in our maritime capability.

Lord Campbell of Pittenweem (LD): My Lords, are the Government not embarrassed that they have had to admit to our closest ally, the United States, that the British Army can no longer put a fully equipped armoured division in the field? If they are not embarrassed, they should be.

Baroness Goldie (Con): The noble Lord will understand that, in this day and age, we cannot look at one aspect of capability on its own—that is not how we deal with and address threats now. The key to how we operate is, first, co-operation with allies; it is also agility in how we respond and making sure that we have the technology and equipment to respond. Although there is no denying—and I have not attempted to deny—that we have seen a hollowing out of our land capability over some decades, it would be quite wrong to give the impression that MoD in the UK does not have a very solid capability: we do. It is important, particularly having regard to the instability in other parts of the world, that we do not talk down our Armed Forces, not least for the morale of the men and women who serve so bravely in them.

Lord Anderson of Swansea (Lab): My Lords, since publication two years ago, surely there has been a major global change—namely, the illegal invasion of Ukraine. Is not one of the lessons of those two years that we should concentrate more on European defence and give up the illusion of a greater tilt to the Indo-Pacific?

Baroness Goldie (Con): We do concentrate on Euro-Atlantic security, and the swiftness with which we responded—indeed, led the response—to the illegal invasion of Ukraine is tangible evidence of that. But I agree with the noble Lord: the threats that we face nowadays are multifaceted, and it is important that we devise a capability that can respond to the character of that new threat. The noble Lord will be aware that we are dealing not just with traditional land, sea and air domains; we now deal with space, cyber and electro-magnetic domains. It is a complicated world in which we live.

Broadband: Social Tariffs

Question

2.59 pm

Asked by ***Baroness Kennedy of Cradley***

To ask His Majesty's Government what steps they are taking to ensure that eligible households are aware of the social broadband tariffs available to them.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, while there is a good availability of low-cost offers for broadband customers, low take-up remains an issue, partly due to the need for greater awareness. My department is working with a range of parties, including other government departments, jobcentres, libraries, local authorities, charities, consumer groups and internet service providers, to get the message

to everyone eligible. The Government are also raising awareness through the UK-wide Help for Households campaign so that families up and down the country know how and where to find these offers.

Baroness Kennedy of Cradley (Non-Afl): My Lords, millions and millions of people—up to 4 million on benefit—are spending more than they need to on their broadband, as the take-up of social tariffs is shockingly low. We need to do more. Digital inclusion matters: without it, we know that people are economically and socially disadvantaged. I take the point about awareness but is it not time for the Government to work with internet service providers to do two things? First, they should ensure an industry standard for all social tariffs for speed, terms and costs. Secondly, and most importantly, they should create an auto-enrolment scheme so that everybody who is entitled to a social tariff and a data voucher receives them.

Lord Parkinson of Whitley Bay (Con): I am very grateful to the noble Baroness, whose Question is helping us to raise awareness for all those that need it. As I said, we are working with a number of groups and parties across the country to get the message out. She rightly underlines the importance of the internet to the way everybody leads their lives. One of the myths to bust is that the speed provided on a social tariff is inferior to other ones. Many providers offer very good services for people, and we are keen to get the message out, through our communications campaign and our work with the Department for Work and Pensions, on the other issues she mentions.

Lord Kirkhope of Harrogate (Con): My Lords, the Minister is right in what he says, but while we all support the universal need for broadband, since 26 December last year, as he knows, planning regulations have been changed so that all new-build housing must have full-fibre broadband provision. Is he satisfied with that, and does he not think there are other ways in which we can encourage providers to provide full fibre for a much wider area of the country?

Lord Parkinson of Whitley Bay (Con): My noble friend is right to point to the changes that were made in the building regulations on Boxing Day. That, of course, sits alongside the work we have taken forward through two telecommunications infrastructure Acts to help ensure that connectivity reaches more households, particularly those in large blocks of flats. It accompanies our wider work to ensure that everyone has access to high-speed internet. As a result of that, 73% of UK premises can now access gigabit-capable broadband, a huge increase from just 6% this time four years ago.

Lord Clement-Jones (LD): My Lords, lack of access to digital devices is a major cause of data poverty. What resources are the Government providing, and what steps are they taking, to make sure that public bodies such as GP practices and schools ensure that families in data poverty can access digital-only services? Do the Government even have a comprehensive digital exclusion policy?

Lord Parkinson of Whitley Bay (Con): By its nature, this, of course, touches on the work of any government department. The Department for Education, through its digital entitlement programme, is equipping people with digital skills. DCMS encourages departments to consider, when making policy, the needs of people who might be digitally excluded. It is supporting that through, for instance, its work with the approximately 2,900 libraries nationwide to make sure that people can get online there if they need to.

Lord Berkeley (Lab): My Lords, is the Minister aware that BT has said that by 2025, it is going to disconnect all wi-fi copper connections, and that the average cost for all consumers will be about £100 a month? How is anybody going to afford this?

Lord Parkinson of Whitley Bay (Con): We are working with providers to make sure that faster broadband connection can be rolled out to people across the country and that those costs are not passed on to consumers. It is of course in providers' interests to provide fast connections and products that people want to use.

Baroness Finlay of Llandaff (CB): My Lords, given the pressure on hospital beds and the move to virtual wards, whereby patients are looked after at home and monitored through electronic devices, what are the Government doing to ensure the rapid installation of adequate broadband in homes with no connectivity, so that patients can be cared for in these virtual wards —which are being set up specifically because there are not enough beds in the NHS to take them?

Lord Parkinson of Whitley Bay (Con): The noble Baroness touches on work about which it may be better for my colleagues in the Department of Health and Social Care to respond. We are working to ensure that everybody has connection to high-speed internet, and through social tariffs it is now available in 99% of the country.

Baroness Altmann (Con): My Lords, many millions of people can neither afford to use internet broadband nor even own a smartphone, especially the elderly. Government figures suggest that more than 90% of people under 60 are digitally enabled, but approximately half of over-75s are not. Can my noble friend the Minister comment on the apparent age discrimination inherent in allowing the accessing of essential public services, banking, making parking payments and more to require ownership or use of an app or the internet? What is the Government's strategy for remedying that digital exclusion?

Lord Parkinson of Whitley Bay (Con): My noble friend is right about the different impacts this has on people of different ages. While accessing services online provides clear benefits to people, I know that many companies are mindful of those who are not yet able to do so. As I have said, we are ensuring that everyone who wishes to do so has access to high-speed internet. Through social tariffs, they know that they can afford it, so if they wish to access those services online, they can.

Lord Sikka (Lab): My Lords, the Government are handing £5 billion to BT for broadband provision. Under that deal, BT will keep the resulting assets and income streams for years and years to come. Can the Minister explain why, as part of that deal, the Government did not ask for free broadband for all poor and vulnerable households?

Lord Parkinson of Whitley Bay (Con): As I have said, the industry is responding, with a number of operators providing low-cost social tariffs for people who want them. We think that a voluntary, market-led approach is the quickest way to provide fast internet connection to everybody, and we are very grateful for the industry's co-operation.

Lord Hunt of Kings Heath (Lab): My Lords, can the Minister come back to the question raised by the noble Baroness, Lady Altmann? It appears that some government departments will accept payments only if they are made online, thereby excluding millions of people from engagement. What are the Government going to do to be more inclusive?

Lord Parkinson of Whitley Bay (Con): My Lords, I will discuss that with colleagues in other departments who are responsible for that particular aspect.

Baroness Merron (Lab): My Lords, as the Minister himself acknowledged, automatic verification of eligibility for cheaper broadband and mobile tariffs is just one side of the story, as only 136,000 households are signed up, with potentially millions not receiving the help they could benefit from. What assessment has been made of the low-income groups who are missing out? Can the Minister commit to a targeted rather than a general campaign to increase take-up—for example, contacting claimants directly? After all, the Government are aware of who they are.

Lord Parkinson of Whitley Bay (Con): The Department for Work and Pensions is working with operators to ensure that the digital verification system is consistent with that. Earlier this month, Sky became the first national provider to go live on that system, with others following in the coming weeks and months. The noble Baroness is right: this and our broader work to help households is part of a large communications campaign that is indeed targeted at the households we think will benefit from it. For example, there are adverts on cash-points, the sides of buses and pub TV screens, and leaflets have been disseminated to 150 supermarkets and to food banks and hospitals around the country to ensure that the message gets to those who will benefit from it.

Baroness Blower (Lab): My Lords, would the Minister like to try again to answer my noble friend Lord Sikka's question? Can he say why BT has not been required to offer free broadband to the poorest and most vulnerable in our society, who clearly have some of the greatest need?

Lord Parkinson of Whitley Bay (Con): I did answer the question. We consider that the quickest way to get this help out is through a voluntary, market-led approach. The social tariffs are available in 99% of the country, and our communications work is to ensure that people are aware of them and take them up.

Vulnerable Households: Energy Costs

Question

3.09 pm

Asked by ***Baroness McIntosh of Pickering***

To ask His Majesty's Government what steps they are taking to help vulnerable households with energy costs; and what is the role of Ofgem in delivering affordable energy.

Baroness McIntosh of Pickering (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and in doing so I refer to my entry on the register as honorary president of National Energy Action.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, as part of the Government's comprehensive package of support, in addition to the energy bills support scheme, EBSS, and the energy price guarantee, EPG, there is further targeted support for vulnerable households to help them to navigate these challenging times. This includes a cost of living payment of £900 to households on means-tested benefits, £300 to pensioner households and £150 to individuals on disability benefits. Ofgem is supporting the Government to deliver EBSS and EPG.

Baroness McIntosh of Pickering (Con): I pay tribute to the Government's warm home discount scheme and accept that it has been an enormous success. Recently, the chief executive of Ofcom has asked for a serious assessment of introducing a social tariff. Given the fact that Citizens Advice recognises that there has been an excess profit of £7.9 billion this year for electricity distribution companies, will my noble friend do one of two things: either introduce a new social tariff or increase the warm home discount? Instead of asking other households to pay for it, will he ask the electricity distribution companies to pay for the increase?

Lord Callanan (Con): There were a lot of questions there. The issue around social tariffs is that the warm home discount was introduced in the first place to replace various social tariffs on offer because this was considered to be a better way of supporting vulnerable households, but we always keep these things under review. I did not quite understand my noble friend's point about excess profits. If she was talking about suppliers, many suppliers have actually gone bankrupt; they are not making excess profits. If she was talking about generators, we have already imposed an excess profit levy on generators.

Lord Watts (Lab): My Lords, will the Minister explain why energy bills in the UK are double what they are in the rest of Europe? Can he explain that to the customers?

Lord Callanan (Con): I am interested to see the noble Lord's figures on that. Various amounts of support are being imposed by different Governments, at different levels and in different ways, so there is a mixed picture across Europe. I know that the German Government, for instance, are putting a huge amount of money behind bills support, as indeed are the UK Government. I struggle to believe that bills are double what they are in Europe.

Lord Teverson (LD): My Lords, one reason we have very high energy prices, obviously apart from Putin himself, is that we are still very reliant on gas for heating and the generation of electricity. Should not one of the tasks of Ofgem be to persuade the Government to make sure that they have as one of their prime objectives the decarbonisation of our electricity system, not least to make sure that we have connections into the grid—it is a crisis at the present moment?

Lord Callanan (Con): Ofgem does not need to persuade the Government to do that. We already have decarbonisation of the grid as one of our prime objectives. The noble Lord is right that we still rely very heavily on gas. It is a falling proportion of our generation, as we roll out more and more renewables, but it is a transition. We are advanced on that transition but we clearly need to go faster.

Baroness Finlay of Llandaff (CB): My Lords, I want to follow on from my previous question about patients at home, some of whom are handicapped children and people on ventilators, using oxygen concentrators and so on; these are pieces of equipment which consume a high amount of electricity. Have the Government undertaken an audit to look at the excess cost borne by these families, where the care is happening at home and such equipment has been installed? Following data from that audit, is there any review of the benefits available in those situations, particularly where there are young people who are extremely handicapped but living at home?

Lord Callanan (Con): Many of those families are on benefits and I outlined earlier some of the support that is being offered. Ofgem also requires energy suppliers and network operators to maintain a priority services register and to provide free non-financial support to people in vulnerable situations with their energy. Customers in such a situation should contact their supplier and their network operator to register.

The Lord Bishop of St Edmundsbury and Ipswich: My Lords, I recognise that my question connects with the previous Oral Question. Listening to clergy in my diocese who are operating food banks and warm spaces, they say to me that one of the biggest challenges that vulnerable households are facing as they try to pay their energy bills is accessing information, particularly when it is available only online. What assurance can the Minister give that those responsible for delivering affordable energy, including Ofgem, will use or require the use of alternatives to electronic forms of communication when trying to reach those in need, including partnering with service providers such as food banks?

Lord Callanan (Con): Ofgem tries really hard to connect the most vulnerable consumers, to make sure they get the support that they require. There are a number of different forms of payment: people can still pay their bills manually using cash if they wish to do so, and there are prepayment meters which are manually upgraded with tokens, as well as those that are available to update online. There is a variety of payment methods, but we stand ready to assist vulnerable consumers in every way we can.

Baroness Blake of Leeds (Lab): My Lords, it is now well documented that prepayment customers, many of whom are the least well off in our society, are charged a higher rate for their energy. Do the Government fully recognise the injustice of thousands more families being forced on to prepayment meters and higher rates at a time when so many are facing severe cost of living pressures—for example, we saw the announcement that grocery price inflation has now gone up to 16.7%? Can the Minister assure us that this area is being treated with the urgency it deserves and that we will see some recommendations coming forward swiftly?

Lord Callanan (Con): I can indeed reassure the noble Baroness that there are extensive regulatory protections in this area. Ofgem rules are clear that suppliers can install a prepayment meter to recover a debt only as a very last resort, and they require energy suppliers to offer a prepayment service only when it is safe to do so. The noble Baroness will have seen that my Secretary of State announced a five-point plan last week, and the Minister of State for Energy has had a meeting with the energy suppliers to discuss this matter. We are on top of it.

Baroness Pinnock (LD): My Lords, it is estimated that there will be 8.4 million households in fuel poverty by next April. The warm home discount is clearly not sufficient or adequate to meet that need. Which utility companies provide social tariffs that do not have to be applied for and are offered to customers in need? Why on earth can the Government not, through Ofgem, ensure that social tariffs are provided for electricity and gas payments?

Lord Callanan (Con): Let me repeat the answer I gave to my noble friend Lady McIntosh earlier: we used to have a system of social tariffs which was judged to be ineffective. That is why we moved to the warm home discount payment, which, of course, has been increased this year. We keep these matters about the best way of getting support to vulnerable consumers under review, and we will continue to look at this.

Baroness Altmann (Con): Would my noble friend comment on the need to reform the standing charge for energy pricing? For the most vulnerable households and, for example, single-person households, regardless of how much they try to cut their energy use, they cannot escape the standing charge—which has in many cases doubled to several hundred pounds per year. I understand that part of the rationale for that is to help pay for the cost of failed gas providers, but this charge is paid even by those who have electricity and no gas.

Lord Callanan (Con): I know that the standing charge is a subject of controversy, but it is there to cover the costs of providing a supply: the cables, the network and the infrastructure. Included within that are some of the costs for what is called the supplier of last resort function, which includes some of the suppliers that went bust in recent years. They were not just gas suppliers; there were a lot of electricity suppliers as well. We think it is right that these costs should be socialised, because otherwise people would be disconnected from suppliers completely.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, the Minister is very good at the gobbledegook but could he explain why the decrease in wholesale prices is not passed on by decreasing the price to consumers?

Lord Callanan (Con): I am sorry if the noble Lord thinks I am spouting gobbledegook but let me try to explain it to him. Many of the suppliers have hedged their supplies over the longer term, so they paid increased amounts. When the price cap is reviewed and the wholesale prices are coming down then eventually that will feed through into lower prices as well. The noble Lord shakes his head but this is one of the protections put in place for consumers to prevent the large increases which would have happened otherwise.

Strikes (Minimum Service Levels) Bill

First Reading

3.20 pm

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

Business of the House

Motion on Standing Orders

3.20 pm

Moved by ***The Lord Privy Seal***

That Standing Order 44 (No two stages of a Bill to be taken on one day) be dispensed with on Tuesday 7 February to enable the Northern Ireland Budget Bill to be taken through its remaining stages that day.

Baroness Hoey (Non-Afl): My Lords, the Northern Ireland Budget Bill is clearly very important to people in Northern Ireland. I fully understand why His Majesty's Government want to get this legislation through in one day, but it is important that your Lordships remember the reason why we have to do this. We are doing this because there is no Executive and there is no Executive because of the protocol.

The Northern Ireland Protocol Bill had its First Reading here in July, then we had Second Reading in October, three long days of Committee and then silence. As the Bill is so important, I want to query why this is. Can the Minister give us some idea of when this very important Bill, which should be going through while the negotiations are continuing, will come back to your Lordships' House?

Every week something new happens that affects people in Northern Ireland because of the protocol. We have a ridiculous situation where, if I fly from Belfast to Faro or Mallorca, I do not get duty free. If I fly to London, I do not get duty free. If I fly from London to Mallorca or Faro, I get duty free. When I asked His Majesty's Government why this is, I was not told the honest reason: Northern Ireland has been left in the EU and therefore the EU will not allow us duty free, and neither will His Majesty's Treasury. We are in a twilight, limbo situation. Your Lordships must realise that this cannot go on. Will the Minister kindly tell us when the protocol Bill is coming back to this House?

Lord Cormack (Con): Before my noble friend replies, could he accept that many of us wish the Government every possible success in their negotiations? This protocol came about as a result of a treaty negotiated by Her Majesty's Government, as they then were. Therefore, we bear responsibility for it. They tried to fit things into a straitjacket when it should have been, as I said last week, a much more flexible garment, but the fact is that this should be sorted out by negotiation and not by a totally unsatisfactory Bill being driven through your Lordships' House. It is a very great pity indeed that those who have been elected to represent people in Northern Ireland are sulking rather than meeting, as they should, in the Assembly to which they were elected to debate this and other things.

The Lord Privy Seal (Lord True) (Con): My Lords, I venture to say that we have a Motion before us relating to the Northern Ireland Budget Bill. I think we have heard from these short interventions the divergent opinion in your Lordships' House about current matters and policy in Northern Ireland.

I cannot, as was alluded to earlier, give any specific response on timing, but all noble Lords will be united on the importance of getting this right and having full and due respect for the feelings and needs of all the people in Northern Ireland. That is something I think everybody in this House shares.

So far as this Bill is concerned, the noble Baroness said it is a pity that it is one day. Following the unfortunate events in 1909 to 1911, it is normal practice for a money Bill to be considered in one day. That will be the same for the Northern Ireland Budget Bill.

Motion agreed.

Built Environment Committee

Communications and Digital Committee

Conduct Committee

Constitution Committee

Delegated Powers and Regulatory Reform Committee

Economic Affairs Committee

Environment and Climate Change Committee

European Affairs Committee

Finance Committee

Joint Committee on Human Rights

Industry and Regulators Committee

International Agreements Committee

International Relations and Defence Committee

Justice and Home Affairs Committee

Liaison Committee

National Security Strategy Committee

Procedure and Privileges Committee

Public Services Committee

Science and Technology Committee

Selection Committee

Services Committee

Statutory Instruments Committee

Artificial Intelligence in Weapon Systems Committee

Education for 11 to 16-Year Olds Committee

Horticultural Sector Committee

Integration of Primary and Community Care Committee

Membership Motions

3.24 pm

Built Environment Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Faulkner of Worcester, Lord Goddard of Stockport, Lord Greenhalgh and Lord Mawson be appointed members of the Select Committee, in place of Baroness Bakewell, Lord Grocott, Lord Haselhurst, the Earl of Lytton and Lord Stunell.

Communications and Digital Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Baroness Fraser of Craigmaddie, Baroness Healy of Primrose Hill, Lord Kamall, the Lord Bishop of Leeds and Baroness Wheatcroft be appointed members of the Select Committee, in place of Baroness Bull, Baroness Rebuck, Lord Vaizey of Didcot and the Lord Bishop of Worcester.

Conduct Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Baroness Mallalieu and Lord Scriven be appointed members of the Select Committee, in place of Baroness Donaghy and Baroness Hussein-Ece.

Constitution Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Anderson of Ipswich, Baroness Andrews, Lord Foulkes of Cumnock, Lord Keen of Elie, Lord Mancroft and Lord Strathclyde be appointed members of the Select Committee, in place of Lord Faulks, Baroness Fookes, Lord Hennessy of Nympsfield, Lord Howarth of Newport, Lord Howell of Guildford, Lord Robertson of Port Ellen and Lord Sherbourne of Didsbury.

Delegated Powers and Regulatory Reform Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Baroness Bakewell of Hardington Mandeville, Lord Carlile of Berriew, Lord Goodlad, Baroness Humphreys and the Earl of Lindsay be appointed members of the Select Committee, in place of Baroness Browning, Lord Goddard of Stockport, Lord Haselhurst, Baroness Meacher and Lord Tope.

Economic Affairs Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Blackwell, Lord Davies of Brixton, Baroness Liddell of Coatdyke, Lord Londesborough, Lord Turnbull and Lord Verjee be appointed members of the Select Committee, in place of Viscount Chandos, Lord Fox, Lord Livingston of Parkhead, Lord Monks, Lord Skidelsky and Lord Stern of Brentford.

Environment and Climate Change Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Baroness Bray of Coln, Lord Bruce of Bennachie, Lord Duncan of Springbank and Baroness Jones of Whitchurch be appointed members of the Select Committee, in place of Lord Browne of Ladyton, Baroness Chalker of Wallasey, Lord Colgrain and Baroness Northover.

European Affairs Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Adonis, Baroness Anelay of St Johns, Baroness Blackstone, Baroness Ludford and Baroness Nicholson

of Winterbourne be appointed members of the Select Committee, in place of Lord Faulkner of Worcester, Lord Foulkes of Cumnock, Lord Purvis of Tweed and Lord Tugendhat.

Finance Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Reay be appointed a member of the Select Committee, in place of Baroness Noakes.

Joint Committee on Human Rights

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Alton of Liverpool, Lord Dholakia, Baroness Kennedy of The Shaws, Baroness Lawrence of Clarendon and Baroness Meyer be appointed members of the Select Committee, in place of Baroness Chisholm of Owlpen, Lord Dubs, Baroness Ludford, Baroness Massey of Darwen and Lord Singh of Wimbledon.

Industry and Regulators Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Viscount Chandos, Lord Clement-Jones, Lord Gilbert of Panteg and Lord Leong be appointed members of the Select Committee, in place of Lord Blackwell, Lord Eatwell, Baroness Donaghy and Lord Sharkey.

International Agreements Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Fox, Lord Geidt, Lord Howell of Guildford, Baroness Kingsmill and Lord Marland be appointed members of the Select Committee, in place of Lord Gold, Lord Lansley, Baroness Liddell of Coatdyke, Lord Oates and the Earl of Sandwich.

International Relations and Defence Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Ashton of Hyde, Baroness Coussins, Baroness Morris of Bolton, Lord Robertson of Port Ellen and Lord Soames of Fletching be appointed members of the Select Committee, in place of Baroness Anelay of St Johns, Lord Alton of Liverpool, Baroness Blackstone, Baroness Fall and Baroness Rawlings; and that Lord Ashton of Hyde be appointed chair of the Select Committee.

Justice and Home Affairs Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Beith, Lord Filkin, Baroness Henig, Baroness Meacher, Baroness Prashar and Lord Sandhurst be appointed members of the Select Committee, in place of Lord Dholakia, Baroness Hallett, Lord Hunt of Wirral, Baroness Kennedy of The Shaws, Baroness Primarolo and Lord Ricketts.

Liaison Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Bichard, Baroness Donaghy and Lord Haskel be appointed members of the Select Committee, in place of Lord Bradley, Baroness Coussins and Lord Davies of Oldham.

National Security Strategy Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Ashton of Hyde, Baroness Fall and Lord Robathan be appointed members of the Select Committee, in place of Baroness Anelay of St Johns, Baroness Hodgson of Abinger and Baroness Neville-Jones.

Procedure and Privileges Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Baroness Bull, Baroness Butler-Sloss, Lord McNally and Lord Strathclyde be appointed members of the Select Committee, in place of Lord Bew, Lord Eames, Baroness Harris of Richmond and Lord Mancroft; and the Earl of Caithness, Baroness Gohir and Lord Laming be appointed alternate members of the Select Committee, in place of Baroness Browning, Baroness Finlay of Llandaff and Lord Turnbull.

Public Services Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Bach, Baroness Bertin, Lord Blencathra, Baroness Campbell of Surbiton, Lord Carter of Coles, Lord Laming, Lord Prentis of Leeds, Lord Shipley and Baroness Stedman-Scott be appointed members of the Select Committee, in place of Baroness Armstrong of Hill Top, Lord Bichard, Lord Bourne of Aberystwyth, Baroness Chisholm of Owlpen, Lord Filkin, Lord Hogan-Howe, Baroness Pinnock, Baroness Pitkeathley and Baroness Sater; and that Baroness Morris of Yardley be appointed chair of the Select Committee.

Science and Technology Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Borwick, Baroness Neuberger, Baroness Neville-Jones, Baroness Northover and Lord Sharkey be appointed members of the Select Committee, in place of Baroness Blackwood of North Oxford, Baroness Manningham-Buller, Baroness Rock, Baroness Sheehan and Baroness Walmsley.

Selection Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Bichard be appointed a member of the Select Committee, in place of Baroness Coussins.

Services Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Baroness Hussein-Ece be appointed a member of the Select Committee, in place of Lord Clement-Jones.

Statutory Instruments Committee

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Lord Leong and Lord Sahota be appointed members of the Select Committee, in place of Baroness Gale, Lord Haskel and Baroness Newlove.

Artificial Intelligence in Weapon Systems Committee

Moved by ***The Senior Deputy Speaker***

That a Select Committee be appointed to consider the use of artificial intelligence in weapon systems, and to make recommendations; and that, as proposed by the Committee of Selection, the following members be appointed to the Committee:

Anderson of Stoke-on-Trent, B, Browne of Ladyton, L, Camrose, V, Clement-Jones, L, Coventry, Bp, Doocey, B, Fairfax of Cameron, L, Grocott, L, Hamilton of Epsom, L, Hodgson of Abinger, B, Houghton of Richmond, L, Lisvane, L (Chair), Symons of Vernham Dean, B.

That the Committee have the power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have power to meet outside Westminster;

That the Committee do report by 30 November 2023;

That the report of the Committee be printed, regardless of any adjournment of the House; and

That the evidence taken by the Committee be published, if the Committee so wishes.

Education for 11 to 16-Year Olds Committee

Moved by ***The Senior Deputy Speaker***

That a Select Committee be appointed to consider education for 11 to 16-year olds with reference to the skills necessary for the digital and green economy, and to make recommendations; and that, as proposed by the Committee of Selection, the following members be appointed to the Committee:

Aberdare, L, Baker of Dorking, L, Blower, B, Evans of Bowes Park, B, Garden of Frognal, B, Johnson of Marylebone, L (Chair), Lexden, L, Mair, L, Massey of Darwen, B, Knight of Weymouth, L, Storey, L, Watson of Invergowrie, L.

That the Committee have the power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have power to meet outside Westminster;

That the Committee do report by 30 November 2023;

That the report of the Committee be printed, regardless of any adjournment of the House; and

That the evidence taken by the Committee be published, if the Committee so wishes.

Horticultural Sector Committee

Moved by ***The Senior Deputy Speaker***

That a Select Committee be appointed to consider the development of the horticultural sector, and to make recommendations; and that, as proposed by the Committee of Selection, the following members be appointed to the Committee:

Arran, E., Buscombe, B, Carter of Coles, L, Colgrain, L, Curry of Kirkharle, L, Fookes, B, Jones of Whitchurch, B, Redesdale, L (Chair), Sahota, L, Walmsley, B, Willis of Summertown, B.

That the Committee have the power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have power to meet outside Westminster;

That the Committee do report by 30 November 2023;

That the report of the Committee be printed, regardless of any adjournment of the House; and

That the evidence taken by the Committee be published, if the Committee so wishes.

Integration of Primary and Community Care Committee

Moved by ***The Senior Deputy Speaker***

That a Select Committee be appointed to consider the integration of primary and community care, and to make recommendations; and that, as proposed by the Committee of Selection, the following members be appointed to the Committee:

Altrincham, L, Armstrong of Hill Top, B, Barker, B, Finlay of Llandaff, B, Kakkar, L, Osamor, B, Pitkeathley, B (Chair), Redfern, B, Shephard of Northwold, B, Tyler of Enfield, B, Watts, L, Wyld, B.

That the Committee have the power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have power to meet outside Westminster;

That the Committee do report by 30 November 2023;

That the report of the Committee be printed, regardless of any adjournment of the House; and

That the evidence taken by the Committee be published, if the Committee so wishes.

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, these 26 Motions give effect to the rotation rule that is applied each January, following the recent meeting of the Committee of Selection, to secure a regular turnover of Select Committee memberships and establish the 2023 special inquiry committees. I place on record my thanks to those Members who are rotating off Committees for their service, and welcome those noble Lords who will be joining the hard-working committees of the House. I beg to move.

Motions agreed.

Secondary Legislation Scrutiny Committee

Membership Motion

3.25 pm

Moved by ***The Senior Deputy Speaker***

That, as proposed by the Committee of Selection, Baroness Harris of Richmond, Lord Hunt of Wirral, Baroness Lea of Lymm, Baroness Randerson, Baroness Ritchie of Downpatrick, Lord Russell of Liverpool and Lord Thomas of Cwmgiedd be appointed members of the Select Committee, in place of Baroness Bakewell of Hardington Mandeville, Lord German, Viscount Hanworth, Lord Hodgson of Astley Abbotts, the Earl of Lindsay, Lord Lisvane and Baroness Watkins of Tavistock; and that Lord Hunt of Wirral be appointed chair of the Select Committee.

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, the Secondary Legislation Scrutiny Committee conducts excellent scrutiny of secondary legislation. Indeed, the committee makes one of the most valuable contributions that the House makes to scrutiny and public policy discourse.

The noble Lord, Lord Hodgson, raised his concerns with me and the Committee of Selection that seven members of the committee are rotating off this month. He requested that a different course of action be adopted. The noble Lord's proposal to address the issue was that three of the seven members of the committee should be permitted to serve a further year, resulting in those members serving on the committee for four and a half years in total.

For many years, your Lordships have recognised the need to ensure that as many Members of the House as possible can sit on committees through a rotation rule. To give greater certainty, the House agreed in October 2020 to have a rotation rule based on three consecutive calendar years or parts of years. As all noble Lords know, Select Committee places are highly sought after. Members of your Lordships' House have a wealth of experience that contributes to the high-quality output of committees and the scrutiny that they undertake.

I shared the proposals from the noble Lord, Lord Hodgson, with the usual channels. I then took his request to the Committee of Selection at its meeting earlier this month. I can assure noble Lords that the usual channels and the committee considered this request carefully. The Committee of Selection agreed unanimously to proceed with the Members nominated to the Secondary Legislation Scrutiny Committee. It was deemed important that we maintain the same process across all committees; indeed, it is not uncommon for there to be the proportion of change on Select Committees that there has been in this year's rotations.

The noble Lord's amendment states that the rotation

"will undermine the quality of service the Committee gives to the House".

I take this charge very seriously indeed. Respectfully, I take a different view. First, I emphasise the qualities of the proposed new members of the Secondary Legislation Scrutiny Committee. These noble Lords are of considerable standing. I am confident that, alongside the four excellent members who remain, they will serve the committee with distinction. As all of us who have been privileged to serve on committees know, there are also officials who ensure their smooth running. Five officials support this committee's work and will, I know, help to ensure the continuity of what we all deem to be exemplary service.

The noble Lord, Lord Hodgson, calls for the Committee of Selection to produce a plan to ensure that, in future, rotations are

"as close as possible to one third of the total membership of the Secondary Legislation Scrutiny Committee".

The problem is that the amendment presumes knowledge of when casual vacancies may occur. The Committee of Selection cannot guarantee the number of future rotations in any given year. Casual vacancies will impact on any prediction of future vacancies.

There is one further point I wish to emphasise. I take myself back to when I was a Minister at Defra. Six noble Lord were appointed to this committee in July 2019. As I say, I was a Minister then, and I am afraid that that committee caused the department a very considerable amount of work—I am looking at one or two noble Baronesses here who were involved in that as Opposition Front Bench Defra. At no point, and I say this honestly and candidly, did I reflect in the months afterwards that the committee did anything other than provide consistently strong scrutiny of secondary legislation. Indeed, I took the opportunity to discuss this with one or two Defra colleagues last night, because I was so fussed about the matter, and they said, "No, the scrutiny committee was consistently strong and robust—and of course, it kept the department on its toes".

3.30 pm

I do not want to labour this, because there is a way forward. Chairs can plan ahead and there are examples of committees taking proactive steps. These steps do not need an amendment to address this. If, indeed, the proposed chair, the noble Lord, Lord Hunt of Wirral, wishes to discuss these matters, I would warmly welcome that.

I conclude by saying that Members of your Lordships' House have a wealth of experience to offer committees. We have a rotation rule to ensure that we can utilise this—as well, of course, as ensuring fairness. My purpose is to ensure that our Select Committees flourish. It is perhaps why I am stung by the accusation that I could countenance anything that might jeopardise that quality of service. So, I know we may have a debate on this, but I emphasise what I think is my punctiliousness in seeking to do the right thing for the House. I beg to move.

Amendment to the Motion

Moved by ***Lord Hodgson of Astley Abbotts***

At end insert "but that this House, whilst recognising the qualities of the proposed new members of the Secondary Legislation Scrutiny Committee, and whilst entirely supporting the need for appropriate rotation of members, deplores the decision to rotate off at the same time seven out of 11 members of the Committee, including the chair, now and every three years hereafter; believes that this will undermine the quality of service the Committee gives to the

House; and therefore calls on the Committee of Selection (1) to ensure that future rotations should be as close as possible to one third of the total membership of the Secondary Legislation Scrutiny Committee, and (2) to report to the House before the House rises for the summer recess setting out how this will be achieved".

Lord Hodgson of Astley Abbotts (Con): My Lords, I am extremely grateful to my noble friend the Senior Deputy Speaker for his explanation of what has gone before and I want to place on record from the beginning his courtesy to me and his openness, for which I am extremely grateful. I had hoped to be able to table this amendment in the name of the Secondary Legislation Scrutiny Committee as a whole, but that is not permissible under the rules of your Lordships' House, so it is in my name as chairman. However, I want the House to be aware that it is a unanimous request from every member of the committee. Seven of them are listed in the paper before noble Lords, and the four who are not listed are the noble Lord, Lord Powell, from the Cross Benches, the noble Lords, Lord Rowlands and Lord Hutton, from the Opposition, and the noble Lord, Lord De Mauley, from the Government Benches.

I emphasise that because I want the House to understand that we are not revolutionaries; we are not here to try to overthrow all the procedures of the House. But, as a group, we believe very strongly that your Lordships' role in scrutinising and holding the Government of the day to account is critical to the performance of our House. I am afraid that we on the SLSC believe, with due respect to the Committee of Selection, that on this occasion process, the administrative operation of the House, has trumped purpose, the effective operation of our committee. We believe that this is the wrong way round. Purpose and performance should come before process.

Before I explain that in a little more detail, I want to make it clear what this amendment is not about. First, we do not argue that we are uniquely qualified to sit on the SLSC—far from it. We have no doubt about the estimable qualities of those are going to take our place. Speaking personally, I have no doubt that my noble friend Lord Hunt of Wirral, who is proposed as my successor as chairman, will carry out the role of committee chair every bit as well as, and better than, I have.

Secondly, this amendment is not an attack on the principle of rotation. All committees need regular injections of new blood to keep their thinking and their approach fresh and up to date. Thirdly, this amendment is not an attack on the decision of the House to change the measurement of time served by an individual on the committee from parliamentary Sessions to calendar years. That must have been a good decision, because calendar years are fixed and parliamentary Sessions are not. But the switch from one method to the other has had a series of dreaded "unforeseen consequences", with which all Members of your Lordships' House are familiar, as regards the rotation of committee membership.

I know we are not alone in our concerns. Other committee chairs may wish to add their perspectives. But the impact on the SLSC is particularly challenging. Today, the House will rotate off seven of the 11 members of the committee—two-thirds, including the chairman. This time next year, the House will rotate off one—just one. Two years from now, the House will rotate off the remaining three, and the following year, we will go back to seven again, this time including my noble friend Lord Hunt, whose term of office will have come to an end. Our committee respectfully suggests to the House that a "seven, one, three" rotation pattern is unlikely to enhance the effectiveness of our committee's operation.

