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Monday
27 February 2023

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

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

HIS MAJESTY'S GOVERNMENT

PRINCIPAL OFFICERS OF STATE

THE CABINET

PRIME MINISTER, FIRST LORD OF THE TREASURY, MINISTER FOR THE UNION AND MINISTER FOR THE CIVIL SERVICE—The Rt Hon. Rishi Sunak, MP

DEPUTY PRIME MINISTER, LORD CHANCELLOR AND SECRETARY OF STATE FOR JUSTICE—The Rt Hon. Dominic Raab, MP

CHANCELLOR OF THE EXCHEQUER—The Rt Hon. Jeremy Hunt, MP

SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS—The Rt Hon. James Cleverley, MP

SECRETARY OF STATE FOR THE HOME DEPARTMENT—The Rt Hon. Suella Braverman, KC, MP

SECRETARY OF STATE FOR DEFENCE—The Rt Hon. Ben Wallace, MP

CHANCELLOR OF THE DUCHY OF LANCASTER AND SECRETARY OF STATE—The Rt Hon. Oliver Dowden, CBE, MP

SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO—The Rt Hon. Grant Shapps, MP

SECRETARY OF STATE FOR SCIENCE, INNOVATION AND TECHNOLOGY—The Rt Hon. Michelle Donelan, MP

SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES AND MINISTER FOR INTERGOVERNMENTAL RELATIONS—The Rt Hon. Michael Gove, MP

SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE—The Rt Hon. Steve Barclay, MP

LORD PRESIDENT OF THE COUNCIL AND LEADER OF THE HOUSE OF COMMONS—The Rt Hon. Penny Mordaunt, MP

LEADER OF THE HOUSE OF LORDS AND LORD PRIVY SEAL—The Rt Hon. Lord True, CBE

SECRETARY OF STATE FOR BUSINESS AND TRADE, PRESIDENT OF THE BOARD OF TRADE AND MINISTER FOR WOMEN AND EQUALITIES—The Rt Hon. Kemi Badenoch, MP

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SECRETARY OF STATE FOR TRANSPORT—The Rt Hon. Mark Harper, MP

SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT— The Rt Hon. Lucy Frazer, KC, MP

MINISTER WITHOUT PORTFOLIO— The Rt Hon. Greg Hands, MP

SECRETARY OF STATE FOR NORTHERN IRELAND—The Rt Hon. Chris Heaton-Harris, MP

SECRETARY OF STATE FOR SCOTLAND—The Rt Hon. Alister Jack, MP

SECRETARY OF STATE FOR WALES—The Rt Hon. David T.C. Davies, MP

ALSO ATTENDS CABINET

PARLIAMENTARY SECRETARY TO THE TREASURY AND CHIEF WHIP—The Rt Hon. Simon Hart, MP

CHIEF SECRETARY TO THE TREASURY—The Rt Hon. John Glen, MP

ATTORNEY-GENERAL—The Rt Hon. Victoria Prentis, KC, MP

MINISTER FOR THE CABINET OFFICE AND PAYMASTER-GENERAL—The Rt Hon. Jeremy Quin, MP

MINISTER FOR IMMIGRATION—The Rt Hon. Robert Jenrick, MP

MINISTER FOR SECURITY—The Rt Hon. Tom Tugendhat, MBE, VR, MP

MINISTER FOR DEVELOPMENT AND AFRICA—The Rt Hon. Andrew Mitchell, MP

MINISTER FOR VETERANS' AFFAIRS—The Rt Hon. Johnny Mercer, MP

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MINISTERS OF STATE—
- Nusrat Ghani, MP
- Nigel Huddleston, MP
- Lord Johnson of Lainston

PARLIAMENTARY UNDER-SECRETARIES OF STATE—
- Kevin Hollinrake, MP
- Maria Caulfield, MP §

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CHANCELLOR OF THE DUCHY OF LANCASTER AND SECRETARY OF STATE— The Rt Hon. Oliver Dowden, CBE, MP

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- Baroness Neville-Rolfe, DBE, CMG
- Nusrat Ghani, MP

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Rt Hon. Stuart Andrew, MP
Lord Parkinson of Whitley Bay

Defence—

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Alex Chalk, KC, MP (Minister for Defence Procurement)
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The Rt Hon. Lord Goldsmith of Richmond Park (Minister for Overseas Territories, Commonwealth, Energy, Climate and Environment)
The Rt Hon. Andrew Mitchell, MP (Minister for Development and Africa)
The Rt Hon. Anne-Marie Trevelyan, MP (Minister for Indo-Pacific)

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Maria Caulfield, MP (Minister for Mental Health and Women's Health Strategy) §
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Lord Privy Seal and Leader of the House of Lords—The Rt Hon. Lord True, CBE

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Parliamentary Secretary to the Treasury and Chief Whip—The Rt Hon. Simon Hart, MP
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Lords in Waiting—
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Lord Harlech
Lord Evans of Rainow
Lord Caine

§ Members of the Government listed under more than one department

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THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE THIRD SESSION OF THE FIFTY-EIGHTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE SEVENTEENTH DAY OF DECEMBER IN THE
SIXTY-EIGHTH YEAR OF THE REIGN OF

HER LATE MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCCXXVIII**

SEVENTH VOLUME OF SESSION 2022-23

House of Lords

Monday 27 February 2023

2.30 pm

Prayers—read by the Lord Bishop of Oxford.

Death of a Member: Baroness Boothroyd

Announcement

2.37 pm

The Lord Speaker (Lord McFall of Lalith): My Lords, I regret to inform the House of the death of the noble Baroness, Lady Boothroyd, yesterday. She made a most valued and significant contribution to both Houses in a parliamentary career spanning almost 50 years—serving this House with distinction for 22 of those. She was an integral part of our parliamentary community and will be sadly missed. On behalf of the House, I extend our condolences to the noble Baroness's family and friends.

Georgia: Imprisonment of Mikhail Saakashvili

Question

2.37 pm

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

To ask His Majesty's Government what discussions they have had with the government of Georgia about the condition of Mikhail Saakashvili, the imprisoned former president of that country.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, we are closely following events connected to the detention of former President Saakashvili. The Foreign Secretary raised Mr Saakashvili's detention, highlighting concerning reports about his health and treatment, with the Georgian Foreign Minister Darchiashvili on 26 January during the Wardrop strategic dialogue. Our ambassador and other officials also raised Mr Saakashvili's case with the Deputy Foreign Minister during the bilateral segment of that dialogue. We will continue to monitor developments regarding the case.

Lord Harries of Pentregarth (CB): I thank the Minister for his reply. I ask that the Government continue and redouble their efforts to get Mr Saakashvili appropriate medical treatment. Can the Minister bear in mind that his situation is part of a wider, very serious development in Georgia, which has been hijacked by a multi-billionaire businessman who controls its economic and political life, as well as its media, to keep it within the orbit and surround of Russia? This is a question not just of his human rights but of the whole future of Georgia as a European-looking nation.

Lord Goldsmith of Richmond Park (Con): The noble and right reverend Lord is right that the treatment of the former president has wider ramifications. While humanitarian concerns are clearly uppermost in our representations on the matter, we have also highlighted the relevance of the Government's treatment of Mr Saakashvili to Georgia's domestic political climate, international reputation and broader Euro-Atlantic aspirations.

Lord Howell of Guildford (Con): My Lords, is this not really all about Russia trying to re-exert control in that area by using familiar methods of undermining stable government to do so? Is it not rather the same as what is happening in Moldova, as well as all over the developing world, including in many countries of the Commonwealth, and in Sudan, where Russia is setting up a naval base? Should we not be very careful that while Putin may be failing in Ukraine—and we hope he fails—he may be succeeding rather continuously in those other areas? Does my noble friend agree that we should keep a very close eye on that aspect of what is otherwise rapidly becoming a new cold war?

Lord Goldsmith of Richmond Park (Con): My Lords, it is right that Russia has been, and remains, a deeply destabilising influence far beyond Ukraine and Georgia. Georgia is under sustained pressure from Russia, which, through its relationship with the de facto authorities of South Ossetia and Abkhazia, is in effective control of 20% of Georgia's territory. Although we do not see an increase in any direct threat to Georgia caused by Russia's illegal invasion of Ukraine, Georgia continues to experience Russian aggression. Former Prime Minister Truss reaffirmed clearly our support in the UK for Georgian territorial integrity and sovereignty when she met the Georgian Prime Minister at the UN General Assembly in September.

Lord Anderson of Swansea (Lab): Does the noble Lord agree that the treatment of Saakashvili will have a negative and adverse effect on Georgia's approach to membership of the European Union and that, therefore, it is not us but the European Union which has far greater leverage in this respect?

Lord Goldsmith of Richmond Park (Con): The Government absolutely share that view, which is why, in our representations to the Government of Georgia, we make the point that allegations and stories emerging in relation to the former president are seen in the context of Georgia's wider ambitions.

Lord Wallace of Saltaire (LD): My Lords, may I add the name of Nika Gvaramia of the independent television station, who has been put in prison on clearly political grounds like Mr Saakashvili? Has the Foreign Office also protested to the Georgian Government about the substantial reports of increases in truck traffic across Georgia between Russia and other states, which suggests a clear breach of sanctions on Russia and has implications for the Ukraine conflict?

Lord Goldsmith of Richmond Park (Con): My Lords, we have been following closely the arrest and conviction of Nika Gvaramia. We note the concerns that have been raised about his case and media freedoms more generally in Georgia. On 2 November last year, senior officials met the Georgian ambassador to discuss the outcome of his appeal on 1 November while also noting those concerns. Our embassy in Tbilisi and officials in London will continue to follow this case.

Baroness Stuart of Edgbaston (CB): My Lords, can I urge the Minister to return to the subject raised by the noble and right reverend Lord, Lord Harries, about oligarchs and their malign influence and to see whether any more sanction could be taken? We should not forget about the role of the Council of Europe, which involves significantly more countries than the European Union, and its influence and potential to help us restore democracy to Georgia.

Lord Goldsmith of Richmond Park (Con): The noble and right reverend Lord's earlier comments are absolutely noted in relation to the influence in particular of Bidzina Ivanishvili, to whom I think he was referring. We understand that he is a private citizen. He does not have any formal or legal role in the Government of Georgia, but we are aware of reports of his links to Russia. We have raised that with the Government of Georgia, who have assured us of their determination to adhere to international sanctions against Russia. As everyone must, we will remain vigilant as we collaborate with our Georgian partners and regularly review our sanctions designations.

Lord Balfe (Con): My Lords, when I was a member of the Venice Commission, it was quite clear that the normal courtesies of democracy had broken down in Georgia, so it is no good going around just blaming other people. Can the Minister assure us that the UK Government will put to the Georgian Government the need to conduct their parliamentary affairs in line with what is normally accepted as western democratic standards—in other words, not boycotting Parliament but exchanging power in a civilised manner?

Lord Goldsmith of Richmond Park (Con): My Lords, we will absolutely continue to press for progress on reforms in line with Georgia's EU and NATO ambitions. I understand that further discussions will take place in the very near future and we continue to encourage all parties within the Georgian system to interact constructively to enact those reforms required to achieve their shared Euro-Atlantic goals and the will of the Georgian people. The Foreign Secretary met the Georgian Foreign Minister on 26 January, raising those same concerns about developments that are clearly damaging Georgia's international reputation, its reform credentials and its EU and NATO aspirations.

Lord Robertson of Port Ellen (Lab): My Lords, I endorse the concerns that have been expressed about what is happening in Georgia today. Some of us who have been long-standing supporters of the ambition of Georgia to join the Euro-Atlantic family are deeply distressed about what is happening there, especially the treatment of former president Saakashvili and other members of the opposition as well. Will the Government keep up their pressure on the Government of Georgia to make sure that they adhere to the normal standards that one would expect of a country with such aspirations?

Lord Goldsmith of Richmond Park (Con): I can absolutely assure noble Lords that that is exactly what the UK is focusing on in our discussions with the Government of Georgia.

Lord Carlile of Berriew (CB): Will our Government remind the Government of Georgia that their abandonment of rule of law standards will affect the otherwise plentiful opportunities for economic and business co-operation between our two countries, not least because our Government will be bound to advise businesspeople of the danger of working in Georgia, and political risks insurers will simply refuse insurance for debts mounted in Georgia?

Lord Goldsmith of Richmond Park (Con): The noble Lord is of course right. The broader context—the backdrop—is for the Georgian Government to act and behave in a manner that takes them forward towards their broader Euro-Atlantic aspirations. We are a firm supporter of those aspirations; we believe that further integration with the EU and NATO will

deliver greater prosperity and security for both Georgia and Europe. UK programmes fully support democratic reforms and NATO interoperability aimed at progressing the Georgian Government's aspirations.

Baroness Smith of Basildon (Lab): My Lords, listening to the Minister, I think he is aware that there is a wider issue here which goes right to the heart of the democratic credibility of Georgia. My noble friend Lord Collins of Highbury previously raised the issue of LGBT people in Georgia, particularly after the very violent protests ahead of the Tbilisi Pride march. Most recently, the Minister—I think it was in November—was clear that there were number of UK-funded projects aimed at building dialogue within Georgia. Can he tell the House whether all those projects remain secure given the cut in ODA funding?

Lord Goldsmith of Richmond Park (Con): My Lords, the UK continues to work with Georgian partners to combat malign Russian influence, consistent with our efforts and our experience with Ukraine, the Baltic countries and Poland. Over the last five years, our ODA spend in Georgia has been between £4 million and £6 million per year, and non-ODA allocation has grown from £0.2 million to £1 million. We are currently funding a wide range of projects in Georgia, focused on the issues the noble Baroness has raised and more, but I cannot go into specific ODA decisions until those decisions are made public by the Foreign Secretary.

Train Services: North of England

Question

2.49 pm

Asked by ***Baroness Randerson***

To ask His Majesty's Government what steps they intend to take to improve train services in the north of England.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, Ministers recognise that the current service provision is far below the standard that passengers rightly expect. The Government constantly review operators' performance, and all options regarding contracts remain on the table to ensure we reach a long-term solution that works for passengers in the north and across the rail network.

Baroness Randerson (LD): Recent Office of Rail and Road data exposes the scale of the misuse of P-coding the last-minute cancellations by TransPennine Express. In the month up to 4 February, TPE cancelled almost a quarter of its services, and Avanti West Coast was not far behind on 17%. These train companies have exploited this loophole to the great inconvenience of passengers and have misled the public. Can the Minister assure us that they will not be rewarded with new contracts?

Baroness Vere of Norbiton (Con): I am not entirely sure that the picture is quite as the noble Baroness has set out. There is not necessarily a misuse of P-codes; the issue is that there has to be a point in the day beyond which a cancellation counts and has to be published as a same-day cancellation and the period before, when a cancellation can happen for all sorts of different reasons, including engineering works and a reduction in timetables, asked for by the department to ensure reliability. We are working very closely with the ORR on the transparency of the cancellation data that is out there. There will of course be P-code data, but there will be other data around the cancellation of train services. When it comes to performance figures, all of the data is taken into account.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I caught the train from Edinburgh Waverley at 9.30 am and got here in plenty of time for Questions because I travelled on the publicly owned LNER. When are the Government going to learn that lesson?

Baroness Vere of Norbiton (Con): My Lords, I went to Liverpool the Friday before last; I got there on time and I returned on time. There are journeys across the country, and across the north, that work on time and to a great level of passenger experience. However, it is the case that, where services are not working properly, we need to hold the operators to account and make them better.

Lord McLoughlin (Con): My Lords, I draw attention to my interest as chairman of Transport for the North. There is no doubt that rail passengers in the north have had a torrid time, be it on TPE, Avanti or Northern. What can the Government do to reassure travelling passengers in those areas directly affected that the train companies have now got the right mechanisms in hand to ensure that future services will improve, whether it is industrial relations or other related matters? There is an issue around P-coding, but P-coding does give forward notification and that should be counted in the overall cancellations.

Baroness Vere of Norbiton (Con): There are many things that the Government are doing, because not all train operating companies in the north are the same; they all have slightly different challenges and some have been able to address those challenges more quickly than others in certain circumstances. The challenges fall into three areas. The first is absence and sickness, which is higher than it really should be, and that needs to be addressed. The second is rest day working and overtime. Noble Lords will all know about the national industrial action that happens periodically, and there is also other industrial action around rest day working and more localised disputes. Those are having very significant impacts on services. The last, in some circumstances, is driver departure, as some drivers are choosing the leave the industry. As my noble friend points out, those are the sorts of things we have to consider. We have got action plans for each of the train operating companies, but each one will have slightly different challenges to address.

Lord Tunnicliffe (Lab): My Lords, the Minister has just described a railway that is in a mess. Is the new Great British railways going to sort this out? If the answer is yes, why are we not seeing a Bill to make it happen? Does the Minister know when such a Bill is going to be introduced?

Baroness Vere of Norbiton (Con): I think I have mentioned at the Dispatch Box many times that the Bill for rail reform will be introduced when parliamentary time allows. It is worth pointing out that an awful lot can be done before legislation is put in place. One key thing that can be carried out is workforce reform. We have to be absolutely realistic about the challenge that our railways face. Without careful and reasonable reform, there will be no long-term future for the railway. I put it to the noble Lord that if he has any influence whatever among the leaders of the trade unions, he asks them to put forward to their membership the packages that the Government have put forward. We need to understand whether or not we are going to be able to reform the workforce; if we are not, the consequences will be quite severe.

Lord Wigley (PC): My Lords, will the Minister take this opportunity to kill stone-dead the reports that are circulating that, despite Avanti West Coast's appalling performance, the Government are still minded to renew its contract?

Baroness Vere of Norbiton (Con): I cannot possibly respond to those reports, but all options remain on the table with regard to all the different contracts as they come up for renewal. There are very well set out processes involving independent evaluation of performance, and all those things will be gone through when it comes to considering Avanti West Coast's contract.

Lord Kirkhope of Harrogate (Con): My Lords, I had the pleasure of travelling on the same train as the noble Lord, Lord Foulkes, this morning—but I obviously was not in the same part of the train as him. I would like to comment on the remarks made by the noble Baroness, Lady Randerson. While those of us in the north are irritated by the services provided by some of the providers, we are also waiting with bated breath for a decision by the Government to once and for all sort out the links that are necessary between our northern cities, east to west. When are these going to happen?

Baroness Vere of Norbiton (Con): That is part of the complex web. The Government want to invest billions of pounds in rail infrastructure for the north. However, if we are unable to operate the services as the train operating companies would like to do, that will become increasingly difficult. It is important that, as we invest billions of pounds across the north, we do so with a constructive and collaborative relationship with the unions and the workforce, to provide the modern seven-day railway that we need.

Lord Alton of Liverpool (CB): My Lords, at least the Avanti service this morning from the north-west ran, although it was 20 minutes late in getting to Euston. The noble Baroness was good enough to raise these issues during a meeting with Huw Merriman a few weeks ago. She will recall that one of the issues raised was the point just made by her noble friend about east-west travel. One suggestion was that the Hellifield link should be reopened to create a second line of route across the Pennines. The noble Baroness kindly said that she and the Transport Minister would consider coming to see the situation first hand. She has received requests from the local Member of Parliament for Ribble Valley and the leader of Lancashire County Council, and I wonder when that might be expedited.

Baroness Vere of Norbiton (Con): I am grateful to the noble Lord for reminding me of that. I will go and give the Rail Minister a bit of a kick and see if we can get him on his way.

Lord Goddard of Stockport (LD): My Lords, I think the Minister will agree with me that one of the ways the railways could be improved would be by stopping the strike action and getting things back to normal. On that basis, could she tell me whether, on strike days, the Government still pay subsidies to Avanti trains for providing no service whatever, or whether they withhold the subsidy that it gets on a daily basis for running the railways? I do not expect the number right now, but to within £10 million would be helpful.

Baroness Vere of Norbiton (Con): I am not sure about the subsidies to which the noble Lord refers. There are complex contractual arrangements around what Avanti is entitled to, and the Government make sure that we abide by those contracts. The key here—I do not think I have emphasised this sufficiently previously—is that we need to ensure that we get the workers back to work and get the workforce reform that we need. I am very concerned that rail workers are being led by their union leaders towards a point where there will be no long-term jobs for them, and no railway system for passengers either. It is not the case that when a railway worker strikes they lose their pay just for that day; we are also weakening the system as a whole for the future.

Lord Watts (Lab): My Lords, is it not the case, though, that the publicly run rail service is far more effective than the ones run by Avanti and the private sector? What lessons has the Minister learned from the difference in performance figures between those in public and private ownership?

Baroness Vere of Norbiton (Con): There are all sorts of reasons and criteria as to why one train operating company runs better than another. Often, it can be due to engineering works—if you are upgrading a main line, for example. There are all sorts of different things that can happen. However, the Government do learn lessons from train operators' performance, comparing one against the other. We take those lessons forward and, particularly for those TOCs in the north, we make sure that those lessons are put in their action plans.

Medicines Manufacturing Industry

Question

2.59 pm

Asked by ***Lord Hunt of Kings Heath***

To ask His Majesty's Government what steps they intend to take in response to the report by the Medicines Manufacturing Industry Partnership *Fulfilling the potential identified in the Government's*

Life Sciences Vision, published on 23 January, which found that medicines manufacturing and employment has declined in the United Kingdom over the last 25 years.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the Government recognise the valuable role that medicines manufacturing plays in the UK economy. This enables us to capitalise on our world-class research and development, creates jobs, and contributes significantly to growth. Life sciences pharmaceutical manufacturing was responsible for more than £20 billion of exports in 2021. Our *Life Sciences Vision* set out the Government's ambition to create a globally competitive environment for manufacturing investment. Last March, we launched the £60 million life sciences innovative manufacturing fund to encourage manufacturing investment in the UK and will announce the fund's winners later this year.

Lord Hunt of Kings Heath (Lab): My Lords, the Minister is absolutely right to stress the importance of this sector to our economy and the value of our exports, but since 2010, the volume produced has reduced by 29% and in the league table of countries with trade balances relating to pharmaceuticals, we have gone from fourth place to 98th place. Now the sector, like others, is having to face up to increasing corporation tax and, remarkably and peremptorily, the Treasury decided to reduce SME R&D tax credits for life science companies. This will, in effect, reduce by half the value for loss-making SMEs. Given that SMEs are at the heart of the life science industry, will the Government reconsider that decision?

Lord Parkinson of Whitley Bay (Con): My Lords, the UK is a prime location to research, develop and manufacture pharmaceutical products, particularly complex medicines. The *Life Sciences Vision* acknowledges that there has been a long-term decline in medicines manufacturing in the UK over the past quarter of a century, as the noble Lord highlighted in his Question, but official statistics from the Office for Life Sciences show that employment in core biopharmaceutical manufacturing has increased by 5% in the two years from 2019. The UK holds the number one spot for life science investment in Europe, and globally is second only to the US, so there are reasons for optimism as well.

Lord Clement-Jones (LD): My Lords, is not the situation outlined by the Minister rather belied by a recent article in the *Financial Times* by Dame Kate Bingham, who did so much to deliver the Covid vaccine? She said:

"Big companies are also retrenching. The pharmaceutical giants AbbVie and Eli Lilly have pulled out of the UK's pricing agreement with the NHS. Bayer's pharmaceutical arm is reducing its UK footprint and cutting jobs. Our own domestic titans, GSK and AZ, have chosen to build new factories in countries more friendly to business",

such as Ireland. Is this not all down to government policy? How are the Government going to get back on the front foot?

Lord Parkinson of Whitley Bay (Con): I echo the tributes that have been paid in this place today and elsewhere to Kate Bingham for the work she did during the pandemic. The Government have invested more than £405 million to date to secure and scale up the UK's vaccine manufacturing capabilities to ensure a robust response to Covid and potential future health emergencies. We recently announced a 10-year partnership with Moderna, which will invest in mRNA research and development in the UK, and other examples include Fujifilm, which announced in 2021 a £400 million investment in its site in Billingham, on Teesside, which will more than double the site's existing development and manufacturing, anticipating the creation of up to 350 skilled jobs.

Lord Kamall (Con): My Lords, one of my frustrations when I was briefly one of the Ministers for life science was that we would have meetings on life sciences between two or three departments, when in fact many parts of government were working on life sciences. I and other Ministers asked for anyone working on life sciences, whether that be in No. 10, the Treasury, DIT, DHSC, et cetera, to all get together in one room, whether virtual or real, to fully co-ordinate across government. I have recently been told that we are no longer co-ordinating across departments. I ask my noble friend to go back to his department to make sure that we continue to co-ordinate with everyone who is working on life sciences in government, so that we do not have one discussion and then have to talk to people outside the room.

Lord Parkinson of Whitley Bay (Con): I certainly shall, and through the creation of the Department for Science, Innovation and Technology, the point my noble friend makes is highlighted. This is an area where the UK has a globally unique offer, because we have already established a network of medicines manufacturing innovation centres which the industry can use to develop its own technologies, giving it a competitive edge, so the point he raises is important.

Lord Patel (CB): My Lords, although I agree with the comments made by the noble Lords, Lord Hunt of Kings Heath and Lord Clement-Jones, also affecting the manufacture and development of medicines in the United Kingdom now is our ability to conduct clinical trials, particularly phase 3 trials. We are good at starting phase 1 trials but by the time it comes to phase 3, not enough patients have been recruited and so the commercial trials come to an end. That means that we are not developing new medicines for cancers, cardiac disease and rare diseases. We need much more co-ordination from the Government, from the regulatory authorities for medicine and the ethics research authority, and from integrated care boards and trusts, so that the recruitment of patients continues at phase 3.

Lord Parkinson of Whitley Bay (Con): The noble Lord makes an important point. With the change in regulation following our departure from the European Union, we have further freedom to act in this area. It is important that we continue to seize those opportunities and ensure that we are at the cutting edge of scientific exploration. I will refer his points back to the department.

Lord Sahota (Lab): My Lords, it is said that India is the pharmacy of the world. Some 50% of generic drugs are manufactured there. Is it in the interests of the taxpayer for our National Health Service to increase its purchases from India?

Lord Parkinson of Whitley Bay (Con): We want to increase the manufacture of medicines in the UK as well. I have mentioned the importance to our economy and to the creation of jobs, particularly high-skilled jobs, in the UK. As 79% of manufacturing sites and 76% of manufacturing jobs in the UK are outside London and the south-east, there is an important angle there as well to support our work on levelling up. However, these are global challenges, and we want to see global solutions to them.

Lord Turnberg (Lab): My Lords, is not yet another reason why the pharmaceutical industry is getting anxious that it relies heavily on the science base in basic sciences, and the basic sciences rely heavily on international collaboration? Our ability to attract and bring collaboration from the rest of Europe has been harmed by Brexit. What are the Government doing to redress that problem?

Lord Parkinson of Whitley Bay (Con): The UK holds the number one spot for life sciences investment in Europe, second only to the United States globally. However, the noble Lord is right about ensuring that we have the skilled talent pool across the industry and from academia and our health service to continue that growth. The *Life Sciences Vision* sets out our commitment to developing a strong talent pool across all those areas and the Government have developed several skills programmes that are delivering against our commitments by developing a pipeline of onshore talent, including through supporting apprenticeships and improving access to talent from overseas.

Lord Allan of Hallam (LD): My Lords, the report referred to in the Question highlights the incredible success of Ireland in establishing itself as a global pharmaceutical manufacturing hub. Can the Minister explain what steps the Government are taking to learn from Ireland's success and apply some of those lessons to the United Kingdom?

Lord Parkinson of Whitley Bay (Con): Of course, we keep an eye on what is happening around the world to ensure that we maintain our competitive edge but, as I said, we are second only to the United States for life sciences investment. We are supported by a mature and sophisticated capital market and the second biggest hub for private equity and venture capital after the US, so we have many advantages to be proud of as well.

Baroness Hooper (Con): Does my noble friend not agree that it is not only a decline in the manufacture of medicines but a decline in the manufacture of medical devices that we see at present? As far as I can make out, most medical devices are imported from China. Will the Government consider looking at a market such as Costa Rica, a country which has as its largest export medical devices, as a friendly and democratic country that we could do business with?

Lord Parkinson of Whitley Bay (Con): My noble friend has great expertise in the economies of Latin America and South America. I will ensure that the example of Costa Rica is being heeded in the department.

Lord Bassam of Brighton (Lab): My Lords, all I am hearing is "managed decline". The MMIP report set six themes for developments in medicines manufacturing, highlighting the importance of a resilient, stable manufacturing base to supply UK and global needs. The report aims to ensure that we have a competitive edge in a world of trade bottlenecks and political instability. What steps are the Government taking to collaborate internationally to secure better regulatory co-operation and trade facilitation to enable this? While we are at it, can the Minister update the House on the Horizon programme association bid, given the progress with the Northern Ireland protocol that we have been told about today?

Lord Parkinson of Whitley Bay (Con): The noble Lord is very up to the minute with the final part of his question, so I will perhaps defer my answer until I have seen what detail emerges. As I explained in the recent Question on Horizon, it is still the Government's desire to join the programme. We hope that the EU will adhere to the terms of the trade and co-operation agreement, which we mentioned.

The pharmaceutical industry in the UK employs more than 136,000 people, of whom more than 48,000 are in manufacturing sites. The bulk of those are across the country, outside London and the south-east. There is perhaps not cause for as much gloom as the noble Lord had in his question, but we know that there is more work to be done, hence the work of the *Life Sciences Vision* and the innovative manufacturing fund to which I referred. We look forward to announcing the first winners of that fund later this year.

Food Price Rises: Public Sector Food Provision

Question

3.11 pm

Asked by ***Baroness Walmsley***

To ask His Majesty's Government what assessment they have made of the impact of food price rises on the provision of food by public sector organisations, in particular the nutrient levels of school lunches.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, we recognise cost pressures that schools and suppliers are facing. Officials are holding regular meetings with food industry representatives, covering issues including public sector food supplies. Schools manage their own contracts, using government funding to procure services from private sector caterers or local authorities, or to fund their in-house catering. The school food standards set out in regulations what schools should and should not serve to children during the school day.

Baroness Walmsley (LD): My Lords, in December, food price inflation was 16.9%. It is a fact that this has caused a reduction in the portion size and nutritional value of school meals. This affects poorer children the most and contributes to health inequalities. Because of the price of energy, some schools are providing only cold meals. Does the Minister accept that the Government's policies on school food standards, using British food and supporting SMEs, will not be achieved unless there is realistic and regular renegotiation of these contracts? Will the Minister please look into this?

Baroness Barran (Con): As always, I will be interested if the noble Baroness has specific examples to share with the department, as that is not the picture we are getting. The picture that we are getting is that there are, of course, pressures on food inflation, but clear standards on nutritional value continue to be met. There is a real focus on reducing waste and, in some cases, that means reducing the number of options available to pupils, but not the quality.

Baroness Boycott (CB): My Lords, based on research we have done at Feeding Britain, I can say that around £88 million every year does not get through to the school food budget. One reason is that poorer pupils are unable to roll over their daily allowance. It has also been true that councils, to a lesser extent, and schools themselves—because food is something that you can reduce while still delivering a meal—have been using some of that money because they are so cash-strapped. No blame is afforded here, because budgets everywhere are very tight, but would the Minister agree that this is an extremely false economy? Will she agree to talk to me and Feeding Britain about whether we can review it and ring-fence the money? As the noble Baroness, Lady Walmsley, pointed out, the amount is not enough at the moment to make sure that these meals are healthy and nutritious. For many kids, it is all that they are getting.

Baroness Barran (Con): I absolutely agree with the noble Baroness that schools need to use the funding provided for them to feed the children eligible for free school meals. We are monitoring the implementation of our policies, and we are investing in a pilot training scheme for school governors so that they are well equipped to understand what is happening in their schools.

Baroness McIntosh of Pickering (Con): My Lords—

Baroness Lister of Burtersett (Lab): My Lords—

Baroness Williams of Trafford (Con): My Lords, we have loads of time. Let us hear from my noble friend and then from the noble Baroness opposite.

Baroness McIntosh of Pickering (Con): My Lords, what could be easier to source and more nutritious than locally produced food? Will my noble friend the Minister and the Government endeavour to ensure that there are more locally sourced meat, fruit and vegetables available for schools and other public sector organisations, such as prisons and military garrisons?

Baroness Barran (Con): The Government absolutely support the spirit of my noble friend's remarks in terms of supporting the local economy and making sure that children and others—in hospitals and elsewhere—who receive government-funded meals get the highest quality. It is important, however, that they have the flexibility and discretion to decide for themselves how they source the food.

Baroness Lister of Burtersett (Lab): My Lords, a recent open letter to the Prime Minister from the heads of leading public health organisations, supported by a number of noble Lords, including myself, called for the extension of free school meals and the national school breakfast programme on the grounds that access to nutritious food at school improves children's health, development and ability to learn. At a time when low-income parents are struggling more than ever, will the Government use the forthcoming Budget to ensure that children have access to nutritious food from school dinners and breakfasts?

Baroness Barran (Con): This Government have made huge strides in extending access to free school meals, with the introduction of universal infant free school meals and the introduction of free school meals in further education. More than a third of pupils are now eligible for free school meals. We keep the situation under constant review.

The Lord Bishop of St Albans: My Lords, security is one of the most fundamental responsibilities of any Government, yet with huge hikes in the cost of food from overseas, our domestic market is declining. Take, for example, the outstanding market garden sector in the Lea Valley in my diocese. About 10% of them had to close in the last year because of the cost of heating. What are the Government going to do to ensure that those market gardens are able to sustain themselves, to guarantee our basic food security in this country?

Baroness Barran (Con): I cannot comment on the specific market gardens to which the right reverend Prelate refers, but I absolutely get the spirit of his question. He will be aware that Defra works very closely with the food industry in this country to monitor where risks are in relation to supply and to make sure that any disruption can be addressed.

Lord Weir of Ballyholme (DUP): My Lords, we would all acknowledge that a lot of good work operates through schools in providing nutritious meals, but we should be aware that schools are not in session for about a quarter of the year. What action are the Government taking to try to tackle the problem of holiday hunger for vulnerable children?

Baroness Barran (Con): The Government have committed £200 million to the holiday activities and food fund. It reached about 600,000 children in the summer of 2021, which is the last year for which we have data. I visited a primary school in Ipswich on Friday that was using that funding very creatively through the holidays, working with families to make sure that it reached the children who needed it most.

Baroness Twycross (Lab): My Lords, a study published by Imperial College last year highlighted that, across primary and secondary schools, 64% of calories consumed by pupils at lunchtime were from ultra-processed food. Given the long-term health implications that this presents and the important role played by good nutrition in pupil attainment, does the Minister intend to take on board the report's recommendation to cap the levels of ultra-processed food in school meals?

Baroness Barran (Con): Our guidelines are clear in respect of the quality of food that children should receive in their lunchtime meals. They are clear about the range of fruit, vegetables, carbohydrates and protein that they should get.

Lord Swire (Con): My noble friend the Minister is right to point out the huge inflationary pressures on school budgets and other budgets in the public sector. At the same time, can she reassure us that everything is being done to prioritise the purchase by the public sector of British-sourced products to support our own hard-pressed farming community?

Baroness Barran (Con): I think that I in part addressed that point in response to my noble friend earlier. We absolutely are supporting our domestic farmers and food production industry, but equally it is important that we give flexibility to schools to respond to opportunities in their local markets. They understand their needs and can deliver for the children in their care.

Lord Storey (LD): My Lords, the Minister will agree that we want all children to have a nutritional hot dinner, particularly at lunchtime. She will also be aware that, when the coalition Government introduced free meals at key stage 1, there was a massive take-up of young people having a hot school dinner. Now we see a large and increasing number of families coming to school with a packed lunch, which in many cases is not nutritional and certainly is not warm. What steps are the Government taking to ensure that packed lunches are of nutritional value to the children who bring them into school?

Baroness Barran (Con): There is obviously a limit to the extent to which the Government should direct individual parents on the food they provide for their children. We are ambitious for our children's understanding of the importance of nutrition and for their own opportunities to cook at school and become more confident in how to cook nutritious and affordable food. Again, I am aware of a number of examples of schools working closely with parents to equip them with those skills not just for lunchtime but for the evening.

Scotland: Bottle Deposit Return Scheme

Private Notice Question

3.22 pm

Asked by ***Lord Forsyth of Drumlean***

To ask His Majesty's Government what assessment they have made of the effect of the Scottish Government's bottle deposit return scheme upon (1) the internal market between Scotland and England and (2) UK manufacturers, businesses and consumers.

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, as waste policy is a devolved matter, the Scottish Government have opted to roll out a DRS independently of the rest of the UK, due to launch on 16 August this year. We remain in close contact with officials and industry to learn from the delivery of the Scottish scheme and align on key decisions wherever possible.

Lord Forsyth of Drumlean (Con): My Lords, that Answer simply is not good enough. This is a unilateral scheme that has been completely ill thought out. Indeed, one of the candidates for the SNP leadership has said it should be cancelled. The deadline for businesses to register is tomorrow. It means a death sentence for small producers of beverages and price increases for Scottish consumers, and it drives a coach and horses through the UK internal market. It requires an opt-out from the internal market Act to proceed. Will my noble friend throw a lifeline to those businesses and consumers?

Lord Benyon (Con): Let us see whether I can try to encourage my noble friend with this reply. The Government have not yet received an official ministerial request from the Scottish Government for a United Kingdom internal market exemption. There have been discussions at official level. He is entirely right to point out the failures of the Scottish scheme and the impact it will have on Scottish businesses. In November some 600 businesses wrote to the Scottish Minister outlining various reasons why the deposit return scheme is going to fail in Scotland. These include a risk of fraud, major losses in consumer spend, loss of investment in the Scottish economy, and financial and environmental implications for local authorities.

I have to wait and see whether the Scottish Government apply for a UKIM exemption, and then I can answer my noble friend's question. One of the front-runners to lead the SNP has announced that if it rolls out in Scotland in August as planned, it will create "carnage". I agree.

