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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Tuesday 16 May 2023

2.30 pm

Prayers—read by the Lord Bishop of Gloucester.

Autism: Diagnosis Targets

Question

2.36 pm

Asked by ***Lord Touhig***

To ask His Majesty's Government what steps they are taking to ensure NHS targets for autism diagnosis are met.

Lord Touhig (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and I declare my interest as a vice-president of the National Autistic Society.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): We recognise that not all areas are meeting the NICE recommended maximum of 13 weeks between a referral for an autism assessment and a first appointment. In 2022-23, we invested £2.5 million to test and improve autism diagnostic pathways. In 2023-24, there is a £4.2 million grant to improve services for autistic children and young people. In April, NHS England published a national framework and operational guidance to help the NHS and local authorities improve autism assessment services.

Lord Touhig (Lab): My Lords, by next year 190,000 patients are expected to be waiting for an autism diagnosis—it is already 130,000, and 67,000 of them have been waiting for more than a year. Research shows that there is a widening gap between the number of people who need to be seen and the number of staff available. In the last four years, we have managed to recruit just 19% more staff. The letter that the Minister helpfully sent us in April indicates that he is as concerned about this matter as any of us in this House. We appreciate that, but my question is simple: what is being done to recruit more staff?

Lord Markham (Con): I thank the noble Lord, both for his question and for his interest and work in this space. The House will know that this topic is quite close to my heart as well. It is an area of challenge. We have more demand than ever. We are committed to recruiting more staff. We have a recruitment target for next year of 27,000. Very promisingly—I hope I will have time to go into this in more detail later, or I will speak to the noble Lord afterwards—there is a pilot scheme in Bradford looking at children's early years scoring and how that can be used as a precursor to screening and testing.

Baroness Browning (Con): My Lords, I too declare an interest as a vice-president of the National Autistic Society—I am always pleased to work alongside my colleague, the noble Lord, Lord Touhig, on these matters. Very often, parents, in desperation, particularly want an autism assessment when their teenagers get to the stage where they are leaving school and going on to further education or other types of study. Without that assessment, no decisions can be made. We have many excellent centres around this country, particularly places such as the Lorna Wing Centre, where assessments can be made. Is it not time that the Government outsourced some of this, as long as the NICE guidelines are followed in giving that assessment, to ensure that the list that the noble Lord announced to the House is reduced much more rapidly than is happening at the moment?

Lord Markham (Con): Yes, absolutely, we need to look at all areas where we can increase and expand supply, including use of the private sector. I am sure I will be asked about ADHD later on and the "Panorama" programme, which shows that there are some pitfalls in all that, but provided they are assessing according to the NICE guidelines, it clearly has to be sensible to use as much supply as possible.

Lord Addington (LD): My Lords, would the Minister agree that when you delay an assessment, you delay support from the entire structure of government, which we have said should be helping? What help is his department getting from the Department for Education and the Department for Work and Pensions to ensure people are getting to these assessments? If they cannot get the full assessment, can some intermediate steps be taken to ensure that people actually get the help they are entitled to?

Lord Markham (Con): We are working closely with the Department for Education. The Bradford pilot scheme I mentioned takes the early years foundation stage profile scores of children. It knows that if you have a low score, you are far more likely to have autism. That triggers a multidisciplinary team to come in and inspect. That is a way that we can use that as an early warning indicator and then follow it up with volume. I hope that working very closely with the DfE in this space will be a real way forward.

Baroness McIntosh of Hudnall (Lab): My Lords, the Minister has already anticipated receiving this question—I would not want to disappoint him. He is clearly aware that there is some question over the reliability of some diagnoses that are being offered, particularly in the private sector, for ADHD, which is another neurodevelopmental disorder. Is he confident that, in trying to scale up the availability of diagnosis, which is obviously an admirable aspiration, the quality of those diagnoses will be maintained? Are the NICE guidelines sufficiently robust to ensure that?

Lord Markham (Con): As we all know, it is a complex area, and there is no black and white diagnosis of autism. The noble Baroness's point is absolutely correct: we need to make sure that the quality is there. The Bradford pilot has now been running in 100 locations. Every child has to get an early years profile score. If we can show the linkages and follow that up with the

[LORD MARKHAM]
screening programme, that will be very promising; but, absolutely, we have to make sure that the right assessment is made.

Lord Kamall (Con): My noble friend the Minister has rightly said that it is important to expand supply and work with the private sector. Can he tell me about the work that the department is doing with civil society organisations and charities in expanding supply?

Lord Markham (Con): Yes, when I talk about supply, it is in all these fields. There are organisations of which I have personal experience, including the National Autistic Society, which does tireless work and has helped me out personally. So I know just how good they are in this situation. Absolutely, the whole strategy in this space is to expand supply by both the private sector and the independent and charity sectors.

Lord Sahota (Lab): My Lords, on autistic children, do the Government keep separate facts and figures for minority communities? I have encountered quite a few ethnic minority children who are suffering from autism. Are there separate facts and figures anywhere for these children?

Lord Markham (Con): Clearly, we pull together all the numbers. Typically, about 2.9% of children and young people are diagnosed with autism. I do not know whether that is different among ethnic minorities. I will happily research that and write to the noble Lord.

Lord Dobbs (Con): My Lords, may I ask my noble friend about artificial intelligence—AI? It is going to have a transformational impact on our National Health Service, for good, or possibly for ill. It will transform diagnosis, treatment, outcomes and—who knows?—it may even help us to make appointments more effectively. Of course, it will have an impact on those who work in the National Health Service as well as those who are treated by it. Have the Government started getting to grips with analysing what lies ahead with artificial intelligence? If not, I encourage them to do so very quickly because I believe that the impact of this will come much more rapidly than we might perhaps think at the moment.

Lord Markham (Con): First, I totally agree with my noble friend's sentiment about the power that AI, when done in the right way, can have in this space. Clearly, the stress is on the words "the right way". I think it is fair to say that we are all on the nursery slopes as regards what it can do. I have seen how effective it can be in taking doctors' notes, recording a meeting and drafting action points, which a doctor can then review. I am sure that we would all agree that that is very promising. There are future generations of AI being talked about that may be able to perform diagnosis. In the 10 to 15 years of looking ahead in the long-term workforce plan, these are some of the things that we will have to try to take into account. However, we are in the very early stages.

Baroness Merron (Lab): My Lords, when it comes to autism services, we know that there are major disparities across the country which predate the pandemic but which were made much worse by it. The number of people waiting for an assessment has grown by 169% from pre-pandemic levels. How will the Minister ensure that the national framework and the standards for autism assessment within it are deliverable at a local level and in every part of the country?

Lord Markham (Con): First, each ICB now has to have a lead for autism and learning difficulties. The noble Baroness is correct that there are some disparities—I am sure that she is aware of the two ICBs which have restricted their services quite significantly, although, thankfully, they are now rowing back on that. We need to make sure that we are on top of all of them. As the noble Baroness is aware, I and other Ministers are taking a personal interest in this. Clearly, there is a lot of work to be done.

Lord Trees (CB): My Lords, what are the Government doing? Are they supporting research to find out the causes of this apparent huge increase in autism which we have seen in recent years?

Lord Markham (Con): There are a couple of factors. Obviously, the strains and stresses of Covid have brought a lot of these things out into the open. It is good that people are becoming much more aware. My experience dates back 20 years when no one had even really heard of Asperger's, so it is good that we are aware of it today. It is also good that many more people are now diagnosed with it.

Whistleblowing Framework

Question

2.46 pm

Asked by ***Baroness Kramer***

To ask His Majesty's Government whether the whistleblowing framework will include an assessment of the desirability of setting up an independent Office of the Whistleblower to deliver its objectives.

The Minister of State, Department for Business and Trade (The Earl of Minto) (Con): My Lords, the Government recognise how valuable it is that whistleblowers are prepared to shine a light on wrongdoing and believe that they should be able to do so without fear of recriminations. The Government launched a review of the whistleblowing framework on 27 March this year. This will examine the effectiveness of the existing framework in meeting its intended objectives, which are to enable workers to come forward and speak up about wrongdoing and to protect those who do so against detriment and dismissal. The review will provide an up-to-date evidence base on whistleblowing.

Baroness Kramer (LD): My Lords, the APPG for Whistleblowing, many Members of both Houses, scores of whistleblowers, significant legal counsel involved with whistleblowing, and even regulators in their evidence to the APPG have called for an office of the whistleblower. Will this review give full consideration to such an office —yes or no? If not, why not?

The Earl of Minto (Con): My Lords, the review will gather and examine evidence on the effectiveness of the GB whistleblowing framework in meeting its objectives. The framework was introduced way back in 1996, updated in 1998 and appended to since. I do not believe that an office of the whistleblower is part of this review. Having said that, once the review has been completed and has reported, that is clearly something that should be considered.

Lord Cormack (Con): My Lords, while I appreciate my noble friend's sentiments and objectives, do we really have to prostitute the English language in order to achieve them?

The Earl of Minto (Con): No, I do not think so.

Lord Browne of Ladyton (Lab): My Lords, I thank the Minister for his letter yesterday to those of us who spoke in the debate on the amendment from the noble Baroness, Lady Kramer, on this very issue on day 6 of the Economic Crime and Corporate Transparency Bill Grand Committee. It deals particularly with data reporting. That is very helpful, although it shows that the regulators implement this patchily, inconsistently and, arguably, uselessly. So is it too late for the terms of reference of the review to be revised specifically to include an office of the whistleblower but, more particularly, to look at whether we could financially reward whistleblowers for information? That has generated a dramatically better climate for whistleblowing in the United States of America. Could we also look at our experience from the pandemic? Given the poor recovery rate for the public funds misspent on PPE, surely this is worth trying.

The Earl of Minto (Con): The noble Lord has asked a lot of questions. The regulators and the level of consistency in reporting are absolutely part of the brief. The review is not currently structured to look at the question of a department of the whistleblower but, as I said in my Answer, I believe that that may well be a recommendation that comes out of it. I am afraid I cannot remember what the other question was.

Viscount Waverley (CB): My Lords, maybe I can help the Minister out on this point by following on from the question from the noble Lord, Lord Browne, and asking what consideration has been given to replicating what is done in the United States in offering financial incentives? Different levels of compensation are paid out commensurate with the quality of information on economic crimes and for the strengthening of sanctioning regimes overall.

The Earl of Minto (Con): My Lords, at the moment the Government do not think that financial incentives to whistleblow are an appropriate way to take this review or any future interest forward.

Lord Flight (Con): [*Inaudible.*]

Baroness Williams of Trafford (Con): My Lords, my noble friend Lord Flight stood up to ask a question, but I do not think the Minister heard it.

Lord Flight (Con): My Lords, which is the bigger issue, the underpayment of pensions or the overpayment of pensions?

Baroness Williams of Trafford (Con): I think my noble friend may want to ask that on the pensions Question.

Baroness Altmann (Con): I congratulate the Government on having a review of whistleblowing, which clearly is long overdue. I thank my noble friend for his letter and engagement with us on the whistleblowing issue in the Economic Crime and Corporate Transparency Bill, but does he consider that there is adequate protection in the current framework against career detriment and dismissal for whistleblowers? Does he not think that those who are working inside firms are best placed to blow the whistle and uncover crimes before any regulator tries to sweep up the mess afterwards? Therefore, looking at examples overseas, such as in America, that seem to work much better than here might be worth considering.

The Earl of Minto (Con): My Lords, I think I have answered the question about the American system. Having said that, we will of course look at what is current practice and best practice overseas to see how we can take this whole process forward. Surely what we are trying to do is to come up with a world-class whistleblowing framework and structure that protects workers who come forward and risk their employment and, to some extent, their financial future in calling out this potential fraud.

Baroness Jones of Moulsecoomb (GP): My Lords, my direct experience of whistleblowers is that doing that actually devastates their life, their income and their circle of friends. They have a very tough time, particularly if they come from the police or the military. I am slightly concerned that the Minister almost seemed to rule out an office of the whistleblower, because it would be wrong to have a consultation and not look at all the options. It seems to me that we need something very drastic, because the current legislation is no protection at all.

The Earl of Minto (Con): My Lords, I quite agree that taking any form of case to an employment tribunal is risky and difficult for the individuals involved, and it is no less so in a whistleblowing case. When the review is done and we are able to take a look at what the recommendations are—I think I have said this twice already—it will be very surprising if the question of an office of the whistleblower did not come up.

Baroness Blake of Leeds (Lab): My Lords, evidence suggests that the UK's law on whistleblowing is falling behind international best practice and has not kept pace with the modern workplace or the scale of the problem. We welcome the Government's announcement of the establishment of the review into the whistleblowing legislation, but perhaps the Minister could tell us when this will report. In the light of that, would he not agree that the Economic Crime and Corporate Transparency Bill, shortly going to Report, provides an ideal opportunity to act now to bring in immediate, obvious improvements?

[Baroness Blake of Leeds]
Further, does he agree that requiring all employers to introduce effective internal arrangements would be a beneficial step forward?

The Earl of Minto (Con): I absolutely agree that the current whistleblowing framework is not current best practice. This was basically put in place in 1996 and 1998, and that is one of the main purposes for the review being carried out now. The review is due to complete its work in October this year and will report very soon after that. Hopefully, from that, we can get to a situation where we are able to move forward to something that really is world-class.

Lord McColl of Dulwich (Con): My Lords, does the Minister have any information on the percentage of whistleblowing claims that are false?

The Earl of Minto (Con): My Lords, I do not, but I will find out and write to my noble friend.

State Pension Underpayment Errors

Question

2.57 pm

Asked by ***Lord Davies of Brixton***

To ask His Majesty's Government what steps they are taking to tackle under-payment errors in state pensions.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Viscount Younger of Leckie) (Con): My Lords, the Government are fully committed to ensuring that state pension error is put right as quickly as possible. More than 1,300 staff have been recruited or redeployed to the ongoing state pension underpayment correction exercise, with case reviews expected to significantly increase this year. This is an issue that dates back many years, and we are working hard to correct these historic errors and to ensure that they do not happen again.

Lord Davies of Brixton (Lab): My Lords, I thank the noble Viscount for his reply and I know that he takes the issue seriously. However, it is notable that the figures published last week by the Office for National Statistics showed that the main cause of underpayment was what it termed "official error", and in the last financial year, the underpayments totalled £580 million—£50 million more than in the previous year. It is getting worse. I note what the Minister says about additional staff, but it is clear that more needs to be done.

Viscount Younger of Leckie (Con): The noble Lord is right. We know that 700,000 cases require review; an estimated 230,000 customers will be affected. In terms of what we have actually done, 173,538 cases have been reviewed; 46,760 underpayments have been identified, and just over £300 million was paid in arrears. As for the reasons that were highlighted by the noble Lord, they are multifarious. One is that DWP staff sometimes fail to manually set an action system prompt on state pension accounts to review payments, such as reaching an 80th birthday.

Lord Geddes (Con): Is my noble friend aware of the beneficence of his department in that those who have reached their fourscore years get a huge 25p a week supplement, which, to the best of my knowledge, has never been reviewed since 1971? Is this good value for money?

Viscount Younger of Leckie (Con): I take note of what my noble friend has said. It is interesting to note that we are talking about an overpayment rather than an underpayment. Far from me to authorise taking away 25p from my noble friend, despite the fact that I am a Scotsman.

Lord Palmer of Childs Hill (LD): My Lords, the department has said that the current large-scale correction for those cheated of their full entitlement should be completed by the end of 2024, but in its most recent annual report it admitted a different error, relating to home responsibilities protection, where thousands of mothers are missing out on NI credits. Can the Minister assure the House that the department will not wait until the end of the current correction exercise before it starts on this new category of cheated errors?

Viscount Younger of Leckie (Con): The noble Lord makes a good point about home responsibilities protection, which is one of the issues that we are looking at in a timely fashion. We will be providing estimates and next steps for corrective action in the summer. Obviously, we are looking to move at pace to resolve these issues.

Baroness Lister of Burtersett (Lab): My Lords, the noble Viscount's Written Statement last week celebrated the fall in fraud and overpayment error in the social security system as a whole, but it rather glossed over the increase in underpayment to £3.3 billion. That is money which is not going into the pockets of people who need it. Do the Government not think that under-payments are as important as overpayments, and what are they doing to minimise underpayments?

Viscount Younger of Leckie (Con): Of course they are important. Any underpayment is incredibly important, as I am sure the noble Baroness would agree. The department became aware of issues with state pension underpayments in 2020 and, as mentioned earlier, the issues go back several decades and through different Governments. We have taken immediate action to investigate the extent of the problem and are carrying out highly complex scans of computer systems. Correction activity commenced on 11 January 2021; I say again that this is an important matter and we are moving at pace.

Baroness Altmann (Con): My Lords, as the exercise is focusing on women, and women's state pensions are still noticeably lower than those of men, are those who are entitled to arrears also entitled to some kind of compensation or consolation payment? How is my noble friend's department prioritising the work?

Viscount Younger of Leckie (Con): I note what my noble friend says about the gender disparities, which we are alert to. Indeed, the department has a discretionary scheme which allows special payments to be made to customers to address any hardship, but particularly injustice caused by DWP maladministration. Consistent with other large-scale LEAP exercises, special payments under the DWP discretionary scheme will not, however, routinely be made, but I assure the House that they are regarded or assessed on a case-by-case basis. Finally, on prioritising, it is important to note that we are prioritising those who are alive over those who are deceased.

Baroness Deech (CB): My Lords, I am one of those women who were underpaid. For years, I got £6 a week—I was very exercised over how to spend it—whereas many of my women friends who had never worked at all were getting much more than that. With expert advice, I was able to access the department and it was set right, but it seemed to me that the problem was how to access the department. Once it had the issue in hand it responded, but people need to know the email addresses and there need to be pamphlets in post offices. There need to be easy ways for older people to speak to someone in the department and get an answer when they write—without, of course, having to hold on to the phone for ages. Will the Minister ensure that that happens?

Viscount Younger of Leckie (Con): Indeed, and it is very important that we engage much more closely with the customer base. Where underpayments are identified, the DWP will contact the individual to inform them of any changes to their state pension amount and of any arrears involved. There is now, I am pleased to say, a more direct route for those inquiring about underpaid state pension. Guidance on this, the House may not be surprised to hear, is on GOV.UK and went live in July last year.

Baroness Sherlock (Lab): My Lords, these cases are very urgent for some people; 25p may be an issue for the over-80s, but in just January and February 14,500 over-80s were found to have been underpaid—out of a total of 46,000 underpayments. The worst affected were those who had been widowed, who were underpaid by, on average, £11,500. We all know how quickly the DWP will go after you if you get overpaid, so can the Minister assure us of two things? First, is priority being given to those who most need the money and who, frankly, may need it rather more urgently for reasons such as more advanced age? Secondly, the NAO suggested in its very damning report that the department assess all underpayments to see whether there is a systemic cause which might affect other cases. Is that now being done?

Viscount Younger of Leckie (Con): Very much so; it is being done. I think I alluded to this earlier. Any systemic problem has to be looked at as a matter of urgency. On the other question the noble Baroness raised, I mentioned the number of extra people we have put on to this particular case. I reassure her and the House that the data shows that we have reviewed an average of more than 15,000 cases per month between November 2022 and February 2023, compared with an average of only 5,000 per month over the first 22 months of the exercise.

Lord Sikka (Lab): My lords, it is estimated that between 20,000 and 25,000 pensioners die each year because of low income and the hard choices they have to make between heating and eating. Can the Minister explain whether any assessment has been made of the deaths and hardship caused by underpayment of state pension over the last 13 years?

Viscount Younger of Leckie (Con): No, I do not have any figures to support the argument that the noble Lord is proffering. What I can say is that we very much take note of wanting to support the most vulnerable. We have increased benefits in line with the September 2022 consumer prices index of 10.1%, including around 12 million pensions.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, is the Minister aware that, due to their incompetence, the Scottish Government have underspent their budget in the last financial year by £2 billion, which could have been spent helping carers and others? Will the Minister confirm that this money will now go back to the Treasury and not be spent helping poor people in Scotland?

Viscount Younger of Leckie (Con): Allow me to look into that and provide an answer to the noble Lord. I think it is normally the case that the money goes back to the Treasury but, without knowing here, I do not want to stick my neck out on it.

Baroness Ritchie of Downpatrick (Lab): My Lords, could the Minister indicate what corrective action will be taken to address the needs of the WASPI women, who have been underpaid for many years and are not entitled to their pensions from the age of 60?

Viscount Younger of Leckie (Con): I am aware, as we all are, of the WASPI issue. The noble Baroness will be aware of the judicial review against the PHSO. We are aware of it, but I am unable to comment because of the judicial review.

Carers: Financial Support

Question

3.07 pm

Asked by ***Baroness Pitkeathley***

To ask His Majesty's Government whether they plan to review the financial support available to unpaid carers following new research by Carers UK and the University of Sheffield which found that they contribute £445 million daily to the economy in England and Wales.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Viscount Younger of Leckie) (Con): My Lords, the Government recognise the vital role played by millions of unpaid carers across the

[Viscount Younger of Leckie]
country. We are already providing them with record amounts of financial support through the benefits system, including nearly £3.5 billion per year to around 1 million carers through the carer's allowance alone. Those unpaid carers in lower-income households could also receive an additional £2,200 per year through the universal credit carer element.

Baroness Pitkeathley (Lab): My Lords, I was only asking for a review; it seems a modest enough request in view of the £445 million contributed every day by unpaid carers. May I ask the Minister something very specific which, if there should be a review, he would be able to consider? The earnings limit for carer's allowance is not rising as quickly as the national living wage. The number of hours carers are allowed to work will reduce from 14 to 13 before they lose their entitlement to the benefit. This means that carers are very limited in their ability to undertake paid work and combine it with their caring, which many of them wish to do. Does the Minister agree that deterring carers from working is really not sensible, and that the earnings limit should be increased to a minimum of 21 hours at national living wage rates?

Viscount Younger of Leckie (Con): I know the noble Baroness has much experience in this particular area. On the carer's allowance, I can reassure her that we continue to review the limit and make changes where we feel they are warranted and affordable. The carer's allowance has an earnings limit, which she alluded to, which permits carers to undertake some part-time work; it also recognises the benefits of staying in touch with the workplace, which we regard as important, including providing greater financial independence and social interaction. As the noble Baroness will know, it can be extremely lonely and very hard work being a carer, as the hours are often long and the work very demanding.

Baroness Walmsley (LD): My Lords, a place in a local authority care home will cost a local authority a minimum of £800 a week, which is over £700 more than is paid to a carer who cares for more than 35 hours a week, as carer's allowance is only £76.75. Does the Minister agree that the Government and local taxpayers are getting a very good deal on the backs of unpaid carers?

Viscount Younger of Leckie (Con): We definitely want to applaud the huge number of unpaid carers who work in our society. Caring for a family member or friend, as we know, can be enormously hard work but it can also be incredibly rewarding. To pick up on the noble Baroness's point, means testing comes into this and this can increase weekly income and act as a passport to other support, including help with fuel costs through schemes such as the warm home discount and cold weather payments, and more recently payments to help with increases in the cost of living.

Lord Farmer (Con): My Lords, as an officer of the APPG on 22q—a genetic syndrome that is half as prevalent as Down's syndrome, with similarly far-reaching effects—I know carers who are parents of disabled children who can suddenly find that they have to be in hospital with their child for several days. They also attend far more medical appointments than normal. Do the Government perceive a need to encourage and enable employers to show greater flexibility in these unavoidable circumstances, and how might they do that?

Viscount Younger of Leckie (Con): My noble friend makes a very good point. As I said earlier, we are committed to supporting unpaid carers to balance the care they may give alongside work, if they are able to do so. Some caring responsibilities are extremely demanding. My noble friend may know that the Carer's Leave Bill is currently going through Parliament. This will introduce a new leave entitlement as a right from day one to those being employed, available to all employees who are providing care to a dependant with a long-term care or support need.

Baroness Andrews (Lab): My Lords, we have received the Government's response to the report from the Adult Social Care Committee and we are grateful for it. Is the Minister aware that in that report we recommended that carer's allowance be reviewed in the next year? We recommended that the threshold for the hours of caring be reduced so that people could access carer's allowance more easily, and that the allowance be uprated in line with the national living wage. All those recommendations have been rejected. Can the noble Viscount tell me why?

Viscount Younger of Leckie (Con): First, I wish the noble Baroness a very happy birthday. Moving on swiftly to her question, I very much note the points the report has produced; I read it over the weekend and it makes some important points. I said earlier how much we value the role of unpaid carers. Yes, the rate of carer's allowance is £76.75 a week. The total caseload is 1.4 million and I think it very important indeed that we continue to review the role of carers and the carer's allowance, but, as I mentioned earlier, there is a means-tested element here and top-ups are available for those in need.

The Lord Bishop of Gloucester: My Lords, in addition to the issue of financial support for unpaid adult carers, we must not forget the contribution of young carers, who provide invaluable support to their families. What are the Government doing to ensure financial support for respite support, as well as access to a young carer's lead in their school or college, as is currently available in Gloucestershire?

Viscount Younger of Leckie (Con): The right reverend Prelate makes a very good point, and that is certainly an element of what we are doing and looking at. As I said, the main point is that we very much recognise the importance of carers and their work. Indeed, Carers Week runs from 5 to 11 June this year. On respite care, the right reverend Prelate makes an important point.

Baroness Wheatcroft (CB): My Lords, there are many young carers between 16 and 25 in full-time education—around 375,000—but they seem to get a

particularly raw deal, in that they are not eligible for any state financial support and have to look to charities. Will the Minister take a look at their predicament?

Viscount Younger of Leckie (Con): I am very aware that some carers are extremely young, and I say again that I recognise the role of unpaid carers. The carer's allowance is not intended to be a replacement for a wage or a payment for caring services, so we cannot compare it to the national minimum wage or the national living wage, for example. The noble Baroness raises another important point that we should continue to look at.

Baroness Sherlock (Lab): My Lords, universal credit is a replacement for a wage, and there are people on it who can work only part time because of the need to care for a loved one, and, in some cases, because they simply cannot get hold of formal social care any more —things are pretty tough at the moment. They are not automatically excluded from the requirement to look for full-time work while on universal credit, so what guidance is given to universal credit work coaches in those circumstances?

Viscount Younger of Leckie (Con): The guidance is continually updated for them. The noble Baroness will be aware of the link between the carer's allowance and the universal credit tapering system, so that, if tapering is involved, you receive 55p for every £1.

Baroness Fraser of Craigmaddie (Con): My Lords, I am glad to hear that the Government want to support unpaid carers, but one of the problems is that they are invisible to all systems, whether that is health and care services, benefits or other government departments. So what are the Government doing to ensure that we identify carers who have this important role?

Viscount Younger of Leckie (Con): Again, there is more to be done to highlight the enormous amount of tremendous work that carers do. We are working on this, particularly in tandem with our colleagues in DHSC. I have certainly noted this and will take it forward. If there is something that I can write to my noble friend with, I will do so.

Lord Laming (CB): My Lords, the whole House will recognise that, at any time, the whole lifestyle of any of us could be changed by a dramatic illness of a close relative. As indicated, the position of unpaid carers is largely not recognised or sometimes ignored, so that, when they are concerned about their relative and get in touch with one of the agencies, they are often disregarded because they are not the patient, and their views are not sought, even though they are providing a huge amount of care. Can the noble Viscount assure us that everything is being done to improve the recognition of unpaid carers' contribution?

Viscount Younger of Leckie (Con): Absolutely, and this ties in with my noble friend's question. I reassure both the noble Lord and my noble friend that we are improving the recognition, identification and involvement of unpaid carers, particularly in local areas. There are new duties in the Health and Care Act 2022 around involving carers, including in hospital discharge, and new guidance has been prepared for the integrated care strategies, as well as new SCIE guidance for commissioners on breaks for adult carers.

Online Safety Bill

Committee (7th Day)

Relevant document: 28th Report from the Delegated Powers Committee

3.19 pm

Amendment 56

Moved by ***Lord Stevenson of Balmacara***

56: After Clause 17, insert the following new Clause—

"OFCOM reviews of complaints systems

(1) Within the period of one year beginning on the day on which this Act is passed, and annually thereafter, OFCOM must review the workings of the complaints systems set up by regulated companies under section 17 (duties about complaints procedures), as to—

(a) their effectiveness;

(b) their cost and efficiency; and

(c) such other matters as seem appropriate.

(2) In undertaking the reviews under subsection (1), OFCOM may take evidence from such bodies and individuals as it considers appropriate.

(3) If OFCOM determines from the nature of the complaints being addressed, and the volumes of such complaints, that systems established under section 17 are not functioning as intended, it may establish an online safety ombudsman with the features outlined in subsections (4) to (8), with the costs of this service being met from the levy on regulated companies.

(4) The purpose of the online safety ombudsman is to provide an impartial out-of-court procedure for the resolution of any dispute between—

(a) a user of a regulated user-to-user service, or a nominated representative for that user, and

(b) the regulated service provider,

in cases where complaints made under processes which are compliant with section 17 have not, in the view of the user (or their representative), been adequately addressed.

(5) The ombudsman must allow for a user (or their representative) who is a party to such a dispute to refer their case to the ombudsman if they are of the view that any feature or conduct of one or more provider of a regulated user-to-user service, which is relevant to that dispute, presents (or has presented) a material risk of—

(a) significant or potential harm;

(b) contravening a user's rights, as set out in the Human Rights Act 1998, including freedom of expression; or

(c) failure to uphold terms of service.

(6) The ombudsman may make special provision for children, including (but not limited to) prioritisation of—

(a) relevant provisions under the United Nations Convention on the Rights of the Child; or

(b) a child's physical, emotional or psychological state.

(7) The ombudsman must have regard to the desirability of any dispute resolution service provided by the ombudsman being—

(a) free;

(b) easy to use, including (where relevant) taking into account the needs of vulnerable users and children;

(c) effective and timely;

(d) fair and flexible, taking into account different forms of technology and the unique needs of different types of user; and

(e) transparent.

(8) The Secretary of State must ensure that use of any dispute resolution service provided by the ombudsman does not affect the ability of a user (or their representative) to bring a claim in civil proceedings."

Member's explanatory statement

This new Clause would require Ofcom to conduct regular reviews of the effectiveness of complaints procedures under Clause 17. If Ofcom were of the view that such procedures were not functioning effectively, they would be able to establish an online safety ombudsman with the features outlined in subsections (4) to (8) of the Clause.

Lord Stevenson of Balmacara (Lab): My Lords, Amendment 56 proposes a pathway towards setting up an independent ombudsman for the social media space. It is in my name, and I am grateful to the noble Lord, Lord Clement-Jones, for his support. For reasons I will go into, my amendment is a rather transparent and blatant attempt to bridge a gap with the Government, who have a sceptical position on this issue, and I hope that the amendment in its present form will prove more attractive to them than our original proposal.

At the same time, the noble Baroness, Lady Newlove, has tabled an amendment on this issue, proposing an independent appeals mechanism

"to provide impartial out of court resolutions for individual users of regulated services".