As the Senior Deputy Speaker said, we were in touch with him well in advance, because we saw this problem coming down the road. We met on 17 November, and he has been kind enough, as he has pointed out, to put our concerns before the Committee of Selection on two occasions at least, and we are very grateful for his and the committee's involvement. He has mentioned our suggested remedy to transition between the two systems—on this occasion, and once only—which is that three people should be asked, not including the chairman, to serve one more year. So we would have "four, four, three", and that would be an even pattern stretching into the future.

The Committee of Selection did not feel able to accept this solution. I ask myself why. I understand that the committee feels bound to implement the decision taken by the House to change the basis of management, whatever the result. It was put to me that this House would be angry if the Committee of Selection flouted its decision. Of course, the House did decide this course of action, but I doubt that any Member of your Lordships' House had any idea of what the practical consequences would be for the rotation of the membership of the SLSC, and indeed other committees, when they decided to approve it. Indeed, if your Lordships had understood all the consequences of the decision, someone would have stood up and said words to the effect of, "Hang on, this is a bit drastic. I think we need to find a way to smooth the transition between the two systems".

Importantly, the Liaison Committee of the House clearly even then thought there might be problems and difficulties with the transition shift. The fourth report from the Procedure and Privilege Committee, which recommended the changes in the rotation rule, states:

"There could be a case for providing a degree of flexibility in the three-year rotation rule when its rigid application would result in a large number of members of a committee being 'rotated off' simultaneously".

I also note that the *Companion* at paragraph 11.14 states:

"The Committee of Selection may consider making *ad hoc* adjustments to the application of the rotation rule when needed."

So, there are what could be described as escape hatches for the Committee of Selection if it wanted to use them.

I have two further points. The Committee of Selection was kind enough to write to me, to all members of our committee and now, I think, to all Members of the House, explaining the background to its decision. It said that

"six Committees are due to see at least 50% of their Lords members rotate off this January".

[Lord Hodgson of Astley Abbotts]
I recognise the issue of fairness, which the Senior Deputy Speaker has raised. But I have to say I regard this statement as actually increasing my concerns about the way the committee rotations take place. I may be naive but, in all my career, I have never come across an organisation where it is argued that a 50% annual staff turnover will lead to a smoother and more effective operation of the organisation.

Finally, I will say a word on the particular position of the SLSC. The House knows that it is not the role of the committee to comment on the wisdom of any policy. That is for the Government of the day to justify, in due time, at the Dispatch Box. The committee's job is to examine the way a policy has been implemented and to highlight points that the committee feels that the House or the wider public would be interested in. Many policy decisions result in not one but a series of regulations—for example, photo ID at the ballot box or changes to the student loans scheme. Knowledge of what has gone before is very important in improving the quality of scrutiny, as it is in our work to keep an eye on government departments when their performance, as regards regulation, has repeatedly fallen short of their statutory obligations.

To do all this, we need what is best called institutional memory: a clear recollection, among a sufficient number of members of the committee, of what has gone before. Institutional memory is not a static concept. That is why a proper degree of rotation is needed. It is also why new members of the committee, however experienced, can be compared with new batsmen coming to the crease: they need some time to play themselves in.

One person from the Committee of Selection suggested to me that this institutional memory resides not with the Members of your Lordships' House on the committee but with the committee's staff. I yield to no one in my admiration for the work of the staff of our House, but their job is to provide the facts. It is up to the committee to interpret what has been put before it.

We on the SLSC may be disappointed, but I hope we are realistic. The Committee of Selection has heard our representations and has rejected them, as it is perfectly entitled to do. It has made its choice of new members of the committee known and those individuals have been told. There is no way back from that. To propose a complete reversal would be both organisationally shambolic and personally insulting to a number of Members of your Lordships' House. That ship has sailed, but we have a chance to reflect on what has happened. I cannot believe that anyone would wish to argue that we now find ourselves in a satisfactory, let alone ideal, situation.

This amendment accepts the status quo but asks the House to endorse a request to the Committee of Selection possibly to think again, in the light of the real-life outcomes of the present procedure of our committee and, perhaps, of other committees, with the view to have a target rotation of one-third of committee members every year; and to come back to the House with its views before the Summer Recess.

At the heart of this issue is whether purpose or performance—the work of the House—is more important than its process or administration. If your Lordships agree that the former is more important, you may be inclined to support the SLSC; if you do not, you will not. I beg to move.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I will not detain the House for long, but it would be useful to put some comments on the record. I fully endorse the comments made by the Senior Deputy Speaker and if the noble Lord, Lord Hodgson of Astley Abbotts, divides the House, I will vote against him.

I agree with the Senior Deputy Speaker that the new members of this committee are of the highest quality and expertise. They do an excellent job on behalf of the House. The noble Lord outlined the work of the committee he saw when he was a Minister, and I invite noble Lords to look at the names that the Senior Deputy Speaker has proposed. I am sure all will agree that these Members will discharge their duties diligently and effectively.

The Senior Deputy Speaker has outlined a way forward for the House, which I support. I hope the House will agree that, as Opposition Chief Whip, I am not in the business of trying to undermine or damage the House's effectiveness in holding the Government to account. I hope that this is the way forward.

I am sure noble Lords will recognise that, when the Opposition table amendments, we often use the reports of the Secondary Legislation Scrutiny Committee, which outline deficiencies in the legislation proposed by the Government. We regularly put those forward. We often rely on the committee's work. We know that it is important and does effective work. I believe that the noble Lord's amendment is not needed: a way forward has been outlined. I invite the House not to agree with the amendment.

3.45 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I rise briefly to support the comments of the noble Lord, Lord Hodgson of Astley Abbotts. I am about to be rotated off of the Secondary Legislation Scrutiny Committee, having done my three years. This is the correct process for me. This is not a party-political issue, nor a personal one, nor about the quality of the members about to be appointed. My comments do not relate to the SLSC in particular but to all committees where members have been rotated off before they have completed three years. I question the wisdom of such a churn of membership, all at the same time.

In the great scheme of things, this is a very minor matter. Most committees' memberships are 11 or 12 strong. It seems to me that the most sensible way to rotate members is that three or four members, having completed three years, should be rotated off once every year. This would ensure a fresh intake of members but leave a core membership of those who have some experience of the work of the committee. I am afraid that to change the membership of committees on a wholesale scale, as is currently happening, just does not seem sensible to me.

I have enjoyed my time on the SLSC, and the excellent and even-handed approach of the noble Lord, Lord Hodgson. To be rotating off seven of the 11 members seems excessive. There are other committees, where

nearly half of the members are being rotated off, which have a similar feeling that this is not the wisest way to run the system. However, I cannot speak for them. Before the next churn of committee memberships, perhaps a more equitable system can be implemented, which employs some flexibility.

Lord Forsyth of Drumlean (Con): My Lords, I confess that, when I was chair of the Economic Affairs Committee, I complained about this rotation. I see that the number of members coming off that committee is the same. I put that down to a failure by me as chairman. As my noble friend the Senior Deputy Speaker said, the remedy lies with the committees themselves. I hope that I am not landing my successor with a difficulty.

The late Queen's question is pertinent here: why did no one see this coming? If they are faced with this, it is surely up to the chairman and committees themselves to say that perhaps some of us may leave a little early and, if people are not willing to, have a ballot so that you get that one-third rotation. There is an argument that some people would then get only two years. We have set up very difficult committees on very difficult subjects where the committee's lifespan is only one year.

My noble friend has been put in a very difficult position, as have the usual channels, because the House voted for this matter. The answer is for the chairmen of committees who feel this way to discuss with their members how they can get a more even rotation in future and not leave it up to the House to sort out.

Viscount Hanworth (Lab): My Lords, I will interpolate a few comments in support of the amendment moved by the noble Lord, Lord Hodgson. This amendment is not, as some are still supposing, a plea to prolong the tenure of some of the existing members of the Secondary Legislation Scrutiny Committee. Rather, it is an attempt to draw attention to the dysfunctional aspects of the existing arrangements affecting Standing Committees, and a plea for some reforms.

I intend to make some brief comments under two headings. The first concerns the logistics affecting the scrutiny of secondary legislation, and the second concerns the nature of the legislation and the kind of scrutiny it requires. It is clear to all who have had experience of these matters that a committee of 11 members that meets once a week is incapable of dealing adequately with the plethora of secondary legislation that comes its way. Its recourse is to pay attention only to the most outstanding issues. The secretariat of the committee sifts the material and, given that in the process every instrument must be studied, this is an extraordinary labour, undertaken by only a handful of people. In short, the secretariat is understaffed.

In 2018, in order to cope with the demands of the secondary legislation arising from the European Union (Withdrawal) Bill, the Secondary Legislation Scrutiny Committee was split into two and its membership doubled. The existing members were divided between the two sub-committees. I believe that the same is bound to happen again in consequence of the phenomenal number of statutory instruments arising from the intended abolition of retained European Union legislation. In that case, the four surviving members of the committee will be divided between the two sub-committees that will contain 18 newly appointed members, of whom few will have had previous experience of these matters. This will be far from ideal.

The other matter on which I wish to comment is the nature of the scrutiny and the recommendations the committee is empowered to make. The committee labours under the injunction that it cannot call into question matters of policy that supposedly would have been established in primary legislation. In fact, much of what transpires in secondary legislation is the exercise of new policy initiatives. The committee cannot propose amendments to the legislation, and it is even doubtful whether it is empowered to ask the Government to think again. The effect is that we are now suffering from government by diktat.

Baroness Parminter (LD): My Lords, I thank the noble Lord for raising this issue because it applies also to committees beyond his own. I am chair of the Environment and Climate Change Committee, and we look forward to welcoming the four new members who are joining us tomorrow. However, the Senior Deputy Speaker said that at some point in 2020, there was an agreement that Peers would serve on a committee for three years. The four people who are being rotated off my committee tomorrow have not served even two years, so clearly, the Committee of Selection can choose to have some flexibility when it suits it. We need to return to this issue.

Next year, my committee will rotate off seven members, including the chair, which is more than 50%. That means there will be nobody on that committee sitting on a committee that was formed less than three years ago. This House has many experts, and I absolutely take the Senior Deputy Speaker's point that we can survive with the excellent staff we have. We do not want old duffers sitting there for ever, but the House needs to think about the suggestion of a more softly, softly rotation of one-third, one-third, one-third, rather than this up and down. Even though we will not be taking any action on this rotation—and, as I said, I welcome the new members joining my committee tomorrow—I hope that the Committee of Selection will reflect upon this issue.

Lord Hutton of Furness (Lab): My Lords, the noble Lord, Lord Hodgson of Astley Abbotts, in moving his Motion so ably, has spoken for all of us on the Secondary Legislation Scrutiny Committee and I hope for many other Members of this House. As the noble Lord said, we all support the premise behind the rules on rotation of membership of our Select Committees. It is a good and sensible procedure for all the reasons he set out, as did the Chairman of the Committee of Selection. However, it is perfectly right and proper that this House must and should continually remind itself of the basic premise and purpose behind this three-year rotation rule. If we find—as in fact I think we do—that it is working in a way not envisaged when it was formulated, we should be prepared to revisit it and correct any perverse impacts.

I am sorry to say that this is what is happening today. The rule is not promoting sensible rotation; it is promoting upheaval, which is a different thing altogether.

[Lord Hutton of Furness]
If we do nothing today, we are locking ourselves into an unhealthy pattern of future appointments to our Select Committees. I do not think we should do that, and nor do I think this is what lay behind the original purpose of the three-year limit on committee membership. As the noble Lord, Lord Hodgson, has pointed out in relation to the Secondary Legislation Scrutiny Committee, this locks us into a pattern of "seven, one, three" which would repeat itself indefinitely.

We have today appointed people for three years. There is the possibility of casual vacancies—we all understand that—but we cannot plan on that basis. That is not the basis on which we should decide committee membership. With the greatest of respect to the Chairman of the Committee of Selection and, indeed, the noble Lord, Lord Forsyth, whom I hold in the very highest regard, nor can we say that this is a problem for the committees themselves to sort out.

The House is appointing people today for three-year terms, so we are locking ourselves into a pattern of seven, one, three for this committee. I defy anyone listening to this debate to justify that pattern of rotation—but that is what we are contemplating. It might turn slightly differently, but as the noble Lord, Lord Hodgson, himself pointed out, it is entirely reasonable to remind ourselves of the fourth report of the Procedure and Privileges Committee, which spotted this as a potential problem years ago.

All the noble Lord's amendment asks the House to do is invite the Committee of Selection to have another look at this pattern of rotational movement of members off our Select Committees. This is not how the rule was intended to operate. As the noble Lord said, this is not a revolutionary moment for your Lordships' House. It just invites people to think again about the practical impact of this rule and see if there is a better way of avoiding disruption to the work of the Select Committees, because that is what we are talking about.

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, I sense the mood of the House that we ought to move forward. There may be other noble Lords from the committee who endorse this, but I want to say that I have listened and, obviously, I take on board the comments made by people I respect. The noble Lord, Lord Forsyth, has said something that I think the noble Lord, Lord Hutton, found difficult, but the truth is that there is precedent for committees to consider these matters. The Conduct Committee, for instance, decided of its own volition that it needed to establish a rotation. Therefore, lots were drawn and some members served two years and others served three.

On the point raised by the noble Baroness, Lady Parminter, transitions are where difficulties arise regarding how long a member may stay. For instance, the noble Baroness, Lady Bakewell of Hardington Mandeville, will have served a gallant three and a half years; others, including I think the noble Lord, Lord German, will have served less, but that is what was agreed by the House in moving from three Sessions to three calendar years. It was only in October 2020 that the House took this view.

The guiding principle is that we all have a lot to contribute to the work of the committees of the House, and we wanted to ensure that as many noble Lords as possible have that opportunity. As we know, there are many applications to serve on the committees. I, the Chief Whip, the Convenor and others can confirm that often, there are more applications than vacancies, so we do need to find a way forward.

I sincerely hope I am being helpful to the noble Lord, Lord Hodgson, in saying that in my view, it is open for chairs and committees to decide the best way forward, as it always has been. There are other examples of staggered rotations precisely to accommodate these matters, and there is no difficult with that. The Committee of Selection always keeps these matters under consideration, but it has been helpful to hear a number of points being made.

I was really quite stung by the idea that somehow in 2019 the six new members placed that committee in jeopardy and difficulties by their lack of experience. My experience of 2019-20 was of a very strong and robust committee. I am confident because of the names that have been put forward, which the noble Lord, Lord Kennedy, referred to. Those seven Members are of very strong standing and are worthy of your Lordships' support.

4 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am sorry to interrupt. I have been listening to the debate with ever-increasing bemusement. Why on earth do we not appoint by thirds? That would deal with the whole problem. We might have to start with some members serving for just one year, some for two and some for three, but at a stroke it would deal with the issue. I do not see why we have this convoluted system of seven, one and then two. It seems bizarre.

Lord Gardiner of Kimble: The noble Lord makes an important point, but with regard to this committee I am saying that there is a solution, which is that the committee and its chair, as has been done with other committees, decide that some will serve for three years while some remaining members may serve for two years rather than three. It is in the hands of the committees that feel very strongly about this. I have to say that I communicated with some other committees where there was going to be a considerable change, and it was the view that that would not be taken forward. I think we should have confidence in the fact that we have seven excellent members to replace seven excellent members.

To conclude, I say to the noble Lord, Lord Hodgson, that I think there is a remedy and a solution. By the summer, I simply do not know who may be the casual vacancies. Casual vacancies have a bearing on the issue of the rotation; we see all the time that there are casual vacancies. I understand the points that have been made, and I am happy for the noble Lord, Lord Hunt of Wirral, and his committee to bear in mind what has happened today and that there can be solutions to the key points.

Obviously I hope that the noble Lord, Lord Hodgson, will feel that what I have said, and the solution that I believe there is, will enable him not to press his amendment.

I could not support it because I cannot identify with the suggestion that the quality of service would be put in jeopardy, particularly given the seven members who we have put forward to take on the great work of those who are rotating off. I am in the hands of the noble Lord, Lord Hodgson, but that is why I sincerely could not support his amendment.

Lord Hodgson of Astley Abbotts (Con): I am grateful to everyone who has participated and made their views known. I am grateful to the members of the committee who have spoken out, to the noble Baroness, Lady Parminter, from another committee, and to the noble Lord, Lord Hutton, for his powerful analysis of the situation that we now find ourselves in.

I have to say to my noble friend Lord Forsyth—he was combative as ever and I would expect no less—that, with great respect, the treadmill nature of the work of the SLSC actually puts it in a different category from many of the committees that he was talking about. He talked about finding ways to fill casual vacancies but we are not trying to find a few; we are having seven out of 11 every third year. This is not a casual exercise but a complete bouleversement every third year, including the chairman. As the noble Lord, Lord Hunt of Kings Heath, pointed out, there is a perfectly sensible way forward, which we have tried to explain in our amendment.

Again, if I may shoot this fox, we are saying nothing about the people who are coming forward. I do not want the noble Lord, Lord Kennedy, or the Senior Deputy Speaker, to get away with the idea that we are trying to undermine the quality of the people who are coming in. I want to be clear about that.

Before I close, I want to ask the Senior Deputy Speaker a question. Next week, my noble friend Lord Hunt could come along and say, "We have sorted it out; two people who will be appointed today are going to leave in a year from now". Could he do that, and could we be certain that the Committee of Selection would allow it? It seems to be a cockeyed system, but it would provide a partial answer to the point we are making.

Lord Gardiner of Kimble: If members of the committee decided they wished to retire early, that would be entirely a matter for them. That is how casual vacancies occur. Picking up the noble Lord's point, I would have hoped and thought that this is exactly what I and the noble Lord, Lord Forsyth, were alluding to. There is a way forward. It is not as if this is static. The chair and the committee, perhaps hearing what has been raised today, can draw some conclusions.

Lord Hodgson of Astley Abbotts (Con): I am grateful for that comment. We either have a system where we do one-third, one-third and one-third, or a system organised by the committee chairman—maybe now or maybe not—and different committees then have different amounts. That is a much less clear system for dealing with the rotation on committees than having a one-third rotation each time, which is what our amendment proposed.

We have hacked this issue to death. Clearly the usual channels and the Committee of Selection have made their decision. I do not believe in gesture Divisions. Therefore, although I greatly regret the position we find ourselves in, for the effective operation of the House I beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Coroners (Determination of Suicide) Bill [HL]

Order of Commitment

4.06 pm

Moved by ***The Lord Bishop of St Albans***

That the order of commitment be discharged.

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

Motion agreed.

IMF Economic Outlook

Commons Urgent Question

4.07 pm

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, with the leave of the House I will now repeat the Answer to an Urgent Question given in the Commons by my honourable friend the Exchequer Secretary to the Treasury:

"This Government have three economic priorities; our plan for this year is to halve inflation, grow the economy and get debt falling. It is a plan that will alleviate the pressure on businesses and families today, and equip us to become one of the most prosperous countries in Europe. As the IMF said in its press conference today, it thinks that the UK is 'on the right track'. It also said that the UK had done well in the last year, with growth revised upwards to 4.1%, which is one of the highest growth rates in Europe for 2022. Since 2010, the UK has grown faster than France, Japan and Italy. Since the EU referendum, we have grown at about the same rate as Germany. Our cumulative growth over the 2022 to 2024 period is predicted to be higher than that of Germany and Japan, and at a similar rate to that of the United States of America. The Governor of the Bank of England has said that any UK recession this year is likely to be shallower than previously predicted.

The actions we are taking, from unleashing innovation across AI, financial services and a host of other sectors, to improving technical education and protecting infrastructure investment, will spur and fuel economic growth in the years to come, benefiting industry and communities alike. However, the figures from the IMF confirm that we are not immune to the pressures hitting nearly all advanced economies. We agree with

[Baroness Penn]
the IMF's focus on the high level of inflation in our country, which is why this is our top priority. Inflation is the most insidious tax rise there is, and so the best tax cut now is to reduce inflation. That will help families across the country with the cost of living. As the Chancellor has said, short-term challenges, especially ones we are focused on tackling, should not obscure our long-term forecasts. If we stick to our plan to halve inflation, the UK is still predicted to grow faster than Germany and Japan over the coming years. That will help us deliver a stronger economy, one that is growing faster and where everywhere across our country people have opportunities for better-paying, good jobs. That is what the people in this country expect and what we are working tirelessly to deliver."

4.10 pm

Lord Tunnicliffe (Lab): My Lords, in another place, the Minister seemed to insist that the IMF forecast was somehow a British success story, because any recession caused in large part by the chaos of the September mini-Budget may be shorter and shallower than previously thought. Britain has huge potential but, under the Conservatives, ours is the only G7 economy still below its pre-Covid level. If growth is the Government's number one priority, why is the UK forecast to be outgrown by sanction-hit Russia? If, as Ministers like to claim, this is all the result of global events, why has the IMF said that we are falling even further behind our international competitors?

Baroness Penn (Con): I must correct the noble Lord on the cause of the disappointing figures for growth this year that we have seen. The IMF emphasises that Russia's war in Ukraine continues to weigh on economic activity, and the UK's relatively high dependence on natural gas and, simultaneously, a near-record tightness in our labour market are dampening our outlook.

The noble Lord asked why the UK economy had not recovered to pre-pandemic levels. If we exclude the public sector, the private sector has recovered to above its pre-pandemic level and is in line with other major European economies. There is a difference in the way that the UK estimates its public sector output compared to many other countries, and the ONS has said that international comparisons are difficult to make.

On the point about the optimism that my honourable friend expressed about the UK economy, the Government make no apologies for pointing out our underlying strengths. Last year's growth rate was uprated by the IMF to one of the highest in Europe, and if we look over the cumulative period 2022 to 2024, growth is predicted to be higher than in Germany and Japan and similar to that of the US. That will happen if we stick to our plan for growth and tackle inflation.

Lord Fox (LD): My Lords, there is no harm in people being optimistic if there are grounds for optimism. Rather than taking this report as a very worrying indicator, the Government are spending their energy downplaying and discounting the bad news in it. Let us look at another indicator that points in the same direction: the ONS statistics on company insolvencies. Its survey, published today, shows a 57% rise in the number of companies going bust; that is more than at any time since the 2009 crisis.

Will the Minister now acknowledge that, as well as the problems that our competitor countries have, with which the Government seek to associate us, there are other problems that are unique to us? The Minister acknowledged the extraordinary problems we are having with skills and the lack of people to work, and the fact that our exports to the European Union have plummeted. Will the Government acknowledge that there is a problem so that they can start solving it?

Baroness Penn (Con): I made it clear that the number one problem facing the UK is our high level of inflation, and that is why the Government have put it at the heart of our economic plans. We are determined to get inflation down. That is why we remain steadfast in our support for the independent MPC of the Bank of England, why we have made difficult but responsible decisions on tax and spending so that we are not adding fuel to the fire, and why we are tackling high energy prices by holding down energy bills for households and businesses this year and next and investing in long-term energy security. I fully acknowledge the challenges the UK is facing, and that is why we have a plan to deal with them.

Lord Naseby (Con): Does my noble friend recall that the IMF has a little bit of a history of making forecasts where the UK is downgraded one way or another, and, lo and behold, a year later, we discover that we have not been as bad as it suggested? Is it not a fact that we now have before the House probably the most crucial financial services Bill that it has had to handle for a decade or more? My noble friend is taking through that Bill. At its core, there is just one word, which affects almost every clause, to help the City, businesses, trade, et cetera: "growth", which is absolutely crucial to the future of this country.

Baroness Penn (Con): I completely agree with my noble friend on the importance of the financial services Bill to unleashing further growth in our economy. It is also a really important example of how we will take the opportunity of the freedoms of Brexit to design regulation in a way that works best for the United Kingdom. Growth forecasts are inherently uncertain, but they still play a valuable role for government, economists, industry and others. Their uncertainty is a fact of life, but we should still look carefully at what they say.

Baroness Wheatcroft (CB): My Lords, as of November this year, the EU will require additional travel documentation for those leaving the UK and heading into Europe. Do the Government have any estimates of the effect that will have on UK trade?

Baroness Penn (Con): I do not, but I will write to the noble Baroness if there is something available on that matter.

Lord Deben (Con): Does my noble friend accept that, if we are to equal the United States, we have to have investment in new green businesses which help in

the battle against climate change? When will the Government bring forward the legislation that is necessary to do that? At the moment, we are wildly behind, which is clear from both the Skidmore report and the Climate Change Committee's report last June—where I declare an interest. I dare say that "freedom" from the EU is not something that any exporter would believe today.

Baroness Penn (Con): My noble friend is right about the importance of investment, which is why the Government are maintaining record levels of capital investment: £600 billion over the next five years. We have permanently set the annual investment allowance at its highest-ever level of £1 million. My noble friend is also right about the importance of green investment and driving green growth in our economy. We have one of the strongest legislative frameworks for tackling climate change and nature loss, and we will continue to build on that. Our record is clear: we are one of the most significant decarbonising economies in the G20, and we have achieved that at the same time as growing.

Viscount Stansgate (Lab): The Minister referred a moment ago to Brexit, and today happens to be the third anniversary of our departure. Can she remind the House of the Government's attitude to the OBR forecast that Brexit has cost the UK about 4% of its GDP per year?

Baroness Penn (Con): My Lords, I believe that that is not a forecast but a modelling assumption. We will look at the record of the UK economy since leaving the EU, and we continue to grow. Since the Brexit referendum, we have grown at a similar rate to Germany, and, last year, we had one of the highest growth rates in Europe. So we look at the record and the outturn, not just the predictions.

Baroness Randerson (LD): My Lords, last week, Tony Danker, the leader of the CBI, made a speech in which he remarked on the fact that private investment was flooding out of the UK because of the Government's lack of a strategy to deal with the economic mess we are in. What is the noble Baroness's response to that criticism from the main representative of business in the UK?

Baroness Penn (Con): I believe that, last week, Tony Danker also welcomed a speech by my right honourable friend the Chancellor of the Exchequer that set out his vision for growth in the UK, looking at the sectors that we are most competitive in, setting out proposals for new regulatory freedoms in those sectors and investing in the drivers of our economy, such as education and enterprise.

Lord Howell of Guildford (Con): My Lords, we ought to add a bit of balance to this discussion and note that the report ended with a comment that Britain was "on the right track"—not that we should place too much weight on the views of the IMF either way, because its record has not been too good. Has the Minister noticed a report from the BBC this morning that it is very worried that its interviewers, editors and staff are not sufficiently apprised of the technicalities and the understanding of modern economics and modern economic trends, and that it is going try to do something about it? Would she encourage it to do something? The impression that invariably pervades the morning programmes—not only on the BBC but others as well—in response to this kind of report is that everything is going wrong. Of course, there are things that need repairing, but the bias—not a political bias between left and right—is between pessimism and optimism, which nearly always comes out on the pessimistic side, so we have a lot to learn and we should encourage them to learn it.

Baroness Penn (Con): I did note the report this morning, and, of course, impartiality is key to the BBC. The report is very interesting but, obviously, taking forward its recommendations is a matter for the BBC, and I believe that it is going to take them forward.

Northern Ireland Troubles (Legacy and Reconciliation) Bill

Committee (2nd Day)

4.21 pm

Relevant documents: 9th and 20th Reports from the Delegated Powers Committee, 5th Report from the Constitution Committee, 6th Report from the Joint Committee on Human Rights

Schedule 1: The ICRIR, the Commissioners and ICRIR officers

Amendment 12

Moved by ***Lord Browne of Ladyton***

12: Schedule 1, page 50, line 34, leave out "Secretary of State" and insert "Northern Ireland Judicial Appointments Commission"

Member's explanatory statement

This and subsequent probing amendments in the name of Lord Browne remove the Secretary of State from various roles in connection with the appointment and holding office of Commissioners.

Lord Browne of Ladyton (Lab): My Lords, I will speak to Amendments 12 and 13 in my name and those of the noble Baroness, Lady O'Loan, and my noble friend Lord Murphy of Torfaen; Amendment 16 in my name and that of the noble Baroness, Lady O'Loan; Amendments 24 to 30 inclusive, which are all consequential; and, finally, Amendment 178, which will not detain us for very long.

Amendments 12 and 16 and their consequential amendments are probing amendments. Their effect is to remove the Secretary of State from the various roles in connection with the appointment and holding office of commissioners of the ICRIR, which, with the leave of the House, I will hereafter refer to as "the commission". The amendments would replace the Secretary of State with the Northern Ireland Judicial Appointments Commission —NIJAC.

[Lord Browne of Ladyton]

As it stands, the Bill confers sweeping powers on the Secretary of State, including the power of appointment to the newly established commission and powers over the process of the commission itself. These powers include but are not limited to: control over the commission's funding; the power to request reviews; the appointment of commissioners; the devising of procedures for dealing with requests around immunity; the power to withhold permission for the disclosure of sensitive information; the power to terminate a review on national security grounds; and, most importantly, the power to wind up the commission itself.

The Government have noted the concerns relating to the commission's lack of independence and have proposed an amendment to strengthen the commission's independence by making it clear that the Secretary of State should consult individuals before appointing the chief commissioner. It is clear that independence is a precondition for investigations to satisfy our obligations under Article 2 of the ECHR. The purpose of the probing amendments in my name, and the consequential amendments, is to discern to what extent the extraordinarily wide-ranging powers conferred on the Secretary of State, even after the Government's amendment, compromise that independence and risk a breach of our ECHR obligations.

One of the functions of independence is securing public confidence in the operation of investigations; to do that, it is necessary for the investigations to be independent—and to be seen to be independent. The role of the Secretary of State in relation to the commission, as currently envisaged, has attracted criticism from all communities in Northern Ireland. The Government have assured us that the commission will have full operational independence; we are assured that that includes the establishment of terms of reference, the appointment of staff and the making of all decisions related to the conduct of investigations. Of course, the commission may appoint its own staff, but that will be done by the commissioners appointed by the Secretary of State. The commission may make decisions related to the conduct of investigations, but with the hand of the Secretary of State ever present and able either to block disclosure or to shut the body down altogether. The commission may make decisions related to immunity applications, but only if the salient question is whether the applicant is telling the truth to the best of their knowledge and belief, and they must take account of any guidance given by the Secretary of State about when that condition is met. It is difficult to consider that a genuine and objective decision at all.

Defending the system, the Government have cited the Northern Ireland Human Rights Commission and various independent public inquiries as precedents, suggesting that it is common practice for the Secretary of State to appoint commissioners or chairs to organisations which enjoy absolute operational independence. The problem is that that is not comparing like with like; there is no way that an individual inquiry or human rights body with limited powers is comparable with the amount of responsibility being placed on the commission by the Bill. That responsibility is to provide the sole route to justice for anyone who lost a loved one during the Troubles.

Noble Lords will have noticed that my amendment does not seek to address all the powers of the Secretary of State. Because of its probing nature, it concentrates, in this form, on only some of those powers, particularly as there is a genuinely independent alternative to the Secretary of State: the Northern Ireland Judicial Appointments Commission. Additionally, the commission's functions include:

> "To select and appoint and recommend for appointment, in respect of all listed judicial offices up to and including High Court Judge … To recommend applicants solely on the basis of merit … To engage in a Programme of Action to secure … that appointments to listed judicial offices are … reflective of the community in Northern Ireland."

Again, that provides independence, but, crucially, it does so in a way which is transparent and will disarm those who may suggest that the commission is simply an arm of the UK Government in Northern Ireland. Why not forestall those criticisms and remove the Secretary of State from the area of appointments altogether? The NIJAC is accustomed to appointing those who fulfil statutory requirements and who are of good character and have integrity. Furthermore, the link between the commission and the judiciary is embedded in the Bill, as the chief commissioner must be a person who holds, or has held, high judicial office, and almost all those candidates have been appointed to their judicial role by NIJAC.

In addition to the issues with the composition of the commission, many noble Lords will be aware of an uneasiness about how this body will work, from where it will derive its legitimacy, what mechanisms exist for scrutiny, and, where necessary, how we can ensure that it is responsive to concerns in a way that is not simply subject to the fiat of whichever Secretary of State happens to be in post. Those issues speak to a wider systemic problem with the Bill.

The delegated powers memorandum contains a remarkable paragraph which encapsulates my concerns and those of other noble Lords:

> "Legacy matters are highly controversial, politically charged and divisive in Northern Ireland. A vast number of issues remain unresolved as a result of political and societal impasse and there is no single accepted or agreed way to address them … There is a very real prospect that providing the Northern Ireland Assembly with the power of veto in relation to delegated powers could frustrate the purpose and application of the provisions in the Bill, which in the Government's view is necessary to achieve progress and reconciliation in Northern Ireland."

That is an explicit acknowledgment that the Government have decided to exclude the elected representatives of the people of Northern Ireland from important decisions for fear that they will not agree with the direction of travel determined from London. If we were to mould the Bill into a shape which will satisfy everyone in Northern Ireland and be seen as an attempt, in good faith, to further the course of reconciliation, the composition of the commission will need to be seen as independently determined.

Further, it will need to be seen as an avowedly apolitical body aimed at achieving a true incremental reconciliation woven from the skeins of public opinion in Northern Ireland, not a reconciliation based on our perceptions in London. I do not propose to put my

amendments to a vote but urge the Government to engage with their provisions critically and take appropriate steps before Report.

I intend to dispose of Amendment 178 at the earliest possible opportunity. Consequently, with the leave of the Committee, I shall say no more about it. I beg to move.

4.30 pm

Baroness O'Loan (CB): My Lords, this group of amendments refers to the independence of the commission to be created. Throughout the Bill, there are restrictions on that independence in the form of not only the Secretary of State's control over the number of commissioners, and in this instance the appointment of commissioners, and the budget, but many of the other requirements made of the commission and the various powers given to the Secretary of State.

I find some of these powers astonishing. They include the power to give guidance to the ICRIR about how to exercise its functions so as not to prejudice national security, put a life at risk or act in any way which might prejudice actual or prospective criminal proceedings. This exercises the minds of senior investigating officers, chief officers, prosecutors and judges on a very regular basis—decisions have to be and are made. Why do the Government think that the ICRIR will not be capable of making such decisions?

There is also a power to identify sensitive information to be given to the commission, the chief constable of the PSNI, chief officers of police forces in Northern Ireland, the Police Ombudsman, the director-general of the Independent Office for Police Conduct, Northern Ireland departments and Scottish Ministers. Managing and identifying sensitive information is done routinely by people such as chief constables. It is difficult to understand why the Secretary of State should be required to make regulations and give guidance in these situations. To those looking in from the outside, from whom I have heard quite extensively, it appears that this may enable the Secretary of State to control the work of the ICRIR.

The Secretary of State has a further extraordinary range of powers throughout the Bill, which we will come to later. Combined, they introduce a unique group of powers regarding the operations of the ICRIR. All the powers conferred on the Secretary of State to enable him to regulate, manage, control or otherwise dictate the proceedings of the ICRIR rest on the appointment of the commissioners. Amendments 12, 13 and 16, to which I have put my name, and Amendments 24 to 30, all in the name of the noble Lord, Lord Browne, seek to address a profoundly important control given to the Secretary of State in Schedule 1 by giving the appointment-making function for the commissioners to the Judicial Appointments Commission rather than to the Secretary of State.

The Judicial Appointments Commission comprises nine people, five of whom are judges and four of whom are not members of the legal profession at present. The requirement in the schedule on the Secretary of State to consult the relevant senior judge and such other persons as he or she considers appropriate will be indicative to many of those in Northern Ireland who want to see a truly independent commission of a total lack of independence. Noble Lords will know that perception is as important as reality in cases such as this. If the commission is to gain any credibility, it must above all be seen to be independent.

It seems to me that, were the House to agree the noble Lord's amendments—which he has just said he will withdraw but which I may well retable on Report because they are so important—the Minister's Amendments 14 and 15 would be unnecessary. In any event, they would not meet the requirement for an independent appointment. The appointment of a person who has gained experience outside the UK, as provided for in Amendment 14, may be an asset, but it could occur in any case, and it seems to me superfluous.

The one thing that emerges from a study of this Bill is that the ICRIR will not be enabled to be independent by its provisions. Rather, it is clear that so much power is reserved to the Secretary of State that it cannot be independent. There is no legislative consent Motion in support of this Bill and no support for it. We are talking about the past and future of the people of Northern Ireland. Independence is critical for this commission.

Baroness Ritchie of Downpatrick (Lab): My Lords, I support the amendments in the name of my noble friend Lord Browne of Ladyton. Over the last number of days, increasingly people have said to us, right across the community in Northern Ireland, that they are opposed to this Bill on the basis that it does not have victims and survivors at its heart and centre. Last night, I was very pleased to sponsor a meeting for SEFF in your Lordships' House, where that was the message, yet again, that was given to us. Right across the community, irrespective of political or religious persuasion or, shall we say, whatever job the person may have had, as a victim or survivor, people do not support the Bill because their needs and requirements are not placed at its centre.