Lord Bruce of Bennachie (LD): My Lords, will the Minister accept that the Minister in charge in Scotland, Lorna Slater, has acknowledged that she has not yet submitted a request, she has not consulted any other Governments which have implemented a scheme, and she has no idea how it is going to work but insists it is still going ahead? Is not the reality that we need a UK-wide scheme that will meet the needs of people in Scotland and elsewhere, where it is extremely divisive and clearly incompetent, and, if we have a UK-wide scheme, the Government's responsibility is to press ahead with it as quickly as possible?

Lord Benyon (Con): The noble Lord is exactly right. If we were indulging in grown-up politics across all the Governments, we would have a scheme that acknowledged that waste is a devolved but aligned issue. There is undoubtedly an environmental benefit from reducing the amount of waste going to landfill and the amount of litter plaguing our highways, in particular. It is possible to run a perfectly sensible scheme. We have been discussing a scheme with the Welsh and Northern Irish Governments, but it should be run in alignment

right across these islands. The Scottish Government have sought to appear more virtuous and to rush this, and they have failed the Scottish people and Scottish businesses. The scheme will result in huge costs and even the risk of booze cruises, so that people can go south of the border to get drink at 50% less cost. This is entirely ridiculous. We want to work with the people of Scotland to make sure we align on this.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, for once I agree with the noble Lord, Lord Forsyth—and that does not happen very often. However, I fear the Minister has underestimated the seriousness of this matter. The Minister dealing with this appeared on television in Scotland yesterday. Although participating manufacturers have to sign up by Tuesday—tomorrow—she said she is reviewing whether there will be a delay of a year. This is total chaos. If the Minister can imagine the situation, if this goes ahead, manufacturers, including small manufacturers, will have to produce separate bottles and cans for Scotland and for England, which will be enormously expensive. If they do not, can he imagine the trade that might take place at Carlisle or Gretna, with people gathering the bottles that are worth 10p and going from England to Scotland and making hundreds and thousands of pounds. The whole thing is total chaos. This is a very good idea, but it must be done on a United Kingdom basis, so there is not this confusion. Will the Minister talk immediately with the Secretary of State for Scotland and see if he can impose Section 35 of the Scotland Act, stop this nonsense straight away and make sure a UK scheme is introduced, which would benefit the whole of the United Kingdom?

Lord Benyon (Con): I cannot disagree at all with the noble Lord. I agree with everything he said and assure him that I spoke to the Secretary of State for Scotland on this matter this morning. He is absolutely resolute that the points raised by the noble Lord are the case and are a serious problem, particularly in cross-border trade—even the letter that I quoted earlier talks about the risk of fraud. But this fits in with a pattern—on educational attainment, on ferries, on drug policy—that the people of his country have to endure with the Government in Scotland. We want to make sure that on environmental policy such as this there is an alignment. It is perfectly possible for all four countries of the union to work through a scheme and implement it gently, in way that does not have great inflationary costs and does not damage business, but that works with the grain of public opinion, which wants to see more recycling, less litter and a scheme that works.

Lord Robathan (Con): My Lords, I went litter-picking at the weekend and I am much encouraged by what the noble Lord, Lord Foulkes, said. Do I understand that, if I were to fill a lorry with all the empty bottles scattered around the lanes of Leicestershire, I could go up to Scotland and make a great deal of money? This is most encouraging as far as I am concerned. I should say that I raised the issue of bottle deposits in my maiden speech in the Commons some 31 years ago.

Lord Benyon (Con): I can only applaud my noble friend for his virtuous activities at weekends, but, sadly, I have to report that I do not think he would be able to do that. For the Scottish scheme to work, an English drinks manufacturing company, say, would be required to produce a labelled item in a particular way so that it could not be deposited there. The current system is Kafkaesque and it has to be more sensible.

Baroness Hayman of Ullock (Lab): My Lords, in answer to my Written Question on this issue at the beginning of January, the Minister replied:

> "Waste is a devolved policy area, and we are working closely with the devolved administrations and industry to support the successful delivery of the scheme across the UK, including mitigating the impacts that arise from differences in scheme implementation."

Can he tell us what progress has been made since then, beyond the publication of the consultation response? While, clearly, we should not impose a system on Scotland, this opens a window of opportunity for the constituent parts of the UK to agree a joint approach, as other noble Lords have said. Are the Government willing to have the discussions needed to achieve this?

Lord Benyon (Con): Yes, and we are having those discussions. We are also looking at other countries that run successful deposit return schemes to try to learn from their successes, just as we are learning from the failures of the Scottish system, and we want to ensure alignment across the United Kingdom. I am absolutely on the same page as the noble Baroness.

Baroness Bennett of Manor Castle (GP): My Lords, the Minister said in response to the noble Lord, Lord Robathan, that not everything being painted here is an accurate picture, and he spoke about a so-called "rush". These regulations were passed by the Scottish devolved Administration in September 2020; as I believe the Minister confirmed, discussions started with Westminster in 2021; it is now 2023. Biffa, the delivery body for Circularity Scotland, has spent £100 million and 500 jobs are being created. The very principle that this Government say they stand for, "polluter pays", is being delivered. Does the Minister agree that, if the Government step in at this very late stage—if Westminster stops Scotland delivering what it has a right to do under devolved law—that will mean a collapse in business confidence and we will never see a bottle deposit scheme across these islands after Westminster steps into this business?

Lord Benyon (Con): I think all of us will feel great sympathy for the noble Baroness in trying to defend what her party is doing as part of a coalition of abject failure. She talks about business; I can only quote what business says:

> "Tens of thousands of businesses who produce, can, bottle, distribute, or sell alcoholic or soft drinks in Scotland now have less than a year to successfully adapt their operations, without the necessary knowledge or levers in place."

It is not the principle of a deposit return scheme—I suspect some of us are old enough to remember the thruppenny bit—but how it is implemented. That, I am afraid to say, is right at the heart of the problem at Holyrood.

Lord West of Spithead (Lab): Can the Minister tell us what will happen on His Majesty's warships in relation to beverages? Not that we have many warships, so it is not too big a problem—but will it apply or not?

Lord Benyon (Con): My Sunday evening has been enhanced by watching what happens to waste on an aircraft carrier and recycling on these facilities. If it lands at Rosyth or Portsmouth, will there be a different scheme? We can say only that it is a mystery wrapped in enigma inside a riddle.

Co-operatives, Mutuals and Friendly Societies Bill

First Reading

3.35 pm

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

Employment Relations (Flexible Working) Bill

First Reading

3.35 pm

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

Electricity Transmission (Compensation) Bill

First Reading

3.35 pm

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

Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023

Motion to Approve

3.36 pm

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

That the draft Regulations laid before the House on 19 December 2022 be approved. *Considered in Grand Committee on 21 February*

Motion agreed.

Authority to Carry Scheme and Civil Penalties Regulations 2023

Motion to Approve

3.36 pm

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

That the draft Regulations laid before the House on 9 January be approved.

Relevant document: 26th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 21 February

Motion agreed.

Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2023

Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2023

Motions to Approve

3.37 pm

Moved by ***Baroness Penn***

That the draft Regulations laid before the House on 16 January be approved. *Considered in Grand Committee on 22 February*

Motions agreed.

Postponement of Local Elections (Northern Ireland) Order 2023

Motion to Approve

3.37 pm

Moved by ***Lord Caine***

That the draft Order laid before the House on 25 January be approved.

Relevant document: 27th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 22 February

Motion agreed.

Women, Peace and Security Bill [HL]

Order of Commitment

3.38 pm

Moved by ***Baroness Hodgson of Abinger***

That the order of commitment be discharged.

Baroness Hodgson of Abinger (Con): 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. Therefore, unless any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Northern Ireland (Executive Formation and Organ and Tissue Donation) Bill

Second Reading

3.39 pm

Moved by ***Lord Caine***

That the Bill be now read a second time.

Relevant document: 26th Report from the Delegated Powers Committee

The Parliamentary Under-Secretary of State, Northern Ireland Office (Lord Caine) (Con): My Lords, before I turn to the main business, it is only right that I invite the House to join me in condemning unreservedly the despicable and cowardly attack on DCI John Caldwell on Wednesday evening. The terrorists who commit such evil acts are not wanted by society and they will

never succeed in their objectives; democracy and consent will always prevail in Northern Ireland. The people of Omagh and Beragh spoke for us all over the weekend when they rallied together to say there can be no going back. Our thoughts and prayers are with DCI Caldwell, his family and his colleagues—some of whom I met at Omagh police station on Thursday morning—at this terrible time.

Over a year has passed since the then First Minister of Northern Ireland resigned his post. Twelve months and one Assembly election later, people in Northern Ireland still do not have a properly functioning Government, as set out in the Belfast agreement and subsequent agreements. In the absence of those institutions, this Government have stepped in to protect the interests of the people of Northern Ireland. We have set a Budget, delivered vital energy support funding of £600 per household and legislated to provide clarity on the decision-making powers of Northern Ireland civil servants to enable them to maintain public service provision.

On each of those occasions, I have stood at this Dispatch Box and expressed my deep disappointment that we still await the return of a functioning Assembly and Executive. I wish to restate that profound disappointment once again today. The restoration of the Executive, in line with the 1998 agreement and its successors, remains the Government's top priority. It was on that basis that we legislated last autumn to extend the Executive formation period through the Northern Ireland (Executive Formation etc) Act 2022. Since that period ended in January 2023, the Secretary of State has once again been under a statutory duty to call an Assembly election, which would have to be held within 12 weeks—on or before 13 April this year.

We have spent some time since then engaging with Northern Ireland's political and community leaders, assessing the options available to His Majesty's Government, and it is the Government's conclusion that a further Assembly election at this time would be unwelcome and expensive and, crucially, would bring us no closer to our objective of delivering fully functioning devolved institutions. On that note, I will briefly summarise the overall intention of the Bill. Before I do so, I again express my gratitude to the Benches opposite, including to the noble Lord, Lord Murphy of Torfaen, and the noble Baroness, Lady Suttie, for the cross-party approach that they continue to take in relation to the delivery of key legislation for Northern Ireland.

The Bill itself will provide for a retrospective extension of the Executive formation period of one year from 19 January 2023, meaning that, if the parties are unable to form an Executive on or before 18 January 2024, the Secretary of State will again fall under a duty to call an Assembly election to take place within 12 weeks. We believe, however, that flexibility is necessary if we are to play our part in encouraging and facilitating the return of the institutions. On that basis, the Bill will also provide the Secretary of State with the power to call an earlier election, providing that offices have not been filled.

Taken together, these provisions represent a delicate balance. Eventually, if the political impasse in Northern Ireland continues, people will rightly expect to return to the polls and have their say. The prospect, however, of forcing an election when that would be unwelcome or unhelpful would, in our view, run contrary to our broader goal of forming an Executive.

Noble Lords with a keen eye for detail will have noticed that, unless an earlier election is called, the extension provided by this Bill would run past the date on which the decision-making powers contained in the Northern Ireland (Executive Formation etc) Act 2022 will lapse: namely 5 June 2023. We are therefore keeping those arrangements under review, in the continued absence of devolved government, but we sincerely hope that an Executive will be in place before these arrangements expire.

In the meantime, the provisions of the 2022 Act and its accompanying guidance provide civil servants with the clarity that they need on how and when they should be taking decisions. The decisions that have been taken by civil servants using the 2022 Act are being published to ensure transparency. We are grateful for the work that Northern Ireland civil servants are doing in making use of those provisions. The current arrangements are not, however, and never can be, a substitute for a fully functioning devolved Government.

I will speak briefly to the amendments the Government brought forward in the other place that now form part of the Bill. I know that all of us in your Lordships' House have been deeply moved by the courage shown by Dáithí Mac Gabhann and his whole family in fighting for the implementation of organ donation changes. The Secretary of State, my right honourable friend Chris Heaton-Harris MP, has met Dáithí and his family. He was incredibly moved by his story and by the family's dedication to seeing important changes to the law implemented as quickly as possible.

As a Government we have recognised that this issue is exceptional, both in the sheer importance it holds and the cross-party support it commands both in Northern Ireland and in this House. Clause 2 will therefore change the procedure for making regulations defining permitted material for transplantation in Northern Ireland under Section 3 of the Human Tissue Act 2004, as amended by the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022. This would allow regulations to be made in the absence of devolved institutions regarding rules for organ donation.

Before I conclude, I will make a very short statement on legislative consent, which is required in relation to the section on organ and tissue donation. Clearly, we have been unable to secure an LCM, a legislative consent Motion, from the Northern Ireland Assembly, given that it is currently not sitting—indeed, if it was sitting, we would not have needed this Bill, but its continued absence, and that of the Executive, mean we have to take action here.

I have spoken this afternoon about dates and timelines in the light of the nature of this Bill. As I conclude, I also want to note one anniversary of which noble Lords across this House will be keenly aware: the upcoming 25th anniversary of the Belfast agreement. I see the noble Lord, Lord Murphy, opposite, who played such a key role in negotiating particularly strand 1 of that agreement. Noble Lords will no doubt join me in noting the progress that Northern Ireland

[Lord Caine]
has made since that historic agreement. This Government will always work to implement, maintain and protect the agreement. As I said in opening, the restoration of the Executive remains our top priority. The Bill will help assist those objectives by avoiding an unwelcome election and providing time for us to work together to end the current impasse. But of course the Bill alone will not be enough to achieve that. All of us now, including His Majesty's Government, need to make the most of the opportunity presented by the Bill. In that spirit, I beg to move.

3.47 pm

Baroness Ritchie of Downpatrick (Lab): My Lords, I take this opportunity to thank the Minister for presenting the details of this important Bill—all three clauses of it. I offer my support, prayers and thoughts to detective chief inspector John Caldwell and his family. He was brutally attacked by gunshots on Wednesday evening in Beragh, in County Tyrone. I commend the people of Beragh, and Omagh, who have been tremendously steadfast in the face of such adversity.

I want to make it quite clear that murder, terrorism and paramilitarism was always wrong, and something that I and my colleagues have always condemned, believing that the political process is the only way forward. Dialogue is the only way forward. Violence, terrorism and paramilitarism solve absolutely nothing. In that respect, I was pleased to see the five political party leaders come forward with the chief constable on Friday to denounce what happened to John Caldwell and to offer support on behalf of the community in Northern Ireland—all of the community—to John and his family. It is vitally important, at this stage, that there is cross-party solidarity against such violence and terrorism. We never ever want to go back to that place. That is a message to those paramilitaries: please get off our backs and leave us to get on with our lives in Northern Ireland in peace and prosperity.

However, in considering the Bill, today is Groundhog Day in many ways, because as we debate this the Prime Minister and the EU president, Ursula von der Leyen, are outlining—they may have already done so—the details of the agreement on the protocol, which I understand has got a new name: the Windsor framework. It sounds like the title of a play down at the West End, but it is much more serious than that. It is about the future economic, social and political prosperity of the people of Northern Ireland.

If anything could be said about last week, it is this: it is important that paramilitarism is not allowed to take over or undermine any political process. It is in that vein that I come to the debate today. It is vitally important that there is a restoration of political institutions to give the political and economic stability that is urgently required in Northern Ireland, and it is important that people feel they can subscribe to that. I hope that the new protocol, or framework, provides the necessary mechanisms to enable us to avail ourselves of tariff-free access to both markets, to allow our economy to grow, to enable political stability and to restore those most-needed institutions of the Good Friday agreement, as we approach the 25th anniversary on 10 April.

The Bill is an interim measure to enable negotiations, which have now been completed, between the UK and the EU. I hope that the political parties will allow this document—we have all to see the legal text—to be investigated in depth, but I also hope that we can get on with our lives, economically, politically and socially. I hope that the Bill will become redundant in time and that the institutions will be up and running, but that is very much in the hands of others—I look forward to a positive response from the DUP and other unionists in relation to that. I come from the position that political principles should never prevent the successful operation and functioning of our political institutions. We must remember—I speak as a former MLA and Minister in the Northern Ireland Executive—that the Executive and Assembly have operated for only 40% of the time over the last 25 years. We must get away from that stop-start situation and vetoes and move on to working in the best interests of the people.

I welcome Clause 2, which will ensure that Dáithí's law becomes a reality. I was very much taken by young Dáithí Mac Gabhann, who requires a new heart. The campaign is spearheaded by his father, Máirtín, his mother, Seph, and Fearghal McKinney of the British Heart Foundation. It lit the hearts and minds of the people of Northern Ireland and the political fraternity. It is interesting that five parties supported this, which is another example of political resilience, political coming together and resolute action on behalf of the political parties. That is the type of determination that we now need to see.

Notwithstanding that, it is important that Chris Heaton-Harris, as Secretary of State, did this. Currently, 146 people are on the waiting list for a heart transplant. Without the enactment of the Bill, particularly Clause 2, this could not have happened. On average, around 10 people per year die for the lack of access to that soft opt-out option for organ donation. So congratulations must go to Dáithí's family—his father, Máirtín, and his mother, Seph—working with Fearghal McKinney, on their resilience and dogged persistence in spearheading and leading this campaign.

It is also interesting to note the affirmation of the organ donation legislative measures from the Delegated Powers and Regulatory Reform Committee:

> "We consider that ordinarily it would be inappropriate for the regulation making power conferred by section 3(9A) of the 2004 Act to be made subject to any procedure other than the affirmative resolution procedure. However, we take the view that the exceptional circumstances applying in Northern Ireland make the application of the negative resolution procedure not inappropriate during the period when there is no Assembly to carry out the approval function under the affirmative procedure."

That is an affirmation, from that important legislative committee here in your Lordships' House, of the importance of going ahead with this from the point of view of the Government and both Houses of Parliament.

Nevertheless, this issue should have been dealt with by a fully functional Northern Ireland Assembly and Executive, because that is what devolution is about and what the 90 MLAs were elected last May to do—not solely constituency work. Yes, there are two prongs to their responsibilities, constituency and legislative work, and it is time those institutions were up and running. Political principles should not be used to

prevent progress within our institutions, and I hope that the concerted joint political action we have seen over the last few days, of politicians working together, will be the hallmark and benchmark of the future weeks and months.

The Bill also highlights the need for us now to move forward. We have now had an outcome to the UK-EU negotiations and the protocol—or the framework—and it is necessary and required that parties reflect on that. But there needs to be resolute action that results now in the restoration of political institutions. As I said on 5 December during the discussion on the last piece of legislation which dealt with the extension to 19 January, there should be inter-party talks in parallel looking at the future appointment of joint Ministers to underscore equality, an end to the vetoes which have prevented the political institutions working properly, and the need to put inclusion, reconciliation and equality—the central principles of the Good Friday agreement—back in government. There should be inter-party talks, with both Governments looking at the outstanding issues of the NDNA and putting a plan in place to implement them.

In conclusion, I support the legislation, but concerted resolve is required by both Governments and the five parties to ensure the restoration of political institutions and not to allow the actions of armed people to take over.

3.58 pm

Lord Alderdice (LD): My Lords, I too thank the Minister for clearly presenting the elements of the Bill. I identify with the sentiments of sympathy and concern expressed for DCI John Caldwell and his family. I also identify with the comments made by the noble Baroness, Lady Ritchie of Downpatrick, who pointed out the need to consider not only those who do violence, as was apparently done by people from the so-called "new IRA" in the attempted murder of DCI John Caldwell, but those who threaten violence if they do not get their own way, in particular at the moment on the loyalist side. It is very important for us all in this House and the other place—indeed, all political representatives—to make it very clear, as the community is doing, that neither doing violence nor threatening to do violence is acceptable any more, if it ever was.

That is the sad side, the worrying side, the downside, of today. But, of course, there is a very positive element to this Bill. I want to take the second part of the Bill first, if I may, the so-called Dáithí's law element. Some of us spend much of a lifetime trying to get a little piece of legislation passed. Young Dáithí, at a very early age, with the support of his parents Máirtín and Seph, and with friends and colleagues such as Fearghal McKinney, as the noble Baroness said, and others, has ensured not only that he is getting legislation passed but getting his name attached to it. That is a remarkable achievement and I hope it presages well for him in the future, making a positive contribution not only on his own behalf but on behalf of many other people as well. He started off life with difficulties, with hypoplastic left heart syndrome, and we all hope he will receive a transplant soon to enable him to be fit and lively and enjoy his life. But he has made a tremendous contribution, by endearing himself to people, by persuading them and by being such an attractive character.

I am delighted, as a doctor who came from Northern Ireland and qualified at Queen's University Belfast, to see this legislation coming forward. But I am also a little bit sad. We are the last part of the United Kingdom to get this legislation, this so-called opt-out clause that enables us to have more organs for transplant. I am a little sad because it was not always so. One hundred years ago, in 1923, a young girl was born in Lurgan, County Armagh—the town I was born in—and she went on to be one of the world's leading nephrologists. Her name was Molly McGeown. She qualified in medicine and, like many other women of the time, found it difficult to get an appointment as a consultant because the senior staff said they could not afford to employ people like her, a married woman with children, at that level. It is wonderful how things have changed, although I have to tell your Lordships that my own wife ran into similar problems herself when she was working as a young doctor. But things have changed, and they changed because of people like Molly McGeown. She was absolutely determined to go ahead, and she did. She established the renal unit at Belfast City Hospital; took forward renal dialysis; developed what became known as the Belfast recipe, a particular approach to renal dialysis that massively improved survival rates; developed a renal transplant programme that was of benefit not just to the people of Northern Ireland but way beyond; produced huge numbers of academic papers in her work as a professor at Queen's University Belfast; and was a star, not just in Northern Ireland, not just in the NHS, but across the world.

So there was a time when we were able to lead things. Now, we find ourselves coming in behind the rest of the United Kingdom. It does not have to be like that, but part of the reason it is, is the political difficulties and stalemate. It is not that the legislation was not approved and passed by the Northern Ireland Assembly, or that politicians in Northern Ireland did not want to see such legislation. Of course they did, and they passed it, but other political difficulties supervened, and it got held back.

I hope that on this auspicious day, we are able to look forward to substantial progress, which takes us to the second part of my speech and the first part of the Bill: the difficulties of establishing an Executive and, because of that, the Assembly itself being in suspension. There were other, political ways that protests could have been made against what people did not want to see with the Northern Ireland protocol. It did not have to involve the suspension of the Assembly and the Executive, and everything that went with it. That this House is having to pass Dáithí's law here shows just what a disaster it is for the people of Northern Ireland to have elected representatives but not be able to pass their own legislation—that it has to be done here and be delayed. I desperately hope we can move forward, and quickly.

When I heard about the Bill and the talk of a delay of another 12 months, my first reaction was for my heart to sink and I thought, "Oh, my goodness, another year waiting around for things to move forward". But

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I often try to look on the bright side and I began to think, "Wait a minute, the Prime Minister may have something here. He may know perfectly well that he is not that far from an agreement; he may also know that that agreement might not be immediately accepted by some of those who have been negative about the Northern Ireland protocol; and he may well be creating a bit of space and time where it is possible for them to find their way towards supporting it". Maybe some of them want to get to the other side of the local government elections before they will give support to it, or maybe there are some discussions that they need to have internally. Whatever the case, creating that space may give an opportunity for a positive result. I hope that that is the case.

I look at friends and colleagues on the other side of the Chamber and I very much hope that they will use their best offices and realise that if Northern Ireland's Assembly is not put in place, and power devolves back to London, it will not be exercised by London alone: it will be exercised by London in collaboration with colleagues in Dublin. Therefore, I think we have to be thoughtful about the future and about the prospects, and I very much hope that they and their colleagues will find it possible to move quickly. We do not want to wait another 12 months until good legislation such as this is passed at the Northern Ireland Assembly, where it ought to be passed. We want to see it happening quickly, for the betterment of all the people of Northern Ireland.

So, I congratulate the Minister and his colleagues, especially today, on trying to take things forward in Northern Ireland and I very much hope that all of us, together, whatever our differing perspectives, can find ways of ensuring that Northern Ireland legislation is done, as much as possible, in Northern Ireland by the elected representatives there, for the betterment of all the people. Young Dáithí has given an example to us that the people who attacked John Caldwell can never give, because he has pointed a positive way forward for all of us and the next generation.

4.06 pm

Lord Dodds of Duncairn (DUP): My Lords, I too join in thanking the Minister for outlining the contents of the Bill before the House today and in condemning the awful attack on Detective Chief Inspector John Caldwell last week. Our hopes and prayers are with John Caldwell as he lies in hospital and we hope and pray that he makes a full recovery. We think of his family and we also think of those young children who were forced to witness a despicable, murderous attack. They are not the first set of children to have gone through this in Northern Ireland; many have grown up with the scars of having witnessed heinous and horrendous events. So many families were scarred, not just those who were on the end of physical attacks but those who witnessed these things. We think of those children and their families and what they are going through today.

This violence is wrong. There is no excuse. There has never been any excuse for violence. As the noble Baroness, Lady Ritchie, pointed out, it has been condemned by right-thinking people throughout the last number of decades of Northern Ireland's Troubles, as they are euphemistically called, but we have to point out that today we are seeing a rise in people who seem to have forgotten the obscenity of violence and are now running around singing, "Up the Ra" and eulogising IRA atrocities. At the forefront of that are Sinn Féin leaders who, despite standing with other leaders the other day, continue to make a distinction. They eulogise and praise the IRA murders of police officers and innocent civilians, many of whom were killed in horrendous circumstances in front of their children. The Sinn Féin putative First Minister has recently eulogised such murders and, as long as that continues, it will set the environment and set a context in which others will follow. They will see it as legitimate to carry out this kind of violence. So we need to see an end to this eulogising of violence. It has always been wrong, there have never been circumstances in which it was justified, and Sinn Féin, if it really wants a shared future and if it really wants respect when it talks about human rights, should stop praising murder and terrorism.

I also join those who have spoken of Dáithí and his achievement. I echo what the noble Lord, Lord Alderdice, said about young Dáithí and the courage and bravery of his family in carrying this campaign forward with such eloquence. Whatever our view may be on the particular piece of legislation, they have achieved an awful amount and a lot of credit goes to them. I am just sorry that there was an attempt by the Government to politicise the issue, trying to use it as a ruse to get the Assembly back, knowing full well that the legislation could be introduced at Westminster without putting the family through all of that. So I welcome the fact that the Government have taken action, just as action was taken on the energy payments which recently came to Northern Ireland.

I hope we do not hear too much about the fact that things cannot be done in the absence of the Assembly; of course they can be done, if there is a will. This Bill proves it. A few months ago, we were here debating the Bill which put back the elections in Northern Ireland to the Assembly for 12 weeks or so. Many of your Lordships warned—I remember speeches from both the Labour Front Bench and the Lib Dem Front Bench—that it was very clear that we would have to return to this, because there was no way that the deadline could be met. The Government refused to accept that at the time; we were told, "Oh, well, you know, primary legislation will be needed and we won't have time for that going forward". Here we are: the legislation is before us and time has been made. I respectfully and gently urge the Government, when they are bringing forward legislation, to be slightly more open and transparent with your Lordships about the reasoning.

One of the problems we have is that the reason we do not have an Executive is the current situation regarding the protocol. Remember that the Democratic Unionist Party First Minister—who was referred to by the Minister—resigned in office as First Minister. So this has not come about as a result of the Assembly elections; this happened before the Assembly elections. The reason why we do not have an Executive in Northern Ireland is that Ministers in that Executive have to administer and implement laws handed down by the European Union which they rightly believe do

damage to the union of Great Britain and Northern Ireland, and no self-respecting unionist is going to put their hand to that. The Government were given plenty of time and plenty of warning right through from early February 2021 that action had to be taken; promises were made to the people of Northern Ireland by successive Prime Ministers on the Conservative side about addressing this matter, but nothing actually ever got done.

I do recognise that we are now on the cusp of hearing about what will be revealed very soon, and we look forward to studying the detail of that. But the reason that we are in this predicament today and the reason we do not have an Executive is that it does breach the principles of democracy itself. It does breach the Acts of Union, as upheld in the Supreme Court recently; it does breach the *New Decade, New Approach* document, which was the basis on which the Assembly returned in January 2020; and it does breach the consent principles of the Belfast agreement, based on the consent of both unionists and nationalists. There is not a single unionist in the Northern Ireland Assembly who supports the current protocol, for the reasons I have previously outlined.

In the coming hours and days, we will see the usual spin and propaganda from many people concerning the proposals we are due to hear about and have been, as I understand it, just released. Obviously, we need to take our time to study exactly what is being said; very often when we get the legislative detail, we find that it is very different from what is portrayed, what is spun and what is the subject of much commentary. Many people told us in emphatic terms—commentators, the media, politicians and many others—that the original protocol should be accepted. But they were wrong, and today proves that they were wrong. Have we heard any apologies for that? No, of course not. The political parties in Northern Ireland—other than the unionists—all called for the rigorous implementation of the protocol, which is now fully accepted to be flawed. So unionists will rightly not be taking advice, much of it coloured by political viewpoint. We will make up our minds on what is right for the union.

However, it is deeply regrettable that the Government have brought the monarchy into this matter through the decision to have the agreement take place in the circumstances in which we understand it to have taken place. This has been warned about over a number of days; I think it is deeply counterproductive and not helpful.

There are fundamental constitutional and democratic principles at stake. Fixes and carve-outs may solve some problems today, but the danger is that if the architecture—the superstructure—of the arrangements gives primacy to foreign law, people will need to think very carefully about the future implications for the separation of Northern Ireland from the rest of the United Kingdom, including what it means for democracy. We are talking here about elections to the Assembly and its restoration. Any Assembly Member in Northern Ireland—not just unionist Members—should surely want to have the power and the basic right to say yes or no to laws that apply to their constituents. What self-respecting legislator would willingly see that handed over to a foreign entity?

There are fundamental issues at stake. Will the Assembly be able to have the final say? That is key, and we will see. The Supreme Court, as I mentioned, recently handed down a very important ruling on the way that the protocol changes the foundation Acts of Union without consent, and any new deal will need to remedy that. That is one of the tests that the Democratic Unionist Party has laid down about removing the supremacy of EU law—in fact, it is the first test. Will that be removed? We shall see, but that is key. Is it too much to ask that people in Northern Ireland have the same rights of citizenship as people in the rest of the United Kingdom? We shall see. Is it too much that we exit the EU along with the rest of the United Kingdom? Again, we shall see in a very short time.

Many who advocate for the retention of EU jurisdiction over Northern Ireland would be the first to rail against any similar arrangements for themselves. That hypocrisy is not lost on unionists. Whatever concessions from the EU, whatever improvements on the original protocol, unionists will judge any deal on sovereignty and democracy. Are our rights, as His Majesty's subjects, equal to those of our fellow citizens in the rest of the United Kingdom? If the answer is no, we must not give up in our rightful quest and desire to have those rights fully restored.

4.17 pm

Lord Lexden (Con): My Lords, I am glad to follow that interesting and carefully considered speech by my noble friend Lord Dodds. There is widespread agreement that the interests of our fellow country men and women in Northern Ireland would not be served by another election in the present circumstances, and what is happening today must reinforce that view. This Bill is entirely appropriate, and there can be no objection to its rapid progress through both Houses. The legal position must be regularised.

But, of course, it is painful to contemplate a further period in which the Northern Ireland departments will not be under ministerial control. Northern Ireland civil servants who continue to administer departmental affairs deserve the highest praise, but as we all know, they labour under serious constraints. Policies agreed by Ministers before their departure cannot be amended; spending plans cannot be adjusted in response to changing needs. It is truly tragic and heartbreaking to hear of the ever-growing problems affecting the great public services in Northern Ireland. Hospital waiting lists spiral to extraordinary lengths, and standards in Northern Ireland's schools—some of the finest in our country—are under severe threat.

Serious consideration should surely be given to a major programme of reconstruction and reform when devolution is restored. Would there not be merit in undertaking such a programme in close partnership with the Northern Ireland Office—indeed, with the United Kingdom Government as a whole?

Funding will, as always, be a central issue; so will the full and successful incorporation in the great public services—the NHS in particular—of all the latest digital and other remarkable advances that are transforming today's world. I listen to what our Health Minister, the noble Lord, Lord Markham, says about the plans that are unfolding for the long-term benefit

[Lord Lexden]
of patients in the NHS in England, and I think, "Ulster should have that, too." Northern Ireland must enjoy the full benefits of the union, and that will not happen without a close partnership between it and the rest of the union.

The imponderable factor in all this is the attitude of Sinn Féin. There have been—and will almost certainly continue to be—great difficulties securing Sinn Féin's successful involvement in the devolved institutions. It is shocking that a Sinn Féin Finance Minister should set irresponsible budgets that the Northern Ireland Assembly turns down. Yet it is hardly surprising. Sinn Féin's goal is not a secure and flourishing Northern Ireland within our union, but its absorption by one means or another into another state.

Unionism, which expresses the wish of Northern Ireland's majority, exists to stop that happening. It needs reinforcing to enable it to go on succeeding in its historic aim, so that we can continue to confound those who have said throughout my lifetime that Northern Ireland's departure from the union is inevitable.

As someone who thinks of himself as a unionist first and Conservative second, I want to see a reversal of the betrayal that took place in 2019. Mr Boris Johnson said that there would not be a border down the Irish Sea and then created one. He presented himself as the person who would restore full sovereignty to the United Kingdom and then left one integral part of it subject to laws made in the European Union. What kind of unionist is that? Real, responsible unionists throughout the country—not just in Northern Ireland but everywhere—should look for a settlement that puts a decisive end to the weakening of the union for which Mr Johnson was responsible.

Last week, Jeffrey Donaldson said:

"The wrong deal will not restore power-sharing, but will deepen division for future generations."

For the sake of Ulster today and for future generations in which divisions lessen and not deepen, our country needs a settlement that will, in the words of the Conservative manifesto at the last election, help sustain

"a proud, confident, inclusive and modern unionism that affords equal respect to all traditions and all parts of the community".

4.22 pm

Lord Hain (Lab): My Lords, briefly, I support the Bill and thank the Minister for moving it. I also associate myself with the condemnation of the barbarous attack on a police officer who represents the Police Service of Northern Ireland, which is supported and overseen by every one of the main political parties, republican and unionist alike, in Northern Ireland today. The fact that it was such an indiscriminate attack on a police officer coaching children at sport underlines its seriousness.

I want to put just one question to the Minister. We have these repeated Bills in this situation. It is not easy. We have a kind of quasi-direct rule—it is not full direct rule—which represents a failure of democratic politics in Northern Ireland. Is there a case for taking the powers to the Secretary of State to authorise elections or hold them off until the political process is ready for them to take place, rather than having these repeated Bills that keep taking important parliamentary time? I should be very interested in hearing the answer to that question.

4.24 pm

Lord Weir of Ballyholme (DUP): My Lords, I join others in supporting this Bill, but particularly in adding my prayers and thoughts—and I believe that everyone in this Chamber is of a like mind—for DCI John Caldwell and his family, in connection with the despicable attack which took place last week in Omagh. It was an attack in front of children. DCI John Caldwell was making a contribution to the community and was horrendously injured. We are glad at least that he has survived this attack, and I am sure that all in this House pray for his full recovery. I join the noble Baroness, Lady Ritchie, and others, in saying not only that this is this fundamentally wrong but that violence, terrorism and the threat of terrorism have always been fundamentally wrong.

It is important that we learn the lessons of this attack. This House has spent some time dwelling on how we should deal with crimes of the past. The events last week show that crimes of the past have a deep resonance in the present and for the future. Every time a signal is sent out that in some way crimes of the past are to be treated differently from what happens this week, it gives a level of tacit approval, or at least acceptance, of what happens in future. We have seen this all too pointedly with this attack. Obviously, the police must do their job in bringing those people to prosecution. However, it is deeply disturbing that some of the suspects who have been arrested were born since the ceasefire and the Belfast agreement. There is a new generation which sees the prospect of using violence as something that is acceptable. Again, the signal was sent when we saw footage on social media of one of the suspects being arrested, in which his neighbours were applauding him as the police came to arrest him. Therefore, with regard to glorifying terrorism and how crimes are treated, we have to realise that the decisions taken have implications, not just in how we look at the past but in how we look towards the future.

As has been indicated, there are two main parts to the Bill. Dealing first with organ retention and donation, I welcomed the Government's amendment in the other House, coming as it does after a similar amendment was tabled by the three main constitutional parties from Northern Ireland that are represented in the House of Commons. As my noble friend Lord Dodds has indicated, at one stage there was an unfortunate attempt to use this issue as some form of leverage. I am glad that has been abandoned and that the Government have seen sense by bringing those amendments forward. As my party and others have said, the key issue is: what is the route by which this can be achieved in the quickest possible fashion? It was always the case that attachment to legislation such as this was the quickest and easiest way of bringing this about.

There has never been a consensus on the broader issue of how best to achieve the maximum amount of organ donation. At one stage a few years ago, clinicians disagreed on the best way forward. I have always wanted an organ donation system which worked best,

and have always been supportive of the sort of legislation that Dáithí's law has brought about. I believe that I am the only member of this House who, in the Assembly, voted in favour of Dáithí's law, which was supported by all the parties of the Assembly. Like many within this House, I am sure, I have a long-standing commitment to organ donation. I am an organ donor, although as years pass by the desirability of my organs may reduce—and I may not be unique in this Chamber on that. Nevertheless, taking action which has the maximum amount of help for those waiting for transplants is something which is deeply responsible, and us supporting this piece of legislation means that this is a good day. It is a tribute to Dáithí and his family, and to the work that they and others have done to bring this about.

The other aspect of the Bill relates to the date of any future Assembly elections. I welcome this as a level of common sense. I have seen that some cynical commentators have said that the Government have put this on the long finger for a year because they may be concerned about the results of an election. I scorn such cynicism, and I know that that would never have entered the Government's minds. If it had, perhaps they would be restoring the 19th-century practice of having Parliament run for seven years, with the prospect of putting off an election—but I do not want to put ideas into any Ministers' heads.