Given that this is almost exactly what I want to see in place—as was set out in my original amendment, which was subsequently rubbished by the Government—I have also signed the noble Baroness's amendment, and I very much look forward to her speech. The Government have a choice.

The noble Baroness, Lady Fox, also has amendments in this group, although they are pointing in a slightly different direction. I will not speak to them at this point in the proceedings, although I make it absolutely clear that, while I look forward to hearing her arguments —she is always very persuasive—I support the Bill's current proposals on super-complaints.

Returning to the question of why we think the Bill should make provision for an independent complaints system or ombudsman, I suppose that, logically, we ought first to hear the noble Baroness, Lady Newlove, then listen to the Government's response, which presumably will be negative. My compromise amendment could then be considered and, I hope, win the day with support from all around the Committee—in my dreams.

We have heard the Government's arguments already. As the Minister said in his introduction to the Second Reading debate all those months ago on 1 February 2023, he was unsympathetic. At that time, he said:

"Ombudsman services in other sectors are expensive, often underused and primarily relate to complaints which result in financial compensation. We find it difficult to envisage how an ombudsman service could function in this area, where user complaints are likely to be complex and, in many cases, do not have the impetus of financial compensation behind them".—[*Official Report*, 1/2/23; col. 690.]

Talk about getting your retaliation in first.

My proposal is based on the Joint Committee's unanimous recommendation:

"The role of the Online Safety Ombudsman should be created to consider complaints about actions by higher risk service providers where either moderation or failure to address risks leads to … demonstrable harm (including to freedom of expression) and recourse to other routes of redress have not resulted in a resolution".

The report goes on to say that there could

"be an option in the Bill to extend the remit of the Ombudsman to lower risk providers. In addition … the Ombudsman would as part of its role i) identify issues in individual companies and make recommendations to improve their complaint handling and ii) identify systemic industry wide issues and make recommendations on regulatory action needed to remedy them. The Ombudsman should have a duty to gather data and information and report it to Ofcom. It should be an 'eligible entity' to make super-complaints"

possible. It is a very complicated proposal. Noble Lords will understand from the way the proposal is framed that it would provide a back-up to the primary purpose of complaints, which must be to the individual company and the service it is providing. But it would be based on a way of learning from experience, which it would build up as time went on.

I am sure that the noble Lord, Lord Clement-Jones, will flesh out the Joint Committee's thinking on this issue when he comes to speak, but I make the point that other countries preparing legislation on online safety are in fact building in independent complaints systems; we are an outlier on this. Australia, Canada and others have already legislated. Another very good example nearer to hand is in Ireland. We are very lucky to have with us today the noble Baroness, Lady Kidron, a member of the expert panel whose advice to the Irish Government to set up such a system in her excellent report in May 2022 has now been implemented. I hope that she will share her thoughts about these amendments later in the debate.

Returning to the Government's reservations about including an ombudsman service in the Bill, I make the following points based on my proposals in Amendment 56. There need not be any immediate action. The amendment as currently specified requires Ofcom to review complaints systems set up by the companies under Clause 17 as to their effectiveness and efficiency. It asks Ofcom to take other evidence into account and then, and only then, to take the decision of whether to set up an ombudsman system. If there were no evidence of a need for such a service, it would not happen.

As for the other reservations raised by the Minister when he spoke at Second Reading, he said:

"Ombudsman services in other sectors are expensive".

We agree, but we assume that this would be on a cost recovery model, as other Ofcom services are funded in that way. The primary focus will always be resolving complaints about actions or inactions of particular companies in the companies' own redress systems, and Ofcom can always keep that under review.

He said that they are "often underused". Since we do not know at the start what the overall burden will be, we think that the right solution is to build up slowly and let Ofcom decide. There are other reasons why it makes sense to prepare for such a service, and I will come to these in a minute.

He said that other ombudsman services

"primarily relate to complaints which result in financial compensation".

That is true, but the evidence from other reports, and that we received in the Joint Committee, was that most complainants want non-financial solutions: they want egregious material taken down or to ensure that certain materials are not seen. They are not after the money. Where a company is failing to deliver on those issues in their own complaints system, to deny genuine complainants an appeal to an independent body seems perverse and not in accordance with natural justice.

He said that

"user complaints are likely to be complex".—[*Official Report*, 1/2/23; col. 690.]

Yes, they probably are, but that seems to be an argument for an independent appeals body, not against it.

To conclude, we agree that Ofcom should not be the ombudsman and that the right approach is for Ofcom to set up the system as and when it judges that it would be appropriate. We do not want Ofcom to be swamped with complaints from users of regulated services, who, for whatever reason, have not been satisfied by the response of the individual companies or to complex cases, or seek system-wide solutions. But Ofcom needs to know what is happening on the ground, across the sector, as well as in each of the regulated companies, and it needs to be kept aware of how the system as a whole is performing. The relationship between the FCA and the Financial Ombudsman Service is a good model here. Indeed, the fact that some of the responsibilities to be given to Ofcom in the Bill will give rise to complaints to the FOS suggests that there would be good sense in aligning these services right from the start.

We understand that the experience from Australia is that the existence of an independent complaints function can strengthen the regulatory functions. There is also evidence that the very existence of an independent complaints mechanism can provide reassurances to users that their online safety is being properly supported. I beg to move.

Baroness Newlove (Con): My Lords, this is the first time that I have spoken in Committee. I know we have 10 days, but it seems that we will go even further because this is so important. I will speak to Amendments 250A and 250B.

I thank the noble Lords, Lord Russell of Liverpool and Lord Stevenson of Balmacara, and, of course—if I may be permitted to say so—the amazing noble Baroness, Lady Kidron, who is an absolute whizz on this, for placing their names on these amendments, as well as the 5Rights Foundation, the Internet Watch Foundation and the UK Safer Internet Centre for their excellent briefings. I have spoken to these charities, and the work they do is truly amazing. I do not think that the Bill will recognise just how much time and energy they give to support families and individuals. Put quite simply, we can agree that services' internal complaint mechanisms are failing.

Let me tell your Lordships about Harry. Harry is an autistic teenager who was filmed by a member of the public in a local fast-food establishment when he was dysregulated and engaging in aggressive behaviour. This footage was shared out of context across social media, with much of the response online labelling Harry as a disruptive teenager who was engaging in unacceptable aggression and vandalising public property. This was shared thousands of times over the course of a few weeks. When Harry and his mum reported it to the social media platforms, they were informed that it did not violate community guidelines and that there was a public interest in the footage remaining online. The family, quite rightly, felt powerless. Harry became overwhelmed at the negative response to the footage and the comments made about his behaviour. He became withdrawn and stopped engaging. He then tried to take his own life.

3.30 pm

It was at this point that Harry's mum reached out to the voluntary-run service Report Harmful Content, as she had nowhere else to turn. Report Harmful Content is run by the charity South West Grid for Learning. It was able to mediate between the social media sites involved to further explain the context and demonstrate the real-world harm that this footage, by remaining online, was having on the family and on Harry's mental health. Only then did the social media companies concerned remove the content.

Sadly, Harry's story is not an exception. In 2022, where a platform initially refused to take down content, Report Harmful Content successfully arbitrated the removal of content in 87% of cases, thus demonstrating that even if the content did not violate community guidelines, it was clear that harm had been done. There are countless cases of members of the public reporting a failure to remove content that was bullying them. This culture of inaction has led to apathy and a disbelief among users that their appeals will ever be redressed. Research published by the Children's Commissioner for England found that 40% of children did not report harmful content because they felt that there

"was no point in doing so".

The complaints mechanism in the video-sharing platform regulation regime is being repealed without an alternative mechanism to fill the gap. The current video-sharing platform regulation requires platforms to

"provide for an impartial out-of-court procedure for the resolution of any dispute between a person using the service and the provider"

to operate impartial dispute resolution in the event. In its review of the first year of this regulation, Ofcom highlighted that the requirements imposed on platforms in scope are not being met in full currently. However, instead of strengthening existing appeals processes, the VSP regime is set to be repealed and superseded by this Bill.

The Online Safety Bill does not have an individual appeals process, meaning that individuals will be left without an adequate pathway to redress. The Bill establishes only a "super-complaints" process for issues concerning multiple cases or cases highlighting a systemic risk. It will ultimately fall to the third sector to highlight cases to Ofcom on behalf of individuals.

The removal of an appeals process—given the repeal of the VSP regime—would be in stark contrast with the direction of travel in other nations. Independent appeals processes exist in Australia and New Zealand,

[Baroness Newlove]

and more countries are also looking at adopting independent appeals. The new Irish Online Safety and Media Regulation Act includes provision

"for the making of a complaint to the Commission".

The Digital Services Act in Europe also puts a process in place. There is precedent for these systems. It cannot be right that the Republic of Ireland and the UK and its territories have over 52 ombudsmen in 32 sectors, yet none of them works in digital at a time when online harm—especially to children, as we hear time and again in your Lordships' House—is at unprecedented levels.

The Government's response so far has been insufficient. When the Online Safety Bill received its seventh sitting debate, much discussion related to independent appeals, referred to here as the need for an ombudsman. The Digital Minister recognised:

"In some parts of our economy, we have ombudsmen who deal with individual complaints, financial services being an obvious example. The Committee has asked the question, why no ombudsman here? The answer, in essence, is a matter of scale and of how we can best fix the issue. The volume of individual complaints generated about social media platforms is just vast".

Dame Maria Miller MP said that

"it is not a good argument to say that this is such an enormous problem that we cannot have a process in place to deal with it".—[*Official Report*, Commons, Online Safety Bill Committee, 9/6/22; col. 295-96.]

In response to the Joint Committee's recommendation for an ombudsman, the Government said:

"An independent resolution mechanism such as an Ombudsman is relatively untested in areas of non-financial harm. Therefore, it is difficult to know how an Ombudsman service could function where user complaints are likely to be complex and where financial compensation is not usually appropriate. An Ombudsman service may also disincentivise services from taking responsibility for their users' safety. Introducing an independent resolution mechanism at the same time as the new regime may also pose a disproportionate regulatory burden for services and confuse users … The Secretary of State will be able to reconsider whether independent resolution mechanisms are appropriate at the statutory review. Users will also already have a right of action in court if their content is removed by a service provider in breach of the terms and conditions. We will be requiring services to specifically state this right of action clearly in their terms and conditions".

Delaying the implementation of an individual appeals process will simply increase the backlog of cases and will allow for the ripple effect of harm to go unreported, unaddressed and unaccounted for.

There is precedent for individual complaints systems, as I have mentioned, both in the UK and abroad. Frankly, the idea that an individual complaints process will disincentivise companies from taking responsibility does not hold weight, given that these companies' current appeal mechanisms are woefully inadequate. Users must not be left to the courts to have their appeals addressed. This process is cost-prohibitive for most and cannot be the only pathway to justice for victims, especially children.

To conclude, I have always personally vowed to speak up for those who endure horrific suffering and injustices from tormentors. I know how the pain and trauma that comes from systems that have been set up being no longer being fit for purpose feels. I therefore say this to my noble friend the Minister: nothing is too difficult if you really want to find a solution. The public have asked for this measure and there is certainly wide precedent for it. By not allowing individuals an appeals process, the Government's silence simply encourages the tormentors and leaves the tormented alone.

Baroness Kidron (CB): My Lords, I will speak in support of Amendments 250A and 250B; I am not in favour of Amendment 56, which is the compromise amendment. I thank the noble Baroness, Lady Newlove, for setting out the reasons for her amendments in such a graphic form. I declare an interest as a member of the Expert Group on an Individual Complaints Mechanism for the Government of Ireland.

The day a child or parent in the UK has a problem with an online service and realises that they have nowhere to turn is the day that the online safety regime will be judged to have failed in the eyes of the public. Independent redress is a key plank of any regulatory system. Ombudsmen and independent complaint systems are available across all sectors, from finance and health to utilities and beyond. As the noble Lord, Lord Stevenson, set out, they are part of all the tech regulation that has been, or is in the process of being, introduced around the world.

I apologise in advance if the Minister is minded to agree to the amendment, but given that, so far, the Government have conceded to a single word in a full six days in Committee, I dare to anticipate that that is not the case and suggest three things that he may say against the amendment: first, that any complaints system will be overwhelmed; secondly, that it will offer a get-out clause for companies from putting their own robust systems in place; and, thirdly, that it will be too expensive.

The expert group of which I was a member looked very carefully at each of these questions and, after taking evidence from all around the globe, it concluded that the system need not be overwhelmed if it had the power to set clear priorities. In the case of Ireland, those priorities were complaints that might result in real-world violence and complaints from or on behalf of children. The expert group also determined that the individual complaints system should be

"afforded the discretion to handle and conclude complaints in the manner it deems most appropriate and is not unduly compelled toward or statutorily proscribed to certain courses of action in the Bill".

For example, there was a lot of discussion on whether it could decide not to deal with copycat letters, treat multiple complaints on the same or similar issue as one, and so on.

Also, from evidence submitted during our deliberations, it became clear that many complainants have little idea of the law and that many complaints should be referred to other authorities, so among the accepted recommendations was that the individual complaints system should be

"provided with a robust legal basis for transferring or copying complaints to other bodies as part of the triage process"—

for example, to the data regulator, police, social services and other public bodies. The expert group concluded that this would actually result in better enforcement and compliance in the ecosystem overall.

On the point that the individual complaints mechanism may have the unintended consequence of making regulated services lazy, the expert group—which,

incidentally, comprised a broad group of specialisms such as ombudsmen, regulators and legal counsel among others—concluded that it was important for the regulator to set a stringent report and redress code of practice for regulated companies so that it was not possible for any company to just sit back until people were so fed up that they went to the complaints body. The expert group specifically said in its report that it

"is acutely aware of the risk of … the Media Commission … drawing criticism for the failings of the regulated entities to adequately comply with systemic rules. In this regard, an individual complaints mechanism should not be viewed as a replacement for the online platforms' complaint handling processes".

Indeed, the group felt that an individual complaints system complemented the powers given to the regulator, which could and should take enforcement against those companies that persistently fail to introduce an adequate complaints system—not least because the flow of complaints would act as an early warning system of emerging harms, which is of course one of the regulator's duties under the Bill.

When replying to a question from the noble Lord, Lord Knight of Weymouth, last week about funding digital literacy, the Minister made it clear that the online safety regime would be self-financing via the levy. In which case, it does not seem to be out of proportion to have a focused and lean system in which the urgent, the vulnerable and the poorly served have somewhere to turn.

The expert group's recommendation was accepted in full by Ireland's Minister for Media, Culture and Tourism, Catherine Martin, who said she would

"always take the side of the most vulnerable"

and the complaint system would deal with people who had

"exhausted the complaints handling procedures by any online services".

I have had the pleasure of talking to its new leadership in recent weeks, and it is expected to be open for business in 2024.

I set that out at length just to prove that it is possible. It was one of the strong recommendations of the pre-legislative committee, and had considerable support in the other place, as we have heard. I think both Ofcom and DSIT should be aware that many media outlets have not yet clocked that this complicated Bill is so insular that the users of tech have no place to go and no voice.

While the Bill can be pushed through without a complaints system, this leaves it vulnerable. It takes only one incident or a sudden copycat rush of horrors, which have been ignored or trivialised by the sector with complainants finding themselves with nowhere to go but the press, to undermine confidence in the whole regulatory edifice.

3.45 pm

So I have three questions for the Minister. The first two are on the VSP regime which, as was set out by the noble Baroness, Lady Newlove, is being cancelled by the Bill. First, could the Minister confirm to the Committee that the VSP complaints system has done nothing useful since it was put in place? Therefore, was the decision to repeal it based on its redundancy?

Secondly, if the system has indeed been deemed redundant, is that because of a failure of capacity or implementation by Ofcom—this is crucial for the Committee to understand, as Ofcom is about to take on the huge burden of this Bill—or is it because all the companies within the regime are now entirely compliant?

Thirdly, once a child or parent has exhausted a company's complaints system, where, under the Bill in front of us, do the Government think they should go?

I have not yet heard from the noble Baroness, Lady Fox, on her amendments, so I reserve the right to violently agree with her later, but I simply do not understand her reasoning for scrapping super-complaints from the Bill. Over the last six days in Committee, the noble Baroness has repeatedly argued that your Lordships must be wary about putting too much power in the hands of the Government or the tech sector, yet here we have a mechanism that allows users a route to justice that does not depend on their individual wealth. Only those with deep pockets and the skin of a rhinoceros can turn to the law as individuals. A super-complaints system allows interested parties, whether from the kids sector or the Free Speech Union, to act on behalf of a group. As I hope I have made clear, this is additional to, not instead of, an individual complaints system, and I very much hoped to have the noble Baroness's support for both.

Lord Russell of Liverpool (CB): My Lords, I also put my name to Amendments 250A and 250B, but the noble Baronesses, Lady Newlove and Lady Kidron, have done such a good job that I shall be very brief.

To understand the position that I suspect the Government may put forward, I suggest one looks at Commons *Hansard* and the discussion of this in the seventh Committee sitting of 9 June last year. To read it is to descend into an Alice in Wonderland vortex of government contradictions. The then Digital Minister—a certain Chris Philp, who, having been so effective as Digital Minister, was promoted, poor fellow, to become a Minister in the Home Office; I do not know what he did to deserve that—in essence said that, on the one hand, this problem is absolutely vast, and we all recognise that. When responding to the various Members of the Committee who put forward the case for an independent appeals mechanism, he said that the reason we cannot have one is that the problem is too big. So we recognise that the problem is very big, but we cannot actually do anything about it, because it is too big.

I got really worried because he later did something that I would advise no Minister in the current Government ever to do in public. Basically, he said that this

"groundbreaking and world-leading legislation"—[*Official Report*, Commons, Online Safety Bill Committee, 9/6/22; col. 296.]

will fix this. If I ruled the world, if any Minister in the current Government said anything like that, they would immediately lose the Whip. The track record of people standing up and proudly boasting how wonderful everything is going to be, compared to the evidence of what actually happens, is not a track record of which to be particularly proud.

I witnessed, as I am sure others did, the experience of the noble Baroness, Lady Kidron, pulling together a group of bereaved parents: families who had lost their child through events brought about by the online world. A point that has stayed with me from that discussion was the noble Baroness, Lady Kidron, who

[Lord Russell of Liverpool]
was not complaining, saying at the end that there is something desperately wrong with the system where she ends up as the point person to try to help these people resolve their enormous difficulties with these huge companies. I remind noble Lords that the family of Molly Russell, aided by a very effective lawyer, took no less than five years to get Meta to actually come up with what she was looking at online. So the most effective complaints process, or ombudsman, was the fact they were able to have a very able lawyer and an exceptionally able advocate in the shape of the noble Baroness, Lady Kidron, helping in any way she could. That is completely inadequate.

I looked at the one of the platforms that currently helps individual users—parents—trying to resolve some of the complaints they have with companies. It is incredibly complicated. So relying on the platforms themselves to bring forward, under the terms of the Bill, completely detailed systems and processes to ensure that these things do not happen, or that if there is a complaint it will be followed up dutifully and quickly, does not exactly fill me with confidence, based on their previous form.

For example, as a parent or an individual, here are some of the questions you might have to ask yourself. How do I report violence or domestic abuse online? How do I deal with eating disorder content on social media? How do I know what is graphic content that does not breach terms? How do I deal with abuse online? What do I do as a UK citizen if I live outside the UK? It is a hideously complex world out there. On the one hand, bringing in regulations to ensure that the platforms do what they are meant to, and on the other hand charging Ofcom to act as the policeman to make sure that they are actually doing it, is heaping yet more responsibility on Ofcom. The noble Lord, Lord Grade, is showing enormous stamina sitting up in the corner; he is sitting where the noble Lord, Lord Young, usually sits, which is a good way of giving the Committee a good impression.

What I would argue to the Minister is that to charge Ofcom with doing too much leads us into dangerous territory. The benefit of having a proper ombudsman who deals with these sorts of complaints week in, week out, is exactly the same argument as if one was going to have a hip or a knee replacement. Would you rather have it done by a surgical team that does it once a year or one that does it several hundred times a year? I do not know about noble Lords, but I would prefer the latter. If we had an effective ombudsman service that dealt with these platforms day in, day out, they would be the most effective individuals to identify whether or not those companies were actually doing what they are meant to do in the law, because they would be dealing with them day in, day out, and would see how they were responding. They could then liaise with Ofcom in real time to tell it if some platforms were not performing as they should. I feel that that would be more effective.

The only question I have for the Minister is whether he would please agree to meet with us between now and Report to really go into this in more detail, because this is an open goal which the Government really should be doing something to try to block. It is a bit of a no-brainer.

Baroness Fox of Buckley (Non-Afl): My Lords, I see my amendments as being probing. I am very keen on having a robust complaints system, including for individuals, and am open to the argument about an ombudsman. I am listening very carefully to the way that that has been framed. I tabled these amendments because while I know we need a robust complaints system—and I think that Ofcom might have a role in that—I would want that complaints system to be simple and as straightforward as possible. We certainly need somewhere that you can complain.

Ofcom will arguably be the most powerful regulator in the UK, effectively in charge of policing a key element of democracy: the online public square. Of course, one question one might ask is: how do you complain about Ofcom in the middle of it all? Ironically, an ombudsman might be somewhere where you would have to field more than just complaints about the tech companies.

I have suggested completely removing Clauses 150 to 152 from the Bill because of my reservations, beyond this Bill and in general, about a super-complaints system within the regulatory framework, which could be very unhelpful. I might be wrong, and I am open to correction if I have misunderstood, but the Bill's notion of an eligible entity who will be allowed to make this complaint to Ofcom seems, at the moment, to be appointed on criteria set only by the Secretary of State. That is a serious problem. There is a danger that the Secretary of State could be accused of partiality or politicisation. We therefore have to think carefully about that.

I also object to the idea that certain organisations are anointed with extra legitimacy as super-complaints bodies. We have seen this more broadly. You will often hear Ministers say, in relation to consultations, "We've consulted stakeholders and civil society organisations", when they are actually often referring to lobbying organisations with interests. There is a free-for-all for NGOs and interest groups. We think of a lot of charities as very positive but they are not necessarily neutral. I just wanted to query that.

There is also a danger that organisations will end up speaking on behalf of all women, all children or all Muslims. That is something we need to be careful about in a time of identity politics. We have seen it happen offline with self-appointed community leaders, but say, for example, there is a situation where there is a demand by a super-complainant to remove a particular piece of content that is considered to be harmful, such as an image of the Prophet Muhammad. These are areas where we have to admit that if people then say, "We speak on behalf of", they will cause problems.

Although charities historically have had huge credibility, as I said, we know from some of the scandals that have affected charities recently that they are not always the saviours. They are certainly not immune from corruption, political bias, political disputes and so on.

I suppose my biggest concern is that the function in the Bill is not open to all members of the public. That seems to be a problem. Therefore, we are saying that certain groups and individuals will have a greater degree of influence over the permissibility of speech than others. There are some people who have understood these clauses to mean that it would act like a class

action—that if enough people are complaining, it must be a problem. But, as noble Lords will know from their inboxes, sometimes one is inundated with emails and it does not necessarily show a righteous cause. I do not know about anyone else who has been involved in this Bill, but I have had exactly the same cut-and-paste email about violence against women and girls hundreds of times. That usually means a well-organised, sometimes well-funded, mass mobilisation. I have no objection, but just because you get lots of emails it does not mean that it is a good complaint. If you get only one important email complaint that is written by an individual, surely you should respect that minority view.

Is it not interesting that the assumption of speakers so far has been that the complaints will always be that harms have not been removed or taken notice of? I was grateful when the noble Baroness, Lady Kidron, mentioned the Free Speech Union and recognised, as I envisage, that many of the complaints will be about content having been removed—they will be free speech complaints. Often, in that instance, it will be an individual whose content has been removed. I cannot see how the phrasing of the Bill helps us in that. Although I am a great supporter of the Free Speech Union, I do not want it to represent or act on behalf of, say, Index on Censorship or even an individual who simply thinks that their content should not be removed—and who is no less valid than an official organisation, however much I admire it.

I certainly do not want individual voices to be marginalised, which I fear the Bill presently does in relation to complaints. I am not sure about an ombudsman; I am always wary of creating yet another more powerful body in the land because of the danger of over-bureaucratisation.

4 pm

Lord Allan of Hallam (LD): My Lords, I had to miss a few sessions of the Committee but I am now back until the end. I remind fellow Members of my interests: I worked for one of the largest platforms for a decade, but I have no current interests. It is all in the register if people care to look. I want to contribute to this debate on the basis of that experience of having worked inside the platforms.

I start by agreeing with the noble Baroness, Lady Kidron, the noble Lord, Lord Stevenson, and my noble friend Lord Clement-Jones. The thrust of their amendments—the idea that something will be needed here—is entirely correct. We have created in the Online Safety Bill a mechanism that we in this Committee know is intended primarily to focus on systems and how Ofcom regulates them, but what the public out there hear is that we are creating a mechanism that will meet their concerns—and their concerns will not end with systems. As the noble Baroness, Lady Newlove, eloquently described, their concerns in some instances will be about specific cases and the question will be: who will take those up?

If there is no other mechanism and no way to signpost people to a place where they can seek redress, they will come to Ofcom. That is something we do not want. We want Ofcom to be focused on the big-ticket items of dealing with systems, not bogged down in dealing with thousands of individual complaints. So we can anticipate a situation in which we will need someone to be able to deal with those individual complaints.

I want to focus on making that workable, because the volume challenge might not be as people expect. I have seen from having worked on the inside that there is a vast funnel of reports, where people report content to platforms. Most of those reports are spurious or vexatious; that is the reality. Platforms have made their reporting systems easy, as we want them to do —indeed, in the Bill we say, "Make sure you have really easy-to-use reporting systems"—but one feature of that is that people will use them simply to express a view. Over the last couple of weeks, all the platforms will have been inundated with literally millions of reports about Turkish politicians. These will come from the supporters of either side, reporting people on the other side—claiming that they are engaged in hate speech or pornography or whatever. They will use whatever tool they can. That is what we used to see day in, day out: football teams or political groups that report each other. The challenge is to separate out the signal—the genuinely serious reports of where something is going wrong—from the vast amount of noise, of people simply using the reporting system because they can. For the ombudsman, the challenge will be that signal question.

Breaking that down, from the vast funnel of complaints coming in, we have a smaller subset that are actionable. Some of those will be substantive, real complaints, where the individual simply disagrees with the decision. That could be primarily for two reasons. The first is that the platform has made a bad decision and failed to enforce its own policies. For example, you reported something as being pornographic, and it obviously was, but the operator was having a bad day—they were tired, it was late in the day and they pressed "Leave up" instead of "Take down". That happens on a regular basis, and 1% of errors like that across a huge volume means a lot of mistakes being made. Those kinds of issues, where there is a simple operator error, should get picked up by the platforms' own appeal mechanisms. That is what they are there for, and the Bill rightly points to that. A second reviewer should look at it. Hopefully they are a bit fresher, understand that a mistake was made and can simply reverse it. Those operator error reports can be dealt with internally.

The second type would be where the platform enforces policies correctly but, from the complainant's point of view, the policies are wrong. It may be a more pro-free speech platform where the person says, "This is hate speech", but the platform says, "Well, according to our rules, it is not. Under our terms of service, we permit robust speech of this kind. Another platform might not, but we do". In that case, the complainant is still unhappy but the platform has done nothing wrong—unless the policies the platform is enforcing are out of step with the requirements under the Online Safety Bill, in which case the complaint should properly come to Ofcom. Based on the individual complaint, a complainant may have something material for Ofcom. They are saying that they believe the platform's policies and systems are not in line with the guidance issued by Ofcom—whether on hate speech, pornography or anything else. That second category of complaint would come to Ofcom.

[Lord Allan of Hallam]

The third class concerns the kind of complaint that the noble Baroness, Lady Newlove, described. In some ways, this is the hardest. The platform has correctly enforced its policies but, in a particular case, the effect is deeply unfair, problematic and harmful for an individual. The platform simply says, "Look, we enforced the policies. They are there. This piece of content did not violate them". Any outsider looking at it would say, "There is an injustice here. We can clearly see that an individual is being harmed. A similar piece of content might not be harmful to another individual, but to this individual it is". In those circumstances, groups such as the South West Grid for Learning, with which I work frequently, perform an invaluable task. We should recognise that there is a network of non-governmental organisations in the United Kingdom that do this day in, day out. Groups such as the Internet Watch Foundation and many others have fantastic relations and connections with the platforms and regularly bring exceptional cases to them.

Baroness Kidron (CB): We are glad to have the noble Lord back. I want also to put on the record that the South West Grid for Learning is very supportive of this amendment.

Lord Allan of Hallam (LD): It has let me know as well. In a way, the amendment seeks to formalise what is already an informal mechanism. I was minded initially to support Amendment 56 in the name of my noble friend Lord Clement-Jones and the noble Lord, Lord Stevenson.

This landscape is quite varied. We have to create some kind of outlet, as the noble Baroness, Lady Kidron, rightly said. That parent or individual will want to go somewhere, so we have to send them somewhere. We want that somewhere to be effective, not to get bogged down in spurious and vexatious complaints. We want it to have a high signal-to-noise ratio—to pull out the important complaints and get them to the platforms. That will vary from platform to platform. In some ways, we want to empower Ofcom to look at what is and is not working and to be able to say, "Platform A has built up an incredible set of mechanisms. It's doing a good job. We're not seeing things falling through the cracks in the same way as we are seeing with platform B. We are going to have to be more directive with platform B". That very much depends on the information coming in and on how well the platforms are doing their job already.

I hope that the Government are thinking about how these individual complaints will be dealt with and about the demand that will be created by the Bill. How can we have effective mechanisms for people in the United Kingdom who genuinely have hard cases and have tried, but where there is no intermediary for the platform they are worried about? In many cases, I suspect that these will be newer or smaller platforms that have arrived on the scene and do not have established relationships. Where are these people to go? Who will help them, particularly in cases where the platform may not systemically be doing anything wrong? Its policies are correct and it is enforcing them correctly, but any jury of peers would say that an injustice is being done. Either an exception needs to be made or there needs to be a second look at that specific case. We are not asking Ofcom to do this in the rest of the legislation.

Baroness Harding of Winscombe (Con): My Lords, it is always somewhat intimidating to follow the noble Lord, Lord Allan, though it is wonderful to have him back from his travels. I too will speak in favour of Amendments 250A and 250B in the name of my noble friend, from not direct experience in the social media world but tangentially, from telecoms regulation.

I have lived, as the chief executive of a business, in a world where my customers could complain to me but also to an ombudsman and to Ofcom. I say this with some hesitation, as my dear old friends at TalkTalk will be horrified to hear me quoting this example, but 13 years ago, when I took over as chief executive, TalkTalk accounted for more complaints to Ofcom than pretty much all the other telcos put altogether. We were not trying to be bad—quite the opposite, actually. We were a business born out of very rapid growth, both organic and acquisitive, and we did not have control of our business at the time. We had an internal complaints process and were trying our hardest to listen to it and to individual customers who were telling us that we were letting them down, but we were not doing that very well.