The need for the independence of the commission goes to the very heart of the Bill. We have seen quite clearly that the Secretary of State will have undue and unfettered powers. My noble friend Lord Browne is absolutely correct: the membership and work of the commission need to be independently determined and it must not be shackled by the unfettered powers of the Secretary of State.

In fact, many human rights organisations have concerns about the influence of the Secretary of State over the processes of the ICRIR as proposed by the Bill. For example, the Secretary of State will have the power to appoint its chief commissioner, who must be a UK judge, moving significantly away from the process envisaged in the Stormont House agreement of appointing an international figure to be jointly agreed by both the UK and Irish Governments. Where is this process of engagement and consultation with the Irish Government and, of course, the agreement that is urgently required? Things in Northern Ireland do not go ahead successfully unless there is reconciliation, consensus, agreement and consent. There is definitely not consent for this Bill. There will be no legislative consent Motion because there is not an Assembly at the moment, but the five main parties are opposed to the Bill, so it would not happen anyway.

[Baroness Ritchie of Downpatrick]

While the proposed government amendments to Schedule 1 seek to provide that the Secretary of State consults relevant figures, they are unspecified. In advance of appointments, the wide discretion given to the Secretary of State in Northern Ireland over appointments to the ICRIR remains. Furthermore, requiring the Secretary of State to ensure, as far as practicable, that there is a commissioner with international experience is a weak substitute for an independent, international individual or group of individuals. I sincerely endorse the views of my noble friend Lord Browne and ask the Minister to go back and look at this issue.

The submissions given to us are quite clear. Liberty says that

"While this may be a 'Northern Ireland Bill' in title and in focus, it is explicitly one that is directed by Westminster. This is not just true in the exclusion of stakeholders in Northern Ireland and Ireland alike in the introduction of the Bill, but in the deep vein of political interference that runs through the legislation",

and that the ICRIR

"stands a chance of working only if it is seen to be independent in its operation."

Yet the hand of the Secretary of State looms large throughout all aspects of its function.

A similar view is expressed by Amnesty, which quite clearly states that the ICRIR does not meet ECHR procedural requirements, and that the Secretary of State retains control over the appointments, the resources and caseload of the ICRIR as well as the powers to terminate its work at any point. In view of that, it is quite clear that the ICRIR will not be independent and I would like the Minister to outline to the House how he and the Government will address that issue, and how he will toughen up the legislation by amendments on Report to ensure independence. If the needs and requirements of victims and survivors are to be placed at the centre of the Bill, this is an urgent priority and I urge the Minister to do that and to use the Judicial Appointments Commission to fulfil the requirements of the ICRIR in achieving independence.

Baroness Hoey (Non-Afl): My Lords, before I speak to my Amendment 14A, I just want to say that we may be wearing the same colours but I disagree with the noble Baroness, Lady Ritchie, on her support for the amendment from the noble Lord, Lord Browne. I really do not see the need for that and, in my view, "independent" can mean so much to so many different people. As far as I am concerned, the Secretary of State is the Secretary of State for the United Kingdom Government of Great Britain and Northern Ireland, and I see absolutely no reason why appointing commissioners would not be done by the Secretary of State. There have been some brilliant Secretaries of State and there have been some terrible ones, but the reality is that they are the representative of our Government of the United Kingdom and that should happen. Perhaps not being a lawyer, I do not share the confidence that so many people seem to have in the Judicial Appointments Commission.

In talking to my Amendment 14A, I had not realised that the Minister would not have spoken to his Amendment 14. Mine is really a probing amendment and in a spirit of genuinely asking a few questions. I would like to see all five of the commissioners not only have relevant experience before appointment. Also, very clearly, that experience must be gained in the United Kingdom and not exclusively in other places. My amendment would ensure that this would happen.

I am not convinced as to why the Minister has conceded the point about a commissioner needing relevant international experience if practical, and of having that prescribed on the face of the Bill. I have to say again that maybe there is a romanticised idea about international involvement in Northern Ireland. But, from experience of internationalising the Troubles—that horrible word that people use—reinvestigation has not always been good and has not always been considered successful. What type and level of experience is anticipated for these commissioners? Will they have to be former police officers or lawyers? As I said in the previous debate, I think it is sad that the Minister is unwilling to put into the Bill that ex-RUC and PSNI officers can definitely be considered. We saw what Jon Boutcher did by ruling out instantly ex-PSNI and ex-RUC. That is wrong and implies, as I said before, that there is somehow something wrong with them and that they are not to be trusted.

We need to know some of these things so that the appointment does not get decided with us and the victims not knowing exactly how that person will be put there. Without the benefit of my amendment, the Minister's Amendment 14 leaves open the possibility of appointing an individual who not only has no experience of UK policing but has never even set foot in Northern Ireland or gained any relevant experience there. Of course we must remember that, once they are appointed, they take on the considerable powers of a constable. That is exceptionally important. Noble Lords should require assurance on this; their acceptance of my amendment would provide that.

4.45 pm

Lord Hogan-Howe (CB): My Lords, I just want to comment on a small but important point that the noble Baroness, Lady O'Loan, made; I wondered whether the Minister would like to respond to it. The noble Baroness said that the advice being issued potentially by a Minister about the restriction on evidence could be quite worrying. As an investigator, I share that view, as I am sure the judiciary would in a court hearing. There are some present restrictions but the list is a small one; it includes the interception of communications, journalistic material, legally privileged material and, most of the time, medical advice. I suspect that this is something to do with foreign intelligence material, which is provided only under certain conditions. That is usually about source protection, and the usual condition is that the material can be shared further only in the event that the provider of the information agrees. I suspect that is what this is about but, if it is not, some reassurance ought to be offered; however, if it is, it could probably be explained quite quickly.

Lord Dodds of Duncairn (DUP): My Lords, I want to comment briefly on the amendments in this group. Before I do so, once again, I put on record our thanks to the Minister and his officials for their continued engagement with us on the matters under consideration in the Bill.

I also want to put on record—the noble Baroness, Lady Ritchie of Downpatrick, referred to this—the meeting that we held yesterday with the victims' group SEFF. Many of its members travelled from Northern Ireland to speak with your Lordships and highlight their concerns about the Bill. It is right that we pay tribute to those victims and the efforts that they are making to try to get across their profound concerns about it. Again and again, they emphasised something that I want to emphasise. While we discuss these amendments and debate independence, appointments and all that, no matter what improvements we make to the Bill, it is—in their view, certainly in my view, and in our view—irredeemable in its terms and fundamental aspects as a piece of legislation. Whatever we do in relation to justice, victims and getting at the truth, it cannot be right to have at the heart of government policy and a piece of government legislation the idea of immunity from prosecution for those who have committed crimes in the United Kingdom.

I want to touch on Amendment 14 in the name of the Minister. It concerns appointing a commissioner who has international experience. Can the Minister develop his thinking in relation to the motivation behind this amendment? I know that this was raised in the other place but it has not really been explained why it is thought necessary that someone should have international experience. It should be relevant to the work of the commission, okay, but what does that mean? Does it mean that they have done some academic studies or spent a bit of time abroad? Does it mean that they have been part of an international organisation? If so, what is the effect of the singling out of a particular position for such a person in relation to other appointments in the commission where other people may be better qualified but lack that particular qualification? I just think it is superfluous, as has been mentioned. There was nothing in the draft legislation to prevent the appointment of such a person, if it was thought necessary, but to put it in the Bill seems puzzling and I would like the Minister to develop his thinking on that.

On Amendment 12 and the other amendments in the name of the noble Lord, Lord Browne, I am not entirely convinced by the arguments that have been put forward. We have to remember that the commission and the commissioners, as has been said, will have the power of a constable. They will play more than just a judicial or quasi-judicial role; they will also have investigatory powers, they will be carrying out reviews and so on, so it is much wider than just a judicial-type role. Fundamentally, it gives more accountability if a Secretary of State, accountable to Parliament, is responsible for this, rather than a judicial appointments commission, whose appointments we really cannot question. Given the role of the judicial appointments commission in Northern Ireland and the fact that, throughout all the period of the Troubles, it has been above party politics and has never been dragged into any real controversy, here we are putting it into a position where it will be responsible for making what will be controversial appointments that could be the object of some criticism, in terms of balance and so on. I am not sure that that is a healthy or sensible position in which to place it.

Fundamentally, we come back to the point that was emphasised and re-emphasised to me at our meeting last night with the victims: whether the commissioners are appointed by the Secretary of State or a judicial appointments committee or whoever, fundamentally, they do not have the confidence and will not have the confidence of the victims. Therefore, all this is very interesting and important—absolutely—but it does not actually deal with the real fundamental flaw at the heart of this legislation.

Baroness Suttie (LD): My Lords, I start by agreeing with the noble Lord, Lord Dodds, in thanking the Minister for his general approach to the Bill. I think we all feel that, unlike so many Bills at the moment, this is a Bill where we have the opportunity to get the Minister to genuinely listen and change it. That is very much to be welcomed in this Chamber. I also agree with the comments of the noble Lord, Lord Dodds, that many of us think the Bill is fundamentally irredeemable, to use his word. It is irredeemable in the eyes of the victims and, therefore, however many amendments and proposals we put forward this afternoon and this evening, it is, for many, an utterly irredeemable Bill and we have to view it through that prism.

However, going back to the amendments in this group, I feel that the noble Lord, Lord Browne of Ladyton, set out very clearly in his probing amendments the concerns about the significant amount of power that is being granted to the Secretary of State for Northern Ireland in the Bill. I very much share his views and concerns about that. I will not repeat the many points he made, other than to say that these are views shared by the House of Lords Constitution and Delegated Powers Committees, which both felt that this was giving far too much power to the Secretary of State for Northern Ireland. As the noble Lord, Lord Browne, and the noble Baronesses, Lady O'Loan and Lady Ritchie, have also said, if we are going to proceed with the ICRIR, the new commission, it is vital not only that it is seen to be independent but that this independence is maintained and seen so that the trust of all the people concerned with it can be maintained. It is also incredibly important that the process for how people are appointed to the ICRIR is seen as genuinely independent and, as others have said, above party politics. I think this is an area we really need to return to and look at in more detail before Report.

I appreciate that Amendments 14 and 15, tabled by the Minister, are intended to ensure that there is greater flexibility in the ability to appoint the best people to these roles, but, even given these amendments, there remains very real concern about the amount of power being given to the Secretary of State. Like the noble Lord, Lord Dodds, I wonder whether the Minister could expand a little on Amendment 14 and the requirement to appoint one or more people with relevant experience outside the UK. I think this is generally to be welcomed as a means of ensuring that the best commissioners with the broadest relevant experience are appointed.

Given the complexities and the history involved, it is not always going to be the case that someone from outside Northern Ireland will automatically understand the Northern Ireland context. But, in the history of the peace process, external people have often played

[Baroness Suttie]
an extremely valuable role, and for that reason I cannot support the position taken by the noble Baroness, Lady Hoey, in Amendment 14A. It would, however, be useful to hear from the Minister what sort of people he has in mind—although obviously he cannot name them, because that would be inappropriate in terms of due process. I would also be interested to know if the phrase

"as far as it is practicable"

in his amendment is intended as a sort of get-out clause if no sufficiently qualified people put their name forward.

Finally—I gave earlier notice of this question—is this going to be a proactive process of recruitment, where the Secretary of State for Northern Ireland and others go out and try to find international experts, or will it be more of a sort of passive process? I would be interested to hear how the Minister views this being introduced in reality.

Lord Eames (CB): My Lords, the amendment of the noble Lord, Lord Browne, gives us the opportunity to do two things at this stage of our work: first, to pay tribute to the Minister for the way in which he has listened, constantly, to the many voices clamouring at our doors over this Bill; and, secondly, to be reminded that there are two key words to this legislation. One is "legacy"—and my goodness, we have said enough in this Chamber already to have analysed legacy—and the other is "reconciliation", and, not for the first time, I am left wondering how His Majesty's Government intended us to interpret that word.

The noble Lord, Lord Browne, is talking about one of the most sensitive parts of this proposed Bill: the appointment of this commission. I cannot, with my experience of Northern Ireland, imagine any issue that is going to be more productive of comment for and against this legislation than the question of the appointment of this commission. The noble Lord, Lord Dodds, has already reminded us of that significant period of this process. I welcome the opportunity given to the Minister to tell us a little more about what the thinking is about the structure of this commission. It is that point where many of us would have concerns about the involvement of the Secretary of State in this process.

Time and again in my correspondence, the messages I receive constantly underline the fact that victims and survivors are not at the centre of this legislation. This opportunity is given to us again to place on the record the needs of that part of our community. It is not just about those in the security forces or victims of either side in the conflict; it is about the mental instability that has been caused to another generation inheriting the deep thought and the deep suffering of the victims of the Troubles in Northern Ireland.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, the independence of commissioners will be vital to the success of this commission, and I agree that the confidence of the community, who are the victims and survivors, must be at the heart of any body. But how do we interpret "independent"? The truth is that many outside Northern Ireland have little or no concept of what has happened in Northern Ireland over the past 50 years. In fact, it is hard for those who have lived through it to understand it fully. Therefore, the independence question is of great importance.

5 pm

It is a fact that, when the Secretary of State makes an appointment, he can be scrutinised by Members of this House, but many noble Lords will find it difficult to question appointments made by the Northern Ireland Judicial Appointments Commission, because doing so will be misinterpreted by many. Bearing in mind the complexity and history of Northern Ireland, the appointment of such commissioners will be of vital importance.

Therefore, I would like such appointments to have at least the scrutiny of Members of both Houses. Over the years, many commissioners have been appointed to deal with many sensitive issues, but those appointments have been questioned within the community. I come back to the beginning: the independence of commissioners is vital for success.

Lord Murphy of Torfaen (Lab): My Lords, this is an interesting and timely debate. I join many of your Lordships in thanking the Minister for his engagement on this Bill. It does not always happen, but it does in his case, and we thank him for that.

I also thank my noble friend Lord Browne, who introduced his amendment extremely ably, as I would expect, but also forensically. He pointed to the issue of independence, but in reality this is also about confidence. Independence means confidence, and a lack of independence means a lack of confidence. The system for appointing different people has been fraught with difficulty over the years, because those appointments have lacked the confidence of one side of the community or the other. Your Lordships referred to international comparisons, and the reason why people of international repute have been involved in Northern Ireland over the years is to try to ensure that all the people of Northern Ireland had confidence in them. When I was Secretary of State, we appointed Judge Cory to look at various inquiries. It was important that a Canadian judge—in his case—was involved.

If more people in Northern Ireland are to accept this Bill—I am sure it is not accepted at the moment—one possibility is to look at how the commissioner is appointed and who it should be. The Secretary of State has far too many powers in the Bill generally, and on the appointment of the commissioner specifically. When I was the Secretary of State, I tried to shed responsibilities so that they rested with the people of Northern Ireland themselves. I hope that, in the next couple of months—perhaps in a couple of years—we see the restoration of institutions in Northern Ireland. But responsibility for these matters should be taken by the people who were elected in Northern Ireland, not a Secretary of State who represents a constituency in Great Britain. We should be thinking about how there can be confidence in such an appointment.

There may be different ways in which we could ensure independence. The Judicial Appointments Commission in Northern Ireland could do it. Committees of this House and the other House could be involved in the

scrutiny; there is merit in what the noble Lord, Lord McCrea, said about that. But it should be transparent and open, and it should certainly not take place through a British Secretary of State, who I hope will eventually have to pass powers to legislators and others in Northern Ireland.

There is another reason too: all the international criticism of this Bill—whether from the Council of Europe, the United States, the United Nations, bodies such as Liberty and all the rest—is about the inadequacy of the Bill's compliance with human rights. It strikes me that the lack of independence in the way the commissioner is appointed is seriously linked with those concerns. In other words, if there were a more independent system of appointment, perhaps it would be more human rights compliant.

Even though the report is lengthy, I am not terribly convinced by the Government's reasoning on the Bill's compliance with the ECHR. Your Lordships will of course remember, as we have said consistently, that in a few months' time it is the anniversary of the Good Friday agreement, which is based on compliance with the European Convention on Human Rights. This is therefore a timely and important debate, and we very much look forward to the Minister's reply.

The Parliamentary Under-Secretary of State, Northern Ireland Office (Lord Caine) (Con): My Lords, I am very grateful to the noble Lord, Lord Murphy of Torfaen, for his kind words, and to other noble Lords for their engagement on this Bill. I think we are meeting again very shortly, almost immediately after Committee stage concludes, and I will continue to engage closely with all interested parties, bodies and noble Lords across the House on this legislation.

With one thing the noble Lord said, I could not agree more: to be honest, I would be more than happy for the people and the Assembly of Northern Ireland to deal with most of the matters in the Bill. However, I set out to the House at Second Reading and, to some extent, last week in Committee, why and how it went from being primarily a Northern Ireland Executive and Assembly responsibility to a UK Government one. Martin McGuinness and Peter Robinson came to see the then Secretary of State after Stormont House and said, "This is all far too difficult for us to do at Stormont. Please will you do it all at Westminster?" We agreed.

I also agree with those noble Lords who have argued that central to the effective delivery of this legislation is the need for an independent body to carry out reviews, including investigations, and to grant, where the tests are met, immunity from prosecution. The Government fully recognise the need for commissioners to have credibility, expertise and legitimacy, so that effective reviews and investigations can be carried out and information provided to families as soon as possible. The UK-wide nature of the legislation provides for the appointment of a person who holds or has held high judicial office across the United Kingdom. It would therefore not be appropriate, in our view, for the appointment function to sit with the Northern Ireland Judicial Appointments Commission, which, by definition, is concerned solely with judicial appointments within Northern Ireland.

I respectfully disagree with the noble Lord, Lord Browne of Ladyton, and others who have spoken about the independence of the commissioner if he or she is appointed by the Northern Ireland Secretary. The Northern Ireland Act 1998, as the noble Lord alluded, provides the Secretary of State with the power to appoint the commissioners of the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland. The Inquiries Act 2005, passed by the Government of which the noble Lords, Lord Murphy and Lord Browne, and the noble Baroness, Lady Smith of Basildon, were members, provides for the appointment of an inquiry panel by a Minister.

My experience of the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland is that they are fiercely independent of government. I think nobody would dare suggest that the fact that they are appointed by the Secretary of State for Northern Ireland makes them in any way in hock to government. They carry out their duties with total independence and they are not slow, as we have seen in respect of this legislation and other legislation which has recently been before your Lordships' House, to voice their criticisms and their opinions vociferously. Therefore I simply do not accept that appointment by the Secretary of State somehow limits or inhibits the independence of the commissioners.

Another example to which I could refer is that I was involved as a special adviser in the setting up the independent review into the on-the-runs administrative scheme back in 2014 which was conducted by the noble and learned Baroness, Lady Hallett, then Lady Justice Hallett. She was appointed in 2014 by the Northern Ireland Secretary in consultation with the Lord Chief Justice at the time. The appointment process did not in any way impact on the independence of the review.

To give a further example, in the absence of a sitting Executive in 2019, it was the then Secretary of State for Northern Ireland, Karen Bradley, who appointed the current Police Ombudsman for Northern Ireland. I do not think anyone would remotely suggest that Marie Anderson is influenced by His Majesty's Government because she was appointed by the Northern Ireland Secretary, any more so than any of her distinguished predecessors—I am looking towards the noble Baroness, Lady O'Loan, as I make those comments.

The noble Lord, Lord Browne of Ladyton, and the noble Baroness, Lady O'Loan, referred to some of the overarching powers of the Secretary of State for Northern Ireland. The noble Lord, Lord Browne, raised specific concern over the winding-up power under Clause 33. I remind noble Lords that the Secretary of State has a similar wind-up power contained in the Inquiries Act 2005, which was passed by the previous Labour Government. In respect of this legislation, the Secretary of State for Northern Ireland may wind up the commission via an affirmative procedure that would have to be debated by both Houses of Parliament. The Government believe that it is for Parliament to have the final say in the potential winding-up and abolition of what Parliament has created. However, the winding-up order will be laid only when the Secretary of State is satisfied that it is has delivered on its functions.

[Lord Caine]

The noble Baroness, Lady O'Loan, referred to some of the Secretary of State's powers in relation to national security. I hardly need to remind her, given her various roles over the years in Northern Ireland, that the Northern Ireland Secretary ultimately has responsibility for national security in Northern Ireland. The powers contained in the Bill are very reflective of what was proposed in the Stormont House agreement and the draft legislation that accompanied it. The power is not in any way extraordinary. I hesitate to remind her that Section 65 of the Police (Northern Ireland) Act 1998 also requires the police ombudsman to have regard to guidance given by the Secretary of State on matters relating to disclosure and national security.

The noble Lord, Lord Hogan-Howe, raised an important point, and I will try to deal with it. Clause 30(2) stipulates that the Secretary of State may by regulations make provision about the holding and handling of information by the commission. This is about ensuring that information is held securely and destroyed when no longer needed. It is not intended to be a power to place restrictions on the use to which the information can be put nor is it a power to restrict the use of information as evidence in a prosecution. I hope that goes some way to answering the noble Lord's query.

5.15 pm

I turn to the amendments in my name, which make it clear that, when appointing the Chief Commissioner, the Secretary of State should always consult the relevant senior judge and any other persons they consider appropriate. I did at one point toy with the idea of producing a list but decided against it on the grounds that every list is imperfect and open to challenge; that should be left to the Secretary of State's discretion. I intend to set out in the coming weeks more information about how we expect the appointments process to take place to provide greater transparency. I hope that goes some way to answering the point raised by the noble Baroness, Lady Suttie. It will be proactive, of course, but I will provide more details on that point very shortly.

I recognise that some people query the value of consultation in this respect. I can only speak from experience, having worked as an adviser to six Northern Ireland Secretaries and now alongside three, in just over a year, in a ministerial capacity. I have always been fully confident in, and impressed by, the seriousness with which they carry out the duty to consult in respect of any appointments process. In my experience, these have never been box-ticking exercises but have been carried out with seriousness and propriety. As we take this legislation very seriously, we will take the appointments process seriously too.

To strengthen the commission's independence, I have also brought forward an amendment requiring the Secretary of State to ensure that, as far as is practicable, there is at least one commissioner who has relevant international experience. This matter was brought up and debated at length in the other place at Committee stage, so the amendment is in large part a response to the debates that took place at the other end of the building. I stress that this does not require a foreign national; it can be a UK national with relevant international experience.

To respond on that point to my noble friend Lord Dodds of Duncairn, as well as the noble Baronesses, Lady Hoey and Lady Suttie, we want to avoid being overly prescriptive in trying to identify an individual or category of individual, but we would expect the person concerned to have experience working outside the UK. It could be a UK national who has worked outside the UK; for example, with experience of working with international organisations in such areas as peacebuilding or reconciliation. The amendment makes it clear that these criteria apply so far as is practicable and would not preclude an individual with UK-only experience from being appointed.

The aim of this amendment is to ensure that the commission benefits from the broadest range of experience, including gained in the UK and abroad, rather than excluding any particular type of relevant experience—as, alas, does Amendment 14A in the name of the noble Baroness, Lady Hoey. On this point, I have had representations from people saying that the commission should exclude anybody who has ever set foot in Northern Ireland, and from people saying it should include only those who have experience in Northern Ireland. I have had representations trying to exclude all sorts of people.

In response to the point about the Royal Ulster Constabulary, I made it clear last week, when we debated this at length, that there is no prohibition on former members of that fine police force being appointed to serve on the commission, or indeed on former members of the Historical Enquiries Team that Hugh Orde set up some years ago.

In conclusion, the Government believe that we have struck the right balance here and that there is no threat to the operational independence of the commission. It is far from unusual that the Secretary of State makes appointments to public bodies in Northern Ireland. That is very long-established and has worked effectively in the past, and I see no reason why it cannot work effectively in future.

On that note, I invite noble Lords not to press their amendments, as I of course shall not press mine.

Lord Browne of Ladyton (Lab): I thank the Minister for his characteristically engaging response. He addressed a significant number of the issues that I and other noble Lords raised, reflecting the co-operation that we have all had from him, his Bill team and his private office. I have previously expressed my thanks for that but I am perfectly pleased to associate myself with the words of other noble Lords on that issue.

The one thing that is certain about the Bill, if it becomes an Act of Parliament, is that the independence of the ICRIR will be tested in legal proceedings that will define independence for us. It will not be, as a number of noble Lords have suggested, a question of independence meaning different things to different people; in that context, it will mean some very specific things.

When I introduced this group of amendments, I sought to give some indication of what I think that body will look for in independence if it is to conclude that the process is complying with the European Convention on Human Rights and with our history and the rule of law in these islands. In my view, it is highly improbable—in fact, impossible—that it will conclude, with this level

of political interference in the commission's work and the way in which it has been set up, that this not only is independent but can be seen to be independent. That will be a significant flaw in the whole process. I think all noble Lords realise that. They may not agree with me that that will be the conclusion, but there is an overwhelming body of opinion and expertise out there that believes that is the case, and we have all been briefed on that.

I thank all noble Lords who have contributed to this interesting debate, particularly those who supported my amendments. Those amendments were intended not to be definitive on this whole issue of independence but to be a way into the debate, and I am glad to say that they succeeded in being that. I am particularly grateful to the noble Baroness, Lady O'Loan, for bringing in her contributions experience that showed that, beyond the points that I identified, there are other issues in the Bill that undermine independence.

I am grateful to the noble Lord, Lord Dodds of Duncairn. I share his view about the Bill, that this whole exercise is irredeemably flawed. The major issue that he raised, which is clearly foremost in his mind, is that of immunity, which we shall come to later today. I am focusing on independence at the moment, and in this group we are looking at independence. I cannot see how that can be consistent with what we have heard today from people with experience interpreting the words of the Bill and relaying to us, from their experience with victims, that there is concern here about the issue of independence.

I say to the noble Baroness, Lady Hoey, that the independence that I am talking about is not restricted to any part of the geography of these islands. It is independence from political control at a level that does not allow the informed examiner of how this will work to conclude that it is independence that is necessary for a process of this nature to satisfy the text. Now, that is going to be tested. I invite the Minister to look at this issue beyond the point that I highlighted in order to get into this debate, which is the appointment of the commissioners. I see the criticism that he makes of that, but the criticism goes much beyond just the appointment of the commissioners.

I ask the Minister to consider some of these points and take seriously some of the well-informed criticism from outside about where this is all going to end up. There are alternatives if he wishes to proceed on this basis—although I am not certain that they can be applied—to give the Government the results that they want. I ask the Minister to go away and think about this and perhaps come back with a response. I will look carefully at the words he has said. I have indicated that I intend to withdraw the amendment in my name, but if the Minister does not come back in anticipation of Report with some response to this issue which is convincing on independence, there will be a race between me and the noble Baroness, Lady O'Loan, to put down an amendment of this nature to be debated and perhaps voted upon on Report. I beg leave to withdraw my amendment.

Amendment 12 withdrawn.

Amendments 13 to 32 not moved.

Schedule 1 agreed.

Clause 3: ICRIR officers

Amendment 33 not moved.

Clause 3 agreed.

Amendment 34 not moved.

Clause 4: Actions of the ICRIR: safeguards

Amendment 35 not moved.

Amendment 36

Moved by ***Lord Bew (CB)***

36: Clause 4, page 4, line 31, at end insert—

"(4) Before carrying out any reviews, the ICRIR must publish, and in carrying out any reviews, the ICRIR must take into account, guidelines containing best practice on the rights of those likely to be named in any reports."

Member's explanatory statement

This new subsection makes it clear that when carrying out reviews and in the exercise of its power to make findings in reports the ICRIR will follow best practice for the due protection of the rights of any person who may be named with critical comment.

Lord Bew (CB): My amendment to Clause 4 is similar to Amendments 99 and 101, which I spoke to in previous discussions on the Bill. I express my gratitude to the noble Lord, Lord Murphy of Torfaen, and the noble Baroness, Lady Smith, for their support for those amendments. My concern here is the functioning of the commission rather than its appointment.

I would also like to express my thanks to the noble Lord, Lord Caine, in a rather different vein from the thanks expressed already, for the very fair, frank and open discussion he gave to the people of Northern Ireland on Ulster Television last night, explaining the whys and wherefores of this Bill, in difficult circumstances. I was at times slightly puzzled, because it felt as if the Bill is the first assault on the principle of equality of justice for the people of Northern Ireland that we have seen. But for 25 years there has been irregular process.

I well remember Tony Blair, at the time of the Good Friday agreement, talking about tearing up the criminal justice system and the release system that was then put in its place, and the importance of getting a referendum result in its favour because it was so complicated, difficult and controversial. I well remember new Labour's entirely reasonable—in my opinion—interest in an amnesty across the board, which was pursued at some length. While it failed because of party machinations in Northern Ireland, it did not fail because of an uprising of victims or sensitivity to the opinions of victims. It fell because of the workings out of political intrigues, particularly between the SDLP and Sinn Féin. I remember the letters of comfort and the royal pardons. All of these things were very unusual and all long pre-date this Bill. I remember Denis Bradley, the distinguished co-author of the noble Lord, Lord Eames, saying that we were now in a place where we could not reasonably expect Governments to deliver justice but that they should be doing their utmost to deliver truth.

[Lord Bew]
However inadequate and flawed this Bill is, it is an attempt to deliver more truth. We are in a darker place, and I felt for the Minister as he struggled under the weight of an accusation which is at least 25 years old and could be directed to others with more point than to him, especially in the context of the amendments that he seeks to make to the Bill.

5.30 pm

Again, there has been no discussion of the elephant in the room. The Minister mentioned the White Paper and said that the Bill is significantly different. He is entirely correct, but the most significant change in the environment is the Supreme Court ruling in December 2022. I look again at the headline of the *Times* law report, which stated that:

"Northern Irish police are not required to re-investigate incidents from the Troubles".

When I drew attention to this in our earlier debate, I was told that newspaper headlines are often misleading, but the *Times* law report is not the *Daily Star*. I went back and checked it and, to be blunt, that is an accurate account of what the Supreme Court ruled. That is a major change in the environment since the—

Baroness O'Loan (CB): I thank my noble friend for giving way. I think the Supreme Court decided that the particular applicants in that case were not entitled to get their cases reinvestigated—or investigated. They did not say that there was no obligation on the state to provide investigation.

Lord Bew (CB): I thank my noble friend for that intervention. I think the implications of the Supreme Court ruling are somewhat broader. I was going to say that, at some point or other, the Government will have to refer to this major change, possibly with the Attorney-General, because there is controversy about what it really means. We cannot finish the Bill as though something of that importance has not happened, because it clearly bears on the issues at stake in the Bill and on the international obligations or otherwise of the United Kingdom Government.

Like my previous amendments, my Amendment 36 is designed, essentially, to get the best possible practice in play for the commission. It calls for the ICRIR to publish

"guidelines containing best practice on the rights of those likely to be named in any reports".

I think the Minister will have a reasonable reply. We already know that there is a process of Maxwellisation. During the long period of the Iraq report, many will have felt frustrated about the amount of time devoted to Maxwellisation but, none the less, people who are challenged in their conduct have every right to take time to give a decent reply.

I am sure that that will be the Minister's reply—that we already have rights in law. But things have moved on since then. It seems to me that the best practice now is something that we might call Maxwellisation-plus. I again draw attention to the way in which the Green Paper to the Commons Treasury Committee sets out proceedings and an approach to the rights of those involved under questioning in the ICRIR, which the Government should adopt. They should follow that Green Paper.

Lord Hain (Lab): My Lords, I too pay tribute to the Minister for his open door and willingness to engage. I hope to knock on that door in the next few days to persuade him to support the Operation Kenova amendments.

Lord Caine (Con): The noble Lord is always welcome.

Lord Hain (Lab): I thank the Minister. However—this is no criticism of him—I think that he is doing his very best to defend the indefensible and that if he were the architect of the Bill, it would not look like this. I am not expecting him to agree with me, although it would be interesting if he did. I see that he has zipped his mouth, which perhaps says it all.

I will speak to Amendments 112 and 124 in my name and those of the noble Lord, Lord Cormack, the noble Baroness, Lady Suttie, and my noble friend Lady Ritchie. Once again, I am grateful to them for their support.

The Bill grants immunity, in effect giving an amnesty, to people who may have committed horrific crimes. Victims and survivors find that most difficult to take. The Bill is opposed by every political party and every victims' group in Northern Ireland—an unprecedented unity between people who almost never agree with one another, even on the definition of a victim.

Before turning to the substance of the amendments, I will briefly refer back to our debate last Tuesday on Amendment 72 in my name, which for convenience I will call the Operation Kenova amendment. In his response, the Minister made a number of assertions in relation to the upscaling of Operation Kenova to deal with the outstanding legacy cases which I am afraid cannot go unchallenged and need correcting.

I have had access to independent advice which supports the view that Kenova can be upscaled and expedite investigations and would represent real value for money in such a role. If the alternative is some kind of cheapskate, back-of-an-envelope process, of course that will be cheaper. But I hope your Lordships' House is seeking and will express unity on a proper process that investigates the past and includes within it a crucial truth recovery priority for victims. As we have seen in the past, in a very small minority of cases the evidence uncovered would qualify for consideration of prosecution.

Inevitably, that will be more expensive than a back-of-the-envelope operation, but Kenova represents real value for money. I will write to the Minister before Report explaining all this and copy it to any interested Members of your Lordships' House. It is very important to do so because the Minister's arguments against modelling the Bill on the hugely successful and popular Operation Kenova are at best specious and, I am afraid, misleading to many. Granting immunity—an amnesty—to perpetrators of terrible crimes drives a stake through the rule of law. I am afraid it is at the core—the rotten core—of this odious legislation.

At Second Reading, I raised the case of 18 year-old John Molloy, who was stabbed to death in a random sectarian attack near his north Belfast home in August 1996. I asked the Minister to explain to John's parents, Linda and Pat, why he and his Government see a difference between John's sectarian murder in Belfast and a racially motivated murder in London or in his own home city of Leeds—both horrific crimes. Linda and Pat are still waiting for an answer.

I can do no better than to quote from a powerful article in the *Belfast Telegraph* on 24 January. In it, Linda, John's mother, gets to the heart of the matter:

"'It feels like John has been archived and forgotten about. You're talking about a child's life here and the repercussions of what we've gone through. How dare they treat my son as a number? Because that's how we feel; he's just another number, and they haven't even tried. John's murderers are walking the streets while he's lying in the cemetery.'"

Quoting Dr Sandra Peake, the article goes on:

"'Why does John's life mean so little that the taking of it will no longer be of any interest to a state whose first duty should be to protect its citizens? If this legislation is passed … the person who stood over John as he bled to death on a cold, hard pavement will have the protection of the state. And to earn it, all they have to do is to tell the story of that night to "the best of their knowledge and belief". Once they do that, the lifelong protection of the state is extended to them as if nothing happened on the night of 10th of August 1996. It will be as if John Molloy never existed.'"

We hear much in the legacy debate about the rewriting of history. What is giving legal absolution to those who murdered John Molloy and so many others like him if not rewriting history? The Government seem perplexed when victims and survivors call this perpetrator-friendly legislation.

I have heard it argued that, over the course of the peace process, decisions have been made that have radically changed fundamental aspects of the criminal justice system. That is true. Sentencing legislation which meant that those convicted of Troubles-related offences would serve only two years in prison before being eligible for early release is cited as the prime example. Those who point to it claim that the immunity granted in this Bill is simply another manifestation of Northern Ireland being a place apart, but I would contend that this is of a radically different order.

Almost 25 years ago, the people of Northern Ireland, including many thousands of victims and survivors, were given a choice: they could vote for the Good Friday/Belfast agreement, in the knowledge that the early release of prisoners was a consequence, or they could vote against it. For many victims and survivors, that was a cruel choice, and every Member of this House who lives in Northern Ireland or who has had the privilege of serving there as a Minister or in another capacity will have met and will know people who had to make it. I have sat with men and women who had to make that agonising choice, who lost loved ones or live with catastrophic injuries, and I have spoken with and listened to them. Many—possibly most—victims and survivors voted "Yes". There were those who could not bring themselves to vote for a settlement that contained that provision—I am sure that some are sitting in this House—but the key point is that they had a choice; in this legislation, victims and survivors are denied a choice.

However, they are making their voices heard loud and clear through their political representatives in every party in Northern Ireland, through their churches, their victims' commissioner, their victims' groups and their representations to the Irish Government, to the US Administration and directly to this Government. I believe that they want us in your Lordships' House to speak for them. Recently, the Secretary of State for Defence—

Baroness Hoey (Non-Afl): I am sorry to interrupt. How were the victims consulted, and what did they think about the pardons and letters of pardon that were given to people who probably did appalling things, although we were never told? The victims were not asked about that.