Nevertheless, this is a sensible measure. At a previous debate, when we were effectively renewing this on a six-weekly basis, I remember that the noble Lord, Lord Murphy, highlighted with a certain level of scepticism that, while he was in favour of the short postponement, he questioned whether it was really likely to sort everything out in such a short timeframe. I believe that he was right: giving a certain level of space is appropriate. The Government did not simply get themselves in a position where they were effectively renewing the law every six weeks, but we also had the slightly farcical spectacle of the Government wanting to take us to the nth degree prior to Christmas and threatening that an Assembly election would be called at one minute past midnight, while the time passed by. I think that the Government have learned from that mistake. It is right that we give a little bit of space to ensure that we can hopefully see a restoration of government. I agree with the noble Lord, Lord Alderdice: as much as possible, I want to see the laws affecting Northern Ireland decided in Northern Ireland. That is one of the fundamental reasons that having 300 areas of law decided not in Northern Ireland or even at Westminster but by Brussels is fundamentally wrong. That is why we need to deal with the issues in front of us.

It is useful to give a certain amount of time to resolve things. However, that is useful only if that opportunity is taken by the Government and others to resolve the fundamental problems. Undoubtedly, the poison at the heart of our political system, which has been causing instability in Northern Ireland, is the Northern Ireland protocol. Probably in the next few hours, we will see what text has emerged from the deal by the Prime Minister and the European Union, and it would be wrong to prejudge that. But it is undoubtedly the case that any deal or any other way of resolving the protocol needs to deal with the key fundamentals. It needs to ensure that there is frictionless trade between Northern Ireland and other parts of the United Kingdom, and a restoration of the UK internal market; that democracy is restored; that our equal citizenship within the United Kingdom is restored; and, above all, that the Act of Union is restored.

To some, these concerns may seem esoteric. I appreciate that there will be some in this House for whom these are not matters of great conviction. But for any of us who feel our citizenship under threat, it is not surprising why we hold this so dear. The solutions which are required go to the very core of our existence, which is why we need to see resolution of those issues. It is how some would portray some of the concerns raised by unionists—and shared by all unionists, well beyond those on these Benches from the Democratic Unionist Party—but we are not seeking some fantastical solution or indeed perfection. In those basic demands, we seek a restoration of the basics: the basic rights of the people of Northern Ireland, and what is basically required to protect our future. These are not just for today but for five or 10 years' time and into the future. In the hope that the Government grasp that problem and come forward with solutions that deal with all those problems is the hope that we can see a level of restoration, but that can be only when those fundamentals have been directly delivered. That is what we will judge this by. I believe that it is useful that we see the Bill passed today but, as others have indicated, it is only a means to an end rather than an end in and of itself.

4.34 pm

Lord Sentamu (CB): My Lords, I have just returned from Sierra Leone as chair of Christian Aid to see what this country has achieved there. People there speak with great affection of the actions taken by the UK Government to restore peace—at an absolutely awful time, when people's hands were being chopped off. Sierra Leone is to go through a general election. Already, there are a lot of fears, but I hope that it will progress in a way that will lead to greater and greater peace in that country.

Edmund Burke, commenting on the French Revolution, said these words:

> "The only thing necessary for evil to triumph in the world is that good men do nothing."

Whenever the Minister has commented on, or introduced a Bill on, Northern Ireland, he speaks with such candour and sensitivity. I thank him for the way in which he handles matters vis-à-vis Northern Ireland.

We have to support the Bill. Organ and tissue donations are vital because medical science has so improved. It is not on for Northern Ireland to be lagging behind the rest of the United Kingdom in this, so I hope that the Bill will get through pretty quickly and be passed.

I admire greatly the noble Lord, Lord Hain, for his work both in Northern Ireland and, more importantly, during the time South Africa was facing a bad apartheid. He resolutely wanted to see things change and improve. I congratulate the noble Lord on that. However, I am slightly puzzled by his question to the Minister around why this Bill has come here instead of the power being with the Secretary of State. My understanding of the law is this: if powers have been devolved by law, nothing can take them back unless a new law is

[Lord Sentamu]
passed. If I were in Northern Ireland, I would not want the Secretary of State suddenly being given greater powers, because it might suggest that we have not quite devolved those powers. They were devolved by an Act of Parliament, and so to intervene in any situation—because of the absence of power-sharing—requires a Bill; it can be done only by a Bill. The Minister and I are tired of hearing endless Bills, but that is the only way to do it, because the Government who are supposed to be working are not really working.

There is one more thing I want to say. When people shoot a police officer while he is training children, it leaves everybody with a chill on their back. No matter what political views you may have, I believe that violence in the end defeats those who want to go by violence. The time has come for all of that to stop. I am glad that, when I came back from Sierra Leone, I saw people protesting, saying, "We are not going back. Enough is enough." If that is the case, I hope that the good men and women of Northern Ireland will resolve the whole question of why the devolved Government are not doing their job.

The amended protocol, of course, may not have everything in it, but I suggest that we are going towards goods coming out of Great Britain and into Northern Ireland, and vice versa, in exactly the same way, and clarification about goods that are likely to end up in the EU, where we are not in the customs union. Having been involved in the past, for a number of years, in reconciliation around the Drumcree marches, I sincerely hope that the dawn has come—although there may still be a number of questions that will not actually be resolved.

In the end, the only way to prove that a thing is good is if it works. I make a plea to my very good friends in Northern Ireland: if Sierra Leone can begin to find a way not to be ruined by tribalism—it even changed its legislation to allow a third of the people in Parliament to be women, which was not previously the case in that society—and to move forward, surely Northern Ireland ought to do better.

4.40 pm

Baroness Hoey (Non-Afl): My Lords, I add my condolences to the family of DCI John Caldwell following the terrible terrorist act last week. It is an act that has been condemned universally but sent a chilling message. Even more chilling has been the official declaration by the New IRA over the weekend that it was responsible and the warning in that message to members of the security forces that it had gathered data and that further attacks on the security forces were in the planning. It described this as a "military operation". That is a very chilling message that we in your Lordships' House should all be well aware of and condemn utterly.

I absolutely agree with the noble Lord, Lord Dodds of Duncairn: it is so hypocritical of the leaders of Sinn Féin to stand there condemning what happened last week and, literally two days later, attend a memorial for people killed because they had been involved in shooting policer officers. Let us not think that somehow the leaders of Sinn Féin have the moral superiority that they sometimes try to put forward.

I am very pleased that Dáithí's law has come through. As I said in my last contribution, I am an integrationist and believe that Northern Ireland should have been added when the organ Bill was going through Westminster. So many things happen where it would be much better if the decision could be taken in the Houses in Westminster. I hope there will be a new Assembly at some stage before next year, when this legislation will come into force, but I also hope we will be able to see that an awful lot of things could be done here.

As everyone knows, we are here only because, long before the election in Northern Ireland last year, the Democratic Unionist Party made it very clear that it would not go back into government until it was satisfied that the problems with the protocol had been fixed—the protocol that so many other parties in Northern Ireland said had to be rigorously implemented. Of course, now they have a very different attitude, which I welcome.

The seven tests that the DUP put forward before the last election were not just plucked out of the air but grounded in promises already made in one form or another to the people of Northern Ireland by various Ministers and Prime Ministers in government. Sitting here, we do not yet know the exact details of the arrangements made today and the deal that has been coming for so long and has finally, apparently, been signed today. But it is worth reminding your Lordships' House what those seven tests are and that they have not been just plucked out of the air, as I said.

As a staunch loyalist, I am deeply saddened by the fact that the President of the European Commission and our Prime Minister have chosen today to bring about this cup of tea with His Majesty the King. I think that is a deliberate act of the Prime Minister, which presumably his advisers and he thought would be welcomed by the loyal people in Northern Ireland. I have to say that it is misguided. As the former First Minister in Northern Ireland, the noble Baroness, Lady Foster, said today that it is a "crass" act. It was very mistaken of our Prime Minister and he will live to regret that, whatever happens to the deal today.

I would like to go through the seven tests quickly and without much detail. The first and most important is the constitutional issue of the Act of Union. Any deal must fulfil the guarantee of Article 6 of the Act of Union. It is not an ordinary statute; it is a constitutional statute which created the United Kingdom. It makes it clear that everyone in the United Kingdom is entitled to the same privileges and is on the same footing as regards goods in either country and in respect of trade in the United Kingdom. We know that that is no longer the case, because of the protocol.

The second test is that any new arrangements must avoid any diversion of trade. We have seen the diversion of trade that has been taking place. In fact, so much diversion of trade has taken place that Article 16 of the protocol could have been implemented and was said to have been broken over a year ago. If that had happened then, we might not have had to spend so long on this as we have over the last year. That is a very important test; will it be changed?

Thirdly, it is essential that any new arrangements do not constitute a border in the Irish Sea. The Secretary of State said on many occasions that we need new

arrangements to see that that border disappears. I know that there has been talk of green and red lines. If a business in Bristol is trading with Belfast, it has to do exactly the same thing and have exactly the same issues as it would if it were dealing with Glasgow, for example, or Cardiff—no difference. That is another crucial test. We will see whether the green lanes and the dropping of the word "customs" is somehow meant to make us all feel that everything will be okay.

The fourth test—I have nearly finished—must give the people of Northern Ireland a say in the making of the laws which govern them. I expect there will be some compromise that says that the Executive in Northern Ireland will be involved in some way when new laws come in from the European Union to Northern Ireland, but if they do not have a veto, they are worthless. That is another important test.

Fifthly, the new arrangements must result in

"no checks on goods going from Northern Ireland to Great Britain, or from Great Britain to Northern Ireland".

That is exactly what the Prime Minister said on 8 December 2019. We will see how that ends up after today.

Sixthly, the new arrangements should ensure no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless agreed by the Northern Ireland Executive and Assembly. That must be on a cross-community consent basis. Everything else in Northern Ireland, because of the Belfast/Good Friday agreement, is cross-community consent. Suddenly, the Government changed that to make it majority consent—we cannot have that.

Finally, the seventh test is, again, very important. New arrangements must

"Preserve the letter and spirit of Northern Ireland's constitutional guarantee",

as set out in the Belfast/Good Friday agreement, by requiring, in advance, the consent of a majority of the people of Northern Ireland

"for any diminution in its status as part of the UK".

That is crucial too; we have already seen the status change and go against the Belfast agreement, which is why the late Lord Trimble said that the Belfast agreement had been broken by the protocol.

While I accept that this legislation needs to go through and hope that it will not be necessary for it to come back again in a year, I agree with those who said that, if the Government had listened more quickly, they could have put this through right at the beginning and not had this nonsense of the Secretary of State coming over, threatening people that there would be an election and then going back on it as we all knew he would have to do. Let us make sure that this does not happen again.

Finally, I ask noble Lords what other country in the world would be in the middle of signing off a deal with a foreign body—the European Union—to talk about getting control over a part of its own country back from that body. What other country would have allowed that to happen in the first place? We have an opportunity now to change that and make it last. If not, if the deal is not satisfactory, there will be no devolution. If there is no devolution, we will be back discussing this time and time again, and any deal that the Prime Minister thinks that he has signed off today will not last.

4.51 pm

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I thank the Minister for his introduction to this legislation and agree wholeheartedly with his opening remarks concerning the murderous attack on DCI John Caldwell. The attack happened in Omagh, and he came from Beragh. I represented that area for 14 and a half years. I am thankful that his life may have been spared but it is tragic that, we are told, he will have life-changing injuries if he comes through and survives. We extend our good wishes and earnest prayers to John and his wife and family. We thank God that his little boy was spared; however, he was not spared the horrors of watching his father being gunned down in front of his eyes.

While I welcome the fact that five leaders at Stormont stood with the chief constable in condemnation of this dastardly, despicable attempted murder of John, it is sad, and has to be condemned that Sinn Féin yesterday honoured the 35th anniversary commemorating Brendan Moley and Brendan Burns, who were on a mission to murder members of the security forces. With one side of the mouth they condemn, then their actions prove that their hearts have in reality not changed. To move forward in Northern Ireland, a big step will have to be taken in proving to the people of Northern Ireland that Sinn Féin has completely turned its back on its terrorist past.

It is also regrettable that, on this day, His Majesty has been brought into the situation concerning the discussions between the European Commission President and the Prime Minister. This was a cynical act by the Government and has certainly done nothing to enhance their reputation among the unionist population of Northern Ireland, who are loyal citizens and subjects of His Majesty the King.

In many ways, this debate is overshadowed by the other developments happening today. As I said, the Prime Minister and the European Commission President are meeting and we are told that they have signed off a new agreement on the protocol. Yet they did so without the elected representatives of the people of Northern Ireland having seen it. They have not learned the lessons of the past. The DUP will not be blackmailed or cajoled by anyone into accepting any deal that is not in the best interests of Northern Ireland and does not fulfil the seven tests set out by our party. These tests are grounded not in a unionist wish list but in promises that have been given to the people of Northern Ireland. For us, the stakes could not be higher, as the protocol that is already being operated poses the greatest threat to the integrity of the United Kingdom and Northern Ireland's part in it.

I will wait for the apology that will be forthcoming from Sinn Féin, the Alliance Party and the SDLP, who called for the rigorous implementation of the failed protocol, which they now acknowledge had to be done away with or replaced by another agreement. Our party is not out to enhance the credibility of the Prime Minister, the Secretary of State or indeed anyone within the unionist family. All along, our genuine

[Lord McCrea of Magherafelt and Cookstown] concern is for the future well-being of the people of Northern Ireland. It seems that all efforts are being put into trading matters. These are indeed very important for the prosperity of Northern Ireland businesses but there is a vital constitutional matter, which must be faced up to honestly and honourably, concerning who governs us. Northern Ireland has in effect been left in the single market for goods and is still bound by many EU regulations and subject to a foreign European court. We are being treated differently from the rest of the United Kingdom; no real unionist can accept the people of Northern Ireland being treated as second-class citizens within our kingdom. The Minister should not be surprised that the Assembly has not been able to function over the past year when, through the protocol, the fundamental consent principle has been removed.

We cannot judge what this so-called deal will or will not hold but the protocol presently being operated violates the Belfast agreement and its commitment to uphold the rights of the people of Northern Ireland to

"pursue democratically national and political aspirations"

with respect to all the laws to which they are subject. The Assembly was brought down because of the democratic deficit, where the protocol stripped the people of Northern Ireland of their rights in relation not only to 300 laws but to 300 areas of law to which they are subject. Currently, 670 laws have been imposed, and the number is rising all the time. This constitutes an attack on other legal protections, such as Article 25 of the International Covenant on Civil and Political Rights, and would be wrong whether or not the Belfast agreement existed. It is deeply offensive when we are being told daily that the Belfast agreement is considered one of the most famous treaties in the world. Indeed, many of our laws are being forced upon us, having been decided in Brussels, without being scrutinised by our Members of Parliament at Westminster. If the past 50 years teaches us anything, it is that, if political arrangements are to last, they require support from right across the community.

I was somewhat disappointed by the threat, as it were, from the noble Lord, Lord Alderdice, to the unionists: "If you do not accept this, remember, you are going to be governed by Dublin". The noble Lord was a Member of the Northern Ireland Assembly many years ago. He was elected by the people of Northern Ireland then, before he left the Province. I suggest to him that he ought to know better than to threaten the unionist population with Dublin rule if they do not abide by what has been decided for them.

I have no doubt that the great and the good, Uncle Tom Cobley and all, will be wheeled out to sell any deal whether it satisfies genuine unionist concerns or not, but that will not move my party from faithfully adhering to our legitimate and stated tests. I will not prejudge what the Prime Minister has to say but any deal must fulfil the guarantee of the sixth article of the Acts of Union 1800, which requires that everyone in the United Kingdom is to

"be entitled to the same privileges and be on the same footing, as to"

goods in "either country" and in respect of trading in the United Kingdom. Under the present protocol, this is clearly not the case. It will take more than words at a press conference or an address to Parliament to convince the people of Northern Ireland because it will be of vital importance that, on the constitutional position, the unionist population study carefully the actual text of any agreement.

I will not say that we will be served up with a bowl of fudge later on tonight, as in the past, but the unionist people need clarity. That is why our legal experts must scrutinise every line of the deal. There cannot be a restoration of the Assembly at Stormont until the unionist community is satisfied that there is integrity in the deal. We are certainly not going to allow any politician to pull the wool over the eyes of the people of Northern Ireland. We will look the people of Northern Ireland in the eye and in the face; if it is right for Northern Ireland, we will agree, but if it does not fulfil the seven tests—especially the constitutional test—that cannot be right for the people of Northern Ireland.

We wait to see but, in the meantime, we have the executive formation Bill. It is essential, to allow the political parties to carefully consider the way forward, to have that legislation passed in this House.

5.02 pm

Lord Morrow (DUP): My Lords, we are here to debate a Bill that is concerned with the formation of a new Executive. While we can talk about changing the date of the next election, which essentially puts back the formation of a new Executive, we should be mindful of what needs to happen so that an Executive can be re-formed. The truth is that we would have a functioning Northern Ireland Executive at the moment if it were not for the Northern Ireland protocol, which some called to be fully implemented.

In engaging with the protocol, we have to understand that it is first and foremost not about the border but about what creates the border: a legal regime in Northern Ireland that is different from the rest of the United Kingdom and, critically, that is imposed on Northern Ireland by a polity of which it is not a part and in which it has no representation at all. In that sense, before anything else, the Irish Sea border is a border of disfranchisement.

The people of Northern Ireland can no longer stand for election to make the laws to which they are subject in 300 different areas. Let me be clear: I am talking about not the imposition of 300 statutes over the heads of the people of Northern Ireland, which would be monstrous, but the imposition of multiple laws in 300 areas. As things stand, as has been said, 670 new laws have been imposed on us. That is after just two years and two months; the figure will just go up and up. Unless the United Kingdom wishes to turn its back on any conception of British values and a commitment to democracy, which would be deeply damaging not only to Northern Ireland but to the entire United Kingdom, this is plainly completely unsustainable.

The essence of citizenship in the United Kingdom is the right to stand for election to make all the laws to which you are subject and/or to vote for a fellow citizen to represent you in this regard. The relationship between the citizen and the citizen-legislator is all-important. Our democratic traditions mean that citizens

can engage with their representatives in the making of the laws to which they are subject and the legislator can shape the laws, mindful of the needs of their constituents. The legislator can move amendments and, if he or she persuades Parliament, the law can be changed. This is a central ingredient of what it means to be a United Kingdom citizen, yet this right has been subject to radical debasement in Northern Ireland thanks to the Northern Ireland protocol. This cannot be allowed to continue.

I read in the *Times* this morning a suggestion that Stormont should be given the ability to reject legislation that it does not like—as if that was the answer. It is not in our political tradition. Our political tradition is not one which infantilises its citizens such that they are told they are no longer mature enough to make the laws to which they are subject; instead, they will just have to make do with a right to reject legislation, which others make for them, if they do not like it. Could anything be worse? How can we countenance such an arrangement after years of exercising the right to make the legislation to which we are subject? There can be no Executive unless and until we are afforded a voice in the making of the legislation to which we are subject. That has defined the United Kingdom as a polity and is enjoyed by the people of Wales, Scotland and England. Northern Ireland will not accept anything less.

5.06 pm

Lord Browne of Belmont (DUP): My Lords, I join with noble Lords who have condemned the attempted murder of Detective Chief Inspector John Caldwell. I trust that he will make a speedy and good recovery. This debate occurs at a pivotal moment for Northern Ireland and the United Kingdom as a whole. We have been reminded again today by my noble friends that, if not for the imposition of the Northern Ireland protocol, we would not be debating this Bill in your Lordships' House.

I support the Bill because it is a sensible and measured response in the current circumstances. I also welcome the Government's decision to bring forward the amendment to address organ donation. This is an incredibly important cause, and it is right that it progresses here. I commend the Minister and the Government for their work in making this possible. I join other noble Lords in paying tribute to the efforts made by young brave Dáithí, his parents, family and friends and, in particular, Fearghal McKinney and Denise McAnena from the British Heart Foundation. They have worked very hard to enable this legislation.

There are over 300 areas of law, such as our ability to trade with the rest of the United Kingdom, which are now determined by the EU. These regulations and diktats have been imposed on Northern Ireland by Brussels without any say or scrutiny. These laws can be amended and will continue to be imposed on Northern Ireland. In all decisions, the European Court of Justice will continue to be the ultimate arbiter on all protocol-related trade disputes. No unionist could countenance a scenario in which UK law is secondary to EU law in Northern Ireland. In England, Scotland and Wales, UK law is supreme. Why should this be any different in Northern Ireland?

As things stand, Northern Ireland is semi-detached from the rest of the United Kingdom, subject to ever-changing diktats being made elsewhere and with no say over them, as I have said. Is it fair that manufacturers and producers in Northern Ireland should continue to operate under a different set of regulations and guidelines to their counterparts in mainland Britain? Continued divergence and regulatory differences will continue to create new hurdles and new sets of everyday problems for producers and manufacturers in Northern Ireland. Why should these business owners be punished purely for sharing a land border with a foreign state?

In a UK context, if Northern Ireland is still left behind and solely subject to the EU's customs code and EU law, regrettably, very little of constitutional significance will have been achieved. Any arrangement or deal with the European Union that fails to achieve the removal of the supremacy of EU law from Northern Ireland will fail to restore the constitutional integrity of the United Kingdom. To date, the implementation of the Northern Ireland protocol has cost £506 million. Specifically, Treasury figures confirm that the trader support service, a by-product of the protocol that helps companies to deal with its additional paperwork, has cost the taxpayer £318 million in just over two years—that is £436,000 per day. This could be invested elsewhere in Northern Ireland: in health, education or roads. Recently, noble Lords discussed cuts to the Northern Ireland budget—yet we were able clearly to point to hundreds of millions of pounds-worth of bureaucracy to implement the protocol. What was true in 2022 is true in 2023: transformative investment should be saved for schools, hospitals and roads in Northern Ireland.

As I have said in your Lordships' House previously, I would prefer Stormont to be up and running again as soon as practically possible. However, the institutions at Stormont cannot work without the restoration of the delicate political balance negotiated over many years. No unionist supports the protocol or the supremacy of EU law. No one who uses the label "unionist" could sign off on any arrangement that does not respect the supremacy of UK law and the constitutional integrity of the United Kingdom. I urge the Minister and the Government to recognise this.

As it stands, Northern Ireland remains in limbo and, unlike the rest of the United Kingdom, it is ultimately still bound to decisions made by politicians in Brussels and the European courts. A Northern Ireland left behind was not what the people in any part of the United Kingdom assented to in 2016. I am sure that noble Lords will agree that the best outcome is for Stormont to get back up and running. To get to that place, we must restore the integrity of the UK internal market as urgently as possible. Northern Ireland's constitutional position and arrangements must be respected. Such uncertainty and disruption are unwelcome—the people of Northern Ireland need these issues to be resolved, and I regret that we are not at that point yet.

No matter what has been achieved by the deal today, Northern Ireland will still be in the single market, subject to EU rules and the European court.

[Lord Browne of Belmont]
Does this protect the sovereignty of Northern Ireland? Anyone who cherishes our historic union must view any new deal with extreme caution.

5.13 pm

Baroness Suttie (LD): My Lords, I also thank the Minister for his clear presentation of the Bill. I utterly condemn the shooting and attempted murder of Detective Chief Inspector John Caldwell in Omagh, a community that has already suffered so much pain and loss. As the joint statement from the political leaders said so powerfully, there should be

"absolutely no tolerance for such attacks by the enemies of our peace."

From these Benches, we commend the continued dedication of the PSNI and wish John Caldwell a full and speedy recovery. Our thoughts are with his family at this very difficult time. That appalling act last week also served to remind us just how fragile the peace process is and that it should never be taken for granted. As the noble Baroness, Lady Ritchie, said, it was none the less encouraging to see how quickly the political leaders in Northern Ireland came together and united in condemning this truly awful and barbaric act.

As my noble friend Lord Alderdice said so movingly in this speech, we congratulate Dáithí and his family on their remarkable campaign that has led us to this point. I also thank the British Heart Foundation for its support. Although it is very much to be welcomed that the Bill has facilitated, finally, the introduction of Dáithí's law, we should not forget that this should have been happening in the Northern Ireland Assembly, which brings me back to the primary purpose of the Bill: trying to deal with the consequences of the ongoing absence of a Northern Ireland Executive and Assembly.

From these Benches, we support the Government on the Bill. We think that it is the right thing to do, but we deeply regret that it is once again necessary. It is right to give time and space for a resolution to be reached without the inevitable heat of an election campaign, but we hope, as others have said, that the Executive and the Assembly are back up and functioning long before the deadline contained in the Bill. We have had so many debates on the situation in Northern Ireland recently, but almost no matter what subject we are debating, we always end up looking back at the protocol. Today there is obviously a very different background to our debate, and, clearly, we all have to examine the proposals announced today in detail.

Since the referendum in 2016, at times we have seen ideology dominate our politics across the United Kingdom at the expense of finding pragmatic solutions to the situation in which we find ourselves. The unionist population was treated very badly, perhaps most of all by the former Prime Minister, Boris Johnson, who ignored political realities and complexities in Northern Ireland for his own political ideological purposes. In that regard, I very much agree with the comments made by the noble Lord, Lord Lexden.

I worked for nearly 10 years in the European Parliament—mostly for an Irish politician, as it happens—and I know that, if you have a positive working relationship based on trust with key players in the EU, you can always find pragmatic solutions to problems and issues. For my speech this afternoon, I had prepared a set of remarks on the two parallel democratic deficits currently faced by Northern Ireland because of the protocol and the absence of a functioning Assembly and Executive, but, given the circumstances and the announcement of the deal today, I shall limit myself to a direct appeal to all parties in Northern Ireland. There was a problem with the protocol—everyone accepts that—and the Government and Brussels have listened. The deal may not be perfect, and we all need to look at it in detail, but for the sake of the people of Northern Ireland, get the Assembly and the Executive back up and running and, if necessary, change and improve this deal from within.

5.17 pm

Lord Murphy of Torfaen (Lab): My Lords, this year is of course the anniversary of the Good Friday agreement, but, tragically, it is also the anniversary of the Omagh bombing. Twenty-five years ago, it fell on me to visit that town three days after the bomb went off, and I had to talk to the parents of children who had been massacred in that appalling event. It was something of unparalleled wickedness. In many ways, what has happened to Detective Chief Inspector Caldwell is a terrible echo of that: it was cowardly and wicked and has left a family in ruins. I am sure that all of us in this Chamber share the views said collectively in today's debate.

On a much happier note, the organ transplant part of the Bill is to be very warmly welcomed. As my noble friend Lady Ritchie said, 146 people in Northern Ireland are waiting for a transplant, including Dáithí, after whom this law will be named. I congratulate the Government on moving so very quickly on something which has complete and unanimous support, not only in this House but in Northern Ireland.

Of course, we support the Bill. As the noble Lord, Lord Weir, reminded me, I said a few months ago that the timescale that the Government gave themselves was far too tight, that it was not going to work and that it would have been better if we had had a much longer period, to which the Bill now agrees, at an earlier date, but we support it. It has to be done, and I just hope that it is unnecessary in many ways and that we can have a functioning Assembly, Executive and all the other institutions of the Good Friday agreement up and running well before January next year.

Some weeks ago, the *Belfast Telegraph* published a list of decisions have been held up in Northern Ireland because they have no Government and no Parliament. Thirty-nine major issues were identified, and I will just mention a few of them: services for oncology; services for breast cancer; an environment strategy; sign-language legislation; independent living funds; funding for victims payments; a strategy for refugees. This is all against the difficult financial background throughout the United Kingdom and the need for ministerial decisions. Civil servants in Northern Ireland, however good they are—and they are good—cannot ultimately make decisions in a democratic way on behalf of the people of Northern Ireland. They cannot set their priorities. They cannot make decisions that properly should be made by elected politicians.

Of course, the DUP is right that there is a democratic issue, so far as the protocol is concerned, but there is a democratic deficit equally as big, if not bigger, in not having an Assembly and an Executive. When we say that the Good Friday agreement is invalidated, violated, because of the protocol, it is the same issue that violates the Good Friday agreement with regard to the institutions. The agreement is violated by the absence of an Assembly and an Executive and by north-south bodies as well as east-west institutions. You cannot pick and choose which bits of the agreement you want; you have to look at it as a whole.

I fully understand the problems that the Democratic Unionist Party highlights and the issue of being part of a single market without any say about what the laws are going to be. Of course, we understand that, but which is the greater? I have just outlined a few of the issues that cannot be discussed or decided in Northern Ireland without a Government. What bigger democratic deficit is there than no Government at all? There is none in Northern Ireland and no Parliament. There is nowhere for views to be expressed. However good Dáithí's law is—and it is good—it is not the place of this Parliament to deal with the domestic issues that were agreed in the agreement and the referendum 25 years ago to be for the people of Northern Ireland themselves.

The other issue is that the people of Northern Ireland do not simply consist of unionists, though the unionists have a very valid point. I will say it again: I accept it, but 56% of people in Northern Ireland voted to stay in the European Union, and I assume that those people actually agree with parts of the protocol—not all of it, but parts of it. In other words, in order for success to be had, you have to compromise. You have to compromise between nationalists and unionists. That was the genius of the agreement 25 years ago.

I do not know what is in the protocol. I have had a little look on my phone now and again during the course of the debate. There are some very interesting things, and I actually congratulate the Prime Minister on what he is trying to do. The protocol was the creature of a previous Prime Minister. It is Boris Johnson's fault—no Boris Johnson, no protocol—but now the current Prime Minister is doing his best to try to ensure that we can overcome this issue. I will just take one example that I have looked at on my phone, the Stormont brake. There is likely to be, in this agreement, a measure by which the Assembly in Northern Ireland can reject laws from the EU. If they can reject laws from the EU, I suspect that that is a major development in the situation with regard to the protocol that the Prime Minister and the European Union have agreed.

It looks to me like a genuine attempt to solve the issue. It is not just about President Biden coming across to Northern Ireland in April; it is not just about celebrating the 25 years; it is about ensuring that public services operate in Northern Ireland, full stop. They are not operating at the moment, not properly, so at the end of the day, the people who matter are not us: the people who matter are the men, women and children who live there. Nearly 2 million people rely on the Assembly and the Executive for the quality of their life; therefore, those institutions must be restored and this, I believe, is a genuine attempt to do precisely that. It has to be a compromise, I just hope that in this space, which I understand the Prime Minister is suggesting should be made available for everybody to look at the detail of this agreement, all of us will look at it very seriously and, when we do, think not of ourselves but of the people of Northern Ireland.

5.26 pm

Lord Caine (Con): My Lords, I am very grateful, as always, for the contributions on the short Bill before your Lordships' House this afternoon. I thank noble Lords at the outset for their unanimity in condemning what happened in Omagh last Wednesday evening. The noble Baroness, Lady Ritchie of Downpatrick, referred to violence never being justified and of course she is absolutely correct: paramilitary activity in Northern Ireland was never justified in the past and is certainly not justified today. I completely agree with the noble Lord, Lord Alderdice, when he refers to the threat that has been made by some on the loyalist side in recent days. Loyalist violence, or the threat of loyalist violence, should always be condemned with equal vigour as republican violence, and it is very important that we do not differentiate.

A number of noble Lords from Northern Ireland referred to the glorification of terrorism by certain parties. They will not be surprised to hear that I have considerable sympathy with that point. I was involved, a number of years ago, with framing a response to a parade organised by republicans in Castlederg which commemorated two IRA men who had blown themselves up bringing a bomb into the town in the early 1970s, so I understand the strength of feeling. I say to noble Lords that we now have a third day scheduled for Committee on the legacy Bill, and my recollection is that the amendments on glorification will be the first group that we take, so we can have a much longer discussion and debate on that issue very shortly. I sympathise with a number of the points that noble Lords behind me have made.

I turn to the Bill. Of course, there has been no opposition to it at all in the House. Almost uniquely, I think I have been asked only one direct question during the couple of hours we have been debating it. That was from the former Secretary of State, the noble Lord, Lord Hain, on taking powers. I said in my opening remarks that should the situation regarding the Assembly not be resolved, the existing powers for civil servants run out in June and we would have to make an assessment as to how we deal with that situation. It is clearly untenable, for a number of reasons that were pointed out by his noble friend Lord Murphy of Torfaen in his very powerful and typically insightful and sensible winding-up speech for the Opposition. Of course, in this piece of legislation we have tried to avoid coming back any time soon with further legislation on election timing. It is the hope of many of us that we will get back to a position where the powers in the previous Executive formation Act 2022 and the timetable in this legislation become irrelevant, because we have the institutions back up and running.

Aside from that, there was strong support for the legislation: both the provisions relating to the date of the election and, of course, Dáithí's law. I join noble Lords in paying tribute again to Dáithí and his family.

[Lord Caine]

I also pay tribute to those who have been very prominent in the campaign, including my old friend Fearghal McKinney, the former party colleague of the noble Baroness, Lady Ritchie of Downpatrick, who has played a key role in all this. I bumped into him last week in Westminster and was able to talk through a number of the issues.

My noble friend Lord Lexden made a typically powerful intervention in the debate. He and I go back many years; we are a part of the Tory tradition that owes a huge amount to the late, great TE Utley in the way we have always approached Northern Ireland affairs. As ever, my noble friend's speech was in what I might call the great Utley tradition of moderate Tory unionism. My noble friend talked about Northern Ireland enjoying the benefits of the union and questioned the widespread view that has been held over many years that a united Ireland is inevitable. I agree with him entirely that a united Ireland is not inevitable. However, the priority has to be to make Northern Ireland work; the more it works, the better that is for the union and for Northern Ireland's position within it. He also talked about the inadequacies of the current legislation and the powers; I dealt with that point a few moments ago.

Unsurprisingly, the debate was dominated not necessarily by the provisions of the Bill but by events that have taken place elsewhere this afternoon in Windsor. We have debated the protocol many times; I have been here late at night during Committee of the Northern Ireland Protocol Bill before Christmas and I answered a PNQ from the noble Lord, Lord Morrow, two or three weeks ago. I hope noble Lords will forgive me if I do not rehearse all the arguments around the protocol this afternoon. The Prime Minister is due to make a Statement in the other place very shortly, and I would be astonished if there was not an opportunity for that Statement to be repeated in your Lordships' House at some point fairly shortly, which will enable noble Lords to ask questions based upon actually having been able to read some of the documentation which has been published. *The Windsor Framework: A New Way Forward* has now been published and is available on GOV.UK.

I heard the comments of many noble Lords, and the noble Baroness, Lady Hoey, reiterated the DUP's seven tests, as did a number of members of the Democratic Unionist Party this afternoon. It will be for them to judge whether the agreement that my right honourable friend the Prime Minister has come to with the European Commission satisfies those tests; no doubt they will want to go through with a fine-toothed comb, as is customary. For our part, the Government are confident that the agreement reached will ensure free-flowing trade by removing the border in the Irish Sea; it will safeguard Northern Ireland's position within the United Kingdom; and it will restore sovereignty for the people of Northern Ireland through what the noble Lord, Lord Murphy, referred to accurately as the so-called Stormont brake. However, it would be better for noble Lords to listen to what the Prime Minister has to say, go through the documentation and then, of course, they will have an opportunity to return to these matters when the Statement is repeated in your Lordships' House.

I think we all hope that the agreement that has been reached this afternoon in Windsor will provide a basis for the restoration of the devolved institutions so that we do not have to come back again to this House and debate the kind of legislation we have seen over the past number of months, and so that responsibility for the running the domestic affairs of Northern Ireland within the United Kingdom will once again be in the hands of locally elected politicians at Stormont, who are responsible and accountable to the electorate there. We fervently hope that that will happen so that we can work together. My noble friend Lord Lexden gave me a very powerful point about the United Kingdom Government and the Northern Ireland Executive at Stormont working closely together on issues of great importance, such as public services in particular—which, as the noble Lord, Lord Murphy of Torfaen, reminded us, need a great deal of attention over the coming months. If this agreement does provide the basis for restoration—I do hope it will—I think the Government will be working extremely hard with a newly-formed Executive to address those issues so that we can get on with building a Northern Ireland that works for everyone across the entire community. On that note, I beg to move.

Bill read a second time and committed to a Committee of the Whole House.

Arrangement of Business

Announcement

5.36 pm

Baroness Williams of Trafford (Con): My Lords, noble Lords now have until one hour hence to table amendments for Committee of this Bill. Noble Lords seeking to table amendments should contact the Public Bill Office. We will now resume Committee of the Levelling-up and Regeneration Bill. The House will then return to the Northern Ireland (Executive Formation and Organ and Tissue Donation) Bill at a point which will be notified on the annunciators. If there are no amendments tabled for Committee, I expect the remaining stages of the Bill to be taken formally at the end of the dinner break.

Levelling-up and Regeneration Bill

Committee (3rd Day)

5.37 pm

Relevant documents: 24th Report from the Delegated Powers Committee, 12th Report from the Constitution Committee, Scottish, Welsh and Northern Ireland Legislative Consent sought

Amendment 51

Moved by ***Baroness Hayman of Ullock***

51: After Clause 5, insert the following new Clause—

"Levelling-up consultants

Within 120 days of this Act being passed, a Minister of the Crown must publish an estimate of how much local authorities have spent on consultants in relation to this Part."

Member's explanatory statement

This means that a Minister must publish an estimate of how much local authorities have spent on consultants in relation to Clauses 1 to 6 of the Bill.

Baroness Hayman of Ullock (Lab): My Lords, I will be moving these amendments in the name of my noble friend Lady Taylor of Stevenage. The first amendment is Amendment 51, which is after Clause 5. It asks for the Minister to publish an estimate of how much local authorities have spent on consultants in relation to the first six clauses of the Bill. The reason for laying this amendment is that there has been quite a lot of discussion over the last few years about the amount of money being spent both by local and national government on consultants. We wanted to probe the Government on this and have a small discussion around this area.

Back in 2020, the Public Accounts Committee released a report which said that the Government were

"too quick to spend money on consultants to undertake work that could actually be better done by existing civil servants"

and that this was being done rather than developing and retaining in-house skills. Since then, any restriction on spending controls on consultants have been ditched by the Government, allowing Whitehall departments to potentially spend millions more on these external consultants. The limits were introduced under a previous Prime Minister, David Cameron, in 2011, requiring central authorisation if contracts lasted more than nine months or exceeded £20,000. Our concern is that the value of contracts has been rising. The limit set earlier this year was £600,000, which is a huge jump. We are very concerned about this, because government spending is being tightened in other areas of public expenditure, particularly during the cost of living crisis. If the Government are increasing this extra cost of outside consultants, how can that be justified in the current crisis? However, obviously, one thing we appreciate is that during the pandemic there was additional spending in this area that could not be avoided.