While my noble friend has spoken so eloquently about the importance of complaints mechanisms for individual citizens, I am actually in favour of them for companies. I felt the consequences of having an independent complaints system that made my business listen. It was a genuine failsafe system. For someone to have got as far as complaining to the telecoms ombudsman and to Ofcom, they had really lost the will to live with my own business. That forced my company to change. It has forced telecoms companies to change so much that they now advertise where they stand in the rankings of complaints per thousand customers. Even in the course of the last week, Sky was proclaiming in its print advertising that it was the least complained-about to the independent complaints mechanism.

So this is not about thinking that companies are bad and are trying to let their customers down. As the noble Lord, Lord Allan, has described, managing these processes is really hard and you really need the third line of defence of an independent complaints mechanism to help you deliver on your best intentions. I think most companies with very large customer bases are trying to meet those customers' needs.

For very practical reasons, I have experienced the power of these sorts of systems. There is one difference with the example I have given of telecoms: it was Ofcom itself that received most of those complaints about TalkTalk 13 years ago, and I have tremendous sympathy with the idea that we might unleash on poor Ofcom all the social media complaints that are not currently being resolved by the companies. That is exactly why, as Dame Maria Miller said, we need to set up an independent ombudsman to deal with this issue.

From a very different perspective from that of my noble friend, I struggle to understand why the Government do not want to do what they have just announced they want to do in other sectors such as gambling.

Lord Clement-Jones (LD): My Lords, I had better start by declaring an interest. It is a great pleasure to follow the noble Baroness, Lady Harding, because my interest is directly related to the ombudsman she has just been praising. I am chairman of the board of the Trust Alliance Group, which runs the Energy Ombudsman and the telecoms ombudsman. The former was set up under the Consumers, Estate Agents and Redress Act 2007 and the latter under the Communications Act 2003.

Having got that off my chest, I do not have to boast about the efficacy of ombudsmen; they are an important institution, they take the load off the regulator to a considerable degree and they work closely with the participating companies in the schemes they run. On balance, I would prefer the Consumers, Estate Agents and Redress Act scheme because it involves a single ombudsman, but both those ombudsmen demonstrate the benefit in their sectors.

The noble Lord, Lord Stevenson, pretty much expressed the surprise that we felt when we read the Government's response to what we thought was a pretty sensible suggestion in the Joint Committee's report. He quoted it, and I am going to quote it again because it is such an extraordinary statement:

"An independent resolution mechanism such as an Ombudsman is relatively untested in areas of non-financial harm".

If you look at the ones for which I happen to have some responsibility, and at the other ombudsmen—there is a whole list we could go through: the Legal Ombudsman, the Local Government and Social Care Ombudsman, the Parliamentary and Health Service Ombudsman—there are a number who are absolutely able to take a view on non-financial matters. It is a bit flabbergasting, if that is a parliamentary expression, to come across that kind of statement in a government response.

4.15 pm

There has been distilled wisdom during the course of this debate. Although there may be differences of view about whether we have half a loaf or a full loaf, what is clear is that we are all trying to head in the same direction, which is to have an ombudsman for complaints in this sector. We need to keep reminding everybody that this is not a direct complaints system: it is a secondary complaints system, and you have to have exhausted the complaints within the social media platform. My noble friend described some of the complexity of that extremely well, and I thank the noble Baroness, Lady Kidron, for setting out some of the complexities and the views of the expert group.

I mentioned the Government's response to the Joint Committee, but as the noble Baroness, Lady Newlove, said, we already have an independent appeals system in the video-sharing platform legislation. Why are we going backwards in this Bill? We should be being more comprehensive as a result of this. This Bill is set to dismantle an essential obligation that supports victims of online harm on video-sharing platforms. We have to be more comprehensive, not less. The South West Grid for Learning's independent appeals process, which has been mentioned already today, highlights that a significant number of responses received by victims of harmful content from industry platforms were initially incorrect, and RHC was able to resolve them.

Some of these misunderstandings are not necessarily complaints that need adjudication; sometimes it is actually miscommunication. We have heard during the debate that other countries are already doing this; several noble Lords have mentioned Ireland, Australia and New Zealand. We need that ability also, and this is where I disagree with the noble Baroness, Lady Fox, although there was a nuance in her argument. It was a probing amendment—how about that? The fact that representative organisations can defend users' rights for largescale breaches of the law is very important, and I was rather surprised by her criticism of the fact that lobby groups can bring action. Orchestrating complaints is the nature of group or class actions in litigation, so the question is begging to be tested. Those complaints need to be tested, and it is perfectly legitimate for a group to bring those complaints.

The noble Baroness, Lady Newlove, mentioned the research published by the Children's Commissioner which showed that 40% of children did not report harmful content because they felt there was no point in doing so. That is pretty damning of the current situation. The noble Lord, Lord Russell, and my noble friend made the very strong point that we do not want to bog down the regulator. We see what happens under the data protection legislation. The ICO has an enormous number of complaints to deal with directly, without the benefit of an ombudsman. This scheme could alleviate the burden on the regulator and be highly effective. I do not think we have heard an argument in Committee against this; it must be the way forward. I very much hope that the Minister will take this forward after today and install an ombudsman for the Bill.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Viscount Camrose) (Con): My Lords, the amendments in this group are concerned with complaints mechanisms. I turn first to Amendment 56 from the noble Lord, Lord Stevenson of Balmacara, which proposes introducing a requirement on Ofcom to produce an annual review of the effectiveness and efficiency of platforms' complaints procedures. Were this review to find that regulated services were not complying effectively with their complaints procedure duties, the proposed new clause would provide for Ofcom to establish an ombudsman to provide a dispute resolution service in relation to complaints.

While I am of course sympathetic to the aims of this amendment, the Government remain confident that service providers are best placed to respond to individual user complaints, as they will be able to take appropriate action promptly. This could include removing content, sanctioning offending users, reversing wrongful content removal or changing their systems and processes. Accordingly, the Bill imposes a duty on regulated user-to-user and search services to establish and operate an easy-to-use, accessible and transparent complaints procedure. The complaints procedure must provide for appropriate action to be taken by the provider in relation to the complaint.

It is worth reminding ourselves that this duty is an enforceable requirement. Where a provider is failing to comply with its complaints procedure duties, Ofcom will be able to take enforcement action against the regulated service. Ofcom has a range of enforcement

[Viscount Camrose]
powers, including the power to impose significant penalties and confirmation decisions that can require the provider to take such steps as are required for compliance. In addition, the Bill includes strong super-complaints provisions that will allow for concerns about systemic issues to be raised with the regulator, which will be required to publish its response to the complaint. This process will help to ensure that Ofcom is made aware of issues that users are facing.

Separately, individuals will also be able to submit complaints to Ofcom. Given the likelihood of an overwhelming volume of complaints, as we have heard, Ofcom will not be able to investigate or arbitrate on individual cases. However, those complaints will be an essential part of Ofcom's horizon-scanning, research, supervision and enforcement activity. They will guide Ofcom in deciding where to focus its attention. Ofcom will also have a statutory duty to conduct consumer research about users' experiences in relation to regulated services and the handling of complaints made by users to providers of those services. Further, Ofcom can require that category 1, 2A and 2B providers set out in their annual transparency reports the measures taken to comply with their duties in relation to complaints. This will further ensure that Ofcom is aware of any issues facing users in relation to complaints processes.

At the same time, I share the desire expressed to ensure that the complaints mechanisms will be reviewed and assessed. That is why the Bill contains provisions for the Secretary of State to undertake a review of the efficacy of the entire regulatory framework. This will take place between two and five years after the Part 3 provisions come into force, which is a more appropriate interval for the efficacy of the duties around complaints procedures to be reviewed, as it will allow time for the regime to bed in and provide a sufficient evidence base to assess whether changes are needed.

Finally, I note that Amendment 56 assumes that the preferred solution following a review will be an ombudsman. There is probably not enough evidence to suggest that an ombudsman service would be effective for the online safety regime. It is unclear how an ombudsman service would function in support of the new online safety regime, because individual user complaints are likely to be complex and time-sensitive—and indeed, in many cases financial compensation would not be appropriate. So I fear that the noble Lord's proposed new clause pre-empts the findings of a review with a solution that is resource-intensive and may be unsuitable for this sector.

Amendments 250A and 250B, tabled by my noble friend Lady Newlove, require that an independent appeals system is established and that Ofcom produces guidance to support this system. As I have set out, the Government believe that decisions on user redress and complaints are best dealt with by services. Regulated services will be required to operate an easy-to-use, accessible and transparent complaints procedure that enables users to make complaints. If services do not comply with these duties, Ofcom will be able to utilise its extensive enforcement powers to bring them into compliance.

The Government are not opposed to revisiting the approach to complaints once the regime is up and running. Indeed, the Bill provides for the review of the regulatory framework. However, it is important that the new approach, which will radically change the regulatory landscape by proactively requiring services to have effective systems and processes for complaints, has time to bed in before it is reassessed.

Turning specifically to the points made by my noble friend and by the noble Baroness, Lady Kidron, about the impartial out of court dispute resolution procedure in the VSP, the VSP regime and the Online Safety Bill are not directly comparable. The underlying principles of both regimes are of course the same, with the focus on systems regulation and protections for users, especially children. The key differences are regarding the online safety framework's increased scope. The Bill covers a wider range of harms and introduces online safety duties on a wider range of platforms. Under the online safety regime, Ofcom will also have a more extensive suite of enforcement powers than under the UK's VSP regime.

On user redress, the Bill goes further than the VSP regime as it will require services to offer an extensive and effective complaints process and will enable Ofcom to take stronger enforcement action where they fail to meet this requirement. That is why the Government have put the onus of the complaints procedure on the provider and set out a more robust approach which requires all in-scope, regulated user to user and search services to offer an effective complaints process that provides for appropriate action to be taken in relation to the complaint. This will be an enforceable duty and will enable Ofcom to utilise its extensive online safety enforcement powers where services are not complying with their statutory duty to provide a usable, accessible and transparent complaints procedure.

At the same time, we want to ensure that the regime can develop and respond to new challenges. That is why we have included a power for the Secretary of State to review the regulatory framework once it is up and running. This will provide the correct mechanism to assess whether complaint handling mechanisms can be further strengthened once the new regulations have had time to bed in.

The Government are confident that the Online Safety Bill represents a significant step forward in keeping users safe online for these reasons.

Lord Russell of Liverpool (CB): My Lords, could I just ask a question? This Bill has been in gestation for about five to six years, during which time the scale of the problems we are talking about has increased exponentially. The Government appear to be suggesting that they will, in three to five years, evaluate whether or not their approach is working effectively.

There was a lot of discussion in this Chamber yesterday about the will of the people and whether the Government were ignoring it. I gently suggest that the very large number of people, who are having all sorts of problems or who are fearful of harm from the online world, will not find in the timescale that the Government are proposing the sort of remedy and speed of action I suspect they were hoping for. Certainly, the rhetoric the Government have used and continue to use at regular points in the Bill when they are slightly on the back foot seems to be designed to try to make the situation seem better than it is.

Will the Minister and the Bill team take on board that there are some very serious concerns that there will be a lot of lashing back at His Majesty's Government if in three years' time—which I fear may be the case—we still have a situation where a large body of complaints are not being dealt with? Ofcom is going to suffer from major ombudsman-like constipation trying to deal with this, and the harms will continue. I think I speak for the Committee when I say that the arguments the Minister and the government side are making really do not hold water.

4.30 pm

I thought in particular of the direct experience of the noble Baroness, Lady Harding, demonstrating the effect on her company—so substitute platforms for that—of knowing that you are being held to account. Having a system that helps the regulator understand in real time whether or not these companies are doing what they should—they are an early warning system and would know earlier than Ofcom would—just seems sensible. But perhaps being sensible is not what this Bill is about.

Viscount Camrose (Con): I do not know about that last point. I was going to say that I am very happy to meet the noble Lord to discuss it. It seems to me to come down to a matter of timing and the timing of the first review. As I say, I am delighted to meet the noble Lord. By the way, the relevant shortest period is two years not three, as he said.

Baroness Newlove (Con): Following on from my friend, the noble Lord, Lord Russell, can I just say to the Minister that I would really welcome all of us having a meeting? As I am listening to this, I am thinking that three to five years is just horrific for the families. This Bill has gone on for so long to get where we are today. We are losing sight of humanity here and the moral compass of protecting human lives. For whichever Government is in place in three to five years to make the decision to say it does not work is absolutely shameful. Nobody in the Government will be accountable and yet for that family, that single person may commit suicide. We have met the bereaved families, so I say to the Minister that we need to go round the table and look at this again. I do not think it is acceptable to say that there is this timeline, this review, for the Secretary of State when we are dealing with young lives. It is in the public interest to get this Bill correct as it navigates its way back to the House of Commons in a far better state than how it arrived.

Baroness Kidron (CB): I would love the noble Viscount to answer my very specific question about who the Government think families should turn to when they have exhausted the complaints system in the next three to five years. I say that as someone who has witnessed successive Secretaries of State promising families that this Bill would sort this out. Yes?

Viscount Camrose (Con): I stress again that the period in question is two years not three.

Lord Stevenson of Balmacara (Lab): Is it two to five?

Viscount Camrose (Con): It is between two and five years. It can be two; it can be five. I am very happy to meet my noble friend and to carry on doing so. The complaints procedure set up for families is to first approach the service provider in an enforceable manner and should the provider fail to meet its enforceable duties to then revert to Ofcom before the courts.

Baroness Kidron (CB): I am sorry but that is exactly the issue at stake. The understanding of the Committee currently is that there is then nowhere to go if they have exhausted that process. I believe that complainants are not entitled to go to Ofcom in the way that the noble Viscount just suggested.

Viscount Camrose (Con): Considerably more rights are provided than they have today, with the service provider. Indeed, Ofcom would not necessarily deal with individual complaints—

Lord Russell of Liverpool (CB): Where would they go?

Viscount Camrose (Con): They would go to the service provider in the first instance and then—

Lord Clement-Jones (LD): What recourse would they have, if Ofcom will not deal with individual complaints in those circumstances?

Viscount Camrose (Con): I am happy to meet and discuss this. We are expanding what they are able to receive today under the existing arrangements. I am happy to meet any noble Lords who wish to take this forward to help them understand this—that is probably best.

Amendments 287 and 289 from the noble Baroness, Lady Fox of Buckley, seek to remove the provision for super-complaints from the Bill. The super-complaints mechanism is an important part of the Bill's overall redress mechanisms. It will enable entities to raise concerns with Ofcom about systemic issues in relation to regulated services, which Ofcom will be required to respond to. This includes concerns about the features of services or the conduct of providers creating a risk of significant harm to users or the public, as well as concerns about significant adverse impacts on the right to freedom of expression.

On who can make super-complaints, any organisation that meets the eligibility criteria set out in secondary legislation will be able to submit a super-complaint to Ofcom. Organisations will be required to submit evidence to Ofcom, setting out how they meet these criteria. Using this evidence, Ofcom will assess organisations against the criteria to ensure that they meet them. The assessment of evidence will be fair and objective, and the criteria will be intentionally strict to ensure that super-complaints focus on systemic issues and that the regulator is not overwhelmed by the number it receives.

Baroness Fox of Buckley (Non-Afl): To clarify and link up the two parts of this discussion, can the Minister perhaps reflect, when the meeting is being

[Baroness Fox of Buckley]
organised, on the fact that the organisations and the basis on which they can complain will be decided by secondary legislation? So we do not know which organisations or what the remit is, and we cannot assess how effective that will be. We know that the super-complainants will not want to overwhelm Ofcom, so things will be bundled into that. Individuals could be excluded from the super-complaints system in the way that I indicated, because super-complaints will not represent everyone, or even minority views; in other words, there is a gap here now. I want that bit gone, but that does not mean that we do not need a robust complaints system. Before Report at least—in the meetings in between—the Government need to advise on how you complain if something goes wrong. At the moment, the British public have no way to complain at all, unless someone sneaks it through in secondary legislation. This is not helpful.

Viscount Camrose (Con): As I said, we are happy to consider individual complaints and super-complaints further.

Lord Allan of Hallam (LD): Again, I am just pulling this together—I am curious to understand this. We have been given a specific case—South West Grid for Learning raising a case based on an individual but that had more generic concerns—so could the noble Viscount clarify, now or in writing, whether that is the kind of thing that he imagines would constitute a super-complaint? If South West Grid for Learning went to a platform with a complaint like that—one based on an individual but brought by an organisation—would Ofcom find that complaint admissible under its super-complaints procedure, as imagined in the Bill?

Viscount Camrose (Con): Overall, the super-complaints mechanism is more for groupings of complaints and has a broader range than the individual complaints process, but I will consider that point going forward.

Many UK regulators have successful super-complaints mechanisms which allow them to identify and target emerging issues and effectively utilise resources. Alongside the Bill's research functions, super-complaints will perform a vital role in ensuring that Ofcom is aware of the issues users are facing, helping them to target resources and to take action against systemic failings.

On the steps required after super-complaints, the regulator will be required to respond publicly to the super-complaint. Issues raised in the super-complaint may lead Ofcom to take steps to mitigate the issues raised in the complaint, where the issues raised can be addressed via the Bill's duties and powers. In this way, they perform a vital role in Ofcom's horizon-scanning powers, ensuring that it is aware of issues as they emerge. However, super-complaints are not linked to any specific enforcement process.

Lord Clement-Jones (LD): My Lords, it has just occurred to me what the answer is to the question, "Where does an individual actually get redress?" The only way they can get redress is by collaborating with another 100 people and raising a super-complaint. Is that the answer under the Bill?

Viscount Camrose (Con): No. The super-complaints mechanism is better thought of as part of a horizon-scanning mechanism. It is not—

Lord Clement-Jones (LD): So it is not really a complaints system; it is a horizon-scanning system. That is interesting.

Viscount Camrose (Con): The answer to the noble Lord's question is that the super-complaint is not a mechanism for individuals to complain on an individual basis and seek redress.

Lord Stevenson of Balmacara (Lab): This is getting worse and worse. I am tempted to suggest that we stop talking about this and try to, in a smaller group, bottom out what we are doing. I really think that the Committee deserves a better response on super-complaints than it has just heard.

As I understood it—I am sure that the noble Baroness, Lady Kidron, is about to make the same point—super-complaints are specifically designed to take away the pressure on vulnerable and younger persons to have responsibility only for themselves in bringing forward the complaint that needs to be resolved. They are a way of sharing that responsibility and taking away the pressure. Is the Minister now saying that that is a misunderstanding?

Viscount Camrose (Con): I have offered a meeting; I am very happy to host the meeting to bottom out these complaints.

Baroness Kidron (CB): I understand that the Minister has been given a sticky wicket of defending the indefensible. I welcome a meeting, as I think the whole Committee does, but it would be very helpful to hear the Government say that they have chosen to give individuals no recourse under the Bill—that this is the current situation, as it stands, and that there is no concession on the matter. I have been in meetings with people who have been promised such things, so it is really important, from now on in Committee, that we actually state at the Dispatch Box what the situation is. I spent quite a lot of the weekend reading circular arguments, and we now need to get to an understanding of what the situation is. We can then decide, as a Committee, what we do in relation to that.

Viscount Camrose (Con): As I said, I am very happy to hold the meeting. We are giving users greater protection through the Bill, and, as agreed, we can discuss individual routes to recourse.

I hope that, on the basis of what I have said and the future meeting, noble Lords have some reassurance that the Bill's complaint mechanisms will, eventually, be effective and proportionate, and feel able not to press their amendments.

Lord Stevenson of Balmacara (Lab): I am very sorry that I did not realise that the Minister was responding to this group of amendments; I should have welcomed him to his first appearance in Committee. I hope he will come back—although he may have to spend a bit of time in hospital, having received a pass to speak on this issue from his noble friend.

This is a very complicated Bill. The Minister and I have actually talked about that over tea, and he is now learning the hard lessons of what he took as a light badinage before coming to the Chamber today. However, we are in a bit of a mess here. I was genuinely trying to get an amendment that would encourage the department to move forward on this issue, because it is quite clear from the mood around the Committee that something needs to be resolved here. The way the Government are approaching this is by heading towards a brick wall, and I do not think it is the right way forward.

4.45 pm

The Minister cannot ignore the evidence from the two very well-respected practitioners who have been involved in this sort of process and understand how it works that this is not the way forward. He has heard somebody who works professionally in this area explain how the system works in practice. He is hearing from individuals who, as we have now discovered, otherwise have nowhere to go. We are being told what seems to be a very confusing story about what the super-complaints system is about and how it will be done. This must be sorted, otherwise he will find that the Great British public, for whom the Bill is designed, particularly younger people, will turn around and say, "This is what you promised us?" They will not believe it and they will not like it.

All I heard coming through from the debate is that Ofcom will pick up a lot of complaints and use them to inform itself about what should happen five years down the track, the next time that the regulatory review takes place. That is not what we are about here. This is about filling a gap in a system for which promises have been issued over the seven long years that we have been waiting for the Bill. People out there expect the Bill to make their lives much more reasonable and to be respectful of their rights and responsibilities.

We find that the VSP provisions are being deleted—a system we already have, which at least does first approximation work. We find that we are reinforcing the inequality of arms between individuals and companies. We find that DCMS—it is not the same department because the Minister is now in DSIT, but it is his former sister department—is creating an ombudsman for gambling problems, having identified that they have gone too far, too fast, and are now out of control and need to be responded to. This just does not add up. The Government are in a mess. Please sort it. I beg leave to withdraw the amendment.

Amendment 56 withdrawn.

Clause 18: Duties about freedom of expression and privacy

Amendment 57 not moved.

Amendment 58

Moved by ***Baroness Fraser of Craigmaddie***

58: Clause 18, page 20, line 32, at end insert "as defined under the Human Rights Act 1998 and its application to the United Kingdom."

Baroness Fraser of Craigmaddie (Con): My Lords, I am delighted to propose this group of amendments on devolution issues. I am always delighted to see the Committee so full to talk about devolution issues. I will speak particularly to Amendments 58, 136, 225A and 228 in this group, all in my name. I am very grateful to the noble Lord, Lord Foulkes of Cumnock, for supporting them.

As I have said before in Committee, I have looked at the entire Bill from the perspective of a devolved nation, in particular at the discrepancies and overlaps of Scots law, UK law and ECHR jurisprudence that I was concerned had not been taken into account or addressed by the Bill as it stands. Many have said that they are not lawyers; I am also not. I am therefore very grateful to the Law Society of Scotland, members of Ofcom's Advisory Committee for Scotland, and other organisations such as the Carnegie Trust and Legal to Say, Legal to Type, which have helped formulate my thinking. I also thank the Minister and the Bill team for their willingness to discuss these issues in advance with me.

When the first proposed Marshalled List for this Committee was sent round, my amendments were dotted all over the place. When I explained to the Whips that they were all connected to devolved issues and asked that they be grouped together, that must have prompted the Bill team to go and look again; the next thing I know, there is a whole raft of government amendments in this group referring to Wales, Northern Ireland, the Bailiwick of Guernsey and the Isle of Man—though not Scotland, I noted. These government amendments are very welcome; if nothing else, I am grateful to have achieved that second look from the devolved perspective.

In the previous group, we heard how long the Bill had been in gestation. I have the impression that, because online safety decision-making is a centralised and reserved matter, the regions are overlooked and engaged only at a late stage. The original internet safety Green Paper made no reference to Scotland at all; it included a section on education describing only the English education system and an annexe of legislation that did not include Scottish legislation. Thankfully, this oversight was recognised by the White Paper, two years later, which included a section on territorial scope. Following this, the draft Bill included a need for platforms to recognise the differences in legislation across the UK, but this was subsequently dropped.

I remain concerned that the particular unintended consequences of the Bill for the devolved Administrations have not been fully appreciated or explored. While online safety is a reserved issue, many of the matters that it deals with—such as justice, the police or education—are devolved, and, as many in this House appreciate, Scots law is different.

At the moment, the Bill is relatively quiet on how freedom of expression is defined; how it applies to the providers of user-to-user services and their duties to protect users' rights to freedom of expression; and how platforms balance those competing rights when adjudicating on content removal. My Amendment 58 has similarities to Amendment 63 in the name of the noble and learned Lord, Lord Hope of Craighead. It seeks

[Baroness Fraser of Craigmaddie]
to ensure that phrases such as "freedom of expression" are understood in the same way across the United Kingdom. As the noble and learned Lord pointed out when speaking to his Amendment 63 in a previous group, words matter, and I will therefore be careful to refer to "freedom of expression" rather than "freedom of speech" throughout my remarks.

Amendment 58 asks the Government to state explicitly which standards of speech platforms apply in each of the jurisdictions of the UK, because at this moment there is a difference. I accept that the Human Rights Act is a UK statute already, but, under Article 10—as we have heard—freedom of expression is not an absolute right and may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law.

The noble Lord, Lord Moylan, argued last week that the balance between freedom of expression and any condition or restriction was not an equal one but was weighted in favour of freedom of expression. I take this opportunity to take some issue with my noble friend, who is not in his place, on this. According to the Equality and Human Rights Commission, the British Institute of Human Rights and Supreme Court judgments, human rights are equal and indivisible, neither have automatic priority, and how they are balanced depends on the context and the particular facts.

In Scotland, the Scottish Government believe that they are protecting freedom of expression, but the Hate Crime and Public Order (Scotland) Act 2021 criminalises speech that is not illegal elsewhere in the UK. Examples from the Scottish Government's own information note state that it is now an offence in Scotland

"if the urging of people to cease practising their religion is done in a threatening or abusive manner or, alternatively, … if a person were to urge people not to engage in same-sex sexual activity while making abusive comments about people who identify as lesbian, gay or bisexual".

The Lord Advocate's guidance to the police says that

"an incident must be investigated as a hate crime if it is perceived, by the victim or any other person, to be aggravated by prejudice".

I stress that I make no absolutely comment about the merits, or otherwise, of the Hate Crime and Public Order (Scotland) Act. I accept that it is yet to be commenced. However, commencement is in the hands of the Scottish Parliament, not the Minister and his team, and I highlight it here as an illustration of the divergence of interpretation that is happening between the devolved nations now, and as an example of what could happen in the future.

So, I would have thought that we would want to take a belt-and-braces approach to ensuring that there cannot be any differences in interpretation of what we mean by freedom of expression, and I hope that the Minister will accept my amendment for the sake of clarity. Ofcom is looking for clarity wherever possible, and clarity will be essential for platforms. Amendment 58 would allow platforms to interpret freedom of expression as a legal principle, rather than having to adapt considerations for Scotland, and it would also help prevent Scottish users' content being censored more than that of English users, as platforms could rely on a legally certain basis for decision-making.

The hate crime Act was also the motivation for my Amendment 136, which asks why the Government did not include it on the list of priority offences in Schedule 7. I understand that the Scottish Government did not ask for it to be included, but since when did His Majesty's Government do what the Scottish Government ask of them?

I have assumed that the Scottish Government did not ask for it because the hate crime Act is yet to be commenced in Scotland and there are, I suspect, multiple issues to be worked out with Police Scotland and others before it can be. I stress again that it is not my intention that the Hate Crime and Public Order (Scotland) Act should dictate the threshold for illegal and priority illegal content in this Bill—Amendment 136 is a probing amendment—but the omission of the hate crime Act does raise the question of a devolution deficit because, while the definition of "illegal content" varies, people in areas of the UK with more sensitive thresholds would have to rely on the police to enforce some national laws online rather than benefiting from the additional protections of the Ofcom regime.

Clause 53(5)(c) of this Bill states that

"the offence is created by this Act or, before or after this Act is passed, by"—

this is in sub-paragraph (iv)—

"devolved subordinate legislation made by a devolved authority with the consent of the Secretary of State or other Minister of the Crown".

How would this consent be granted? How would it involve this Parliament? What consultation should be required, and with whom—particularly since the devolved offence might change the thresholds for the offence across the whole of the UK? The phrase "consent of the Secretary of State" implies that a devolved authority would apply to seek consent. Should not this application process be set out in the Bill? What should the consultation process with devolved authorities and Ofcom be if the Secretary of State wishes to initiate the inclusion of devolved subordinate legislation? Do we not need a formal framework for parliamentary scrutiny—an equivalent of the Grimstone process, perhaps? I would be very happy to work with the Minister and his team on a Parkinson process between now and Report.

Amendments 225A and 228 seek to ensure that there is an analysis of users' online experiences in the different nations of the UK. Amendment 225A would require Ofcom to ensure that its research into online experiences was analysed in a nation-specific way while Amendment 228 would require Ofcom's transparency reporting to be reported via each nation. The fact is that, at this moment in time, we do not know whether there is a difference in the online experience across the four nations. For example, are rural or remote communities at greater risk of online harm because they have a greater dependence on online services? How would online platforms respond to harmful sectarian content? What role do communication technologies play in relation to offline violence, such as knife crime?

We can compare other data by nation, for example on drug use or gambling addiction. Research and transparency reporting are key to understanding nation-specific harms online, but I fear that Ofcom will have limited powers in this area if they are not specified in

the Bill. Ofcom has good working relationships from the centre with the regions, and part of this stems from the fact that legislation in other sectors, such as broadcasting, requires it to have advisory committees in each of the nations to ensure that English, Scottish, Northern Irish and Welsh matters are considered properly. Notably, those measures do not exist in this Bill.

The interplay between the high-level and reserved nature of internet services and online safety will require Ofcom to develop a range of new, wider partnerships in Scotland—for example with Police Scotland—and to collaborate closely at a working level with a wide range of interests within the Scottish Government, where such interests will be split across a range of ministerial portfolios. In other areas of its regulatory responsibility, Ofcom's research publications provide a breakdown of data by nation. Given the legislative differences that already exist between the four nations, it is an omission that such a breakdown is not explicitly required in the Bill.

I have not touched—and I am not going to touch—on how this Bill might affect other devolved Administrations. The noble Baroness, Lady Foster of Aghadrumsee, apologises for being unable to be in the Chamber to lend her voice from a Northern Ireland perspective—I understand from her that the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 might be another example of this issue—but she has indicated her support here. As my noble friend Lady Morgan of Cotes said last Thursday:

"The Minister has done a very good job"

of

"batting away amendments".—[*Official Report*, 11/5/23; col. 2043.]

However, I am in an optimistic mood this afternoon, because the Minister responded quite positively to the request from the noble and learned Lord, Lord Hope, that we should define "freedom of expression". There is great benefit to be had from ensuring that this transparency of reporting and research can be broken down by nation. I am hopeful, therefore, that the Minister will take the points that I have raised through these amendments and that he will, as my noble friend Lady Morgan of Cotes hoped, respond by saying that he sees my points and will work with me to ensure that this legislation works as we all wish it to across the whole of the UK. I beg to move.