Lord Hain (Lab): Actually, those letters, which started before my time as Secretary of State, were not pardons at all; the so-called "on the runs" letters were statements that there was no evidence, to the best of the PSNI's knowledge at the time, to bring a prosecution against them. However, in fact, a prosecution was brought against at least one of them afterwards, so they were not pardons—how could they be? If they were, that prosecution would never have been brought.

We are speaking about the current Bill, but I will pause since the noble Baroness raised a wider issue. All of us have tried to grapple with this terribly difficult and fraught issue of legacy. All of us, including me as Secretary of State, have tried to do this, but it is extremely difficult. I sympathise with the Minister, who is trying to get to grips with it, as he has done in serving as a special adviser in Northern Ireland over many years—I pay tribute to him for that. It is not easy to do. However, this Bill is not the way to do it.

I hope that the Minister will listen to all the victims and that the Secretary of State for Defence, who recently visited Belfast, will do too, because he referred to a

"merry-go-round of legacy inquests".

I hope that the Minister will acknowledge how deeply hurtful that comment was to victims and survivors. He will know, even if the Secretary of State for Defence does not, that the Ballymurphy families did not regard themselves as being part of a legal fairground entertainment as they listened to how their loved ones died and how their reputations were trashed and damned for 50 years. The Secretary of State for Defence also answered those crying out for the Government to abandon this ill-conceived legislation by saying

"give the legislation a try and see if it works."

That casual dismissal of the pain of victims and survivors is disgraceful.

There is a second difference between what is proposed here and what has gone before: accountability. People who committed crimes were held accountable, even if the sentence they served was short. With this legislation, there is no accountability: they do not even have to pretend to express remorse or regret for their actions. They will, in effect, confess to having committed, or having been involved in the commission of, the most serious crimes—but, if their word is accepted as being true "to the best of" their "knowledge and belief", as the Bill says, they must be granted immunity. As far as

[Lord Hain]
the world at large is concerned, they would not have a stain on their character. They could have committed murder, but a future employer would never know it. If I have misinterpreted the outworking of the legislation in this specific example, I would very much welcome the Minister putting me right.

5.45 pm

Amendment 112 aims to make the granting of immunity more conditional and to give the ICRIR more discretion in granting immunity at the outset, along with the powers to revoke it once granted if the terms set out by it are breached, as set out in Amendment 124. If, in verifying whether the account given by the person seeking immunity is true to the best of their knowledge and belief, the ICRIR uncovers evidence or credible intelligence that the applicant is engaged in activities—I will set these out—that, if uncovered after immunity had been granted, could lead to revocation, it would have the discretion to withhold granting immunity. Thus, an applicant for immunity may have satisfied the conditions set out in paragraphs (a) to (c) of Clause 18(3) but, if they are found to be engaging with a proscribed organisation or harassing a victim or victim's family, for example, the ICRIR may withhold the granting of immunity.

The Minister has proposed that there is only one circumstance in which immunity could be revoked: if a person knowingly misleads the ICRIR. There must be more circumstances than that to hold perpetrators to account, in however limited a way—if not for what they have done, then for their behaviour in the future. This is the thrust of my amendments: they would put some conditions on the granting of immunity, much like those imposed on those released from prison on licence. If they reoffended, they would be locked up again.

Amendment 124 would grant immunity on terms set out by the ICRIR. Its purpose is to give the ICRIR some discretion in the terms on which immunity is granted. Paragraphs (a) and (b) of proposed new subsection (14A) are designed to do two things. One is to link a person who has confessed to committing a crime, but who will have no criminal record, to the criminal justice system. If they subsequently commit offences that are sufficiently serious to warrant the revocation of their immunity, having fingerprints and DNA on record would be appropriate.

Proposed new subsection (14B)(a) would see immunity revoked if the person granted that immunity is subsequently found to actively engage with a proscribed organisation. It may well be that the crime—I will call it that, even though, through this legislation, it would seem that no crime has been committed—that has been confessed to will have been carried out on behalf of a proscribed organisation. It would be outrageous if the person granted immunity could simply carry on with that association as if nothing had happened.

Proposed new subsection (14B)(b) stipulates that, if a person granted immunity is a danger to the public in the view of the police and if the ICRIR concurs, they should have their immunity revoked. If there is a counterargument to that, I would be interested to hear it from the Minister.

Proposed new subsection (14B)(c) stipulates that, if a person granted immunity harasses a victim or a victim's family, the immunity would also be revoked. This is important: people who work with victims and survivors of the Troubles often talk of the intimacy of violence in Northern Ireland. This is not often appreciated by those who have not experienced it. Even today, before this amnesty legislation is in force, victims and families are stared at, winked at and smiled at by those who have wronged them.

I can give a living example. A woman who had just given birth to her son was visited in hospital by her husband, who was a member of the RUC. When he left, she heard gunshots: he was murdered in the car park. Years later, thanks to advances in forensic science, someone was prosecuted for her husband's murder and found guilty. He went to prison, albeit for only two years. Associates of this individual would stand outside this woman's place of work. One day they came in and asked her to make a donation to a hardship fund for the man who had murdered her husband. Surely, we must give some protection, however limited, to victims and their families, for instance in that case.

Proposed subsection 14B(d) would prevent someone using their immunity to benefit financially from the crime or crimes for which they have been granted immunity. Again, that seems to me to be self-evident. These amendments set out a range of circumstances in which it would be appropriate to either withhold immunity or revoke it, and I hope that the Government will adopt the amendments without dividing the House on Report—otherwise I would need to ask leave to do so. If there are technical issues associated with the phrasing, I would be more than happy to work with the Minister to suggest how those might be corrected. If not, then I must divide.

I will draw my remarks on these amendments to a close. We have to show victims and survivors that, in this House at least, they have not been completely abandoned. I strongly appeal to the Minister—and, above all, to the Cabinet Ministers behind the Bill—to think again. If they agree our Kenova Amendments 112, 124 and 72, including the ones on immunity, they will be able to deliver a Bill with cross-community support rather than the one we have before us—with or without his government amendments, which do not really address the substance—which has provoked near-universal cross-community hostility in Northern Ireland and, frankly, huge opposition across the UK, and this House in particular. I urge him to persuade his colleagues sitting above him in the Cabinet to think again and to engage constructively on this.

Lord Cormack (Con): My Lords, I am very glad to have added my name to Amendment 112, in the name of the noble Lord, Lord Hain. But there was a contradiction running through even the very eloquent and powerful speech that we have just heard from my friend—I deliberately call him that—the noble Lord, Lord Hain. He worked with extreme sensitivity when he had the honour to be Secretary of State for Northern Ireland, and I saw at first hand how he agonised over things and cared about people. At the beginning of his speech, he said—in as many words—that this Bill was

beyond improvement: that whatever we did to it, we could not really make it into a decent Bill. Then he went on to urge us all to support the amendments. I understand the contradiction—of course I do, because we have the Bill before us. But every word I have heard uttered in these debates—and I have heard most of them—and on Second Reading, underlines the fact that, to quote the noble Lord, Lord Reid of Cardowan, in a different context, this is not fit for purpose. It really is not.

Much as I admire—and I do admire—the noble Lord, Lord Caine, as I have said before during the passage of this Bill, with all the good will in the world, and I know he has a great measure of that, he cannot really make this better. It is as if you are confronted with a cake made with poisonous fruit. Any amount of cream, any amount of icing and any amount of titivation will not make it anything other than a poisonous cake. I am afraid that the Government have, with a combination of insensitivity and ignorance—and this emphatically does not apply to my noble friend on the Front Bench—created a monster of a Bill that has alienated every community in Northern Ireland. There is only one answer, and I have said this before, and that is to go back to the drawing board and try to produce something that really does meet many of the points that have been made by the noble Lord, Lord Hain, and others during the course of our debates.

While I am here because I believe that the subject is important—I care deeply about Northern Ireland, although I have never had the good fortune to live there, and have been there many times and heard many stories—I feel we are not serving the people of Northern Ireland as we should if we try to make the proverbial silk purse out of the sow's ear that the Bill is.

For those who are not from Northern Ireland, I would say this: a fortnight ago, I had a message that somebody from Northern Ireland wished to see me. Of course, I saw him. He was a man who had appeared as a witness when the Northern Ireland Affairs Committee—under my chairmanship—conducted an inquiry into organised crime. We had to take a unique departure for a Select Committee—I do not think it has happened since—which was that every evidence session was taken in camera, because people were not prepared to give evidence in public as their lives were at stake. This was a man who had suffered from extortion by—I hate the term—loyalist terrorists. How you can be a loyalist and a terrorist is completely beyond me, but the term is used. He wanted to come and tell me what had happened since that day in 2006 when he gave evidence to my committee. I was moved and impressed by his courage, his resilience and his determination. He had suffered quite considerably, and suffered physically as well. How would a man like that ever buy this Bill? It is from individual examples such as that that one can try to gain an understanding of what it is like, and has been like, in Northern Ireland, and realise that we really have a duty to produce something that can be acceptable to those who have suffered so much.

Lord Hain (Lab): I do not disagree with anything the noble Lord has said. The problem is that the House's role is not normally—if ever—to reject a Bill, especially one that, at least in part, has a manifesto commitment in it. So we just have to do our best to make it less unacceptable. That is what my amendments have been designed to do and I am very grateful that he has supported them.

6 pm

Lord Cormack (Con): The noble Lord says that we cannot reject a Bill, but of course we can. It should be done very rarely. The Parliament Acts of 1911 and 1949 make provision for it. There have been Bills rejected during my time in Parliament—only three in the 53 years that I have been here. The War Crimes Bill was rejected by the House of Lords. Mrs Thatcher pursued it, and it went on to the statute book, but I think I am right in saying that it has never been used in this country. Similar Bills have hardly been used elsewhere; they have little application. However, we have the opportunity to say, "Sorry, up with this we will not put". To say that is entirely consistent with our constitutional position. It is not something that I would ever likely advocate, but it is something I would contemplate—and I think we have to contemplate it in this case. I do not like saying that, because I like to think I am a good constitutionalist. My belief is that this House has a duty to ask the other place to think again; it has an opportunity, if something is irremediable, to say, "Sorry, we won't have this".

Of course, if the Bill is then presented in an exactly similar form a year later in the next Session of Parliament, it will go through. However, I remind your Lordships that we are more than half way through this Parliament, and it probably would not apply in this case. That makes our responsibility all the greater before we do such a thing. Clearly, the obvious answer is to pause the Bill after Committee and to not have a Report stage—that is the tidiest and most constitutional way forward. I say to my noble friend—while, again, reiterating my admiration for his determination, sincerity, knowledge and commitment; all those words apply to him—that the Bill really should not pass.

Baroness O'Loan (CB): I will add to the words of the noble Lord, Lord Cormack, about the options open to the House at present. One of those would be to support an amendment such as the one I tabled at the beginning of Committee, and to decide that the Bill should not proceed until such time as a legislative consent Motion has been obtained from the Northern Ireland Assembly.

With the noble Lord, Lord Murphy, and the noble Baronesses, Lady Ritchie and Lady Suttie, I have indicated that Clause 18 on immunity should not stand part of the Bill. I agree that we have seen limited measures for immunity in Northern Ireland. We saw, for example, the legislative provisions which allowed the information to be supplied for the recovery of the remains of the disappeared, in which situation the information provided could not be used for a prosecution. We also saw the decommissioning of arms, the information gathered as a consequence of which could not be used for a prosecution. But we have not seen the like of this Bill before, and I do not know of any other democracy which has agreed to the like of this Bill before.

[Baroness O'Loan]

We are faced with a situation in which the obligations of the United Kingdom to provide processes for criminal investigation and prosecution, for civil action and for inquests are being removed, and in which immunity is being provided for perpetrators for their previous criminal offences. That is not compliant with our domestic and international legal obligations, which require the provision of processes to enable the investigation and prosecution of offences. For example, we have very clear obligations as high-contracting parties to the European Convention on Human Rights. Under Section 1, we are committed to securing that everyone in the jurisdiction has all the rights and freedoms provided for in the convention. Those rights were incorporated into UK law by the Human Rights Act 1998, although their application, as domestic rights, has been limited somewhat by the jurisprudence of the courts.

In addition, under the Good Friday agreement of 1998, the participants of the multiparty agreement dedicated themselves

"to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all."

They stated:

"The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all."

They agreed that

"neither the Assembly nor public bodies can infringe"

the European Convention on Human Rights, and that there should be

"a coherent and cooperative criminal justice system, which conforms with human rights norms."

However, the Bill does not provide that.

In England and Wales, people seem to be under the illusion that paramilitaries no longer have areas of Northern Ireland under their control—that is not the case. Paramilitaries, both loyalist and republican, are still at work, and they still exercise, on occasion, brutal control in their areas. Since 1998, when the Good Friday agreement was signed, 155 people have been killed, and there have been 1,660 bombing incidents and 2,700 shooting incidents. Over 1,500 people have been arrested under the Terrorism Act, and 235 people have been charged with terrorist offences in the last 10 years alone. Terrorism is alive and well, although not to the scale of previous atrocities.

The mere existence of those paramilitaries means that people who may have information to give which might lead to the arrest and conviction of people for Troubles-related events will, very often, fear to do so, lest they themselves be attacked. The consequence is that it seems that many of Northern Ireland's terrorists have, by their very existence, created for themselves de facto immunity from prosecution. Now the Government are preparing to enable immunity for those few who may come to fear that prosecution might become a reality.

It is said that the Bill owes its genesis to the statement in the Conservative Party manifesto:

"We will continue to seek better ways of dealing with legacy issues that provide better outcomes for victims and survivors and do more to give veterans the protections they deserve."

Victims across the UK have stated that the Bill is not victim-centred and that it does not provide better outcomes for victims; rather, it deconstructs the existing legal framework, creating a web of protections for perpetrators. There can be no doubt that the Bill is intended to give veterans protection, but most veterans who served in Northern Ireland did not commit criminal offences—and certainly not the most serious Troubles-related offences created by the Bill.

I have mentioned before that it is said that the state kept records while the terrorists did not. However, the state forces did not keep records of instructions not to investigate, not to transmit information or intelligence to investigators, not to arrest or to interview suspects, to lose evidence, or to contaminate physical evidence so that it would be inadmissible. Those things emerge only through painstaking investigation, usually because there are gaps in the chain of evidence, and sometimes people come forward to explain that they tried to do something but were stopped. Those processes enabled murderers to continue their nefarious business, sometimes as agents of the state, despite the best-intentioned processes, such as the passing of legislation by Parliament designed to regulate and to help in this area.

For the record, it is not the case that state actors, such as soldiers and agents, are more likely to be prosecuted than terrorists—and, of course, some state agents were terrorists. According to a House of Commons Library research briefing paper of May 2022, four soldiers have been convicted and sentenced following the Troubles, and one case is currently before the courts. Some 300,000 soldiers served under Operation Banner, which continued until 2007. Since 2011, 26 prosecutions have been brought by the Public Prosecution Service, 21 of which involved republicans and loyalists.

The provisions of the Bill suggest that the commission, and on very limited occasions, to some extent, the criminal law, is supposed to fill the vacuum left by the removal of criminal investigation processes, civil actions to recover damages for harms caused and inquests. Until now, we have had processes which are compliant with all our legal and moral obligations. If this Bill is passed, we will no longer have such processes.

The Government have stated that their aim is to get to those people who need it information which might help them and to achieve reconciliation. The Bill, unfortunately, has only one provision for reconciliation, and it relates to memorialisation. The response of the political parties, the victims' groups, the NIHRC, the Equality Commission and all the international organisations, including the UN High Commissioner for Human Rights, do not indicate any confidence that the immunity provisions will actually achieve what the Government are aiming for. The general response that I have encountered in Northern Ireland, and among those British victims to whom I have spoken, is: "Why would they tell what they know? They don't need to. They just need to sit it out".

There is a view that immunity clauses and the provisions about early release et cetera create a perpetrator-focused regime, under which perpetrators will be able, should they wish to do so, to provide

information which really will not be capable of challenge, and through which, should they avail of it, they will be free from all fear of prosecution. Clause 18 will enable an offender to provide a statement to secure immunity for prosecution for murder and other serious crimes which comprises limited information; information which has already been supplied in other circumstances, and even information which is already in the public domain. The information must be true, but there is nothing which says that it must be complete. Will the Minister tell the House whether there is a requirement that P should tell the whole truth?

The provisions in Clause 18(11) state that the commission can grant immunity for not only all identified offences but

"all serious or connected Troubles-related offences which are within a description determined"

by the commission. Will the Minister tell us what this means? I have read it several times and am trying to work out what those offences might be.

Lord Caine (Con): Sorry, I missed that.

Baroness O'Loan (CB): It is complicated. Clause 18 provides that the commission can grant immunity for not only all identified offences but

"all serious or connected Troubles-related offences which are within a description determined"

by the ICRIR. Will the Minister tell us what that means and what types of offences are envisaged by these provisions?

Clause 18 does not provide that the commission must investigate whether there is information available which may undermine or assist the verification of P's account. The commission will have to make the decision on the basis of the information supplied by P, the information already in its possession and P's statement that to the best of his knowledge and belief it is true.

Clause 18 is fundamentally flawed. It is in contravention of our legal and moral obligations. It is actually offensive to those who are expected to believe that the perpetrator has fulfilled his obligation to provide complete information. My experience as Police Ombudsman for Northern Ireland, and even as chair of the Daniel Morgan Independent Panel during my service on the independent steering group for Kenova, has shown that perpetrators very often do not tell the whole truth even when they are swearing that that is what they are doing. Their information is frequently disproved by other available information when the necessary investigation occurs.

One of the most questionable things about the Bill is that, under Clause 18 and government Amendment 85, and the new schedule to follow Schedule 4, a perpetrator of Troubles-related sexual offences, which includes attempted sexual offences, cannot be granted immunity but immunity will be available for murder, and for things such as dropping concrete blocks on people's limbs, shooting them in the knee so that they will live their lives with constant pain and disability, or other forms of torture. Paramilitaries were known for torturing people to confess to that which they had not done so as to justify their subsequent murder, with bodies left mutilated and naked on country roads as a warning to others, or even concealed for ever so that they became disappeared. These are the kind of offences for which the Government intend to grant immunity from prosecution in return for information. The big question is whether the commission would ever really be in a position to know that the whole truth, or even a semblance of the truth, had been provided, even if the proposed amendments are accepted. For this reason, Clause 18 should not form part of the Bill.

6.15 pm

While I have no doubt that Clause 18 should be removed from the Bill, like other noble Lords, I have sought to try to mitigate the worst effects of these measures, because that is what we must do. I support Amendment 112 to Clause 18 in the names of noble Lord, Lord Hain, and others. Had they not got there before me, I would have tabled such an amendment. Amendments 113, 115 and 119 to Clause 18 in the name of noble Lord, Lord Browne, to which I have put my name, would require the commission to be satisfied that any grant of immunity would be compatible with human rights et cetera. That is a very significant requirement. I also support Amendment 114 in the name of the noble Lord, Lord Dodds, though I think that it might be improved by the inclusion of a requirement to investigate and then, where appropriate, to submit a file to the prosecution service. I support Amendments 120 and 121 in the names of the noble Baronesses, Lady Suttie and Lady Ritchie. My own Amendment 122 is designed to ensure that there is consideration of all identified possible Troubles-related offences arising from P's conduct and which were disclosed by P, because I think that Clause 18(10) is possibly ambiguous.

It is most important that there is a provision in the Bill for the revocation of immunity. I think that has now to some degree been accepted by the Government. My Amendments 123 and 126, also in the names of the noble Lords, Lord Murphy and Lord Hain, and the noble Baroness, Lady Ritchie, provide for revocation where it can be shown that P has not actually complied with the requirements for the grant of immunity in the first place.

The Government's opposition to Clause 19 standing part, to be replaced by government Amendments 125, 139 and 140, provides for revocation by a court after a court has held that an offence has been committed under the new offence created in government Amendment 139. That amendment involves making a false statement. Will the Minister explain whether a statement which is true but incomplete is a false statement which would attract a penalty on conviction? Moreover, will the Minister consider how an accusation of making a false statement might be proved beyond a reasonable doubt in an environment in which it is so difficult to prove so much of what happened in the past and in which there are such limitations on the disclosure of information, particularly sensitive information, which may well be needed to prove a perpetrator's involvement in a crime to which he has not admitted? Disregarding the inadmissibility of various forms of evidence, as referred to by the noble Lord, Lord Hogan-Howe, many very expensive and lengthy trials collapsed in the past when the evidence which was available which might have led to a conviction could not be presented because of the need to protect lives and sources. What will be different about this situation? If a conviction is

[Baroness O'Loan]
impossible because of matters like this, under the Government's amendment there can be no revocation of immunity.

Amendment 124, in the name of the noble Lord, Lord Hain, provides an alternative: the revocation of the grant of immunity by the commission for specified conduct by P. Amendment 127, in the name of the noble Lord, Lord Dodds, provides for revocation where an offence of encouragement of terrorism or glorification of terrorism is subsequently committed. That may require some consideration as to the legitimate expectations of a person who is granted immunity that they will not be prosecuted. I am not sure about that; perhaps the Minister and the noble Lord, Lord Dodds, could help us.

In reality, in most cases, all that any perpetrator has to do is sit it out until the end of the five-year period provided for in the Bill, and then they know that the murders and the life-changing injuries which they inflicted, and the serious mental health issues which were caused by their actions across the generations, will no longer be a cause for concern. Nothing can happen to them. The measures in this Bill, in particular Clauses 18 and 34, could mean, among other things, that ultimately any murderer or torturer, whether IRA, loyalist, state agent or member of the security forces, could not be prosecuted unless the commission agreed to an investigation within the five-year period at the request of a family member or a victim/survivor. Is it possible that these people could be subjected to pressure not to seek investigation by the perpetrators? The commission has no power, such as the police and the Police Ombudsman for Northern Ireland have, to initiate an investigation because there is a serious matter which requires to be investigated.

For this reason, with the noble Lords, Lord Murphy of Torfaen and Lord Hain, and the noble Baroness, Lady Ritchie, I have tabled Amendment 130 to Clause 21. It would impose an obligation on the ICRIR to investigate and seek information, which would allow a more informed decision to be made about whether P has actually told the truth—something which in most cases may well be incapable of verification.

Our subsequent Amendment 131 removes the Secretary of State's power under Clause 21 to give guidance to the ICRIR about how to operate the immunity system. It would leave the immunity requests panel, which comprises the chief commissioner—a person who holds or has held high judicial office—and two ICRIR officers, who must be senior lawyers, as provided for in Clause 22, to make its decisions with complete and unfettered independence. If this immunity system is to operate at all—and I do not believe that it should—it will be vital that there can be no suggestion that the independence of the immunity requests panel is in any way compromised by political interference.

Lord Browne of Ladyton (Lab): My Lords, I have amendments in this group. I say emphatically at the outset to the noble Lord, Lord Cormack, and other noble Lords that I am not in the business of silk purse manufacturing. But I do have amendments in this group and I will explain the purpose of them. My noble friend Lord Hain's decades—in fact, lifetime—of commitment to human rights issues, peace and reconciliation, and latterly, for decades, to the people of Northern Ireland, is to be commended. I do not believe that he is in that business either; he explained himself the purpose of these amendments. I say in support of him that, if his Kenova amendments were accepted, we would not be dealing with this Bill. It would fundamentally change the legislation we have before us and, in my view, open up lots of other opportunities. In terms of the support for reconciliation, it may be potentially more valuable than what we have here.

Amendments 113, 115 and 119 are in my name and supported by the noble Baroness, Lady O'Loan, for whose support I am once again extremely grateful. They are probing amendments with the effect of ensuring that the ICRIR—the commission—must consider whether granting immunity from prosecution would be compatible with convention rights and, as important, compliant with the constitutional principle of the rule of law, as well as satisfying the interests of justice. Amendment 115 is the active amendment, Amendment 113 is a paving amendment and Amendment 119 is consequential.

The other purpose of Amendment 115 is to create an opportunity for your Lordships' House to explore the compatibility or otherwise of the immunity provisions of the Bill with our obligations under Article 2 of the European Convention on Human Rights and the constitutional principle of the rule of law. Also inherent in this question is the scope of the commission to deal with the question of immunities without the guiding hand of the Secretary of State, in a way that is truly and avowedly independent—a point I made in the earlier debate.

To deal briefly with that second question first—and to repeat myself in a sense, if I may—the Bill does empower the commission to make decisions relating to immunity applications. But if the only salient question precedent to the exercise of this power is whether the applicant is telling the truth "to the best of" their "knowledge and belief", and at the same time it

"must take account of any guidance given by the Secretary of State"

about when this condition is met, it is very difficult to consider this as any genuinely independent decision at all. I ask the Minister to consider the language of the Bill here. "Take account of" could imply various widely divergent systems in practice. Does it imply oversight, indifference or interference? Given the importance of independence and the appearance of independence in the conduct of reviews and investigations, I would welcome guidance from the Minister here in clarifying what this would look like in practice.

Turning to the wider question of compatibility, I read the Government's ECHR memorandum issued by the Northern Ireland Office with great interest. It acknowledges candidly that the Bill will

"restrict or prohibit the investigation and prosecution of offences arising out of Troubles-era deaths"

and will

"therefore engage the UK's obligations under Article 2 of the Convention."

But there are certain minimum requirements that investigations must meet for the state to be conforming with its duties to protect the right to life as defined by

its obligations. Investigations must be independent—as we debated earlier—effective, prompt and open to public scrutiny and must involve the next of kin.

Noble Lords have considered and are considering the questions of independence and transparency elsewhere, and we may come back to them on Report. But, speaking to the questions on the involvement of the next of kin and effectiveness, I would observe that, while the involvement of the next of kin is mandated, the European court previously has ruled that the state cannot rely solely on the next of kin, but rather that

"authorities must act of their own motion, once the matter has come to their attention."

However, the Explanatory Notes to the Bill suggest that reviews primarily will be instigated by the next of kin rather than by the state. I hope the Minister will help me to square that circle in his response.

Most of all, it is unclear just how "effective" a commission review can be said to be, considering the weakness of the body's powers and the immunity provisions in the Bill, to which I now turn. In their ECHR memorandum, the Government argue that the conditional immunity scheme can be justified as

"a proportionate means of achieving and facilitating truth recovery and reconciliation in Northern Ireland".

In interrogating this assertion, we must ask two questions. First, will the immunity scheme prove an effective and proportionate means of achieving reconciliation? Secondly, may amnesties be accepted at all under the European convention?

Under the Bill's provisions, to receive immunity, a person must just offer an account of their behaviour that is

"true to the best of"

their "knowledge and belief", even if this account is already entirely in the public domain. This contrasts with the South African Truth and Reconciliation Commission, which demanded

"full disclosure of all the relevant facts"

as a precondition of amnesty. What fresh truths could one expect to uncover given this somewhat anaemic provision? It is hard to see how the cause of reconciliation is furthered by the spectacle of killers being granted immunity in return for partial and self-serving recollections.

Even if it were effective, it is far from clear that amnesties might be accepted at all under the ECHR. The Government acknowledge that previous amnesty schemes launched without reconciliation processes have been found to undermine Article 2, citing the case of Ould Dah v France and the court's finding that

"an amnesty is generally incompatible with the duty incumbent on the States to investigate such acts."

Yet the Government suggest that it is unclear in case law whether amnesties will be incompatible in all cases. The ECHR memorandum reads—this is crucial, because this is the basis of the Government's immunity and amnesty—that the European Court of Human Rights

"has countenanced the possibility of an amnesty being compatible with Article 2 in some particular circumstances, including where a reconciliation process is in existence".

The Government specifically cite the case of Marguš v Croatia. They go on:

"It is therefore an open question as to whether the Court would find an amnesty to be compatible with the Article 2 procedural obligation where there are alternative procedures that allow for investigation, information recovery and reconciliation."

An "open question" where a "possibility" has been "countenanced". This is hardly an endorsement of the Government's legal position.

6.30 pm

In Marguš v Croatia and in the Government's response to questions from the Committee of Ministers, it appears that the Government are building their case on this paragraph from the Court's conclusion, which says:

"A growing tendency in international law is to see such amnesties as unacceptable because they are incompatible with the unanimously recognised obligation of States to prosecute and punish grave breaches of fundamental human rights."

That is pretty clear. But this is the sentence that matters to the Government:

"Even if it were to be accepted that amnesties are possible where there are some particular circumstances, such as a reconciliation process and/or a form of compensation to the victims, the amnesty granted to the applicant in the instant case would still not be acceptable since there is nothing to indicate that there were any such circumstances."

The active part of this judgment is a commentary, and I repeat it because it is crucial:

"Even if it were to be accepted that amnesties are possible where there are some particular circumstances, such as a reconciliation process".

This daisy chain of conditionality is extremely shaky ground on which to overhaul a country's entire system of justice relating to a several-decades long conflict. The Bill, if passed, will be challenged in the courts. To base such a radical and controversial shift on a hypothetical statement, deemed irrelevant to its own case, is an adventurous act in a process that is supposedly about reconciliation.

Viscount Brookeborough (CB): My Lords, I would like to mention one factor which may be naïve and maybe I just cannot see it, but we appear to be talking about amnesty for individuals who have committed a heinous crime of some type. I wonder whether noble Lords understand what actually occurred in practical terms? This is from my own experience of living there and serving there.

Early on in the Troubles there were cowboy shoots. There were people who went out just to murder a person. But after a certain time, I would like to think that the security forces not only became better, but they also became much more numerous. There were patrols all over the place. How was it that these people—supposedly individuals, as we seem to be talking about—were not caught? I will tell you why: after several years of the Troubles, no one except a madman carried out an incident on his own. It was not one person; it was a group of people.

When they went into Derryard checkpoint and reversed a lorry in and used flamethrowers, there were about—I am not sure—six people involved. Forty people were involved in that incident in total, and they were accomplices to murder. On every occasion, there were other people involved. Sometimes there was a change of gunman at the last minute. Does that make the other person any less guilty?

What I am really coming to is this: what is the evidence the commission will ask for in order to give immunity to a person? What can he say without giving

[Viscount Brookeborough]
evidence on some of the other people involved? Is he expected to do that, and how would it work? What evidence does the commission require to say that it knows he is telling the truth? If the commission asks how many were involved and he says, "Nobody. I carried a Mark 5 mortar on my back, crawled down the road and blew up the police station", which is patently rubbish because you cannot do that, what is the proof it will require? What is the threshold of admission? Does that admission include any other names? If so, what is going to happen to these other people? Can the commission take it any further? This is really getting down into the practical side of how on earth this will work.

We talk about reconciliation—the noble Lord, Lord Browne, mentioned it a minute ago—saying that the truth would lead to reconciliation. Rubbish. What on earth are we talking about? There are people there who have lost loved ones and their families, and friends, who are equally hurt. In our case, in Fermanagh—I am talking about victims of all types, but these are my examples—every single one of my soldiers who was killed was killed off duty. They were killed feeding calves in the backyard; delivering vegetables; visiting a wife who happened to be Catholic, on a housing estate which was more Catholic; driving a lorry; leaving home in the morning.

How did they kill them? It was not the next-door neighbours; it was somebody close. If he is going to tell the truth, he is also going to say that his accomplice was his next-door neighbour. Do you call that reconciliation? Let us be realistic about this. There is a big hole here. How can you give immunity to individuals when there were multiple people in every incident who are equally guilty? Sometimes more so, because the gunman could be somebody who is instructed just to do it and is told: "I will drive you there and we will make sure that there are no patrols". They did it to such an extent that they might have laid it on five mornings previously, one after the other; but lo and behold, there was a patrol and somebody said: "Don't do it. They are closer to you than they can be". The gunman, although he may have pulled the trigger, may never have done it without 20 people behind him, without the planning, without everything else.

Maybe I am being naïve but I just do not know where we are going with this at all, and I agree with everybody else that it is going to create rubbish and as far as reconciliation goes, which I would like to see in my own area, it is further from completion than anything I have ever heard.

Lord Dodds of Duncairn (DUP): My Lords, it is an honour to follow the very powerful speech of the noble Viscount, Lord Brookeborough, who brings us back to the reality of the sordid terrorism, the violence and the campaign of the IRA—and other paramilitaries—during the period of the Troubles. It struck me very powerfully because just yesterday evening, Pam Morrison, who the noble Viscount will know well, as will others in this House, came to meet us as part of the delegation from SEFF, the victims group. In the space of six years from 1981, in the county of Fermanagh, she lost her three brothers to IRA terrorism—Jimmy, Cecil and Ronnie Graham. They were all slaughtered in the manner to which the noble Viscount referred: not on duty but going about their daily business. Pam also lost her sister, who was a Greenfinch in the UDR, as a result of the violence in Northern Ireland. This is the reality of what we are talking about. She was here at Westminster, along with others who have suffered terribly, basically to plead with lawmakers here to think of them, to bear in mind their loss and not to deprive them of hope, however difficult, as one of them said. They realise more than anyone the difficulty of getting justice, but to take away the hope of justice is a terrible thing.

I will deal with the amendments briefly because we have had a long debate, but this group of amendments on immunity is an important one; it goes to the heart of the Bill and it is right that we take time to examine it in detail. I just want to pick up on what the noble Lord, Lord Bew, said at the start of our debate on this group. He was absolutely right when he said about the concentration now by so many on this legislation that it is as if it is the first time there has been an attack on the equality of justice. We hear people in the United States complaining about this Bill. We hear people who have defended the IRA and raised money for it complaining about this Bill. We hear people in the Irish Republic who provided a safe haven over many years for terrorists and would not extradite them complaining about this Bill.

A number of examples have been listed, such as the letters of comfort to on-the-run terrorists, the royal pardons—we have never had a proper explanation of what crimes, and who, were covered by those—and, let us be frank, the 1998 agreement itself. To be fair, the noble Lord, Lord Hain, referenced the point about victims and that agreement, which released some of the most hardened criminals who had carried out some of the most obscene atrocities in Northern Ireland after only two years' imprisonment. That was a grievous body blow to the victims, and many of us spoke out about it at the time. There has been a litany of issues affecting victims. I thank the noble Lord, Lord Bew, for making this point because it puts all this into context.

Having said all that, I want, if I can, to focus briefly and concisely on the amendments in this group in my name and those of my noble friends. The first is Amendment 149, which is

"intended to allow the offences for which immunity has been granted to be taken into account in sentencing for post-Troubles offences."

That means offences committed after 10 April 1998. In my view, it is only right that, if a perpetrator or defendant committed a crime after that date and was convicted of that crime, a court of law should be able to take into account all previous convictions, including crimes for which they may have received immunity. Otherwise, we will have a perverse situation where post-Troubles crimes and sentencing are also affected by this legislation, which would be entirely wrong.

Amendment 114, also in my name and those of my noble friends, would

"require the Commissioner for Investigations to refer a file to the PPS when an individual is found to have provided false statements to the ICRIR in the course of its functions."

I take the point made by the noble Baroness, Lady O'Loan, in relation to that. The Government have conceded that making a false statement should be an offence and that, if someone is found guilty of it, their immunity should be revoked. I very much welcome that limited progress, which my colleague, Gavin Robinson MP, spoke about and pushed an amendment on in the other place. I am glad that the Government have now come forward with something, albeit in a different form than we originally proposed, by creating an offence and then having a court revoke the immunity. However, in our view, Amendment 114 would tackle a deficiency in the Government's drafting: the offence is established but it is not apparent who is to bring proceedings and where the burden falls. Although the Government are making provision to ensure that compelled material can be inadmissible in criminal proceedings, there is no provision to require the ICRIR to provide that material and evidence of false statements to the PPS. I just want to probe the Minister on that issue and see whether that gap can be rectified.

I very much welcome Amendment 130 in the names of the noble Baroness, Lady O'Loan, and others; indeed, we sought to table the same amendment. Again, there was a bit of a competition to get some of these amendments in, but it shows the level of cross-party support on many of these issues, in an effort to improve the Bill. If it can be improved, we should try to do that as part of the function of our House. Clause 21(4), which this amendment would remove, does need to be removed. It is wrong for the ICRIR not to be required to seek information from others in relation to someone who comes forward and gives their point of view on crimes they may have committed.

6.45 pm

Government Amendments 45 and 85 will provide exemptions in relation to sexual offences; again, that is welcome. If I am right, this issue was the subject of a vote in the other place and the Government were defeated, which is very rare for government legislation. The Opposition led on that change, which we welcome.

Amendment 45 would exempt material gathered as part of the ICRIR's functions and provide for access to that material in relation to safeguarding children in civil cases. Again, that is welcome. It is vital that those categories be regarded as sufficiently important for us to provide amendments and exemptions, but it comes back to this question: why are victims of some of the most terrible crimes possible, and their families, not sufficiently regarded? They are to be faced with the consequences of the perpetrators of the crimes against them being given immunity, but then we have these exemptions. It does not sit consistently with the view that people should be treated according to their human rights and human dignity.