In 2022, the UK public sector awarded £2.8 billion-worth of consulting contracts, according to data from the contract analyst Tussell Ltd which was published in the *Financial Times*. That figure was up by 75% from 2019, so even taking into consideration rising costs during the pandemic, that is still a huge jump in spending. Does the Minister agree with the Public Accounts Committee that the Government's way forward on this should be to retain civil servants and develop their skills, and that that is a better use of government money?

I turn to the nub of the amendment, which is the published estimate of how much local authorities have spent on consultants in relation to Clauses 1 to 6. Last week in Committee, we discussed the thorny issue of competitive funding. Our concern is that this is not the best way to fund different local authorities in their bids for levelling-up pots of money. We know that local authorities have complained about the Government's proliferation of these competitive funding pots. Alongside this, local authorities obviously have been using more consultants. It has recently been reported that consultancy firms have raked in around £26 million from councils which are clearly cash strapped. They have lost funding from central government over the last few years, so they really do not have this money to spend. The reason they are spending it is that they are trying to prepare high-quality levelling-up funding bids, and they no longer retain much of the necessary skill set for that in house.

Considering that many of those with successful bids have lost far more in local authority funding cuts than they are going to achieve, does the Minister agree with me that the only people who seem to be turning a profit here are the consultants? We believe that the Government should change the way the funding is assessed and granted. I would be grateful if the Minister, and the wider Government, could think about how we can return skills in house—both in national government and local authorities—to stop this huge amount of cash going on external consultants.

My noble friend's Amendment 52 relates to the practicalities of implementing a levelling-up agenda. It proposes that a Minister must publish a statement of any levelling-up directors who have been appointed and their role in implementing the levelling-up missions. We have heard for some time from the Government about the levelling-up directors and their intended appointment, but we have had very little detail or further information.

Last year, my noble friend Lord Bassam of Brighton tabled a series of Questions about the government appointment of regional levelling-up directors, asking what their remuneration, role and responsibilities would be. The creation of these posts was announced not long after the White Paper was published last spring. At that stage, it was said that they were to be paid £140,000 a year. Last December, my noble friend was told in response to his Question that at that stage, none had been appointed and that further details on what they might actually do were still being worked out. Put simply, the noble Baroness, Lady Scott, said in response to his Question:

"Further announcements will be made in due course."

5.45 pm

Given that levelling-up directors are, in theory, supposed to be driving the agenda nationally and regionally, and getting both councils and government working together and with all the relevant agencies, charities, businesses and so on that can help deliver this agenda, I would be grateful if the Minister could tell us what progress has been made with these posts. I have heard a rumour that somebody might actually have been appointed; maybe I have missed the confirmation of that. It would be helpful to know about progress on the posts, or whether the Government have had a rethink about this and how it is going to be structured. Have the Government perhaps pulled the plug on this way forward? It would be helpful to have a better understanding. The reason why this is so important is that it strikes me that they are supposed to be the glue between the department, local councils and local communities, and to start to make things happen. So, we consider a proper understanding of their role in implementing the levelling-up missions to be critical. If the Minister can give us any further information on this, it would be gladly received. If he cannot, it would be helpful to know when we are likely to have an update.

Lord Scriven (LD): My Lords, I rise to speak to Amendments 51 and 52 in the name of the noble Baroness, Lady Taylor of Stevenage. As the noble

[Lord Scriven]

Baroness, Lady Hayman of Ullock, just pointed out, these amendments relate to consultant spend by councils and regional director spends, and their roles in the Government's levelling-up agenda.

Amendment 51 is important, as the noble Baroness just pointed out. A freedom of information request showed that in the 245 upper and lower-tier councils, £26.9 million has been spent on levelling-up bids. That is £26.9 million taken away from social care, housing, cleaning, street cleaning and bin collection at a time when councils are finding things particularly difficult. Of that money, the vast majority went to external consultants. Does the Minister think it right that £26.9 million should be used on a lottery process pitting town against town and city against city to bid for levelling-up funds, only for the Government to move the goalposts at the last second by changing the criteria against which councils are bidding, which means not only that this money could have been spent on other services but that it has been wasted?

On Amendment 52, I wish to start with a general point, and here I do not necessarily share the sentiments of the noble Baroness, Lady Hayman of Ullock. The concept of 12 regional directors controlled out of Whitehall somehow being the panacea for devolution is ludicrous. Let us be clear: what this will turn out to be is a system of crude decentralisation. Those of us who have been around for quite a while in local government know that when we had something similar in the past, the regional directors of the department dispersed to work with local area partnership boards came with "We are here to help and support you" as their mantra. However, they were used as government enforcers and the eyes and ears of government, going back to the department and saying which areas were in the good books and who should be put on the naughty step because they were not carrying out the Government's agenda.

Reports back from such regional directors decided who got money and what sticks or carrots were deployed. I know that the noble Earl will pour out soothing words from the Dispatch Box, saying that is not the role, but history shows that it is. Look at the job advert issued in November 2022—it kind of gives the game away. It says that they will report progress to the newly established committee for levelling-up, which is exactly the same as the previous directors in the department did.

We are now told that these regional directors are on hold, but that they could be answerable and accountable to the mayors. Let us take Yorkshire as a region, as these are regional directors. We could have four mayors in Yorkshire with different agendas and from different political persuasions. To which mayor will the regional director be accountable—one of them or all of them? It is clear that these roles have not been thought through from a regional perspective but from an office in Whitehall, with a very Londoncentric view of how they can be used as government enforcers.

Talking of Yorkshire, we are a little perplexed—not that we are from Yorkshire, but perhaps the Minister can help with this. *Civil Service World* on 17 February had an interesting headline, stating that the department

"hires former … No. 10 official as levelling-up director."

Ed Whiting, David Cameron's former deputy private secretary has been hired, and he very helpfully tweeted that he has been recruited to the role of levelling-up director in the north, based in and working out of Leeds:

"I'll be based in Leeds, hoping to be travelling round North",

working with local councils and others on innovation. He also expects to travel to London often too—ah, yes, that newly established Cabinet committee for levelling-up has to be informed. He goes on, quite incredibly—he has been hired on a six-figure salary—to say that "details" of the new role are "tbc".

We are perplexed, Minister, and some clarification would be helpful. Is Mr Whiting a regional director for levelling up and, if not, what is his role and how does it fit with the regional directors? When was he recruited, where was the job advert and who sat on the recruitment panel? Why have local authorities in the north not been informed officially who he is and how he is there to help them? Why has someone been recruited on a six-figure salary when their role is still to be confirmed?

That is why Amendment 52 is important. We need transparency and clarity on who the department is using in the regions and what roles they have, to ensure the Government do not establish an expensive decentralized bureaucracy, costing the taxpayers millions, trying to enforce their agenda in local areas.

Earl Howe (Con): My Lords, as we have heard, this group of amendments is related to consultants and the Government's appointment of levelling-up directors. Specifically, Amendment 51, in the name of Baroness Taylor of Stevenage, would require the Government to publish an estimate of how much local authorities have spent on consultants in relation to Part 1 of the Bill. I fear that requiring local authorities to report in this way would be disproportionate and unnecessary, but let me explain why.

The new burdens doctrine, established and maintained by successive Governments, requires all Whitehall departments to justify why new duties, powers, targets and other bureaucratic burdens should be placed on local authorities, as well as how much these policies and initiatives will cost and where the money will come from to pay for them. This provision already ensures that the Government must properly consider the impact of their policies, legislation and programmes on local government and fully fund any new burdens arising.

Further, local authorities are already bound by the *Local Government Transparency Code*, which mandates local authorities to publish data on all expenditure over £500 in open and accessible formats. I will come back to that point in a second, but I have a great deal of sympathy with the points made by the noble Baroness about expenditure by central government on consultants.

Baroness Hayman of Ullock (Lab): Will the Minister clarify something? When he says that the Government fully fund any new burdens, does that mean that the Government are reimbursing local authorities for the cost of creating their bids?

Earl Howe (Con): It would depend on the circumstances. It would depend on whether the expenditure on consultants was classified as a truly new burden or not, and that is an arcane science on which I do not pretend to be expert. Perhaps I may provide the noble Baroness with clarification in writing on that point, because I recognise that it is of relevance.

As I was saying, I have a great deal of sympathy with the noble Baroness's points on expenditure by central government on consultants. As a matter of principle, I think all Secretaries of State across government would agree that they should impose a self-denying ordinance on their departments where skills can be developed in-house. Where that can happen, it should. The problem is, I suggest, twofold. First, the skills needed are very often highly specialised; secondly, if one looks across government as a whole, it is very difficult to make general statements about the needs of individual departments. However, I think the noble Baroness and I are aligned in our antipathy to expenditure that may turn out to be unnecessary—certainly expenditure that turns out to be wasteful. No department wants to go down that road.

On expenditure, transparency, as so often, is key. I note the comments of the noble Lord, Lord Scriven, about consultancy expenditure by local authorities in preparing their bids. I would just say to him that the decision by some local authorities to appoint consultants in their bidding process was a decision for them, and such decisions will doubtless have reflected in part the point that I just made: that the necessary skills are not always on tap locally. I think that is all I can say about that, but I will write on his questions about Mr Whiting, as I do not have the necessary briefing on that in front of me.

Lord Scriven (LD): I want to ask a specific question, which I think the noble Baroness, Lady Hayman of Ullock, also asked. Has any regional director been appointed? That is the key question, particularly about Mr Whiting.

Earl Howe (Con): I am coming to Amendment 52 in a second. It might be helpful if I added a few comments about local government funding more generally, because we recognise that the sheer number of different funds has become onerous for some councils to navigate and deliver. We have taken initial steps to address this complexity in the funding landscape. For example, the levelling-up fund provides cross-departmental capital investment in local infrastructure, and the UK shared prosperity fund provides resource-focused investment to support people, boost pride in place and strengthen communities. However, the levelling-up White Paper made it clear that we can do more, and we will set out a plan on funding simplification shortly.

6 pm

Amendment 52, also in the name of the noble Baroness, Lady Taylor, sets out that we must publish a statement of any levelling-up directors who have been appointed and their role in relation to the implementation of the levelling-up missions. It might be helpful if I gave a little bit of background on our approach to levelling up. It is clearly a long-term programme. Levelling-up directors are but one part of a wide suite of activity across government to deliver the 12 missions and the objectives of the levelling-up White Paper. I am afraid that I can give the noble Baroness only a brief update on where we are. I can tell her and the noble Lord, Lord Scriven, that no appointments have yet been made. We are reviewing the recruitment process for levelling-up directors internally, as well as our wider approach to working with places across the country. It is obviously key that we get this right and that we join up effectively across government. I or my ministerial colleague, my noble friend Lady Scott, will be happy to update noble Lords further on this in due course.

To bring us back to the specific amendments, Civil Service appointments are already subject to the requirements of the Constitutional Reform and Governance Act 2010, so it is unnecessary to seek to create further statutory processes around this. Legislating in this way with regard to Civil Service roles would be disproportionate and unnecessary. Therefore, I ask the noble Baroness to withdraw Amendment 51. I hope that what I have said has been reasonably helpful and that she will not feel that she must move Amendment 52.

Lord Berkeley (Lab): My Lords, I have listened to this debate very carefully. The noble Lord, Lord Scriven, talked about Yorkshire, which he clearly knows well. Apparently, this new director will be based in Leeds. Several times "the north" was referred to—but does "the north" include west of the Pennines or is that a different area? What is the geographical boundary of these things, or is it still fluctuating?

Earl Howe (Con): It is open for decision. We want to see local areas taking the initiative themselves. Where there is a functioning economic hub, for example, or a whole county, they may wish to apply for CCA status, but it is up to them to make those decisions. One can talk in general terms of "the north", but until we know that the appetite is in those northern areas for taking advantage of the opportunities that we are trying to create, I cannot be more specific.

Lord Scriven (LD): For clarity, the issue with Mr Whiting, to whom I referred, is that, as the Minister helpfully said, no regional director has been appointed so far. However, Mr Whiting describes himself as a regional director for the north and not for a particular region. Therefore, it is important that, when the Minister writes to me, he clarifies exactly what Mr Whiting's role is and how it fits with the regional directors.

Lord Berkeley (Lab): My Lords, can he also clarify the geographical area for which he is responsible?

Baroness Hayman of Ullock (Lab): My Lords, I agree that it would be very helpful, because it is a bit confusing at the moment to know exactly what is what. I would appreciate that.

I thank the noble Lord, Lord Scriven, for his support of Amendment 51. On Amendment 52, I am not entirely sure that I agree with the appointment of directors. The point of the amendment is to get a better understanding of exactly what is happening, what the timescales are and what is expected of them, then to be able to make a proper assessment of exactly

[Baroness Hayman of Ullock]
what we think about this policy of directors. It is quite difficult to have a proper position on it if you do not know what is going on and what sort of people are likely to be getting the jobs. It would be extremely helpful if the Minister could write to us around any appointments that might be in the pipeline to give us a better understanding of how it is all working and what the timescales are.

While we are on Amendment 52, the Minister said that the recruitment process was being reviewed. When he writes, it would be good to understand what that means. Has there been any process so far? Are they liaising with the sector on how recruitment might best be done and on the timescales? I know that the Minister cannot give us any further information on that today, and he may not have a lot to put in his letter, but if he could give us as much as he possibly can, so we know where we are as we move forward through the scrutiny of the Bill, it would be extremely helpful.

On Amendment 51, again I thank the Minister for agreeing to write to me with more clarification around these matters. It is extremely helpful to have that. I am pleased that he agrees with us that developing skills in-house is important and that we must not have wasteful expenditure in departments. Again, the way forward is to stop it happening and to invest more in people. I thank him for his response, and thank the noble Lord, Lord Scriven, and my noble friend Lord Berkeley, for their contributions. I beg leave to withdraw my amendment.

Amendment 51 withdrawn.

Amendments 52 to 57 not moved.

Clause 6: Interpretation of Part 1

Amendments 58 and 59 not moved.

Clause 6 agreed.

Clause 7: Combined county authorities and their areas

Amendment 60

Moved by ***Baroness Taylor of Stevenage***

60: Clause 7, page 6, line 33, after "whole" insert "or part"

Member's explanatory statement

This probing amendment means that a CCA can include part of a two-tier council area, rather than the whole area.

Baroness Taylor of Stevenage (Lab): My Lords, as we start to examine those parts of the Bill which address local government and devolution powers, we might welcome the fact that the Bill addresses the long-standing asks of councils and their representative bodies for greater devolution, and that there is more flexibility in the proposed structure of combined county authorities than we might previously have envisaged. Nevertheless, we had hoped for a Bill that was far more ambitious and open to ideas when looking to address the imbalance of power in the UK.

As we have often heard in your Lordships' House, the UK today is the most centralised state in Europe and there is too much in the Bill that seeks further powers for the Secretary of State to intervene. I welcome very much that the Secretary of State accepts that the national challenges require place-based solutions—at least, it appeared so from the White Paper. However, I feel strongly that Part 2 would better deliver this if accompanied by greater powers and fairer funding so that leaders can support the local economic recovery according to the needs of their own areas.

We have pointed out before in your Lordships' House that, without a comprehensive and fair funding system across local government which would properly empower local authorities to deliver what is needed to support, sustain and develop their communities and economies, any steps taken towards devolution will have a hollow ring. Even worse, if funding mechanisms are driven by the current competitive bidding pots, which favour areas that are able to spend the most on shiny bids, they will run counter to the whole levelling-up agenda. I was grateful to the noble Earl, Lord Howe, for saying that the sheer number of funds have become onerous and that we certainly need to look at that. There is a further danger in this "bidding bingo" way of funding local areas: it is yet another way of imposing the Government's policy on growth and infrastructure in local areas and does not make for true devolution in any sense of the word.

We may have wished that provisions for reorganising local government had been the subject of a separate devolution Bill, an issue I have raised before in your Lordships' House. Given that this does not appear to be on the horizon, we will be seeking amendments to transfer greater powers to local areas. I welcome the implicit recognition that devolution can drive economic, social and environmental development in local areas, but questions remain over whether the specific model of combined county authorities is right for every area, and whether all the current constituent parts of local government will have their importance recognised and their voice heard as the new structures develop. Local residents and leaders will always know best their own areas and the powers they need to deliver on their ambitions. Amendments for this part of the Bill will aim to allow greater flexibility for towns, cities, counties and the people who live in them to determine their own future.

Amendment 60 is a probing amendment to discover what a CCA can include as part of a two-tier council area—will all or only part of it be allowed? The amendment is designed to help us understand whether the Government will prescribe the nature of a CCA area to include all constituent councils. This has been tabled because there has been significant confusion about the geography of CCAs and what is and is not in scope. For example, does the CCA have to include the whole of an upper-tier authority area? In the case of my home county, Hertfordshire, must it include the whole of the county? The Minister will know that this is complicated: in some areas, counties already include unitary areas, and some county areas have enormous populations and significantly diverse demographics.

In previous devolution rounds, we have seen a confusing spectrum of scope—from being instructed on what will be in and out geographically, to

documentation saying that it is for local government to decide. The second option is clearly preferable to all of us, but even when that is the stated initial intent, the goalposts are often moved during the bidding rounds to be more prescriptive than was initially thought.

Amendment 99 probably belongs better with the group of amendments relating to consultation on CCAs. If consultation is needed for the formation of a CCA and/or its dissolution, as we contend in other amendments, should there not also be consultation when a CCA is to be amended? Later regulations could determine the qualifying parameters for this, so that extensive consultation is not necessary for minor changes. This and similar amendments seek to determine the principle of public engagement on local government structures. I beg to move.

Baroness Pinnock (LD): My Lords, the noble Baroness, Lady Taylor of Stevenage, is quite right to table this amendment to explore the area that can be included in a combined county authority. As I understand it, a combined county authority is a bit of a misnomer. Last Wednesday, the noble Baroness, Lady Scott, said in response to an amendment that a CCA could include, for instance, the unitary authority of Wiltshire and the city unitary authority of Swindon. Equally, when I asked her what would happen in Devon, she said quite clearly that the county and district authorities of Devon and the unitary authority of Plymouth would be included. These are not necessarily combined county authorities: they are unitary and county and district combined authorities—if that is determined, we hope, by the people who live there and the councillors elected to represent them.

6.15 pm

It is really important for us to get some clarity about how this will operate. In some parts of the Midlands, you can imagine there being concern about which parts of a county are to be included. For example, in Nottinghamshire and Derbyshire there is an overlap of travel-to-work areas, and they would try to form a combined authority that would not necessarily include the whole of Nottinghamshire or Derbyshire. For example, there was certainly some movement to try to get parts of North Derbyshire included in the West Yorkshire Combined Authority. There is a lot to consider, and I hope we will get clarity from the Minister on the Government's thinking.

I support the amendment in the name of the noble Baroness, Lady Taylor of Stevenage, on the ability of just part of a two-tier authority to join if that is what is wanted. You cannot expect all the district councils necessarily to want to go with their upper-tier county authorities into a new combined county authority if that does not work for them. For instance, a historic county boundary may no longer represent the travel-to-work areas of that geographic area.

I am also pleased that the noble Baroness, Lady Taylor, has tabled Amendment 99, on public consultations. The public should have a say on this issue, which will come up again in later groups. There has been too much of a top-down requirement for combined authorities, which depends on those currently in power in local areas making the decisions without proper decision-making—more than consultation—by local people. In the end, the public will have to be asked to pay the additional taxes to support the working of the combined authority. Clause 7 simply states:

"The Secretary of State may by regulations establish … a combined county authority".

That is not good enough. Local people, who are going to pay the additional taxes required, should have a say in what happens.

After all, the combined authorities may or may not be of benefit to local communities. They will benefit the Government, because they will be doing their will: in my view, we currently have delegation from the Government, rather than devolution to local people. For instance, in the West Yorkshire Combined Authority where I live, we have delegation of transport funding and regeneration funding, but with all the strings attached that the Government apply to funding where the decision has been made in departments or in combined authorities' mayoral offices.

Therefore, if combined authorities do not have prior public debate and prior consultation and approval, what we get is the creation of another remote institution making decisions for local areas without direct accountability for them. Can the Minister explain what policies and proposals of combined county authorities can be questioned and challenged before final decisions are made? Currently, scrutiny arrangements in combined authorities are of the implementation and outcomes of decisions. I am keen to hear from the Minister whether the Government support the idea of pre-decision scrutiny to help to improve outcomes and involve more elected representations. In that way, more local people—or, certainly, their elected representatives—will have a say in any policies and priorities that are set out by the combined authorities. I support these two amendments and look forward to the reply.

Earl Howe (Con): My Lords, this group of amendments relates to the area of a combined county authority, the new type of local government institution being provided for in Part 2 of this Bill. Provisions in this part support the delivery of the local leadership mission of the levelling-up White Paper, to enable by

"2030, every part of England that wants one"

to

" have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement.

Baroness Pinnock (LD): I am sorry to interrupt so early in the Minister's response, but could he define more clearly what the "highest level of devolution" actually means?

Earl Howe (Con): If the noble Baroness will bear with me, I shall do my best on that.

Noble Lords will be aware that 10 combined authorities have been established since 2011 in our city regions. However, we recognise that such authorities might not be so appropriate for non-metropolitan areas. The new model of combined county authorities is more appropriate for non-metropolitan areas, many of which have two-tier local government. It enables the establishment of a single institution covering a functional

[Earl Howe]
economic area, or whole county geography, which would be a suitable institution to provide effective leadership over an appropriate geography to qualify for a devolution deal.

I take on board the comments of the noble Baroness, Lady Taylor, about local government funding, but it might be helpful if I added a little to the information I gave the Committee in the last group of amendments. Our intention is to set out a plan for streamlining the funding landscape, as I mentioned, to provide greater flexibility for local authorities and make it easier to navigate opportunities for growth. This will include streamlining local growth funds, reducing inefficiency and bureaucracy and giving local government the flexibility it needs to deliver for local economies. As part of this work, we expect that there will be fewer small competitions. Where competitive funds do exist, we will look to streamline bidding and support greater alignment between revenue and capital sources. We will also consider the monitoring and evaluation requirements to ensure that places have robust, proportionate, ongoing monitoring and evaluation plans for the impact and delivery of investments and spending.

Amendment 60, tabled by the noble Baroness, Lady Taylor, seeks to allow part of a two-tier county council area to be included in a combined county authority, rather than the whole county council area. This would not be consistent with the policy we set out in the White Paper, whereby we will devolve to an institution covering a whole county geography or functional economic area. I will come on in a moment to the rationale for that model. In a combined county authority, such as the intended East Midlands CCA, the upper-tier councils within the area covered by a combined county authority are the constituent members of the CCA. There is no upper-tier council that covers part of a two-tier county council's area; the only upper tier council is that two-tier county council, whose area covers a wider geography. As such, as the two-tier county council will be the constituent member of the combined county authority, the whole area that the council covers must be part of CCA's area.

Moreover, allowing part of a two-tier county council's area to be part of a combined county authority would not be consistent with the levelling-up White Paper's principle of devolution being to institutions covering functional economic areas or whole county geographies, over which a number of functions should be exercised for maximum effect. Splitting the responsibility for such functions could also lead to discrepancies—

Baroness Pinnock (LD): Can the Minister explain, then, where the geographies of a county area do not coincide with the geographies of an economic or travel-to-work area? Often, they do not. What I have heard is that you can either have a functioning geography of a county and its two tiers, or the alternative, but not a mixture of the two.

Lord Scriven (LD): I am pleased that the Minister has raised the East Midlands. On the northern tip of the East Midlands there is Chesterfield and north Derbyshire. Most businesses in that area would look into the South Yorkshire Combined Authority in terms of their business, and not into the county combined authority. It seems to be an administrative boundary designed down here in Whitehall rather than a true travel-to-work area. How would the north Nottinghamshires and Chesterfields be affected by this when, in reality, the economic performance and activity is actually into the South Yorkshire Combined Authority?

Baroness Taylor of Stevenage (Lab): May I add to what my noble colleagues have said? This goes to the heart of this amendment. We struggle to say how you can have a county with more than one functioning economic area included in that county. To take my county as an example, the south of the county largely relates to London, because some of the boroughs almost are London boroughs, whereas the north of the county relates much more to Cambridge and Bedfordshire. There are definitely two distinct, functioning economic areas within one shire county. The shire counties go back centuries: their economic geographies have changed very considerably since then. If you take the economic geography of my noble friend Lady Hayman's area, people in Cumbria may even relate to an economic area that includes parts of Scotland. This is not a simple picture around the country.

Earl Howe (Con): Some extremely sensible and logical points have just been made. Perhaps I could address them by pointing out the contrast to what we have seen up to now. Devolution deals, up to now, have typically been put in place in city regions, where they cover the functional geographies in which people travel, commute, work and live.

The Government absolutely recognise that functional economic geographies are far less clear-cut in rural and semi-urban areas, and that the strategic scale and cultural and political resonance of county identities can act as a useful proxy. One can work only on the basis of best endeavours when trying to decide what a sensible area looks like. On a best endeavours basis, deals should be agreed over a sensible geography of a functional economic area, with a single institution in place across that geographic footprint to access more powers. That is the aim.

6.30 pm

We absolutely recognise that in some areas it will not be a straightforward case of drawing a line around a particular geographic area but, where there is a will to make progress, it ought to be possible to find a way through. The department will do its best to assist areas in their thinking if that is of help. We will prioritise establishing deals where they cover a strategic geography, either a functional economic area or a whole-county geography.

The noble Baroness, Lady Pinnock, asked me to provide some clarification on the various tiers of a devolution package. The most comprehensive devolution package, level 3, is on offer to areas that have or are able to put in place a single institution over a sensible geography, with the strongest and most accountable leadership, such as a mayoral combined authority, a mayoral combined county authority or a single unitary authority, or a county council covering the whole

county area, with a directly elected mayor or leader. If the structures are in place for that kind of powerful leadership, it is likely that the area will qualify for the highest tier of package.

I have a lot to say in response to the noble Baroness's points about local consultation but, if she will allow, we can cover that issue more fully in the debate on the next group of amendments, which are all about local accountability.

To get back to the amendment, I suggest that splitting the responsibility for functions currently vested in local authorities could lead to discrepancies in the delivery of important services, such as transport or adult education, within areas of a county council. I think it would introduce unnecessary complexity.

Lord Scriven (LD): I am sorry to interrupt the Minister, but he keeps talking about complexity. This is complexity of boundary, not of reality. I will give him a situation where complexity may hold back the levelling-up agenda. Let us again take the top end of the east Midlands and South Yorkshire. If both the South Yorkshire combined authority and the Derbyshire and Nottinghamshire combined authority have control of the skills money, the fact that probably about half the people from the north end of the east Midlands come up into South Yorkshire means that the skills required should be funded for jobs available in the South Yorkshire combined authority. If the Derbyshire and Nottinghamshire combined authority decides not to invest in that type of skill, the issue is that the flow of labour will not be there for South Yorkshire businesses. How does that kind of problem get solved? It is not an administrative issue but the reality of having the skills where real people and businesses travel and work together.

Earl Howe (Con): I take the noble Lord's point. The experience we have had with combined authorities is that local authorities' natural tendency is to co-operate with each other. We have seen this all over the place: they do not want to operate in silos and they look outside their boundaries. Yes, there may well be cases where at the beginning there would seem not to be a particularly good fit, but that does not preclude two authorities, such as those he mentioned, getting together and finding a way through, if they possibly can, to address the mismatches of the kind he mentioned.

Amendment 99 seeks to amend Clause 23 to require a public consultation before any proposal to change the area of an existing combined county authority. We agree that those with an interest in the area should be consulted before a combined county authority is changed. As I said, we will have more to say about this in the debate on the next group of amendments.

Clauses 45 and 46 set out a requirement for a public consultation on any proposals from the local area on changes to the area of a CCA. Where a combined county authority has been established and subsequently seeks to change its boundary, Clause 23 enables the Secretary of State to make regulations for areas to achieve that. The Secretary of State may make regulations changing the area of a CCA if that is something the area consents to, the Secretary of State agrees and Parliament approves the necessary secondary legislation.

We fully recognise the crucial importance of residents in the local area having a say; that is common ground between us. That is why any CCA or local authority seeking to submit a proposal to the Secretary of State to change the area of a CCA must carry out a public consultation, as set out in Clause 45(3). This consultation must take place in the area covered by the CCA. This enables local residents, businesses and other interested parties to have a strong input into any such proposals. A summary of consultation responses is then to be submitted to the Secretary of State alongside the proposal.

Clause 46 provides an additional safeguard to ensure that there is sufficient public consultation. This enables the Secretary of State to undertake a consultation prior to making any regulations to enact these changes if they feel that there has been insufficient public involvement in their development.

We completely agree with the sentiment of Amendment 99, but I suggest that we already have provisions later in the Bill to address this; we will debate some of these in a few moments. I therefore hope that the noble Baroness feels able to withdraw Amendment 60 and not to move Amendment 99 when it is reached.

Baroness Taylor of Stevenage (Lab): My Lords, I am pleased we tabled these probing amendments, because they have brought out some of the discussion we needed to have in these areas. I am grateful to the noble Baroness, Lady Pinnock, for her comments. She said that "combined county authority" is a misnomer, and I think she is absolutely correct.

Previous responses indicate that we could include unitaries and counties all within a two-tier area. It is not clear in the Bill what that might mean. In the example of Nottinghamshire and Derbyshire, with the overlap of economic areas and travel-to-work areas, et cetera, the geography is far more complicated than back in whatever century it was when the county shire boundaries were devised. The purpose of my amendment was to determine whether parts of a two-tier area would be required to join a CCA if it did not work for them. It is really important that we do some more probing around this and think about it more.

We did not get on to the subject of population, which I will come to in a minute. My concern with this is that we have the phrase that the Secretary of State can determine "by regulation" what a combined county authority will look like. That does not seem to me to be in the spirit of devolution in any way whatever. If it is for the Secretary of State to determine that by regulation, I would be interested to know the noble Earl's view on how that would be conducted in relation to the partners in the local area.

I am grateful for the noble Earl's extensive response on this, which is an indication that we are moving the debate forward somewhat. I will come back to the issue of the functional economic area. These are not neatly contained now within county council areas. We have heard a few examples of that. We need to focus on that and think about how we might amend the Bill to recognise that.

The noble Earl spoke about streamlining funding. I was grateful for those comments and I am sure they will be welcomed across local government, but when

[Baroness Taylor of Stevenage]
will we see the detail of how that streamlining of funding will work? If he has any more information on that, it would be helpful.

I have a lot of sympathy with what the noble Earl said about city regions. They make a lot more sense—I spent quite a lot of time with colleagues in the city region in Manchester looking at how that works. However, that does not mean that that model can be lifted and put down in areas that are very different in this country. The difficulties that we have set out underline exactly why there must be flexibility for local areas to consider for themselves what the appropriate geography might be for them.

I return to the issue of population size. In previous iterations of these bids for devolution, we were told that any bid under 600,000 population would not be considered. My county of Hertfordshire has a population of 1.2 billion—sorry, 1.2 million; I am exaggerating—which is a very different issue from a rural county that might have a population of only 300,000. That is why this is much more complicated in shire areas. Will the noble Earl comment on whether population issues will be taken into consideration in relation to the size and constitution of combined county authority areas?

Earl Howe (Con): It may be helpful to the noble Baroness if I comment on that specific question. We expect upper tier local authorities with a population of less than 500,000 to collaborate with their neighbouring authorities to agree a sensible geography for a devolution deal. Where neighbouring local authorities wish to join a deal which has been negotiated and have the same level of ambition, we will expect other authorities to take this seriously in order to secure devolution and to avoid areas being stranded. Once again, I come back to the point I made earlier that our experience with combined authorities has shown that this kind of co-operation takes place quite readily. That is the position we have taken currently.

Baroness Taylor of Stevenage (Lab): I am grateful to the noble Earl for his clarification. It covers one side of the picture with the smaller county areas. However, larger county areas, where the population may not lean towards a single county authority, should still be a subject for discussion.

I agree that we have several amendments relating to consultation processes and that the other amendment in this group probably sits better with those, so I am happy to postpone discussion of that until the future group. However, the principle of consultation, and recognising the importance of local areas having a say, seems to be enshrined for all the other issues around the setting up and dissolution of a CCA. If it is right for those, it must be right for a change of boundaries too. That is the point we were trying to make with Amendment 99. That said, we have had a useful discussion and I am happy to withdraw Amendment 60 at this stage.

Amendment 60 withdrawn.

6.45 pm

Amendment 61

Moved by ***Baroness Taylor of Stevenage***

61: Clause 7, page 7, line 5, at end insert—

"(3A) The Secretary of State may not lay regulations under this section until he or she has deemed that establishment is supported by no less than 60% of residents in the area."

Member's explanatory statement

This means that a CCA is established only if the Secretary of State deems there is no less than 60% of support from the local residents.

Baroness Taylor of Stevenage (Lab): My Lords, as we have already discussed this afternoon, the principle of consultation when fundamental changes are being made to governance structures is an important one. Amendment 61 is aimed at establishing the principle of public consultation in relation to the formation of a combined county authority and to setting a realistic threshold for the constitutional reform to proceed.

A fundamental principle of localism is that changes must be made with people and not to them. Without a provision in the Bill like this, it is too easy for a leader or a group of leaders, or even a Secretary of State, to take fundamental governance changes, such as the formation of a CCA, a long way without consulting those who will be affected by them. The complex structure of local government in the UK, which means some areas have multiple layers of local authorities overseeing services, makes this even more necessary. The amendment in the name of my noble friend Lady Hayman outlines the process for ensuring that the outcome of the consultation process is publicly available, essentially before any submission to form a combined county authority is made.

Amendment 62 is designed to probe government thinking on the constitution of combined county authorities. With the rolling five-year housing targets potentially being removed, for example, is it the intention that governance structures should be able to consider the impact across a defined economic area, or do the Government envisage that the combined county authority will determine such matters for itself? If the latter is the case, is there to be an arbitration process which will help to determine where one economic area crosses boundaries with another? On the issue of non-constituent members of CCAs, for example, will it be the case that some members of authorities will be required to sit in more than one authority if it affects their economic geography?

Amendment 63 reflects on the nature of levelling-up missions and the significant part of the Bill that refers to planning matters. The Government may have assumed that co-operation between combined county authorities would take place in order, for example, to resolve boundary issues where a service is necessarily delivered across boundaries or where a planning matter either crosses boundaries or requires a facility delivered in one area to have the use of services provided in another. As I make these points, I am reminded of the example of Harlow and Gilston village, which sits in both Essex and Hertfordshire.

Planning history suggests that writing the duty of co-operation on the face of the Bill would be helpful. Whether we are talking about the delivery of missions across rural areas, or in urban areas such as London and Manchester, where the boundaries of CCAs may be complex, guidance and a framework for duties to co-operate would probably be helpful.

Amendment 64 is crucial, particularly as it is difficult to see how missions will be delivered at all with a patchwork quilt of non-coterminous boundaries between public bodies as they are currently constituted. This has been a long-standing issue in local government. The amendment will, for example, enable discussions about the impact of the rollout of ICSs on the potential for future health devolution—a really important issue. If we do not devolve the responsibility for health issues to these new authorities, we will not be able to tackle as effectively the inequalities in health that we discussed in earlier debates on the Bill.

It is welcome to note from the Greater Manchester population health plan that significant benefits have already been recorded for local residents following the devolution of health and social care to the Greater Manchester Combined Authority. This includes a substantial increase in school readiness and a smoking prevalence rate falling twice as fast as the national average. We definitely see the benefits of this, and we want to see it extended across other devolved areas. We would welcome further information from the Government on how they envisage the further devolution of health, police and crime commissioner powers, and other public functions which would enable the progress of the missions.

Amendment 65 is probably shaped by my long experience as a district councillor. We in district councils were very pleased to see the original amendment to Clause 18, which enshrines the role of district councils in determining the future governance of their areas; but I always believe in a belt and braces approach, particularly where the track record for inclusion has not always been consistent. The same applies to my colleagues in the National Association of Local Councils in respect of parish and town councils. We want everybody to be included in these discussions.

Lastly, Amendments 101 and 102 refer to the dissolution of CCAs. The first would require that public consultation take place before dissolution. If there is to be consultation on the setting up of a CCA, it follows that it should also take place if one is to be dissolved. Amendment 102 asks the Secretary of State to clarify, upon dissolution of a CCA, how local powers will be retained, and implicitly suggests that they will not return to central government. I would be interested to hear the Minister's comments on how that might work for the future. I beg to move.

Baroness Bennett of Manor Castle (GP): My Lords, I rise to speak to Amendment 127, which appears in my name in this group, and to make a couple of brief comments on the amendments so clearly and comprehensively presented by the noble Baroness, Lady Taylor of Stevenage.

I refer back to the terminology the noble Baroness used in the previous group when talking about what the spirit of devolution should be: it should surely be a democratic spirit. The decision about the shape of devolution should rest with the local people, the people who are actually affected. Historically, the perception and the reality of some instances of devolution has been deals done un-transparently, in the dark, in what would once have been smoke-filled rooms. The smoke may have gone, but that lack of transparency remains.

What we are seeking here is a different idea of devolution—devolution that is truly transparent and open, with local people in control of the process rather than having it inflicted on them. With that in mind, my Amendment 127 calls for a referendum to be conducted on whether a combined county authority should be established in a given area. It occurs to me, having listened to the debate on previous groups of amendments, that the amendment should say "established or disestablished", but we are in Committee so we can explore these things as we go along.

I see that the noble Lord, Lord Scriven, is in his place, so we might have already had extensive discussion about what happened in Sheffield, South Yorkshire and north Derbyshire. I will not, therefore, go into great detail on that, but it is worth noting that Sheffield voted against having a mayor and then, not long afterwards, found itself with a mayor.