5 pm

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I warmly support the amendment moved by the noble Baroness, Lady Fraser of Craigmaddie, to which I have added my name. I agree with every word she said in her introduction. I could not have said it better and I have nothing to add.

Lord Hope of Craighead (CB): My Lords, I follow the noble Lord, Lord Foulkes, with just a few words. As we have been reminded, I tabled Amendment 63, which has already been debated. The Minister will remember that my point was about legal certainty; I was not concerned with devolution, although I mentioned Amendment 58 just to remind him that we are dealing with all parts of the United Kingdom in the Bill and it is important that the expression should have the same meaning throughout all parts.

We are faced with the interesting situation which arose in the strikes Bill: the subject matter of the Bill is reserved, but one must have regard to the fact that its effects spread into devolved areas, which have their own systems of justice, health and education. That is why there is great force in the point that the noble Baroness, Lady Fraser, has been making. I join the noble Lord, Lord Foulkes, in endorsing what she said without going back into the detail, but remind the Minister that devolution exists, even though we are dealing with reserved matters.

Lord Clement-Jones (LD): My Lords, this is unfamiliar territory for me, but the comprehensive introduction of the noble Baroness, Lady Fraser, has clarified the issue. I am only disappointed that we had such a short speech from the noble Lord, Lord Foulkes—uncharacteristic, perhaps I could say—but it was good to hear from the noble and learned Lord, Lord Hope, on this subject as well. The noble Baroness's phrase "devolution deficit" is very useful shorthand for some of these issues. She has raised a number of questions about the Secretary of State's powers under Clause 53(5)(c): the process, the method of consultation and whether there is a role for Ofcom's national advisory committees. Greater transparency in order to understand which offences overlap in all this would be very useful. She deliberately did not go for one solution or another, but issues clearly arise where the thresholds are different. It would be good to hear how the Government are going to resolve this issue.

Lord Stevenson of Balmacara (Lab): My Lords, it is a pity that we have not had the benefit of hearing from the Minister, because a lot of his amendments in this group seem to bear on some of the more generic points made in the very good speech by the noble Baroness, Lady Fraser. I assume he will cover them, but I wonder whether he would at least be prepared to answer any questions people might come back with—not in any aggressive sense; we are not trying to scare the pants off him before he starts. For example, the points made by the noble Lord, Lord Clement-Jones, intrigue me.

I used to have responsibility for devolved issues when I worked at No. 10 for a short period. It was a bit of a joke, really. Whenever anything Welsh happened, I was immediately summoned down to Cardiff and hauled over the coals. You knew when you were in trouble when they all stopped speaking English and started speaking Welsh; then, you knew there really was an issue, whereas before I just had to listen, go back and report. In Scotland, nobody came to me anyway, because they knew that the then Prime Minister was a much more interesting person to talk to about these things. They just went to him instead, so I did not really learn very much.

I noticed some issues in the Marshalled List that I had not picked up on when I worked on this before. I do not know whether the Minister wishes to address this—I do not want to delay the Committee too much—but are we saying that to apply a provision in the Bill to the Bailiwick of Guernsey or the Isle of Man, an Order in Council is required to bypass Parliament? Is that a common way of proceeding in these places? I suspect that the noble and learned Lord, Lord Hope,

[Lord Stevenson of Balmacara]
knows much more about this than I do—he shakes his head—but this is a new one on me. Does it mean that this Parliament has no responsibility for how its laws are applied in those territories, or are there other procedures of which we are unaware?

My second point again picks up what the noble Lord, Lord Clement-Jones, was saying. Could the Minister go through in some detail the process by which a devolved authority would apply to the Secretary of State—presumably for DSIT—to seek consent for a devolved offence to be included in the Online Safety Bill regime? If this is correct, who grants to what? Does this come to the House as a statutory instrument? Is just the Secretary of State involved, or does it go to the Privy Council? Are there other ways that we are yet to know about? It would be interesting to know.

To echo the noble Lord, Lord Clement-Jones, we probably do need a letter from the Minister, if he ever gets this cleared, setting out exactly how the variation in powers would operate across the four territories. If there are variations, we would like to know about them.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I am very grateful to my noble friend Lady Fraser of Craigmaddie for her vigilance in this area and for the discussion she had with the Bill team, which they and I found useful. Given the tenor of this short but important debate, I think it may be helpful if we have a meeting for other noble Lords who also want to benefit from discussing some of these things in detail, and particularly to talk about some of the issues the noble Lord, Lord Stevenson of Balmacara, just raised. It would be useful for us to talk in detail about general questions on the operation of the law before we look at this again on Report.

In a moment, I will say a bit about the government amendments which stand in my name. I am sure that noble Lords will not be shy in taking the opportunity to interject if questions arise, as they have not been shy on previous groups.

I will start with the amendments tabled by my noble friend Lady Fraser. Her Amendment 58 seeks to add reference to the Human Rights Act 1998 to Clause 18. That Act places obligations on public authorities to act compatibly with the European Convention on Human Rights. It does not place obligations on private individuals and companies, so it would not make sense for such a duty on internet services to refer to the Human Rights Act.

Under that Act, Ofcom has obligations to act in accordance with the right to freedom of expression under Article 10 of the European Convention on Human Rights. As a result, the codes that Ofcom draws up will need to comply with the Article 10 right to freedom of expression. Schedule 4 to the Bill requires Ofcom to ensure that measures which it describes in a code of practice are designed in light of the importance of protecting the right of users'

"freedom of expression within the law".

Clauses 44(2) and (3) provide that platforms will be treated as complying with their freedom of expression duty if they take the recommended measures that Ofcom sets out in the codes. Platforms will therefore be guided by Ofcom in taking measures to comply with its duties, including safeguards for freedom of expression through codes of practice.

My noble friend's Amendment 136 seeks to add offences under the Hate Crime and Public Order (Scotland) Act 2021 to Schedule 7. Public order offences are already listed in Schedule 7 to the Bill, which will apply across the whole United Kingdom. This means that all services in scope will need proactively to tackle content that amounts to an offence under the Public Order Act 1986, regardless of where the content originates or where in the UK it can be accessed.

The priority offences list has been developed with the devolved Administrations, and Clause 194 outlines the parliamentary procedures for updating it. The requirements for consent will be set out in the specific subordinate legislation that may apply to the particular offence being made by the devolved authorities—that is to say, they will be laid down by the enabling statutes that Parliament will have approved.

Amendment 228 seeks to require the inclusion of separate analyses of users' online experiences in England, Wales, Scotland and Northern Ireland in Ofcom's transparency reports. These transparency reports are based on the information requested from category 1, 2A and 2B service providers through transparency reporting. I assure my noble friend that Ofcom is already able to request country-specific information from providers in its transparency reports. The legislation sets out high-level categories of information that category 1, 2A and 2B services may be required to include in their transparency reports. The regulator will set out in a notice the information to be requested from the provider, the format of that information and the manner in which it should be published. If appropriate, Ofcom may request specific information in relation to each country in the UK, such as the number of users encountering illegal content and the incidence of such content.

Ofcom is also required to undertake consultation before producing guidance about transparency reporting. In order to ensure that the framework is proportionate and future-proofed, however, it is vital to allow the regulator sufficient flexibility to request the types of information that it sees as relevant, and for that information to be presented by providers in a manner that Ofcom has deemed to be appropriate.

Similarly, Amendment 225A would require separate analyses of users' online experiences in England, Wales, Scotland and Northern Ireland in Ofcom's research about users' experiences of regulated services. Clause 141 requires that Ofcom make arrangements to undertake consumer research to ascertain public opinion and the experiences of UK users of regulated services. Ofcom will already be able to undertake this research on a country-specific basis. Indeed, in undertaking its research and reporting duties, as my noble friend alluded to, Ofcom has previously adopted such an approach. For instance, it is required by the Communications Act 2003 to undertake consumer research. While the legislation does not mandate that Ofcom conduct and publish nation-specific research, Ofcom has done so, for instance through its publications *Media Nations* and *Connected Nations*. I hope that gives noble Lords some reassurance

of its approach in this regard. Ensuring that Ofcom has flexibility in carrying out its research functions will enable us to future-proof the regulatory framework, and will mean that its research activity is efficient, relevant and appropriate.

I will now say a bit about the government amendments standing in my name. I should, in doing so, highlight that I have withdrawn Amendments 304C and 304D, previously in the Marshalled List, which will be replaced with new amendments to ensure that all the communications offences, including the new self-harm offence, have the appropriate territorial extent when they are brought forward. They will be brought forward as soon as possible once the self-harm offence has been tabled.

Amendments 267A, 267B, 267C, 268A, 268B to 268G, 271A to 271D, 304A, 304B and 304E are amendments to Clauses 160, 162, 164 to 166, 168 and 210 and Schedule 14, relating to the extension of the false and threatening communications offences and the associated liability of corporate officers in Clause 166 to Northern Ireland.

This group also includes some technical and consequential amendments to the false and threatening communications offences and technical changes to the Malicious Communications (Northern Ireland) Order 1988 and Section 127 of the Communications Act 2003. This will minimise overlap between these existing laws and the new false and threatening communications offences in this Bill. Importantly, they mirror the approach taken for England and Wales, providing consistency in the criminal law.

This group also contains technical amendments to update the extent of the epilepsy trolling offence to reflect that it applies to England, Wales and Northern Ireland.

5.15 pm

Amendment 286B is a technical amendment to repeal a provision in the Digital Economy Act 2017 that will become redundant when Part 3 of that Act is repealed by this Bill.

Amendments 304F and 304G give the Bailiwick of Guernsey and the Isle of Man the power to extend the Online Safety Bill to their jurisdictions, should they wish. Amendments 304A and 304H to 304K have been tabled to reflect the Bailiwick of Jersey opting to forgo a permissive extent clause in this instance.

With the offer of a broader meeting to give other noble Lords the benefit of the discussions with the Bill team that my noble friend has had—I extend that invitation to her, of course, to continue the conversation with us—I hope that provides information about the government amendments in this group and some reassurance on the points that my noble friend has made. I hope that she will be willing to withdraw her amendment and that noble Lords will accept the government amendments.

Lord Stevenson of Balmacara (Lab): I suggested that we might see a table, independent of the meetings, although I am sure they could coincide. Would it be possible to have a table of all the criminal offences that the Minister listed and how they apply in each of the territories? Without that, we are a bit at sea as to exactly how they apply.

Lord Parkinson of Whitley Bay (Con): Yes, that would be a sensible way to view it. We will work on that and allow noble Lords to see it before they come to talk to us about it.

Baroness Kidron (CB): I put on record that the withdrawal of Part 3 of the Digital Economy Act 2017 will be greeted with happiness only should the full schedule of AV and harms be put into the Bill. I must say that because the noble Baroness, Lady Benjamin, is not in her place. She worked very hard for that piece of legislation.

Baroness Fraser of Craigmaddie (Con): My Lords, I thank the Minister for his response. I take it as a win that we have been offered a meeting and further discussion, and the noble Lord, Lord Foulkes, agreeing with every word I said. I hope we can continue in this happy vein in my time in this House.

The suggestion from the noble Lord, Lord Stevenson, of a table is a welcome one. Something that has interested me is that some of the offences the Minister mentioned were open goals: there were holes leaving it open in Northern Ireland and not in England and Wales, or whatever. For example, epilepsy trolling is already a criminal offence in Scotland, but I am not sure that was appreciated when we started this discussion.

I look forward to the meeting and I thank the Minister for his response. I am still unconvinced that we have the right consultation process for any devolved authority wanting to apply for a subordinate devolved Administration to be included under this regime.

It concerns me that the Minister talked about leaving requesting data that Ofcom deemed to be appropriate. The feeling on the ground is that Ofcom, which is based in London, may not understand what is or is not necessarily appropriate in the devolved Administrations. The fact that in other legislation—for example, on broadcasting—it is mandated that it is broken down nation by nation is really important. It is even more important because of the interplay between the devolved and the reserved matters. The fact that there is no equivalent Minister in the Scottish Government to talk about digital and online safety things with means that a whole raft of different people will need to have relationships with Ofcom who have not hitherto.

I thank the Minister. On that note, I withdraw my amendment.

Amendment 58 withdrawn.

Amendments 59 to 64 not moved.

Clause 18 agreed.

Clause 19: Record-keeping and review duties

Amendments 64A to 64D

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

64A: Clause 19, page 21, line 36, leave out "all"

Member's explanatory statement

This is a technical amendment needed because the new duty to supply records of risk assessments to OFCOM (see the amendment in the Minister's name inserting new subsection (8A) below) is imposed only on providers of Category 1 services.

64B: Clause 19, page 21, line 36, at end insert "(as indicated by the headings)."

Member's explanatory statement

This amendment provides clarification because the new duty to supply records of risk assessments to OFCOM (see the amendment in the Minister's name inserting new subsection (8A) below) is imposed only on providers of Category 1 services.

64C: Clause 19, page 21, line 38, after "of" insert "all aspects of"

Member's explanatory statement

This amendment concerns a duty imposed on providers to keep records of risk assessments. The added words make it clear that full records must be made.

64D: Clause 19, page 21, line 38, at end insert ", including details about how the assessment was carried out and its findings."

Member's explanatory statement

This amendment concerns a duty imposed on providers to keep records of risk assessments. The added words make it clear that full records must be made.

Amendments 64A to 64D agreed.

Amendments 65 and 65ZA not moved.

Amendment 65A

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

65A: Clause 19, page 22, line 26, at end insert—

"(8A) As soon as reasonably practicable after making a record of a risk assessment as required by subsection (2), or revising such a record, a duty to supply OFCOM with a copy of the record (in full)."

Member's explanatory statement

This amendment requires providers of Category 1 services to supply copies of their records of risk assessments to OFCOM. The limitation to Category 1 services is achieved by an amendment in the name of the Minister to clause 6.

Amendment 65A agreed.

Amendment 65AA not moved.

Clause 19, as amended, agreed.

Clause 20: Providers of search services: duties of care

Amendments 65B to 65E

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

65B: Clause 20, page 23, line 5, leave out "and (3)" and insert "to (3A)"

Member's explanatory statement

This technical amendment is consequential on the other changes to clause 20 (arising from the new duties in clauses 23, 25 and 29 which are imposed on providers of Category 2A services only - see the amendments in the Minister's name to those clauses below).

65C: Clause 20, page 23, line 10, at end insert "(2) to (8)"

Member's explanatory statement

This amendment is consequential on the amendments in the Minister's name to clause 23 below (because the new duty to summarise illegal content risk assessments in a publicly available statement is only imposed on providers of Category 2A services).

65D: Clause 20, page 23, line 15, at end insert "(2) to (6)"

Member's explanatory statement

This amendment is consequential on the amendments in the Minister's name to clause 29 below (because the new duty to supply records of risk assessments to OFCOM is only imposed on providers of Category 2A services).

65E: Clause 20, page 23, line 15, at end insert—

"(2A) Additional duties must be complied with by providers of particular kinds of regulated search services, as follows."

Member's explanatory statement

This technical amendment is consequential on the other changes to clause 20 (arising from the new duties in clauses 23, 25 and 29 which are imposed on providers of Category 2A services only - see the amendments in the Minister's name to those clauses below).

Amendments 65B to 65E agreed.

Amendment 66 not moved.

Amendments 66A to 66D

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

66A: Clause 20, page 23, line 16, leave out "In addition,"

Member's explanatory statement

This technical amendment is consequential on the other changes to clause 20 (arising from the new duties in clauses 23, 25 and 29 which are imposed on providers of Category 2A services only - see the amendments in the Minister's name to those clauses below).

66B: Clause 20, page 23, line 20, at end insert "(2) to (8)"

Member's explanatory statement

This amendment is consequential on the amendments in the Minister's name to clause 25 below (because the new duty to summarise children's risk assessments in a publicly available statement is only imposed on providers of Category 2A services).

66C: Clause 20, page 23, line 20, at end insert—

"(3A) All providers of regulated search services that are Category 2A services must comply with the following duties in relation to each such service which they provide—

(a) the duty about illegal content risk assessments set out in section 23(8A),

(b) the duty about children's risk assessments set out in section 25(8A), and

(c) the duty about record-keeping set out in section 29(8A)."

Member's explanatory statement

This amendment ensures that the new duties set out in the amendments in the Minister's name to clauses 23, 25 and 29 below (duties to summarise risk assessments in a publicly available statement and to supply records of risk assessments to OFCOM) are imposed on providers of Category 2A services only.

66D: Clause 20, page 23, line 21, at end insert—

"(5) For the meaning of "Category 2A service", see section 86 (register of categories of services)."

Member's explanatory statement

This amendment inserts a signpost to the meaning of "Category 2A service".

Amendments 66A to 66D agreed.

Clause 20, as amended, agreed.

Clause 21 agreed.

Clause 22: Illegal content risk assessment duties

Amendment 66DA not moved.

Amendment 66E

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

66E: Clause 22, page 24, line 38, after "29(2)" insert "and (8A)"

Member's explanatory statement

This amendment inserts a signpost to the new duty in clause 29 about supplying records of risk assessments to OFCOM.

Amendment 66E agreed.

Clause 22, as amended, agreed.

Clause 23: Safety duties about illegal content

Amendments 66F and 66G

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

66F: Clause 23, page 24, line 42, leave out "all"

Member's explanatory statement

This is a technical amendment needed because the new duty to summarise illegal content risk assessments in a publicly available statement (see the amendment in the Minister's name inserting new subsection (8A) below) is imposed only on providers of Category 2A services.

66G: Clause 23, page 24, line 42, at end insert "(as indicated by the headings)."

Member's explanatory statement

This amendment provides clarification because the new duty to summarise illegal content risk assessments in a publicly available statement (see the amendment in the Minister's name inserting new subsection (8A) below) is imposed only on providers of Category 2A services.

Amendments 66F and 66G agreed.

Amendments 67 to 72 not moved.

Amendment 72A

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

72A: Clause 23, page 25, line 31, at end insert—

"(8A) A duty to summarise in a publicly available statement the findings of the most recent illegal content risk assessment of a service (including as to levels of risk and as to nature, and severity, of potential harm to individuals)."

Member's explanatory statement

This amendment requires providers of Category 2A services to summarise (in a publicly available statement) the findings of their latest risk assessment regarding illegal content. The limitation to Category 2A services is achieved by an amendment in the name of the Minister to clause 20.

Amendment 72A agreed.

Clause 23, as amended, agreed.

Amendment 73 not moved.

Clause 24: Children's risk assessment duties

Amendments 74 and 75 not moved.

Amendment 75A

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

75A: Clause 24, page 26, line 45, after "29(2)" insert "and (8A)"

Member's explanatory statement

This amendment inserts a signpost to the new duty in clause 29 about supplying records of risk assessments to OFCOM.

Amendment 75A agreed.

Clause 24, as amended, agreed.

Clause 25: Safety duties protecting children

Amendment 75B

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

75B: Clause 25, page 27, line 4, at end insert "(as indicated by the headings)."

Member's explanatory statement

This amendment provides clarification because the new duty to summarise children's risk assessments in a publicly available statement (see the amendment in the Minister's name inserting new subsection (8A) below) is imposed only on providers of Category 2A services.

Amendment 75B agreed.

Amendments 76 to 81 not moved.

Amendment 81A

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

81A: Clause 25, page 27, line 46, at end insert—

"(8A) A duty to summarise in a publicly available statement the findings of the most recent children's risk assessment of a service (including as to levels of risk and as to nature, and severity, of potential harm to children)."

Member's explanatory statement

This amendment requires providers of Category 2A services to summarise (in a publicly available statement) the findings of their latest children's risk assessment. The limitation to Category 2A services is achieved by an amendment in the name of the Minister to clause 20.

Amendment 81A agreed.

Amendments 82 to 85 not moved.

Clause 25, as amended, agreed.

Clause 26: Duty about content reporting

Amendment 86 not moved.

Clause 26 agreed.

Clause 27: Duties about complaints procedures

Amendment 87 not moved.

Clause 27 agreed.

Clause 28: Duties about freedom of expression and privacy

Amendment 88 not moved.

Clause 28 agreed.

Clause 29: Record-keeping and review duties

Amendments 88A to 88D

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

88A: Clause 29, page 31, line 4, leave out "all"

Member's explanatory statement

This is a technical amendment needed because the new duty to supply records of risk assessments to OFCOM (see the amendment in the Minister's name inserting new subsection (8A) below) is imposed only on providers of Category 2A services.

88B: Clause 29, page 31, line 4, at end insert "(as indicated by the headings)."

Member's explanatory statement

This amendment provides clarification because the new duty to supply records of risk assessments to OFCOM (see the amendment in the Minister's name inserting new subsection (8A) below) is imposed only on providers of Category 2A services.

88C: Clause 29, page 31, line 6, after "of" insert "all aspects of"

Member's explanatory statement

This amendment concerns a duty imposed on providers to keep records of risk assessments. The added words make it clear that full records must be made.

88D: Clause 29, page 31, line 6, at end insert ", including details about how the assessment was carried out and its findings."

Member's explanatory statement

This amendment concerns a duty imposed on providers to keep records of risk assessments. The added words make it clear that full records must be made.

Amendments 88A to 88D agreed.

Amendments 89 and 90 not moved.

Amendment 90A

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

90A: Clause 29, page 31, line 37, at end insert—

"(8A) As soon as reasonably practicable after making a record of a risk assessment as required by subsection (2), or revising such a record, a duty to supply OFCOM with a copy of the record (in full)."

Member's explanatory statement

This amendment requires providers of Category 2A services to supply copies of their records of risk assessments to OFCOM. The limitation to Category 2A services is achieved by an amendment in the name of the Minister to clause 20.

Amendment 90A agreed.

Amendment 90B not moved.

Clause 29, as amended, agreed.

5.30 pm

Amendments 91 and 91A not moved.

Clause 30: Children's access assessments

Amendment 92 not moved.

Clause 30 agreed.

Clause 31 agreed.

Schedule 3 agreed.

Amendment 93 not moved.

Clause 32 agreed.

Clause 33: Duties about fraudulent advertising: Category 1 services

Amendment 94 not moved.

Clause 33 agreed.

Clause 34: Duties about fraudulent advertising: Category 2A services

Amendment 95 not moved.

Clause 34 agreed.

Clause 35 agreed.

Amendment 96

Moved by ***Baroness Finlay of Llandaff***

96: After Clause 35, insert the following new Clause—

"Suicide or self-harm content duties

(1) This section sets out the duties about harmful suicide or self-harm content which apply to all regulated user-to-user services and providers of search services.

(2) This section applies in respect of all service users.

(3) A duty to include provisions in the terms of service specifying the treatment to be applied in relation to harmful suicide or self-harm content.

(4) The possible kinds of treatment of content referred to in subsection (3) are—

(a) taking down the content;

(b) restricting users' access to the content;

(c) limiting the recommendation or promotion of the content.

(5) A duty to explain in the terms of service the provider's response to the risks relating to harmful suicide or self-harm content by reference to—

(a) any provisions of the terms of service included in compliance with the duty set out in subsection (3), and

(b) any other provisions of the terms of service designed to mitigate or manage those risks.

(6) If provisions are included in the terms of service in compliance with the duty set out in subsection (3), a duty to ensure that those provisions—

(a) are clear and accessible, and

(b) are applied consistently in relation to content which meets the definition in section 207."

Member's explanatory statement

This creates a duty for providers of regulated user-to-user services and search services to manage harmful suicide or self-harm content, applicable to both children and adults.

Baroness Finlay of Llandaff (CB): I am particularly grateful to the noble Lords who co-signed Amendments 96, 240 and 296 in this group. Amendment 225 is also important and warrants careful consideration, as it explicitly includes eating disorders. These amendments have strong support from Samaritans, which has helped me in drafting them, and from the Mental Health Foundation and the BMA. I declare that I am an elected member of the BMA ethics committee.

We have heard much in Committee about the need to protect children online more effectively even than in the Bill. On Tuesday the noble Baroness, Lady Morgan of Cotes, made a powerful speech acknowledging that vulnerability does not stop at the age of 18 and that the Bill currently creates a cliff edge whereby there is protection from harmful content for those under 18 but not for those over 18. The empowerment tools will be futile for those seriously contemplating suicide and self-harm. No one should underestimate the power of

suicide contagion and the addictive nature of the content that is currently pushed out to people, goading them into such actions and drawing them into repeated viewings.

Amendment 96 seeks to redress that. It incorporates a stand-alone provision, creating a duty for providers of user-to-user services to manage harmful content about suicide or self-harm. This provision would operate as a specific category, relevant to all regulated services and applicable to both children and adults. Amendment 296 defines harmful suicide or self-harm content. It is important that we define that to avoid organisations such as Samaritans, which provide suicide prevention support, being inadvertently caught up in clumsy, simplistic search engine categorisation.

Suicide and self-harm content affects people of all ages. Adults in distress search the internet, and children easily bypass age-verification measures and parental controls even when the have been switched on. The Samaritans Lived Experience Panel reported that 82% of people who died by suicide, having visited websites that encouraged suicide and/or methods of self-harm, were over the age of 25.

Samaritans considers that the types of suicide and self-harm content that are legal but unequivocally harmful include, but are not limited to, information, depictions, instructions and advice on methods of self-harm and suicide; content that portrays self-harm and suicide as positive or desirable; and graphic descriptions or depictions of self-harm and suicide. As the Bill stands, platforms will not even need to consider the risk that such content could pose to adults. This will leave all that dangerous online content widely available and undermines the Bill's intention from the outset.

Last month, other parliamentarians and I met Melanie, whose relative Jo died by suicide in 2020. He was just 23. He had accessed suicide-promoting content online, and his family are speaking out to ensure that the Bill works to avoid future tragedies. A University of Bristol study reported that those with severe suicidal thoughts actively use the internet to research effective methods and often find clear suggestions. Swansea University reported that three quarters of its research participants had harmed themselves more severely after viewing self-harm content online.

Amendment 240 complements the other amendments in this group, although it would not rely on them to be effective. It would establish a specific unit in Ofcom to monitor the prevalence of suicide, self-harm and harmful content online. I should declare that this is in line with the Private Member's Bill I have introduced. In practice, that means that Ofcom would need to assess the efficacy of the legislation in practice. It would require Ofcom to investigate the content and the algorithms that push such content out to individuals at an alarming rate.

Researchers at the Center for Countering Digital Hate set up new accounts in the USA, UK, Canada and Australia at the minimum age TikTok allows, which is 13. These accounts paused briefly on videos about body image and mental health, and "liked" them. Within 2.6 minutes, TikTok recommended suicide content, and it sent content on eating disorders within eight minutes.

Ofcom's responsibility for ongoing review and data collection, reported to Parliament, would take a future-facing approach covering new technologies. New communications and internet technologies are being developed at pace in ways we cannot imagine. The term

"in a way equivalent … to"

in Amendment 240 is specifically designed to include the metaverse, where interactions are instantaneous, virtual and able to incite, encourage or provoke serious harm to others.

We increasingly live our lives online. Social media is expanding, while user-to-user sites are now shopping platforms for over 70% of UK consumers. However, online is also being used to sell suicide kits or lethal substances, as recently covered in the press. It is important that someone holds the responsibility for reporting on dangers in the online world. Harmful suicide content methods and encouragement were found through a systematic review to be massed on sites with low levels of moderation and easy search functions for images. Some 78% of people with lived experience of suicidality and self-harm surveyed by Samaritans agree that new laws are needed to make online spaces safer.

I urge noble Lords to support my amendments, which aim to ensure that self-harm, suicide and seriously harmful content is addressed across all platforms in all categories as well as search engines, regardless of their functionality or reach, and for all persons, regardless of age. Polling by Samaritans has shown high support for this: four out of five agree that harmful suicide and self-harm content can damage adults as well as children, while three-quarters agree that tech companies should by law prevent such content being shown to users of all ages.

If the Government are not minded to adopt these amendments, can the Minister tell us specifically how the Bill will take a comprehensive approach to placing duties on all platforms to reduce dangerous content promoting suicide and self-harm? Can the Government confirm that smaller sites, such as forums that encourage suicide, will need to remove priority illegal content, whatever the level of detail in their risk assessment? Lastly—I will give the Minister a moment to note my questions—do the Government recognise that we need an amendment on Report to create a new offence of assisting or encouraging suicide and serious self-harm? I beg to move.

Baroness Morgan of Cotes (Con): My Lords, I particularly support Amendment 96, to which I have added my name; it is a privilege to do so. I also support Amendment 296 and I cannot quite work out why I have not added my name to it, because I wholeheartedly agree with it, but I declare my support now.

I want to talk again about an issue that the noble Baroness, Lady Finlay, set out so well and that we also touched on last week, about the regulation of suicide and self-harm content. We have all heard of the tragic case of Molly Russell, but a name that is often forgotten in this discussion is Frankie Thomas. Frankie was a vulnerable teenager with childhood trauma, functioning autism and impulsivity. After reading a story about self-harm on the app Wattpad, according to the coroner's inquest, she went home and undertook

"a similar act, resulting in her death".

[Baroness Morgan of Cotes]

I do not need to repeat the many tragic examples that have already been shared in this House, but I want to reiterate the point already made by the BMA in its very helpful briefing on these amendments: viewing self-harm and suicide content online can severely harm the user offline. As I said last week when we were debating the user empowerment tools, this type of content literally has life or death repercussions. It is therefore essential that the Bill takes this sort of content more seriously and creates specific duties for services to adhere to.

We will, at some point this evening—I hope—come on to debate the next group of amendments. The question for Ministers to answer on this group, the next one and others that we will be debating is, where we know that content is harmful to society—to individuals but also to broader society—why the Government do not want to take the step of setting out how that content should be properly regulated. I think it all comes from their desire to draw a distinction between content that is illegal and content that is not illegal but is undoubtedly, in the eyes of pretty well every citizen, deeply harmful. As we have already heard from the noble Baroness, and as we heard last week, adults do not become immune to suicide and self-harm content the minute they turn 18. In fact, I would argue that no adult is immune to the negative effects of viewing this type of content online.

This amendment, therefore, is very important, as it would create a duty for providers of regulated user-to-user services and search engines to manage harmful suicide or self-harm content applicable to both children and adults, recognising this cliff edge otherwise in the Bill, which we have already talked about. I strongly urge noble Lords, particularly the Minister, to agree that protecting users from this content is one of the most important things that the Bill can do. People outside this House are looking to us to do this, so I urge the Government to support this amendment today.

Lord Allan of Hallam (LD): My Lords, I am pleased that we have an opportunity, in this group of amendments, to talk about suicide and self-harm content, given the importance of it. It is important to set out what we expect to happen with this legislation. I rise particularly to support Amendment 225, to which my noble friend Lady Parminter added her name. I am doing this more because the way in which this kind of content is shared is incredibly complex, rather than simply because of the question of whether it is legal or illegal.