There are other amendments I could speak to, but time is moving on and is short for us to consider some of the other important groups we must deal with. I support amendments that would limit the power of the ICRIR to grant general immunity, put in licence-type conditions and take away the mandatory need to grant immunity for discretion and so on. All those measures would lead to improvements. I look forward to reconsidering these issues and voting on some of them on Report.

Baroness Ritchie of Downpatrick (Lab): My Lords, this has been a powerful debate because, irrespective of their party-political affiliation, where they come from in Northern Ireland or whether they reside here in Britain, all noble Lords have a deep aversion to the proposition in this Bill to eradicate, in many ways, civil actions and to provide immunity. That is very much anathema to victims and survivors.

The Minister probably finds this Bill particularly challenging. In his previous positions over many years, he will have dealt directly with many victims and survivors in discussing the various iterations of how the Government, along with others, intend to deal with the legacy issues, because that is one of the outstanding matters of the Troubles era. However, having listened to the people from SEFF yesterday evening and to other victims over the past few weeks and months, many of whom I know personally, I know that they find that part of the Bill particularly difficult. They say that this Bill is irredeemable—a word that was used last week and has been used this week.

Looking at this group of amendments, I agree that Clause 18 should not stand part of the Bill. I also agree with Amendments 120 and 121, in the name of the noble Baroness, Lady Suttie, which probe the Government's general definition of immunity from prosecution. Will the Minister say a few words about that? Clause 18 should definitely not stand part.

All these amendments deal with the immunity process, which, along with the denial of access to justice measures at the heart of the Bill, is very troubling for victims. What they want is the truth about what happened to their loved ones. The noble Lord, Lord Dodds, recounted the story of Pam Morrison. She told me last night about her three brothers and sister, who were heinously murdered in such a summary fashion. I know the Minister will be aware of the incidents in Loughinisland, where I have neighbours and indirect relations who were murdered, or executed, in a very summary fashion. These people were never involved in politics or anything like that. The way they were murdered impacts on the lives of their loved ones, because those people are no longer there; it is about the way that people decided to take them out of society.

I ask the Minister to talk to his colleagues in government, particularly the Secretary of State for Defence, who was in Belfast, as the noble Lord, Lord Hain, referred to, only a couple of weeks ago. He seemed to be very gung-ho about this legislation, with little cognisance of the needs of victims and survivors. The Bill provides for the granting of immunity from prosecution for gross violations of human rights on the basis of participation in the review process, through telling recollections. It does not specify whether those recollections have to be detailed or whether they can be scarce in their content. To many observers, including me, this legislation and this section on immunity are incompatible with the UK's obligations under international human rights law, particularly the European Convention on Human Rights. This has already been referred to by the Northern Ireland Human Rights Commission, which has just written to our protocol committee about this issue.

[Baroness Ritchie of Downpatrick]

There is no doubt that the threshold for this immunity set out in the Bill is low, with a requirement that information provided is true only to the best of the person's knowledge or belief, and no requirement objectively to test that information against evidence. Can the Minister elaborate on this? To me, there is something inherently wrong in that. It shows a terrible fault line in this legislation and the need for the legislation not to be pursued.

Finally, the government amendments, including on penalties for lying, do not in any way attempt to make changes to this part of the Bill; I come back to the issue that there remain incredibly limited mechanisms for testing the veracity of accounts. The bottom line is that the government amendments would make no change to the immunity provisions. I ask the Minister to look at this matter, because the issue of immunity and the denial of access to civil action and inquests are causing grave concern to victims and survivors who thought they would be able to get truth recovery and justice—the very things they are looking for.

Lord Weir of Ballyholme (DUP): My Lords, in dealing with this group of amendments, as we have to, it is undoubtedly the case, as has been said on all sides of this Committee, that we cannot get away from the elephant in the room: no matter how good an amendment is put forward—I include the amendments I have added my name to—it cannot turn what is an unacceptable Bill into an acceptable Bill. I urge the Minister and his government colleagues to listen to the clarion voices from all sides of the Committee, from all sections of society within Northern Ireland and from all groups connected with victims that this is not the right way forward. At the heart of it is the completely unacceptable anathema of the immunity that the Bill proposes. I agree with the remarks of the noble Baroness, Lady O'Loan, and her call for Clause 18 not to stand part of the Bill.

However ultimately unamendable the Bill is in terms of its scope, we have no choice at this stage but to look at these amendments. It is a duty on all of us to make whatever improvements we can, however small, and at least try to take any step forward that we can, so I will touch on them briefly.

I welcome Amendments 120 and 121 in the names of the noble Baronesses, Lady Suttie and Lady Ritchie. Along with others, I met representatives of SEFF and have spoken to other victims' groups as well. There is undoubtedly a deep sense of hurt and betrayal among victims. It is obviously not their biggest concern, but one of the concerns that adds to their hurt is a level of confusion and anxiety over the definitions of general and specific immunity. There is a lack of clarity around that. While this will not get to the heart of the issue, at the very least, can the Minister give us some clarity around that today? I would welcome these probing amendments if they can draw out that information.

I also welcome Amendments 112 and 124, brought forward by the noble Lord, Lord Hain, and others. To move from a position in which immunity is effectively compulsory to one which gives a much greater level of discretion to the commission is a sensible step forward. I think the scope of Amendment 124 has been accepted and government Amendments 139 and 140, dealing specifically with the issues around withholding information, move in a way that was not the case a while ago: at least there has been an acceptance that, if immunity is to be granted, it cannot simply be a one-off gift and that, where there are breaches, it can be revoked. That is an important principle as well.

We believe our Amendment 114 to be complementary with the provisions on the withholding of information or the giving of wrong information, because it gives a clear pathway for those prosecutions which the offence created in Amendment 139 can progress. The giving of false information or the withholding of information are of importance for two reasons. First, if we are to be stuck with this inequity of immunity, it should not be some form of tick-box exercise that anybody can qualify for no matter what information they give. Also, if there is anything to be gained from this at all in terms of truth—I very much share the views of the noble Viscount, Lord Brookeborough, that this whole process will be entirely counterproductive rather than helpful—one of the things that will aggravate victims is if the information provided is false, if they are given false hope and wrong information about the deaths of their loved ones.

Viscount Brookeborough (CB): Perhaps the noble Lord would like to ask the question of what information given to the commission by somebody seeking immunity will be made available to the victims. That is the point at which reconciliation breaks down—when the names of the other people involved will horrify most families, people who have never appeared on the radar.

7 pm

Lord Weir of Ballyholme (DUP): That is an entirely fair and justified point. I look forward to the Minister responding directly to it.

Where revocation takes place, there is going to be a trigger mechanism that brings that about, as in the Government's Amendment 125. I have a slight concern—this point has been raised by the noble Baroness, Lady O'Loan, and others in other amendments—about the length of time it takes for prosecution to take place and the amount of work required. That is why I think the wording of Amendment 126 in the name of the noble Baroness, Lady O'Loan, which is of a similar nature to the Government's, is better. If false information has clearly been given, where immunity pertains and continues to pertain until we reach the final point at which there is a successful prosecution for that offence, we are giving a false and wrong position of immunity to perpetrators. I prefer the wording in Amendment 126.

I have one final point to touch on; again, I do not want to reiterate everything that has been said. Our Amendment 149, which would provide for the information on immunity to be made available to the court for a post-1998 serious offence to assist with sentencing, is important for a number of reasons. As somebody who worked as a lawyer in a previous life, as many in your Lordships' House have, I know that when you are making a claim on behalf of a client, one of the critical elements in sentencing is looking at past behaviour and, in particular, the past criminal behaviour of that

individual, to establish from the court's point of view whether the conduct of that individual is simply a one-off or whether they have a long history of similar crimes. There is protection for the guilty party in that it does not come into play until the person is convicted and found guilty. That is along the lines of what we have put forward.

This effectively brings the situation for post-1998 offences and those who have been granted immunity into line with what happens under the normal law. That is important. As has been mentioned by the noble Lord, Lord Bew, there is already a history of corruption of justice through this process, which treats perpetrators of crimes from the Troubles in a special place compared to other criminals. That is wrong. It is morally wrong, and it should be legally wrong. It is also deeply offensive and hurtful to the victims. But it is not simply a question of the impact on the past and the present. It is about what message is sent out to the future. We are seeing already in Northern Ireland, and in other jurisdictions, an almost casual attitude among some towards the Troubles, in which trite phrases are trotted out such as, "There was no alternative to violence." If we continue to perpetrate a belief that those who were involved in Troubles-related murders are in some form of special category—that they are not really criminals on the same basis as others who have committed heinous crimes—we send a signal to current and future generations that in some way this was acceptable, and therefore there is a greater risk of it being repeated in future. It would apply only where a post-1998 conviction has taken place, rather than within a trial, but it would be a small but significant step in the direction of normality for those who have committed that crime.

I commend the range of amendments that have been put forward, but—among many in this Chamber; effectively everyone who has spoken, I think—there is a consensus that this is not the way forward. The Government, beyond this set of amendments or any of today's amendments, need to think again, pause and withdraw.

Lord Eames (CB): My Lords, apart from all else that has been said, this group of amendments takes the House to the substance of what is causing so much heartache, has united opposition and is destroying hopes of reconciliation back in Northern Ireland. The two words we have all used, "victims" and "survivors", are very easy to use. When we really think about it, we are generalising in a way, which is doing immense harm to what those words mean. We are not speaking about some group that we cannot touch, hear or understand. We are talking about men and women who, perhaps two generations on in the same family, are feeling the repercussions of what we continue to call—and here is another word—the Troubles. We are talking about the need, somehow, to find a way—if this legislation is to have any use—to do something about the real faces behind "victims" and "survivors".

I am sitting here listening to so much that has been said, and I am hearing other voices. I am hearing those countless voices I have ministered to over the years as a priest, a bishop and then an archbishop. I have listened to the service families, those who came out of their homes and, most importantly of all, those who, when off duty, came back into their homes in the very areas where they would be in danger. Can noble Lords imagine what that was like—the constancy of anxiety and thinking about the children? One child in particular, when I had performed the burial of her father who had been slaughtered by terrorism, tugged on my robes to draw my attention and looked up at me. As I looked down at this child—I can still see her—she said, "What have you done with Daddy?" That is the sort of human reaction we are talking about this evening. We are not talking about facts—"victims" and "survivors". We are talking about ordinary, decent people caught up in a situation that I wonder whether we will all ever understand—its causes and consequences.

I have said publicly in this House, twice at least, that I feel so strongly for the position that the Minister is in and why he has tried to do so much to feel the tenor of what we are saying to him about this legislation. I plead with him to go beyond "victims" and "survivors" to the people who are actually asking this House and the other House to treat them as human beings. That is what they are, and they are at the centre of the need in relation to which this legislation is lacking.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I agree with every word that the noble and right reverend Lord, Lord Eames, said. For 50 years, I ministered to the people. I was not only an elected representative for 14 and a half years in the area of Northern Ireland that was known as the "Killing Fields"—Mid Ulster, Castlederg and that area—but was a pastor. Like the noble and right reverend Lord, I have stood with many families grieving loved ones. Like him, I can still see a boy standing at the side of a street, when everyone around this little child was crying. His father had been murdered. The words he said were, "Why is everybody crying?" He did not realise that they were crying for him, because that father would never lift him again, cuddle him again, touch him again or kiss him again. Unfortunately, that has been replicated over and over again.

Here we are, some 50 years from the commencement of the Troubles, talking about the situation. Many people say, "Why don't you just forget the past? Why don't families just move on?" A person who says that has no idea of the hurt and grief that many to this day are carrying because their loved one has been murdered and no one has been brought to justice.

Can immunity be regarded as justice? Is an amnesty for those who have committed vile atrocities against their fellow human beings justice? The vast majority of people in Northern Ireland, way back 50 years ago, desired to live in peace with their neighbours. They had no ill will against them; they wanted to live in peace and harmony. But that was all changed by the insurrection of IRA terrorism, which sought to turn neighbour from neighbour. Fear and suspicion were rampant everywhere.

I agreed with the noble Viscount, Lord Brookeborough, when he drew attention to the fact that the persons who pulled the trigger did not act on their own. Information gatherers were in the community, watching the movements of that part-time member of the security

[Lord McCrea of Magherafelt and Cookstown] forces who was doing his daily work but going out to try to bring peace and stability to the community in which he lived. Many of those watching were his neighbours; they were watching his every movement to be able to report back, until that final occasion when a trigger was pulled or a bomb was set off. So we are left with this legacy. Indeed, the Bill is called the Northern Ireland Troubles (Legacy and Reconciliation) Bill.

Reconciliation is not aided by persons who are guilty of the vilest crimes getting immunity or being let off. The hope of justice is the last thing that families hold on to. I pay tribute to members of the RUC, the RUCR and the UDR—all those who stood between the communities over many years. They were vilified by so many people; the propaganda machines of the IRA were condemning them, while of course the bombs were tearing their families and communities asunder. We must never forget the sacrifice that many of these people made.

I pay tribute to the young soldiers who came to Northern Ireland. Many of them did not know the roads they were patrolling. They did not know the community. They were there only to do a job: to try to bring peace and stability to Northern Ireland.

While I realise that time is limited, I will make one point. I have heard a lot of people saying that the whole Northern Ireland community is against this Bill. I can accept that—partially—but I will not accept the total hypocrisy of Sinn Féin in this situation. Make no mistake about it: Sinn Féin members are quite happy for legislation to pass so that their terrorist colleagues will escape justice—very happy. The only reason they come out with their words of condemnation of this is that they have a hatred of members of the security forces, the young soldier lads who patrolled the streets of Northern Ireland.

7.15 pm

That is why I can say that every person who legitimately opposes terrorism can rightly say that they demand justice—and this Bill will not give them that justice. But let us not cover over the hypocrisy of those who caused over 30 years of murder and mayhem, and who do not, in reality, want justice to touch their loved ones. They want them to be spared while the security force members are pulled through the courts. That is hypocrisy.

Baroness Suttie (LD): My Lords, as was said by the noble Baroness, Lady Ritchie, this is an extremely important debate. It may have been long, but it is extremely important. We have heard many detailed and deeply compelling speeches. I will just pay tribute to the noble and right reverend Lord, Lord Eames, because his intervention reminded us what this is all about. It is about people who have suffered, and it is important to focus on that.

As many noble Lords have said several times during debates on the Bill, we would have preferred it not to proceed at all, not least because of its Clause 18. I think I am not alone on these Benches in rather liking the radical noble Lord, Lord Cormack. He sometimes surprises us with his radicalism, but he was absolutely right to talk about this as trying to make a silk purse out of a sow's ear. There are other, less polite, Scottish versions, but I will not use them today.

I will try to be brief, because time is ticking on and dinner break business is waiting. I am pleased to have added my name to Amendments 112, 124 and 135, tabled by the noble Lord, Lord Hain, who made a very compelling argument for them in his intervention. Clause 18 is absolutely the key clause of concern. It is at the very heart of people's concerns about the Bill as currently drafted, and the proposals for immunity have caused a great deal of distress and anxiety to so many victims by potentially closing the door to hope. The maintenance of that hope that justice could be done has been so vital for so many victims and their families. If Clause 18 is left unamended, it is not clear to me how the Bill will be Article 2 compliant. I know that this view is shared by many others speaking in the debate, not least the noble Baroness, Lady O'Loan, and I feel that the Minister should respond to that in his concluding remarks.

At an earlier meeting on the Bill, I asked the Minister how the "general immunity from prosecution" set out in Clause 18 would sit alongside some of the government amendments proposed, which, in some way, restrict the definition of immunity. I am not a lawyer, but it is not clear to me how the general immunity framed in the existing Clause 18 would sit with some of the exemptions that the Government are proposing. I would be very grateful if the Minister could shed some light on this during his concluding remarks. We all appreciate that the Minister is trying to square multiple circles with this Bill, and that he himself has expressed deep concerns about the prospect of general immunity as it stands.

In conclusion, it would be useful to hear from the Minister whether there is still scope for movement on this between Committee and Report stages. He will have heard the united view of all noble Lords and Baronesses who have spoken this evening. Every single Peer who has spoken in this debate is against Clause 18. The victims are against Clause 18. I know that it was a Conservative Party manifesto commitment, but it is wrong and remains wrong. We would like to hear the Minister's views on whether we can make progress, perhaps through the proposals of the noble Lord, Lord Hain, and the Operation Kenova process, but, personally, I think that it should be deleted from the Bill.

Lord Murphy of Torfaen (Lab): My Lords, this has been a very impressive, rather stunning debate. I have tabled Clause 18 stand part, which would effectively omit immunity from the Bill. The noble and right reverend Lord, Lord Eames, quite rightly mentioned that this debate, and this and subsequent clauses, are at the heart of the legislation. Without them, there would be no Bill and no argument. If anybody reads in *Hansard*, or watches on television, the last two hours of debate in your Lordships' House—and I hope they do—they will see how strong the feeling is across these Benches. This is not just because people do not like it but because noble Lords have spoken from deep experience over decades in Northern Ireland, from living there, being Ministers there, or whatever

it might be, unanimous in the belief that this immunity, this amnesty—they are the same thing—should be dropped.

The other unanimous view in the debate was that the legislation completely ignores the victims: it is not about them, whereas it should be. Looking back over the last 25 years—particularly, I suppose, at the agreement—as I was saying to someone today, there were a number of things that we could have done and did not. We did many things when we introduced the agreement, but we could have improved on how we dealt with victims. In the years that followed, there were brave attempts: the Eames-Bradley review and others all tried to put right that which was not right a quarter of a century ago. What is certain is that this legislation does not. To the contrary, it makes things worse. Over 25 years, I have never experienced such unanimity on a difficult issue like this in Northern Ireland—I have experienced much disunity—so it cannot be right that we go ahead.

The noble Lord, Lord Cormack, made the interesting point about whether we should go ahead with the Bill, as it is so bad. Then the noble Lord, Lord Hain, the noble Baroness, Lady O'Loan, and others put their amendments forward, all first class with excellent speeches. They give an opportunity to improve it. Revocation of immunity, conditional immunity and licensing around immunity would all certainly improve it. The whole issue of trying to improve it was discussed last week in our first day of debates on Kenova. That is a dilemma for us in this House. We could have done nothing, let the Bill go through on the nod, and said that it was so bad that we would have to wait for a change of Government to repeal it, which the leader of my party has said that he will do. But there is a duty on us to try to ensure that it is not as bad as it is at the moment when it leaves this Chamber and goes back to the other place.

This part of the Bill in particular goes fundamentally against the rule of law. If I thought for one second that we could salvage some of this, that would be all well and good. But my feeling is that the Government simply want to go ahead, come what may. The amendments that they have put forward are all right, but they do not go far enough. My plea, and, I am sure, that of everybody in this Chamber, is to drop it.

Lord Caine (Con): My Lords, I would like to say that I will try to be brief, but I fear that that might be impossible in response to a debate that has lasted for one hour and 58 minutes. I think the only debate that has lasted longer since I joined your Lordships' House in October 2016 was on one of the amendments to the European Union (Withdrawal) Bill from my noble friend Lord Patten of Barnes, which lasted longer than two hours.

This has obviously been an extensive debate. I say sincerely that I am grateful to all those who have taken part. Noble Lords are absolutely right that these clauses and amendments go to the heart of the legislation before the Committee. I hope that noble Lords will forgive me if I take longer than normal in trying to respond to as many points as possible, in the knowledge that I will not be able to deal with everything but will try my best.

I start by expressing my gratitude to my noble friend Lord Bew for his kind words at the outset of this group some time ago. He and others who have spoken were absolutely right to draw attention to occasions in the past when quite extraordinary changes have been made to the criminal justice system in Northern Ireland: the noble Baroness referred to the decommissioning Act of 1997, the location of victims' remains Act of 1999, and the early release scheme in the 1998 agreement and the subsequent Northern Ireland (Sentences) Act—the latter have caused so much difficulty, not least for my noble friends on the Democratic Unionist Benches. Those remind us that it is far from unknown for changes to be made to the normal process of the criminal justice system in Northern Ireland.

My noble friend Lord Bew referred to the importance of the commission following best practice in carrying out reviews and so on. I assure him that it is already under a clearly defined obligation in Clause 4(1)(b) not to do anything which

"would risk putting, or would put, the life or safety of any person at risk".

It is the Government's view that this safeguard is wide enough to offer protections of the kind to which he was referring.

A large number of amendments in this group, the vast bulk of them, consider the immunity process. It is worth reflecting at the outset that the Written Ministerial Statement of March 2020 and Command Paper of July 2021, both published by my right honourable friend Brandon Lewis when Secretary of State, envisaged a form of unconditional closure of cases which would apply to all Troubles-related offences, including offences carried out by members of terrorist organisations and the security forces. I am on record as saying that I do not support, and have never supported, a blanket statute of limitations. My position has not changed, so, as I said in the House last week, if the Government were still pursuing the position from the Command Paper of 2021, I would not be standing here taking the Bill through.

The point is that the legislation before us today is very different. Rather than a statute of limitations, it provides for a conditional immunity model whereby immunity from prosecution will be granted only on a case-by-case basis, and will depend on individuals providing an account that is assessed by the commission, using all the evidence available to it, to be true to the best of their knowledge and belief. I will go into some of the points raised in connection to that later. If individuals do not do so, they remain liable to prosecution should sufficient evidence exist or come to light. I want to be absolutely clear that prosecutions in circumstances where individuals do not engage and co-operate fully with the commission will still be possible.

7.30 pm

The Government maintain the view that the immunity process is robust, but I have heard the strength of feeling on this most serious of issues during numerous engagements with interested parties, and I am therefore bringing forward key amendments that will ensure that there are stronger incentives for individuals to engage in the truth recovery process and stronger penalties for those who do not.

[Lord Caine]

Before I go on to Amendment 112, I shall respond briefly on the Kenova point, and perhaps we can take this away. The noble Lord is absolutely right that, in a technical sense, Kenova could be scaled up; I think the problem is applying the Kenova model to all outstanding cases and all cases that might be referred. For example, the PSNI Legacy Investigation Branch currently has a caseload of more than 1,000 cases. If you were to apply a full criminal standard investigation to all of them, you are looking at this process potentially taking many years indeed. That is one of the principal difficulties, but I am happy enough to talk to the noble Lord about this matter.

The noble Lord referred to prosecutions and so on within the legislation. I remind noble Lords that a number of former Secretaries of State, including Members of your Lordships' House, wrote to the then Secretary of State for Northern Ireland in 2018 attacking the Stormont House legacy proposals that provided for prosecutions in the normal way:

> "We understand why many victims and others attach great importance to the prosecution, conviction and sentencing of those responsible for the appalling loss that they have suffered … But experience suggests that it would be a mistake to expect that judicial outcome in any but a tiny percentage of the crimes that have not already been dealt with."

That letter was signed by the noble Lords, Lord Hain, Lord Browne of Ladyton and Lord Murphy of Torfaen, and my noble friend Lord Cormack. I think there is an understanding that criminal justice outcomes would be very rare, and that is why, as I have said on previous occasions, the Government move towards the condition—

Lord Hain (Lab): I of course acknowledge that letter, since I helped get it together, and I have said in debate that criminal prosecutions will be extremely rare. In fact, I think I quoted the HET example of 2,000 cases and three convictions. That is not an issue between us. What we did not have then was proof that the Kenova operation works. Notwithstanding what the Minister said—I look forward to engaging with him—we now have a ready-made model to drop into this Bill and make it palatable.

Lord Caine (Con): I appreciate what the noble Lord has said. I pay tribute to the work of Jon Boutcher, and I hope to see him to discuss it very shortly, but we have yet to see whether prosecutions can take place. There are cases before the DPP which have been sitting there for some time, so we have yet to see any outcome; and we await his first interim report, so we should perhaps exert a bit of caution.

Turning to the noble Lord's Amendment 112, as I have said, conditional immunity will be granted to individuals who provide an account true to the best of their knowledge and belief. In determining whether that is the case, the immunity request panel, which is chaired by the chief commissioner, who will be a senior judge, retired or serving, will of course exercise professional judgment in that respect. In our view, the noble Lord's amendment would give the immunity request panel too broad a discretion to refuse to grant immunity, even where the statutory conditions are met, and we do not consider that appropriate. The existence of such discretion would lead to uncertainty over the terms of the process for those who might come forward with information, potentially discouraging their co-operation. Additionally, the application of such a broad discretion may undermine the perception of fairness which is critical to wider public trust.

However, the Government are tabling amendments that will enhance the robustness of the immunity process. My Amendment 139 will create a new offence for people who knowingly or recklessly make a false statement to the commission, including as part of an application for immunity. People convicted of this offence could go to prison for up to two years and face an unlimited fine. I hope noble Lords will agree that that is a significant strengthening of this legislation. Amendment 43 makes an important consequential change to Clause 7, ensuring that a false statement provided to the commission can be used in evidence against the person who provided it if prosecuted for the new offence. Government Amendment 140 proposes that a person convicted of this offence in relation to a request for immunity will automatically lose that immunity and therefore, under provisions in part 2 of the new schedule to be inserted by Amendment 85, will not be able to apply for immunity for those offences again. I hope noble Lords will agree that someone who has been proven to have deliberately or recklessly provided a false account to the commission, potentially frustrating the objective of families to know the truth about what happened to their loved ones, should not retain any immunity granted in relation to that false account.

I am instinctively sympathetic to Amendment 124 from the noble Lord, Lord Hain, which would attach certain licence conditions to somebody granted immunity. I am also sympathetic to the intent behind Amendment 149, in the name of my noble friend Lord Dodds of Duncairn, which would widen the circumstances in which immunity could be revoked. I am very happy to commit to considering these further and sitting down with the noble Lords to discuss them between Committee and Report. I am very sympathetic to the intent behind both those amendments.

Regrettably, I am not able to say the same to the noble Baroness, Lady O'Loan, in respect of Amendment 131, which seeks to remove subsections (7) and (8) of Clause 21, which will allow the Secretary of State to publish general guidance relating to decisions on immunity. Without going over some of the same ground that we discussed in considering the previous group, the Government are very confident that the commission will retain full operational independence in making decisions, including decisions on immunity, and the Secretary of State will have absolutely no say whatever in any specific individual immunity application. The intention of the general guidance the Secretary of State may issue, and to which the commission must have regard, is to help the commission apply the statutory criteria in a consistent and transparent manner when taking decisions. It will be important that we engage with a number of experts, including prosecutors, when developing this guidance so that it is effective and workable. On the previous group, I referred to the fact that there are examples of this in other legislation, including the Police (Northern Ireland) Act 1998, which set up the Police Ombudsman for Northern Ireland.

Turning to the question of whether Clause 18 should stand part of the Bill, I would gently take issue here. The noble Lord, Lord Murphy of Torfaen, said that without this clause there would not be an argument. Unfortunately, one of the reasons we are here is that there was no equivalent Clause 18 in the report compiled by the noble and right reverend Lord, Lord Eames, and Denis Bradley in 2009. There was no such clause in the Stormont House agreement, but there was no consensus around any of those attempts to deal with the legacy of the past. Yes, I agree that this clause is extremely challenging, and I have said on the record that it is extremely challenging for me, but to say that without it, everything would be perfect is probably mistaken.

Baroness O'Loan (CB): I thank the Minister for giving way. I would just like to ask him: does he think that Clause 18 is compliant with all our international legal obligations?

Lord Caine (Con): I dealt with this to some extent last week, but I will go on to deal with it later in the course of my remarks; I hope the noble Baroness will bear with me. I was reiterating that I completely accept that this is the most challenging part of the legislation—I have been completely up front and honest; it is challenging for me, too. However, as I said a few moments ago, the difficult reality is that the prospect of successful prosecutions is vanishingly small, and a single-minded focus on them offers the prospect of achieving very little for families and for wider society.

Again, in response to some of the comments about pausing, pulling or repealing the Bill—which is, I believe, the official position of the Opposition—the difficulty is that, if we go back to square one, it will take at least another five years to come up with something. The reality is that no Government of either colour will go anywhere near this anytime soon, if at all. Maybe I am wrong and the Opposition have a fully fleshed-out and workable model—but the noble Baroness is shaking her head, which indicates that they do not. If they are starting from scratch, I can tell her that the process is extremely laborious and will take a long time.

Baroness Smith of Basildon (Lab): There is a big difference between starting from scratch and having something fully worked out. The Minister has heard the views from around this House. There is work to be done and we would like to do it.

Lord Caine (Con): The words "I'll believe it when I see it" spring to mind, given the experience of successive Governments over the past 25 years who have sought to grapple with this issue.

Lord Cormack (Con): I do not want to delay things unduly but, if my noble friend were to have a round table with those who have taken part tonight, who have a fairly common view of the inadequacy of this legislation but a desire to make progress, I do not think we would be talking about five years—five months, maybe.

Lord Caine (Con): It might well be that a round table of noble Lords who have taken part in this debate could produce some proposals within five months, but we have all seen the difficulty of getting agreement from all the political parties in Northern Ireland for legacy proposals, and the huge difficulty of getting consensus and agreement from the victims' groups in Northern Ireland. That is a very laborious process. After the Stormont House agreement, I went through four or five years of trying to get that agreement into legislation and before your Lordships' House; that was despite it being a manifesto commitment in 2015 and 2017 and a Queen's Speech commitment in 2015.

It is a very long and difficult process to get consensus. With the criticism there is of this legislation—I accept that it is criticism and that it does not have widespread consensus—the onus would be on those coming forward with other proposals, alternative suggestions, to build consensus. That would take a long time, and then to turn that consensus into legislation, to legislate and to establish new bodies is not something that could be done very quickly.

Turning back to the debate itself, it is the Government's view that the immunity test is robust. It requires individuals to apply for immunity and, in so doing, acknowledge their role in Troubles-related incidents. Immunity will be granted only in relation to conduct that individuals disclose, and only where the panel is satisfied that the conduct exposes the individual to criminal liability.

Crucially, it requires the individual to provide an account that is true to the best of their knowledge and belief. In determining whether that is the case, there is a legal obligation on the commission to consider all the information that it holds that is relevant to that decision. If an individual provides an account that contains truthful information about numerous offences, but that same account includes untruthful information about just one offence, they will not be granted immunity at all. This will help prevent people from trying to minimise their role in incidents.

7.45 pm

The noble Baroness, Lady O'Loan, suggested that all a perpetrator would have to do is sit out the five-year period. Within the same five-year period, families, the Secretary of State, the coroners and, I think, the Attorney-General for Northern Ireland can all refer cases that could—depending on the outcome of immunity—lead to a prosecution of that individual. So it is not just about trying to sit something out.

The noble Baroness also raised an important point about whether the account to the commission has to be both true and complete. The commission can, of course, ask whatever questions it thinks appropriate and the director of investigations, as we have said before, will have the powers of a police constable. The way that someone answers those questions will help determine the outcome of the immunity application. The commission must also consider any evidence it holds when determining the truthfulness of an account and this should help the commission ensure that it will be able to obtain as full and complete an account as possible.

The noble Viscount, Lord Brookeborough, raised the question of someone who clearly lies because they do not want to name accomplices. That person would

[Lord Caine]
not get immunity because the commission would determine that they had not been truthful in their account. If they did name accomplices, those people could be investigated by the commission and, if they did not engage, they could be prosecuted.

Viscount Brookeborough (CB): Does he mean that the commission will ask them who their accomplices were and that they must not refuse to name them?

Lord Caine (Con): It is fairly straightforward. The commission will ask whatever questions it believes to be appropriate. On the basis of the answers it is given, it will have to make its decisions regarding immunity. If a person is untruthful or unwilling to give information, that will of course be taken into account.

I am delighted to say that I am sympathetic to the proposed Amendment 130 from the Baroness, Lady O'Loan, to Clause 21(4), which is designed to ensure that the commission has to take steps to seek information beyond that which it holds already for the purposes of testing an account. I am very much open to exploring further with her how this issue might be appropriately addressed, when we move to the next stage of the legislation,

I wish to focus very quickly on some other amendments that I have tabled. Under Clause 23, the commissioner for investigations currently has the power to refer for possible prosecution conduct causing death or serious injury which is the subject of the review under consideration. My Amendment 137 clarifies that the commissioner is also able to refer conduct that constitutes "connected offences" within the meaning of the Bill. These are offences which do not themselves meet the Bill's definition of "serious offence" but are nevertheless factually connected to such offences, for example because they form part of the same incident. This would allow, for example, the commission to refer to prosecutors evidence of sexual offences connected to a death or serious injury, if it came to light during the investigation.

Noble Lords will have noticed my intention to oppose the proposition that Clause 19 should stand part of the Bill. To reassure, this is simply because I propose to move provisions made by Clause 19 to the new schedule introduced by Amendment 85, titled "No immunity in certain circumstances". This will bring together these provisions and those relating to the revocation of immunity mentioned before. Moving Clause 19—

Baroness O'Loan (CB): I thank the Minister for giving way. Very briefly, his Amendment 137 refers to "other harmful conduct" that is not Troubles-related conduct serious enough to justify being dealt with under the Bill. But the Bill says that no prosecutions can be brought except in respect of Troubles-related conduct, does it not?

Lord Caine (Con): I will need to read the clause through again and come back to the noble Baroness on that, if I may. As I was just saying, moving Clause 19 into the schedule is simply intended to make this legislation easier to follow.

The ability of commission officers to use their powers of arrest and detention as part of its investigations is important. That includes cases where a suspect, having not obtained immunity, needs to be detained for the purposes of questioning. That would happen as part of the case-building process in a criminal investigation before a file was referred to prosecutors. I have tabled Amendment 151 to remove any doubt as to the circumstances in which criminal enforcement action can be taken where immunity has not been granted, and where a referral to a prosecutor has not yet been made. In addition to allowing for the exercise of powers of arrest and detention, the amendment also ensures that the commission would be able to charge a person with an offence before a referral to a prosecutor had been made. The amendment also clarifies that those with existing powers of detention—for example, the police—may continue to use those powers where they are being exercised in connection with the commission's functions.

Amendments 150 and 153 are related minor and technical amendments. We touched on the importance of the chief commissioner's actions over the course of a review leading up to a report, as per Amendment 36. Under Clause 15, the chief commissioner is required to share the draft report with the person who requested the review, with victims, where applicable, and with any relevant family members as defined in the Bill. These persons will have the right to make representations, which must be considered before a report is finalised. Separately, the chief commissioner must share the draft report with any living individual subject to significant criticism in the draft report, who also has the right to make representations that must be considered before a report is finalised.

We have discussed today the referral of conduct to prosecutors. Amendments 114 and 135 specifically would expect the commissioner for investigations to refer conduct to prosecutors in cases where the threshold is met, unless there is a good reason not to do so. If the commission were under an obligation to refer all relevant conduct to prosecutors that it considered an offence, there is a risk this would place an unreasonable operational burden on it—a concern that was also relevant to the Stormont House agreement. I will try to get through this as quickly as I can.

I turn to post-Troubles sentencing, and specifically Amendment 149 in the name of my noble friend Lord Dodds of Duncairn. All offences, including terrorist-type offences, committed after 10 April 1998 will remain the investigative responsibility of the relevant police force. I recognise the intent behind this amendment but we have already tabled an amendment which could mean that people lose immunity if they are convicted of knowingly or wilfully misleading the commission. I am content to keep engaging with noble Lords and others on possible instances where we can strengthen the incentives to engage with the body and ensure adequate and proportionate penalties for those who do not.

The noble Baroness, Lady Suttie, and my noble friend Lord Weir of Ballyholme have probed the meaning of "general immunity from prosecution" in Clause 18. To be clear, as I have said immunity will be granted

only in respect of conduct disclosed by an individual as part of their application. "General immunity from prosecution" does not mean immunity for all Troubles-related conduct in which individuals may have been involved but which has not been disclosed. Clause 18(9) makes it clear that, where immunity from prosecution is framed as a grant of general immunity, it must be framed by reference to the particular conduct that the person has disclosed. In other words, it will not confer immunity in relation to other conduct. The noble Baroness is looking at me slightly quizzically; I am happy to go through this again with her.

The noble Lord, Lord Browne of Ladyton, proposed an amendment to add an additional condition that must be met before immunity is granted: that the commission is satisfied that the grant of immunity would be compatible with convention rights, comply with the constitutional principle of the rule of law and satisfy the interests of justice. In response, the Government remain confident that the legislation is legally robust and complies with our obligations, so it is not necessary to make specific reference in the Bill to the compatibility of convention rights in respect of the commission discharging specific functions. It is the Government's view that this is already covered.

The noble Lord referred in one of his questions to cases being initiated by the state or being initiated by families. While the commission will carry out reviews where requested to do so by a family or where a person has requested immunity, I assure the noble Lord that the Secretary of State and other public officials, such as the Attorney-General in Northern Ireland, will be able to request a review where this is necessary to ensure an effective and efficient investigation for the purposes of discharging the UK's international obligations. Those powers are there.