I will also give a more positive, more recent example from Sheffield. Sheffield is the largest local authority to convert, through a referendum, from a cabinet-based system to a modern committee-based system of government. I know many of the people who were involved in that campaign, which was led not by political parties but by a local community group. Many people said, "You'll never get this referendum through. It's all too technical, difficult and complicated, and people won't understand." But the referendum was voted through. It was a real vehicle for a huge amount of debate and discussion in the city about how it was run and administered, and how that could be done better. Putting a referendum in for CCAs would be a chance to have a discussion and a debate, and to really engage local people, which is what we need in our local areas to improve the quality of local governance.

Of course, the other recent example of such change, driven at the local level with decisions made by local people, is the city of Bristol deciding to get rid of its mayor. That was the decision that the people of the city made. Again, some said, "You'll never get this referendum through; everyone is just going to shrug and it will all be too difficult." But people were engaged and involved and they made the decision for themselves. Surely, that is what democracy means, and that is why I have tabled this amendment.

Lord Shipley (LD): My Lords, I will make just one or two comments on this group. I have listened very carefully to this and the previous group and I think we have an opportunity for the Government to clarify a number of issues around consultation and, indeed, referendums. I listened carefully to what the noble Baroness, Lady Bennett of Manor Castle, said about referendums. What is needed is a statement from the Government, hopefully before Report, on what the nature of consultation should be. What would be deemed to meet a minimum requirement or threshold for there to be an official consultation?

[Lord Shipley]

Secondly, the Government need to be absolutely clear what their own powers should be in relation to a consultation: what they can require of a local authority or set of authorities. I welcome the fact that this discussion is taking place; it is really important. We have discussed before in recent years during the passage of previous Bills what local people have a right to expect of their consultation. I, too, in Newcastle, have been through a mayoral referendum, and the same thing happened. The decision was not to have a mayor, but, of course, we now have a mayor of the North East Combined Authority—for which, in fact, there was no referendum. Our referendum was within scope; I ask the Minister: are referendums out of scope?

Turning to Amendment 62, I was struck by one or two other very important issues raised by the noble Baroness, Lady Taylor, which the Government need to be a bit clearer about. The first was also raised by the noble Baroness, Lady Hayman of Ullock: travel-to-work areas. It all depends how big your CCA or other combined authority is geographically. A very important issue is raised in Amendment 62: whether the Government are thinking in terms of each CCA having a single economic hub. In a number of areas that would not be suitable. In my own part of the country, several travel-to-work areas apply. Hopefully, that point will not be forgotten by the Government.

Lastly, on Amendment 63, the noble Baroness, Lady Taylor of Stevenage, made another very important point about the duty to co-operate. When during previous Bills we have debated the duty to co-operate, the Government have always been very positive about having that duty placed clearly on the face of the Bill. But a CCA is not just being required to co-operate with a neighbouring CCA, but with all the other bodies that may relate to it. Given the ability of the public sector to operate across boundaries, both geographical and in terms of responsibilities and powers, it matters that the duty to co-operate is made absolutely clear at the outset.

Baroness Pinnock (LD): My Lords, I will just make one or two additional comments to those of my honourable friend Lord Shipley, the main one concerning Amendment 126 in the name of the noble Baroness, Lady Hayman of Ullock, about public consultation. I have been involved in a number of statutory instruments on the establishment of metropolitan combined authorities where the public consultation involving "the public" has been minimal, but it was agreed to be satisfactory because it enabled other local institutions—be it businesses, local council representatives or the LEPs—to respond. That has been labelled "public consultation".

7 pm

It seems that once they have been established, combined authorities of whatever nature will rely on public support. Public support will not be forthcoming if they have not been fully engaged with on the establishment of the mayoral authority. The examples given by the noble Baroness, Lady Bennett, were appropriate in this instance. Bristol City Council decided to get rid of its mayor. Surely that has to be available. Equally, it has to be writ large in the Bill that the public in an area have a right to have their voice heard prior to a combined county authority being established. In the end, they are the recipients of both the tax bill and the decisions made by that authority.

I emphasise the importance of coterminosity. It is not just economic geography or travel-to-work areas—call it what you will—it is about coterminosity with, for instance, police areas and national health areas. These make a big difference to a combined authority's ability to make a substantial difference to the lives of people in that area. The new integrated care boards seem to have thrown out the idea of coterminosity, certainly where I live, and that will be a negative on their ability to do their best for local people.

The only other point I want to make is about the right for the Government in Clause 24 to dissolve a CCA, and again the importance there of local people being consulted and being able to influence the outcome of a decision. Given that, this is an important set of amendments and I look forward to the noble Earl's response.

Baroness Hayman of Ullock (Lab): My Lords, I will make a few comments on my Amendment 126 before we hear the Minister's response. I tabled this amendment because public consultation is something I feel very strongly about. I worked in consultation before I entered Parliament. The noble Lord, Lord Shipley, made some comments about standards of consultation, and it is incredibly important when we are talking about consultation that we know what we mean by that and that we are not just talking about stakeholder engagement, because they are very different things. I know that the Government do have minimum standards of consultation that they follow, so I wanted to make sure that that was properly on the record.

I want the results of the public consultation to be publicly available because consultation is not just about going out and talking to people. It is about listening to people and, having listened to them, it is about demonstrating the changes made in response to what the public have said during that consultation process. That is why, to me, this is critical. If you are to bring people on board with what you are trying to achieve, they need to genuinely believe that they have been part of the process in a constructive way. Even if you do not agree with them, it is important to explain why not and whether any further action has been taken.

Finally, I may have got this wrong, but I think the Minister said in his response to the previous debate that there were no further requirements around consultation because it is covered in Clause 46. I had a look at Clause 46 and it says:

"The Secretary of State must carry out a public consultation unless"

and there are few examples. The final one is if

"the Secretary of State considers that no further consultation is necessary."

Again, that would concern me unless it was clearly demonstrated and transparent why that was no longer required, because we have seen publicly what has been said and what further action has been taken or not taken and the reasons surrounding that. I would be grateful if the Minister could clarify that that is the approach the Government will be taking to consultation in this area.

Earl Howe (Con): My Lords, as we have heard, this group of amendments covers preconditions for establishing, and indeed disestablishing, a combined county authority. This process is locally led and it aligns with the process for a combined authority that we have seen successfully used in many areas to date.

Amendment 61, tabled by the noble Baroness, Lady Taylor of Stevenage, seeks to insert a requirement into Clause 7 that the Secretary of State can establish a combined county authority via regulations only if they deem there to be at least 60% support from local residents in the area to be covered by the CCA. In a similar vein, Amendment 127, tabled by the noble Baroness, Lady Bennett of Manor Castle, seeks to insert a requirement into Clause 44 for there to be a referendum before the Secretary of State may make regulations to establish a combined county authority, and for this question to be approved by a majority of local government electors.

We do want to ensure that the local public, in the broadest sense, are consulted on a proposal to establish a combined county authority in their area. This desire on the Government's part is already captured by the requirement for a consultation provided for in Clause 43. Clause 43(4) states that, prior to submitting a proposal for a combined county authority to the Secretary of State, the local authorities proposing the establishment of a CCA must undertake a public consultation on the proposal in the area that the CCA will cover.

The noble Lord, Lord Shipley, asked, perfectly reasonably, what a proper consultation would look like. One important element is that it would have to cover the waterfront, as it were, in terms of stakeholders, to get a real sense of the strength of feeling and the climate of opinion in an area, and the extent to which an authority has taken the trouble to represent the scope of that opinion and feeling in the submission it makes. Once the consultation has happened, the authorities must submit a summary of consultation responses to the Secretary of State alongside their proposal.

When deciding whether to make the regulations to establish a combined county authority for an area, one of the tests the Secretary of State must consider is whether the area's public consultation is sufficient. That is a judgment the Secretary of State must make in the light of the information presented, but if they conclude that it has not been sufficient, Clause 44 provides that the Secretary of State must undertake a public consultation before any regulations can be made.

I noted the point made by the noble Baroness, Lady Hayman, and will take advice on why that clause is worded as it is. I suggest to her that there is nothing sinister in it—it is the way that these legal provisions have to be drafted—but the net effect is as I have described, because what we wanted to introduce was a safety net, as it were, of a further Secretary of State-initiated consultation if that was deemed necessary. I hope the fact that we have done that demonstrates the importance which the Government attach to the consultation process.

We believe that the existing clauses provide for sufficient local consultation. I hope the way I have outlined the provisions and what we intend them to do in practice has persuaded the noble Baroness, Lady Bennett, that a referendum would be unreasonably burdensome. What we want, above all, is transparency of local opinion and that I hope we will get.

Baroness Bennett of Manor Castle (GP): Many examples are flashing through my head, but I am thinking about one particular local government consultation that I saw, which happened to be around the city of Chester. The consultation asked, "Do you want to build on the green belt in areas A, B, C, D or E?". Many local people pointed out to me that they wanted to say, "None of the above", but there was no space in the box or provision to do that. So can the Minister reassure me that part of the Secretary of State's examination of the summary of consultation responses will look at whether the consultation truly gave the space for local opinion to be expressed?

Earl Howe (Con): That is certainly the aim. I do not know whether the noble Baroness would agree with me that one of the downsides of referendums that we have seen in the past is that people are asked to take a binary decision. That very often does not allow for the nuances and subtleties of an issue to be presented in the question, to put it at its mildest. So we think the consultation model is more appropriate for this type of situation, particularly as the different constituent elements of a community will have different interests and viewpoints on the issue in question.

Lord Scriven (LD): It is clear that, even barring a referendum, under Clause 44(3)(c) the Secretary of State will ask for further consultation if they consider that it is required. I assume that the Secretary of State will not have a subjective opinion on that and that there will be some objective criteria. It therefore comes back to what my noble friend Lord Shipley said: would it not be wise for the objective criteria about what good consultation is to be shared and, potentially, to be in the Bill? That would stop the position where local authorities had to rerun a consultation because it had not met the criteria which the Secretary of State was looking for in the first place.

Earl Howe (Con): Yes, I take the noble Lord's point. It comes back to one that I think the noble Lord, Lord Shipley, made about minimum standards in this area. It might be helpful if I took advice on this and wrote to noble Lords who have taken part in this debate, to see whether I can add some clarification.

Turning to Amendment 62, tabled by the noble Baroness, Lady Taylor of Stevenage, the levelling-up White Paper clearly states the Government's ambition for devolution, including the devolution framework, which is underpinned by four principles. One of these principles is sensible geography. The White Paper clearly states that future devolution deals should be agreed over a sensible, functional economic area and/or a whole-county geography, with a single institution in place across that geographic footprint. We have already debated that issue on the previous group. The combined county authority model is being established in the Bill to provide a single institution that can cover such functional economic areas, or whole-county geographies, where there is existing two-tier local government and

[Earl Howe]
multiple upper-tier councils. As such, I reassure the noble Baroness that combined county authorities will be focused on single economic hubs.

7.15 pm

While I am on this point, I think it was the noble Baroness, Lady Pinnock, who asked whether mayors were mandatory for a devolution deal. The answer is no, a mayor will not be a prerequisite for a new devolution deal, but we do believe that a high-profile, directly elected leader will be most effective for levelling up. They will provide a single point of accountability for local citizens. The Bill will also allow mayors to use different titles, if they wish to, not simply "mayor"—but that is a detail.

Amendment 63, tabled by the noble Baroness, Lady Taylor, seeks to prevent the Secretary of State laying regulations to establish a combined county authority until they have laid a statement in both Houses, including plans for a duty of co-operation between the CCA and neighbouring areas. A fundamental principle of devolution, as I emphasised earlier, is that it should be locally led. It should be for the area itself to decide how it wishes to co-operate with its neighbours, not for central government to impose this.

The Bill contains methods to support inter-area co-operation, such as the non-constituent member provisions, which would allow a neighbouring council to have a voice in a combined county authority, should the CCA wish for this. We have also seen good co-operation between existing combined authorities and their neighbours, as I mentioned earlier: for example, joint working between the West Yorkshire combined authority and the City of York on transport shows that this does work in practice. I hope the noble Baroness agrees that devolution should be locally led.

Turning to Amendment 64, combined county authorities are based on the building blocks of local authority areas. As such, while there is sometimes coterminosity with police forces and NHS trusts, sometimes there is not. Where possible, we encourage coterminosity and, where the boundaries of a combined county authority and its policing are coterminous, the Government's preference is for the mayor of a combined county authority to take on the police and crime commissioner functions. Examples of where this has already happened for combined authorities include Greater Manchester and West Yorkshire. Where there is no coterminosity with policing and health boundaries, there are other methods for ensuring collaboration, such as the Bill's non-constituent and associate membership provisions, which would allow a member of an integrated care partnership or a police and crime commissioner to attend combined county authority meetings.

Amendment 65 proposes that all district councils in a combined county authority's area would have to consent to its establishment. Only upper-tier local authorities—that is, two-tier county councils and unitary councils—can be constituent members of a combined county authority and only constituent members can consent to the establishment of a CCA. As district councils cannot be constituent members of a combined county authority, they cannot consent to its establishment. The amendment would prevent a CCA being established unless all district councils within the CCA's area agreed to it. I suggest that this would give district councils a privileged position above all other bodies that are not constituent members, and would in practice be likely to prevent devolution to many areas where the majority of councils are in favour. However, we agree that it is important for district councils to be able to have a say in the establishment of a combined county authority, and the Bill already provides for this.

As I mentioned a moment ago, Clause 43(4) states that, prior to submitting a proposal for a combined county authority to the Secretary of State, the local authorities proposing the establishment of a CCA must undertake a public consultation on the proposal in the area that the CCA will cover. As important local stakeholders, we would expect district councils to be involved and use this opportunity to have their say on the proposal. As stated in the levelling-up White Paper, we expect CCAs and their upper-tier local authorities to work closely with their district councils and have been pleased to see this happening in deal areas such as the east Midlands.

Amendment 101 seeks to ensure the public are consulted prior to the dissolution of a combined county authority. I support the noble Baroness's desire for this, which is why there is already a requirement in the Bill for a public consultation on any proposals from the local area on changes to the area of a CCA or on the area being dissolved as part of a CCA being abolished. Where a combined county authority has been established and subsequently seeks to dissolve its area and abolish the CCA, Clause 24 enables the Secretary of state to make regulations for areas to achieve that.

The Secretary of State may make regulations dissolving the area of a CCA if the area consents, the Secretary of State agrees, and if Parliament approves the necessary secondary legislation. So there is, as it were, a "triple lock" on this process. In both scenarios, we fully recognise the crucial importance of residents in the local area having a say. That is why any CCA or local authority seeking to submit a proposal to the Secretary of State to dissolve it as part of the CCA being abolished has to carry out a public consultation as set out in Clause 45(3). This consultation must take place in the area covered by the CCA, which enables local residents, businesses and other interested parties, as I have mentioned, to have a strong input into any such proposals. A summary of consultation responses must then be submitted, in the same way as I described earlier, to the Secretary of State alongside the proposal.

Clause 46 provides the additional safeguard that I mentioned to ensure there is sufficient public consultation. This enables the Secretary of State to undertake a consultation prior to making any regulations to enact these changes, if they feel that there has been insufficient public involvement in the development of them.

I suggest that Amendment 102 is unnecessary because of the provisions in Clause 24. Clause 24 sets out the statutory requirements for the dissolution of a CCA's area and subsequent abolition of the CCA. Any changes to the delivery of functions because of a combined

county authority's boundary being abolished must be given active consideration. Such changes to the delivery of functions will be set out in the regulations the Secretary of State will make to abolish a combined county authority, which require the consent of the local area and parliamentary approval, as I have described.

Parliamentary committees and this House will have a statement in an explanatory memorandum explaining any changes to the combined county authority's area or conferral of powers, the views of the consultees and how these changes meet the statutory test of improving economic, social and environmental well-being. If there is a local wish to abolish a CCA to which functions have been devolved, it is possible that those functions will be discontinued in that area.

The clauses already include provisions that, when changing an area or abolishing a CCA, the regulations can transfer functions to another public authority if that is decided to be appropriate. For some areas, a public authority will continue to undertake some of the functions in the area. For some, it may be decided that the function is no longer to be exercised in the area. As such, Parliament will already have this information through the means that I have described. I hope the noble Baroness is reassured.

I turn to Amendment 126, tabled by noble Baroness, Lady Hayman of Ullock. I agree with the intention of this amendment, which is to ensure the findings on any public consultation to establish a combined county authority are made public by the area submitting the proposal. The Bill already makes provision for this. I remind the Committee again of Clause 43(4), which states that, prior to submitting a proposal for a combined county authority to the Secretary of State, the local authorities proposing the establishment of a CCA have to conduct a public consultation on the proposal. That will provide an opportunity for local residents and other stakeholders to have their say. A summary of consultation responses must be submitted alongside the proposal to the Secretary of State. The decision to submit this summary will be taken at council meetings, which are held publicly. As such, the summary of consultation results will be publicly available.

I hope that these rather lengthy explanatory comments are helpful and that the noble Baroness, Lady Taylor, will feel able to withdraw Amendment 61.

Baroness Taylor of Stevenage (Lab): I am very grateful to the noble Earl for his detailed comments on the amendments. I would like to start with a few comments on the amendment tabled by the noble Baroness, Lady Bennett. She mentioned that devolution deals were often done in smoke-filled rooms. I do not think that would have been the case in Manchester because they seem to have cracked the smoking cessation issue in Manchester, which is good to hear. But it is true that there has been an impression that these deals were cooked up behind closed doors. There has not always been a degree of consultation, which is why we have had such a significant discussion this afternoon around what consultation should take place on the setting up of a CCA, the dissolution of one or any boundary changes. The examples that the noble Baroness, Lady Bennett, gave on the effectiveness of public consultation and referendums in both Sheffield and Bristol illustrate that these things can be done very effectively, if adequate information is provided for the public to have a debate and discussion before they vote.

The noble Lord, Lord Shipley, raised the opportunity for the Government to issue a statement on consultation, being clear about what the parameters need to be, what the Government's powers are and what local people can expect to have a say on. That is a vital point.

We also had a lot of discussion under this group of amendments and the previous group on travel-to-work areas. The noble Lord, Lord Shipley, asked whether each CCA is going to have a single economic hub. I do not think that question has been answered yet. We may have multiple hubs in county areas. I will use a local example, as it is the one I know best. In Hertfordshire there are multiple hubs. There are even two very distinct economic clusters: one in the pharmaceutical industry, which is thriving and doing extremely well in things like cell and gene therapy, and one in the creative industries. They are very distinct and different economic hubs within one area. We need to think about how that works in counties where there is not just a simple, single economic hub.

On Amendment 63, the noble Lord, Lord Shipley, talked about how previously on this Bill the Government have been clear more than one public authority may be included in the CCA. Non-constituent members have been talked about a lot. If there is more than one public authority in an area—for example, a local enterprise partnership, the National Health Service or a PCC—it can be very confusing when they do not have coterminous boundaries about who is responsible for delivering within that CCA. It is important that we get further clarification on that as the Bill develops and goes forward.

My noble friend Lady Hayman spoke about standards of consultation and the fact that the consultation should be publicly available. Added to our other discussions on consultation, these are important points. I am grateful to the noble Earl for saying that he would come back to us on that strange subsection in Clause 46 that talks about the Secretary of State having the power to say that they do not think that any further consultation is necessary. That will require further clarification.

7.30 pm

The standard of consultation is important. One example I had was a consultation on the withdrawal of some bus services, to which there were 13,000 responses that said, "We don't want to lose these bus services", but the services were withdrawn anyway because there was no funding to take them forward. That is not consultation: if you have no intention of taking something forward or of changing your opinion on what you will do, having 13,000 responses that say the opposite is very frustrating for the people consulted. We have to be careful about consultation in that respect.

I turn to the noble Earl's direct responses to the amendments. The 60% support issue was putting a figure out there to ask whether there would be a specific requirement of a percentage—a barrier we

[Baroness Taylor of Stevenage]
would need to cross—before we could accept that that was a clear public response. But the figure is not the important point here: the point is about what proper consultation is.

I am reassured by the noble Earl's comments, but we must ensure that public consultation is sufficient. If it will fall to the Secretary of State to undertake this consultation, if it is not sufficient, it would be far better if the criteria and parameters for the consultation were set out clearly beforehand, so that we did not end up with public consultations in numerous areas going to the Secretary of State, who would say, "That's not sufficient", and we would end up redoing the consultation. I would be much happier if we were very clear about what the criteria of the consultation would be before we set out.

I covered the issue of the single economic hub in previous comments. The fundamental principle that the noble Earl referred to about the duty of co-operation being locally led is right, but I still find the provisions around non-constituent members of CCAs confusing for two-tier areas and for county areas where single economic hubs may be operated across a number of different areas. As we work through the Bill, further clarification on how that duty of co-operation might look would be helpful.

There has been a long-standing issue around the coterminosity of boundaries. I know that they are decided by different government departments for their own reasons, but it is very difficult to make this work. I am fortunate that, in Hertfordshire, our PCC boundary is coterminous with the county, but the health boundaries are not, which has made it consistently difficult to work across those boundaries.

On district councils' engagement, I fundamentally disagree with the fact that district councils are one of a number of stakeholders in an area. The difference between district councils and even other public bodies is that district councils are made up of groups of people who are democratically elected. So they are not important local stakeholders but democratically elected bodies—the same as a county council. So we are saying that the democratic elections held by unitaries and counties give them more of a say—if that were the case, it is sheerly a case of numbers, because the democratic principle is the same. So we have to be very careful about putting district councils in as stakeholders, whereas counties and unitaries are the decision-makers here; that is the fundamental principle of this.

The noble Earl spoke about a triple lock on consultation—I listened to that and understand that the provisions are there. So, provided we have clarification on the wording in Clause 46, we can consider that there is enough in the Bill to refer to consultation on setting up or dissolving a CCA. But we need to clarify the issues around whether, if a boundary is changed or something is fundamentally changed about the CCA area, we need to have another look at what the consultation on that is.

On the intention of Amendment 126, an awful lot hangs on Clause 43. That is fine, but we need to make sure that the level of public transparency on the consultation that is set out in Clause 43 is adequate and will meet any test of public accountability. That said, I am very grateful for a good debate and to all noble Lords who participated. I withdraw Amendment 61.

Amendment 61 withdrawn.

Amendments 62 to 65 not moved.

Clause 7 agreed.

House resumed. Committee to begin again not before 8.21 pm.

Northern Ireland (Executive Formation and Organ and Tissue Donation) Bill

Committee (and remaining stages)

7.37 pm

Relevant document: 26th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): My Lords, I understand that no amendments have been set down to the Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. With the agreement of the Committee, I will now report the Bill to the House without amendment.

House resumed. Bill reported without amendment. Report and Third Reading agreed without debate. Bill passed.

Communications Act 2003 (Restrictions on the Advertising of Less Healthy Food) (Effective Date) (Amendment) Regulations 2022

Motion to Regret

7.39 pm

Moved by ***Lord Allan of Hallam***

That this House regrets that the Communications Act 2003 (Restrictions on the Advertising of Less Healthy Food) (Effective Date) (Amendment) Regulations 2022 (SI 2022/1311) will delay for 33 months, until 1 October 2025, the implementation of the ban on advertising less healthy foods and drinks before the 9pm watershed on television, on radio and on online media.

Relevant documents: 24th Report of the Secondary Legislation Scrutiny Committee. Special attention drawn to the instrument

Lord Allan of Hallam (LD): My Lords, the increasing level of obesity represents a clear and present danger to the health of our nation. I will not recite all the issues caused by obesity, but I direct anyone wanting to learn more to the Obesity Health Alliance.

Recognising this risk, Parliament has agreed on a number of tools to try to arrest, and ideally reverse, that increase, including restrictions on advertising less healthy foods which were agreed to in the Health and Care Act 2022. But while Parliament can will the ends as well as the means, in the shape of the proposed new advertising restrictions, it depends on the Executive to bring them into effect and to do so in a timely fashion, and yet we are faced here with the Government telling

us that they cannot implement what we have asked them to do for the best part of two years. This makes the Government look powerless to respond to a public health crisis that needs action right now, and their defence seems to be that they are not impotent but merely incompetent.

We can expect the Minister's response to explain the challenges of all the different processes that they have to go through to introduce the restrictions and why these all take time. While I am generally sympathetic to the need to regulate properly by consulting with affected organisations, I am afraid that my response on this occasion has to be that my heart bleeds custard for the Government. The need to go through these various steps was entirely predictable, as these measures have been under discussion since 2018 and were formally consulted on after the Government's much-heralded tackling obesity strategy of 2020. With the additional delay proposed today, we are looking at these measures taking seven years to get from farm to table. The Minister can have a go at explaining this, but I hope that he will not try too hard to defend it.

I expect to hear about the challenges with Ofcom's workload. Again, I certainly understand that it is stretched by all the new work coming under the Online Safety Bill, but this delay on these regulations now risks making matters worse. It would have been better to have had this all in place before the wave of new demands comes along. I fear that we may be back here again being told that, unfortunately, there has to be a further delay while more important online safety measures take up all of Ofcom's bandwidth. We need to ask if there is more to this delay, and if the Government are backsliding on their commitments to anti-obesity measures; they are happy to announce and reannounce them but less willing to get the job done.

We can see that there are mixed views about giving advice to people among leading Conservative Party figures, which we might describe as, "Private nannies good, nanny state bad". But this is not a nanny-state measure, as it does not stop anyone buying or selling any food products. Rather, it is aimed at changing the environment in which people make their own choices, so that they will be, to borrow language from election law, free from coercion and undue influence.

We also have to ask cui bono—who benefits—from any policy shift, and I hope that the Minister can tell us today who from the food or advertising industries has been lobbying for the delay. If we want to consider cui malo—who is harmed—we find that the Government have just not done their homework to look into the effects of the delay, as pointed out by the Secondary Legislation Scrutiny Committee in its 24th report, to which the noble Baroness, Lady Merron, refers in her Motion. The Explanatory Memorandum tells us in paragraph 12.3:

> "A full Impact Assessment has not been prepared … because this instrument is being made only to delay the implementation date of the advertising restrictions by 33 months."

Only 33 months—just in time for the third birthday of children being born today, whose lifetime health chances will be set during those critical early years. I wonder how long the Minister thinks a delay in legislation has to be for its impact to be worth assessing.

Even without the Government's assessment, I do not think that any serious commentator would agree that there is no harm from this delay, as it means that there will be a longer period in which people trying to make healthier choices are exposed to messages pushing them in the opposite direction. We may not be able to quantify precisely the effect of those messages, but the promoters of less healthy foods are not stupid; they advertise only because it helps them to sell more.

This debate is obviously an opportunity for us to have a go at the Government for appearing to back-track on a measure which they said they were committed to and have previously agreed is in the public interest. I look forward to hearing other noble Lords kick their balls into this open goal.

7.45 pm

Assuming the Minister will say that the Government are still committed to a robust anti-obesity strategy, I close my remarks with a suggestion for how they might make swifter progress and look a little more competent. I assume that the first stage of developing the regulations will be to identify the extent and nature of advertising for less healthy foods that is likely to come within the scope of the new rules. This scoping and definitional exercise will have to be done quickly, if indeed it has not already happened.

Once those major advertisers have been identified, I suggest that the Government call them in and invite them to adapt their advertising strategies now, so as to be compliant with the incoming rules, rather than waiting to be ordered to do so in 2025 under threat of sanction. The Government should also then inform the public about how companies have responded to this request, so that we can judge for ourselves the extent to which each company has a sense of genuine corporate social responsibility that goes beyond mere minimal legal compliance.

Such an identify, invite and inform process—yes, that is a polite way of saying "name and shame"—could easily be done within the timeframe of 2023, based on work that will have to be carried out anyway as part of developing the regulations. I expect that businesses will want to meet with government, to lobby perhaps for slower movement on the new restrictions, creating perfect opportunities for government to lobby them back to move faster in areas where they have considerable discretion: their marketing strategies. If some of the major businesses accept an invitation to change, this could make a real difference in 2024, as well as creating a solid foundation for the order-and-enforce phase that will eventually come in 2025.

I hope that the Minister will, after the obligatory defence of the Government's tardiness for reasons beyond their control, wish to explore this modest proposal. I beg to move.

Baroness Bull (CB): My Lords, I support the regret Motions from the noble Lord, Lord Allan of Hallam, and the noble Baroness, Lady Merron. At the noble Lord's invitation, I will kick a slightly different ball into the open goal.

I share the Government's concerns about levels of obesity in the UK, but the failure to adequately explain or justify both the delay to and the rationale for these

[Baroness Bull]
regulations is further evidence that the Government's strategy to tackle obesity is disjointed, partial and careless of unintended consequences, and that it falls far short of the integrated public health approach that will be required if we are to meet this major public health challenge.

Research in obesity and eating disorders has often followed separate paths, but it is increasingly recognised that eating and weight-related problems need to be seen on a spectrum that goes from diagnosable eating disorders, through to disordered eating behaviours such as fasting, vomiting or laxative use, to body dissatisfaction, binge eating, being overweight and obesity. Studies show that individuals often present with more than one problem concurrently or move between different problems at different times in their lives, so eating disorders and obesity cannot be seen as separate and distinct issues. There is a raft of risk factors common to both: poor body image and low self-esteem; weight-related teasing; the modelling of poor eating behaviours at home; the stigmatising attitudes of teachers or sports coaches; and the socio-cultural norms around body shape that underpin everyday life. Any of these can increase the risk of both eating disorders and obesity in adolescence and adult life.

The interactions between the two mean that any strategy to address them needs also to be integrated. This is especially important when it comes to messaging. Many campaigns position being overweight and obesity as issues of personal responsibility and choice, shaming and stigmatising people, rather than acknowledging and addressing societal and environmental factors, as well as the powerful impact of genetics, epigenetics, metabolism and biology.

In 2020, 100 obesity specialists from around the world signed a statement in which they explained:

> "The assumption that body weight is entirely under volitional control, and that voluntarily eating less and/or exercising more can entirely prevent or reverse obesity is at odds with a definitive body of biological and clinical evidence developed over the last several decades."

Yet that same year, just months later, the Government produced an obesity strategy underpinned by the assumption that everybody is able to make the choice to modify behaviour and change their weight status. Not only does this stigmatise those who cannot, it can have negative consequences for people for whom the message is not intended. It can cause or exacerbate incipient or established eating disorders, promoting unhealthy dieting or inducing body dissatisfaction.

Children and adolescents are especially vulnerable to this kind of messaging, particularly those who are prone to anxiety. The simplistic portrayal of foods as good and bad, healthy and unhealthy, is risky for children, because they may not yet be at the developmental stage needed to appreciate the nuances involved. Many pre-adolescents report healthy eating initiatives at school as the trigger for an eating disorder, internalising messages such as "fat is bad" in a literal way, impervious to the importance of fat in their neurological development—of course they would be impervious to that; they are children. Children have a degree of cognitive inflexibility, and it can lead them to adhere very strictly to rules. In susceptible children, this can result in obsessive preoccupation with reducing calories, avoiding foods or increasing exercise to burn off what they have eaten.

The current obesity strategy, developed at speed as the links between Covid and obesity became clear, is far from the integrated approach that is needed to address these complexities. Its policies focus mainly on physical activity, diet and weight control and seem to have been designed in consultation with experts in obesity but with little or no input from specialists in eating disorders or body image. In my conversations with officials and Ministers about food labelling regulations, I was astonished at the levels of disconnect between eating disorder and obesity research, policy and clinical practice, and I found it hard to avoid the conclusion that concerns from an eating disorder perspective had been sacrificed to the perceived greater needs of the obesity crisis.

It is completely understandable that the Government have focused their attention on tackling obesity, given its increased prevalence, the long-term health consequences and the burden to both the NHS and the public purse. But it is regrettable that so many aspects of the strategy were not thought through: the complex interactions with other weight-related or eating-related issues; the particular risks to children; and, as the Secondary Legislation Scrutiny Committee has highlighted, the practicalities of implementation and the impact of this further delay on young people's health.

Obesity is a major public health challenge, and it requires an integrated public health approach, one that balances risks and benefits and focuses on better education, healthcare and policies that modify the environment in ways that support healthier behaviours. The current patchwork of policies, with its partial focus and unexplained delays, is not going to be the answer.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Baroness, Lady Bull, who set out so clearly that we have to get away from blaming individuals for the fact that we have, as a society, a deeply damaging and disastrous relationship with food. Perhaps going even further than the noble Baroness, I stress that what is behind that is a broken food system—that what is supplied into the system is deeply unhealthy and damaging in all kinds of ways. It is both what is presented to people and what comes into the system that are problems.

It might be fairly said, as the noble Baroness just did, that tonight we are talking about partial, inadequate measures—and I offer the Green group's support for both these regret Motions—but they are, at least, measures to do something. We can look at another partial, inadequate measure that has come into effect and we are starting to see the results of: the Soft Drinks Industry Levy Regulations 2018. It is very small and partial, but a recent study published in *PLOS Medicine* showed that we have seen an 8% reduction in obesity in girls aged 10 and 11 as a result of that. There is a gender aspect that I do not think anyone yet fully understands. It is a limited state of progress, but it is better than heading in the opposite direction.

Looking where we are now, here is one figure that is truly shocking: last year, 660 under-fives were admitted to hospital with obesity given as the primary cause of

their admission. That is what our broken food system is doing. Restrictions on advertising were hard fought for and much discussed during the Health and Social Care Bill, and I remember sitting in your Lordships' Chamber over what I suspect was many hours. Yet here we are today, and I cannot help reflecting on an earlier discussion in your Lordships' House in which it was suggested that the Scottish Government were bringing in the bottle return scheme far too quickly. That was a three-year delivery from the regulations being passed to them being implemented. That was something Westminster could not imagine.

Looking to the general public, one of the things I have found again and again on that issue and issues tackling obesity is that people say, "We heard the government announcement, but it does not seem to have happened." People think that once the Government have announced something it is happening, and the Government use that, announcing things again and again that never get delivered. It really is past time that we should be seeing the delivery here. I will finish with a question to the Minister: what is the higher priority here, the health of the nation or the profits of broadcasters?

Baroness Walmsley (LD): My Lords, I am afraid I am a weary veteran of discussions about these regulations. As your Lordships know, the House's Secondary Legislation Scrutiny Committee has absolutely slated them and the information provided with them. It mentions:

"The Explanatory Memorandum (EM) states that in 2019"—

that is a year after the industry was first warned that this sort of ban was going to be implemented—

"under current voluntary restrictions, children were exposed to 2.9 billion 'less healthy food and drink TV impacts and 11 billion less healthy food and drink impressions online'".

That is 13.9 billion hits. That was four years ago. In the four years between the measures first being announced and us legislating for the ban last summer, there were 13.9 billion every year, coming to 55.6 billion hits for unhealthy foods, which is an existential scale of influence on children's food choices. Now we are being told there is going to be another three years of it; at the same rate, that is another 41.7 billion hits to persuade children to eat unhealthily. That comes to 97.3 billion adverts—a figure 12 times the population of the world. There cannot be a child in this country over that period of time who has not seen hundreds and thousands of adverts persuading them to make the wrong food choices.

We are told that the industry needs longer to prepare and the Government need longer to consult. The Government are consulting on simple technical issues that should not take many weeks, let alone another three years. Indeed, I understand there is an idea of changing the definition of these foods, but we already have a clear mechanism for deciding what these foods are. It is called the nutrient profiling model, and the industry knows it perfectly well, because since 2007, it has not been able to advertise those foods around children's television programmes. So why do we have to wait another three years? How on earth do these delays line up with the Government's strategy to halve childhood obesity by 2030? These things simply do not match up.

8 pm

Lord Brooke of Alverthorpe (Lab): My Lords, I am grateful to the noble Lord, Lord Allan, for his Motion to Regret and for the excellent way in which he presented it, and to all other speakers who have contributed. I feel sorry for the Minister. He is one of several Ministers we have seen since 2015, since the Conservatives have been totally in charge of government, and, during that period, of course, we have seen obesity grow—it is the one area in which we have seen growth, growth, growth. It is an area that has now worryingly spread down, particularly to children. We can say what we will say today, but I know the Government are not changing their mind; they are kicking this ball into the long grass, into the next election and beyond. Really, I think we in this Chamber should start addressing ourselves to who will be in power next time around, and what we might try to do in persuading them to have policies that will effect changes, because the one thing that the Government should have learned is that relying on voluntary conversations and a voluntary response from the private sector and the businesses in the food and drinks industry rarely produces a response.

Yesterday, I had experience of where the Government have taken some action. I went out for lunch and I had a choice on the menu: I saw the number of calories available to me with the various foods that were in front of me. I chose to have food with 1,000 calories, as opposed to 1,500, which I might have chosen had they not got that legislation through—with our support. Where they failed, of course—we pointed this out at the time the legislation was going through—was when my colleagues sat down, my friends and family, and had the bottles of wine, the gin and tonics before and the rest of it. They had no idea what they were consuming. I have been talking about labelling on alcohol for years, and the Government have done nothing at all. They have relied on the private sector to try to effect changes; there have been some marginal ones, but we still do not have any knowledge of what people are consuming when they come to take alcoholic drinks. Often, they can be consuming far more calories in the form of drink than in food.

So, looking at a menu with calories on does work. Leaving it to the private sector to do it voluntarily does not. I am hoping that the next Government in power will recognise fairly early on that we have to take the action, do the research, get it on the statute book and then implement it and not fiddle around. Because we see that we now have type 2 diabetes emerging among children as young as nine, 10 and 11, and that was not the case back in 2010 when the Labour Government went out of power. It was not the case even in 2014. If we look at what is happening in America with type 2 diabetes, the projections of the numbers of citizens who will have it in the future are quite frightening. They are saying that there could be up to 90% with type 2 diabetes unless people start to address basic food and drink properly. Yet we are letting it slip through our fingers here today. I am hoping the Minister will sensibly recognise—he does endeavour to bring a business attitude to bear—that we need to get law and not rely on a voluntary approach.