5.45 pm

Our goal in the regulations should actually be twofold. First, we do, of course, want to reduce the likelihood that somebody who is at lower risk of suicide and self-harm might move into the higher-risk group as a result of their online activity on user-to-user services. That is our baseline goal. We do not want anyone to go from low risk to high risk. Secondly, as well as this "create no new harm" goal, we have a harm reduction goal, which is that people who are already at a higher risk of suicide and self-harm might move into a lower-risk category through the use of online services to access advice and support. It is really important, in this area, that we do not lose sight of the fact there are two aspects to the use of online services. It is no simple task to try to achieve both these goals, as they can sometimes be in tension with each other in respect of particular content types.

There is a rationale for removing all suicide and self-harm content, as that is certainly a way to achieve that first goal. It makes it less likely that a low-risk person would encounter—in the terms of the Bill—or be exposed to potentially harmful content. Some countries certainly do take that approach. They say that anything that looks like it is encouraging suicide or self-harm should be removed, full stop. That is a perfectly rational and legitimate approach.

There is, however, a cost to this approach, which I wish to tease out. It would be helpful in this debate to understand that, and it might not be immediately apparent what that cost is. It is that there are different kinds of individuals posting this content, so if we look at the experience of what happens on online platforms, there certainly is a community of people who post content with the express aim of hurting others: people who we often call trolls, who are small in number but incredibly toxic. They are putting out suicide and self-harm content because they want other people to suffer. They might think it is funny, but whatever they think, they are doing it with an expressly negative intent.

There is also a community of individuals and organisations who believe that they are sharing content to help those who are at risk. This can vary: some can be formal organisations such as the Samaritans, and others can be enterprising individuals, sometimes people who themselves had experiences that they wish to share, who will create online fora and share content. It might be content that looks similar to content that appears harmful, but their expressed goal is seeking to help others online. Most of these fora are for that purpose. Then there are the individuals themselves, who are looking for advice and support relevant to what is happening in their own lives and to connect with others who share their experiences.

We might see the same piece of content very differently when posted by people in these groups. If an individual in that troll group is showing an image of self-harm, that is an aggressive, harmful act; there is no excuse for it, and we want to get rid of it. However, the same content might be part of an educational exchange when posted by an expert organisation. The noble Baroness, Lady Finlay, said that we needed to make sure that this new legislation did not inadvertently sweep up those who were in that educational space.

The hardest group is the group of individuals, where, in many cases, the posting of that content is a cry for help, and an aggressive response by the platform can, sadly, be counterproductive to that individual if they have gone online to seek help. The effect of that is that the content is removed and, because they violated the platform's terms of service, that person who is feeling lonely and vulnerable might lose social media accounts that are important to them for seeking help. Therefore, by seeking to reduce their exposure to content, we might inadvertently end up creating a scenario in which they lose all that is valuable to them. That is the other inadvertent harm that we want to ensure we avoid in regulating and seeking to have Ofcom issue the most appropriate guidance.

We should be able to advance both goals: removing the content that is posted with harmful intent but enabling content that is there as a cry for help, or as a support and advice service. It is in that context that something like the proposal for an expert group for Ofcom is very helpful. Again, having worked at a platform, I can say that we often reached out to advisers and sought help. Sometimes, the advice was conflicting. Some people would say it was really important that if someone was sharing images of self-harm they should be got rid of; others would say that, in certain contexts, it was really important to allow that person to share the image of self-harm and have a discussion with others—and that maybe the response was to use that as a trigger, to point them towards a support service that they need.

Again, when somebody is at imminent risk of suicide, protocols were developed to deal with that when the solution is nothing that the platform can do. If a platform has detected that somebody is at imminent risk of suicide, it needs to find a way to ensure that either a support body such as the Samaritans or, in many cases, the police are notified so that they can go to that person's house, knock on the door and prevent the suicide happening. Platforms in some countries have the relationships that they need with local bodies. Giving that advice is very sensitive; you are disclosing highly sensitive personal data to an outside body, against the individual's wishes. There will not be consent from them, in many cases, and that has to be worked through.

If we are thinking about protocols for dealing with self-harm content, we will reach some of the same issues. It may be that informing parents, a school or some other body to get help to that individual would be the right thing to do. That is very sensitive in terms of the data disclosure and privacy aspects.

The Bill is an opportunity to improve all of this. There are pieces of very good practice and, clearly, areas where not enough is being done and too much very harmful content—particularly content that is posted with the express intent of causing harm—is being allowed to circulate. I hope that, through the legislation and by getting these protocols right, we can get to the point where we are both preventing lower-risk people moving into a higher-risk category and enabling people already in a high-risk category to get the help, support and advice that they need. Nowadays, online is often the primary tool that could benefit them.

Baroness Fox of Buckley (Non-Afl): My Lords, as usual, the noble Lord, Lord Allan of Hallam, has explained with some nuance the trickiness of this area, which at first sight appears obvious—black and white—but is not quite that. I want to explore some of these things.

Many decades ago, I ran a drop-in centre for the recovering mentally ill. I remember my shock the first time that I came across a group of young women who had completely cut themselves up. It was a world that I did not know but, at that time, a very small world—a very minor but serious problem in society. Decades later, going around doing lots of talks, particularly in girls' schools where I am invited to speak, I suddenly discovered that whole swathes of young women were doing something that had been considered a mental health problem, often hidden away. Suddenly, people were talking about a social contagion of self-harm happening in the school. Similarly, there were discussions about eating disorders being not just an individual mental health problem but something that kind of grew within a group.

Now we have the situation with suicide sites, which are phenomenal at exploiting those vulnerabilities. This is undoubtedly a social problem of some magnitude. I do not in any way want to minimise it, but I am not sure exactly how legislation can resolve it or whether it will, even though I agree that it could do certain things.

Some of the problems that we have, which have already been alluded to, really came home to me when I read about Instagram bringing in some rules on self-harm material, which ended up with the removal of posts by survivors of self-harm discussing their illness. I read a story in the *Coventry Evening Telegraph*—I was always interested because I ran the drop-in centre for the recovering mentally ill in Coventry—where a young woman had some photographs taken down from Instagram because they contained self-harm images of her scars. The young woman who had suffered these problems, Marie from Tile Hill, wanted to share pictures of her scars with other young people because she felt that they would help others recover. She had got over it and was basically saying that the scars were healing. In other words, it was a kind of self-help group for users online, yet it was taken down.

It is my usual problem: this looks to be a clear-cut case, yet the complexities can lead to problems of censorship of a sort. I was really pleased that the noble Baroness, Lady Finlay, stressed the point about definitions. Search engines such as Google have certainly raised the problem of a concern, or worry, that people looking for help—or even looking to write an essay on suicide, assisted suicide or whatever—will end up not being able to find appropriate material.

I also want to ask a slightly different question. Who decides which self-harms are in our definitions and what is the contagion? When I visit schools now, there is a new social contagion in town, I am afraid to say, which is that of gender dysphoria. In the polling for a newly published report *Show, Tell and Leave Nothing to the Imagination* by Jo-Anne Nadler, which has just come out, half of the young people interviewed said that they knew someone at their school who wanted to change gender or had already, while one in 10 said that they wanted to change their gender.

That is just an observation; your Lordships might ask what it has to do with the Bill. But these are actually problem areas that are being affirmed by educational organisations and charities, by which I mean that organisations that have often worked with government have been consulted as stakeholders. They have recommended to young women where online to purchase chest binders, which will stop them developing, or where and how to use puberty blockers. Eventually, they are affirming double mastectomies or castration. By the way, this is of course all over social media, because once you start to search on it, TikTok is rife with it. Algorithmically, we are reminded all the time to think about systems: once you have had a look at it, it is everywhere. My point is that this is affirmed socially.

[Baroness Fox of Buckley]

Imagine a situation whereby, in society offline, some young woman who has an eating disorder and weighs 4 stone comes to you and says "Look, I'm so fat". If you said, "Yes, of course you're fat—I'll help you slim", we would think it was terrible. When that happens online, crudely and sometimes cruelly, we want to tackle it here. If some young woman came to you and said, "I want to self-harm; I feel so miserable that I want to cut myself", and you started recommending blades, we would think it was atrocious behaviour. In some ways, that is what is happening online and that is where I have every sympathy with these amendments. Yet when it comes to gender dysphoria, which actually means encouraging self-harm, because it is a cultural phenomenon that is popular it does not count.

In some ways, I could be arguing that we should future-proof this legislation by including those self-harms in the definition put forward by the amendments in this group. However, I raise it more to indicate that, as with all definitions, it is not quite as easy as one would think. I appreciate that a number of noble Lords, and others engaged in this discussion, might think that I am merely exhibiting prejudice rather than any genuine compassion or concern for those young people. I would note that if noble Lords want to see a rising group of people who are suicidal and feel that their life is really not worth living, search out the work being done on detransitioners who realise too late that that affirmation by adults has been a disaster for them.

On the amendments suggesting another advisory committee with experts to advise Ofcom on how we regulate such harms, I ask that we are at least cautious about which experts. To mention one of the expert bodies, Mermaids has become controversial and has actually been advocating some of those self-harms, in my opinion. It is now subject to a Charity Commission investigation but has been on bodies such as this advising about young people. I would not think that appropriate, so I just ask that some consideration is given to which experts would be on such bodies.

6 pm

Baroness Kidron (CB): My Lords, I also support the amendments in the name of my noble friend Lady Finlay. I want to address a couple of issues raised by the noble Lord, Lord Allan. He made a fantastic case for adequate redress systems, both at platform level and at independent complaint level, to really make sure that, at the edge of all the decisions we make, there is sufficient discussion about where that edge lies.

The real issue is not so much the individuals who are in recovery and seeking to show leadership but those who are sent down the vortex of self-harm and suicide material that comes in its scores—in its hundreds and thousands—and completely overwhelms them. We must not make a mistake on the edge case and not deal with the issue at hand.

There is absolutely not enough signposting. I have seen at first hand—I will not go through it again; I have told the Committee already—companies justifying material that it was inconceivable to justify as being a cry for help. A child with cuts and blood running down their body is not a cry for help; that is self-harm material.

Lord Allan of Hallam (LD): From experience, I think it is true that companies get defensive and seek to defend the indefensible on occasion. I agree with the noble Baroness on that, but I will balance it a little as I also work with people who were agonising over not wanting to make a bad situation worse. They were genuinely struggling and seeking to do the right thing. That is where the experts come in. If someone would say to them, "Look, take this stuff down; that is always better", it would make their lives easier. If they said, "Please leave it up", they could follow that advice. Again, that would make their lives easier. On the excuses, I agree that sometimes they are defending the indefensible, but also there are people agonising over the right thing to do and we should help them.

Baroness Kidron (CB): I absolutely agree. Of course, good law is a good system, not a good person.

I turn to the comments that I was going to make. Uncharacteristically, I am a little confused about this issue and I would love the Minister's help. My understanding on reading the Bill very closely is that self-harm and suicide content that meets a legal definition will be subject to the priority illegal content duties. In the case of children, we can safely anticipate that content of this kind will be named primary priority content. Additionally, if such content is against the terms of service of a regulated company, it can be held responsible to those terms. It will have to provide a user empowerment tool on category 1 services so that it can be toggled out if an adult user wishes. That is my understanding of where this content has already been dealt with in the Bill. To my mind, this leaves the following ways in which suicide and self-harm material, which is the subject of this group of amendments, is not covered by the Bill. That is what I would like the Minister to confirm, and I absolutely stand by to be corrected.

In the case of adults, if self-harm and suicide material does not meet a bar of illegal content and the service is not category 1, there is no mechanism to toggle it out. Ofcom has no power to require a service to ensure tools to toggle self-harm and suicide material out by default. This means that self-harm and suicide material can be as prevalent as they like—pushed, promoted and recommended, as I have just explained—if it is not contrary to the terms of service, so long as it does not reach the bar of illegal content.

Search services are not subject to these clauses—I am unsure about that. In the case of both children and adults, if self-harm and suicide material is on blogs or services with limited functionality, it is out of scope of the Bill and there is absolutely nothing Ofcom can do. For non-category 1 services—the majority of services which claim that an insignificant number of children access their site and thus that they do not have to comply with the child safety duties—there are no protections for a child against this content.

I put it like that because I believe that each of the statements I just made could have been fixed by amendments already discussed during the past six days in Committee. We are currently planning to leave many children without the protection of the safety duties, to leave vulnerable adults without even the cover of default protections against material that has

absolutely no public interest and to leave companies to decide whether to promote or use this material to fuel user engagement—even if it costs well-being and lives.

I ask the Minister to let me know if I have misunderstood, but I think it is really quite useful to see what is left once the protections are in place, rather than always concentrating on the protections themselves.

Baroness Healy of Primrose Hill (Lab): My Lords, I support the noble Baroness, Lady Finlay of Llandaff, in her Amendment 96 and others in this group. The internet is fuelling an epidemic of self-harm, often leading to suicide among young people. Thanks to the noble Baroness, Lady Kidron, I have listened to many grieving families explaining the impact that social media had on their beloved children. Content that includes providing detailed instructions for methods of suicide or challenges or pacts that seek agreement to undertake mutual acts of suicide or deliberate self-injury must be curtailed, or platforms must be made to warn and protect vulnerable adults.

I recognise that the Government acknowledge the problem and have attempted to tackle it in the Bill with the new offence of encouraging or assisting serious self-harm and suicide and by listing it as priority illegal content. But I agree with charities such as Samaritans, which says that the Government are taking a partial approach by not accepting this group of amendments. Samaritans considers that the types of suicide and self-harm content that is legal but unequivocally harmful includes information, depictions, instructions and advice on methods of self-harm or suicide, content that portrays self-harm and suicide as positive or desirable and graphic descriptions or depictions of self-harm and suicide.

With the removal of regulation of legal but harmful content, much suicide and self-harm content can remain easily available, and platforms will not even need to consider the risk that such content could pose to adult users. These amendments aim to ensure that harmful self-harm and suicide content is addressed across all platforms and search services, regardless of their functionality or reach, and, importantly, for all persons regardless of age.

In 2017 an inquiry into suicides of young people found suicide-related internet use in 26% of deaths in under-20s and 13% of deaths in 20 to 24 year-olds. Three-quarters of people who took part in Samaritans' research with Swansea University said that they had harmed themselves more severely after viewing self-harm content online, as the noble Baroness, Lady Finlay, pointed out. People of all ages can be susceptible to harm from this dangerous content. There is shocking evidence that between 2011 and 2015, 151 patients who died by suicide were known to have visited websites that encouraged suicide or shared information about methods of harm, and 82% of those patients were over 25.

Suicide is complex and rarely caused by one thing. However, there is strong evidence of associations between financial difficulties, mental health and suicide. People on the lowest incomes have a higher suicide risk than those who are wealthier, and people on lower incomes are also the most affected by rising prices and other types of financial hardship. In January and February this year the Samaritans saw the highest percentage of first-time phone callers concerned about finance or unemployment—almost one in 10 calls for help in February. With the cost of living crisis and growing pressure on adults to cope with stress, it is imperative that the Government urgently bring in these amendments to help protect all ages from harmful suicide and self-harm content by putting a duty on providers of user-to-user services to properly manage such content.

A more comprehensive online safety regime for all ages will also increase protections for children, as research has shown that age verification and restrictions across social media and online platforms are easily bypassed by them. As the Bill currently stands, there is a two-tier approach to safety which can still mean that children may circumnavigate safety controls and find this harmful suicide and self-harm content.

Finally, user empowerment duties that we debated earlier are no substitute for regulation of access to dangerous suicide and self-harm online content through the law that these amendments seek to achieve.

Lord Clement-Jones (LD): My Lords, I thank the noble Baroness, Lady Finlay, for introducing the amendments in the way she did. I think that what she has done, and what this whole debate has done, is to ask the question that the noble Baroness, Lady Kidron, posed: we do not know yet quite where the gaps are until we see what the Government have in mind in terms of the promised new offence. But it seems pretty clear that something along the lines of what has been proposed in this debate needs to be set out as well.

One of the most moving aspects of being part of the original Joint Committee on the draft Bill was the experience of listening to Ian Russell and the understanding, which I had not come across previously, of the sheer scale of the kind of material that has been the subject of this debate on suicide and self-harm encouragement. We need to find an effective way of dealing with it and I entirely take my noble friend's point that this needs a combination of protectiveness and support. I think the combination of these amendments is designed to do precisely that and to learn from experience through having the advisory committee as well.

It is clear that, by itself, user empowerment is just not going to be enough in all of this. I think that is the bottom line for all of us. We need to go much further, and we owe a debt to the noble Baroness, Lady Finlay, for raising these issues and to the Samaritans for campaigning on this subject. I am just sorry that my noble friend Lady Tyler cannot be here because she is a signatory to a number of the amendments and feels very strongly about these issues as well.

I do not think I need to unpack a great deal of the points that have been made. We know that suicide is a leading cause of death in males under 50 and females under 35 in the UK. We know that so many of the deaths are internet-related and we need to find effective methods of dealing with this. These are meant to be practical steps.

I take the point of the noble Baroness, Lady Fox, not only that it is a social problem of some magnitude but that the question of definitions is important.

[Lord Clement-Jones]
I thought she strayed well beyond where I thought the definition of "self-harm" actually came. But one could discuss that. I thought the noble Baroness, Lady Kidron, saying that we want good law, not relying on good people, was about definitions. We cannot just leave it to the discretion of an individual, however good they may be, moderating on a social media platform.

6.15 pm

Along with the Samaritans, I very much regret that we no longer have the legal but harmful category, which would help guide us in this area. I share its view that we need to protect people of all ages from all extremely dangerous suicide and self-harm content on large and small platforms. I think this is a way of doing it. The type of content can be perhaps more tightly defined in terms of the kinds of information, depictions, instructions and the kinds of content, the portrayal and the graphic descriptions that occur. One perhaps might be able to do more in that direction. I very much hope that we can move further today with some assurance from the Minister in this area.

The establishment of a specific unit within Ofcom, which was the subject of the Private Member's Bill of the noble Baroness, Lady Finlay, is potentially a very useful addition to the Bill. I very much hope that the Minister takes that on board as well.

Lord Stevenson of Balmacara (Lab): This has been a very good debate indeed. I have good days and bad days in Committee. Good days are when I feel that the Bill is going to make a difference and things are going to improve and the sun will shine. Bad days are a bit like today, where we have had a couple of groups, and this is one of them, where I am a bit worried about where we are and whether we have enough—I was going to use that terrible word "ammunition" but I do not mean that—of the powers that are necessary in the right place and with the right focus to get us through some of the very difficult questions that come in. I know that bad cases make bad law, but they can also illustrate why the law is not good enough. As the noble Baroness, Lady Kidron, was saying, this is possibly one of the areas we are in.

The speeches in the debate have made the case well and I do not need to go back over it. We have got ourselves into a situation where we want to reduce harm that we see around but do not want to impact freedom of expression. Both of those are so important and we have to hold on to them, but we find ourselves struggling. What do we do about that? We think through what we will end up with this Bill on the statute book and the codes of practice through it. This looks as though it is heading towards the question of whether the terms of service that will be in place will be sufficient and able to restrict the harms we will see affecting people who should not be affected by them. But I recognise that the freedom of expression arguments have won the day and we have to live with that.

The noble Baroness, Lady Kidron, mentioned the riskiness of the smaller sites—categories 2A and 2B and the ones that are not even going to be categorised as high as that. Why are we leaving those to cause the damage that they are? There is something not working here in the structure of the Bill and I hope the Minister will be able to provide some information on that when he comes to speak.

Obviously, if we could find a way of expressing the issues that are raised by the measures in these amendments as being illegal in the real world, they would be illegal online as well. That would at least be a solution that we could rely on. Whether it could be policed and serviced is another matter, but it certainly would be there. But we are probably not going to get there, are we? I am not looking at the Minister in any hope but he has a slight downward turn to his lips. I am not sure about this.

How can we approach a legal but harmful issue with the sort of sensitivity that does not make us feel that we have reduced people's ability to cope with these issues and to engage with them in an adult way? I do not have an answer to that.

Is this another amplification issue or is it deeper and worse than that? Is this just the internet because of its ability to focus on things to keep people engaged, to make people stay online when they should not, to make them reach out and receive material that they ought not to get in a properly regulated world? Is it something that we can deal with because we have a sense of what is moral and appropriate and want to act because society wants us to do it? I do not have a solution to that, and I am interested to hear what the Minister will say, but I think it is something we will need to come back to.

Lord Parkinson of Whitley Bay (Con): My Lords, like everyone who spoke, I and the Government recognise the tragic consequences of suicide and self-harm, and how so many lives and families have been devastated by it. I am grateful to the noble Baroness and all noble Lords, as well as the bereaved families who campaigned so bravely and for so long to spare others that heartache and to create a safer online environment for everyone. I am grateful to the noble Baroness, Lady Finlay of Llandaff, who raised these issues in her Private Member's Bill, on which we had exchanges. My noble friend Lady Morgan is right to raise the case of Frankie Thomas and her parents, and to call that to mind as we debate these issues.

Amendments 96 and 296, tabled by the noble Baroness, Lady Finlay, would, in effect, reintroduce the former adult safety duties whereby category 1 companies were required to assess the risk of harm associated with legal content accessed by adults, and to set and enforce terms of service in relation to it. As noble Lords will know, those duties were removed in another place after extensive consideration. Those provisions risked creating incentives for the excessive removal of legal content, which would unduly interfere with adults' free expression.

However, the new transparency, accountability and freedom of expression duties in Part 4, combined with the illegal and child safety duties in Part 3, will provide a robust approach that will hold companies to account for the way they deal with this content. Under the Part 4 duties, category 1 services will need to have appropriate systems and processes in place to deal with content or activity that is banned or restricted by their terms of service.

Many platforms—such as Twitter, Facebook and TikTok, which the noble Baroness raised—say in their terms of service that they restrict suicide and self-harm content, but they do not always enforce these policies effectively. The Bill will require category 1 companies—the largest platforms—fully to enforce their terms of service for this content, which will be a significant improvement for users' safety. Where companies allow this content, the user-empowerment duties will give adults tools to limit their exposure to it, if they wish to do so.

The noble Baroness is right to raise the issue of algorithms. As the noble Lord, Lord Stevenson, said, amplification lies at the heart of many cases. The Bill will require providers specifically to consider as part of their risk assessments how algorithms could affect children's and adults' exposure to illegal content, and content that is harmful to children, on their services. Providers will need to take steps to mitigate and effectively manage any risks, and to consider the design of functionalities, algorithms and other features to meet the illegal content and child safety duties in the Bill.

Lord Allan of Hallam (LD): Following our earlier discussion, we were going to have a response on super-complaints. I am curious to understand whether we had a pattern of complaints—such as those the noble Baroness, Lady Kidron, and others received—about a platform saying, under its terms of service, that it would remove suicide and self-harm content but failing to do so. Does the Minister think that is precisely the kind of thing that could be substantive material for an organisation to bring as a super-complaint to Ofcom?

Lord Parkinson of Whitley Bay (Con): My initial response is, yes, I think so, but it is the role of Ofcom to look at whether those terms of service are enforced and to act on behalf of internet users. The noble Lord is right to point to the complexity of some marginal cases with which companies have to deal, but the whole framework of the Bill is to make sure that terms of service are being enforced. If they are not, people can turn to Ofcom.

Baroness Kidron (CB): I am sorry to enter the fray again on complaints, but how will anyone know that they have failed in this way if there is no complaints system?

Lord Parkinson of Whitley Bay (Con): I refer to the meeting my noble friend Lord Camrose offered; we will be able to go through and unpick the issues raised in that group of amendments, rather than looping back to that debate now.

Lord Clement-Jones (LD): The Minister is going through the structure of the Bill and saying that what is in it is adequate to prevent the kinds of harms to vulnerable adults that we talked about during this debate. Essentially, it is a combination of adherence to terms of service and user-empowerment tools. Is he saying that those two aspects are adequate to prevent the kinds of harms we have talked about?

Lord Parkinson of Whitley Bay (Con): Yes, they are—with the addition of what I am coming to. In addition to the duty for companies to consider the role of algorithms, which I talked about, Ofcom will have a range of powers at its disposal to help it assess whether providers are fulfilling their duties, including the power to require information from providers about the operation of their algorithms. The regulator will be able to hold senior executives criminally liable if they fail to ensure that their company is providing Ofcom with the information it requests.

However, we must not restrict users' right to see legal content and speech. These amendments would prescribe specific approaches for companies' treatment of legal content accessed by adults, which would give the Government undue influence in choosing, on adult users' behalf, what content they see—

Lord Stevenson of Balmacara (Lab): I wanted to give the Minister time to get on to this. Can we now drill down a little on the terms of service issue? If the noble Baroness, Lady Kidron, is right, are we talking about terms of service having the sort of power the Government suggest in cases where they are category 1 and category 2A but not search? There will be a limit, but an awful lot of other bodies about which we are concerned will not fall into that situation.

Also, I thought we had established, much to our regret, that the terms of service were what they were, and that Ofcom's powers—I paraphrase to make the point—were those of exposure and transparency, not setting minimum standards. But even if we are talking only about the very large and far-reaching companies, should there not be a power somewhere to engage with that, with a view getting that redress, if the terms of service do not specify it?

Lord Parkinson of Whitley Bay (Con): The Bill will ensure that companies adhere to their terms of service. If they choose to allow content that is legal but harmful on their services and they tell people that beforehand—and adults are able and empowered to decide what they see online, with the protections of the triple shield—we think that that strikes the right balance. This is at the heart of the whole "legal but harmful" debate in another place, and it is clearly reflected throughout the approach in the Bill and in my responses to all of these groups of amendments. But there are duties to tackle illegal content and to make sure that people know the terms of service for the sites they choose to interact with. If they feel that they are not being adhered to—as they currently are not in relation to suicide and self-harm content on many of the services—users will have the recourse of the regulator to turn to.

6.30 pm

I think that noble Lords are racing ahead a little bit in being pessimistic about the work of Ofcom, which will be proactive in its supervisory role. That is a big difference from the status quo, in terms of the protection for users. We want to strike the right balance to make sure that we are enforcing terms of service while protecting against the arbitrary removal of legal content, and the Bill provides companies with discretion about how to treat that sort of content, as accessed by their users. However, we agree that, by its nature, this type of content can be very damaging, particularly for vulnerable young people, which is why the Government

[Lord Parkinson of Whitley Bay]
remain committed to introducing a new criminal offence of content that encourages or promotes serious self-harm. The new offence will apply to all victims, children as well as adults, and will be debated once it is tabled; we will explore these details a bit more then. The new law will sit alongside companies' requirements to tackle illegal suicide content, including material that encourages or assists suicide under the terms of the Suicide Act 1961.

The noble Baronesses, Lady Finlay and Lady Kidron, asked about smaller websites and fora. We are concerned about the widespread availability of content online which promotes or advertises methods of suicide and self-harm, and which can easily be accessed by people who are young or vulnerable. Where suicide and self-harm websites host user-generated content, they will be in scope of the Bill. Those sites will need proactively to prevent users being exposed to priority illegal content, including content that encourages or assists suicide, as set out in the 1961 Act.

The noble Baroness asked about the metaverse, which is in scope of the Bill as a user-to-user service. The approach of the Bill is to try to remain technology neutral.

Lord Allan of Hallam (LD): I will plant a flag in reference to the new offences, which I know we will come back to again. It is always helpful to look at real-world examples. There is a lot of meme-based self-harm content. Two examples are the Tide Pods challenge—the eating of detergent capsules—and choking games, both of which have been very common and widespread. It would be helpful, ahead of our debate on the new offences, to understand whether they are below or above the threshold of serious self-harm and what the Government's intention is. There are arguments both ways: obviously, criminalising children for being foolish carries certain consequences, but we also want to stop the spread of the content. So, when we come to that offence, it would be helpful if the Minister could use specific examples, such as the meme-based self-harm content, which is quite common.

Lord Parkinson of Whitley Bay (Con): I thank the noble Lord for the advance notice to think about that; it is helpful. It is difficult to talk in general terms about this issue, so, if I can, I will give examples that do, and do not, meet the threshold.

The Bill goes even further for children than it does for adults. In addition to the protections from illegal material, the Government have indicated, as I said, that we plan to designate content promoting suicide, self-harm or eating disorders as categories of primary priority content. That means that providers will need to put in place systems designed to prevent children of any age encountering this type of content. Providers will also need specifically to assess the risk of children encountering it. Platforms will no longer be able to recommend such material to children through harmful algorithms. If they do, Ofcom will hold them accountable and will take enforcement action if they break their promises.

It is right that the Bill takes a different approach for children than for adults, but it does not mean that the Bill does not recognise that young adults are at risk or that it does not have protections for them. My noble friend Lady Morgan was right to raise the issue of young adults once they turn 18. The triple shield of protection in the Bill will significantly improve the status quo by protecting adults, including young adults, from illegal suicide content and legal suicide or self-harm content that is prohibited in major platforms' terms and conditions. Platforms also have strong commercial incentives, as we discussed in previous groups, to address harmful content that the majority of their users do not want to see, such as legal suicide, eating disorder or self-harm content. That is why they currently claim to prohibit it in their terms and conditions, and why we want to make sure that those terms and conditions are transparently and accountably enforced. So, while I sympathise with the intention from the noble Baroness, Lady Finlay, her amendments raise some wider concerns about mandating how providers should deal with legal material, which would interfere with the careful balance the Bill seeks to strike in ensuring that users are safer online without compromising their right to free expression.

The noble Baroness's Amendment 240, alongside Amendment 225 in the name of the noble Lord, Lord Stevenson, would place new duties on Ofcom in relation to suicide and self-harm content. The Bill already has provisions to provide Ofcom with broad and effective information-gathering powers to understand how this content affects users and how providers are dealing with it. For example, under Clause 147, Ofcom can already publish reports about suicide and self-harm content, and Clauses 68 and 69 empower Ofcom to require the largest providers to publish annual transparency reports.

Ofcom may require those reports to include information on the systems and processes that providers use to deal with illegal suicide or self-harm content, with content that is harmful to children, or with content which providers' own terms of service prohibit. Those measures sit alongside Ofcom's extensive information-gathering powers. It will have the ability to access the information it needs to understand how companies are fulfilling their duties, particularly in taking action against this type of content. Furthermore, the Bill is designed to provide Ofcom with the flexibility it needs to respond to harms—including in the areas of suicide, self-harm and eating disorders—as they develop over time, in the way that the noble Baroness envisaged in her remarks about the metaverse and new emerging threats. So we are confident that these provisions will enable Ofcom to assess this type of content and ensure that platforms deal with it appropriately. I hope that this has provided the sufficient reassurance to the noble Baroness for her not to move her amendment.

Baroness Kidron (CB): I asked a number of questions on specific scenarios. If the Minister cannot answer them straight away, perhaps he could write to me. They all rather called for "yes/no" answers.

Lord Parkinson of Whitley Bay (Con): The noble Baroness threw me off with her subsequent question. She was broadly right, but I will write to her after I refresh my memory about what she said when I look at the *Official Report*.

Baroness Finlay of Llandaff (CB): My Lords, I am extremely grateful to everyone who has contributed to this debate. It has been a very rich debate, full of information; my notes have become extensive during it.