As I have explained before, the commission, as a public authority, will be under a duty under the Human Rights Act to act compatibly with convention rights when exercising its functions and making any of its decisions. Working together with public prosecutors and making use of its full police powers, it will also be able to institute criminal proceedings against suspected offenders in cases where conditional immunity has not been granted.

In response to the noble Baroness, who I know disagrees with me on this, I set out at length last week that the Government's view is that the absence of a prosecution or punishment outcome in individual cases where immunity is granted can be justified on the basis that the conferral of such immunity in a limited and conditional way is necessary to ensure the recovery of information about Troubles-related deaths and serious incidents that is extremely unlikely to come to light in any other circumstances. It is through the recovery of information for the benefit of families and wider communities, in part by means of the conditional immunity process, that the new body will be enabled to contribute to moving society forward in Northern Ireland. It is therefore consistent with the Government's stated objective to provide more information to victims and survivors in a timely and efficient manner, which would not happen if we engaged in a single-minded focus simply on criminal justice outcomes.

I have gone way over time. I have tried to answer as many points as possible, but if there are any that I have missed then I am happy to sit down with noble Lords following Committee. On that basis, I urge noble Lords not to press their amendments, as I will not press mine.

Lord Bew (CB): I beg leave to withdraw the amendment.

Amendment 36 withdrawn.

Clause 4 agreed.

House resumed. Committee to begin again not before 8.35 pm.

Arrangement of Business

Announcement

8 pm

The Deputy Speaker (Baroness Morris of Bolton) (Con): Before I call this urgent business, I understand that an appeal against sentence has been made in the case of Jordan McSweeney. That means that the case is covered by the House's sub judice resolution. Given the importance of this issue, the Lord Speaker is content for this to go ahead, but I ask noble Lords not to refer specifically to the case of Jordan McSweeney.

Probation Service: Chief Inspector's Reviews into Serious Further Offences

Statement

The following Statement was made in the House of Commons on Tuesday 24 January.

"Today the Chief Inspector of Probation has published his independent review into the probation service's management of Jordan McSweeney, who brutally murdered Zara Aleena as she walked home after an evening out with friends. Today's report follows another independent review into the management of Damien Bendall, who murdered an entire family, killing pregnant Terri Harris, her two children, John Paul and Lacey, and Lacey's 11 year-old friend, Connie Gent. Bendall also pleaded guilty to rape.

The thoughts of us all are with the families and friends of the victims. They have gone through and continue to go through the most unimaginable suffering, and the passage of time will never diminish the magnitude of their loss. Immediately upon learning that first Bendall and then McSweeney had been charged with murder while subject to probation supervision, Ministers asked the chief inspector to undertake independent reviews. Both reviews set out clear and serious failings by the probation service. I am profoundly sorry for those failings, and the Deputy Prime Minister and I are seeking opportunities to make apologies in person. It is incumbent on us now to do everything we can to ensure that those failings do not and cannot happen ever again.

The chief inspector's report is very clear: the level of risk posed by McSweeney and Bendall was not assessed properly by the probation service. If McSweeney

had been assessed as posing a higher level of risk, he would have been more closely monitored by senior staff under more stringent licence conditions. If the report to the court had taken account of Bendall's known risks to women and young girls, he would not have been recommended for an electronically monitored curfew to the home of Terri Harris and her two young children.

These basic but fundamental flaws meant that the plans drawn up by the probation service to manage each offender's risk were not robust enough, and people were not properly protected. We are determined to make sure that those failings are not repeated. I will set out for the House the action this Government have already taken and the further action we will take to keep the public safe and to ensure that similar tragedies are prevented in future.

Jordan McSweeney sexually assaulted and killed 35 year-old Zara Aleena on 26 June, having been released from prison on licence on 17 June. At the point McSweeney was released, the probation service assessed him as presenting a medium rather than high risk of harm. The chief inspector finds that that assessment was flawed, based on the clear information and intelligence available to the probation service at the time.

A long criminal history showed offences escalating in severity and levels of violence. McSweeney had been in and out of prison on multiple occasions, including for breaching licence conditions after attacking a female acquaintance. At the time of Ms Aleena's murder, McSweeney was unlawfully at large after failing to attend three probation appointments, his licence having been revoked.

Had all of the information held on McSweeney been properly considered by the probation service at the time, his risk would have been set at a higher level. In particular, his risk of violence towards women would have been flagged as a concern. He would have been under more stringent licence conditions and monitored by a more senior member of probation staff. He would not have been given a third opportunity to attend an appointment with his probation officer but would have been recalled to custody after his second missed appointment.

The chief inspector's review into Damien Bendall highlights similar serious failings. When Bendall killed Terri Harris and her unborn child, her children, and their friend Connie Gent, he was serving a 24-month suspended sentence order for arson and had previously been in prison for violent offences. As with McSweeney, the chief inspector found that the probation service's assessment and supervision of Bendall were unacceptable, with critical opportunities to correct errors missed at every stage.

Bendall's risk level was miscategorised at the point when he was sentenced for the arson offence. Indeed, the report produced for the courts to inform the sentencing decision was flawed. Given the known domestic violence concerns, the report should never have proposed that Bendall be curfewed to the home of Ms Harris and her children. The poor risk assessment meant that his case was handled by a less experienced member of staff who was inadequately supervised by a senior manager.

These were appalling crimes. In response, the Chief Probation Officer has apologised to the victims' families for the unacceptable failings in these cases, and two members of staff involved in the Bendall case, and one in the McSweeney case, are subject to disciplinary proceedings. Apologies will not bring those loved ones back, but it is right that the probation service acknowledges and learns lessons from its mistakes so that they will not be made again. The probation service has accepted all the chief inspector's recommendations in each case and put in place robust action plans, which will strengthen probation practice to better protect the public. That includes better information sharing between police, probation and courts, and improving the quality of court reports and support for senior probation officers to manage complex teams and case loads.

As of April last year, probation service staff must now gather domestic abuse information from police, and child safeguarding information in all cases, before making a recommendation to the court that an offender may be suitable for an electronically monitored curfew. Probation service staff are also required to ask for information from children's services in every case—regardless of the sentence—in which the offender has children, is in contact with children, is seeking contact with children, or presents a potential risk of harm to children.

We are providing an additional £5.5 million a year to recruit more probation staff who are specifically responsible for accessing domestic abuse information held by the police, and children's safeguarding information held by councils. We have introduced a new child safeguarding policy framework, setting out clear requirements and best practice to support staff. We have introduced a section on the offender management system that considers solely the well-being and safety of children, and senior probation officers must now record why they have allocated a case to a particular probation officer. That must include evidence that the senior probation officer has fully considered the complexity of the case, the risk that the offender poses, and the experience and workload of the probation staff member taking on the case.

More broadly, we have unified the probation service to raise standards. We recognise that the probation service needs more staff, and that is why we have invested heavily by injecting additional funding of more than £155 million a year to deliver tougher supervision of offenders, reduce case loads and recruit thousands more staff to make the public safer. That has helped us to boost our number of trainee probation officers by 2,500 over the last two years, and we plan to recruit a further 1,500 by the end of the year ending in March.

Beyond our changes to probation, our parole reforms have public safety at their core. Our root and branch review of the parole system, which was published last year, set out changes that will increase ministerial oversight of release decisions for the most serious criminals. That will ensure that public protection is at the forefront of all parole decisions, so that the British people can have greater confidence in the system. We are making the release test more prescriptive, so that it is absolutely clear that prisoners should continue to be

detained unless it can be demonstrated they no longer present a risk of further serious offending. For the most serious offenders—those sentenced for murder, rape, causing or allowing the death of a child, and terrorist offences—we want Ministers to have the power to refuse a release decision made by the Parole Board if they believe that the criteria for release have not been met. We have introduced greater scrutiny of Parole Board recommendations on open prison moves, and a more stringent test to be met before transferring a prisoner to open conditions. The Parole Board recommendation will be rejected if the criteria are not met.

Finally, I will address the issue of offenders who refuse to attend court for sentencing. I am sure that the whole House would agree that it is entirely unacceptable for criminals such as McSweeney, and Koci Selamaj, who murdered Sabina Nessa, to cower in court cells and refuse to come up for sentencing. That denies victims and their families the opportunity at least to look offenders in the eye as they deliver their victim impact statements and to know that those statements have been heard. To that end, we are looking at measures to make sure that criminals show their face in court for sentencing.

The first duty of any Government is to keep the public safe. Our reforms of probation and parole have that principle at their heart. Nothing can bring back Zara Aleena, Terri Harris, John Paul Bennett, Lacey Bennett and Connie Gent, but it is absolutely vital that we do everything in our power to make sure that that kind of tragedy can never happen again. I commend this Statement to the House."

8.01 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, last Tuesday, the Minister Damian Hinds gave a Statement commenting on the Chief Inspector of Probation's independent review of the probation service's management of particular cases. In that, he referred to murders in the most distressing of circumstances. While the report rightly draws attention to probation failures in process and practice which led to these deaths, I want to ask the Government how we got to this position.

In 2014, the Government embarked on their disastrous privatisation of the probation service. In 2020, they abandoned this experiment and brought it back under state control. For 100 years, probation had benefited from local connections, a degree of local autonomy and professionalism. Unfortunately, in 2020, instead of reinstating local links, the probation functions were squeezed into the Civil Service. The independence and ability to speak out about local issues has gone. On-the-ground contacts with voluntary organisations and essential services such as housing have gone. The very things that are proven to prevent reoffending are gone. Heavy workloads, high vacancy rates and newly recruited, young and inexperienced staff who lack managers to guide their complex work are all factors that lead to mistakes. Ultimately, they endanger the public. This deterioration only makes more pointless deaths likelier. Does the Minister agree that we should reinstate the links to local government so that housing, health, the police and voluntary organisations can play their part?

I agree that strategic direction and inspection must be a central government responsibility, but local management is the best chance for reviving the probation service. Information sharing across services would improve if data about any individual offender were held in one place. This would allow better-informed risk assessment and supervision. Why have the Government still not introduced this centralised database?

The fact is that the Government knew about the problems highlighted in this report but failed to act on them, so they must shoulder their fair share of responsibility. It is right that the chief probation officer has apologised. Will the Minister accept responsibility and apologise not just for the service's failure but for the Government's failure to tackle the severe staff shortages and excessive case loads that contributed to what went so tragically wrong?

Lord Marks of Henley-on-Thames (LD): My Lords, these two appalling cases have shocked and horrified us all. Our deepest sympathies go out to the families of the innocent victims. These reviews record a catalogue of mistakes, miscalculations and failures to act. In view of the Lord Speaker's ruling, I shall not go into the detail of McSweeney's case.

In Bendall's case, against a background of domestic abuse dating back to 2016 and a clear risk of sexual abuse of girls dating back to March 2020, he was assessed in a pre-sentence report in June 2021 as a medium risk of serious harm to the public and, incredibly, as a low risk of harm to partners and children. The so-called fast delivery pre-sentence report was described in the review of his case as "inappropriate"—an understatement, I suggest. As a result, for an offence of arson Bendall was given a suspended sentence order with an electronically monitored curfew requirement that he reside with Terri Harris and her children. The probation service had made no contact with Ms Harris before Bendall's sentencing and no assessment of the risk to her and her children. In September 2021, he murdered Ms Harris, who was pregnant, her two children and an 11 year-old friend of theirs, raping one of the children.

We can date the parlous state of the probation service to its disastrous privatisation in 2014 and the inevitably challenging attempt to reverse the damage in 2021. However, it is still plagued by a lack of resources and dismally low morale. Of course, we welcome the extra £5.5 million per year for more staff to access domestic abuse and child safeguarding information, but why is it so late? How will the Government ensure that this new investment addresses poor information sharing and the lack of consideration for the welfare of children?

The extra £155 million per year for more probation staff will help, particularly if it really does yield a net extra 4,000 probation officers over three years. However, Andy Slaughter MP pointed out in the House of Commons that more than 50% of probation officer posts in London are vacant. Does the Minister agree that filling the vacancies with suitable candidates is a huge challenge? Retention of experienced officers is also vital; as is high-quality training and building confidence that officers are fully informed and that their decisions are not impossibly pressured. In the other place, Sir Robert Neill, the chair of the Justice

[Lord Marks of Henley-on-Thames]
Committee, pointed out that these issues had all been highlighted by his committee in April 2021. Will the Minister explain how the Government now plan to tackle all these extremely difficult issues?

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, I am sure the whole House will join me in expressing once again our deep condolences and sorrow to the victims in these two cases. I will not, if your Lordships permit, go into details which have already been set out in the House of Commons and have been mentioned today. However, I repeat unreservedly on behalf of the Government the profound apology for serious failings in probation supervision in these two cases already made by my right honourable friend Damian Hinds MP, Minister for Prisons and Probation, in the House of Commons on Tuesday 24 January. The chief probation officer has also made that apology to the families concerned.

As the noble Lords, Lord Ponsonby and Lord Marks, have already said, the primary duty of the Government now is to do all we can to address these failings and ensure, as far as possible, that this kind of thing can never happen again. As the Chief Inspector of Probation found in his highly critical reports, the central problem in both these cases was that the level of risk was not assessed properly. Both criminals concerned were assessed as medium risk when they should have been assessed as high risk in light of their long and often dangerous criminal histories. However, the questions we have to address, which have rightly been raised, are: what are the Government doing about it and how we can move forward from here?

First, at a very high level, the probation service has been reunified with a view to raising standards. The noble Lord, Lord Ponsonby, mentioned the history of this matter and mention has also been made of the privatisation of the service. The Government believed it right to bring that arrangement to an end, and are currently engaged in restoring, reinforcing and improving the service.

The Government recognise that the probation service needs more staff, and an additional £155 million has been invested in that endeavour. This has led to an increase of 2,500 trainee probation officers over the last two years, and a further 1,500 officers are to be recruited by the end of March 2023. I am advised that that is on track.

More specifically, in relation to the circumstances of these specific cases, the Chief Inspector of Probation has produced two detailed reports which in turn have engendered two action plans by HMPPS published on 17 and 24 January respectively.

In the case of Bendall, the report made 17 recommendations, all of which have been accepted, and most have already been actioned. I will briefly run through the steps that have been taken so that we can understand what is in progress.

First, domestic abuse inquiries must be routinely carried out in all cases where an electronically monitored curfew is being considered, with a detailed assessment of any risk of harm.

Lord Ponsonby of Shulbrede (Lab): Will the Minister give way on that point? He said that there would be domestic abuse inquiries, and the noble Lord, Lord Marks, mentioned the £5.5 million for them, which was in the Statement. What exactly are the inquiries? Are they checking what I would call "call-outs" and social service records? I am talking not about convictions but about call-outs by the police to domestic situations, which are recorded, and the wider social service records, which are sometimes used in courts in different contexts. Is that the information that he is referring to?

Lord Bellamy (Con): My understanding is that this covers relevant inquiries by the police and children's services and any history of restraining orders or other similar court action in the past relating to domestic abuse, but I will write to the noble Lord to confirm how far it reaches. I do not know whether that answers the noble Lord's question.

Lord Ponsonby of Shulbrede (Lab): Not quite. The practice in family courts, domestic abuse courts and criminal courts is to get more information than the Minister has just alluded to—namely, call-outs. That is when the police are called to a situation. There may be no action taken, but the record of the call-out is kept and passed to family courts in some circumstances, and sometimes to criminal courts as well. I am just checking that that is the information that will be available to the probation service.

Lord Bellamy (Con): I cannot confirm it at this moment. My understanding is that such information should be available if it is recorded in the police record, and not just if there was a consequence—so if a call-out had occurred, even if there was no further action. I ask the noble Lord to allow me to confirm that to be absolutely sure that I have understood the question and given the correct answer.

Lord Marks of Henley-on-Thames (LD): I am terribly sorry to interrupt again but, to follow that up, because it is a very important point, the Statement talks about this money being spent

"to recruit more probation staff who are specifically responsible for accessing domestic abuse information held by the police,"—

with which the Minister has dealt—

"and children's safeguarding information held by councils".

When he goes back, it is important that he finds out whether information held by councils on domestic abuse would also be researched, because that can also be very valuable to the probation service.

Lord Bellamy (Con): My understanding is that that is the case but, again, I will confirm it to make absolutely sure that we have the right information for your Lordships. As the noble Lord rightly emphasised, one of the further recommendations is that a child safeguarding inquiry be carried out in all cases where the person concerned either lives with or is likely to have contact with any relevant child, and there are new training and procedures to achieve that.

There are further specific measures to ensure the safety of children, involving a separate section in the OASys—the offender assessment system; a new child

safeguarding policy framework; revision of training in producing pre-sentence reports to improve the quality; more support and mentoring for trainee probation officers, with new learning tools and opportunities; and a better framework to guide senior probation officers when allocating cases to more junior probation officers.

Those recommendations are complemented by the report relating to the case of McSweeney, which has 10 further recommendations. It proposes first a thorough review of the processes for assessing the risk of harm, because what went wrong in these two specific cases was that the risk was underassessed. As I understand it, that was partly because not all the information that was on the system was properly assessed or accessed by the relevant staff. It was also, particularly in one of the cases, partly because relevant information was not properly shared between the various elements, particularly the Prison and Probation Service in the community. The noble Lord, Lord Ponsonby, rightly made the point about how important it is that we have a consolidated system in which all information is available to everyone, so that nothing falls through the cracks or is missed.

That is essentially part of the recommendations, particularly in the McSweeney case, for improved processes to ensure that all information on past behaviour and current risks while in prison is shared in a timely and effective manner, particularly between the prison offender manager—the probation officer looking after the prisoner in prison—and the community offender manager who will be responsible for managing the person concerned in the community. That includes better procedures and allocation of cases before a prisoner is released, so that there is proper communication between the relevant prison offender manager and the relevant community offender manager so that there is continuity and overall management when a prisoner is released. It also includes the tightening up of all recall decisions being signed off by a senior probation officer within 24 hours, which was one of the problems in one of the cases, and close monitoring of the licence conditions. So a range of steps are being taken.

I will briefly turn to the questions that your Lordships quite understandably posed. In his reports, the inspector does not make a link between the effect of the previous privatisation arrangements and these particular cases. I do not think I am revealing any secrets if I say that the Government came to the view that the earlier arrangements were not working properly and the situation had to be reformed, which is why the probation service was reunited.

On the local links question, I have every reason to suppose—but, again, I will clarify this with the service and write appropriately to your Lordships—that, although the emphasis has perhaps moved to more central management, as is probably inevitable in the present modern circumstances, one should not underestimate the importance of local links, particularly with the voluntary sector. I will ascertain and obtain further information on how that particular important aspect is being addressed, in answer to the question of how far the links to local government agencies are being reinstated or used—this is an important question, and your Lordships need to know the answer, so I will endeavour to give more detail on it.

I have addressed the importance of the information on an individual offender being held in one place and combined, which will improve information sharing. In the brief time available, I have done my best to explain how the information sharing will be improved. It is true that filling the relevant vacancies is a large challenge, and it is particularly so in London, where some areas have had particular difficulties—I am sure that noble Lords are broadly familiar with the situation. Some senior management has had to be replaced, and various remedial action plans are in force to address this; it is all taken extremely seriously. I hope and trust that we will see significant improvements as the increasing staff gradually gain experience and come through the system. There has been a remarkable increase in the number of recruits in the last two or three years.

All in all, the Government's position is that a great number of positive actions are being taken. I have apologised deeply and sincerely for these particular incidents involving these victims, to whom our hearts of course go out. I do not think I am in a position to give a wider apology than that but I will put one matter in perspective. I am sure it is your Lordships' experience that, within probation services and prison services, we have many dedicated professionals who go the extra mile to ensure our safety and look after their charges. When things go wrong, they are as devastated as the rest of us. I would not want it to be thought that the front-line staff, whom I personally salute, are under undue criticism in these cases. I hope I have explained the steps being taken to improve the system at all levels and to avert future tragedies of this kind.

8.23 pm

Lord Hacking (Lab): My Lords, I hesitate to stand up, although things are getting better now, as the formidable yellow flashing time constraint of 20 minutes was before us, but it seems that it has been recognised that the time allocated to this business is 40 minutes. Before I ask the Minister a question, I associate myself with the words of my noble friend Lord Ponsonby and those of the noble Lord, Lord Marks, and the questions that they put. I would also like to recall what it was like working with the probation service long ago, when I was a young barrister. In those days, it was in the Quarter Sessions and the Assize Court, not in the Crown Court. We all had a great respect for the probation service then. It was under fewer constraints than it has recently been, and it was then part of the government service. When I was practising at the Bar those years ago, the responsibility of the probation service did not extend to the post-prison time. It is quite clear that responsibility has now been placed—and I notice the Minister nodding—on the probation service. That, of course, requires that information be passed from the prison service to the probation officers so they can take on that new responsibility. Does the Minister think that this a good system?

Lord Bellamy (Con): I too have a fond memory of that probation service, as it was then. As I appeared only once at the Quarter Sessions before they were replaced by the Crown Court, I bow respectfully to the seniority of the noble Lord, who has clear recollection

[Lord Bellamy]
of both Quarter Sessions and, of course, the magistrates' courts. It is completely right that, in those days, the probation service dealt very largely with people who were put on probation. Those were, generally speaking, the lower-level offences, where you still had some chance of not imposing a custodial sentence and some hope of avoiding it. At a point—I would be hard pressed on the hoof to say exactly when, but it is quite a long time ago—the probation service was given the further duty of managing prisoners who had been released in the community. Systems have been developed—in some cases, very sophisticated systems—for managing that risk. The view of both Governments has been that we now have to manage the progressively more dangerous, difficult and chaotic released prisoners, who are very often drug users or have alcohol problems—they need support and that is provided through the probation service. In specific answer to the noble Lord's question—is this a good idea?—the Government's view is that, yes, it is a good idea. We cannot do without it, in effect, but it does need particular skills and training, especially with the higher-risk offenders, for whom there is a special system called MAPPA. Matters have moved on since our joint recollection of the past, and, in today's conditions, there is no alternative.

8.28 pm

Sitting suspended.

Northern Ireland Troubles (Legacy and Reconciliation) Bill

Committee (2nd Day) (Continued)

8.35 pm

Clause 5: Full disclosure to the ICRIR

Amendment 37

Moved by ***Baroness O'Loan***

37: Clause 5, page 4, line 37, leave out "reasonably"

Member's explanatory statement

This amendment and the new Clause after Clause 5 in the name of Baroness O'Loan give the ICRIR the right to require information, documents and other material from all the organisations listed in the definition of "relevant authority", other than the Security Service, the Secret Intelligence Service and GCHQ, without justification of the reasonableness of any request.

Baroness O'Loan (CB): My Lords, the amendments in this group deal with the requirements in Clause 5 to provide full disclosure of information to the ICRIR. They are intended to assist the ICRIR in its work and are quite simple, but slightly technical.

In normal circumstances, the Police Ombudsman and many other public policing authorities with criminal investigation powers are entitled to require information to be supplied by relevant authorities such as those in Clause 54, where a whole list of police organisations is given. The ones from which there is no power to require information are the Security Service, the Secret Intelligence Service and GCHQ. Clause 5 as drafted imposes a requirement that any request for information must be reasonable. That is an unnecessary restriction, as the purposes for which the information will be required are the statutory functions of investigation. If the essential amendments providing for investigation, review and immunity are accepted, this information, which will be sought by the ICRIR, will be that required for the purposes of investigation, review and immunity.

The effect of my amendments is to take that composite group in Clause 54 of relevant authorities and divide it into two: relevant authorities and special relevant authorities. Relevant authorities will have to supply information. There will be one category of relevant authority, which will be under the obligation to provide information as provided for in Clause 5, as amended by Amendments 37 and 39. That will include all the authorities listed in Clause 54 except the Secret Intelligence Service, the Security Service and GCHQ. I suggest that the House remove them from the list by accepting Amendment 191. Through Amendment 197, a new category of "Special relevant authority" would be created into which the Security Service, the Secret Intelligence Service and GCHQ would be inserted.

Imposing a requirement of reasonableness on the process of making requests for information, which can be very complicated, imposes an unnecessary hurdle. When I was Police Ombudsman, I had complete power to require information, and it was delivered. There were a few early hiccups in the process, but everyone settled into it. When I was doing the non-statutory review of the Daniel Morgan inquiry for the Home Secretary, I had no power to require information and we had endless arguments about which information should and should not be required. Those arguments cost a lot of money and took a lot of time.

If the Bill is passed as drafted, there would need to be a process for determining reasonableness and a determination as to who other than a court might determine what is reasonable. This would lead to disputes and the matter ultimately would end up in court, particularly if a relevant authority is reluctant to disclose information about, for example, the handling of an informant or the way in which physical evidence was managed. To impose the restriction of a requirement of reasonableness, which will be assessed, on the ICRIR, would impact on the perception and reality of its independence and powers. For this reason, Amendment 37 simply excludes "reasonably" from Clause 5(1). That would make it consistent with current law as it applies, for example, to the Police Ombudsman and the police. It would apply to all the authorities listed as relevant authorities, as I said, except the Security Service, the Secret Intelligence Service and GCHQ.

Amendment 39 adds to the list of those required to provide reasonable assistance to facilitate the effective use of information, documents and other material. When one gets information from policing organisations, the way in which it has previously been handled can often be very helpful, particularly if it is on a digitised account such as the HOLMES investigation accounts. If there is a requirement, as there is in Clause 5, to provide reasonable assistance, the policing organisation supplying the material would also have to provide assistance to access those databases, et cetera.

The reason I suggest that other organisations should be included under Amendment 39 is that some of the criminal offences the ICRIR will investigate or review relate to events such as the bombings in Hyde Park, Manchester, London, et cetera, which were not investigated by the PSNI but by other police forces. The clause as it stands requires only the PSNI and the Police Ombudsman to provide assistance, but I suggest to your Lordships that all the other policing organisations should be under a similar obligation. Without this amendment, those providing information as relevant authorities would not be under the same obligation as, say, the PSNI to assist in the effective use of the information. Amendment 39 is therefore designed to assist the ICRIR in conducting its investigations.

Because we have to deal with GCHQ, the Security Service and the Secret Intelligence Service, Amendment 197 suggests a new category of "special relevant authority" in which those three organisations would sit. They would be required to supply information if the request by the ICRIR was reasonable. I would prefer that they had to provide it without a reasonableness requirement, but I understand that noble Lords might be reluctant to impose an obligation on the security services to provide information. This would enable those agencies to protect national security, which is their function. To give effect to that new special category of three organisations for which there would be a reasonableness requirement, a new clause, Clause 5A, would be required. That is provided by Amendment 40.

Amendment 185 is very simple: it would include the director-general of the NCA in the list of chief officers of police for the purposes of the Bill, to enable them to assist the ICRIR. It may be that the National Crime Agency will not have material relevant to the ICRIR, but it is distinctly possible that it will. It is important that it be empowered to provide information.

Finally, I support the amendment in the name of the noble Baroness, Lady Smith, which relates to the power of the Secretary of State to make regulations under Clause 31 about biometric materials and raises the level of procedure required for such regulations to the affirmative procedure. I beg to move.

Baroness Smith of Newnham (LD): My Lords, I will speak to Amendment 145 in my name, and I also support the amendments in the name of the noble Baroness, Lady O'Loan. Amendment 145 is quite different from most of the other amendments put forward to the Bill. I am aware that it might sound a bit geeky, but much legislation brought forward by His Majesty's Government seems to include sweeping powers for Secretaries of State in whichever department. This Bill does not have quite as many egregious cases of Henry VIII clauses but with Clause 31, about retention of biometric material, there is some concern that the Secretary of State can make regulations for which there would be very little scrutiny and by which, potentially, individuals' rights are interfered with.

8.45 pm

I am grateful to Rights and Security International for a briefing on this matter where it raises concerns about individuals' rights under the Human Rights Act and the ECHR. In particular, apart from moving from negative to affirmative assent, I would be grateful if the Minister could consider specifying an upper limit on the retention of data. At the moment, the legislation simply talks about a "reasonable" amount of time. That seems fairly non-specific. Can the Minister clarify to the Committee what is really intended by this clause and whether it might be possible to bring forward a government amendment to ensure that people's right are not unduly affected by sweeping powers to retain data? Can he also clarify that there is no intention for data collected to be circulated more widely than for very specific purposes? At the moment, that is not clear in the clause.

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness, Lady O'Loan, for bringing forward these amendments, which I think are very helpful. However, she said earlier—the noble Lord, Lord Dodds, referenced it as well—that while many in your Lordships' House, perhaps everyone, think that this Bill is not fit for purpose and should not be brought, there is an obligation on us to do what we can to improve legislation. That is our role, and I think her amendments today and the way in which she has spoken to them illustrate that sharply.

They are a very helpful amendments because surely at the heart of any investigation is access to information. I was struck by the noble Baroness's comment about there not being clarity if there is a test or qualification about getting that information, as it can take longer, be more expensive and does not do the job that this clause is probably intended to do.

As we know from other Troubles-related investigations, relevant information can be held by different authorities and different agencies. One of the things that the commission—I say that to save having to go through the initials and stumble over them—will have to do is access that information quickly if it is to gain as complete a picture as possible. I will be interested to hear what the noble Lord has to say and hope that he will view the amendments sympathetically when he comes to respond.

I understand the reasons the noble Baroness, Lady Smith, has put forward the amendments about the affirmative resolution. I think there is a general issue about government regulations; they seem to be heavily weighted. If we were to look at a chart of how many decisions are made or how much legislation can be done by secondary legislation, I think we would see quite a sharp incline in recent years. It is not a big leap from a negative to an affirmative procedure; it just guarantees that it will come before both Houses. But these are quite big issues. If something cannot be in the Bill, and if there are reasons why it has to be done by regulation, then it seems perfectly reasonable to have the affirmative procedure. Will that be enough, given that, as we all know, statutory instruments are an adequate of way of legislating when everything is set out first in the primary legislation? As I understand it, this is about looking at individual cases. I hope the Minister can give some reassurances on that. The noble Baroness, Lady O'Loan, has done the Committee a service by bringing forward these amendments today.

The Parliamentary Under-Secretary of State, Northern Ireland Office (Lord Caine) (Con): My Lords, I am grateful to those noble Lords who have put forward

[Lord Caine]
these amendments. In responding, I am conscious of the experience in these matters of the noble Baroness, Lady O'Loan, both in her role as police ombudsman and in the subsequent investigations and reviews that she has carried out.

The noble Baroness's Amendments 37, 40, 191 and 197 aim to redefine the disclosure requirements of certain relevant authorities by, as she pointed out, creating a new tier of "special relevant authority". This would mean that any authorities left in the "relevant authority" category, such as the ombudsman or the chief constable of the PSNI, would be required to disclose all material to the ICRIR regardless of whether or not it is reasonably required, while certain other agencies, such as MI5 and MI6—the Secret Intelligence Service—would be able to rely on the provisions as drafted, being required to provide information only where reasonably required.

The Government's view is that the amendments are unnecessary, as we are clear that the disclosure provisions in the Bill already go further than ever before in statute in terms of putting relevant authorities under a duty to disclose information if it is reasonably required by the commission for its investigations.

Baroness O'Loan (CB): I thank the Minister for giving way; I know that it is late. I just want to let him know that, as police ombudsman, I had a power to require information. There was no requirement of reasonableness in the requests; clearly, the requests were reasonable, but there was no requirement for them to be so. This is a new requirement.

Lord Caine (Con): I totally accept what the noble Baroness says about her experience as police ombudsman; I think that it has been less straightforward in the case of information from other bodies over the years. That is why the Government have placed this obligation on bodies to disclose information, which goes further than ever before. Indeed, the provisions directly mirror those included in the draft legislation to give effect to the 2014 Stormont House agreement, so they have been around for some time, certainly in draft form.

The noble Baroness will be aware that "reasonableness" is not a term created or policed by the Government. It is widely used and understood; it is included in other legislation, such as the Finance Act 2008; and it has a specific purpose in terms of creating obligations on others to provide information. The law requires all public bodies to exercise their powers reasonably and proportionately. It is open to authorities to challenge an assessment of reasonableness, of course, but our expectation is that the ICRIR would request the information only if it were reasonably required for the purposes of discharging its functions, so any challenge would be likely to fail if the commission followed this practice. Ultimately, it will be for the courts to decide whether the commission has acted reasonably in any case.

On Amendments 39 and 185, which would add to the list of individuals who may be required to assist the commission in handling information that they have disclosed under Clause 5, the Government are confident that all relevant individuals are already listed in the legislation. However, I am happy to take that away and look at the clause again.

As the noble Baroness, Lady Smith of Newnham, pointed out, Amendment 145 in her name—I welcome her to our debates—would require regulations regarding the retention of biometric material under Clause 31 to be made by the affirmative rather than the negative procedure. I assure her that the Government take their international obligations in this area—and in other areas, I hasten to add—very seriously. We are confident that our approach to the retention of legacy biometrics, if I can use that term, is compliant with the relevant European Court of Human Rights rulings in this area.

To remain compliant at all times, the commission will need to carry out regular, periodic reviews of the data that it retains for the purposes of its investigations, as set out in Clause 31(2)(a). This will of necessity involve the commission making decisions regarding the deletion or retention of certain data based on strict proportionality criteria that we will outline in secondary legislation. We feel that the negative procedure will provide an appropriate level of scrutiny for a power such as this, that is very limited in scope in the sense that it exists solely to ensure ECHR compliance in this area through the appropriate management of biometric material retained by the commission. The regulation-making power ensures that the commission retains only a limited category of biometric material in prescribed circumstances, for a limited purpose and a limited amount of time, after which it will fall for deletion.

The power allows only relevant biometrics to be retained and used by the commission to ensure there can be effective Article 2 investigations, while also ensuring compatibility with the provisions of Article 8 relating to the right to a private life. It also allows for biometric data no longer needed by the commission to be deleted, again to ensure ECHR compliance. So, in our view the power is proportionate and does not, for example, enable the commission to take new biometric data from individuals, but if the noble Baroness still has concerns about this, again, I am very happy to sit down with her. On that basis, I urge her to withdraw the amendment.

Baroness O'Loan (CB): I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Amendments 38 and 39 not moved.

Clause 5 agreed.

Amendment 40 not moved.

Clause 6: Operational powers of ICRIR officers

Amendment 41 not moved.

Clause 6 agreed.

Schedule 2: Operational powers of ICRIR officers

Amendment 42 not moved.

Schedule 2 agreed.

Clause 7: Admissibility of material in criminal proceedings

Amendments 43 and 44 not moved.

Clause 7 agreed.

Clause 8: Admissibility of material in civil proceedings

Amendment 45 not moved.

Clause 8 agreed.

Clause 9: Requests for reviews of deaths

Amendments 46 to 52 not moved.

Clause 9 agreed.

Schedule 3 agreed.

Clause 10: Requests for reviews of other harmful conduct forming part of the Troubles

Amendments 53 and 54 not moved.

Clause 10 agreed.

Clause 11: Requests for reviews: general provision

Amendments 55 to 65 not moved.

Clause 11 agreed.

Clause 12: Reviews in connection with requests for immunity from prosecution

Amendments 66 and 67 not moved.

Clause 12 agreed.

Clause 13: Conduct of reviews

Amendments 68 to 81 not moved.

Clause 13 agreed.

Clause 14: Supply of information

Amendments 82 and 83 not moved.

Clause 14 agreed.

Schedule 4: Supply of Information: enforcement

Amendment 84

Moved by ***Lord Caine***

84: Schedule 4, page 64, line 39, leave out "£1,000" and insert "£5,000"

Member's explanatory statement

This increases the maximum penalty for failure to comply with an information notice under section 14 from £1,000 to £5,000.

Lord Caine (Con): My Lords, I plan to be brief. At the introduction, the Bill made provision for amendments to the early release scheme under the Northern Ireland (Sentences) Act 1998, with the effect that a person convicted of a Troubles-related offence could, in future, apply for immediate release from prison, regardless of the amount of time served, thus removing even the current two-year minimum requirement. This reflected a focus on reconciliation. But a number of Members in the other place, as the Bill was going through, questioned the rationale behind this approach, arguing that it would not encourage people who may have information to come forward and provide it in seeking immunity. This is a very fair and reasonable challenge, and one which was also raised by a number of interested groups and parties during the engagement that I have been extensively carrying out since the summer. I have therefore carefully reflected on this, and I am pleased to bring forward an amendment that will address this issue and, in the Government's view, strengthen the Bill. Under these amendments, only certain categories of people will be eligible for the early release scheme in future. These are people who were convicted before the establishment of the Bill's conditional immunity scheme as well as people who were convicted after it but following a prosecution that began before.