[Lord Brooke of Alverthorpe]

Another approach linked to this—I hope my noble friend on the Front Bench might pick this up—is that we see increasingly that advertising is not so much influencing young people on television, but it is online, and these regulations do not touch on online advertising one iota. There may be a saving grace, in that there is a delay: whoever deals with it next will sweep up online advertising as well. Linked to that, there is a requirement to look at the whole advertising industry and see how it is operating and whether we should not contemplate introducing health taxes into advertising, so that those who are advertising the most harmful food and drinks should be paying taxes on their advertising, and those who are advertising good food should have encouragement and support. That is the kind of change that we may be looking for with a new Government—a different approach from the one we have had so far. So, I look forward with interest, as others do, to the defence the Minister is going to mount—a defence which will be about nothing changing while they are still in power.

Baroness Merron (Lab): My Lords, the Children's Minister recently admitted that the nation had a problem with childhood obesity that should not be ignored. I am sure that noble Lords who have spoken today, and I am grateful to them, will share that view, not least because children with obesity are five times more likely to become adults with obesity, increasing the risk of developing conditions including type 2 diabetes, cancer and heart and liver disease. This is an extremely serious and pressing matter, as the Minister has been reminded yet again.

Two in five children in England are above healthy weight when they leave primary school and we now see the fastest increase in childhood obesity on record, as my noble friend Lord Brooke highlighted in his remarks. But it gets worse. Children starting school in the most deprived areas are three times as likely to be severely obese as those in the wealthiest, while NHS data shows that almost half of boys in England's poorest areas are overweight or obese when they leave primary school. Last year, there were 3,400 severely obese children aged four or five in the most deprived parts of the country, as compared with 630 in the richest. So will the Minister give some indication as to what account is being taken of this great disparity between those who have more and those who have less in the Levelling-up and Regeneration Bill currently being considered in your Lordships' House?

As we have heard today, it is absolutely right that we make informed choices about what we eat and drink, but choice can only really be choice if there is no distortion, and if those who are making the decisions have all the information they need and are able to interpret it. As the noble Baroness, Lady Bull, said, we actually need an integrated health approach to tackle the complexities of achieving a healthy weight. So the question for the Minister that has run throughout this debate is: how will the statutory instrument support this integrated health approach to tackle the complexities we know we have?

In the Government's original analysis, they suggested a watershed on advertising, saying that introducing restrictions to prevent adverts for products high in salt, fat and sugar being shown before 9 pm could lead to 20,000 fewer obese children. I took it that this was, as others have said in the debate today, about shifting the environment, shifting the power of influences, in order to manage the challenges that we all face in supporting our wish to secure good health. So, will the Minister tell your Lordships' House what will be the change in opportunity to tackle children's obesity because of this regulation and the change it brings about? I refer in particular to page 33 of the Secondary Legislation Scrutiny Committee report. The noble Baroness, Lady Walmsley, referred to the figures. The report states:

"Analysis conducted to inform the Government's Impact Assessment of the advertising restrictions found that under current restrictions children were exposed to 2.9 billion less healthy food and drink TV impacts and 11 billion less healthy food and drink impressions online in 2019".

The committee observes that the effect of the delays means that, presumably, this level of advertising will continue and asks for an explanation as to why this is acceptable given the harms stated. Perhaps the Minister could refer to an answer on this point. The committee also asks for an explanation as to how the Government anticipate that they will still achieve the target of halving childhood obesity by 2030 if various elements of the strategy are delayed. Again, perhaps the Minister can tell your Lordships' House his view on this.

Of course, there is a difficult balance to strike when seeking to improve public health and also when working with broadcast and online and the advertising industries. The Government have produced a regulation that has been drawn to the attention of the Secondary Legislation Scrutiny Committee once again, and this clearly does not assist the striking of that balance. It is not acceptable that the Explanatory Memorandum is described as "poor", and that it fails to evaluate the effects on public health and the NHS from this delay. Nor is it acceptable that it fails to explain the use of a different definition from previous legislation. This refers to the unexplained shift from "high-fat, sugar and salt" to "less healthy foods". The committee rightly asks whether the Government's intended scope of products that they want to regulations to cover have been changed. Perhaps the Minister could respond on this point.

The SLSC also says that it

"provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation."

It also says that, worryingly:

"The views of the NHS are not addressed or explained."

This, I believe, is quite remarkable and suggests a breath-taking lack of engagement with those who should be engaged with. Once again, poor policy-making and poor administration have come together to leave your Lordships' House unable to properly scrutinise what the Government are doing and why, even though it is the job of your Lordships' House to do this. Perhaps the Minister could address these points of concern.

The Minister will recall that I have raised many times before the point about his department's approach to legislation and the criticism that it has attracted. He kindly gave an undertaking that he would look into this with a view of doing better in future. Can the Minister could update the House of progress in this

regard? Finally, I hope that the Government will not be diverted from measures that will have an impact on the health and weight of the nation.

Lord Markham (Con): My Lords, I congratulate the noble Lord, Lord Allan—despite his wish to invite people to kick our balls—and the noble Baroness, Lady Merron, for securing the debate to discuss these regulations. I also thank the Secondary Legislation Scrutiny Committee for its report on this, and I thank all noble Lords for their constructive discussion on how to tackle the pressing challenge on obesity. I thank the noble Baroness, Lady Bull, in particular, for her thoughtful contribution showing the complexities of the subject with regard to the impact on eating disorders, as well as obesity.

I like to think that we are all agreed on the scale and the gravity of the issue at hand. Data from the latest child measurement programme, as mentioned by others, shows that 38% of children leaving primary school were either overweight or living with obesity. One in four were living with obesity. This, as we know, is fuelled by the regular overconsumption of food and drink that is high in calories, sugar and fat—or HFSS food and drink for short. As the noble Baroness, Lady Merron, mentioned, we know that being overweight or living with obesity at a young age increases the risk of being overweight as an adult which, in turn, significantly increases the risk of diabetes, coronary heart disease, musculoskeletal issues and certain cancers. This impacts on both the individual's well-being and wider society. As we all know, it comes at a very high cost. Not only does it cost the NHS £6.5 billion a year in the latest estimates—there is an economic cost estimated to be as much as £58 billion. For all those reasons, this Government are committed to tackling obesity: it is the morally and fiscally responsible thing to do.

8.15 pm

I would like to think that the steps we have taken so far actually do show a well-thought-out approach of meeting our goal of halving childhood obesity by 2030. If we look back at those, we see that in October 2022 we introduced restrictions on where products that are high in fat, sugar and salt can be placed in stores. If you walked around our supermarkets today, you would see a big change in their look and feel. Our conservative estimates suggest that these restrictions alone will reduce excess calorie consumption by children by 50 calories a day. This would reduce the number of children living with obesity by over 400,000 over 25 years. We expect that those restrictions will be the most impactful policy in tackling obesity and early data from Kantar—the data provider in this area—shows that these results are starting to come through.

In April 2022, we implemented regulations requiring large out-of-home businesses such as restaurants, cafés and takeaways to provide calorie labelling on the food they sell, which is estimated to reduce calorific intake by eight calories per day. I take the point made by the noble Lord, Lord Brooke, about alcohol labelling, but I note there are a number of low-calorie beers—this is close to my own heart—and other low-calorie alcohol. In fact, if you look closely at the label, you can see the number of calories. However, you do have to look very closely, so I think he makes a good point about making people more aware of them, as happens with menus. As I said, those out-of-home restrictions reduce intake by eight calories per day. The other big thing we did—again, there was cross-party support for all these things—was the soft drinks industry levy, which has reduced sugar content by almost 50% in the last five years. That is estimated to reduce calorific intake by 18 calories per day. So these three measures—these three solid actions—reduce excess calories by an estimated 76 calories per day.

I now turn to what the Government think the impact of the advertising restrictions will be. Restricting advertising of these products when children are likely to see it is estimated to reduce their calorific intake by two calories per day. To get this right: the measures introduced to date reduce intake by 76 calories per day, and the ad restrictions will reduce it by two calories per day; in other words, our actions to date—again, the noble Baroness, Lady Walmsley, asked what our actions have done—make up 95% of the reduction. What we are discussing tonight is equivalent to roughly 2%.

So what is the big win that is still out there, as mentioned by the noble Baronesses, Lady Merron and Lady Bull? What are the things that are going to really move the dial? Actually, it is the reformulation of food. This is the thing that Nesta estimates can reduce calorie intake by another 30 to 40 calories per day; that is, it would be 15 times more impactful than the advertising ban. How can we do this? I was asked earlier for examples of voluntary reductions working. The sugary drinks tax reduced the level of sugar in milk-based drinks by 30%. Why was that? Basically, the producers wanted to reformulate their foods to reduce the impact of the tax. We needed to give industry the incentive, and the industry took it.

Why is this relevant to an advertising ban? As mentioned earlier by the noble Lord, Lord Allan, and others, advertising does work, and producers want to be able to advertise their foods. So signalling that we are going to put an advertising ban in place is a very sensible carrot-and-stick approach. The stick is the advertising ban. It will not have much impact in terms of calories, but it will have an impact on the producers, because advertising works. The carrot is to avoid that ban by reformulating the product. That is the big win we are talking about here; that will have the big impact of 30 to 40 calories per day. However, we need to give producers the time to implement that.

If you follow the thinking through, we need to spend time with the industry and Ofcom to consult. We need to get their input. We need to show them that we are serious in what we are doing, and we need to give them the time to change by reformulating their recipes, testing them on consumers and then putting them out there into the marketplace. Those are the actions that are going to make the difference—not the banning of the ads, but the actual action of signalling that we are banning them and giving industry the time to reformulate its products. That is the voluntary approach I am talking about.

Again, the noble Lord, Lord Brooke, asked me for examples of where a voluntary approach has worked. I can give another example: the restrictions on so-called BOGOF—buy one get one free—which is another

[Lord Markham]
area where we have been criticised for delays. The voluntary action there has already seen Tesco and Sainsbury's, which represent 42% of the market, change the way they approach this type of promotion. That is another example of where you signal a change and the industry changes to take it into account.

That is the approach we are trying to show. The noble Baroness, Lady Bennett, asked what we care most about: the health of the nation or the profits of the broadcasters. Of course, it is the health of the nation, but what we have here is a sensible approach, working with industry to improve the health of the nation by getting it to reformulate its food through a voluntary method, using the impact of a threatened ban on advertising to leverage that and make it happen. That is the big step tonight—that reduction of 30 to 40 calories—which, to answer the question from the noble Baroness, Lady Walmsley, will be how we are going to reduce childhood obesity still further by 2030. Those are the steps we are taking on this. That is what we mean in terms of this approach, and how we see the impact of this SI.

I take very seriously the points raised by the noble Baroness, Lady Merron, about the department's action generally on SIs. The staff will know that this is something I brought up at a "meet the Ministers" session. It is something I have written out on, because our approach, to be candid, has not been good enough in all this. I absolutely accept that criticism, and I have made the department aware of the seriousness of this. I know that this will take time to come through, but I can only say on my part that that is something we have been taking seriously.

As ever, I hope that I have managed to give some understanding of our approach, but I will write in detail to all noble Lords who have spoken tonight to make sure I have covered all the questions that they raised. This is something we are serious about and a challenge on which we have taken major action. As I said, our actions to date are estimated to have made a calorific reduction of 76; the advertising ban only two. The big win which we are still to go after, and which I think this ban, done in the right way, will achieve, is the reformulation of such foods, which is another 30 to 40 calories—15 times more impact. That is where the prize is. I hope that shows the seriousness of what we are trying to do: driving forward a wider package of measures to tackle obesity, of which the advertising restrictions are just one part. As I mentioned, reformulation is now the real prize to go after.

I hope I have reassured noble Lords that the Government are committed to this overarching aim through greater restrictions on advertising less healthy foods and reducing childhood obesity through a number of well-thought-out measures to encourage the consumption of healthier foods.

Lord Allan of Hallam (LD): My Lords, I am grateful to all noble Lords who have taken part in the debate. The noble Baroness, Lady Bull, gave us an important reminder that we need to think holistically about our entire relationship with food, including eating disorders as well as obesity. That is helpful, and something I am sure we will return to.

The noble Baroness, Lady Bennett, and the noble Lord, Lord Brooke, reminded us of other regulations in this area which seem to be having some success: the soft drinks levy and the information provided on restaurant menus. My noble friend Lady Walmsley's institutional memory is extraordinarily helpful in explaining much of what has already been debated and agreed, undermining the Government's argument that so much still needs to be done. The noble Baroness, Lady Merron, was right to criticise the process of presenting regulations, and I suggest a carrot and stick approach to the Minister. The carrot is a friendly, gentle debate in the Moses Room and the stick is to come here for another ball-kicking exercise.

Finally, on the substance of the regulation, the Minister has explained that the Government's real goal is reformulation. This could be done perhaps more urgently than the Government are suggesting if they put their mind to it. If we can shift from being tomato eaters to turnip eaters in the space of a few months, I think we can shift from being unhealthy burger eaters to healthier burger eaters in less than two years. With that and the other contributions, I seek the leave of the House to withdraw the Motion.

Motion withdrawn.

Communications Act 2003 (Restrictions on the Advertising of Less Healthy Food) (Effective Date) (Amendment) Regulations 2022

Motion to Regret

8.27 pm

Moved by ***Baroness Merron***

That this House regrets that the Department of Health and Social Care's explanatory memorandum for the Communications Act 2003 (Restrictions on the Advertising of Less Healthy Food) (Effective Date) (Amendment) Regulations 2022 (SI 2022/1311) fails to provide sufficient information to gain a clear understanding of the instrument's policy objective and intended implementation.

Relevant documents: 24th Report of the Secondary Legislation Scrutiny Committee. Special attention drawn to the instrument

Motion withdrawn.

Levelling-up and Regeneration Bill

Committee (3rd Day) (Continued)

8.27 pm

Relevant documents: 24th Report from the Delegated Powers Committee, 12th Report from the Constitution Committee, Scottish, Welsh and Northern Ireland Legislative Consent sought

8.27 pm

Amendment 66

Moved by ***Baroness Hayman of Ullock***

66: After Clause 7, insert the following new Clause—

"Environmental Impact Assessment

(1) The Secretary of State must publish an environmental impact assessment 120 days after laying regulations under section 7.

(2) Each year thereafter, the CCA must publish an environmental impact assessment in relation to their ongoing operation."

Member's explanatory statement

This means that an environmental impact assessment must be published following the establishment of a CCA.

Baroness Hayman of Ullock (Lab): My Lords, in moving Amendment 66 I will speak also to a number of amendments in this group in my name and that of my noble friend Lady Taylor of Stevenage.

Amendment 66 would require an environmental impact assessment to be published following the establishment of a CCA. We have heard in previous debates that the Bill will create a new model of combined authority through county deals, which will provide local leaders with powers to enhance local accountability, join up services and provide transparent decision-making to rejuvenate their communities. Although this is clearly an excellent ambition, previous debates have also demonstrated that there are many unknowns about how things are going to happen, particularly in a practical way, and what the impacts will be.

An environmental impact assessment would ensure that the likely environmental effects of any decisions are fully understood and then properly considered. An EIA would assess the direct and indirect impact based on a wide range of environmental factors—and it is a wide range, which is why an EIA must be considered and published. It could cover population and human health, biodiversity, land and soil, water, air, climate, landscape, material assets and cultural heritage. There is a lot here to be thought about. It is important, particularly given that we do not believe, as others have said in the previous debates around emissions, that the environment has been properly considered as one of the missions; it is not properly built upon throughout the Bill.

Amendment 74, tabled by my noble friend Lady Taylor of Stevenage, asks the Government to define and clarify the purpose of non-constituent members under Clauses 9 and 10, which relate to the appointment of the non-constituent and associate members of a CCA respectively. Our concern is that it is not clear whether there is to be any further guidance on whether certain types of non-constituent or associate members will be prescribed by the Secretary of State or recommended in further guidance, or whether it is entirely for the CCA to determine this class of membership according to what it believes local needs to be; for example, whether an ICS or a hospital trust is invited—because a major priority is to tackle health inequalities—or whether it is felt to be important locally that the local enterprise partnership be a non-constituent member to make a link with economic growth. Clarification on that from the Minister would be very helpful.

We have concerns that Clauses 9 and 10 appear to be qualified by Clause 11, which gives significant powers to the Secretary of State to make regulations in relation to non-constituent members. These include the number of non-constituent members; the appointment, disqualification and resignation, or even removal, of non-constituent members; the appointment of a substitute member to act in place of a constituent member; the maximum number of non-constituent members; and the things that may or may not be done by a non-constituent member. There are also equivalent Secretary of State powers relating to associate members. A circumstance could be imagined where, if the Secretary of State took such powers, the outcomes could end up being the exact opposite of the localism and devolution that the Bill purports to enshrine.

That is our big concern with these clauses, and why the amendment seeks clarification and further definition relating to the role of non-constituent and associate constituent members of the CCA. It is important to understand this properly. We do not want any part of the Bill to start pulling powers back centrally when the Government appear to want the exact opposite.

Amendment 76 in my name carries on from this. It would mean that a CCA could request that regulations are introduced in relation to it. Again, it is about the control that the CCA itself has when looking at regulations and at how it needs to operate and behave effectively for its local community, rather than everything being driven centrally by the Secretary of State.

Amendment 86, from my noble friend Lady Taylor, means that an annual statement must be published to show how much funding is given to each CCA. This should include a cost-benefit analysis. We have talked a lot about funding today and last week. It is a critical central part of achieving success from these clauses and the proposed devolution for England.

Clause 14 specifies the process by which the Secretary of State may draw up regulations for the funding and costs of a CCA to be met by its constituent councils, and how that amount payable will then be determined. While the clause specifies that this has to be done with the consent of constituent councils and the CCA, it does not tell us how any additional funding that may be provided by the Secretary of State, for example through the different competitive bidding pots that exist or any grants that may be given, will be included in the accountability process for the CCA. Clarification around that would be very helpful.

We also cannot ascertain from the clause how the overview and scrutiny committee—or the general public, for that matter—would be able to determine by cost-benefit analysis just how effective, with the funding being contributed to it, the CCA is at then delivering against its objectives for the area. We believe that our amendment provides a simple, straightforward way to provide that accountability through an annually published statement.

Amendment 100 in Clause 23, in the name of my noble friend Lady Taylor, would require the Secretary of State to explain how a local government area will, in future, have access to the powers that it has lost through removal from a CCA. My noble friend referred to this earlier. If the Secretary of State exercises the

[Baroness Hayman of Ullock]
powers set out in Clause 23 to change the boundary of a CCA and remove a local government area from the existing area of the CCA, they can either transfer those functions to another public authority or remove a particular function of the CCA altogether for that area. While there is provision that the relevant councils must consent to this removal, there is nothing in the Bill as it stands that requires the Secretary of State to specify how any powers or functions will be delivered in future once that membership of the CCA has been terminated. So, again, it would be very helpful if the Minister were able to explain how that would move forward.

Clause 23(8) refers to consent being required from only the county council and not from any district councils that may be constituent members. My noble friend spoke earlier about the important role that district councils should play. They should not be seen just as a stakeholder, a secondary authority that does not have a say in such matters. This would mean that, in effect, an area could be removed from the CCA with the consent of only the county council but not of the constituent district councils that make up the area of the CCA being removed from its boundary. Surely they should have some kind of say in this. Is this what the Bill is intending or is this an oversight? If it is what the Bill is intended to do, would the consent vote required in Clause 23(9) specifically exclude the votes of district council members of the CCA? This is a really important area that we need to clarify.

Amendment 129, again in the name of my noble friend Lady Taylor of Stevenage, would require the Secretary of State to produce guidance on the establishment and operation of CCAs within six months of the Bill receiving Royal Assent. The current clause simply states that the Secretary of State,

"may give guidance about anything that could be done"

in relation to this chapter. Well, in view of the fundamental changes to the structure of local government that this chapter on CCAs is introducing, we believe that that is far too vague, and very likely to leave local government with a cloud of uncertainty hanging over it. In view of the fact that there have already been many iterations of the devolution agenda in recent years, we do not believe that it is unreasonable to expect that the Government will work with the sector in order to have, very quickly, clear and detailed guidance in relation to the establishment and the operation of CCAs as soon as possible after Royal Assent. That is why we have asked for this to happen within six months.

I turn finally to Amendment 130, which aims to probe whether the public will be informed of their CCA's functions. With this amendment, we want to determine whether the Secretary of State will be responsible for setting out the purpose and aims of the CCAs, and how they are to be established and operated; or whether that responsibility will fall to local government. If the latter is the case, will there be new burdens that will require funding in relation to the communications aspects of informing the public about the functions of a CCA? Will any such new burdens extend to any public consultation funding? This may well be required when an area decides to proceed with the establishment of a CCA. We discussed consultation a lot in the last group but one, and the Minister seemed to believe that there was going to be support for any new burdens—so, again, clarification on that would be very welcome. With that, I beg to move.

Lord Shipley (LD): My Lords, I want to give very substantial support to what the noble Baroness, Lady Hayman of Ullock, has said. She has made several very powerful points. I hope that the Minister will be able to respond to those, because I am as concerned as the noble Baronesses, Lady Hayman and Lady Taylor, are about some of these issues. Some of what I want to say I will cover in the next group, so I will try to avoid getting on to the issue of voting powers.

It really is very telling. Amendment 74, in the name of the noble Baroness, Lady Taylor of Stevenage, says:

"Within 30 days of this Act receiving Royal Assent, a Minister of the Crown must publish a statement including a definition of 'non-constituent member' and a description of their purpose".

If I may be so bold, I think that is really late. I had expected that we would have this before Report. With the concept of an associate member and the concept of a non-constituent member, I really think that, before this Bill gets any further, we have to understand what the Government are thinking of with those definitions. We can all hazard a guess. I can hazard a guess. Some things have been said and occasionally written, but we have to do better than this.

On page 10 of the Bill, in Clause 11, the Secretary of State is going to make provision by regulations for a whole set of matters about membership. Then, as the noble Baroness, Lady Hayman of Ullock, rightly identified, it is almost a whole side of the Bill which includes provisions on just about anything you could think of. I am at a loss to understand why these matters are not public at this stage in the consideration of a Bill.

Clause 11(4), "Regulations about members", says:

"In this section 'constituent member', in relation to a CCA, means a member of the CCA (other than any mayor for the area of the CCA) appointed by a constituent council."

I am sure that is correct, but that is the only definition we have. We have no definition of an associate member or a non-constituent member. Yet, as we will discover in the debate on the next set of amendments, the CCA will have discretion to give those people full votes. There is a big issue here, and I intend to take it further when we get to Report.

All I am trying to do is to support the noble Baroness, Lady Hayman of Ullock, and say to the Government: here we have a number of very serious proposals that, as they stand, are unacceptable.

8.45 pm

Baroness Randerson (LD): My Lords, I will specifically address Amendment 66 in the name of my noble friend Lady Bakewell, but I will also refer to Amendment 86. On these Benches we broadly support these amendments because they ask some important questions.

Amendment 66 refers to the environment, which to all intents and purposes is a bit of an orphan in the Bill. One of the great advantages of CCAs, and of

gathering together councils on a bigger area, is that you can have co-ordination and efficiencies of scale on environmental issues that are more difficult in smaller units. There are great disadvantages to having large units, but on the environmental issue you need to exploit the advantages. On everything from the management of areas of outstanding natural beauty to recycling schemes—I am trying to produce contrasting examples—and particularly on transport issues, there are huge advantages to running on a larger scale. For example, you have the efficiencies of running a bus network that is not just in the towns and cities but serves the rural areas that feed into them. It is therefore very important indeed that those issues are at the forefront of the decision-making of the CCAs and that they report back on those decisions.

Turning to Amendment 86, I am sure the Minister will forgive me for some cynicism here. The first round of the UK shared prosperity fund and two rounds of levelling-up funding have posed more questions than answers on the criteria on which this sort of government funding is now being based. It seems that areas favoured by the Government are doing well, sometimes not for any good reason. There therefore needs to be accountability in the funding of CCAs.

If we look at the current patchwork of local government funding in England, there always tend to be huge discrepancies and illogicalities because you are always inheriting what has gone before. Areas change and develop, and sadly some areas decline relatively. Sometimes political decisions put some areas at a disadvantage while others thrive. The point I am making is that with CCAs you are starting afresh. It is therefore very important to explain why they are being funded as they are, not just through bald accounting but with a cost-benefit analysis. Amendment 86 is a very good idea.

Earl Howe (Con): My Lords, I am grateful to members of the Committee for such an interesting debate about statements and guidance on combined county authorities. We agree completely with the need for transparency on the wide range of issues in these amendments.

Amendment 66, tabled by the noble Baroness, Lady Taylor of Stevenage, seeks to place a requirement on the Secretary of State to publish an environmental impact assessment 120 days after making regulations that establish a combined county authority. I hope I can reassure the noble Baroness that in making the regulations, government and Parliament will have already considered the environmental impact of doing so. When deciding whether to make regulations to establish a combined county authority or change arrangements for an existing one, the Secretary of State has to consider statutory tests, including whether it would improve the environmental well-being of some or all of those who live and work in the area. Indeed, the regulations cannot be made unless the Secretary of State considers that this test would be met. There is therefore in our view an ample opportunity for Parliament to consider this.

This amendment would also require a combined county authority to publish an annual environmental impact assessment of its ongoing operation. As a form of local government body, CCAs will be subject to the same requirements as other local authorities to publish environmental impact assessments for specific pieces of work and decisions where necessary.

Amendment 74, tabled by the noble Baroness, Lady Taylor of Stevenage, seeks a public statement of the definition and description of a non-constituent member of a combined county authority. I hope I can reassure her that there is already a definition for a non-constituent member in Clause 9. Paragraph 135 of the Explanatory Notes explains that:

> "A non-constituent member of a CCA is a representative of a local organisation or body—such as a district council, Local Enterprise Partnership or university—that can attend CCA meetings to input their specific local knowledge into proceedings".

The Explanatory Notes go on to explain how a non-constituent member would be chosen. First, the combined county authority may designate an organisation or body as a "nominating body" of a combined county authority if that organisation or body consents to the appointment. A nominating body would be a local organisation such as a district council. The nominating body will then suggest the representative to attend for its body—for example, the leader of the council—and that individual is the non-constituent member.

An associate member is an individual person such as a local business leader or an expert in a local issue whom a CCA can appoint. This enables the associate member to be a representative at CCA meetings and to input their specific local knowledge into proceedings.

I hope I can allay the doubts and fears of the noble Baroness, Lady Hayman, on this issue. This model is designed to allow for genuine localism. It allows the local area to decide which local organisations or bodies will bring the greatest benefit to the combined county authority, and then appoint them. No two areas are the same. Depending on the local area, this will be different stakeholders, but examples of bodies that we expect to see combined county authorities engaging with are, as I mentioned, district councils, local enterprise partnerships, local universities, local health organisations and local registered providers, to name just a few.

The clause provides that district councils can be non-constituent members of a combined county authority. This will facilitate district councils having a formal seat at the table in putting their local expertise and ensuring join-up. Non-constituent members could attend the combined county authority's cabinet meetings, be on sub-committees, and sit on overview and scrutiny committees and audit committees, giving those organisations that want them a role and voice in the combined county authority.

The model allows for local flexibility to reflect the different situations of different areas. If the combined county authority and all district councils wish to be involved, they can all be non-constituent members. However, if one does not, a devolution deal will not fall, as it would under the current combined authority model.

As stated in the levelling-up White Paper, we expect the upper-tier local authorities that we are agreeing devolution deals with to work with district councils to deliver the powers most effectively being provided. In discussions thus far, we have been pleased to see collaboration between upper- and lower-tier councils on devolution proposals to deliver for their area.

[Earl Howe]

I emphasise that it is down to the combined county authority to decide what voting rights a non-constituent member should have rather than this being imposed by us in Westminster. Depending on the decision of the combined county authority, its non-constituent members can be given voting rights on the majority of matters.

I hope that this provides sufficient clarity on non-constituent members. I shall, of course, read *Hansard* and pick up any further questions that I feel I have not covered adequately, and I will write to noble Lords on those points.

Baroness Taylor of Stevenage (Lab): As a further point of clarification, if the Minister will allow, is that saying specifically that district councils represented on a CCA will not have a vote, whereas the CCA can decide that other non-constituent members can vote? I am not clear about this at all. Unless what is intended is more clearly set out, we could end up in what I would consider to be an unfortunate situation of elected district councillors who sit on a CCA not being able to have a vote, and the potential for that to be manipulated in a political way would still be there. We need to understand the situation around voting and non-voting for non-constituent members.

Earl Howe (Con): I understand the noble Baroness's point. I do think that I covered that in my remarks, but I will reread what I said and, to the extent that I was unclear, I will be happy to write to the noble Baroness. The broad point is that it will be up to the CCA what voting rights it allows to whom, including district councils.

Amendment 76, tabled by the noble Baroness, Lady Hayman of Ullock, seeks to allow a combined county authority to be able to request that the Secretary of State makes regulations in relation to its membership. In agreeing a devolution deal with councils in an area, we will be discussing what governance arrangements would be appropriate, including the institution to operate the devolved powers, and membership and decision-taking arrangements.

The combined county authority would be able to make such a request to the Secretary of State. Such a request would be formalised through submitting a proposal to the Secretary of State, as set out in Clause 43 for establishing a new CCA and Clause 45 for making changes to the arrangements for an existing CCA. The Secretary of State has to consider such a proposal and, if they deem the statutory tests to be met, can decide to make the regulations. Such regulations can be made only with the consent of the local area—including the combined county authority if one is already established—and with parliamentary approval.

I turn to Amendment 86, tabled by the noble Baroness, Lady Taylor of Stevenage. The Government recognise the importance of transparency with regard to allocations of funding and regular reporting on the impact of wider and deeper devolution. Section 1 of the Cities and Local Government Devolution Act 2016 requires the Government to produce an annual report on progress with devolution to combined authorities and local authorities, which covers the areas suggested by the noble Baroness's amendment; namely, funding and regular progress reporting on devolution of additional public functions.

9 pm

I can confirm that government Amendment 152, which we have not yet debated, brings combined county authorities into the scope of this annual report. This measure will ensure that combined county authorities operate in a transparent manner and are held to account for successful delivery in the same way that other institutions in England with devolved powers already are. The Government therefore feel that we have already provided for effective proportionate reporting mechanisms for combined county authorities that will cover what the noble Baroness is seeking to achieve.

Perhaps I could add, for the noble Baroness's benefit and that of the noble Baroness, Lady Randerson, that alongside budgets for specific functions, such as the adult education budget and CRSTS, the Government have sought to provide long-term certainty to areas with devolution deals—including through the provision of a 30-year investment fund, and settlements around that, worth over £11 billion for deals agreed to date. The funding for individual devolution deals is negotiated on a case-by-case basis, as noble Lords would expect. Long-term investment funds will be considered only for those level 3 proposals that represent the strongest governance and opportunities for greater efficiency and economic growth.

Amendment 100, tabled by the noble Baroness, Lady Taylor, would require the Secretary of State to explain how a local government area will have access to combined county authority functions if it leaves the area of the CCA. We consider that provisions in Clause 23 already provide for the amendment's aims. Clause 23 sets out the statutory requirements for changing the area of a combined county authority, including the removal of a local government area. Any changes to the delivery of functions because of a combined county authority's boundary changing must of course be considered. Such changes to the delivery of functions will be set out in the regulations the Secretary of State will make to change a combined county authority's boundary, which require the consent of the local area and parliamentary approval.

As I mentioned earlier, Parliament will be provided with a statement in the Explanatory Memorandum to the regulations explaining any changes to the combined county authority's area or conferral of powers, the views of the consultees, and how these changes meet the statutory test of improving economic, social and environmental well-being. If a local government area wishes to leave a combined county authority, it is possible those functions will be discontinued in that area. The clause already includes provisions that, when changing an area of a CCA, the regulations can transfer functions to another public authority if that is decided to be appropriate. For some areas, a public authority will continue to undertake some of the functions in the area. For some, it may be decided that the function is no longer to be exercised in the area—a point I made earlier, in a previous debate. As such, Parliament will already have this information via the above means, and the amendments are, I consider, unnecessary.

Amendment 129, tabled by the noble Baroness, Lady Taylor, would require

"the Secretary of State to produce guidance on the establishment and operation of CCAs within 6 months of … Royal Assent."

Clause 53 enables the Secretary of State to issue written guidance about anything that could be done under or by virtue of Chapter 1 of the Bill by a combined county authority, combined authority, county council, district council or integrated transport authority. The relevant authority must have regard to any guidance given in exercising any function under this chapter. I should explain: the reference to guidance in Clause 53 relates to requirements for an authority to have regard to this guidance in exercising a function conferred or imposed by or by virtue of Chapter 1; it does not relate to making areas familiar with the processes required to establish a combined county authority.

Any area wishing to establish a CCA will be made familiar with the required processes during their devolution deal negotiations. As we have seen with the deals announced over the past years, officials will work closely with an area's officers to ensure the successful negotiation and subsequent implementation of deals. While the Secretary of State has no immediate plans to issue any guidance, this clause provides the maximum flexibility to do so, should it ever be suitable.

Turning to Amendment 130, tabled by the noble Baroness, Lady Taylor of Stevenage, I agree that ensuring residents understand what functions their local combined county authority has is undoubtably important. We think there are already a number of mechanisms for achieving this. First, devolution deal documents are public. Among other things, they clearly set out what functions government will confer on the relevant institution, which for many areas will be a combined county authority. Secondly, before a combined county authority is established there needs to be a public consultation, as we have been debating, in that area. It should provide residents and others with the clarity that this amendment seeks.

Furthermore, Section 1 of the Cities and Local Government Devolution Act already places a requirement on the Secretary of State to publish an annual report on devolution in England, including on where agreements have been reached and functions devolved. This section would be amended by government Amendment 152, which we have yet to debate, as I mentioned earlier, to also cover combined county authorities. Finally, the Government will publish a new devolution accountability framework to ensure that all devolution deals lead to local leaders and institutions that are transparent and accountable. This will include consideration of how devolution deals are communicated to residents.

I hope that these explanations are helpful and that the noble Baroness will feel able to withdraw her Amendment 66.

Baroness Hayman of Ullock (Lab): My Lords, there was a lot to think about there so perhaps the Committee would bear with me, as I have an awful lot more questions.

I thank the noble Lord, Lord Shipley, for his very strong support for these amendments, which is much appreciated. As he said, we are concerned about the lack of definition, for example. Much of this is unacceptable as it stands, because there are so many unknowns. It is really complicated and confusing, with not enough information out there, and we are really trying to pin the Government down on that as we move forward.

As the noble Baroness, Lady Randerson, said, the environment is a bit of an orphan in the Bill. I thank her for her support for my amendment; she is absolutely right to say that we could be looking to have co-ordination and efficiency of scale on environmental matters. It concerns me that this is a real missed opportunity, particularly in areas of waste and transport, as the noble Baroness mentioned. The funding rounds so far have posed more questions than answers and there is not enough opportunity to make great strides in co-operation on environmental issues. These are things that we could do so much better; maybe if the missions focused more on the environment, there would be more thought around this. Obviously, this is something that we will come back to.

We need accountability to be built into these provisions. One thing to think about on the funding is that it is regressive in many areas—and in many that need levelling up more than others. It is not necessarily working at the moment, which is why we think it needs to be looked at.

Coming to the Minister's comments, I am very pleased that he said we need more transparency and that it is important. However, on the environment, he talked about the fact the Secretary of State has a statutory test of improving environmental well-being. I am not convinced that that is the same thing as I am trying to achieve through the environmental impact assessment. I am trying to talk about working together more effectively on things such as waste, so you have cost benefits alongside improving the environment. There could be an opportunity for the Bill to do that—and it is not exactly the same as improving environmental well-being; they are slightly different. It would be good if the Government could go away and look at how that could perhaps be built into the legislation.

The Minister also mentioned that environmental impact assessments are there for certain pieces of work, but often they are the developers' responsibility, if they are putting in for a particular development or for planning permission and so on. It is not built into encouraging councils to work together more environmentally effectively to bring that cost benefit to everybody.

On the non-constituent and associate members, from what the Minister said I gather that non-constituents are organisations and associate members are individuals. I am glad I have got that correct. However, to come back to district councils, they are already democratically elected. In theory, if 10 district councils were within a new CCA, could you end up with just one member being represented on the CCA? You could end up with very little district council representation compared with how many different councils there are. We need clear definitions and clear structures. There is nothing about how many members we are looking at and what their powers or responsibilities are. We are concerned

[Baroness Hayman of Ullock]
that there is not enough pinned-down detail. Obviously, we like things to be in the Bill, but we could have more in the Explanatory Notes or under terms and conditions on how it is going to work once it is up and running.

I also want to point out that, in my experience—perhaps it is just to do with where I have been living—not all upper and lower authorities want to collaborate, and not all lower authorities want to collaborate. You can meet stalemate pretty quickly in those circumstances. I would be interested in how that is intended to be managed and who would manage it in order to smooth things over. How is that going to be helped if it is the CCA which decides who can and cannot vote? It strikes me that that has the potential for manipulation. It would be good to see conditions built in to ensure that does not happen. Would there be any guidance on this? What if, say, the only district council member is refused voting rights? Is there any right of appeal or challenge? How is that going to be managed?

On funding and regular reporting, the Minister mentioned the Local Government Act and how the government amendment is going to bring the CCAs into scope. That is really interesting to hear, and I imagine that we will probably revisit it once we have had a chance to look at that amendment and when it comes up for debate. I thank him for drawing our attention to that.

On access to powers if an authority has left the CCA, I clearly heard what the Minister said on Clause 23, but we added this because it does not actually explain that or lay out what happens. For example, if one local authority were delivering transport itself and were then removed, would that transport delivery go to the private sector, for example? That is completely different. We are trying to understand how that would operate and what the potential implications are if it is not managed properly.

9.15 pm

Just very finally—sorry; this is very complicated—on Amendment 129 and the guidance and operation of the CCAs, our concern is that, if this is not laid out clearly, how will local authorities know exactly what they are applying for, or letting themselves in for, if you like? They need sufficient information to know exactly what the possibilities are.