There are a few things that I would like to know more about: for example, how self-harm, which has been mentioned by the Minister, is being defined, given the debate we have had about how to define self-harm. I thought of self-harm as something that does lasting and potentially life-threatening damage. There are an awful lot of things that people do to themselves that others might not like them doing but that do not fall into that category. However, the point about suicide and serious self-harm is that when you are dead, that is irreversible. You cannot talk about healing, because the person has now disposed of their life, one way or another.

I am really grateful to the noble Baroness, Lady Healy, for highlighting how complex suicide is. Of course, one of the dangers with all that is on the internet is that the impulsive person gets caught up rapidly, so what would have been a short thought becomes an overwhelming action leading to their death.

Having listened to the previous debate, I certainly do not understand how Ofcom can have the flexibility to really know what is happening and how the terms of service are being implemented without a complaints system. I echo the really important phrase from the noble Lord, Lord Stevenson of Balmacara: if it is illegal in the real world, why are we leaving it on the internet?

Many times during our debates, the noble Baroness, Lady Kidron, has pushed safety by design. In many other things, we have defaults. My amendments were not trying to provide censorship but simply trying to provide a default, a safety stop, to stop things escalating, because we know that they are escalating at the moment. The noble Lord, Lord Stevenson of Balmacara, asked whether it was an amplification or a reach issue. I add, "or is it both?". From all the evidence we have before us, it appears to be.

I am very grateful to the noble Lord, Lord Clement-Jones, for pressing that we must learn from experience and that user empowerment to switch off simply does not go far enough: people who are searching for this and already have suicidal ideation will not switch it off because they have started searching. There is no way that could be viewed as a safety feature in the Bill, and it concerns me.

Although I will withdraw my amendment today, of course, I really feel that we will have to return to this on Report. I would very much appreciate the wisdom of other noble Lords who know far more about working on the internet and all the other aspects than I do. I am begging for assistance in trying to get the amendments right. If not, the catalogue of deaths will mount up. This is literally a once-in-a-lifetime opportunity. For the moment, I beg leave to withdraw.

Amendment 96 withdrawn.

Clause 36: Codes of practice about duties

Amendment 96A not moved.

Amendment 97

Moved by ***Baroness Morgan of Cotes***

97: Clause 36, page 36, line 42, at end insert "including a code of practice describing measures for the purpose of compliance with the relevant duties so far as relating to violence against women and girls."

Member's explanatory statement

This amendment would impose an express obligation on OFCOM to issue a code of practice on violence against women and girls rather than leaving it to OFCOM's discretion. This would ensure that Part 3 providers recognise the many manifestations of online violence, including illegal content, that disproportionately affect women and girls.

Baroness Morgan of Cotes (Con): My Lords, it is a great pleasure to move Amendment 97 and speak to Amendment 304, both standing in my name and supported by the noble Baroness, Lady Kidron, the right reverend Prelate the Bishop of Gloucester and the noble Lord, Lord Knight of Weymouth. I am very grateful for their support. I look forward to hearing the arguments by the noble Lord, Lord Stevenson, for Amendment 104 as well, which run in a similar vein.

These amendments are also supported by the Domestic Abuse Commissioner, the Revenge Porn Helpline, BT, EE and more than 100,000 UK citizens who have signed End Violence Against Women's petition urging the Government to better protect women and girls in the Bill.

I am also very grateful to the noble Baroness, Lady Foster of Aghadrumsee—I know I pronounced that incorrectly—the very distinguished former Northern Ireland politician. She cannot be here to speak today in favour of the amendment but asked me to put on record her support for it.

I also offer my gratitude to the End Violence Against Women Coalition, Glitch, Refuge, Carnegie UK, NSPCC, 5Rights, Professor Clare McGlynn and Professor Lorna Woods. Between them all, they created the draft violence against women and girls code of practice many months ago, proving that a VAWG code of practice is not only necessary but absolutely deliverable.

Much has already been said on this, both here and outside the Chamber. In the time available, I will focus my case for these amendments on two very specific points. The first is why VAWG, violence against women and girls, should have a specific code of practice legislated for it, rather than other content we might debate. The second is what having a code of practice means in relation to the management of that content.

Ofcom has already published masses of research showing that abuse online is gendered. The Government's own fact sheet, sent to us before these debates, said that women and girls experience disproportionate levels of abuse online. They experience a vast array of abuse online because of their gender, including cyberflashing, harassment, rape threats and stalking. As we have already heard and will continue to hear in these debates, some of those offences and abuse reach a criminal threshold and some do not. That is at the heart of this debate.

6.45 pm

The first death threat that I received—I have received a number, sadly, both to me and to my family—did not talk about death or dying. It said that I was going

[Baroness Morgan of Cotes]

to be "Jo Coxed". Of course, I reported that to Twitter and the AI content moderator. Because it did not have those words in it, it was not deemed to be a threat. It was not until I could speak to a human being—in this case, the UK public affairs manager of Twitter, to whom I am very grateful—that it even started to be taken seriously.

The fear of being harassed is impacting women's freedom of speech. The Fawcett Society has found that 73% of female MPs, versus 51% of male MPs, say that they avoid speaking online in certain discussions because of fear of the consequences of doing so. Other women in the public eye, such as the presenter Karen Carney, have also been driven offline due to gendered abuse.

Here is the thing I cannot reconcile with the government response on this so far. This Government have absolutely rightly recognised that violence against women and girls is a national threat. They have made it a part of the strategic policing requirement. If tackling online abuse against women and girls is a priority, as the Government say, and if, as in the stated manifesto commitment of 2019, they want the UK to be

"the safest place in the world to be online",

why are the words "women and girls" not used once in the 262 pages of the current draft of the Bill?

The Minister has said that changes have been made in the other House on the Bill—I understand that—and that it is now focused more on the protection of children in relation to certain content, whereas adults are deemed to be able to choose more what they see and how they see it. But there is a G in VAWG, for girls. The code of practice that we are talking about would benefit that very group of people—young girls, who are children—whom the Government have said that they really want to protect through the Bill.

Online harassment does not affect only women in the public eye but all women. I suspect that we all now know the statistic that women are 27 times more likely to be harassed online than men. In other words, to have an online presence as a woman is to expect harassment. That is not to say that men do not face abuse online, but a lot of the online abuse is deliberately gendered and is targeted at women. Do men receive rape threats on the same vast scale as women and young girls?

It should not be the public's job to force a platform to act on the harmful content that it is hosting, just as it should not be a woman's job to limit her online presence to prevent harassment. But the sad reality is that, in its current form, the Bill is doing very little to force platforms to act holistically in relation to violence against women and girls and to change their culture online.

The new VAWG-relevant criminal offences listed in the Bill—I know that my noble friend the Minister will rely on these in his response to the debate—including cyberflashing and coercive and controlling behaviour, are an important step, but even these new offences have their own issues, which I suspect we will come on to debate in the next day of Committee: for example, cyberflashing being motive-based instead of consent-based. Requiring only those platforms caught by the Bill to look at the criminal offences individually ignores the rest of the spectrum of gendered abuse.

Likewise, the gender-neutral approach in the Bill will harm children. NSPCC research found that in 2021-22, four in five victims of online grooming offences were girls. The Internet Watch Foundation, an organisation we are going to talk about in the next group, has found in recently published statistics that girls are more likely to be seriously abused online. I have already stated that this is not to say that boys and men do not experience abuse online, but the fact is that women and girls are several times more likely to be abused. This is not an argument against free speech; people online should be allowed to debate and disagree with each other, but discussions can and should be had without the threat of rape or harassment.

Again, the Government will argue that the triple-shield approach to combating legal but harmful content online will sufficiently protect women and girls, but this is not the case. Instead of removing this content, the Bill's user empowerment tools—much debated already—expect women to shield themselves from seeing it. All this does is allow misogynistic and often violent conversations to continue without women knowing about them, the result of which can be extremely dangerous. A victim of domestic abuse could indeed block the user threatening to kill them, but that does not stop that user from continuing to post the threats he is making, or even posting photos of the victim's front door. Instead of protecting the victim, these tools potentially leave them even more vulnerable to real-life harms. Likewise, the triple shield will rely too heavily on platforms setting their own terms and conditions. We have just heard my noble friend the Minister using this argument in the last group, but the issue is that the platforms can choose to water down their terms and conditions, and Ofcom is then left without recourse.

I turn to what a violence against women and girls code of practice would mean. It could greatly reduce all the dangers I have just laid out. It would ensure that services regularly review their algorithms to stop misogyny going viral, and that moderators are taught, for example, how to recognise different forms of online violence against women and girls, including forms of tech abuse. Ofcom has described codes of practice as

"key documents, which set out the steps services can take to comply with their duties".

Services can choose to take an alternative approach to complying with their duties, provided that it is consistent with the duties in the Bill, but codes will provide a clear route to compliance, and Ofcom envisages that many services will therefore take advantage of them.

The value of having a code lies in its systemic approach. It does not focus on individual items of content—which is one of the worries that have been expressed, both in this House and outside—but it focuses the platforms' minds on the whole environment in which the tech-enabled abuse occurs. The code of practice would make the UK the first country in the world to hold tech companies specifically to account on tackling violence against women and girls. It would also make the Online Safety Bill more future-proof, because it would provide a proactive and agile route for identifying and problem-solving new forms of online VAWG as they emerge, rather than delaying

action until the creation of a new criminal offence when the next relevant piece of primary legislation comes along.

I finish by saying that throughout the Bill's journey through Parliament, we have debated whether it sufficiently protects women and girls. The objective answer is, "No, it does not", but there appears to be a real reluctance to accept this as fact. Instead of just agreeing to disagree on this topic, we instead have an opportunity here to protect millions of women and girls online with a violence against women and girls code of practice. So I ask noble Lords to support this critical amendment, not just for the sake of themselves, their daughters, their sisters or their wives but for the sake of the millions of women whose names we will never know but who will be grateful that we stood on their side on the issue of gendered online violence. I beg to move.

The Lord Bishop of Gloucester: My Lords, I have added my name to Amendments 97 and 304, and I wholeheartedly agree with all that the noble Baroness, Lady Morgan, said by means of her excellent introduction. I look forward to hearing what the noble Baroness, Lady Kidron, has to say as she continues to bring her wisdom to the Bill.

Let me say from the outset, if it has not been said strongly enough already, that violence against women and girls is an abomination. If we allow a culture of intimidation and misogyny to exist online, it will spill over to offline experiences. According to research by Refuge, almost one in five domestic abuse survivors who experienced abuse or harassment from their partner or former partner via social media said they felt afraid of being attacked or being subjected to physical violence as a result. Some 15% felt that their physical safety was more at risk, and 5% felt more at risk of so-called honour-based violence. Shockingly, according to Amnesty International, 41% of women who experienced online abuse or harassment said that these experiences made them feel that their physical safety was threatened.

Throughout all our debates, I hesitate to differentiate between the real and virtual worlds, because that is simply not how we live our lives. Interactions online are informed by face-to-face interactions, and vice versa. To think otherwise is to misunderstand the lived experience of the majority—particularly, dare I say, the younger generations. As Anglican Bishop for HM Prisons, I recognise the complexity of people's lives and the need to tackle attitudes underpinning behaviours. Tackling the root causes of offending should always be a priority; there is potential for much harm later down the line if we ignore warning signs of hatred and misogyny. Research conducted by Refuge found that one in three women has experienced online abuse or harassment perpetrated on social media or another online platform at some point in their lives. That figure rises to almost two in three, or 62%, among young women. This must change.

We did some important work in your Lordships' House during the passage of the Domestic Abuse Act to ensure that all people, including women and girls, are safe on our streets and in their homes. As has been said, introducing a code of practice as outlined will help the Government meet their aim of making the UK the safest place in the world to be online, and it will align with the Government's wider priority to tackle violence against women and girls as a strategic policing requirement. Other strategic policing requirements, including terrorism and child sexual exploitation, have online codes of practice, so surely it follows that there should be one for VAWG to ensure that the Bill aligns with the Government's position elsewhere and that there is not a gap left online.

I know the Government care deeply about tackling violence against women and girls, and I believe they have listened to some concerns raised by the sector. The inclusion of the domestic abuse and victims' commissioners as statutory consultees is welcomed, as is the Government's amendment to recognise controlling and coercive behaviour as a priority offence. However, without this code of conduct, the Bill will fail to address duties of care in relation to preventing domestic abuse and violence against women and girls in a holistic and encompassing way. The onus should not be on women and girls to remove themselves from online spaces; we have seen plenty of that in physical spaces over the years. Women and girls must be free to appropriately express themselves online and offline without fear of harassment. We must do all we can to prevent expressions of misogyny from transforming into violent actions.

Baroness Kidron (CB): My Lords, I have added my name to Amendments 97 and 304, and I support the others in this group. It seems to be a singular failure of any version of an Online Safety Bill if it does not set itself the task of tackling known harms—harms that are experienced daily and for which we have a phenomenal amount of evidence. I will not repeat the statistics given in the excellent speeches made by the noble Baroness, Lady Morgan, and the right reverend Prelate, but will instead add two observations.

7 pm

I am of the generation that saw women break gender barriers and glass ceilings. We were ourselves the beneficiaries of the previous generation, which both intellectually and practically pushed the cause of gender equality. Many of us are also employers, mothers, aunties or friends of a generation in which the majority of the young favour a more gender-equal world. Yet we have seen online the amplification of those who hold a profound resentment of what I would characterise as hard-won and much-needed progress. The vileness and violence of their fury is fuelled by the rapacious appetite of algorithms that profit from engagement, which has allowed gender-based detractors, haters and abusers to normalise misogyny to such a degree that rape threats and threats of violence are trotted out against women for the mildest of perceived infractions. In the case of an academic colleague of mine, her crime—for which she received rape threats—was offering a course in women's studies.

If the price of having a voice online continues to be that you have to withstand a supercharged swarm of abuse then for many women it is simply not worth it. As the noble Baroness, Lady Morgan, said, they are effectively silenced. This sadly extends to girls, who repeatedly say that, as the statistics persistently show,

[Baroness Kidron]
they are put off any kind of public role and even expressing a view because they fear both judgment on how they look and abuse for what they say. How heart-breaking it is that the organising technology of our time is so regressive for women and girls that the gains we have made in our lifetime are being denied them. This is why I believe that Parliament must be clear that an environment in which women and girls are routinely silenced or singled out for abuse is not okay.

My second observation is slightly counterintuitive, because I so wish for these amendments to find their way into the Bill. I have a sense of disquiet that there will be no similar consideration of other exposed or vulnerable groups that are less well-represented in Parliament. I therefore want to take this opportunity to say once again that we have discussed in our debates on previous groups amendments that would commit the Bill to the Equality Act 2010, with the expectation that companies will adhere to UK law across all groups with protected characteristics, including those who may have more than one protected characteristic, and take note that—this point has been made in a number of briefings—women with disabilities and mixed or global-majority heritage come in for double, sometimes triple, doses of abuse. In saying that, I wish to acknowledge that the amendments in the name of the noble Baroness, Lady Fox, which make it clear that the discussion of protected characteristics does not in and of itself constitute harm. I very much agree with her on that.

Perhaps this is a good moment to remember that the Bill is proposed as a systems and processes regime—no single piece of content will be at stake but rather, if a company is amplifying and promoting at scale behaviours that hound women and girls out of the public space, Ofcom will have the tools to deal with it. At the risk of repeating myself, these are not open spaces; they are 100% engineered and largely privately owned. I fail to see another environment in which it is either normal or lawful to swarm women with abuse and threat.

On our first day in Committee, the Minister said in his response to the amendment in the name of the noble Lord, Lord Stevenson, that the Government are very clear on the Bill's purposes. Among the list of purposes that he gave was

"to protect people who face disproportionate harm online including, for instance, because of their sex or their ethnicity or because they are disabled".—[*Official Report*, 19/4/23; col. 724.]

I ask the Minister to make this Bill come true on that purpose.

Baroness Healy of Primrose Hill (Lab): My Lords, I strongly support Amendment 97 in the name of the noble Baroness, Lady Morgan. We must strengthen the Bill by imposing an obligation on Ofcom to develop and issue a code of practice on violence against women and girls. This will empower Ofcom and guide services in meeting their duties in regard to women and girls, and encourage them to recognise the many manifestations of online violence that disproportionately affect women and girls.

Refuge, the domestic abuse charity, has seen a growing number of cases of technology-facilitated domestic abuse in recent years. As other noble Lords have said, this tech abuse can take many forms but social media is a particularly powerful weapon for perpetrators, with one in three women experiencing online abuse, rising to almost two in three among young women. Yet the tech companies have been too slow to respond. Many survivors are left waiting weeks or months for a response when they report abusive content, if indeed they receive one at all. It appears that too many services do not understand the risks and nature of VAWG. They do not take complaints seriously and they think that this abuse does not breach community standards. A new code would address this with recommended measures and best practice on the appropriate prevention of and response to violence against women and girls. It would also support the delivery of existing duties set out in the Bill, such as those on illegal content, user empowerment and child safety.

I hope the Minister can accept this amendment, as it would be in keeping with other government policies, such as in the strategic policing requirement, which requires police forces to treat violence against women and girls as a national threat. Adding this code would help to meet the Government's national and international commitments to tackling online VAWG, such as the tackling VAWG strategy and the Global Partnership for Action on Gender-Based Online Harassment and Abuse.

The Online Safety Bill is a chance to act on tackling the completely unacceptable levels of abuse of women and girls by making it clear through Ofcom that companies need to take this matter seriously and make systemic changes to the design and operation of their services to address VAWG. It would allow Ofcom to add this as a priority, as mandated in the Bill, rather than leave it as an optional extra to be tackled at a later date. The work to produce this code has already been done thanks to Refuge and other charities and academics who have produced a model that is freely available and has been shared with Ofcom. So it is not an extra burden and does not need to delay the implementation of the Bill; in fact, it will greatly aid Ofcom.

The Government are to be congratulated on their amendment to include controlling or coercive behaviour in their list of priority offences. I would like to congratulate them further if they can accept this valuable Amendment 97.

Baroness Stowell of Beeston (Con): My Lords, I start by commending my noble friend Lady Morgan on her clear introduction to this group of amendments. I also commend the noble Baroness, Lady Kidron, on her powerful speech.

From those who have spoken so far, we have a clear picture of the widespread nature of some of the abuse and offences that women experience when they go online. I note from what my noble friend Lady Morgan said that there is widespread support from a range of organisations outside the Committee for this group of amendments. She also made an important and powerful point about the potential chilling effect of this kind of activity on women, including women in public life, being able to exercise their right to freedom of expression.

I feel it is important for me to make it clear that—this is an obvious thing—I very much support tough legal and criminal sanctions against any perpetrator of violence

or sexual abuse against women. I really do understand and support this, and hear the scale of the problem that is being outlined in this group of amendments.

Mine is a dissenting voice, in that I am not persuaded by the proposed solution to the problem that has been described. I will not take up a lot of the Committee's time, but any noble Lords who were in the House when we were discussing a group of amendments on another piece of legislation earlier this year may remember that I spoke against making misogyny a hate crime. The reason why I did that then is similar, in that I feel somewhat nervous about introducing a code of conduct which is directly relevant to women. I do not like the idea of trying to address some of these serious problems by separating women from men. Although I know it is not the intention of a code such as this or any such measures, I feel that it perpetuates a sense of division between men and women. I just do not like the idea that we live in a society where we try to address problems by isolating or categorising ourselves into different groups of people, emphasising the sense of weakness and being victims of any kind of attack or offence from another group, and assuming that everybody who is in the other group will be a perpetrator of some kind of attack, criticism or violence against us.

My view is that, in a world where we see some of this serious activity happening, we should do more to support young men and boys to understand the proper expectations of them. When we get to the groups of amendments on pornography and what more we can do to prevent children's access to it, I will be much more sympathetic. Forgive me if this sounds like motherhood and apple pie, but I want us to try to generate a society where basic standards of behaviour and social norms are shared between men and women, young and old. I lament how so much of this has broken down, and a lot of the problems we see in society are the fault of political and—dare I say it?—religious leaders not doing more to promote some of those social norms in the past. As I said, I do not want us to respond to the situation we are in by perpetuating more divisions.

I look forward to hearing what my noble friend the Minister has to say, but I am nervous about the solution proposed in the amendments.

Baroness Fox of Buckley (Non-Afl): My Lords, it gives me great pleasure to follow the noble Baroness, Lady Stowell of Beeston, not least because she became a dissenting voice, and I was dreading that I might be the only one.

First, I think it important that we establish that those of us who have spent decades fighting violence against women and girls are not complacent about it. The question is whether the physical violence we describe in the Bill is the same as the abuse being described in the amendments. I worry about conflating online incivility, abuse and vile things said with physical violence, as is sometimes done.

I note that Refuge, an organisation I have a great deal of respect for, suggested that the user empowerment duties that opted to place the burden on women users to filter out their own online experience was the same as asking women to take control of their own safety and protect themselves offline from violence. I thought that was unfair, because user empowerment duties and deciding what you filter out can be women using their agency.

7.15 pm

In that context, I wanted to probe Amendment 104, in the name of the noble Lord, Lord Stevenson of Balmacara, and whether affording, as it states, a higher standard of protection to women and girls could actually be disempowering. I am always concerned about discriminatory special treatment for women. I worry that we end up presenting or describing young women as particularly vulnerable due to their sex, overemphasising victimhood. That, in and of itself, can undermine women's confidence rather than encouraging them to see themselves as strong, resilient and so on. I was especially worried about Amendment 171, in the name of the noble Baroness, Lady Featherstone, but she is not here to move it. It states that content that promotes or perpetuates violence against women and girls should be removed, and the users removed if they are identified as creating or even disseminating it.

What always worries me about this is Bill that, because we want to improve the world—I know that is the joint enterprise here—we could get carried away. Whereas in law we have a very narrow definition of what incitement to violence is, here we are not very specific about it. I worry about the low threshold whereby somebody who creates a horrible sexist meme will be punished, but then someone who just retweets it will be treated in the same way. I want to be able to have a conversation about why that is the wrong thing to do. I am worried, as I always am, about censorship and so on.

The statistics are a bit confusing on this. There are often-repeated statistics, but you need to dig down, look at academic papers and talk to people who work in this field. An academic paper from Oxford Internet Surveys from August 2021 notes that the exceptional prevalence of online hostility to women is largely based on anecdotal experience, and that a closer look across the British population, contrary to conventional wisdom, shows that women are not necessarily more likely than men to experience hateful speech online. It also notes, however, that there is empirical evidence to show that subgroups of women—it cites journalists and politicians—can be disproportionately targeted. I will not go through all the statistics, although I do have them here, but there were very small differences of 2% or 3%, and in some instances young men were more likely to suffer abuse.

Ofcom's *Online Nation* report of June 2022 says that women are more negatively affected by trolling and so on, but again, I worry about the gender point. I am worried that what we are trying to tackle here is what we all know to be a toxic and nasty political atmosphere in society that is reflected online. We all know what we are talking about. People bandy around the most vile labels; we see that regularly on social media, and, if you are a woman, it does take on this nasty, sexist side. It is incredibly unpleasant.

We also have to recognise that that is a broad, moral, social and cultural problem, which I hope that we will try to counter. I am no men's rights sympathiser by any stretch, but I also noticed that the Ofcom

[Baroness Fox of Buckley]
report said that young men are more likely than women to have experienced seeing potentially harmful behaviour or content online in the four weeks before the survey response—64% of men as against 60% of women. Threats of physical violence were more prevalent with boys than women—16% versus 11%—while sexual violence was the other way around. So I want us to have a sense of proportion and say that no one on the receiving end of this harmful, nasty trolling should be ignored, regardless of their sex.

It is also interesting—I will finish with this—that UK women are avid users of social media platforms, spending more than a quarter of their waking hours online and around half an hour more than men each day. We say that the online world is inhospitable to women, but there are a lot of them on it regardless, so we need a sense of perspective. Ofcom's report makes the point that, often,

"the benefits of being online outweigh the risks".

More women than men disagree with that; 63% agree with it compared with 71% of males. But we need a sense of perspective here because, actually, the majority of young men and women like being online. Sometimes it can give young women a sense of solidarity and sisterhood. All the surveys that I have read say that female participants feel less able to share their opinions and use their voice online, and we have to ask why.

The majority of young people who I work with are women. They say the reason they dare not speak online is not misogynist hate speech but cancel culture. They are walking on eggshells, as there are so many things that you are not allowed to say. Your Lordships will also be aware that, in gender-critical circles, for example, a lot of misogynistic hate speech is directed at women who are not toeing the line on a particular orthodoxy today. I do not want a remedy for that toxicity, with women not being sure if they can speak out because of cancel culture, if that remedy introduces more censorious trends.

Baroness Burt of Solihull (LD): My Lords, it is an honour to follow some very knowledgeable speakers, whose knowledge is much greater than mine. Nevertheless, I feel the importance of this debate above and beyond any other that I can think of on this Bill. However, I do not agree with the noble Baroness, Lady Stowell of Beeston, who said that women should not be victims. They are not victims; they are being victimised. We need a code—the code that is being proposed—not for the victims but for the tech companies, because of the many diverse strands of abuse that women face online. This is an enabler for the tech companies to get their heads around what is coming and to understand it a lot better. It is a helpful tool, not a mollycoddling tool at all.

I strongly agree with everything else, apart from what was said by the noble Baroness, Lady Fox, which I will come on to in a second. I and, I am sure, other noble Lords in this Chamber have had many hundreds of emails from concerned people, ordinary people, who nevertheless understand the importance of what this code of practice will achieve today. I speak for them, as well as the others who have supported this particularly important amendment.

As their supporters have pointed out in this Chamber, Amendments 97 and 304 are the top priority for the Domestic Abuse Commissioner, who believes that, if they do not pass, the Bill will not go far enough to prevent and respond effectively to domestic abuse online. The noble Baroness, Lady Fox, spoke about the need to keep a sense of proportion, but online abuse is everywhere. According to the charity Refuge—I think this was mentioned earlier—over one-third of women and 62% of young women have experienced online abuse and harassment.

I am sure that the Minister is already aware that a sector coalition of experts on violence against women and girls put together the code of practice that we are discussing today. It is needed, as I have said, because of the many strands of abuse that are perpetuated online. However, compliance with the new terms of service to protect women and girls is not cheap. In cost-driven organisations, the temptation will be to relax standards as time goes by, which we have seen in the past in the cases of Facebook and Twitter. The operators' feet must be held to the fire with this new, stricter and more comprehensive code. People's lives depend on it.

In his remarks, can the Minister indicate whether the Government are at least willing to look at this code? Otherwise, can he explain how the Government will ensure that domestic abuse and its component offences are understood by providers in the round?

Baroness Gohir (CB): My Lords, I rise to support the noble Baronesses, Lady Morgan and Lady Kidron, the right reverend Prelate the Bishop of Gloucester and the noble Lord, Lord Knight of Weymouth, on Amendment 97 to Clause 36 to mandate Ofcom to produce codes of practice, so that these influential online platforms have to respond adequately to tackle online violence against women and girls.

Why should we care about these codes of practice being in the Bill? Not doing so will have far-reaching consequences, of which we have already heard many examples. First, it will threaten progress on gender equality. As the world moves to an increasingly digital future, with more and more connections and conversations moving online, women must have the same opportunity as men to be a part of the online world and benefit from being in the online space.

Secondly, it will threaten the free speech of women. The voices of women are more likely to be suppressed. Because of abuse, women are more likely to reduce their social media activity or even leave social media platforms altogether.

Thirdly, we will be failing in our obligation to protect the human rights of women. Every woman has the right to be and feel safe online. I thank the noble Baroness, Lady Kidron, who highlighted online abuse due to intersecting identities. The noble Baroness, Lady Stowell, mentioned that this could cause divisions; there are divisions already, given the level of online abuse faced by women. Until we get an equal and just society, additional measures are needed. I know that the noble Baroness, Lady Fox, is worried about censorship, but women also have the right to feel safe online and offline. The noble Baroness is worried about whether this is a proportionate response, but I do feel that it is.

Relying on tech companies to self-regulate on VAWG is a bad idea. At present, the overwhelming majority of tech companies are led by men and their employees are most likely to be men, who will be taking decisions on content and on moderating that content. So we are relying on the judgment of a sector that itself needs to be more inclusive of women and is known for not sufficiently tackling the online abuse of women and girls.

I will give a personal example. Someone did not like what I said on Twitter and posted a message with a picture of a noose, which I found threatening. I reported that and got a response to say that it did not violate terms and conditions, so it remained online.

The culture at these tech companies was illustrated a few years ago when employees at Google walked out to protest against sexism. Also, research a couple of years ago by a campaign group called Global Witness found that Facebook used biased algorithms that promoted career and gender stereotypes, resulting in particular job roles being seen by men and others being seen by women. We know that other algorithms are even more harmful and sinister and promote hatred and misogyny. So relying on a sector that may not care much about women's rights or their well-being to do the right thing is not going to work. Introducing the VAWG code in the Bill will help to make tech companies adequately investigate and respond to reports of abuse and take a proactive approach to minimise and prevent the risk of abuse taking place in the first instance.

7.30 pm

I also add my support to the noble Baroness's Amendment 304, to Clause 207, so that the definition of violence against women and girls is in line with the gold standard framework provided by the Istanbul convention, which was ratified by the UK Government.

The Bill is a unique opportunity to protect women and girls online, so I commend the Government on introducing it to Parliament, but they could do much more to combat violence against women and girls. If they do not, inaction now will result in us sleepwalking into a culture of normalising despicable behaviour towards women even more openly. If online perpetrators of abuse are not tackled robustly now, it will embolden them further to escalate and gaslight victims. The Government must send perpetrators a message that there is no place to hide—not even online. If the Government want the UK to be the safest place in the world to be online, they should agree to these amendments.

Lord Clement-Jones (LD): My Lords, I will be very brief. My noble friend has very eloquently expressed the support on these Benches for these amendments, and I am very grateful to the noble Baroness, Lady Morgan, for setting out the case so extremely convincingly, along with many other noble Lords. It is, as the noble Baroness, Lady Kidron, said, about the prevention of the normalisation of misogyny. As my noble friend said, it is for the tech companies to prevent that.

The big problem is that the Government have got themselves into a position where—except in the case of children—the Bill now deals essentially only with illegal harms, so you have to pick off these harms one by one and create illegality. That is why we had the debate in the last group about other kinds of harm. This is another harm that we are debating, precisely because the Government amended the Bill in the Commons in the way that they did. But it does not make this any less important. It is quite clear; we have talked about terms of service, user empowerment tools, lack of enforcement, lack of compliance and all the issues relating to these harms. The use of the expression "chilling effect"—I think by the noble Baroness, Lady Kidron—and then the examples given by the noble Baroness, Lady Gohir, absolutely illustrated that. We are talking about the impact on freedom of expression.