9 pm

The amendments achieve our objectives by amending the definition of "qualifying offence" to exclude convictions other than those under these two categories. The rationale for excluding those convicted after the establishment of the scheme, following a prosecution initiated by the commission, is that such individuals will have had the opportunity to engage with the commission and to provide a full and truthful account of their involvement in exchange for immunity. In future, those individuals will be liable to serve their full prison sentence if convicted, subject to normal rules around release on licence. For those still able to apply to the early release scheme, the minimum two-year requirement—the so-called accelerated release scheme—will continue to apply.

This approach gives us a better chance of maximising the amount of information we obtain from people who engage with the commission, through ensuring that those who choose not to engage with it and are subsequently convicted would be liable to serve their full sentence. To further strengthen the incentives to engage, I am also tabling an amendment that would increase the financial penalty for failing without reasonable excuse to comply with a request for information from £1,000 to up to £5,000.

[Lord Caine]

I contend that these amendments significantly strengthen the Bill. They provide clear incentives to co-operate with the commission and clear sanctions for those who do not co-operate and might subsequently be convicted. I beg to move.

Baroness O'Loan (CB): My Lords, with respect, I am not sure why these measures are described as incentives. Certainly, the victims and survivors whom I met yesterday did not regard them in any way as incentives, and it does not seem to me or them that those who hold information that may be of use to the ICRIR and do not provide it in accordance with the notice under Clause 14 are likely to be incentivised by an increase in the possible fine from £1,000 to £5,000. I will simply say that I do not see this as providing any incentive to someone to provide information if they are reluctant to do so. Bearing in mind that the information may reveal that the person or organisation they represent may have done something that relates to, or constitutes part of, a Troubles-related offence, that reputational issue, with all its potential consequential damage, could be a compelling reason not to disclose information. I think the changes made by Amendments 168 to 170 are not of great significance because they seem to apply to a very limited subset of people.

Lord Bruce of Bennachie (LD): I want briefly to ask the Minister how he feels people should be incentivised and whether this is the case in the Bill. The reality, as we have heard in previous debates, is that in many cases the consequences of not co-operating are nothing. If you do not co-operate, nothing happens. If the risk of co-operating is increased from £1,000 to £5,000, it is neither here nor there. Would the Minister explain why making that change would significantly affect the number of people who co-operate? Does he accept that victims are somewhat concerned that there is a desire to incentivise certain people to come forward and not others? It will do nothing to ensure that they get the information, knowledge or understanding that they need.

I know that the Minister is trying to reassure people that he is balancing the needs of victims with the concerns of veterans. The danger is that he ends up satisfying neither and alienating both. To what extent does he feel that this contributes constructively to the effective working of the commission?

Lord Murphy of Torfaen (Lab): These are reasonably sensible amendments, but they go only so far. The points made by the noble Baroness, Lady O'Loan, and the noble Lord, Lord Bruce, are valid and we look forward to the Minister's reply. If these amendments came to a vote, it is highly unlikely that we would oppose them. It was quite good that the Minister had, for example on Amendment 84, listened to the victims' commissioner. We look forward to his reply.

Lord Caine (Con): I am grateful to those who took part in this short debate. By way of a brief response, I disagree on the point about incentives. I have spoken to a number of victims' groups and political parties that, while they might not like other parts of the Bill, have no issue with this and think it a sensible strengthening of the incentives to co-operate and the disincentives not to.

Having reflected on the earlier versions of the Bill, the Government think it right and proportionate that somebody who chooses not to co-operate with the commission on an investigation, if they are subsequently prosecuted and convicted in the normal way, should face and be liable to a full sentence. In many of the circumstances covered by this legislation, such as the Troubles-related offences, that could mean a sentence of life imprisonment. As a matter of common sense, that would be a stronger incentive to co-operate than an individual perhaps serving two years or no sentence at all. This is a sensible and proportionate change to the Bill which should genuinely encourage people to co-operate. If they do not co-operate, they do so in the knowledge that, if someone comes knocking on their door and they are convicted, they are liable for a lengthy prison term. I withdraw the amendment for now.

Amendment 84 withdrawn.

Schedule 4 agreed.

Amendment 85 not moved.

Clause 15: Production of reports on the findings of reviews

Amendments 86 to 93 not moved.

Amendment 94

Moved by ***Baroness Suttie***

94: Clause 15, page 13, line 33, at end insert—

"(c) allow those persons to submit, for inclusion in the final report, a victim impact statement which sets out the physical, emotional, social or financial impact upon them of the matters contained in the report.

(4A) The ICRIR must produce guidance on the support available to assist in drafting the statement in subsection (4)(c) and suggested matters for inclusion."

Member's explanatory statement

This amendment is intended to give victims and survivors a voice within the ICRIR process by providing the opportunity to set out the impact upon them of the matters contained in the ICRIR report.

Baroness Suttie (LD): My Lords, I will speak to Amendments 94 and 95, tabled in my name and signed by the noble Lord, Lord Murphy, and the noble Baroness, Lady Ritchie. The Minister will recognise that these amendments are from the victims' commissioner and that they seek to focus the Bill more on the needs of victims. The amendments aim to give victims and survivors a greater voice within the new commission process by allowing those victims who want to do so to submit an impact assessment to be included in the final report. These statements would allow victims to set out in detail the physical, emotional, social or financial impact that the matters contained in the report have had on their lives.

The second section of each of these amendments would require the ICRIR to provide guidance on the support that should be made available to the victims to produce these statements. These seem to me to be fairly straightforward and reasonable amendments, and a relatively small set to add to the Bill. These changes would provide at least some additional support for victims in the process. I hope the Minister might feel able to concede this. I would be very happy to discuss them in more detail between now and Report. I beg to move.

Baroness Ritchie of Downpatrick (Lab): My Lords, I am very pleased to have been a signatory to these amendments and to assist the noble Baroness, Lady Suttie, in dealing with the needs of victims. The need for these amendments became very apparent last night, when we were talking to the victims associated with SEFF. As we have already explained, many of them experienced undue suffering and terrible hardship as a result of the summary execution of their loved ones, whether they were members of the security forces or ordinary members of the community.

The victims' commissioner and his commission are absolutely correct in their assertion, based on feedback from members of the Victims and Survivors Forum and victims themselves: it is important that they can tell their story and the impact of that immediate and summary loss on them, their families and their wider community. That is vitally important and should be permitted. I make a plea to the Minister to give due consideration to these amendments. Maybe the Government would consider coming back on Report and inserting them in the Bill.

Baroness O'Loan (CB): My Lords, I support the amendments tabled by the noble Baronesses, Lady Suttie and Lady Ritchie, and the noble Lord, Lord Murphy, which provide for the inclusion of victim impact assessments, which are now part of normal criminal justice processes, in the consideration of a final report on a review or an investigation.

I cannot help noticing that the word "victims" appears but twice in the Bill. One is in Clause 49, which states that the designated persons are to be appointed by the Secretary of State under Clause 50 if he

"is satisfied that the person would make a significant contribution to the performance of the functions which are imposed by sections 43, 44 and 46",

in Part 4, "Memorialising the Troubles". Clause 50 states:

"When deciding whether to designate a person, the Secretary of State must have regard to whether the person is supported by different communities in Northern Ireland and will act independently of the influence of any other persons."

Questions must arise here. Do they have to be supported by different communities? What are different communities? Are we back to sectarian headcounts? The legislation provides that:

"The designated persons must use their best endeavours to establish an advisory forum consisting of other persons"—

simply "use their best endeavours", not just establish it—including

"persons who represent the views of victims and survivors of events and conduct forming part of the Troubles".

The only other reference to victims appears in paragraph 5 of Schedule 11, which relates to the situation in which a person asks the Secretary of State for information about any application which may have been made for release under the sentences Act by a person who is serving a sentence of imprisonment for at least five years or for life. Two fairly insignificant changes are made to the information to be provided to the victim about the convicted person. In a Bill that the Government have presented as being designed to bring reconciliation to Northern Ireland, these minor but very important amendments would do something to promote the interests of victims.

Lord Eames (CB): My Lords, I too want to give some support to this amendment because it touches on what we were crying out for in earlier debates, which is a small but significant voice for victims. As I tried to say this afternoon, these are real people who would perceive in some ways the legislation as it stands as being tilted against the victimhood that they had suffered. I want to see some more thought given to what that means, but I support the pith and substance of what is involved.

9.15 pm

Lord Hain (Lab): I too support Amendments 94 and 96 tabled by the noble Baroness, Lady Suttie, but I shall speak briefly to the amendment that I have tabled, Amendment 166. I am grateful for the support of the noble Lords, Lord Blair and Lord Hogan-Howe, and the noble Baroness, Lady O'Loan, most strikingly.

For many interested parties, the starting point for any legacy case should be to find the truth of what happened to the families affected. Families want to be heard and acknowledged and they want a robust and independent investigation to find the truth, and that is what Operation Kenova does very effectively and why it is so popular. Victims and families are realistic about the prospects of bringing the culprits to justice. Many families and victims for a variety of reasons do not want criminal prosecutions; they want to discover the truth. The Minister referred to that indirectly. The reasons for not wanting a prosecution include toxic residual attitudes within the communities towards the Troubles and towards the prosecution of paramilitaries or the security forces. The culpability of the various terrorist groups involved, the unwanted media and public attention that the legacy cases attract, especially where the state might have failed its citizens, and the time that legacy cases take to prosecute all cause strong reactions. These reactions and issues can lead to the intimidation and further traumatising of victims and bereaved families. Therefore, their views must be considered by the Police Service of Northern Ireland when taking prosecution decisions.

The voice of those most seriously affected—victims and the bereaved families—was not considered when the Good Friday agreement resulted in paramilitaries being released, paramilitary weapons being decommissioned beyond forensic examination and those involved in violence being allowed into power sharing. These were undoubtedly important and necessary elements that thankfully brought peace, but we must now allow victims to have at least a voice in the prosecutor deciding the

[Lord Hain]
direction of their case. These decisions can have serious consequences for victims and families. This can be provided for through a new codification of the public interest test for legacy cases that permits the opinion of the victim and the family to be considered by the prosecutor. That is what Amendment 166 seeks to achieve, and I hope the Government will consider supporting it.

Lord Morrow (DUP): My Lords, I think we have to be grateful to the noble Baroness, Lady O'Loan, who has pointed out something very significant. I suspect many have not noticed it but, with her forensic mind, she has drawn our attention to the fact that "victim" is mentioned only twice in the Bill. That has concerned my party for quite some time. We have always contended —I know it has been said by others—that this Bill should have victims at its heart and soul. That is what it should be about.

It has to be remembered that more than 3,000 people were killed. I do not cast them all as victims because there were those who were caught in their own explosions and blew themselves to pieces, so judgment was swift there, but I include all innocent victims from whatever side—I care little about it—of the community they may have come. However, I am firmly of the opinion, as are others, that this Bill is not amendable. Maybe we would have done this House, the Minister and everybody else more justice if we had not put in any amendments and had said, "This is just not doable."

I see that even the Minister's own Back-Benchers have, to all intents and purposes, forsaken him. He cannot just blame the Opposition, the Lib Dems, the Cross-Benchers or the DUP—and we often get blamed for everything. He will have to blame his own side for not coming in and covering his back this evening; but I do not lay the blame at his feet. I believe that he is here with some degree of reluctance. He has been asked to steer a Bill in which I do not think he has great confidence; having listened to everybody this evening, I think he will go home with even less.

I certainly support the noble Baroness, Lady O'Loan. As I said earlier, we owe her a debt for pointing out very clearly that "victim" is mentioned twice; I do not think we need to hear much more.

Baroness Smith of Basildon (Lab): My Lords, having had a long debate, we are now moving at pace. These are interesting amendments. Just as the immunity debate went to the heart of the Bill, in many ways this one does as well. Although we have not seen victims mentioned much in the Bill, it is entitled the Northern Ireland Troubles (Legacy and Reconciliation) Bill, and if victims are not at the heart of what we do here, it is hard to see how reconciliation follows. That is what prompted the amendments before us today.

I have said before in this place that one of the most profound experiences I had was as victims and survivors Minister for Northern Ireland, which I did for about two and a half years. There is not a homogenous design whereby you can say, "Victims want this." Different people have had different experiences, and different things have happened to them in different ways. There is not one experience whereby everyone can say, "Yes, that is how I feel; this is what I want." They are looking for different things, and that is what makes this so complex and these amendments so important.

As has been noted, some will be saying, "We want justice. We know who is responsible. There should be action." Others say, "I just need to know the truth. I want to know what happened", because the agony of not knowing is so great. In some cases, knowing what happened creates additional agony. I remember a discussion where the truth for one individual was going to be awful. They wanted it and needed it, but it was not a pleasant experience for them in any way at all. Others just want acknowledgement that this is what they and their families went through. When we are talking about victims and survivors, one thing that was brought home to us all by those we met during the process of this Bill is that the trauma of what happened can survive several generations. It is not just the individual who has been through the experience of the Troubles; the family can be affected, whether financially, emotionally or physically.

This group of amendments is really helpful and goes to the heart of what the Bill should be about. Possibly the biggest failure of the Government is not recognising that. There have been a lot of warm words for the Minister, and they are well deserved, but he is there to support the Government in defending this Bill and he may be disappointed that only one member of his party is behind him to offer support. We have all been there; it can be a lonely experience on the Front Bench in those circumstances—although I am not sure I have ever been in quite the same circumstances. That is why, if he cannot say tonight that he will accept these amendments, it would do the Government well if he can say what he will bring forward to address the issues that have been raised.

My noble friends Lord Murphy and Lady Ritchie have signed these amendments, which allow family members to provide a victim impact statement as part of the review process. Without that, this will be one of the biggest failures of the Bill—and we have mentioned many tonight.

The Bill allows family members to refer cases and make general representations, but it is not clear what the family member gains from that process. If, as the noble Baroness, Lady Suttie, has proposed, the Bill explicitly allows statements and for the proper resourcing of that process, that would go some way towards some resolution of that issue. It would not go the whole way; I think the Bill is so badly drafted and ill-conceived that it cannot address all the issues. The noble Lord made the point that has been made many times today in every part of the Bill: we would not start from here, but as Members of this House we have a duty to do what we can and fulfil our role—though I have been struck by how many of the individuals and organisations that I have spoken to have said they almost feel they are compromising their own integrity by bringing forward and suggesting amendments and changes to us.

I commend my noble friend Lord Hain on the different approach that he has taken. It is not one that I had considered before and I would be interested to hear the Minister's comments on it. My noble friend is

suggesting that we amend the code for prosecutors, and he talks about how that could be done: it would take account of

"the likelihood of the accused re-offending … the time elapsed since the offence … the volume and seriousness of the crime, and … the character and behaviour of the accused since offending."

The code would have to

"ensure that the views, interests and well-being of victims, and of the families of deceased victims, are considered when determining whether criminal proceedings should be instituted for a Troubles-related offence."

I will be interested to hear what the Minister has to say on that tonight. If he cannot give any satisfaction then I hope he will agree to have further meetings so that we can progress it. It seems to me that this is one of the biggest failings of the Bill, and it is what has caused so much upset and unhappiness among those who will be affected by this legislation.

Lord Caine (Con): I am grateful to noble Lords. When the noble Baroness, Lady Smith of Basildon, and my noble friend Lord Morrow were referring to the lack of members of my own party sitting behind me tonight, I could not help but reflect on the famous poster, with which noble Lords behind me at least will be very familiar, from the period of the third home rule Bill, with the caption:

"Deserted! Well—I can stand alone."

Lord Weir of Ballyholme (DUP): Good choice.

Lord Caine (Con): Maybe, like Ulster in 1912, I have no choice.

I appreciate the sentiments behind these amendments. The noble Baroness, Lady Smith, referred to the fact that victims groups are not a homogenous group of people. People are looking for different things. She referred to her time as victims Minister. As I have said before, I have probably met more groups over many decades than any person, certainly any politician, who does not live in Northern Ireland.

Yesterday was the 51st anniversary of the events of Bloody Sunday. I vividly recall that, a few weeks after David Cameron responded to the Saville inquiry in June 2010, I went with the then Secretary of State to the City Hotel in Derry, where we met members of the Bloody Sunday families. It will not be any surprise that they did not all speak with one voice. Some of them thought that what had happened with Saville and David Cameron's response was fantastic: "We can now move on and get on with the rest of our lives". Others said to us, "It was fantastic, we really appreciate it, but now we want to see the next phase of this, which is prosecutions". I have referred to the later time when it came to taking a decision on that. Another group—by far the smallest—said to us, "Well, the Saville inquiry did not finger Edward Heath, Brian Faulkner or the military top brass and so on, therefore it's a whitewash and, 12 years and £200 million later, we need another inquiry". So I was struck that, even on an issue such as that, where most people suggest that the Government got it right in June 2010, not everybody was satisfied and people wanted different outcomes.

9.30 pm

Speaking of outcomes, one of the objectives of the Bill is to deliver better outcomes for those most affected by the Troubles. I point out in passing that the Government passed legislation to introduce the Troubles Permanent Disablement Payment Scheme. I totally acknowledge the role of the noble Lord, Lord Hain, in ensuring that that legislation was passed. It is not true to say that we as a Government have totally ignored victims. We legislated in this Parliament to introduce a scheme over which there had been disagreement for many years, and no agreement. We got it through with the help of the noble Lord, Lord Hain; I think we can take some credit for that.

Moreover, the proactive amendments I have tabled reflect the significant engagement we have had and, on my part, a genuine attempt to address some of the concerns raised by victims and survivors. I acknowledge the sentiment behind Amendment 166 in the name of the noble Lord, Lord Hain, and the desire to make the legislation more victim centred. I am prepared to consider this further, and I will sit down with the noble Lord and discuss his amendments. I am naturally sympathetic to his objectives, as I am to the amendments in the name of the noble Baroness, Lady Suttie.

The current drafting of the Bill does not prevent a victim or survivor submitting an impact statement, nor does it prevent the commission publishing one. However, I recognise the purpose of this amendment and as with Amendment 166, I am very sympathetic to it and happy to talk to the noble Baroness, and to continue talking to the victims' commissioner to see if there is a way to take these matters forward at a later stage. On that note, I ask the noble Baroness to withdraw her amendment for now, and I am confident we will return to these issues in due course.

Baroness Suttie (LD): My Lords, this has been a very positive and indeed united short debate, and I thank all noble Lords who participated. I also thank the noble Baroness, Lady Ritchie, and the noble Lord, Lord Murphy, for signing my amendment. Like others, I was very struck by the fact that there are only two references in the Bill to victims. The Minister might want to take that away and think about it.

I was also very struck by the phrase used by the noble and right reverend Lord, Lord Eames. He said that these amendments would be a small but significant step forward in giving a greater voice to victims. It is very welcome that the Minister is making positive noises, and I look forward to speaking to him before Report and perhaps continuing a conversation with Ian Jeffers, the victims' commissioner, about how they could reflect victims' views as transferred to him. On that basis, I beg leave to withdraw my amendment.

Amendment 94 withdrawn.

Amendments 95 to 103 not moved.

Clause 15 agreed.

Clause 16: Issuing and publication of reports

Amendments 104 to 108 not moved.

Clause 16 agreed.

Clause 17: Reports: general provision

Amendments 109 to 111 not moved.

Clause 17 agreed.

Clause 18: Immunity from prosecution

Amendments 112 to 115 not moved.

House resumed.

House adjourned at 9.34 pm.

Grand Committee

Tuesday 31 January 2023

Arrangement of Business

Announcement

3.45 pm

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

Health and Safety and Nuclear (Fees) Regulations 2022

Considered in Grand Committee

3.46 pm

Moved by ***Viscount Younger of Leckie***

That the Grand Committee do consider the Health and Safety and Nuclear (Fees) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Viscount Younger of Leckie) (Con): My Lords, the Health and Safety and Nuclear (Fees) Regulations 2022 statutory instrument was laid before Parliament on 20 December 2022 and came into force on that same day. These regulations correct an error in the powers used to make the Health and Safety and Nuclear (Fees) Regulations 2021. The error was an unfortunate oversight. Due to the volume of Covid, Brexit and trade agreement work, pressures on the Government Legal Department—GLD for short—resulted in this referencing error not being picked up in checks. HSE and GLD regret the error and are taking steps to reduce the risk of this sort of error happening again. The error was identified by GLD during a recent review.

The urgency to make these regulations arose from the need to use the powers in the European Union (Withdrawal) Act 2018 before they expired on 31 December 2022 and so avoid the requirement for primary legislation. This instrument has to be made in the affirmative and debated in both Houses because this is what the EU (Withdrawal) Act 2018 specifies.

This instrument is non-contentious, as it repeats the previous regulations with some minor technical changes. The preamble to the Health and Safety and Nuclear (Fees) Regulations 2021 did not cite one of the enabling powers and was not made with the consent of HM Treasury to certain fees for chemical regulation functions which were transferred from the EU. The correction ensures that the Health and Safety Executive can continue to recover its costs for these functions.

The preamble in the 2021 regulations refers to paragraph 7 of Schedule 4 to the European Union (Withdrawal) Act 2018. It should also have referenced paragraph 1 of Schedule 4 to give the powers for the provisions which allow charging for certain regulatory activity around biocides and classification labelling and packaging—so-called CLP. In addition, this same error was repeated in later regulations, which contained a series of amendments to, and mirrored powers in, the 2021 regulations. This instrument also corrects that error.

Biocides and CLP provisions in the fees regulations 2022 rely on paragraph 1 of Schedule 4 to the European Union (Withdrawal) Act 2018, and so consent from HM Treasury is required, as referenced in paragraph 3 of that schedule. I can assure your Lordships that consent has been given. I can also assure your Lordships that we have a rigorous checking process in place which will normally ensure that errors are identified before instruments are made.

In conclusion, I take this opportunity to emphasise that this instrument is a restatement of the fees regulations 2021, with the correct powers cited in the preamble and for which HM Treasury consent has been obtained. These changes put beyond doubt the ability of HSE to charge fees for certain biocides and CLP regulatory activity. The instrument makes no changes to policy or duties, although, as explained in the Explanatory Memorandum, it corrects some minor technical errors as well.

I hope that colleagues of all parties will join me in supporting the new regulations, which I commend to the Committee. I beg to move.

Baroness Sherlock (Lab): My Lords, I thank the Minister for that introduction, and I can only take it that the remarks he addressed to "colleagues of all parties" means me, so I am delighted to be here. I also love it when a Minister announces, as was done in the Commons as well, that an instrument is non-contentious. From the Opposition Benches, our mind goes, "Well, we'll see about that; that's our call." It is not the kind of thing one can do unilaterally.

However, as we have heard, this instrument revokes and replaces the Health and Safety and Nuclear (Fees) Regulations 2021, as amended by the amending regulations, and consequentially revokes Regulation 14 of those. We have heard that the purpose is to correct a number of errors. I accept that some of them are clearly technical. There is the incorrect cross-reference in Regulation 12, the error in the definition of "nuclear provisions" in Regulation 16 and the omission from Regulation 22 of the process clarifying how to interpret terms on classification, labelling and packaging, and so on.

However, there is a more serious error. The fees regulations 2021, as amended, were meant to enable the Health and Safety Executive and the Office for Nuclear Regulation to charge fees for a range of specified activities, but, as we hear, it has become apparent that an error in the preamble to the regulations and to the amending regulations has caused a problem. Neither cites paragraph 1 of Schedule 4 to the EUWA 2018, but both should have done so. The problem is that that would have allowed provision for the charging of fees in connection with functions following Brexit, particularly those performed by the HSE in relation to biocides and chemicals—I still think fondly of our long debate on biocides and chemicals not very long ago.

I have some questions. The effect of the error was that the required Treasury consent was not sought prior to the making of regulations under paragraph 1

[Baroness Sherlock]

of Schedule 4 to the EU withdrawal Act. I accept that the Treasury has indicated that it would have given consent had it been asked. However, it was not asked, which is of course the problem. The EM says that the error

"may raise doubt as to HSE's ability to continue to recover the affected fees."

Can the Minister unpack that a little more for us? First, we need to be clear what fees have already been charged using the flawed powers in the 2021 regulations. When these regulations were debated yesterday in the Delegated Legislation Committee in another place, the Minister, Mims Davies, said:

"About £25,000 was charged across the industry under the powers related to the error. However, HSE judged that there is a low chance of any case being brought, due to the amount of money involved. That is why we are rectifying it extremely quickly. HSE will continue to manage any legal implications on a case-by-case basis."—[*Official Report*, First Delegated Legislation Committee, Commons, 30/1/23, col. 8].

Can the Minister tell the Committee: was there a legal basis for charging those £25,000-worth of fees? If not, will the money be refunded to the firms which paid them, or do I take it from that last sentence of the Minister that the Government are simply waiting to see whether anyone who paid them under deficient rules will sue to get their money back? Were any fees not charged as a result of this error that would otherwise have been charged? If so, has any revenue been lost?

There are two other questions. We need to know more about how we got here and, more importantly, how the Committee can be assured it will not happen again. I accept that drafting errors happen, of course, but there are quite a lot of errors in one set of regulations here. Yesterday, the Minister gave the explanation that the noble Lord has repeated today, which dumps the blame pretty much lock, stock and barrel on the Government Legal Service, saying that it was under pressure as a result of Covid, Brexit and trade agreement work, it had too much pressure and that is why it happened. The only problem with that is that two of those three were completely foreseeable. I realise that post Brexit there will have to be redrafting of regulations and other legislation, but the volume and speed is a direct consequence of decisions the Government made about the nature of Brexit and about the way to handle retained EU law.

So, knowing all this, why did the Government not plan and resource the GLD accordingly so that it could deal with the volume of work and the pressure that it would be facing? We cannot simply accept that our statute book should be in a mess as a result of Brexit. There were various points at which these errors could have been picked up. Why were they not? Is there a quality assurance process in place? Does the HSE or the DWP do any checking of their own legislation? Do they literally just give it to the GLD, say, "Do it!" and then take whatever is given back and put it out? Is there a quality assurance process and, if so, why was none of the errors picked up? I spent some years as a non-executive director on a board. If the executive reports a significant error, the question that one asks is: is it systemic? If the answer comes back, "No, it is not", then one wants evidence of that; if the answer is: "Yes, it is", one wants to know how one can be assured that it will not happen again?

The Minister yesterday in the Commons said that,

"the HSE and the GLD have completed a full review of the lessons learned,"

and,

"identified some practical actions".—[*Official Report*, Commons, First Delegated Legislation Committee, 30/1/23; col. 7.]

to improve ways of working between their officials. That is nice but—this is an important question—if those practical actions had been in place, would they have avoided these errors? So, one has done lessons learnt. If one had done those things then, could this error have happened? If it could still have happened, then we have not solved the problem. Did the review look at other errors, other than the one that it turned out had created this problem?Crucially, how confident is the Minister in assuring the Committee that something this serious will not happen again?

Finally, we are told that

"the Department is adopting the free issue procedure in relation to this instrument."

Do I take it that that means that there will be free issues of this instrument and the amendment regulations? What will be the cost of that?

Given that I have fired a number of questions, I really want to get answers today—I do not want any more letters because they never arrive, or they may arrive eventually but it takes a long time and these regulations have already been made. To clarify, I am interested in finding out: what happened; why the mistakes were not picked up; whether fees were charged without any legal cover and, if so, whether fees are going to be refunded and whether there were fees that could have been charged that have not been; whether there is quality assurance in place; and whether the DWP and the HSE do any checking of their own legislation and how they can assure us that this will not happen again. I look forward to the Minister's reply.

Viscount Younger of Leckie (Con): My Lords, I thank the noble Baroness, Lady Sherlock, for her response. I totally understand the tone and nature of the questions that she has asked. I hope that I can respond. It may be that the detail in the responses is not quite what she is looking for and, of course, I will say that I will write to her if the answers are deemed to be not satisfactory. But I will certainly do my best.

I should like to say first that these errors are unfortunate. As I said, the error was an unfortunate oversight caused by pressures on the GLD—the legal side—due to the volume of Covid, Brexit and trade agreement work. Despite checks in place, the omission of one of the powers from the preamble was not noticed. I shall go into a little more detail in terms of how the error was noticed. The preamble to the fees regulations 2021 referred to Paragraph 7 of Schedule 4 to the EUWA 2018 but should have also referenced Paragraph 1 of that schedule. The error was repeated in the amendment regulations, being a set of regulations that amended the fees regulations 2021. Due to that unfortunate oversight, the correct power was not cited in the preamble, which meant that certain regulations were made without the consent of HM Treasury, as they should have been. The error was spotted during a recent review of the fees regulations 2021, as I mentioned.

On the noble Baroness's question what has been done to prevent such errors happening again, I believe that the review has been rigorous, and we do not believe that it will happen again. However, I shall give a bit more detail. HSE and GLD have completed their review of lessons learnt. This has identified some practical actions that can be taken including better ways of working between GLD crucially and HSE policy officials.

The question of HM Treasury and its role came up, and perhaps I can be helpful in answering some questions. HM Treasury has approved the 2022 fees regulations and has confirmed that consent would have been provided at the time of the 2021 regulations, if sought. HM Treasury consent was given when the fees were first introduced into UK law in 2019 by way of amendments to the fees regulations 2016. HSE is informing HM Treasury of the proposed treatment of the approximately £25,000 of fees received between 1 April 2021 and 21 December 2022. Some 14 companies have been charged between £500 and £5,000, so I hope that is helpful.

4 pm

These regulations put beyond doubt the ability to charge these fees. We are liaising with HM Treasury on the repayment. There is a quality assurance in place, and we regret that it was human error that led to this. We have reviewed our processes, as mentioned earlier, and have implemented actions to improve this. If they were in place, the error would have been avoided. I hope that helps to answer the questions raised by the noble Baroness.

Baroness Sherlock (Lab): On the £25,000, I asked a specific question: was there legal cover for charging that money? I would like an answer to that. I think the Minister said that the HSE is informing the Treasury as to what it will do about the money. Can he inform us what it is going to do about it rather than just the Treasury?

Viscount Younger of Leckie (Con): Those are two fair questions. I will have to write to the noble Baroness to follow through on the specific details that she has asked for. I will certainly write a letter and make sure that she is fully informed. With that, I commend these regulations to the Committee.

Motion agreed.

Plant Health and Trade in Animals and Related Products (Amendment) Regulations 2022

Considered in Grand Committee

4.03 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Plant Health and Trade in Animals and Related Products (Amendment) Regulations 2022.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, the Plant Health and Trade in Animals and Related Products (Amendment) Regulations 2022 were laid before the House on 19 December 2022. Protecting our biosecurity is of paramount importance to addressing the climate and biodiversity crisis. By correcting deficiencies that have arisen from EU exit, this instrument ensures the effective operation of the biosecurity regime in Great Britain. The instrument makes amendments to plant and animal health legislation and, while the provisions in the instrument are merely technical amendments and not a change in policy, I must emphasise that the instrument is urgent.

In recent months, an outbreak of a plant disease near the Wales-England border highlighted an unknown gap in the legislation. This gap prevents the authority in one territory of Great Britain from establishing a demarcated area, based on the findings of a pest or disease in another territory. A rapid solution was needed to ensure that the legislation continued to allow effective action against this disease. Additionally, the withdrawal Act powers required to make changes in this instrument were due to sunset on 31 December 2022. We needed to address the identified deficiency before that date.

On the details of this instrument, these regulations correct the deficiency identified by allowing authorities to implement demarcated areas after a pest outbreak in another territory. They do this by making the following changes. First, they ensure that all relevant pests are included in the legislation for the application of demarcated areas. They also allow authorities in Great Britain to co-operate with one another in demarcating areas affected by certain plant pests. Authorities are then permitted to take measures in their own territory to control the spread of plant pests from a neighbouring territory. For example, a demarcated area could be established, and a restriction put in place on the movement of potentially infected material.

Amendments are additionally made to domestic legislation in, respectively, England, Scotland and Wales to allow notices to be served to establish demarcated areas in these instances. Given the urgency of this instrument, Scottish and Welsh government Ministers have formally consented for amendments to be made on their behalf.

Finally, this instrument corrects errors from earlier instruments made under the European Union (Withdrawal) Act 2018; these amendments have been deemed non-urgent. The corrections include amending a retained EU decision to ensure that certain potato commodities from some regions of Lebanon meet stringent entry requirements.

An animal health instrument is also corrected to ensure the transfer of functions from the EU Commission to the appropriate authority in Great Britain. This will give the appropriate authority the power to change or establish specific rules on the imports of equine animals from third countries.

I am pleased to state that the devolved Administrations have given their consent for these regulations to extend across Great Britain, with some exceptions. Regulation 3 applies to England only, Regulation 4 applies to Scotland only, Regulations 5 and 6 apply to Wales only, and Regulation 8 applies to England and Scotland only.

[Lord Benyon]

As I stated previously to your Lordships, this instrument is urgent. As a result, these regulations came into force on 20 December 2022, except for the non-urgent provisions, which will come into force after the approval period for this instrument has ended.

In conclusion, I emphasise that these regulations ensure that effective biosecurity controls are in operation within Great Britain. They also enable co-ordinated action between territories within Great Britain to best manage the outbreaks of certain pests. I hope noble Lords will support these measures and their objectives. I commend these regulations to the Committee.

Baroness McIntosh of Pickering (Con): My Lords, I am most grateful to my noble friend for introducing these regulations, which I broadly support. I have just a couple of points of interest.

I know my noble friend has visited—sometime last year, I think—Fera, based at Sand Hutton near York, which used to be in my constituency. I take this opportunity to praise it for the work it does. Presumably it will have a role to play in identifying any pest and the danger it might hold.

I would like to focus on the position of the Lebanese potatoes to which my noble friend referred. I think the regulations call for demarcation and for controls to be taken at the point of entry. On paragraph 7.9 of the Explanatory Memorandum, I sympathise with the department for the errors it has made and welcome this opportunity to correct them. It begs the question: if we are transposing these regulations into UK law, will they be subject to the retained EU law Bill? Will we ask Defra to lift them? I would be interested to know why we are being asked to look at them this afternoon if they are to be reversed later this year.

I know that it is a slightly separate issue, but it is very difficult to follow the retained EU legislation from looking at the dashboard. Defra does not appear in alphabetical order but has just shy of 1,800 regulations. I know that we in both Houses were involved in transposing these regulations into UK law, but Defra bore the brunt of the 2,700 or 4,000 regulations. I thank the officials for the work they did over a very intensive programme.

Paragraph 7.9 refers to ensuring

"that potatoes from certain regions of Lebanon meet stringent entry requirements."

Did the checks take place at the port of entry? What is the normal entry route for these Lebanese potatoes? Do they come directly from Lebanon or through the EU? That is my first point of information. If they come through the EU, which is a strong possibility, I draw attention to the concern that the Food Standards Agency raised in its most recent annual report, *Our Food 2021: An Annual Review of Food Standards Across the UK*, which states at paragraph 8 on page 13:

"The UK Government recently announced that full import controls for goods coming from the EU to Great Britain would be further delayed and replaced by a modernised approach to border controls by the end of 2023."

I am trying to understand whether that really is the case. If it is, it will put a huge onus of responsibility on local authorities. For information, I would like to know where the entry and route into this country is.

I also raise a question my right honourable friend Kit Malthouse asked in the other place. Ash dieback has taken hold of the country. I think my noble friend will confirm that we have ended the practice of exporting ash seeds and reimporting young saplings into this country from regions such as Denmark and Poland, in which ash dieback is rife. Kit Malthouse asked about ash dieback on Wednesday 25 January when this instrument was debated in the other place. It again begs the question: where are ash trees, whether saplings of bigger trees, being imported to? Where do the checks take place? That is crucial to ensuring that any diseased trees among these imports are taken at a very early stage.

I commend these regulations because there is an animal or plant scare or scandal roughly every 10 years. I think of BSE, foot and mouth, horsegate and, this year and last year, avian flu. The regulations provide the department with the tools it needs, but I have raised concerns that I hope my noble friend will address.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for setting out the rationale for this statutory instrument so clearly. It apparently addresses failures of retained EU law to operate effectively following Brexit. It also corrects some errors in previous SIs, including ensuring that potatoes from Lebanon meet stringent entry conditions. Perhaps the Minister can say whether potatoes from Lebanon were entering the country without being properly monitored before this SI was laid.

Corrections are also needed to the Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022, or the TARP (ALF) as they are called. These ensure the transfer of functions from the EU to appropriate GB authorities, with a change to establish specific rules on imports of equine animals from third countries. Corrections in Regulation 7 in part 2 of the instrument before us deal with the import of potatoes, while Regulation 8 in part 3 deals with the errors in TARP (ALF).