I have one final question—I would be grateful if the Minister could write to me if he does not know the answer. When the upper-tier authorities publish their reports, are they specifically not allowed to do this through the Part 2 confidential reports? I am sorry to have taken a bit of time on this, but this is an important section. It is incredibly complicated, which is why I am trying to get clarification. I do appreciate the Minister's time.

Earl Howe (Con): My Lords, I listened carefully to the noble Baroness. Although some of her questions can be dealt with quite easily via a letter, it might be helpful to her and other noble Lords if we had a round-table session to explore some of the broader questions in greater depth. As she rightly said, considerable ramifications emerge from some of these questions, and I think they would be usefully dealt with in a conversational format, with officials present. So, if that idea appeals to noble Lords, I would be happy to arrange it.

Baroness Hayman of Ullock (Lab): I thank the Minister. We would very much welcome that; it would be extremely helpful. I will finish by wishing the noble Baroness, Lady Goldie, a very happy birthday.

Baroness Goldie (Con): That is very kind.

Amendment 66 withdrawn.

Clause 8: Constitutional arrangements

Amendment 67

Moved by ***Baroness Hayman of Ullock***

67: Clause 8, page 7, line 24, after second "the" insert "initial"

Member's explanatory statement

The means that regulations can only relate to the initial constitutional arrangements.

Baroness Hayman of Ullock (Lab): My Lords, I am going to lose my voice at this rate. I will introduce my amendments in this group and briefly comment on those in the names of other noble Lords.

My Amendment 67 to Clause 8 means that regulations can relate only to the initial constitutional arrangements, and my Amendment 68 means that the regulations relating to the constitutional arrangements of a CCA can be made only after consultation with the CCA. Clause 8 allows the Secretary of State to establish constitutional arrangements, and we do not have a problem with that at all. These are defined as

"membership ... voting powers ... executive arrangements"

and

"functions of any executive body".

The executive arrangements include government appointments, the functions by which the executive operates, the functions of the executive that might be delegated to the committee, the "review and scrutiny" of the executive, "access to information" about the executive and the disapplication of Section 15 of the Local Government and Housing Act 1989—plus the keeping of records. These are important aspects of establishing who will be on a CCA, where decisions will be made and what will and will not be in the public domain.

We believe that, once the Secretary of State sets up the bodies, they really ought to be allowed to get on with the job without undue interference. We believe that we should be able to trust them to exercise the significant power and money functions that will be devolved to them from the centre by this clause. So, if we trust them to do that, we should also trust them to be able to operate their own constitutional arrangements.

My Amendment 67 would insert the word "initial" to demonstrate that the Secretary of State may make provisions about the first set of constitutional arrangements only, and then the CCAs can carry on

and do it themselves. Amendment 68 would further ensure that CCAs are consulted on any further regulations that would relate to their constitutional arrangements.

I will speak briefly to my Amendment 88 to Clause 16, which would mean that the

"regulations can only be made with a majority of members of the constituent councils".

If all the constituent councils are going to feel on a level footing, as it were, with the rest, it is important that they all have that say and that things can change only once there is a majority who actually wants to make that change. It is then more likely to be accepted and moved forward in a constructive manner.

I will comment on a few other amendments. The deletion of the paragraph that the noble Lord, Lord Shipley, has asked for in his Amendment 69

"would reduce the risk of single party control of the executive of a CCA or its committees".

We strongly agree with the noble Lord on that. It is an important amendment, because the Secretary of State should not be able to make regulations which disapply the political proportionality rules for an executive or committee of a CCA; we believe that that is for the electorate to decide.

We also agree completely with the noble Lord, Lord Foster of Bath, in his Amendment 71, which means that a constituent council can include

"a district council in a two-tier county council for an area within the CCA's area or proposed area".

We believe that this is one of a number of places in the Bill where district councils must be allowed to be included as constituent councils in two-tier areas.

The noble Lord, Lord Shipley, has also tabled Amendments 72 and 75, which, again, reduce the risk of one-party dominance. I absolutely understand his point: if you allow voting members to resolve that non-constituent members can vote on a CCA, you could end up with the situation where this class of member is appointed specifically to boost the voting majority of one party. This comes back to us saying earlier that, if you are not careful, you could end up with a situation where things could be manipulated, even if that is not the Government's intention. We have to be very careful about that, so we strongly support those amendments.

The amendment to Clause 26 in the name of the noble Baroness, Lady Bennett, would require a referendum. I see that she is very keen on referendums today. I am not sure whether this is subject to prior legislation, but I am sure that she can enlighten me. The consultation to which we referred in our amendment in relation to setting up the CCA could carry a requirement that it also determines the nature of that CCA: for example, whether it is to be mayoral-led or indirectly elected, appointed by the CCA. In any case, it is probably good practice to consider a referendum on whether there should be a mayor and whether a CCA is indirectly elected. However, the one concern we have—I am sure that the Minister will refer to this—is the considerable cost of running any referendum; that is the sticking point for us.

Amendment 114, in the name of the noble Lord, Lord Shipley, ensures that appointments cannot be imposed without scrutiny and without the CCA's agreement. Again, this is around the appointment of a deputy mayor, in particular. If we assume the current system will continue as it is—that is, where deputy mayors are appointed—I would certainly agree with the noble Lord that this should not be without the scrutiny and agreement of the CCA. The question here is whether a powerful position such as that of deputy mayor should even be appointed in the first place, or whether we should undertake some kind of democratic process for these powerful positions.

Amendment 116A in the name of the noble Lord, Lord Stunell, seeks to probe the circumstances in which political balance might be inappropriate. This is a very helpful amendment where the noble Lord, Lord Stunell, is seeking to explore the nature of political balance in bodies that exercise joint functions. In effect, these have usually worked without political proportionality being applied, but it would be interesting to hear the Minister's view on how this might operate going forward.

Finally, the noble Lord, Lord Shipley, has another two amendments. Amendment 120

"would ensure that the CCA is confident that powers being delegated by the deputy mayor are appropriate."

Sensibly, it seeks to add an extra protection, which we would support—we would not want to see any deputy mayors going rogue, for example. Amendment 122

"would ensure that the views of a majority of the CCA are fully considered".

Again, we think this is absolutely appropriate. There are important matters that this could cover—for example, the transfer of fire and rescue powers to the chief constable, which is of course a possibility. With that, I beg to move.

Lord Shipley (LD): My Lords, I would like first to welcome the offer from the noble Earl, Lord Howe, of a meeting. I suggest that plenty of time be allowed for us to discuss some of the issues that we have been trying to get to the bottom of in our debates so far.

I have six amendments in my name, and they all derive from a first reading of the Bill and the Explanatory Notes. Going back and reading it all again, you realise you actually need to place amendments on these matters. In this group, there are Amendments 69, 72, 75, 114, 120 and 122, and they all have a common theme, which is the centralisation of power and the need for checks and balances in the decision-making process.

Amendment 69 would delete Clause 8(3)(f), which says that

"section 15 of the Local Government and Housing Act 1989 (duty to allocate seats to political groups) in relation to an executive of the CCA or a committee of such an executive"

is disapplied. Therefore, it will not any longer be in place. That says to me that the deletion seems to encourage single-party control of a committee structure of a CCA. I just ask the Minister whether that is wise. It seems to centralise a power to an inner group of the CCA.

There has been a lot of discussion in the last group and then this one about district councils and their rights—clearly the meeting we are going to have will address some of those issues. Amendment 72 is a

[Lord Shipley]
probing amendment and would prevent non-constituent members of the CCA voting. I say that to draw an explanation of why a non-constituent member of a CCA should have a vote. Why should the non-constituent members of the CCA become voting members? Will they all have a vote, or will it be only some non-constituent members? There is a big issue of principle here. Is it not enough for a non-council-nominating member to be in attendance? It is a simple issue. If you are a full member, you have a vote, and if you have a vote, you must be a full member. In other words, we have to have a discussion about the rights of district councils to be full members and have full votes.

Amendment 75 then addresses the issue of associate members of a CCA having a vote at the discretion of the CCA. I would like the Minister just to explain in what circumstances an associate member would qualify for a full vote. Again, the process could encourage one-party domination, by giving a majority party the right to give a vote to an associate member of their choice—or do I misunderstand? I am very happy to have misunderstood, but I am probing to know what the intention actually is.

9.30 pm

Clause 27 as it stands gives the power to a mayor to appoint a deputy mayor from the members of the CCA. Amendment 114 would require this appointment to be approved by the CCA; in other words, it would not allow a mayor to have absolute power in the appointment. I think that is reasonable and would be a check on the power of a mayor, to ensure that we have balance in decision-making.

Amendment 120 would ensure that, when powers are delegated from a deputy mayor who has PCC powers to another person, this arrangement is agreed by the CCA and is felt by it to be appropriate. I was surprised to read that the mayor will delegate powers of PCC to a deputy mayor but that the deputy mayor can then pass on some powers to another person. We need to be much clearer about how that would work. In other places, the police and crime commissioner is being directly elected by the general public. We need to be really clear what the impact is going to be of the change we are going to pass through the Bill.

Finally, I come to Amendment 122. As it stands, the Bill requires at least two-thirds of a CCA to disagree to regulations drawn up by the mayor for recommendation to the Secretary of State. That is about disagreeing with the mayor, and I think that forcing two-thirds of the votes on a CCA to disagree is too high a barrier. It would be better, as I say in my amendment, for it to be 50%, which I think is a much more reasonable figure, because it would be a majority.

I hope the Minister will listen to these probing amendments and that, from the process we are about to follow, we will actually get something in the Bill that is going to be better. I want these powers of devolution to succeed. If they are going to succeed, what we do not want is for things to go badly wrong, and it is possible with a structure such as this that we could end up with them going seriously badly wrong.

Baroness Bennett of Manor Castle (GP): My Lords, I shall speak to my amendment in this group and my opposition to Clause 25 standing part. I will make a couple of other comments on other amendments in the group.

I begin by very strongly agreeing with the noble Baroness, Lady Hayman of Ullock, in supporting Amendment 69 from the noble Lord, Lord Shipley. I will be very interested to hear the Minister's explanation of the reasons for this, but an undue dominance of one party in committees is a clear problem, and it is very hard to imagine a justification for the deletion that the Government are proposing. I also agree with Amendments 114 and 120 on the CCA having to approve the appointment and powers of deputy mayors. That is an obvious point of democratic scrutiny.

In this group I have given notice of my intention that Clause 25 should not stand part of the Bill. This would delete the power for the Secretary of State to establish an elected mayor for a CCA, and my Amendment 113 would require a referendum for an elected mayor. What we are talking about here is what I was talking about in the previous group on which I spoke: democracy. We have seen from several sides of the Chamber a real desire to impose a model of governance known as the strong leader model: "We need to have one person there as a figurehead, who makes the decisions." As a Green, I am fundamentally opposed to that model. I think it is very bad for democracy and very bad for the quality of decision-making and the quality of governance, independent of whatever the ideology might be. I also think that it discourages broader involvement in politics, which should be the very foundation of our democracy.

What we have also seen in the context of this is the election system for elected mayors, which the Government chose to unilaterally change under the Elections Bill—now Act—despite considerable opposition. I am not standing up and saying that as Greens we are going to write into this Bill that there is no right to have an elected mayor. I am saying that people should have the right to decide whether they want an elected mayor. It is very possible to imagine a community, an area, or a region that says, "We want a CCA, but we do not want an elected mayor." I am seeking to ensure that however it is written into the Bill, that people have that choice, and that genuine choice is available to them.

My understanding is that the Labour Party, as well as the Conservative Party, has tended to be in favour of this strong leader model. That is a model to which I am fundamentally opposed, but I am saying that people should be allowed to have a choice whether or not to have that model applied to them. As in the previous group, I referred to the fact that in a number of cases around England where people have had it imposed on them, they got rid of it when they got the chance—as the people of Sheffield and Bristol did. To answer the question about cost from the noble Baroness, Lady Hayman of Ullock, I can cite figures for Sheffield. When conducting it at the same time as another election, it cost around £170,000 for Sheffield, which is the fifth largest city, making it more or less comparable to other cities. That was a couple of years ago, but it gives you a ballpark sense of what it would cost. I do not believe that sort of figure, proportionately, is too high a cost to apply for democracy.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I rise briefly in this debate to support Amendment 69 in the name of the noble Lord, Lord Shipley. When I was listening, I read it and I am actually quite surprised by what the Government are doing—the disapplication of the duty of allocate seats to political groups. It seems perverse to me that the Government would do this. We are going to bring in these county combined authorities, whereby we bring people together across large areas who were not engaged, were not involved—and we want people to participate in this. Where would you be if you were trying to join one of these county authorities and you thought, "Hang on here, I am from one political group and we control this council, but all the other councils are controlled by my political opponents. I can join here, but then I will be taken off all the committees." Why would you do that? It just seems perverse. I would be really interested to see how the Government can justify this when the Minister responds.

I really do think that the Government need to go away and think about that. It seems only fair to me that, if you are going to bring a combined authority together and you have elected politicians in all those authorities that come together, if they are from different groups, they should have representation on the Executive. I cannot see why you would want to take them off. Surely, you would want to hear their views. They are from different parts. I know there are proposals for a combined authority covering Derbyshire and Nottinghamshire. I used to work up there, and that is a huge area. The thought that one group could be excluded from that because they were not of the same political group—the larger group there—is just perverse. I do not understand why the Government would suggest that and want to do that. I am really looking forward to the Minister's response to justify this. I hope that, maybe, he may agree to take it back to the department and suggest that they have overstepped the mark and that it should be removed at Report.

The Earl of Lytton (CB): My Lords, as this is the first time I have spoken at this stage of the Bill, I remind noble Lords of my various interests and activities. I am a chartered surveyor, a vice-president of the National Association of Local Councils, and a member of the Country Land and Business Association. Probably none of them really clashes with what I am about to say. However, I do have fundamental concerns about these CCAs. How is this extra tier going to be funded or how will it generate its own income, in whole or in part? Will they truly meet what the Minister referred to as the transparency and accountability test that he set in the previous group? Will those standards always be routed in democratic accountability and the norms and conduct to be expected thereby, or something else?

I relate to the point made by the noble Lord, Lord Shipley, about ever-greater centralism in the Bill generally. That is a disturbing trend, especially when this whole levelling-up Bill, if you like, was gazetted as something that was going be better for communities. I see the thing drawing away from everything I understand community to be, and recognised it as, when I was president of NALC. This seems to be moving in the opposite direction.

The lack of clarity and specificity, presented as a freedom of CCAs to organise and manage their own affairs to some extent, is another area which is not clear from the Bill. The real acid test is whether this will result in citizen confidence in what we are doing. It cannot be otherwise. This is not something we can do from the top down, saying, "Oh well, they'll like it, won't they?" This has to be rooted in confidence in communities and among the citizenry generally.

Specifically, on this clause, the associate members are a special area of what I see as potential democratic dilution. Voting or not, these associates will have position and influence in debate and the processes going on. Let us not get too hung up about precisely whether they will be voting, because they will obviously have a lot of important functions notwithstanding. But who might they be? One can think of all sorts of worthy individuals representing important sectors of the community, but what about a property developer? What about a telecoms or construction company executive, who might have a particular interest in being involved in a particular area, or an investor linked to a sovereign wealth fund? The list goes on. What about a pressure group? The real question is: do these pass the test of citizen credibility when looked at from that area, bearing in mind that this is a body that is going to add another tier to the process we have all become familiar with and, to some extent, used to?

Could the noble Earl give us some reassurance as to who these associates might be? There has to be some overarching principle that sits behind their appointment and the functions they are able to deal with. If not, we would be signing some sort of operational blank cheque to these bodies. I hope he will be able to provide me with an answer to that point, which concerns me very much.

Lord Kennedy of Southwark (Lab Co-op): My Lords, when I spoke earlier, I should have referred to my interest as a vice-president of the Local Government Association. I apologise to the Committee for that.

Lord Foster of Bath (LD): My Lords, before I turn to Amendment 71, I place on record a very personal—and it is not just mine—support for what the noble Baroness, Lady Bennett, said a few minutes ago about the vital importance of allowing tiers of local government to decide for themselves how they want to organise their decision-making processes. That is fundamental.

In terms of one of those tiers of local governance, we have already heard throughout the course of today's deliberation frequent reference to the importance and the role of district councils. That is what Amendment 71 is about. I noticed that, during the deliberations on a number of groups, concern has been raised about quite how district councils are going to fit in to the new structures that are being proposed. Indeed, the noble Baroness, Lady Hayman, said—I counted it—on five separate occasions during her last contribution, "It's all very complicated" or "It's all incredibly

[Lord Foster of Bath]
complicated". I say to her that my Amendment 71 provides a solution which brings enormous simplicity to the whole issue.

9.45 pm

Before I do so, I will remind the Committee why district councils are so important. After all, they deliver 86 out of the 137 essential local government services to some 22 million people, which is 40% of the population of England. Those services cover things such as waste collection, street cleaning, housing, economic development, planning, leisure, recreation and many other things. It is important to remember that they are also better known, more popular and more trusted than other tiers of government. They have a higher name recognition, for example, than county councils. The public believe that district councils are much more likely than other tiers to take their views into account in the decisions they make. A recent survey said that 62% of people thought that of district councils, compared with only 32% for county councils and, for those of us who have been or are involved in it, it is sad to know that only 6% of the population believe that central government take their views into account. The public believe that district councils are best placed to understand and deal with social issues in their area and to boost local economies. It is interesting that in two-tier areas, the district councils get a higher satisfaction rate than the county councils.

Amendment 77 is an attempt to explore further the debate we have been having about how these important district councils fit into the CCA plans. At present, as I understand it—the Minister was very helpful earlier in setting the scene in answer to the noble Baroness—the district council might become a non-constituent body, depending on the decisions of other people, but there is no certainty about that. The powers that district councils will have are uncertain, because they are determined by other bodies, and whether they will have a vote is also uncertain, because other groups will decide. An additional complication was raised by my noble friend Lord Shipley when he asked why a non-constituent body should have a vote at all.

One of the issues was the problem of district councils having their powers removed without having any say in it, and I am pleased that some progress has been made—back in November, Michael Gove made a Statement, and we have amendments coming up later that, we hope, will address that concern. It seems to me there is a simple solution to all of this. Currently we have constituent members, which are either a county council or the unitary district council for the relevant area. Amendment 71 simply proposes that we add district councils to that list. It would provide a neat and simple solution; it would ensure that there is no problem with powers being stolen from people, because they would be involved in the decision-making on all the powers that they currently hold, and so on.

Of course, I entirely accept that the Government have concerns about that, believing that district councils could outvote the others or perhaps even have a veto, but these are issues that can be resolved. We note that in Clause 11, there are already powers for the Secretary of State to make regulations. I simply propose to the noble Earl not only that he accepts the amendment, as I hope he will, but as he has very generously offered us a round table to discuss many of these complicated issues, that that could be added to the list of things we look at. I hope that the very simple solution to all the concerns people have expressed about district councils is accepting Amendment 71.

Lord Stunell (LD): My Lords, it is late. I will try to be quick. I want to pick up what the noble Earl, Lord Lytton, referred to as "operation blank cheque". The bit of the Bill that we are looking at here and that my amendment refers to is described in a sub-heading as "Functions of CCAs". It consists of 15 clauses, 11 of which start with:

"The Secretary of State may by regulations make provision".

What is different about the other four? Well, in those, the same words appear but they are not the first words. The problem is that there is a concept, an idea, floating around, but with such a lack of precision that it is extremely difficult to pin down what we will get at the end of the day. My Amendment 116A amends Clause 30, which does indeed start with:

"The Secretary of State may by regulations make provision"

and deletes subsection (4), which would suspend the operation of political proportionality.

I very strongly agree with all the other speakers in what has been said so far and support their amendments, but regarding this amendment, what is Clause 30(4) designed to achieve and why should it achieve it? The Local Government and Housing Act 1989 was not actually the original legislation. There was some preceding legislation introduced by Mrs Thatcher, who was fed up with Conservative councillors in opposition complaining to her about another large party, which shall be nameless, taking not just majority control but complete control of the committee system. That led, in their view, to serious injustice. Mrs Thatcher was persuaded of that point and the rules were introduced. Liberal Democrats at the time were strongly urging the same course of action. It was designed to stop an undemocratic abuse of majoritarian rule.

There would have to be a strong reason for suspending that in this arrangement. It will be a complex situation. We have enough experience here to know that getting a group of district councils and a county council together is not an afternoon's walk in the park but a complex job, and the last thing that anybody needs to upset that applecart is the idea that there will be unfair or disproportionate representation, or "My council's view is going to be squeezed out because of a distortion in the system."

Others have spoken eloquently about that, but I just want to pick up the point about associate members. These are the individuals who can be appointed to join what are joint committees. This clause relates to the constitution of joint committees. It will have county councillors and district councillors. It may have associate members and they may have a vote in certain circumstances. The noble Earl, Lord Lytton, pointed out that there is no limitation on who that could be.

We used to have an institution called aldermen. The majority party would appoint a sufficiently large number of its supporters to ensure that it never had

any difficulty in the chamber in passing its budget or anything else. Quite rightly, the institution of aldermen has long since been consigned to the dustbin. However, we have got it back here, with associate members. It will be explosive if you mix that in with the complexity of getting district and county councillors around a table taking decisions.

My question to the Minister is: in what circumstances could doing that enhance the Government's proposal for CCAs? It is one of the many occasions when Ministers decide the regulations, but there is no indication of what factors are to be considered which might justify having any confidence in this proposition. Should not the factors that the Secretary of State considers at least be in the Bill; for example, "The Secretary of State cannot exercise Clause 30(4) unless the following conditions are complied with"? The noble Earl might like to suggest those conditions, those limitations or constraints, because on Report, I would want to include them in an amendment.

Of course, this is not the only clause that I might have made this amendment to: Clause 28(5)(f) is another where proportionality is being suspended—or may be if, at his complete discretion, the Secretary of State decides to do so. I want to hear what the Minister has to say about why he thinks that it is necessary or even slightly advantageous. If he has a plausible reason for that, will he go on and accept that it has to be codified or constrained in some way? If he cannot do any of those things, will he please accept my Amendment 116A and delete subsection (4) from Clause 30?

Baroness Pinnock (LD): I will not speak for long. This has been a very important debate, and very positive: across the Chamber, Members are in agreement that we need clarity from the Government about what they are proposing regarding the constitution of the CCAs.

There is one element that has not yet been raised. Where the constituent members are not equal in size, is that to be reflected in the constitution of that particular CCA? I will give an example that was raised in earlier groups. I asked the noble Baroness, Lady Scott, about Devon. It has a county council; Plymouth is a unitary, as a city; so is Torbay, as a unitary district. Those three are very different in size, population and economic geography, which we talked about earlier. Are they equal members with a similar number of voting rights? As the Bill says, they can each nominate at least one, but will there be an expectation that they be proportionate to their size and responsibilities? That is not clear and needs to be clarified by the Government before we get any further.

Then there are the non-constituent members. I agree wholeheartedly with Amendment 71 from the noble Lord, Lord Foster: the easy way forward is to say that district councils are democratic bodies within the CCA and have a right to be full members. As I have said just now about constituent members, CCAs can and will have to decide proportionality, and they could do that with regard to the districts. It makes good sense.

Frankly, as somebody who has spent most of my life as an elected person, I find it insulting that a democratically elected body such as a district council is aligned with other non-constituent bodies and put in the same category as local business groups, chambers of trade or trade union bodies, which are not elected by the public. I can see why you would want other groups to be associated with the CCA, but, if they are not democratically elected and therefore democratically accountable, they should be in a different category.

This leads me to associate members. I personally think that they should not exist and I shall leave it at that. Why should they? Somebody tell me. Get individual, unaccountable to anybody—nobody needs to know who they are; perhaps they are somebody's mate—on there to stuff the numbers the right way. It is just not acceptable.

10 pm

The only other point I think I want to make is about the appointment of deputy mayors to take on the role of police and crime commissioners. That is the situation we have in West Yorkshire. People in West Yorkshire had the right to vote for a mayor, and the successful mayor was then able to appoint somebody to be responsible for police and crime in the whole of West Yorkshire. This is not a reflection on the individual, who is doing a good job. There is, however, a question here, because the experience of police and crime commissioners in the country has been variable, to say the least. In one or two cases, it was worse than variable: question marks have been put against their names and their positions and how they are carrying out their duties, to the extent that they have had to resign.

Now, if you have an appointed deputy mayor who is then responsible for the duties and responsibilities of a police and crime commissioner, how does that work? Where is the accountability? Does the elected mayor carry the can for what their appointed deputy has to do? That is the only way that I think it might be able to work. It is an area that we need to resolve, and this Bill gives us the opportunity to do so.

My last and final point is just to say how important Amendment 69, about proportionality, is. There will be voices from across political groups in the very big, strategic issues that are going to be determined by combined authorities. To take proportionality away—to disapply it—is a mistake, and I hope that the noble Earl will take away the very strong feelings that have been expressed in the Chamber and come back with revised proposals.

Earl Howe (Con): My Lords, this group of amendments considers various aspects of a combined county authority's constitution and its day-to-day working. Although I appreciate it is a probing amendment, Amendment 67, tabled by the noble Baroness, Lady Hayman, would remove the ability of the Secretary of State to amend the regulations on the constitution of a combined county authority. These regulations include the membership of the combined county authority, which must be amended if, for example, another area wished to join a CCA. Members of the new area would need to be added to the CCA. If no such change were possible, there could be no change to the make-up of an established combined county authority, regardless

[Earl Howe]
of the wishes of the local area. CCAs must retain the flexibility to include a new area or for an area to leave, or to reflect other such changes.

Turning to Amendment 68, I completely agree with the noble Baroness on the need for consultation with combined county authority members on regulations regarding the constitution of a CCA. Clause 44 of the Bill already goes further than this amendment by providing that the consent of all the constituent councils is required if the Secretary of State is to make any such regulations. It is worth my making the point that these clauses should not be read in isolation, but rather in the round.

I noted the noble Baroness's position that CCAs, once established, should just be allowed to get on with it, without the involvement of or interference by the Secretary of State. I look at the issue from the other perspective. The clause enables constitutional arrangements for a CCA to be established in the regulations that will also establish the CCA. These arrangements are the fundamental working mechanisms of the CCA; they include aspects such as the membership of the CCA. As such, it is appropriate that they are set out in secondary legislation to ensure the establishment of a stable institution with good governance. A CCA can set out its own local constitution or standing orders with additional local working arrangements. This is done locally and does not require secondary legislation. However, the local constitution cannot be allowed to contravene primary or secondary legislation. There has to be consistency, and we believe that this is the right way to ensure that.

Amendment 69, tabled by the noble Lord, Lord Shipley, and spoken to by the noble Lord, Lord Kennedy, would prevent the Secretary of State making provision for the executive of a combined county authority to represent the political make-up of its members. A combined county authority is to be made up of members from each of the constituent councils on a basis agreed by those councils through their consent to the establishing regulations. These regulations will also provide for the make-up of the CCA's executive. It is essential that the constituent councils can agree together the make-up of the combined county authority's executive that properly reflects the local political membership of the CCA. This is essential to underpin the collaborative working required to make a CCA work in practice.

The amendment would, in effect, impose on a combined county authority an executive that did not reflect the make-up of CCA members, which could negatively impact on the working of the CCA. It would also place the executive of a combined county authority in a different position from that of either a local authority or a combined authority, neither of which requires political balance.

Amendment 71, tabled by the noble Lord, Lord Foster, would enable a two-tier district council to be a constituent member of a combined county authority. As I said, the combined county authority is a new institutional model made up of upper-tier local authorities only. Only two-tier county councils and unitary councils can be constituent members of a CCA. We contend that this model will provide the flexibility required for devolution to areas with two-tier local government, which has proved a challenge to date. It allows a combined county authority to be established with agreement from the councils across the area that will be the constituent members of the CCA; that is, the upper-tier local authorities.

I realise that some noble Lords are sceptical about this, but this model removes the risk of one or two district councils vetoing the wishes of the great majority for devolution, as has happened with some two-tier local government areas wishing to form combined authorities, where unanimous consent from all councils in the area, including upper- and lower-tier councils, is needed.

I come back to a point I made earlier. While they cannot be constituent members of a combined county authority and, as such, cannot consent to its establishment, district councils can have a voice in a CCA via the non-constituent member model, as set out in Clause 9. As stated in the levelling-up White Paper, we expect CCAs and their upper-tier local authorities to work closely with their district councils, and have been pleased to see this happening in deal areas. This flexible model will enable the county, district and unitary councils to work together in the way that best meets local needs and wishes. The bottom line, I contend, is that this amendment would defeat those objectives.

It is important for me to say to the noble Lord, Lord Foster, that we are not taking away district council powers. Devolution is about giving power from Whitehall to local leaders. We expect the upper-tier local authorities we are agreeing devolution deals with to work with district councils, as I have said, to deliver the powers most effectively being provided. In discussions thus far, we have been pleased to see collaboration of the kind I have mentioned.

I realise that Amendment 72 is, in essence, a probing amendment. It will not surprise noble Lords to hear that I cannot accept it, because it would prevent a combined county authority resolving that non-constituent members could exercise a vote on matters where the CCA considered this to be appropriate. Non-constituent members are non-voting members by default. As I tried to make clear earlier, the combined county authority can give them voting rights on most matters, should it wish to. For example, a combined county authority may have provided for there to be some non-constituent members from the area's district councils to enable their input on matters of importance to district councils in the CCA's area. The CCA may wish to maximise this input by allowing in certain circumstances for these non-constituent members to vote. This amendment would prevent these non-constituent members being given a vote and would risk undermining the CCA's ability to work in collaboration with its district councils and other non-constituent members.

Amendment 75, also tabled by the noble Lord, Lord Shipley, would prevent a combined county authority resolving that associate members could exercise a vote on matters where the CCA considered this to be appropriate. I am afraid that this is another proposal that I cannot accept, for reasons similar to those I have just outlined for Amendment 72.

Associate members are non-voting members by default, but the combined county authority can give them voting rights on most matters, should it wish to. For instance, a combined county authority may have provided for an associate member who, for example, may be a local business leader or an expert on a local issue to enable the member's input on matters on which they have relevant expertise in the CCA's area. The CCA may wish to maximise this input—

Lord Shipley (LD): May I ask for a point of clarification on the associate members? Is it possible that a CCA can decide to give an associate member a vote, but not other associate members, and on what basis would that decision be made?

Earl Howe (Con): I think the answer to that is yes. CCAs can distinguish between associate members in that way. But they would need to justify to themselves why they were according that difference of treatment. Circumstances would dictate a different course in different circumstances.

I come back to saying that the CCA may wish to maximise the input of associate members by allowing—

Lord Stunell (LD): I appreciate the Minster's reply, but if I could press him a little more, does he see any way at all in which we could differentiate what he is suggesting from the traditional role of the aldermen?

Earl Howe (Con): The noble Lord, Lord Stunell, has stumped me there. As I am not totally familiar with the role of the aldermen, and I am sure he is, I had better write to him on that point, if he will allow.

The point I was seeking to make is that the CCA would in some, if not many, circumstances want to maximise the input from associate members by allowing in certain circumstances those associate members to vote on such matters. The amendment would prevent that happening and could risk undermining the combined county authority's ability to work in collaboration with local experts who can contribute positively to the working of the CCA.

10.15 pm

I listened with care to the noble Earl, Lord Lytton, who I took to express considerable scepticism about having a non-elected person with a seat at the combined county authority's table. We did cover this in some detail in the previous group of amendments, which he may not have been here to listen to in full. We have seen combined authorities appoint commissioners with specific expertise to focus on a challenging local policy area and drive change in that area. For example, the Greater Manchester Combined Authority has appointed Dame Sarah Storey as a commissioner on active travel.

The associate member arrangement provides a more formal structure for bringing in such expertise. Associate members can also bring the local business voice into the combined county authority, the harnessing of which is, of course, vital to achieving levelling up.

Lord Scriven (LD): Can I ask the Minister a question? In relation to the commissioners who have just been referred to, do those commissioners have an automatic seat on the combined authority?

Earl Howe (Con): Well, does that not argue for having in certain circumstances a similar status for associate members, who can contribute on a par with the way that commissioners contribute to combined authorities?

Lord Scriven (LD): The point I am trying to make to the Minister is that, if he is going to use an example, it has to be an example of someone who already sits on a combined authority and has that influence, rather than just someone who advises the mayor and does not have a formal role within the combined authority structure.

Earl Howe (Con): I think this was said earlier. I do not think you can take the model of the metropolitan areas and combined authorities and transpose that on to other areas of the country. Why should we not allow for difference, diversity and local decision-making on the way that people are used to best effect?

Lord Scriven (LD): The Minister does not seem to understand. It is not about transposing from an urban to a non-urban issue. This is a matter of principle about democratic accountability for taxpayers' money being used and that, when people sit at a table, there is some form of democratic accountability back to the people for whom they are making those decisions. The kind of membership that the Bill proposes has no democratic accountability. It is not about transposing a model from urban to rural; it is a matter of principle. If people are spending taxpayers' money as part of a mayoral combined authority, whether urban or rural, they should be democratically accountable back to the people whose taxes they are spending.

Earl Howe (Con): I sense that this is a matter that we will come back to at a later stage of the Bill. I do not think I can add anything to what I have already said on this subject.

Lord Kennedy of Southwark (Lab Co-op): I will just come back to one point. I was a bit puzzled by the Minister's response to Amendment 69 in the name of the noble Lord, Lord Shipley. The Government are taking the power in the Bill to disapply the duty to allocate seats on the basis of political proportionality in the combined authority; they are disapplying that power. The noble Lord, Lord Shipley, was seeking to remove that provision so that, if a party had a third or a quarter of the seats, it would expect something similar on the Executive. When the Minister answered the noble Lord, Lord Shipley, he gave an answer that seemed to agree with what he was suggesting while justifying the position of the Government. It seemed perverse.

I know that there are to be proposals for a Nottinghamshire/Derbyshire combined authority. At the moment Derbyshire County Council and Nottinghamshire County Council are controlled by the Conservatives, and Derby City Council is led by the Conservatives. The only Labour council is Nottingham City Council. On the basis set out in the Bill, the three

[Lord Kennedy of Southwark]
Conservative councils could get together, gang up on the Labour council and throw it out of the committee structure. That surely cannot be right. Why would a minority council join something if it could be ganged up on and removed from the executive? It would not; we want to bring people together. I know that the noble Lord, Lord Shipley, is trying to ensure that this problem could not happen. I do not follow the Minister's arguments, which were in support of the noble Lord, Lord Shipley, but were used to say that we cannot have the amendment.

Lord Shipley (LD): My Lords, perhaps I could help the Minister at this point by simply suggesting that we add this to the agenda of our meeting, which gets longer and longer as we speak. It is a very important issue, to which we should add the issue of whether the calculation of political proportionality applies to the membership of the CCA—those who are there—or the bodies that each of those members represents, on behalf of which they have been nominated to attend the CCA. You might get a different answer depending on which it is. To avoid a lengthy evening and discussion at cross purposes, perhaps the Minister will agree that we can talk about it around the table; it might be easier.

Earl Howe (Con): I am very grateful to the noble Lord, Lord Shipley, because the last thing I would wish to do is mislead this Committee or lead it down a path that led nowhere. Rather than go round in circles, as I suspect we might if I continued, I would be very happy to take up that suggestion and add it to the agenda of this rather lengthy round table we are planning.

Moving on to the amendment tabled by the noble Baroness, Lady Hayman, I completely agree with her on the need for the constituent members of a combined county authority to agree to the conferral of local government functions on a CCA. This is recognised in Clause 16, which provides that the consent of all the constituent councils is required if the Secretary of State is to make regulations conferring any such functions on a CCA. It is essential that all the constituent councils have agreed to the regulations that establish and confer powers on the new institution to support the collaborative working that is essential for a successful CCA.

I turn to some of the broader issues raised by the noble Baroness, Lady Bennett of Manor Castle, on Clause 25 standing part. I take on board her instinctive antipathy to the concept of having elected mayors, but let me outline the case in their defence. We have seen from our existing mayors how strong local leadership can enhance economic and other opportunities. Mayors act as champions for their areas, attracting investment and opportunity to their places. They provide that single point of accountability to local citizens. Our devolution framework in the levelling-up White Paper places a strong emphasis on the importance of high-profile, directly elected local leadership, strong local institutions, and joint working across sensible and coherent economic geographies. We believe that high-profile, directly elected leaders—such as a mayor—will be most effective in driving levelling up in an area. Such strong local leadership is essential for delivering better local outcomes and joined-up public services.

As such, level 3 of the devolution framework in the White Paper, which is the highest tier, requires an institution to have a directly elected mayor to access the fullest range of functions and funding. In the case of a combined authority, we have seen that directly elected mayors are the clearest and lightest-touch way to provide that single point of accountability that I have referred to, which enables greater risk taking in decision making. In the case of a local authority, a directly elected mayor increases the visibility of leadership and helps create a greater convening power to delivery place-based programmes. That visibility is not to be derided. The *Evaluation of Devolved Institutions* report in 2021 found that nearly three-quarters of respondents —72%—across all combined authority areas reported that they were aware of who the mayor of their local area was. London, with 97%, and Manchester, with 88% of respondents, reported the highest level of awareness of who their mayor was.

Many noble Lords will be aware of mayors around the country who are already playing an incredibly powerful role in driving economic growth, as well as improving public services and giving local areas a real voice on the national stage. West Midlands would be a good example, where Andy Street has led work to form Energy Capital with the aim of creating a competitive, secure modern energy system that provides low-cost, clean and efficient power, while Andy Burnham and the Greater Manchester Combined Authority have created Our Pass, a membership scheme to provide free bus travel across Greater Manchester for young people. It greatly improves their ability to take advantage of the city-region's amenities.

Clause 25 enables regulations to be made for a combined county authority to be led by a mayor. It introduces Schedule 2, which sets out the detail of the electoral arrangements. As I have said, this opens the way for a combined county authority area to benefit from the strongest devolution offer available. As I also mentioned earlier, combined county authorities do not have to have a mayor; they can choose to be non-mayoral. We believe that that choice should be made by the local area, in line with our localism principles. Non-mayoral CCAs can access level 2 of the devolution framework, which in itself is valuable and powerful. This clause provides the mechanism for delivering our aim of having strong, visible and accountable leaders to take devolved powers and budgets, and drive the levelling up in their areas.