I am afraid that, once again, I do not agree with the noble Baroness, Lady Fox. Why do I find myself disagreeing on such a frequent basis? I think the harms override the other aspects that the noble Baroness was talking about.

We have heard about the lack of a proper complaints system—we are back to complaints again. These themes keep coming through, and until the Government see that there are flaws in the Bill, I do not think we are going to make a great deal more progress. The figure given was that more than half of domestic abuse survivors did not receive a response from the platform to their report of domestic abuse-related content. That kind of example demonstrates that we absolutely need this code.

There is an absolutely convincing case for what one of our speakers, probably the right reverend Prelate, called a holistic way of dealing with these abuses. That is what we need, and that is why we need this code.

Baroness Merron (Lab): My Lords, the amendments in this group, which I am pleased to speak to now, shine a very bright light on the fact that there is no equality when it comes to abuse. We are not starting at a level playing field. This is probably the only place that I do not want to level up; I want to level down. This is not about ensuring that men can be abused as much as women; it is about the very core of what the Bill is about, which is to make this country the safest online space in the world. That is something that unites us all, but we do not start in the same place.

I thank all noble Lords for their very considered contributions in unpicking all the issues and giving evidence about why we do not have that level playing field. Like other noble Lords, I am grateful to the noble Baroness, Lady Morgan, for her thorough, illustrative and realistic introduction to this group of amendments, which really framed it today. Of course, the noble Baroness is supported in signing the amendment by the noble Baroness, Lady Kidron, the right reverend Prelate the Bishop of Gloucester and my noble friend Lord Knight.

The requirement in Amendment 97 that there should be an Ofcom code of practice is recognition that many aspects of online violence disproportionately affect women and girls. I think we always need to come back to that point, because nothing in this debate has taken me away from that very clear and fundamental point. Let us remind ourselves that the online face of violence against women and girls includes—this is not a full list—cyberflashing, abusive pile-ons, incel gangs and cyberstalking, to name but a few. Again, we are not starting from a very simple point; we are talking about an evolving online face of violence against women and girls, and the Bill needs to keep pace.

[Baroness Merron]

I associate myself with the words of the noble Baroness, Lady Morgan, and other noble Lords in thanking and appreciating the groups and individuals who have already done the work, and who have—if I might use the term—an oven-ready code of practice available to the Minister, should he wish to avail himself of it. I share the comments about the lack of logic. If violence against women and girls is part of the strategic policing requirement, and the Home Secretary says that dealing with violence against women and girls is a priority, why is this not part of a joined-up government approach? That is what we should now be seeing in the Bill. I am sure the Minister will want to address that question.

The right reverend Prelate the Bishop of Gloucester rightly said that abuse is abuse. Whether it is online or offline, it makes no difference. The positive emphasis should be that women and girls should be able to express themselves online as they should be able to offline. Again, that is a basic underlying point of these amendments.

I listened very closely to the words of the noble Baroness, Lady Stowell. I understand her nervousness, and she is absolutely right to bring before the Committee that perhaps a code of conduct of this nature could allow and encourage, to quote her, division. The challenge we have is that women and girls have a different level of experience. We all want to see higher standards of behaviour, as the noble Baroness referred to—I know that we will come back to that later. However, I cannot see how not having a code of conduct will assist those higher standards because the proposed code of conduct simply acknowledges the reality, which is that women and girls are 27 times more likely to be abused online than men are. I want to put on record that this is not about emphasising division, saying that it is all right to abuse men or, as the noble Baroness gives me the opportunity to say, saying that all men are somehow responsible—far from it. As ever, this is something that unites us all: the tackling of abuse wherever it takes place.

Amendment 104 in the name of my noble friend Lord Stevenson proposes an important change to Schedule 4: that

"women and girls, and vulnerable adults"

should have a higher standard of protection than other adult users. That amendment is there because the Bill is silent on these groups. There is no mention of them, so we seek to change this through that amendment.

To return to the issue of women and girls, two-thirds of women who report abuse to internet companies do not feel heard. Three-quarters of women change their behaviour after receiving online abuse. I absolutely agree with the noble Baroness, Lady Kidron, who made the point that the Bill currently assumes that there is no interconnection between different safety duties where somebody has more than one protected characteristic, because it misses reality. One has only to talk to Jewish women to know that, although anti-Semitism knows no bounds, if you are a Jewish woman then there is no doubt that you will be the subject of far greater abuse than your male counterpart. Similarly, women of colour are one-third more likely to be mentioned in abusive tweets than white women. Again, there is no level playing field.

As it stands, the Bill puts an onus on women and girls to protect themselves from online violence and abuse. The problem, as has been mentioned many times, is that user empowerment tools do not incentivise services to address the design of their service, which may be facilitating the spread of violence against women and girls. That point was very well made by my noble friend Lady Healy and the noble Baroness, Lady Gohir, in their contributions.

On the question of the current response to violence against women and girls from tech companies, an investigation by the *Times* identified that platforms such as TikTok and YouTube are profiting from a wave of misogynist content, with a range of self-styled "self-help gurus", inspired by the likes of Andrew Tate, offering advice to their millions of followers, encouraging men and boys, in the way described by the noble Baroness, Lady Stowell, to engage with women and girls in such a way that amounts to pure abuse, instructing boys and men to ensure that women and girls in their lives are "compliant", "insecure" and "well-behaved". This is not the kind of online space that we seek.

I hope that the Minister, if he cannot accept the amendments, will give his assurance that he can understand what is behind them and the need for action, and will reflect and come back to your Lordships' House in a way that can allow us to level down, rather than level up, the amount of abuse that is aimed at men but also, in this case in particular, at women and girls.

7.45 pm

Lord Parkinson of Whitley Bay (Con): My Lords, protecting women and girls is a priority for His Majesty's Government, at home, on our streets and online. This Bill will provide vital protections for women and girls, ensuring that companies take action to improve their safety online and protect their freedom of expression so that they can continue to play their part online, as well as offline, in our society.

On Amendments 94 and 304, tabled by my noble friend Lady Morgan of Cotes, I want to be unequivocal: all service providers must understand the systemic risks facing women and girls through their illegal content and child safety risk assessments. They must then put in place measures that manage and mitigate these risks. Ofcom's codes of practice will set out how companies can comply with their duties in the Bill.

I assure noble Lords that the codes will cover protections against violence against women and girls. In accordance with the safety duties, the codes will set out how companies should tackle illegal content and activity confronting women and girls online. This includes the several crimes that we have listed as priority offences, which we know are predominantly perpetrated against women and girls. The codes will also cover how companies should tackle harmful online behaviour and content towards girls.

Companies will be required to implement systems and processes designed to prevent people encountering priority illegal content and minimise the length of time for which any such content is present. In addition, Ofcom will be required to carry out broad consultation when drafting codes of practice to harness expert

opinions on how companies can address the most serious online risks, including those facing women and girls. Many of the examples that noble Lords gave in their speeches are indeed reprehensible. The noble Baroness, Lady Kidron, talked about rape threats and threats of violence. These, of course, are examples of priority illegal content and companies will have to remove and prevent them.

My noble friend Lady Morgan suggested that the Bill misses out the specific course of conduct that offences in this area can have. Clause 9 contains provisions to ensure that services

"mitigate and manage the risk of the service being used for the commission or facilitation of"

an offence. This would capture patterns of behaviour. In addition, Schedule 7 contains several course of conduct offences, including controlling and coercive behaviour, and harassment. The codes will set out how companies must tackle these offences where this content contributes to a course of conduct that might lead to these offences.

To ensure that women's and girls' voices are heard in all this, the Bill will, as the right reverend Prelate noted, make it a statutory requirement for Ofcom to consult the Victims' Commissioner and the domestic abuse commissioner about the formation of the codes of practice. As outlined, the existing illegal content, child safety and child sexual abuse and exploitation codes will already cover protections for women and girls. Creating a separate code dealing specifically with violence against women and girls would mean transposing or duplicating measures from these in a separate code.

In its recent communication to your Lordships, Ofcom stated that it will be consulting quickly on the draft illegal content and child sexual abuse and exploitation codes, and has been clear that it has already started the preparatory work for these. If Ofcom were required to create a separate code on violence against women and girls this preparatory work would need to be revised, with the inevitable consequence of slowing down the implementation of these vital protections.

An additional stand-alone code would also be duplicative and could cause problems with interpretation and uncertainty for Ofcom and providers. Linked to this, the simpler the approach to the codes, the higher the rates of compliance are likely to be. The more codes there are covering specific single duties, the more complicated it will be for providers, which will have to refer to multiple different codes, and the harder for businesses to put in place the right protections for users. Noble Lords have said repeatedly that this is a complex Bill, and this is an area where I suggest we should not make it more complex still.

As the Bill is currently drafted, Ofcom is able to draft codes in a way that addresses a range of interrelated risks affecting different groups of users, such as people affected in more than one way; a number of noble Lords dealt with that in their contributions. For example, combining the measures that companies can take to tackle illegal content targeting women and girls with the measures they can take to tackle racist abuse online could ensure a more comprehensive and effective approach that recognises the point, which a number of noble Lords made, that people with more than one protected characteristic under the Equality Act may be at compound risk of harm. If the Bill stipulated that Ofcom separate the offences that disproportionately affect women and girls from other offences in Schedule 7, this comprehensive approach to tackling violence against women and girls online could be lost.

Baroness Morgan of Cotes (Con): Could my noble friend the Minister confirm something? I am getting rather confused by what he is saying. Is it the case that there will be just one mega code of practice to deal with every single problem, or will there be lots of different codes of practice to deal with the problems? I am sure the tech platforms will have sufficient people to be able to deal with them. My understanding is that Ofcom said that, while the Bill might not mandate a code of practice on violence against women and girls, it would in due course be happy to look at it. Is that right, or is my noble friend the Minister saying that Ofcom will never produce a code of practice on violence against women and girls?

Lord Parkinson of Whitley Bay (Con): It is up to Ofcom to decide how to set the codes out. What I am saying is that the codes deal with specific categories of threat or problem—illegal content, child safety content, child sexual abuse and exploitation—rather than with specific audiences who are affected by these sorts of problems. There is a circularity here in some of the criticism that we are not reflecting the fact that there are compound harms to people affected in more than one way and then saying that we should have a separate code dealing with one particular group of people because of one particular characteristic. We are trying to deal with categories of harm that we know disproportionately affect women and girls but which of course could affect others, as the noble Baroness rightly noted. Amendment 304—

Baroness Merron (Lab): I thank the Minister for giving way. There is a bit of a problem that I would like to raise. I think the Minister is saying that there should not be a code of practice in respect of violence against women and girls. That sounds to me like there will be no code of practice in this one particular area, which seems rather harsh. It also does not tackle the issue on which I thought we were all agreed, even if we do not agree the way forward: namely, that women and girls are disproportionately affected. If it is indeed the case that the Minister feels that way, how does he suggest this is dealt with?

Lord Parkinson of Whitley Bay (Con): There are no codes designed for Jewish people, Muslim people or people of colour, even though we know that they are disproportionately affected by some of these harms as well. The approach taken is to tackle the problems, which we know disproportionately affect all of those groups of people and many more, by focusing on the harms rather than the recipients of the harm.

Baroness Morgan of Cotes (Con): Can I check something with my noble friend? This is where the illogicality is. The Government have mandated in the *Strategic Policing Requirement* that violence against women and girls is a national threat. I do not disagree

[Baroness Morgan of Cotes]
with him that other groups of people will absolutely suffer abuse and online violence, but the Government themselves have said that violence against women and girls is a national threat. I understand that my noble friend has the speaking notes, the brief and everything else, so I am not sure how far we will get on this tonight, but, given the Home Office stance on it, I think that to say that this is not a specific threat would be a mistake.

Lord Parkinson of Whitley Bay (Con): With respect, I do not think that that is a perfect comparison. The *Strategic Policing Requirement* is an operational policing document intended for chief constables and police and crime commissioners in the important work that they do, to make sure they have due regard for national threats as identified by the Home Secretary. It is not something designed for commercial technology companies. The approach we are taking in the Bill is to address harms that can affect all people and which we know disproportionately affect women and girls, and harms that we know disproportionately affect other groups of people as well.

We have made changes to the Bill: the consultation with the Victims' Commissioner and the domestic abuse commissioner, the introduction of specific offences to deal with cyber-flashing and other sorts of particular harms, which we know disproportionately affect women and girls. We are taking an approach throughout the work of the Bill to reflect those harms and to deal with them. Because of that, respectfully, I do not think we need a specific code of practice for any particular group of people, however large and however disproportionately they are affected. I will say a bit more about our approach. I have said throughout, including at Second Reading, and my right honourable friend the Secretary of State has been very clear in another place as well, that the voices of women and girls have been heard very strongly and have influenced the approach that we have taken in the Bill. I am very happy to keep talking to noble Lords about it, but I do not think that the code my noble friend sets out is the right way to go about solving this issue.

Amendment 304 seeks to adopt the Istanbul convention definition of violence against women and girls. The Government are already compliant with the Convention on Preventing and Combating Violence Against Women and Domestic Violence, which was ratified last year. However, we are unable to include the convention's definition of violence against women and girls in the Bill, as it extends to legal content and activity that is not in scope of the Bill as drafted. Using that definition would therefore cause legal uncertainty for companies. It would not be appropriate for the Government to require companies to remove legal content accessed by adults who choose to access it. Instead, as noble Lords know, the Government have brought in new duties to improve services' transparency and accountability.

Amendment 104 in the name of the noble Lord, Lord Stevenson, seeks to require user-to-user services to provide a higher standard of protection for women, girls and vulnerable adults than for other adults. The Bill already places duties on service providers and Ofcom to prioritise responding to content and activity that presents the highest risk of harm to users. This includes users who are particularly affected by online abuse, such as women, girls and vulnerable adults. In overseeing the framework, Ofcom must ensure that there are adequate protections for those who are most vulnerable to harm online. In doing so, Ofcom will be guided by its existing duties under the Communications Act, which requires it to have regard when performing its duties to the

"vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection".

The Bill also amends Ofcom's general duties under the Communications Act to require that Ofcom, when carrying out its functions, considers the risks that all members of the public face online, and ensures that they are adequately protected from harm. This will form part of Ofcom's principal duty and will apply to the way that Ofcom performs all its functions, including when producing codes of practice.

In addition, providers' illegal content and child safety risk assessment duties, as well as Ofcom's sectoral risk assessment duties, require them to understand the risk of harm to users on their services. In doing so, they must consider the user base. This will ensure that services identify any specific risks facing women, girls or other vulnerable groups of people.

As I have mentioned, the Bill will require companies to prioritise responding to online activity that poses the greatest risk of harm, including where this is linked to vulnerability. Vulnerability is very broad. The threshold at which somebody may arguably become vulnerable is subjective, context-dependent and maybe temporary. The majority of UK adult users could be defined as vulnerable in particular circumstances. In practice, this would be very challenging for Ofcom to interpret if it were added to the safety objectives in this way. The existing approach allows greater flexibility so that companies and Ofcom can focus on the greatest threats to different groups of people at any given time. This allows the Bill to adapt to and keep pace with changing risk patterns that may affect different groups of people.

8 pm

I am conscious that, for understandable reasons, the noble Baroness, Lady Featherstone, is not here to speak to her Amendment 171. I will touch on it briefly in her absence. It relates to platform transparency about providers' approaches to content that promotes violence against women, girls and vulnerable groups. Her amendment raises an extremely important issue. It is essential that the Bill increase transparency about the abuse of women, girls and vulnerable people online. This is why the Bill already empowers Ofcom to request extensive information about illegal and harmful online abuse of women, girls and vulnerable groups in transparency reports. Accepting this amendment would therefore be duplicative. I hope that the noble Baroness would agree that it is not needed.

I hope that I have given some reassurance that the Bill covers the sort of violent content about which noble Lords are rightly concerned, no matter against whom it is directed. The Government recognise that many of these offences and much of the violence does disproportionately affect women and girls in the way that has been correctly pointed out. We have reflected this in the way in which the Bill and its regulatory

framework are to operate. I am happy to keep discussing this matter with my noble friend. She is right that it is important, but I hope that, at this juncture, she will be content to withdraw her amendment.

Baroness Morgan of Cotes (Con): My Lords, I thank my noble friend for his response, which I will come on to in a moment. This has been a fascinating debate. Yet again, it has gone to the heart of some of the issues with this Bill. I thank all noble Lords who have spoken, even though I did not quite agree with everything they said. It is good that this Committee shows just how seriously it takes the issue of violence against women and girls. I particularly thank all those who are watching from outside. This issue is important to so many.

There is no time to run through all the brilliant contributions that have been made. I thank the right reverend Prelate the Bishop of Gloucester for her support. She made the point that, these days, for most people, there is no online/offline distinction. To answer one of the points made, we sometimes see violence or abuse that starts online and then translates into the offline world. Teachers in particular are saying that this is the sort of misogyny they are seeing in classrooms.

As the noble Baroness, Lady Merron, said, the onus should not be on women and girls to remove themselves from online spaces. I also thank the noble Baronesses, Lady Kidron and Lady Gohir, for their support. The noble Baroness, Lady Kidron, talked about the toxic levels of online violence. Parliament needs to say that this is not okay—which means that we will carry on with this debate.

I thank the noble Baroness, Lady Healy, for her contribution. She illustrated so well why a code of practice is needed. We can obviously discuss this, but I do not think the Minister is quite right about the user reporting element. For example, we have heard various women speaking out who have had multiple rape threats. At the moment, the platforms require each one to be reported individually. They do not put them together and then work out the scale of threat against a particular user. I am afraid that this sort of threat would not breach the illegal content threshold and therefore would not be caught by the Bill, despite what the Minister has been saying.

I agree with my noble friend Lady Stowell. I would love to see basic standards—I think she called it "civility"—and a better society between men and women. One of the things that attracts me most to the code of practice is that it seeks cultural and societal changes—not just whack-a-mole with individual offences but changing the whole online culture to build a healthier and better society.

I will certainly take up the Minister's offer of a meeting. His response was disappointing. There was no logic to it at all. He said that the voice of women and girls is heard throughout the Bill. How can this be the case when the very phrase "women and girls" is not mentioned in 262 pages? Some 100,000 people outside this Chamber disagree with his position and on the need for there to be a code of practice. I say to both Ofcom and the tech platforms that a code has been drafted. Please do not do the "Not drafted here; we're not going to adopt it". It is there, the work has been done and it can easily be taken on.

I would be delighted to discuss the definition in Amendment 304 with my noble friend. I will of course withdraw my amendment tonight, but we will certainly return to this on Report.

Amendment 97 withdrawn.

Amendment 98 not moved.

House resumed. Committee to begin again not before 8.45 pm.

Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2023

Motion to Regret

8.06 pm

Moved by ***Lord Ponsonby of Shulbrede***

That this House regrets that in laying the Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2023 (SI 2023/298) His Majesty's Government have not yet published the evidence to justify this change of policy, which has potential ramifications for slowing down the justice system for victims, witnesses and defendants; further regrets that sitting magistrates have spent thousands of hours cumulatively on training to properly sentence using the 12 months training pack; and calls on His Majesty's Government to announce the expected date for the review of the effect of reducing sentencing powers to six months.

Relevant document: 35th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

Lord Ponsonby of Shulbrede (Lab): My Lords, in moving this regret Motion, I remind the House that I am a sitting magistrate in London. I thank the Magistrates' Association for the briefing that it has provided, as well as the Secondary Legislation Scrutiny Committee for its work in asking, the Minister, Mike Freer, to flesh out the reasons for this change to magistrates' sentencing powers.

The instrument that is the subject of this regret Motion reduces the maximum custodial sentence that magistrates' courts can impose for a single either way offence from 12 to six months, reversing a change put in place in May 2022. The higher sentencing powers had been in place for only 10 months when they were reversed. The May 2022 change did not alter the maximum sentence for any given offence; it simply changed which court might try cases expected to have a maximum sentence of between six and 12 months.

The justification given by the Lord Chief Justice was that, since magistrates' courts work faster than Crown Courts, the increase sentencing powers had led to an increase in the prison population that needed to be addressed, and that going back to the previous sentencing powers would slow down the increase in the prison population. The Ministry of Justice is also running Operation Safeguard, which is designed to

[Lord Ponsonby of Shulbrede]
create a vacancy contingency in the male prison estate. Minister Freer has also said that that would be part of a raft of measures to decrease the prison population. We do not yet know what the other measures will be. I want to put on record that the Minister has said that there will be a six-month review on this change in policy.

In his response to the SLSC letter, Minister Freer spoke of downstream pressures on the prison population, namely the recruitment of extra police officers, tougher sentences, more recalls of prisoners on licence, working through the Covid backlog and the Criminal Bar Association's strike. All these factors have contributed to the growth in the prison population—about 4,000 prisoners in the past year. We do not know how that figure is broken down between these various pressures. In my view, it is unlikely that the change in sentencing powers has played a significant part in the overall increase.

I shall go through the objections to and the questions raised by this change in sentencing powers, first made by the SLSC and then by the Magistrates' Association. First, when considering the numbers in custody and on bail, those waiting for their trial in custody will have to wait longer because of the far longer backlog in the Crown Courts. When Mr Freer, the Minister, was asked about the increased risk of reoffending of those who are on bail to Crown Courts, he said there was no available data. The SLSC commented that this was indeed a relevant factor and should have been assessed as part of the policy-making process.

On the costs of the two systems, Mr Freer asserted that the change does not give rise to any direct financial pressure because it does not introduce any new demand into the system but simply transfers some cases to the Crown Court. The SLSC was unimpressed by that point and pointed out that Crown Courts take longer to hear cases, involve juries and are very likely to be more expensive.

An analysis of the May 2022 change was promised by the noble Lord, Lord Wolfson of Tredegar, on Report of the Judicial Review and Courts Bill. The SLSC pointed out that no data had been published and called on the Ministry of Justice to complete and publish its review so that a more informed decision could be taken when considering the effect of changing maximum sentencing powers in magistrates' courts. It also inquired whether more research could be done to see whether sentence lengths vary between similar cases in magistrates' courts and Crown Courts.

In conclusion, the SLSC said that using the maximum sentence available to magistrates' courts as a sort of valve that could be opened and closed in response to wider developments that affected the prison population was not an optimum way of making policy, as it failed to consider other potentially important factors. The SLSC said that maximum sentences in magistrates' courts should be determined by the overall outcomes for society and should be evidence-based, and it believed that this was not the case with the Government's decision.

Turning to the Magistrates' Association, I can do no better than refer to what Mark Beattie, the current chairman of the association, has said: "The reaction of magistrates has been very negative. Magistrates each spent three hours completing a mandatory training pack, totalling over 30,000 hours of our own time on our own equipment. Chairs of training committees personally chased up people who had not done the training so they could complete the training before they sat in court. These chairs are feeling particularly aggrieved, both because of the many extra hours they have spent at this task and because they fear that this sudden reversal will have damaged their ability to persuade people the next time they ask them to undertake extra training. They feel personally undermined, and as this is an essential statutory role, it is especially bad if they feel that their ability to perform their duties has been impacted. 'Why do the training if the rules can be changed so easily?' is a message that we are hearing. We know, because we have been told, that magistrates are resigning over this matter, although we don't know the numbers or the locations."

Of course magistrates will work conscientiously to deal with the cases put in front of them and fulfil the judicial oath they have all taken. However, it is incumbent on the Government, through the Ministry of Justice, to ensure that the decisions taken are properly evidenced-based and that court users can understand the rationale behind those decisions.

I would be grateful if the Minister could give any indication of a timetable for a review of the current sentencing arrangements, and whether that review will take into account the additional factors highlighted by the SLSC and the Magistrates' Association. I beg to move.

Lord Thomas of Gresford (LD): My Lords, I am sorry to hear that the magistrates were upset by the introduction of this change.

I was articled as a solicitor in the office of the clerk to the magistrates of the Ruabon Bench in north-east Wales. The chairman of the Bench was Lord Maelor, formerly TW Jones, the Labour MP for Merioneth. He had gone down the pit at the age of 14 for 12 shillings a week and later served time in Wormwood Scrubs and Dartmoor as a conscientious objector, which is an unusual beginning for the chairman of the Magistrate's Bench. He is noted for being the first and perhaps the last noble Lord to burst into song in the middle of a speech in this Chamber. Once when Mormon missionaries called at his terrace house in Rhosllanerchrugog and asked, "Is the Lord within?", his wife replied, "No, he's just gone for his cigarettes."

8.15 pm

To me, TW was the essence of a good magistrate. He was totally involved in the community, sometimes uncomfortably so. If a miscreant came from Rhos, his home village, he would not rest until he had identified his father, his mother, his chapel and his home. I cut my teeth in prosecuting, in front of that Bench, those who had trespassed in pursuit of conies or, worse, poached a pheasant on local estates.

I have always valued the commitment and dedication of lay magistrates and their desire to do justice, whatever the clerk may advise them about the law. I know that they regard imprisonment as a last resort. I must also pay tribute to their work in family courts. Friends of mine who have been or are magistrates have found that area of law to be most rewarding.

What the magistracy has gained, therefore, is not just acceptance but trust in dealing with the 95% of criminal cases which come before magistrates. I have less trust in the motivation of the Ministry of Justice, which is promoting a now traditional Conservative U-turn in policy in the record time of 19 months. So far as I am aware, this is not based on research into the outcomes of the policy announced by Dominic Raab. His expressed purpose in January 2022 was to reduce the backlog of Crown Court cases by 1,700 either-way cases—a reduction of 2% to 3% of what was then a backlog of 60,000 cases and is now said to be 61,000.

I struggle to find any reason in the Explanatory Memorandum for the reversal of the policy. For me, it explains nothing. It says

"we are currently experiencing downstream pressures in the criminal justice system as, for example, manifested in Operation Safeguard and it is important that the government ensures a cohesive cross-system response to this growing pressure. Whilst increased MSPs is not the only factor behind this pressure and the data on the impact of MSPs is still limited, it is safest to temporarily reduce MSPs to 6 months so that the Crown Court retains power over decisions in respect of longer sentences".

I do not know what that means. What are "downstream pressures"? What are the other terms that are used in that particular context? I would be grateful if the Minister could address those problems.

Your Lordships might observe that my iPad has gone blank, so I am a little bit lost at this stage. Suffice it to say that we need some justification—some research—to find out what has happened in the last 19 months. Why is the policy now being reversed? Is it simply that magistrates are sentencing for too long a period, or what? What the ministry needs to bear in mind is that they may be passing sentences of between six and 12 months—the short sentences, which, unhappily, do not resolve the problems of the individual. There is no way in which he can be rehabilitated in that time; nor do those problems get dealt with. I therefore look forward to an explanation from the Minister, and I apologise that my script has disappeared.

Baroness Sater (Con): My Lords, I share the anxieties and concerns of the noble Lord, Lord Ponsonby. I declare my interests as set out in the register, including as a former magistrate and, at present, a life member of the Magistrates' Association.

I appreciate that the criminal justice system is currently experiencing—as the noble Lord mentioned—"downstream pressures", as manifested in Operation Safeguard. Indeed, as has already been said, Ministers have said that this pause gives them time to review this measure, assessing relevant data across the CJS, with a view to reinstating powers should this be supported by the evidence. Ministers, however, have also been clear that the increase to sentencing powers is not the only factor behind this pressure, and that the data on the impact is still limited. In the light of this, therefore, I question whether it can be justified for this change to be made, given the impact it will have on magistrates delivering speedier justice. Surely it would be better to make this change only if the data clearly suggested that it was a significant factor behind the increased pressure we have seen.

As the noble Lord, Lord Ponsonby, has stated, this change has ramifications for slowing down the justice system for victims, witnesses and defendants, not to mention the hours of training by sitting magistrates. I would be grateful to hear from my noble and learned friend the Minister more on this, specifically regarding the process, what evidence and data are needed and when this review will be concluded.

Baroness Jones of Moulsecoomb (GP): My Lords, considering that we deal with a lot of very big Bills here in your Lordships' House, this is quite a small issue, but for me, it encapsulates the panicky and misguided way in which the Government constantly tackle big problems such as our prison population and the justice system. It is an example of their wanting a quick fix for something that they have damaged over the last 13 years of austerity and incompetence.

I cannot comment on whether six months or 12 months is right—I do not have a magistrate's training—but I can say that we have too many people in prison and we have to stop sending so many people to prison, particularly women. We also have to be clear, of course, that people coming out of prison need help if they are not going to reoffend. You cannot fix these big problems with tiny little tweaks such as this.

I do not understand why such knee-jerk reactions happen all the time with this Government. Where is the overview or the long-term planning? Where is the coherence for dealing with these big problems? This Government have tried to fix the whole justice system on the cheap. It has not in fact been cheap, of course, because it is very expensive to keep people in prison and train magistrates, while not giving people the support they need when they come out of prison, so they go on to offend again. Why not have a longer-term plan?

This Government have got, one supposes, another year. Please could they get some expert advice on this sort of thing and not keep flailing around? One minute it is six months, the next it is 12 months and then it is back to six months again. This is not good government; it just does not make any sense to do things like this. The court system is at breaking point and the prisons are way over full, so the Government should really now be thinking about how to solve these two problems. This, I would argue, is not the way to do it. The Government have broken our justice system and are now doing tiny little tweaks to try to fix it, which simply will not work.

Lord Hacking (Lab): My Lords, the House is fortunate in having my colleague and noble friend Lord Ponsonby, and with some reason because he has sat for many years on the magistrates' courts and has enormous experience of their functioning. We are also lucky to have the noble Lord, Lord Thomas, whose memory stretches back—I dare not ask him how many years—to his early days when embarking upon a career at the Bar, and to a certain magistrate whom he much respected in Wales. We are fortunate, too, to have the noble Baroness, Lady Sater, who is behind the Minister, and who also clearly has much experience as a magistrate, although I think she has ceased to be one.

In my experience, and this goes a long way back, magistrates are on the whole sensible people—after all, having been magistrates for 10, 15 or 20 years, they

[Lord Hacking]
have become very experienced—and are not great senders to prison. Magistrates are actually reluctant to send people to prison, particularly for the reason that the noble Lord, Lord Thomas, presented. It does not do much good to have somebody in prison for three or six months to set a kind of an example. It does not work, or did not in my experience, for the normal kind of criminal offences involving theft and violence. But it was quite good for motoring offences, because it set a rather good example to all motorists. If the driver of a motor car who is otherwise without conviction misbehaves really badly in driving their car—these are normally citizens who have not had previous convictions—and they are sentenced to prison for a short time, that is a very big shock.

The central issue has been rightly raised by my noble friend Lord Ponsonby and by the noble Lord, Lord Thomas. There should be proper research on the figures to see whether the basis of this is right, because magistrates across the board do not have a record of imprisoning the people who appear in front of them. It seems to me that to change the sentencing policy down from 12 months, which is only a moderate period, to six months is complete nonsense. Magistrates should have that freedom. All that happens is that the appeals go up—in my day—from the magistrates' sessions to quarter sessions, and, for many years now, to the Crown Court. One of the things that magistrates were able to do—I am sure this remains the position—was that, if they considered that they did not have sufficient powers to sentence the offender for a period of more than 12 months, they could send the case to the higher court and it could be dealt with there.