4.15 pm

The main body of this instrument deals with plant pests and relates to the devolved Administrations, with Regulation 6 dealing with Wales being in Welsh. These regulations deal with plant health and genetically modified organisms, allowing for the setting-up of demarcation areas on the borders between Wales and England, and between England and Scotland, all to help control the spread of pests. It is important to have demarcation areas on the borders with the devolved Administrations so that territories can be protected from pests and plant disease, outbreaks of which need to be dealt with quickly and effectively. Ensuring co-operation between the devolved Administrations to control outbreaks is vital.

The Explanatory Memorandum refers in paragraph 3.3 to an

"outbreak of a certain pest near the Wales/England border".

This has flagged up the need to ensure that legislation is corrected to allow for outbreaks of pests to be controlled. I hope that the Committee will forgive my pronunciation in the next part. I understand that this

pest is Phytophthora pluvialis, which was first seen in Cornwall in September 2021 and attacks the bark on trees. There are currently six demarcated areas in place in England: Devon and Cornwall, Cumbria, Herefordshire, Surrey, Gloucestershire, and Shropshire, so it would appear to be spreading. Does the Minister think that the measures in this instrument will contain the spread and help save trees in other rural areas, or will more stringent measures be needed to control the spread?

I have looked at photos of the effect of this disease, and it is certainly extremely unpleasant, but until I read this instrument and asked what the pest outbreak on the border between Wales and England was, I had no idea that it had acquired a toehold in England. Perhaps I am the only one and everybody else knows about it. It appears to have spread fairly rapidly over the ensuing 17 months since it was first identified in Cornwall. The Forestry Commission has lifted its original restrictions on the movement of wood, isolated bark and trees affected by this virus. This has been replaced with restrictions on plants for planting within demarcated areas. Can the Minister say whether he feels these restrictions are sufficient to contain the spread of the disease within the current demarcation areas?

I realise that this SI deals with a broad-brush approach to plant health and puts in place legal measures to ensure plants and animal products are protected. However, it provides us with an opportunity to have a debate, albeit somewhat curtailed, on the effects on our trees, which are under attack from all quarters through disease and need constant protection. I support this SI, which is really important, and look forward to the Minister's response.

Baroness Hayman of Ullock (Lab): My Lords, I confirm that we also support the SI and note that the Minister said it is urgent. Our main concern, however, comes from the fact that the 18th report of the Joint Committee on Statutory Instruments has once again drawn the attention of both Houses of Parliament to our having a defectively drafted SI in front of us, so we are once again tidying up some mistakes that have come through from previous instruments.

Section 3 of the Explanatory Memorandum notes that the instrument corrects various errors in bits of retained EU law and cites a previous JCSI report. Our concern is really: what is Defra's resource, since this seems to happen time and again? Are there concerns about the level of resources Defra has to deliver well-drafted SIs? We know that the department will have to accurately review all retained EU law by the end of this year, as envisaged by the retained EU law Bill, so it would be good to have confidence in its resources and ability to do this without errors.

Other noble Lords have talked about paragraph 3.3 of the Explanatory Memorandum, which refers to the pest outbreak on the Wales/England border. The Minister knows of my concern about trees, ash dieback and the terrible impact of larches being felled; I have mentioned it before. It would be helpful to understand the reaction to this outbreak. What work is being undertaken to ensure that these kinds of outbreaks are brought under control? As we continue to debate EU law, what powers are needed to ensure that we do not have constant new pest outbreaks in this country? The noble Baroness, Lady McIntosh, talked about ash seeds. It would also be useful to have clarification about this.

Section 7 of the Explanatory Memorandum talks about how previous amendments to retained EU law failed to provide for the new demarcated area system. I would be interested if the Minister could go into a bit more detail on the policy background. I am trying to ascertain whether this would have been possible under the original regulation before it was amended to take account of our departure from EU, or has the power not existed previously? I am trying to understand that better.

I will not go into detail about the Lebanon potatoes. Other noble Lords talked about that.

I appreciate that many of the SIs which Defra has had to deal with following our departure from the EU, of which there are a very large number, are really complicated. I do not want to undermine the officials' confidence, because I know that there has been an enormous amount of work involved. We have the REUL Bill coming forward. It is important for us to be confident that the Minister and his officials have the resources and ability to function properly in all the work that they have to do.

Lord Benyon (Con): I am grateful to noble Lords for their contributions to this debate. They have raised some very good and important points. I will start by addressing those raised by my noble friend Lady McIntosh and emphasised by other noble Lords about the risks we face.

At the moment, the main areas of concern which come up at my regular biosecurity meetings with the Defra group include Phytophthora pluvialis. This is an emerging concern. Phytophthora ramorum has been here a little longer. My noble friend mentioned ash dieback, which continues to be a real concern. I see a glimmer of hope there, but I do not want to raise expectations. The horrendous way in which it galloped through our woodlands in recent years seems to have slowed a little. This may be for a variety of reasons. We are working hard to find resistant strains. I recently visited a Forestry Commission site, where we have taken plants from the most resistant species in the eastern areas of England where the disease first hit landfall. We are trying to develop a real understanding of what makes certain ash trees more resistant than others. You can find a relatively healthy tree standing next to one that is practically dead. We are trying to understand the genetics and pathology of this really serious problem in our landscape. We are dealing with a number of different agencies. Fera certainly has a part to play.

We have just published our biosecurity strategy for Great Britain for the next five years. It has been a comprehensive, collaborative piece of work with devolved Governments and a variety of stakeholders across the piece. I think it is one of the most impressive biosecurity strategies you can find anywhere in the world. As I have said in other fora, we can no longer rely on the fact that we are an island. We have to consider ourselves just as much at risk as countries that share land

[Lord Benyon]
borders in Europe. The globalised economy is moving plant and animal diseases at alarming rates. If there is one that keeps me awake at night it is Xylella, which is absolutely devastating in parts of southern Europe and is moving north.

Of all the plants sold in this country from nurseries, 92% come from overseas. We have to be absolutely clear that we are promoting homegrown products. Our Plant Healthy strategy, which really tackles this, and Grown in Britain—another really good initiative that the Government support—are supporting nurseries to produce more homegrown products. Where they are imported, we are making absolutely sure that they come here in a way that is safe.

My noble friend asked about the Lebanon issue. Changes are being made to specify the relevant labels that should be in English and reference the relevant testing standards that we felt were omitted. These amendments are merely technical. Certain official controls are inserted in one of the intermediate stages of testing for the pest potato ring rot. It is a very small volume of trade—only 20 kilograms have come from Lebanon since 2018—but sometimes a very small amount is all you need to create a massive problem.

A number of issues were raised around the retained EU law Bill. I want to make absolutely clear that our default position is to retain. In no way can we hit our targets for reversing the declines of species, or meet our international commitments and our determination to see our seas and oceans recover to health and many other commitments to support nature and biodiversity, if we just dump regulations that we need. What we need is good regulations, and that is what industry wants—it does not want a bonfire of regulation that could see the wrong kind of people prosper.

I was talking to the Horticultural Trades Association conference this morning, making the point that we really value good, responsible businesses and see them as a key partner, because they are the connection with the customer. There are 30 million gardeners and a great many professional growers, and we need to know that what they are getting is safe and secure and will not pass on diseases in this country. That is a key part of our determined effort to create a proper regulatory regime.

Noble Lords are right: the dashboard has been amended. A great many of the nearly 1,800 regulations that exist for Defra will be retained. A great many of them have nothing to do with the United Kingdom whatever; they are about the export of olives, or relationships between certain countries and their fishing arrangements with other third countries, and have no relevance to the United Kingdom at all. They will obviously go. A number can be reformed and made better, and we see this as an opportunity to do that.

The noble Baroness, Lady Hayman, rightly questioned us about our resources. In this Parliament, we have had a Fisheries Act, an Agriculture Act, an Environment Act, a sentience Act, a gene technology Bill, soon to become an Act—and a great many provisions that lie within those Acts have been debated in this Room—and other pieces of legislation. So, yes, we have been running hot in terms of legislation. I would not be so arrogant as to try to pretend we always get this right. Sometimes we need to tweak regulations, and that is what we are doing today, but we need to tweak them for a very good purpose.

4.30 pm

On containing Phytophthora pluvialis, as the noble Baroness, Lady Bakewell, said, it started in the south-west. There is a depressing map showing it creeping up the temperate west of Great Britain, parts of the Welsh/English border and up into the north-west of England. We want to make sure we are doing everything to contain it. The people from the Forestry Commission who are doing this are remarkable. They are also tackling other diseases, such as oak processionary moth and ash dieback, as I have already talked about. Ips typographus, which has blown in from Europe into the south-east, is particularly devastating for spruce plantations. We are basically trying to eradicate every spruce tree in the south-east of England to make sure there is no foothold from which it can move to other parts of the country.

It feels at times like a war: I spend a lot of time looking at a map and seeing the enemy, in various forms, approaching. The ability of our scientists, agencies and civil servants who help me with these issues is breathtakingly impressive, but these diseases present a growing problem in an age where the climate and people's habits are changing, with their ability to move around the world. That great British tradition of going abroad, seeing a cutting or plant and putting it in your suitcase has to end—we need to stop that wonderful thing that my mother always did, but must no longer do, because we do not know what we are bringing in. I would like to see an Australian-style culture of biosecurity in this country. We are moving very fast to try to weaponise society in this great endeavour, not just government. It is crucial that we involve other people.

Statutory instruments go through multiple rounds of checks ahead of laying. However, the drafting of the EU exit SIs has proved challenging to the department due to the pressures on legal and policy resources and the complexity of some provisions. It is the department's intention to correct errors at the earliest opportunity to ensure we have a fully operable SPS regime in place.

My noble friend Lady McIntosh asked about ash imports. There are strong import controls on ash trees and ash wood to reduce the risk of introduction through trade, and a pre-notification of firewood imports. Why are we importing firewood? I was in the Alice Holt laboratory the other day looking at a piece of firewood that had come from eastern Europe. We have a lot of degraded woodland in this country that we need to bring into management, which will be good for our biodiversity and our domestic industry. We are doing a lot to try to encourage homegrown industries so that we do not import firewood. Where we do, we have the strongest measures in place to prevent the risk of any diseases coming into this country. The emerald ash borer is known to occur in some of these species. We want to make sure that we stop them at the border.

My noble friend also asked about checks at the point of entry. We have increased the number of inspectors, in line with the increase in checks we are demanding.

Our Animal and Plant Health Agency's services will see 137 new inspectors, who have already been recruited and performing checks. They will perform a lot of those checks at our new purpose-built BCPs—our border control posts.

At the moment, the checks are at the point of arrival. Many of the nurseries I have visited are incredibly professional and are helping with that. The plant health inspectors are good at spotting a problem and ruthless in dealing with it when one arrives—sometimes at great cost to the company. We want to try to stop these diseases before they get here by digitalised certification and, when they do get here, at the border control posts. We are shortly going to announce the rollout of our targeted operating model, which will see these measures come into place. I am spending a lot of time talking to ministerial colleagues in the devolved Administrations to make sure that we are working with them. Like nature, diseases know no boundaries. We want to make sure that we are working across Great Britain, and where possible across the United Kingdom, to try to prevent them.

Intensive surveillance, diagnostics and research are being carried out to understand more about Phytophthora pluvialis. This includes extensive UK-wide aerial surveillance, including a ground survey of more than 1,900 sites across Great Britain and comprehensive research modelling to explore factors such as climatic suitability and species susceptibility to inform the management response. In October we published a pest risk analysis assessing the risk posed by Phytophthora pluvialis.

That covers most of the points. I would like to reassure the noble Baroness that while we are running hot on a number of fronts, we are also getting it right most of the time. The vast majority of measures that we bring before your Lordships are properly thought through. The teams involved take them through an exhaustive process of checks to make sure that they are doing what they say.

My eyes should roll when I hear reference to the Secondary Legislation Scrutiny Committee, which the noble Baroness sits on, because time is the monkey on my back, but I applaud it for what it does. Its job is to make sure that secondary legislation works, and we get that right in the high 90s, percentage-wise, of the time. Where the committee pulls us up on something, we try to correct it. If we think it has got it wrong we will sometimes point that out, but that is very rare. I appreciate that the committee is an important part of this process.

I hope I have answered your Lordships' questions and that all noble Lords share my conviction of the need for this instrument. Pests and diseases do not acknowledge country borders and can spread to any suitable wider environment. As I have outlined, this instrument makes technical operability changes to ensure that effective biosecurity controls are in place within Great Britain. These amendments are crucial for taking effective co-ordinated action between the devolved Administrations to deliver biosecurity and protect the environment of Great Britain in the future. I commend these regulations to the Committee.

Motion agreed.

Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code H) Order 2023

Considered in Grand Committee

4.39 pm

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

That the Grand Committee do consider the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code H) Order 2023.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, this order was laid before this House on 12 December. Following the horrific terrorist attack at Fishmongers' Hall in November 2019, the then Home Secretary commissioned the Independent Reviewer of Terrorism Legislation, Jonathan Hall KC, to review the Multi Agency Public Protection Arrangements, commonly referred to as MAPPA, used to supervise terrorist and terrorist-risk offenders on licence in the community. The Police, Crime, Sentencing and Courts Act 2022, hereafter referred to as the 2022 Act, established three new powers for counterterrorism policing: a personal search power, a premises search power and a power of urgent arrest. These powers were established in response to recommendations made by Mr Hall KC following his review of MAPPA.

This order relates to the new power of urgent arrest, which was inserted into the Terrorism Act 2000 as new Section 43B of that Act by the 2022 Act. The new arrest power came into force on 28 June last year. The Government have also taken this opportunity to make a small number of updates to the code to reflect changes previously made by primary legislation, including ensuring that relevant terminology within the code is up to date.

As set out by the Government during the passage of the 2022 Act, the new power of urgent arrest applies across the UK. The power enables the police to arrest without warrant a terrorist or terrorism-connected offender who has been released on licence and is suspected to have breached their licence conditions when it is considered necessary, for purposes connected with protecting members of the public from a terrorism risk, to detain the offender until a recall decision is made.

Section 66 of the Police and Criminal Evidence Act 1984, commonly referred to as PACE, requires the Secretary of State to issue codes of practice in connection with the exercise by police officers of statutory powers to arrest a person and the detention, treatment, questioning and identification of persons by police officers. We have prepared a revised PACE Code H, which relates to the detention and treatment of people arrested under the Terrorism Act 2000; it applies across England and Wales. This order seeks Parliament's approval to bring the revised code of practice into force.

The primary update to PACE Code H is the incorporation of the new urgent arrest power provided for by Section 43B of the Terrorism Act 2000. A terrorist

[Lord Sharpe of Epsom]
offender who is detained under new Section 43B must, unless recalled to prison or otherwise detained under any other power, be released if a decision is made not to revoke their licence and accordingly the offender is not recalled to prison. A terrorist offender must also be released from police detention if a recall decision has not been made by the end of the relevant period, which in relation to terrorist offenders who have been released on licence under the law of England and Wales is six hours, beginning with the time of the arrest.

The Government have updated PACE Code H to reflect this new arrest power, including by ensuring that there is clarity for the police on the length of time for which the terrorist offender on licence can be detained, and their rights upon first being detained, such as their right to have one named person informed of their whereabouts and their right to consult and communicate privately with a solicitor. The revised PACE Code H also reflects that there is no requirement to caution a terrorist offender on licence who is arrested under Section 43B, as they will not have been arrested on suspicion of committing a criminal offence and so will not be questioned or interviewed by the police under caution while being detained under this power. The Government plan to collect data from police forces on the use of this targeted power, as we routinely do for other police arrest powers, and make this data publicly available through future statistical publications.

The Government have also updated PACE Code H to reflect other changes already made to primary legislation by the Counter-Terrorism and Border Security Act 2019, hereafter referred to as the 2019 Act. The 2019 Act amended provisions in Schedule 8 to the Terrorism Act 2000 to specify in the legislation that, on first being detained, a detainee must be informed of their rights to inform a named person of their detention and consult a solicitor. The 2019 Act replaced provisions in Schedule 8 that would enable a senior officer, in certain exceptional circumstances, to direct that the detainee has to consult their solicitor in the sight and hearing of another officer with one whereby a senior officer can, in these exceptional circumstances, require the detainee to consult a different solicitor of the detainee's choosing.

4.45 pm

The 2019 Act also amended Section 41 of, and Schedule 7 to, the Terrorism Act 2000 to give effect to a recommendation made by a former Independent Reviewer of Terrorism Legislation that the detention clock should be suspended in the case of detainees who are admitted to hospital. Finally, the 2019 Act created powers to stop, question, search and detain a person at UK ports and the Northern Ireland border area for the purpose of determining whether the person appears to be someone who is, or has been, engaged in hostile state activity.

When revising PACE Code H, the Government have also made other minor, non-discretionary updates to ensure that terminology contained within it is up to date and reflects wider legislative changes. The revised code makes a clarification to refer to retained EU law to reflect the effect of the European Union (Withdrawal) Act 2018, updates the wording regarding offences having a terrorist connection to reflect changes made by the Sentencing Act 2020, and updates a reference to the relevant department to the Foreign, Commonwealth and Development Office.

In the course of revising the code, we have engaged key stakeholders, including Counter Terrorism Policing, the National Police Chiefs' Council, the College of Policing and the Independent Reviewer of Terrorism Legislation, all of whom are supportive of the approach being taken.

While powers such as the Section 43B urgent arrest power in the Terrorism Act 2000 apply UK-wide, our revised PACE Code H applies in England and Wales. We have liaised with the Scottish Government and the Northern Ireland Executive on our proposed revisions, and they intend to update their respective equivalent guidelines and code of practice correspondingly in due course.

The revised code promotes the fundamental principles to be observed by the police and helps preserve the effectiveness of, and public confidence in, the use of arrest powers under the Terrorism Act 2000. I very much hope that noble Lords will support these revisions to PACE Code H.

Lord German (LD): My Lords, I want to ask several questions of the Minister, not least because the recommendations to upgrade Code H are in fact non-discretionary—the policy for a code of practice. In other words, the Secretary of State has to transfer these into the code of practice without any subsequent amendment.

I have two questions, the first of which is about process. Code H says:

"This Code of Practice applies to, and *only* to … persons in police detention after being arrested".

The word "after" is important, because the first of the powers transferred into the Terrorism Act 2000 in Section 43B relates to the fact that constables "may arrest without warrant"—so this is before the arrest has taken place. There are four bullet points at paragraph 7.5 of the Explanatory Memorandum on the 2019 Act changes. The last one, which the Minister mentioned in his opening speech, is about creating powers to stop, search and detain. Again, such powers are obviously prior to the arrest being made.

If the advice on the code of practice to police officers does not appear in this document, PACE Code H, where does it occur? It cannot occur in this document because these powers are prior to arrest. That is a technical question, but if it is not in Code H, where might it be? It may be in general advice to police officers somewhere else; perhaps the Minister can tell us. Two distinct powers given by the various Acts are prior to someone being arrested; then, of course, as the Minister says, after they are arrested the conditions within the relevant Acts are clearly transferred into Code H. Clearly, if there is no explanation of where they might have advice, that leaves a certain amount of unhelpful discretion to the police, who will want guidance on this very important matter.

My second question relates to Section 43B(1), inserted into the Terrorism Act 2000. I do not want to rehearse the debate that was had when the relevant Act was discussed in this House, but it says that

"a constable may arrest without warrant a terrorist offender who has been released on licence",

and then gives two conditions—

"if the constable … has reasonable grounds for suspecting that the offender has breached a condition"

and

"reasonably considers that it is necessary … to detain the offender"

because of a public risk of terrorism. I understand why both conditions are there, but I do not understand what advice has been given to police officers and where that advice might be. First, you would have to understand or know that the person was a terrorist offender. Secondly, you would have to understand or know whether they had been released on licence. Thirdly, you would have to understand or know what the licence conditions were for that person to be released on licence.

I understand the reasons. We had the very tragic case that the Minister referred to, but if I were a police constable, knowing that I had these powers but with those conditions, I would want to see some advice in a code of practice as to how I would understand those three conditions prior to my being able to detain a person. I must have reasonable grounds for the offender having breached the conditions of their licence and I must understand the risk of terrorism. The latter is probably much easier to understand—it could well be by observation of the circumstance—but the former would require a police officer to understand and know that this person had a licence. Given that the advice cannot be in PACE Code H, because it is prior to arrest, where, if anywhere, is it? These are important questions relating to how a police officer can operate the code of practice inherent in the primary legislation that we are debating.

Lord Ponsonby of Shulbrede (Lab): My Lords, we support this statutory instrument, which revises the PACE code of practice H to reflect the introduction of a new power of urgent arrest by the Police, Crime, Sentencing and Courts Act 2022. As the Minister outlined, this power enables the police to arrest without warrant and detain a previous terrorism or terrorism-connected offender who is suspected of presenting a further terrorism risk to the public. It also updates Code H to reflect changes made by the Counter-Terrorism and Border Security Act 2019.

As the noble Lord said, the horror of the attack at Fishmongers' Hall in 2019 and a subsequent attack in Streatham is a reminder of the harm that terrorist-risk offenders are capable of. Following these attacks, the Government commissioned the Independent Reviewer of Terrorism Legislation, Jonathan Hall, to review MAPPA, which is used to supervise such terrorist and terrorist-risk offenders. The creation of the power of urgent arrest was recommended as part of this review.

We supported the introduction of this power during the passage of the PCSC Act and we support it now. We believe it is vital to have the right safeguards in place. With the introduction of such powers comes the possibility of unintended consequences or missed opportunities. I look forward to the Independent Reviewer of Terrorism Legislation considering the effect of the introduction of these powers, as well as the other new powers introduced to improve the management of terrorist offenders on licence, and the 2019 powers that Code H now includes.

I was just reflecting on my memory of the attack in Streatham, which is not that far from where I live. I have no inside information on it other than what I read, but I read in the papers various bits of speculation about the officers who were tracking that terrorist offender, who was out on licence; they observed a crime being committed and intervened, and the offender was killed. The speculation I read in the press was about how that process was managed and the huge resource-intensiveness of tracking such people when they are out on licence. Can the Minister say anything about whether this change to the codes of practice within Code H is partly a result of the large resource implications of tracking such offenders when they are out on licence? However, we support the changes.

Lord Sharpe of Epsom (Con): My Lords, I thank both noble Lords for their contributions.

The noble Lord, Lord German, asked me, first, in essence, where is the guidance for the police pre arrest? Of course, the guidance is operational in nature, so it will be issued by Counter Terrorism Policing and the College of Policing, which will issue it internally. Any guidance for officers is of a highly tactical and operational nature and will therefore obviously have to sit within the police's own guidance rather than a government-issued code of practice.

On how to determine whether an individual is on licence for a terrorist offence, this will be understood through close working by Counter Terrorism Policing and the Prison and Probation Service, which will include information-sharing and briefing about terrorist offenders on licence. If they breach their licence and are recalled, a warrant will be out for their arrest. Obviously, policemen can find out whether an offender is out on licence by checking their details on the police national computer, which will flag it.

In answer to the noble Lord, Lord Ponsonby, about potential operational constraints on the police because of potentially large numbers involved, obviously, I hope that there will not be a large number of people subject to these powers, but I am quite sure that if Counter Terrorism Policing and more routine and—shall we say, traditional?—policing come up against capacity issues, we will certainly hear about it and come back to debate this in further detail. I fear that I cannot supply any better detail than that at this point. However, I will have a dig and, if I can find anything, I shall come back to the noble Lord in writing, if that is acceptable.

Lord German (LD): Just before the Minister moves on, reflecting on the answer he just gave me about the internal guidance, is that guidance publicly available? If so, has it already been written and where can we find it?

Lord Sharpe of Epsom (Con): I do not know whether it is publicly available; I am afraid I shall have to find that out as well and come back to the noble Lord. I should be somewhat surprised if it is, but you never know.

[Lord Sharpe of Epsom]

In closing, I reiterate that this order provides for the revised PACE Code H, which relates to the detention and treatment of people arrested under the Terrorism Act 2000 and applies across England and Wales, to be brought into force. This revised PACE Code H will govern the fundamental principles to be observed by the police when exercising the new urgent arrest power in Section 43B of the Terrorism Act 2000 and will help preserve the effectiveness of and public confidence in the use of police powers of arrest. The updated code will also reflect various changes made to primary legislation by the 2019 Act, as well as other minor updates to ensure that the terminology in PACE Code H is up to date with wider legislative changes. I can pre-empt writing a letter to the noble Lord, Lord German: I fear the guidance is for internal police use only, so it is not public. That said, I thank both noble Lords for their broad support for this SI and I commend it.

Motion agreed.

Trade (Mobile Roaming) Regulations 2023

Considered in Grand Committee

5.01 pm

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

That the Grand Committee do consider the Trade (Mobile Roaming) Regulations 2023.

Relevant document: 25th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I am pleased to move these regulations, which were laid before your Lordships' House in draft on 15 December. This legislation represents a world first in international trade: the UK-Norway, Iceland and Liechtenstein free trade agreement contains the world's first provisions regulating mobile roaming charges.

Most recent free trade agreements mention mobile roaming, but provisions in those agreements talk of co-operating or even endeavouring to co-operate. However, this free trade agreement takes a further step: actually ensuring the regulation of charges in order to make a real difference to Britons travelling overseas. It is an example of the innovative trade deals we can now negotiate, bringing real benefits to British travellers.

This legislation is necessary to implement domestically the UK's international obligations under the terms of the agreement. Technically, the legislation implements the agreement's provisions that regulate international mobile roaming wholesale charges.

As many noble Lords will appreciate, wholesale charges are what mobile operators charge each other, as distinct from retail charges, which are what they charge their customers. The wholesale charges Norwegian and Icelandic mobile operators can charge UK operators will be capped by their domestic legislation. The legislation we are debating will cap the charges that UK operators can apply to Norwegian and Icelandic mobile operators. The caps cover wholesale charges for mobile data, voice calls and text messages. The regulation of wholesale charges in the agreement is with a view to facilitating surcharge-free international mobile roaming for British consumers to Norway and Iceland, as well as, of course, surcharge-free mobile roaming for Norwegians and Icelanders in the UK.

I note that the agreement's provisions regulate mobile roaming wholesale charges between the UK and Norway, and the UK and Iceland. The agreement's provisions do not apply to Liechtenstein. Therefore, this legislation is not relevant to that principality. That is because Liechtenstein decided to opt out, given its operators' commercial relationships with Switzerland. Because of the topography and the limited geographical area of Liechtenstein, a significant part of its territory is supplied by masts from neighbouring Switzerland. I add that this legislation also ensures that Ofcom has the power to enforce the caps on wholesale charges.

Before I make way for the debate on this legislation, I will cover an issue that might form the basis of questions that noble Lords might have: the agreement's coverage of wholesale, rather than retail, charges. The reason the agreement covers wholesale charges but not retail ones is that wholesale charges have to be covered by an international agreement. Wholesale charges are a cross-border issue; an international agreement is therefore required to cover them. UK legislation alone cannot bind the charges of Icelandic or Norwegian operators.

Retail charges can be covered by an international agreement, but they can also be covered by purely domestic legislation. This is because retail charges are between UK operators and their domestic customers. Retail charges are not a cross-border issue.

The parties concluded that this agreement should cover only wholesale charges, as these have to be covered by an international agreement. That the agreement does not cover retail charges reflects its light-touch regulatory approach. It will ensure that UK operators are protected from high wholesale charges from Norwegian and Icelandic operators. It is therefore expected that those UK operators who surcharge their customers roaming in Norway and Iceland will react at the retail level by reconsidering their approach and moving to surcharge-free services.

While the agreement is light touch in its regulatory approach, let me be clear: one of the key, publicly stated achievements of the agreement was to keep costs low for holidaymakers and business travellers in Norway and Iceland. The Government are committed to delivering that aim. They therefore expect UK mobile operators which are surcharging to reconsider their approach. If they do not, the Government have the capacity to intervene.

Lord Deben (Con): On this particular point—

Lord Parkinson of Whitley Bay (Con): My Lords, this is my opening speech. My noble friend will be able to join the debate in a moment. I look forward to the contributions from my noble friend and other noble Lords. I beg to move.

Lord Deben (Con): I wanted to ask my noble friend: what advantage does the mobile telephone user get from us having left the European Union? Is this not a

rather pathetic doing of a deal with a few countries, when everybody in Britain suffers from having left the European Union and being charged extra? This deal is just with a couple of countries—even Liechtenstein is left out.

Lord Clement-Jones (LD): My Lords, that was a suitable start to my own small intervention. I will not trouble the Minister for too long but I want to strike a note of genuine regret, rather along the lines of what the noble Lord, Lord Deben, said.

It is a very small crumb of comfort to be faced with this order when previously, right across the EU, there were no roaming charges for consumers. As we saw, last July the EU extended the exemption from roaming charges for another 10 years—an extensive period. I suspect we are all now much more aware of what we have lost as a result of leaving the EU, exactly as the noble Lord mentioned.

There is a small consolation offered in this free trade agreement. I do not know whether any negotiations will ever be underfoot again with the EU about taking advantage of its single market and the resulting lack of roaming charges. Maybe the Minister could say whether any kind of initiative was available.

I have only a couple of questions about these new regulations. The Minister talked about the technicalities of wholesale, retail and so on. Obviously, the retail charges—if any—follow from any wholesale charges. How are these charges to be set? What is the basis for them? Norway and Iceland are limited exemptions. Even Liechtenstein did not feel moved enough to join up to this great roaming exemption. Why has Liechtenstein excluded itself from this splendid initiative?

Of course, we support these regulations. I welcome particularly that there is a review. I am greatly in favour of government reviewing its own regulations, and the mechanism in Regulation 13 is very useful, but what does the Minister envisage? Do we do this after a couple of years, after five years, this time next year or never? What is the plan? It is useful at least to have in the department's diary something that says, "Review these Norway and Iceland regulations", when somebody has the spare time to do it. I hope that consumers will take great benefit from these regulations.

Viscount Stansgate (Lab): My Lords, I intervene briefly to ask two questions, one of which, about the review, has just been asked. Regulation 13 says that the review has to be within five years but can be in as little as a year. Can the Minister say anything about when the department might intend to consider a review? The subject of roaming charges is of pretty wide interest generally.

Secondly, in respect of the scope—which, let us face it, is modest—am I right in assuming that, under the reconsideration of the trade and co-operation agreement that has been signed and comes up for review in a year or two, this whole area might be an appropriate part of any reconsideration and renegotiation that the UK conducts with the EU?

Lord Bassam of Brighton (Lab): My Lords, I am grateful, as ever, to the Minister for introducing the SI, and to the Secondary Legislation Scrutiny Committee for commenting on it in its 25th report. The scope of the SI is very narrow, as colleagues have said. But if we are looking for something to welcome, we should certainly welcome the fact that the Government have decided to work a bit more collaboratively with international partners, are bringing forward legislation that enacts rather than attempts to rip up international agreements and are seeking to negotiate somewhat with our partners in Europe.

The agreement with Norway and Iceland will give certainty to mobile operators about their costs when customers use roaming charges across the relevant jurisdictions, but this is a very limited agreement. I soon realised when I came back from Norway last year just how much more expensive it is to use a mobile device there than it used to be in the rest of Europe, so this is a small but welcome move forward.

The SI deals only with a wholesale price cap rather than with any retail-focused provisions. The Secondary Legislation Scrutiny Committee was right to query whether there is likely to be a knock-on effect. In a sense, that must be at the heart of this and a question. The Government's response in paragraph 84 of the committee's report is not entirely convincing. The DCMS says:

> "If operators do not react appropriately, the Government will have to consider what further measures may be necessary".

That seems to be something of an empty threat. The Government previously said they saw no reason why our departure from the EU would lead to the reintroduction of roaming charges, and we know where that led. Yet the DCMS has not introduced any further measures to address the decision of three of the four main mobile operators to reinstate charges. Why not? As well as setting the wholesale costs, the SI introduces powers for Ofcom to enforce them. Yet you would not really get that if you read the Explanatory Memorandum, which gives no explanation of how these powers will be exercised or operate in practice.

We obviously do not oppose this SI but, as is often the case with the DCMS, we are somewhat underwhelmed by the general approach to an issue that will affect millions of British travellers each year. A small crumb of comfort is the best description we can give of this SI, welcome though it is.

5.15 pm

Lord Parkinson of Whitley Bay (Con): My Lords, I will take whatever small crumbs of comfort are offered by noble Lords. Looking around, I imagine that noble Lords will not be celebrating the third anniversary of our departure from the European Union this evening in the same way that I will, but I understand why they are taking account of that anniversary to use this opportunity to make some points about the European Union, which is tangentially linked to the issue before us.

As I mentioned, this statutory instrument covers only Norway and Iceland, but I am happy to respond to the points which noble Lords have taken this opportunity to make, not least to reiterate that, during our negotiations leading up to our departure from the European Union, UK negotiators did propose to the European Commission the continuation of reciprocal arrangements between the UK and the EU for surcharge-free roaming. The EU, regrettably, did not agree with

[Lord Parkinson of Whitley Bay]
that proposition. We subsequently proposed a review clause to consider the need for these agreements, should roaming surcharges return for consumers. The EU did not agree to that either, and we are unaware of any shift in its position on this issue.

My noble friend Lord Deben says that the SI refers to just a couple of countries. It is, as I say, world-leading legislation because it is the first agreement which refers to this important issue and its impact upon the bills of mobile phone users. There are nearly 200 countries around the world, only 27 of them member states of the European Union, and this issue affects travellers—holidaymakers and those from businesses—when they travel across the globe. We are proud that this agreement sets out a way for co-operation on this issue.

Lord Deben (Con): I will not hold my noble friend up, and I know this is difficult, but the countries to which most people go most of the time are those in the rest of Europe. That is the fact of the matter. Will he tell me how much the average person will benefit from this deal and how much they have lost from us not being members of the European Union? What I am really fed up with is that the Government never tell us the facts about the loss from our leaving the European Union, so people cannot understand whether this is something to be cheerful about or miserable about. Today, we had a Minister referring to our freedom from the European Union; the freedom is that we now pay more and we are blaming the European Union for not giving way to the fact that we left the EU. All I want to know from my noble friend—I know this is on unfair on him—is how much the average person loses by our not having a deal with the European Union and how much they gain, on average, from being able to go to Iceland and Norway, although they will miss out on Liechtenstein.

Lord Parkinson of Whitley Bay (Con): Even if I had the statistics to hand, I do not think I would be able to satisfy my noble friend entirely. I do not have the numbers to compare UK travellers visiting Norway and Iceland with, say, Bulgaria or any other EU member state. What they have gained, as the UK has gained by our departure from the European Union, is the ability to sign free trade agreements and agreements such as this which allow us to pursue these benefits. They are a model for our co-operation with countries around the world, whether they are in the European Union or not.

Decisions about imposing roaming charges on customers who travel to the EU is a matter for operators themselves. I note that some, including Virgin Mobile and O2, do not so consumers in the UK still have the option of using that network and travelling without any charge to the European Union. I do not suppose any of that fully persuades my noble friend, but I hope it addresses the points that he has raised.

As I say, this represents a world first in a free trade agreement, and we expect it to make a real difference to Britons travelling to Norway and Iceland. It was one of the key and publicly stated achievements of the agreement, when we signed it, to keep costs low for holidaymakers and business travellers going to those countries, and the Government are committed to delivering that aim.

The noble Lord, Lord Clement-Jones, asked about wholesale charges. They are set out in the statutory instrument and took the EU rates as a benchmark. The agreements sub-committee recommended to the joint committee that the current rate found in the EU roaming regulation would be appropriate for the UK, Norway and Iceland. That is consistent with the agreement's language, which concerns looking at "relevant international benchmarks". I should say that the sub-committee is made up of officials, while the joint committee is the senior body chaired by Ministers.

Lord Clement-Jones (LD): Thank you—that is really helpful—but will those rates change when the EU benchmark changes?

Lord Parkinson of Whitley Bay: That is not set out in the agreement, but, as is set out in it, the joint committee will review the rates every two years, unless it decides otherwise, with a view to determining whether they are still appropriate. An option in any of the reviews could indeed be to follow the rates in the EU and EEA, as the agreement talks about "relevant international benchmarks", but that will be for the joint committee to decide.

The noble Lord, Lord Bassam, asked whether we plan to legislate to intervene if surcharges are imposed and endure. Obviously, I cannot make commitments on the Government's future legislative programme, but I can stress the Government's firm desire to see the benefits of this agreement flowing to consumers in the form of surcharge-free roaming to Norway and Iceland. If that does not happen, the Government have the capacity to intervene, and we will of course keep that under consideration. We will review these in due course, noting the five-year limit set out. I fear I cannot give a more precise timeframe to the question posed by the noble Viscount, Lord Stansgate.

I think that covers all the points raised, but I will consult the *Official Report* and write if I have missed anything. With that, I commend the Motion.

Motion agreed.

Committee adjourned at 5.21 pm.