Amendment 113, tabled by the noble Baroness, Lady Bennett of Manor Castle, seeks to insert a requirement into Clause 26 for there to be a referendum before the Secretary of State may make regulations to provide that a combined county authority should have an elected mayor, and for this question to be approved by a majority of local government electors. I have probably said all I can on the pros and cons of referenda. I am, generally speaking, not a fan, and I have to say that I agree with the point made by the noble Baroness, Lady Hayman, about the cost of putting on a referendum.

Lest there be any doubt about local public involvement, however, I absolutely agree that it is important that the public are consulted on a proposal to introduce a combined county authority mayor in their area, hence the requirement for public consultation in Clauses 43 and 45. For the record, again, Clause 43(4) states that, prior to submitting a proposal for establishing a combined county authority to the Secretary of State, the local authorities proposing to establish it must undertake a public consultation on the proposal in the area that the CCA will cover. If those local authorities are proposing that there is an elected mayor for the CCA, that will be set out in the proposal.

Clause 45(3) includes similar provisions for a proposal from a combined county authority to make changes to existing arrangements relating to that CCA, including introducing an elected mayor for the CCA's area if moving from a non-mayoral CCA. The authorities or the CCA must undertake a public consultation in those circumstances and submit a summary of consultation responses to the Secretary of State alongside their proposal.

When deciding whether to make the regulations to establish or change a combined county authority for an area, including introducing an elected mayor, one of the tests that the Secretary of State must consider is whether the area's public consultation is sufficient. If they conclude that it is not, Clauses 44 and 46 provide that the Secretary of State must himself or herself undertake a public consultation before any regulations can be made. So we believe that the existing clauses provide for sufficient local consultation on the introduction of a mayor or a CCA. I know that that reply will not make the noble Baroness, Lady Bennett, any happier, but I believe we are closer to her position than perhaps she thought we might be.

10.30 pm

Amendment 114, tabled by the noble Lord, Lord Shipley, and the noble Baroness, Lady Pinnock, seeks to ensure that a deputy mayor of a combined county authority cannot be appointed without scrutiny and agreement. The appointment of a deputy mayor is a significant one. The statutory deputy mayor is a member of the combined county authority who would act in the place of the mayor if, for any reason, the mayor is unable to act or the office is vacant. As it is a mayoral appointment, the mayor should have the ability to choose the deputy of their choice as the person who would stand in for them, providing continuity and strong leadership in such an event.

The noble Baroness, Lady Pinnock, asked about accountability mechanisms in these circumstances. Alongside the clear need for mayors to be able to choose their deputy from the authority membership, CCAs are required to have at least one overview and scrutiny committee. This is the mechanism by which mayoral decisions will be assessed and scrutinised, together with those of a deputy mayor where they have been required to take over from the mayor.

I turn to Amendment 116A, tabled by the noble Lord, Lord Stunell. Clause 30 enables regulations to be made so that a combined county authority mayor can jointly exercise any mayoral general functions with a neighbouring local authority. Such regulations may set out the detailed operational arrangements, such as membership, chairing and voting powers, and political balance requirements. This amendment would remove the possibility for joint committee appointments to not be politically balanced. We have to resist that, as there may be circumstances in which politically balanced committees are not possible or appropriate. For example, in an area where both the combined county authority and neighbouring local authority are dominated by one political party, it may be desirable for the joint committee to not reflect this and instead include opposition councillors from a different party to ensure a rounded approach. This provision applies to all local authority and combined authority joint committees. This amendment would mean that combined county authority joint committees would be out of step with all other local government institutions.

Amendment 120, tabled by the noble Lord, Lord Shipley, seeks to ensure the combined county authority agrees which police and crime commissioner functions exercised by the deputy mayor for policing and crime can be further delegated to any other person. Combined county authority mayors with PCC functions may appoint a deputy mayor specifically for policing and crime to carry out such PCC functions as may be delegated to them by the mayor. The authority has no role in the exercise of these functions, nor in scrutinising the performance of the mayor and deputy mayor for policing and crime in exercising these functions. This is provided by a statutory police and crime panel for the area. While scrutiny of the role and performance is crucial, it is important that this is done via the panel and that nothing can fetter the deputy mayor for policing and crime's discretion to further delegate the functions they exercise.

Finally, Amendment 122, tabled by the noble Lord, would lower the threshold at which the Secretary of State would be required to intervene in a proposal by a combined county authority's mayor to implement the single employer model for fire and policing, uniting both services under a single operational lead. The amendment would mean that only 51% or above, as opposed to two-thirds or above currently, of constituent members of the combined county authority would be required to oppose the mayor's proposal to implement the single employer model in order to trigger a number of actions involving the Secretary of State. These actions are: a requirement for the mayor to share all representations from authority members about the proposal with the Secretary of State, a requirement for the Secretary of State to commission an independent assessment of the proposal and a decision, and a requirement for the Secretary of State to publish that assessment. It should be for the combined county authority mayor to determine whether to implement the single employer model for these two key public protection services for which they have responsibility. As such, a threshold of two-thirds feels more in keeping to us.

I hope that the noble Lord and the Committee will find these comments helpful and that the noble Baroness, Lady Hayman, will feel able to withdraw Amendment 67.

Baroness Hayman of Ullock (Lab): My Lords, I thank all noble Lords who took part in this debate. The main takeaway for me is that it is crystal clear that the model is very problematic and that we need a proper discussion about the role and rights of district councils, because I honestly think that the model strips them of powers. It is worth reminding noble Lords that district councils are currently responsible for economic development and planning. So I thank the Minister for his detailed response, but I am sure that we will revisit these concerns in future debates on the Bill. In the meantime, I beg leave to withdraw my amendment.

Amendment 67 withdrawn.

Amendments 68 and 69 not moved.

House resumed.

House adjourned at 10.35 pm.

Grand Committee

Monday 27 February 2023

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Henig) (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.

Radio Equipment (Amendment) (Northern Ireland) Regulations 2023

Considered in Grand Committee

3.45 pm

Moved by ***Lord Evans of Rainow***

That the Grand Committee do consider the Radio Equipment (Amendment) (Northern Ireland) Regulations 2023.

Relevant documents: 27th Report from the Secondary Legislation Scrutiny Committee

Lord Evans of Rainow (Con): My Lords, I beg to move that the draft Radio Equipment (Amendment) (Northern Ireland) Regulations 2023, which were laid before the House on 17 January 2023, be approved.

I think it would be helpful if I started by providing some of the background to this instrument. The instrument we are debating today relates to radio equipment, which is defined as any electrical product that emits or receives radio waves for the purposes of radio communication; this includes products such as mobile phones and smartphones. The regulations implement Commission delegated regulation (EU) 2019/320 in Northern Ireland and enable it to be enforced.

The radio equipment directive is an EU directive requiring that specified essential requirements be met by radio equipment placed on the EU market or put into service in the EU. The directive also permits the Commission to place additional essential requirements on radio equipment manufacturers. The directive was implemented in UK law in 2017 by the UK's Radio Equipment Regulations 2017, which have been subsequently amended to reflect the fact that we have left the EU.

Under the current terms of the Northern Ireland protocol, Northern Ireland remains subject to EU law for radio equipment. So, while the Radio Equipment Regulations 2017 apply across the UK, some provisions apply differently in Northern Ireland. Today, the Prime Minister is due to make a statement on the protocol in the other place, which my noble friend the Leader of the House will repeat in the Chamber tomorrow.

Delegated regulation (EU) 2019/320 was issued by the Commission in 2018, adding to the essential requirements in the directive and requiring smartphones to be able to transmit their location data in calls to emergency services. This instrument seeks to amend the UK's Radio Equipment Regulations as they apply in Northern Ireland to reflect the new essential safety requirements for smartphones. This will enable the regulation to be legally enforced in Northern Ireland, as required under the current terms of the Northern Ireland protocol.

If it is helpful, I will now explain in more detail how this instrument will achieve its purpose. Under the Radio Equipment Regulations, the overall objectives for how radio equipment must be constructed before it can be placed on the market are set out in the essential requirements. This instrument adds the new requirement for smartphones to be capable of transmitting their caller location in emergency calls to the existing essential requirements in the Radio Equipment Regulations 2017 as they apply in Northern Ireland. The additional essential requirement extends the scope of an existing offence in the Radio Equipment Regulations for manufacturers in relation to non-compliance with the essential requirements when placing products on the market. In addition, the instrument amends the regulations covering conformity assessment processes in the Radio Equipment Regulations 2017 as they apply in Northern Ireland. As a result, manufacturers will need to ensure that their products are assessed by EU notified bodies as being compliant with the regulation.

As set out in the legislation, not complying with this new requirement in Northern Ireland will be a criminal offence. However, I assure noble Lords that prosecution will occur only in very rare circumstances, if at all. This level of action will be taken forward only where it is absolutely necessary to protect consumers from unsafe products or address persistent or deliberate non-compliance. Enforcement officers will continue to take a proportionate approach to compliance and enforcement activities, in accordance with the Regulators' Code. In most cases, we expect that compliance will be achieved without recourse to the use of criminal penalties.

I will now set out the impact for business of this instrument. The Commission's own assessment suggested that the impact on smartphone manufacturers will be minimal. In part, that is due to the technical solution already being anticipated by the market, but it is also because nearly all new smartphones have the required capability already. Indeed, the European Commission's assessment in its 2018 Explanatory Memorandum was that a technical solution incorporating global navigation satellite systems and wi-fi signal-based information was available in more than 95% of all smartphones at the time of writing. We expect that to be even higher since 2018.

I assure noble Lords that the Government are not aware of any additional concerns from smartphone manufacturers in relation to the regulation since its EU adoption in 2019. I draw attention to the engagement conducted by the European Commission during the development of the regulation. To raise awareness on this instrument and its requirements, and to support business compliance, officials are liaising with the Northern Ireland district councils responsible for enforcing the radio equipment regulations there. We are making sure that they have all the necessary information to do so. In addition, industry guidance will be made available online by officials in the Office for Product Safety & Standards to ensure that businesses have what they need to understand how to comply with the regulation.

[Lord Evans of Rainow]

We are not currently considering introducing a similar requirement for Great Britain. The main reason for this is that, as I mentioned earlier, the European Commission's assessment of the regulation sets out that almost all new smartphones currently on the market already have the technical capabilities required by it. We see no reason to mandate the requirement through legislation in Great Britain, given that existing widespread adoption. However, we will keep this under review.

This SI is necessary to give effect to Commission Delegated Regulation (EU) 2019/320. The UK is required to implement that in Northern Ireland under the current terms of the Northern Ireland protocol. The regulation requires that smartphones placed on the EU market from 17 March 2022 must be able to transmit their location data in emergency calls. This SI enables us to give effect to that requirement by amending the UK's Radio Equipment Regulations 2017 as they apply in Northern Ireland. This will enable the new requirement to be legally enforced. As I highlighted, we expect that any prosecutions will be in only very rare circumstances, if indeed at all. I commend this instrument to the Committee.

Lord Lennie (Lab): My Lords, thanks are due to the Minister for introducing the purpose, scope and effect of this legislation. I am a late substitute for my noble friend Lady Blake, who is unable to be here because of family illness; I am sure we hope that everybody gets well soon. Substitutes did not help Newcastle United yesterday; we lost, as you know.

The Secondary Legislation Scrutiny Committee said:

"The purpose of this instrument is to implement an EU Regulation in Northern Ireland (NI) which requires all smartphones placed on the EU market to be capable of transmitting caller location."

Asked whether the Government considered introducing an equivalent requirement for smartphones placed on the market in Great Britain, the then BEIS department told us that,

"having engaged with UK industry representative trade bodies, it did not see any reason to 'mandate a technical requirement through legislation that is (i) already adopted in almost all new smartphones and (ii) is not directly related to product safety'."

As the Minister said:

"The Department said that it would keep its position under review."

We support this statutory instrument. We are fulfilling a treaty commitment and working to ensure that Britain is a country where international laws are respected and followed, which I am sure is something that most of us believe in on all sides of the House.

According to the European Telecommunications Standards Institute, one of the biggest challenges facing the emergency services is determining the location of mobile callers. Ambulance service measurements show that, on average, 30 seconds per call can be saved if the precise location is automatically provided. Several minutes can be saved where callers are unable to describe their location verbally due to stress, injury or simply unfamiliarity with the area they are in, so it is no overstatement to say that technology saves lives. The faster a patient is located, the faster the emergency services can reach them—they are not very fast at the moment, but I hope that that will improve—and the faster they can receive treatment.

The question must therefore be asked of the Government: why has the legislation not been introduced in England, Scotland and Wales? I note the Minister said that 95% of smartphones meet the requirements, but I wonder what assessment he made of the incremental cost of introducing this legislation. Given that a legal requirement would have a minimal impact on manufacturers, can the Minister assure me that the department has made a thorough assessment of the potential of placing this standard on a legal footing in the rest of the United Kingdom?

Another relevant issue raised by the draft statutory instrument is its relationship to GNSS and the European-owned Galileo system. The EU regulation introduced by this instrument requires all smartphones to be compatible and interoperable with the Galileo system. It raises questions concerning the UK's technological sovereignty following our expulsion from the Galileo programme. In 2018, the Government threatened to spend the entire UK science budget on duplicating Galileo because they had bungled negotiations on Galileo with the European Union. Four years on, the Defence Committee reported,

"with tens of millions of pounds money spent, the Government appears no closer to coming to any conclusions about development of the UK's own space-based Position, Navigation and Timing (PNT) capabilities."

Perhaps the Minister could update us on the PNT development: when we might expect it and, possibly, what the costs will be.

In outlining the rationale for requiring Galileo compatibility in smartphones, the European Commission argued for the importance of securing the independence and resilience of emergency services within the European Union. I hope that the Minister understands and agrees with that objective. What work are the Government doing to ensure that emergency services in the UK are similarly resilient?

Lord Evans of Rainow (Con): My Lords, I am most grateful to the noble Lord, Lord Lennie. With regard to being a substitute, he is a very good one but, like yesterday, I am on the opposite side to him. I thank him for his valuable contribution.

For reasons that I will summarise, it is vital that the statutory instrument comes into force in Northern Ireland. The noble Lord asked why we have not carried out an impact assessment. An impact assessment has not been prepared for this SI because measures resulting from the Northern Ireland protocol are out of scope of the assessment. The Northern Ireland protocol has already been given effect in legislation through the European Union (Withdrawal Agreement) Act 2020, which added provisions and powers to the European Union (Withdrawal) Act 2018.

The noble Lord also asked why the UK does not implement this in Great Britain and whether the UK does not value its emergency services. As I said, we have no current plans to do so but we will keep this under review. It is important to remember that we are debating today an SI implementing an EU delegated regulation, which sets out EU requirements and is

based on EU priorities. We have left the EU and discussion of the UK's future plans for caller location requirements for smartphones is outside the scope for today.

The instrument is needed to give effect to Commission delegated regulation (EU) 2019/320, which applies in Northern Ireland, as we are required to do under the current terms of the Northern Ireland protocol. The instrument amends the UK's radio equipment regulations as they apply in Northern Ireland to enable the new requirement for smartphones to be legally enforced in Northern Ireland.

Although this instrument will widen the scope of an existing offence in the radio equipment regulations, this is expected to result in prosecutions only in rare circumstances, and only when it is necessary to protect consumers from unsafe products or to address persistent or deliberate non-compliance. As I mentioned at the start, in the great majority of cases we expect compliance will be achieved without recourse to the use of criminal penalties.

I highlighted the EU Commission's assessment of this regulation in 2018, which was that the impact on smartphone manufacturers is anticipated to be minimal. This is because nearly all new smartphones already possess the technology, and it is increasing. The Commission engaged industry during the development of the regulation, which it adopted in 2019. We are not aware of any concerns from smartphone manufacturers in relation to it. I commend this draft instrument to the Committee.

Motion agreed.

Code of Practice for the Forensic Science Regulator

Considered in Grand Committee

4.01 pm

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

That the Grand Committee do consider the Code of Practice for the Forensic Science Regulator.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, forensic science is vital to the investigation and prosecution of crime. Without high-quality forensic evidence entering the criminal justice system, our ability to fight crime would be compromised. We are fortunate in this country to have some of the world's best forensic scientists, who deploy their considerable skills to help deliver justice, but we cannot rest on our laurels.

Public confidence in the criminal justice system is vital. This confidence can be undermined if quality standards in forensic science are not upheld or maintained. This Government believe that, in order to set appropriate standards, a degree of statutory regulation is required, which is why it has been long-standing government policy—since 2016, in fact—that the Forensic Science Regulator should have statutory powers. That is why the Government supported the Private Member's Bill that became the Forensic Science Regulator Act in 2021.

The Act established the regulator as a statutory officeholder. It gives powers to the regulator allowing them to act, as a last resort, when they have reason to believe that forensic science activities are being conducted in such a way as to create a substantial risk to the course of justice. It also requires the regulator to produce a draft statutory code of practice. This code defines which forensic science activities will be regulated and sets out the standards that providers will be expected to meet. It is the first time that a statutory code regulating the provision of forensic science has been produced anywhere in the world.

This code has been through a comprehensive consultation process, which revealed broad support among the forensics community. In fact, 83% of respondents to the consultation, which included stakeholders from policing, the commercial sector, academia and the judiciary, expressed their support for the model of regulation set out in the code. By adhering to the code and complying with its requirements, forensics providers will ensure that the evidence they gather and present to the courts is of the highest quality, in turn helping to maintain public confidence in our systems.

In practical terms, this means that all forensics providers who deliver forensic science activities to which the code applies will have to declare compliance with the code. In addition, they may also need to attain accreditation and establish quality management systems for the activities they undertake. Non-compliance with the code will not in itself automatically mean that the evidence gathered will be inadmissible—it is always the courts who ultimately decide whether to accept evidence—but compliance with the code will reduce the risk of substandard evidence entering the system. Compliance with the code will make it far more likely that providers are producing high-quality forensic evidence to the courts. Compliance with the code will help protect the integrity of the criminal justice system and guard against miscarriages of justice.

I very much hope that noble Lords will support this code of practice, which I commend to the Committee. I beg to move.

The Earl of Lindsay (Con): My Lords, I thank my noble friend the Minister for providing this opportunity to consider the Motion that the 2013 draft code of practice for the Forensic Science Regulator, laid before the other place on 26 January, be approved. I warmly welcome the Forensic Science Regulator's code of practice as an important further step in ensuring the quality, consistency and integrity of our forensic sciences across England and Wales. The code builds on the non-statutory codes of practice and conduct issued by the previous regulator and incorporates much of their content.

I particularly welcome the code's recognition of the importance of accreditation against internationally recognised standards in driving quality improvement, trust and confidence in the critical services of forensic providers. Technical competence and consistency across the mixed economy for the provision of forensic science services should be a vital part of a fair and functioning criminal justice system. This code of practice will help achieve that.

[The Earl of Lindsay]

I should declare an interest as the chair of the United Kingdom's national accreditation body, UKAS, which is the sole national body recognised by government for the accreditation of organisations against nationally or internationally recognised standards. Accreditation provides assurance of the impartiality and competence of providers, which we can all agree are imperative in the criminal justice system. UKAS and the Forensic Science Regulator have been working closely since the FSR role was first created; together, we have achieved consistent success in improving standards through the accreditation of forensic science providers in both the private sector and police forces. UKAS will continue to work closely to deliver the vision of the Forensic Science Regulator with respect to compliance with standards and, through the accreditation of forensic providers, the demonstration of the appropriate competence of the practitioners undertaking this critical work.

I believe that this code of practice will support and encourage a culture of improvement and a commitment to quality, competence and impartiality across forensic science provision. I am delighted to add my support to its approval.

Lord Thomas of Cwmgiedd (CB): My Lords, I, too, warmly welcome this code of practice. As the Minister so eloquently pointed out, we have one of the best five forensic science services in the world and have made enormous strides in getting forensic science set on a course of absolute science, rather than old wives' tales or police lore. That is a huge step forward, which this country has been instrumental in taking.

However, it is right to say that there have been several serious miscarriages of justice—I have sat on several of them—where forensic scientists have not behaved with competence or integrity or have gone beyond what they are qualified to speak about. I therefore warmly welcome the work of the two non-statutory regulators, Andrew Rennison and Dr Gillian Tully, and now the statutory regulator, Mr Gary Pugh, in all they have done to try to eliminate the problems that have caused difficulties in such cases.

The noble Earl, Lord Lindsay, has spoken eloquently about accreditation, which is key. Also key is the fact that, within organisations, there must be a senior appointed individual who can be made responsible for lapses that occur. I regard as the most important part of the code the part that sets out standards of impartiality and integrity. As I have said, there have been cases where this has not always been so. Much to my regret, in some cases, there has been a lack of professionalism. One must remember that forensic scientists are often put under a great deal of pressure; standards of integrity to resist pressure, particularly from police officers who are anxious to secure a conviction, are therefore essential. The record of what has happened is well known so I need not go into it.

Secondly, it is important to stress the duty of the court. Thirdly, I very warmly welcome—it may be due to Mr Gary Pugh's personal integrity and experience—the duty to guard against miscarriages of justice.

It is also important that the code goes into detail. There have been serious problems in relation to footwear analysis, DNA and fingerprinting, and it is good to see those now firmly covered by standards. There has also been worry about the way evaluative opinions have been formed. Many experts—not merely forensic experts—stray outside their sphere of expertise and seek to act more as advocates than as independent experts, relying on matters to which the code refers. I am very glad, therefore, that there is a firm steer for evaluative opinions.

The strength of the code can be seen by the fact that it deals with infrequently consulted experts, making it clear that, although they are not subject to accreditation, they must abide the standards of the court. It is surprising to see the spheres in which expert evidence is often needed, and from people who will never have given expert evidence before, or where the court may never have had expert evidence. Therefore I see this as a landmark in trying to make certain that we buttress our outstanding reputation as a nation in forensic science and strengthen that position for the future.

I will ask two questions of the Minister. First, what is to be done to ensure that the code is publicised and enforced? Secondly—I have spoken on this on many occasions—is the Home Office really getting to grips with other issues in forensic science and taking forward the need to keep forensic science ahead of the game, particularly in digital forensics?

Lord Coaker (Lab): My Lords, I thank the noble Earl and the noble and learned Lord who have contributed to this important if short debate. They said that this is an extremely important step forward by the Government, and we welcome it as well.

I thank the noble Lord, Lord Sharpe, for his introduction. I also thank my friend in the other place, Darren Jones MP, and indeed my colleague and noble friend Lord Kennedy, who would be most upset if I did not mention that he was part of the Private Member's Bill effort which became the Forensic Science Regulator Act in 2001. That was an important step forward and shows how sometimes Private Members' Bills can make a real difference. As noble Lords realise, the Act required the regulator to produce a statutory code of practice so that all those doing forensic science activities uphold and maintain proper standards, which both the noble Earl and the noble and learned Lord said is so important, and which indeed many forensic scientists do.

This statutory instrument is the new code of practice. It builds upon non-statutory codes of practice and integrates much of their content. Upholding good forensic science standards is absolutely vital to our criminal justice system. The code applies to all those carrying out forensic science activities: individual practitioners, academics, private and public sector organisations, or indeed forensic science units.

With those general comments I have a few questions for the Minister. A report by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services showed that, when it came to digital forensics, the police have not kept pace with the scale of the challenges they face. The report said that, in some cases, they simply did not understand what digital forensics meant. It found, in the words of the inspectorate,

"delays … so egregious that victims were being failed".

Could the Minister give us any indication of what progress has been made following the recommendations of that report?

The Home Office also considered an impact assessment on the Forensic Science Regulator in 2013, but it has not been updated since. With this new regulator and statutory code, has an internal impact assessment from 2021 been made? There was a deadline of October 2022 for all police laboratories to be accredited. Can the Minister give an update on whether that target was reached?

4.15 pm

My last point is one that both noble Lords have made. This report is 360 pages long, and it is a really methodical and thoughtful document that will make a big difference. However, as the noble and learned Lord, Lord Thomas, asked, what will the Government do to work with the regulator to ensure that the whole code of practice is adhered to and followed? That is the test of it. I have not read every single word, but it is a really good document. As one example, right at the beginning, in paragraph 3.1.6, the code says:

"The Regulator may also provide guidance in relation to undertaking FSAs (whether covered by this Code or not) … While such guidance is often produced in a similar manner to standards, it is not published in the Code. The guidance may advise forensic units on how to achieve and maintain the requirements set out in the Code. Non-compliance with the guidance does not, by itself, establish non-compliance with the Code, but any forensic unit which does not comply with guidance … shall be capable of showing how the requirements of the Code have been met."

From my reading of that, guidance can be produced but it does not have to be and units can follow the guidance but do not have to, because the regulator can be satisfied in other ways. If they do not have to produce guidance that people will have to follow, that requires the Government to put on the record how they are going to work with the regulator to ensure that the very important standards, procedures and processes that are laid out in this code, which will make a real difference and improve things enormously to build on the good work that is being done, as we have heard, will be put into practice and followed.

With that, we very much welcome the code and support the Government in its introduction.

Lord Sharpe of Epsom (Con): My Lords, I thank all three noble Lords who have spoken in this short debate. I am grateful for their considered and constructive contributions.

I pay tribute to the Forensic Science Regulator for producing such a detailed and comprehensive code of practice. The code is a significant piece of work, as befits an instrument that will help to drive up quality standards. It is long, but builds on other non-statutory codes of practice and conduct and incorporates much of their content, meaning that much of its content will already be largely familiar to forensic science providers. The code sets out for the very first time definitions of forensic science activities and specifies which of those activities it applies to. As I said in my opening remarks, this is the first time that has been done—and not just in England and Wales; this is a world first.

I turn to some of the specifics that have been raised. I thank my noble friend Lord Lindsay for his positive remarks and for the UKAS perspective. I am sure he would acknowledge that accreditation for forensic science activities is not a panacea, but experience has shown that it raises quality standards by improving processes and ensuring that if failures happen then appropriate steps are taken. In addition, accreditation helps drive standardisation to support cross-force co-operation and efficiency.

It is fair to say that achieving accreditation takes time and resources, but evidence from non-accredited laboratories has always been open to challenge in court and there is a real risk of losing cases as a result, which goes some way to answering the question from the noble Lord, Lord Coaker.

Accreditation across the board helps to ensure a level playing field and consistent quality standards, which also goes some way to answering the questions from the noble and learned Lord, Lord Thomas, particularly those around impartiality and integrity. It is acknowledged that some forensic providers and police forces have failed to achieve accreditation across a range of forensic disciplines, which can cause miscarriages of justice, abandoned trials and so on. This code, together with the powers in the Act, will allow the regulator to issue compliance notices against forensic providers that are failing to meet the required quality standards.

In answer to the comments of the noble and learned Lord, Lord Thomas, about whether and how this will be supported by the forensic science—I hesitate to call it "industry"—caucus, as I said in my opening remarks, the office of the Forensic Science Regulator engaged in a statutory consultation which ran from 8 August to 31 October 2022. There were 110 responses with 3,000 comments from across the forensic science community—again, as I said—including from policing, academia, the judiciary and the commercial sector, with 83% of respondents overall expressing support. The private and commercial sector has actively been calling for regulation for a long time because it understands the value of quality and wants to compete on a level playing field. This is the crucial point: almost 80% of policing respondents expressed support. Based on those numbers, I think it will be largely self-enforcing. It is fairly obvious that the industry is going to be very excited about this progress.

The noble Lord, Lord Coaker, asked about the HMICFRS report that showed that digital forensics were perhaps a little left behind. We have invested around £10 million in this financial year—2022-23—in the new digital forensics programme in the Police Digital Service that will support forces through automation and better safeguard victims' privacy and in other new technology to increase forces' capacity to process digital devices. We are working very closely with the NPCC and other criminal justice system partners to understand clearly current national performance and implement the recommendations of the HMICFRS inspection report on digital forensics. The Home Office has undertaken a national data collection project which looks more widely at governance, operating models, resources, training, technical capabilities and funding, which all impact on the ability of the police to conduct

[Lord Sharpe of Epsom]
timely investigations and provide high-quality forensic evidence to support CJS outcomes. However, I acknowledge that this is a rapidly evolving space, so I suspect this is a debate we will come back to at greater length in future.

In answer to the questions asked by the noble and learned Lord, Lord Thomas, about digital, about 90% of forces have some ISO 17025 accreditation for digital forensics, but no force yet has accreditation for all digital forensics activity. As I just said, significant progress is still required to meet full compliance. It is for that reason that the new statutory powers for the regulator are so important.

The noble Lord, Lord Coaker, asked about the impact assessment that was completed in 2021. It was an internal assessment for Home Office policymakers, but we will be very happy to publish that in due course.

None of this is sudden. It has been government policy for many years that providers should have accreditation for the forensic science activities they conduct. The previous non-statutory regulator regularly published timetables for providers to achieve accreditation, often giving several years' notice. Since 2016, it has been official policy that the regulator should have statutory powers underpinned by a new statutory code. The Act received Royal Assent nearly two years ago. In answer to the question, the regulator did not expect all providers to be fully compliant by October. This is a grace period to allow those providers who are already well advanced to become formally accredited to the code before it comes into force.

I hope I have answered noble Lords' question. Approval of the draft code of practice today will help pave the way for better and higher quality forensic science in the criminal justice system in England and Wales. However, that is not the end. The overriding need to maintain high-quality standards continues. The new powers that the Forensic Science Regulator Act provides, taken together with this draft code of practice, will help driven up quality standards, improve outcomes and maintain public confidence. I commend the draft code of practice to the Committee.

Motion agreed.

Non-Domestic Rating (Rates Retention: Miscellaneous Amendments) Regulations 2023

Considered in Grand Committee

4.27 pm

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

That the Grand Committee do consider the Non-Domestic Rating (Rates Retention: Miscellaneous Amendments) Regulations 2023.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, these regulations make changes to key elements of the business rates retention system. The amendments themselves do not enact any new policy but instead action policy decisions that have already been taken.

By way of background, the business rates retention scheme was introduced in 2013. It allows local government to keep 50% of the rates that are collected locally; the other 50% is paid over to central government. Under the business rates retention system, authorities that see their business rates income fall significantly in any year can receive a safety net payment. The cost of the safety net is paid for by levying a percentage of the business rates income of authorities that have seen their business rates income increase significantly in any year.

The detailed rules of the business rates retention scheme are set out in multiple sets of regulations. The Non-Domestic Rating (Rates Retention: Miscellaneous Amendments) Regulations 2023 make changes to four sets of regulations to ensure that policy measures determined elsewhere can be incorporated into the ongoing administration of the business rates retention system. They are: the levy and safety net regulations, the rates retention regulations, the transitional protection payments regulations and the levy account basis of distribution regulations.

First, several changes to the levy and safety net regulations are necessary to mitigate the impact of the 2023 revaluation of business rates on the business rates retention system. These regulations will adjust the calculation of baseline funding levels, which are used to calculate whether an authority triggers a safety net payment. These changes will make sure that authorities are not overpaid or underpaid as a result of the 2023 revaluation. In addition, authorities in Greater Manchester, Liverpool City Region, West of England, West Midlands and Cornwall have enhanced arrangements, which mean that they retain 100% of the business rates that they collect. As a result, these regulations will also adjust calculations for those authorities so that their safety net calculation remains accurate and reflective of the arrangements that have been agreed with them.

As is usual each year, the regulations also need to amend the calculation of authorities' retained rates income to ensure that it includes relief schemes designed by the Government. Where the Government provide a new national business rates relief—such as the retail, hospitality and leisure discount—local authorities, as the bodies that collect business rates, award that relief to local businesses in their area. The Government compensate local authorities for the income they lose in doing this, which we take account of in a different part of the system. Therefore, the regulation changes here strip out the impact of the income reductions so that local authorities are not compensated twice for the same loss of income. These regulations also codify new business rates retention values for three restructuring authorities from 2023 to 2024: Somerset, Cumbria and North Yorkshire.

We adjust the rates retention regulations to amend the City of London off-set, which is an amount of business rates income that the City is allowed to retain outside the business rates retention system, due to its low resident population. Regulation 3 will make amendments to ensure that the off-set amount is uprated by the same inflationary uplift as core business rates retention figures.

We also amend the transitional protection payment regulations following the Chancellor's Autumn Statement, which announced a transitional relief scheme as part of a package of targeted measures to ratepayers who

would otherwise face large bill increases following the revaluation of business rates. Transitional protection payments compensate local authorities for their lost income from transitional relief. Regulation 2 will make a small amendment to ensure that where transitional relief is applied, it is calculated before the application of public lavatories relief. This will ensure that compensation is calculated and paid on the true cost of the transitional arrangements put in place following the revaluation.

Finally, the schedule to these regulations changes the basis of distribution regulations so that core funding allocations for the recently restructured authorities are actioned on the correct basis. Most immediately, this will ensure that, as announced in the local government finance settlement, every authority in England will receive a share of the £100 million surplus currently held in the business rates levy account.

In conclusion, this is a highly technical set of regulations. Most of the provisions simply give effect to previously agreed policy decisions, and they ensure that the correct calculations will continue to be made under the business rates retention system. I commend them to the Committee and I beg to move.

Baroness Wilcox of Newport (Lab): My Lords, I draw attention to the fact that I am a vice-president of the Local Government Association, as noted in the register. I thank the Minister for introducing this statutory instrument. The regulations make various amendments to the system for the local retention of non-domestic rates established by Schedule 7B to the Local Government Finance Act 1988.

The current Chancellor's Autumn Statement business rates package and this year's revaluation of business rates will mean that all regions in England will see a decrease in average bills, which can only be of benefit to struggling high street businesses that have been unduly affected by unprecedented energy costs, together with inflationary pressures which were unduly exacerbated by the reckless fiscal policies of the previous Prime Minister and her Chancellor, bringing the UK economy to the very brink.

Britain is doing much worse than other western economies, which have faced the same pressures from Covid and Russia's invasion of Ukraine. Britain is the only G7 economy still smaller than before the pandemic and has the slowest growth forecast over the next two years. The cost to working people and businesses is clear and profound: the worst cost of living crisis in 40 years; soaring energy and food prices; £400 a month more to pay on the average mortgage through higher interest rates; and the highest taxes for the British taxpayer in 70 years.

A Labour Government would change things for business by implementing a cut in business rates for small and medium-sized businesses, paid for by a temporary increase in the digital services tax, among a host of other costed measures to plan for a stronger, more secure economy. Labour has a plan to back business by bringing business rates in line with the modern economy. We will bring in an annual revaluation of business rates, rather than the ad hoc basis on which this Government operate, to give the sector the stability and reassurance that it needs. Through our model, the heavy burden of taxes will move from SMEs and high-street business to online giants, which for too long have got away with contributing too little to our economy. However, until Labour gets into government and delivers the transformation that businesses deserve, we need an urgent increase to the threshold for small business rates relief, raising it from £15,000 to £25,000.

We will get the cost of living under control and make Britain more resilient, laying the foundations we need for a thriving, dynamic economy in the future. Furthermore, Labour will make the business tax system fit for the 21st century by ultimately scrapping business rates and replacing them with a system that incentivises investment and levels the playing field between high-street businesses and global giants.

It is not just the billing authorities that need to prepare for new non-domestic rates. For many of the individuals and groups paying the new rates, financial and administrative overhauls such as this can be a costly operation. The LGA highlighted the need for councils to be compensated for the cost in staff time and the potential new technologies involved in the revaluation of rates and bringing in the transitional scheme. It is welcome that the Government have already announced that administrative costs for local authorities will be covered, as with previous schemes, under the new burdens doctrine, but the short time to input these changes will still cause problems that council staff do not need.

I therefore ask the Minister, first, will these current changes be continued into future financial years so that councils across England, together with local businesses, can have certainty when planning future budgets? Secondly, what will the Barnett consequential be for the devolved Governments because of this legislation, and how soon will they receive any extra funding from Whitehall?

Despite our concerns and our alternative policies, I say that anything that helps business to survive in these extremely difficult trading times is needed, and we therefore support this statutory instrument.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I thank the noble Baroness, Lady Wilcox, for her contribution to the debate. I appreciate her setting out some of the future directions of a possible Labour Government, and I thank her for her comments on the benefits that the Chancellor's Autumn Statement and these regulations will bring to the high street.

The noble Baroness asked why we were not considering an online sales tax. The Government have decided not to introduce such a tax, but we are in the process of consultation and the response to that will be published shortly. Concerns have been raised about complexity, market distortion and the unfair outcomes between business models.

This revaluation will rebalance the tax burden to reflect the growth in online retail. Large distribution warehouses are expected to see total rates paid to increase by about 27%, while retail, hospitality and leisure businesses are expected to see total bill decreases of over 10%.

I think the noble Baroness creates an unnecessarily gloomy prognosis of the future of the UK economy. The Chancellor's business rate support package means

[Baroness Bloomfield of Hinton Waldrist]
that businesses will benefit from support worth £13.6 billion over the next five years. Together with the revaluation, that package ensures that bills will more accurately reflect current market values while protecting businesses from large bill increases. The Government remain committed to implementing the outcomes from the business rates review, and we will bring forward legislation as soon as parliamentary time allows.

The noble Baroness had another couple of questions, but I fear I will have to write about the impact on Barnett consequentials and whether the current changes will carry over to the future. I apologise for not being able to answer those now.

These are indeed a highly technical set of regulations that are necessary to ensure that the rates retention scheme continues to operate effectively and as intended. If the amendments detailed in this SI are not made in time for the relevant calculation to be made in early March 2023, local authorities will not receive the safety net payment to which they are entitled or will pay the wrong amount of levy for 2021-22. Additionally, if changes are not made to values used in the levy and safety net calculation in response to the revaluation ahead of 1 April 2023, authorities may pay or receive the wrong amounts of levy or safety net in 2023-24 as well. The regulations ensure that this does not happen, and I hope the Committee will join me in supporting them.

Motion agreed.

Committee adjourned at 4.40 pm.

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