In summary, we are very spoilt by the presence of those who have experience in magistrates' courts in this House. There should be proper research and I welcome all of those suggestions.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, I am very grateful to all noble Lords who have contributed to this debate, in particular the noble Lord, Lord Ponsonby, whose Motion this is. I also thank the noble Lord, Lord Hunt of Wirral, and his colleagues in the Secondary Legislation Scrutiny Committee for their report. Their comments are understandable; I will say more about the background to this in a moment.

I would first like to make one overarching point. I would like to reassure the House, and through the House the magistracy in general and the Magistrates' Association, that this change is no reflection whatever on the magistracy or its use of the extended powers. The Government place immense value on the continuing and outstanding contribution of magistrates in the justice system. I believe everyone in this House is very aware of the exceptional work that magistrates do. This has already been mentioned by the noble Lords, Lord Thomas and Lord Hacking, and by other noble Lords.

8.30 pm

I most warmly thank the magistrates, including the noble Lord, Lord Ponsonby—who is a distinguished magistrate, if I may say so—for their service to the justice system. I have obviously seen magistrates in action at first hand. I greatly regret that I never had the opportunity to appear before the TW to whom the noble Lord, Lord Thomas, referred. The dedication and principles explained by my noble friend Lady Sater are alive and well in the magistracy. We rely heavily on them in the justice system and they make a vital contribution. I hope I have clarified that as the most important point to arise from this debate.

That takes me to the question of the three hours of training the magistrates did. The Government's hope and expectation is that this training is not wasted and, as soon as it is possible to revert to the underlying purpose of the previous legislation and system, that training will come in again extremely usefully.

That takes me on to explain a little more on the background, and I will do my best to explain the circumstances in which the statutory instrument we are discussing came to be made. As your Lordships are aware, in the Judicial Review and Courts Act 2022 the Government took a variable power to alter magistrates' sentencing limits. It was deliberately a variable power and therefore a cautious approach to enable the Government to deal with unforeseen circumstances in the criminal justice system and to be able to adjust the sentencing powers according to circumstances.

As the House is aware, we are currently experiencing downstream pressures in the criminal justice system. I entirely accept the comment from the noble Lord, Lord Thomas, that this is a somewhat elliptical phrase, but what it means is that currently prison capacity is hovering around 99%. It is quite tight. That is the background to the introduction of Operation Safeguard, which we debated in this House in December 2022. Operation Safeguard is part of a package to manage prison capacity. This statutory instrument takes effect against that background.

Operation Safeguard was announced in November 2022. Meanwhile, the new sentencing powers under this legislation came into force in May 2022. Information available to the ministry in November 2022, six months after the new magistrates' courts powers came into force, showed that sentences in the six to 12 months bracket had increased by some 35%. In other words, in that period there had been quite a sharp increase in percentage terms, which produced an unexpected and accelerated increase of 500 prisoners coming into the system in that six-month period and the possibility of that trend line continuing.

It may sound a small number, but if you are already bumping right up against capacity you have to step back and consider measures to deal with the risk that is emerging. At that point, I think it may be fairly clear that the department finds itself effectively between the devil and the deep. On the one hand, as has been pointed out, the purpose of the reform in the first place was to try to reduce the pressure on the Crown Court by processing cases more efficiently in the magistrates' court. That is a perfectly sensible measure. It is the Government's policy and remains our hope to revert to that policy. On the other hand, as it turned out, with various factors in play, including the distortions caused by the barristers' strike, the new situation was posing risks to the prison system's ability to deal with this change in flow, as it were.

It is perfectly true that in a perfect world one would have perfect information, one would be able to do research and one would have all the time one wished to have. Sometimes, however, if I may respectfully say so, Governments are faced with unexpected circumstances, imperfect information and the need to take a decision without delay, and sometimes they have to decide between very unpalatable options. The options here were extremely unpalatable, but the Government decided that they had to do everything possible to avoid running out of prison capacity, albeit at the expense of some increased pressures in the Crown Court. I venture respectfully to suggest that that was a responsible decision that any responsible Government would take in the circumstances I have outlined.

With regard to some of the observations that were made by the scrutiny committee, and have also been made this evening, I respectfully point out that the effect of the statutory instrument we are discussing is simply to revert to the status quo that existed at the time of TW and the other experiences mentioned, namely that magistrates still enjoy the powers that they have enjoyed for decades. That has been a successful system. All we have done is temporarily, we hope, modify the change that was introduced only in May last year.

As to the general comments from the noble Baroness, Lady Jones, which of course I completely understand, that we have too many in prison and what are the long-term plans and so forth, the management of the prison estate and the whole sentencing policy is somewhat outside the scope of our debate this evening. However, the Government are taking, with at least some modest success, quite extensive efforts to reduce reoffending rates and make prison a more effective regime, particularly in relation to prison education, employment and other matters. Indeed, the noble Lord, Lord Thomas, on a recent occasion in this Chamber, praised Berwyn prison in particular for the success that was being achieved there. So we have some encouraging—if only modestly encouraging—and at least positive signs in the system that the Government are beginning to tackle successfully these very difficult issues.

I will briefly mention the somewhat limited effect of this change, in the following respects. First, whether we have the statutory instrument or not, as far as we know, there is no change in the proportion of cases electing for trial in the Crown Court—it has stayed the same. People still have confidence in the magistrates, and some—around 17%—elect for trial. So whether the statutory instrument is there or not, there is no change there.

Secondly, as far as we know, there has been no change in the number of appeals from the magistrates' court to the Crown Court—that is neutral.

Thirdly, whether the statutory instrument is there or not, there is no effect on the overall length of sentences: there has been no suggestion that magistrates are mis-sentencing or that one does better on sentence in either the Crown Court or the magistrates' court. As far as we know, it is the same. Therefore, whether the statutory instrument is there or not, there is no effect on the time one actually spends in custody; it is simply a question of which court deals with the sentence.

Fourthly, on the question of the trial, as far as we know—the noble Lord, Lord Thomas, or perhaps the noble Lord, Lord Hacking, made this point—the vast majority of defendants do not elect for trial in the Crown Court; they are content to be tried in the magistrates' court. They are tried there because, as was pointed out, they have confidence in the magistrates' court system.

Therefore, the Government's understanding is that whether we have this recent statutory instrument or the old system, that does not affect trials in the magistrates' court: you can still have a trial, with the witnesses, the victim and everything as normal. The only difference is the process by which you sentence. So this is a slight change in the process, and more sentencing is being done in the Crown Court. The Government's view is that, in the very unfortunate circumstances with which they were faced, that was the lesser of two evils, to put it bluntly. That is the explanation.

I hope I have dealt with the various questions, and, in the circumstances, I invite the noble Lord, Lord Ponsonby, not to proceed with the Motion.

Lord Hacking (Lab): Before the Minister sits down, has he any figures for the occasions when the magistrates do not consider that they have sufficient powers under the current regime and therefore send the accused to the Crown Court for sentencing?

Lord Bellamy (Con): I do not have that figure with me, but I will write to the noble Lord, Lord Hacking, with it.

Lord Ponsonby of Shulbrede (Lab): I thank all noble Lords who took part in this interesting and short debate. I query one statistic that the Minister used: he spoke about a 35% increase in sentences between six and 12 months during the six-month period after the introduction of the increased sentencing powers for magistrates' courts. That seems a high figure. The SLSC report projected an increase of perhaps 500 prisoners over a two-year period because of that increase in sentencing. To me, that sounds a lot less than 35%, but, nevertheless, I take the Minister's broader point.

In the Minister's conclusion, he described the Government's course of action as the lesser of two evils, but there are many more than just two evils. A number of evils leading to the increase in the prison population have been identified in this debate. The whole point of the debate is that we do not know the proportion of those evils which are leading to the increase in the prison population by 4,000. The Minister has not given any extra information so that we can judge whether the course of action taken by the Government has addressed the more serious of the various evils leading to the increase in the prison population. The point of the SLSC report was that the Government used a cruder mechanism when using the sentencing powers of the magistrates' courts as a sort of valve for regulating this, when so many other factors are leading to the increase in the prison population. Nevertheless, it has been an interesting debate, and I hope that the Government will look at the data in the round and review this decision again in the coming months. I beg leave to withdraw my Motion.

Motion withdrawn.

Online Safety Bill

Committee (7th Day) (Continued)

8.45 pm

Clause 36: Codes of practice about duties

Amendment 98A

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

98A: Clause 36, page 37, line 29, at end insert—

"(ga) the Children's Commissioner,

(gb) the Commissioner for Victims and Witnesses,

(gc) the Domestic Abuse Commissioner,"

Member's explanatory statement

This amendment provides that in preparing a draft code of practice or amendments of a code of practice under clause 36, OFCOM must also consult the Children's Commissioner, the Commissioner for Victims and Witnesses and the Domestic Abuse Commissioner.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the amendments in this group consider the role of collaboration and consultation in Ofcom's approach. The proposals range in their intent, and include mandating additional roles for young people in the framework, adding new formal consultation requirements, and creating powers for Ofcom to work with other organisations.

I reassure noble Lords that the Government take these concerns extremely seriously. That is why the Bill already places the voices of experts, users and victims at the heart of the regime it establishes. In fact, the intent of many of the amendments in this group will already be delivered. That includes Ofcom working with others effectively to deliver the legislation, consulting on draft codes of practice, and having the ability to designate specific regulatory functions to other bodies where appropriate. Where we can strengthen the voices of users, victims or experts—without undermining existing processes, reducing the regulator's independence or causing unacceptable delays—the Government are open to this. That is why I am moving the amendment today. However, as we have heard in previous debates, this is already a complex regulatory framework, and there is a widespread desire for it to be implemented quickly. Therefore, it is right that we guard against creating additional or redundant requirements which could complicate the regime or unduly delay implementation.

I turn to the amendment in my name. As noble Lords know, Ofcom will develop codes of practice setting out recommended measures for companies to fulfil their duties under the Bill. When developing those codes, Ofcom must consult various persons and organisations who have specific knowledge or expertise related to online harms. This process will ensure that the voices of users, experts and others are reflected in the codes, and, in turn, that the codes contain appropriate and effective measures.

One of the most important goals of the Bill, as noble Lords have heard me say many times, is the protection of children. It is also critical that the codes reflect the views of victims of online abuse, as well as the expertise of those who have experience in managing them. Therefore, the government amendment seeks to name the Commissioner for Victims and Witnesses, the domestic abuse commissioner and the Children's Commissioner as statutory consultees under Clause 36(6). Ofcom will be required to consult those commissioners when preparing or amending a code of practice.

Listing these commissioners as statutory consultees will guarantee that the voices of victims and those who are disproportionately affected by online abuse are represented when developing codes of practice. This includes, in particular, women and girls—following on from our debate on the previous group—as well as children and vulnerable adults. This will ensure that Ofcom's codes propose specific and targeted measures, such as on illegal content and content that is harmful to children, that platforms can take to address abuse effectively. I therefore hope that noble Lords will accept it.

I will say a little about some of the other amendments in this group before noble Lords speak to them. I look forward to hearing how they introduce them.

I appreciate the intent of Amendment 220E, tabled by the noble Lord, Lord Clement-Jones, and my noble friend Lady Morgan of Cotes, to address the seriousness of the issue of child sexual exploitation and abuse online. This amendment would allow Ofcom to designate an expert body to tackle such content. Where appropriate and effective, Section 1(7) of the Communications Act 2003 and Part II of the Deregulation and Contracting Out Act 1994 provide a route for Ofcom to enter into co-regulatory arrangements under the online safety framework.

There are a number of organisations that could play a role in the future regulatory framework, given their significant experience and expertise on the complex and important issue of tackling online child sexual exploitation and abuse. This includes the Internet Watch Foundation, which plays a pivotal role in the detection and removal of child sexual abuse material and provides vital tools to support its members to detect this abhorrent content.

A key difference from the proposed amendment is that the existing route, following consultation with Ofcom, requires an order to be made by a Minister, under the Deregulation and Contracting Out Act 1994, before Ofcom can authorise a co-regulator to carry out regulatory functions. Allowing Ofcom to do this, without the need for secondary legislation, would allow Ofcom to bypass existing parliamentary scrutiny when contracting out its regulatory functions under the Bill. By contrast, the existing route requires a draft order to be laid before, and approved by, each House of Parliament.

The noble Lord, Lord Knight of Weymouth, tabled Amendment 226, which proposes a child user advocacy body. The Government are committed to the interests of child users being represented and protected, but we believe that this is already achieved through the Bill's existing provisions. There is a wealth of experienced and committed representative groups who are engaged with the regulatory framework. As the regulator, Ofcom will also continue to consult widely with a range of interested parties to ensure that it understands the experience of, and risks affecting, children online. Further placing children's experiences at the centre of

the framework, the Government's Amendment 98A would name the Children's Commissioner as a statutory consultee for the codes of practice. The child user advocacy body proposed in the noble Lord's Amendment 226 may duplicate the Children's Commissioner's existing functions, which would create uncertainty, undermining the effectiveness of the Children's Commissioner's Office. The Government are confident that the Children's Commissioner will effectively use her statutory duties and powers to understand children's experiences of the digital realm.

For the reasons that I have set out, I am confident that children's voices will be placed at the heart of the regime, with their interests defended and advocated for by the regulator, the Children's Commissioner, and through ongoing engagement with civil society groups.

Similarly, Amendment 256, tabled by the noble Baroness, Lady Bennett of Manor Castle, seeks to require that any Ofcom advisory committees established by direction from the Secretary of State under Clause 155 include at least two young people. Ofcom has considerable experience in setting up committees of this kind. While there is nothing that would preclude committee membership from including at least two young people, predetermining the composition of any committee would not give Ofcom the necessary space and independence to run a transparent process. We feel that candidates should be appointed based on relevant understanding and technical knowledge of the issue in question. Where a board is examining issues with specific relevance to the interests of children, we would expect the committee membership to reflect that appropriately.

I turn to the statement of strategic priorities. As I hope noble Lords will agree, future changes in technology will likely have an impact on the experience people have online, including the nature of online harms. As provided for by Clause 153, the statement of strategic priorities will allow the Secretary of State to set out a statement of the Government's strategic priorities in relation to online safety. This ensures that the Government can respond to changes in the digital and regulatory landscape at a strategic level. A similar power exists for telecommunications, the management of the radio spectrum, and postal services.

Amendments 251 to 253 seek to place additional requirements on the preparation of a statement before it can be designated. I reassure noble Lords that the existing consultation and parliamentary approval requirements allow for an extensive process before a statement can be designated. These amendments would introduce unnecessary steps and would move beyond the existing precedent in the Communications Act when making such a statement for telecommunications, the management of the radio spectrum, and postal services.

Finally, Amendment 284, tabled by the noble Lord, Lord Stevenson of Balmacara, proposes changes to Clause 171 on Ofcom's guidance on illegal content judgments. Ofcom is already required to consult persons it considers appropriate before producing or revising the guidance, which could include the groups named in the noble Lord's amendment. This amendment would oblige Ofcom to run formal public consultations on the illegal content guidance at two different stages: first, at a formative stage in the drafting process, and then before publishing a final version. These consultations would have to be repeated before subsequently amending or updating the guidance in any way. This would impose duplicative, time-consuming requirements on the regulator to consult, which are excessive when looking at other comparable guidance. The proposed consultations under this amendment would ultimately delay the publication of this instrumental guidance.

I will listen to what noble Lords have to say when they speak to their amendments, but these are the reasons why, upon first reading, we are unpersuaded by them.

Lord Clement-Jones (LD): My Lords, I thank the Minister for opening the group. This is a slightly novel procedure: he has rebutted our arguments before we have even had a chance to put them—what is new? I hope he has another speech lined up for the end which accepts some of the arguments we put, to demonstrate that he has listened to all the arguments made in the debate.

I will speak mainly to Amendments 220E and 226, ahead of the noble Baroness, Lady Kidron; I understand that the noble Baroness, Lady Merron, will be speaking at the end of the group to Amendment 226. I am very grateful to the noble Baroness, Lady Morgan, for signing Amendment 220E; I know she feels very strongly about this issue as well.

As the Minister said, this amendment is designed to confirm the IWF's role as the recognised body for dealing with notice and take-down procedures for child sexual abuse imagery in the UK and to ensure that its long experience and expertise continues to be put to best use. In our view, any delay in establishing the roles and responsibilities of expert organisations such as the IWF in working with Ofcom under the new regulatory regime risks leaving a vacuum in which the risks to children from this hateful form of abuse will only increase. I heard what the Minister said about the parliamentary procedure, but that is a much slower procedure than a designation by Ofcom, so I think that is going to be one of the bones of contention between us.

The Internet Watch Foundation is a co-regulatory body with over 25 years of experience working with the internet industry, law enforcement and government to prevent the uploading of, and to disable public access to, known child sexual abuse, and to secure the removal of indecent images and videos of children from the internet. The organisation has had some considerable success over the last 25 years, despite the problem appearing to be getting worse globally.

In 2022, it succeeded in removing a record 255,000 web pages containing child sexual abuse. It has also amassed a database of more than 1.6 million unique hashes of child sexual abuse material, which has been provided to the internet industry to keep its platforms free from such material. In 2020, the Independent Inquiry into Child Sexual Abuse concluded that, in the UK, the IWF

"sits at the heart of the national response to combating the proliferation of indecent images of children. It is an organisation that deserves to be acknowledged publicly as a vital part of how, and why, comparatively little child sexual abuse material is hosted in the UK".

9 pm

Our Joint Committee on the draft Online Safety Bill stated back in December 2021—that seems a long time ago now—that the IWF

"made a persuasive case that they should be co-designated by Ofcom to regulate CSEA content, an argument supported by the CPS and by TalkTalk"

in their evidence to the committee. We also concluded that

"it would have been beneficial to see more information … about how such co-designation might be achieved or even"

the processes for and

"a timeline on when such decisions will be taken".

In fact, the then Minister, Chris Philp MP, backed up the importance of the IWF to the regulatory landscape during the Public Bill Committee in the Commons in June 2022, stating that

"agencies such as the Internet Watch Foundation and others should co-operate closely. There is already very good working between the Internet Watch Foundation, law enforcement and others—they seem to be well networked together and co-operating closely".—[*Official Report*, Commons, Public Order Bill Committee, 14/6/22; col. 421.]

But I think that is not utterly clear, and that is the reason for putting this forward.

It is clear that Ofcom does not see regulation as a solo effort just by itself; of course, that cannot be the case for something as big and important as this. There is already so much expertise in other organisations such as the IWF. I hope that this amendment will tease out some of the progress being made—or not—in terms of co-designation and the relationship between Ofcom and organisations such as the IWF. What consultation has been carried out with the IWF to date? Are arrangements going to be come to with it in terms of CSEA and other similar material?

Three years have elapsed since we saw the first draft of this Bill, so we have had plenty of time to have those discussions and consultations. When can we expect decisions to be made? What steps will be taken to help organisations such as the IWF to scale up if they do get a response to assistance from Ofcom? What conclusions has Ofcom reached on the role for the IWF in the new regulatory landscape? I very much hope that we will get a more positive response to some of those questions at the end of this debate.

I want to come on to Amendment 226. My noble friend Lady Tyler is not well, unfortunately, and cannot be here today, but she is a strong supporter of this amendment, which deals with child protection and mental health. Mental health is the number one reason why children call Childline. We know that online abuse and harm can have a profound impact on children's mental health. Online child abuse has a devastating impact on children. It profoundly affects their mental health and their experience of relationships, with many continuing to experience the impact long after the period of abuse. Exposure to legal but harmful content can have an incredibly damaging impact on children's mental and emotional well-being. Some children told Childline that they were experiencing

"anxiety, intrusive thoughts, low self-esteem and trouble sleeping"

as a result of seeing that harmful material online. That is why we support this amendment to introduce an advocacy body for children.

I heard what the Minister had to say about that: that it was duplicative, and so on. I am sure there are some jolly good reasons that the Minister can adumbrate, but I do not necessarily believe that the Children's Commissioner believes that that is their specific role in these circumstances. That is why Young Minds and the Molly Rose Foundation, established by Ian Russell after the death of his daughter Molly, have come together with the NSPCC to support the introduction of an advocacy body for children. So I hope that the Minister will be rather more positive than he started out being on Amendment 226.

Baroness Kidron (CB): I shall speak briefly to Amendments 220E and 226. On Amendment 220E, I say simply that nothing should be left to chance on IWF. No warm words or good intentions replace the requirement for its work to be seamlessly and formally integrated into the OSB regime. I put on record the extraordinary debt that every one of us owes to those who work on the front line of child sexual abuse. I know from my own work how the images linger. We should all do all that we can to support those who spend every day chasing down predators and finding and supporting victims and survivors. I very much hope that, in his response, the Minister will agree to sit down with the IWF, colleagues from Ofcom and the noble Lords who tabled the amendment and commit to finding a language that will give the IWF the reassurance it craves.

More generally, I raise the issue of why the Government did not accept the pre-legislative committee's recommendation that the Bill provide a framework for how bodies will work together, including when and how they will share powers, take joint action and conduct joint investigations. I have a lot of sympathy with the Digital Regulation Co-operation Forum in its desire to remain an informal body, but that is quite different from the formal power to share sensitive data and undertake joint action or investigation.

If history repeats itself, enforcing the law will take many years and very likely will cost a great deal of money and require expertise that it makes no sense for Ofcom to reproduce. It seems obvious that it should have the power to co-designate efficiently and effectively. I was listening to the Minister when he set out his amendment, and he went through the process that Ofcom has, but it did not seem to quite meet the "efficiently and effectively" model. I should be interested to know why there is not more emphasis on co-regulation in general and the sharing of powers in particular.

In the spirit of the evening, I turn to Amendment 226 and make some comments before the noble Baroness, Lady Merron, has outlined the amendment, so I beg her indulgence on that. I want to support and credit the NSPCC for its work in gathering the entire child rights community behind it. Selfishly, I have my own early warning system, in the form of the 5Rights youth advisory group, made up of the GYG—gifted young generation—from Gravesend. It tells us frequently exactly what it does not like and does like about the online world. More importantly, it reveals very early on in our interactions the features or language associated with emerging harms.

Because of the lateness of the hour, I will not give your Lordships all the quotes, but capturing and reflecting children's insight and voices is a key part of future-proofing.

It allows us to anticipate new harms and, where new features pop up that are having a positive or negative impact, it is quite normal to ask the user groups how they are experiencing those features and that language themselves. That is quite normal across all consumer groups so, if this is a children's Bill, why are children not included in this way?

In the work that I do with companies, they often ask what emerging trends we are seeing. For example, they actually say that they will accept any additions to the list of search words that can lead to self-harm content, or "What do we know about the emoji language that is happening now that was not happening last week?" I am always surprised at their surprise when we say that a particular feature is causing anxiety for children. Rather than being hostile, their response is almost always, "I have never thought about it that way before". That is the value of consulting your consumer—in this case, children.

I acknowledge what the Minister said and I welcome the statutory consultees—the Children's Commissioner, the Victims' Commissioner and so on. It is a very welcome addition, but this role is narrowly focused on the codes of practice at the very start of the regulatory cycle, rather than the regulatory system as a whole. It does not include the wider experience of those organisations that deal with children in real time, such as South West Grid for Learning or the NSPCC, or the research work done by 5Rights, academics across the university sector or research partners such as Revealing Reality—ongoing, real-time information and understanding of children's perspectives on their experience.

Likewise, super-complaints and Ofcom's enforcement powers are what happen after harms take place. I believe that we are all united in thinking that the real objective of the exercise is to prevent harm. That means including children's voices not only because it is their right but because, so often in my experience, they know exactly what needs to happen, if only we would listen.

Baroness Morgan of Cotes (Con): My Lords, I speak mainly to support Amendment 220E, to which I have added my name. I am also delighted to support government Amendment 98A and I entirely agree with the statutory consultees listed there. I will make a brief contribution to support the noble Lord, Lord Clement-Jones, who introduced Amendment 220E. I thank the chief executive at Ofcom for the discussions that we have had on the designation and the Minister for the reply he sent me on this issue.

I have a slight feeling that we are dancing on the head of a pin a little, as we know that we have an absolutely world-leading organisation in the form of the Internet Watch Foundation. It plays an internationally respected role in tackling child sexual abuse. We should be, and I think we are, very proud to have it in the United Kingdom, and the Government want to enhance and further build on the best practice that we have seen. As we have already heard and all know, this Bill has been a very long time in coming and organisations such as the Internet Watch Foundation, which are pretty certain because of their expertise and the good work they have done already, should be designated.

However, without knowing that and without having a strong steer of support from the Minister, it becomes harder for them to operate, as they are in a vacuum. Things such as funding and partnership working become harder and harder, as well, which is what I mean by dancing on the head of a pin—unless the Minister says something about another organisation.

The IWF was founded in 1996, when 18% of the world's known child sexual abuse material was hosted in the UK. Today that figure is less than 1% and has been since 2003, thanks to the work of the IWF's analysts and the partnership approach the IWF takes. We should say thank you to those who are at the front line of the grimmest material imaginable and who do this to keep our internet safe.

I mentioned, in the previous group, the IWF's research on girls. It says that it has seen more girls appearing in this type of imagery. Girls now appear in 96% of the imagery it removes from the internet, up almost 30 percentage points from a decade ago. That is another good reason why we want the internet and online to be a safe place for women and girls. As I say, any delay in establishing the role and responsibility of an expert organisation such as the IWF in working with Ofcom risks leaving a vacuum in which the risk is to children. That is really the ultimate thing; if there is a vacuum left and the IWF is not certain about its position, then what happens is that the children who are harmed most by this awful material are the ones who are not being protected. I do not think that is what anybody wants to see, however much we might argue about whether an order should be passed by Parliament or by Ofcom.

9.15 pm

The Minister has already mentioned the Internet Watch Foundation tonight. It would be very helpful if he could set out whether he does expect Ofcom to work with the IWF to deliver its obligations under the Bill and whether he will commit to discussing this with both Ofcom and the IWF, due to the impact this uncertainty is having on the IWF. I am sure, as the noble Baroness, Lady Kidron, suggested, that I and the noble Lord, Lord Clement-Jones, would be happy to attend any such meeting as well, if that would help, but I do not think that we need necessarily to hold hands with these two extremely grown-up organisations in meeting the Minister. Obviously, the IWF has to have some sort of commitment in relation to its funding, to help it, as we have said, to scale up to offering services to the 24,000 companies that could be attempting to access its services to comply with the Bill.

I think it is fair to say this is a probing amendment. It is an important amendment, and I think that without that confirmation or indication from the Minister, we do leave a vacuum in which this hateful material proliferates, and children become ever more vulnerable.

Baroness Healy of Primrose Hill (Lab): My Lords, I have put my name to Amendment 220E, in order that the Internet Watch Foundation is duly recognised for its work and there is clarity for its role in the future regulatory landscape. So far, no role has yet been agreed with Ofcom. This could have a detrimental effect on the vital work of the IWF in combating the proliferation of child sexual abuse images and videos online.

[Baroness Healy of Primrose Hill]

As other noble Lords have said, the work of the IWF in taking down the vile webpages depicting sexual abuse of children is vital to stemming this tide of abuse on the internet. Worryingly, self-generated images of children are on the rise, and now account for two-thirds of the content that is removed by the IWF. Seven to 10 year-olds are now the fastest-growing age group appearing in these images. As the noble Baroness, Lady Morgan, said, girls appear in 96% of the imagery the IWF removes from the internet—up almost 30 percentage points from a decade ago. The abuse of boys is also on the rise. In the past year the IWF has seen an 138% increase in images involving them, often linked to sexual extortion.

This amendment attempts to clarify the future role of the IWF, so we await the response from the Government with interest. Tackling this growing plague of child sexual abuse is going to take all the expert knowledge that can be found, and Ofcom would be strengthened in its work by formally co-operating with the IWF.

Briefly, I also support Amendment 226, in the name of my noble friend Lord Knight, to require Ofcom to establish an advocacy body for children. I raised this at Second Reading, as I believe that children must be represented not just by the Children's Commissioner, welcome though that is, but by a body that actively includes them, not just speaks for them. The role of the English Children's Commissioner as a statutory consultee is not an alternative to advocacy. The commissioner's role is narrowly focused on inputting into the codes of practice at the start of the regulatory cycle, not as an ongoing provider of children's experiences online.

This body would need to be UK-wide, with dedicated staff to consistently listen to children through research projects and helplines. It will be able to monitor new harms and rapidly identify emerging risks through its direct continual contact with children. This body would assist Ofcom and strengthen its ability to keep up with new technology. The new body will be able to share insights with the regulator to ensure that decisions are based on a live understanding of children's safety online and to act as an early warning system. Establishing such a body would increase trust in Ofcom's ability to stay in touch with those it needs to serve and be recognised by the tech companies as a voice for children.

There must be a mechanism that ensures children's interests and safety online are promoted and protected. Children have a right to participate fully in the digital world and have their voices heard, so that tech companies can design services that allow them to participate in an age-appropriate way to access education, friendships and entertainment in a safe environment, as the Bill intends. One in three internet users is a child; their rights cannot be ignored.

Baroness Benjamin (LD): My Lords, I support Amendment 220E in the names of my noble friend Lord Clement-Jones and the noble Baroness, Lady Morgan of Cotes. I also support the amendments in the name of the noble Baroness, Lady Kidron, and Amendment 226, which deals with children's mental health.

I have spoken on numerous occasions in this place about the devastating impact child sexual abuse has and how it robs children of their childhoods. I am sure everyone here will agree that every child has the right to a childhood free of sexual exploitation and abuse. That is why I am so passionate about protecting children from some of the most shocking and obscene harm you can imagine. In the case of this amendment and child sexual abuse, we are specifically talking about crimes against children.

The Internet Watch Foundation is an organisation I am proud to support as one of its parliamentary champions, because its staff are guardian angels who work tirelessly beyond the call of duty to protect children. In April 2019, I was honoured to host the IWF's annual report here in Parliament. I was profoundly shocked and horrified by what I heard that day and in my continued interactions with the IWF.

That day, the IWF told the story of a little girl called Olivia. Olivia was just three years old when IWF analysts saw her. She was a little girl, with big green eyes and golden-brown hair. She was photographed and filmed in a domestic setting. This could have been any bedroom or bathroom anywhere in the country, anywhere in the world. Sadly, it was her home and she was with somebody she trusted. She was in the hands of someone who should have been there to look after her and nurture her. Instead, she was subjected to the most appalling sexual abuse over several years.

The team at the IWF have seen Olivia grow up in these images. They have seen her be repeatedly raped, and the torture she was subjected to. They tracked how often they saw Olivia's images and videos over a three-month period. She appeared 347 times. On average that is five times every single day. In three in five of those images, she was being raped and tortured. Her imagery has also been identified as being distributed on commercial websites, where people are profiting from this appalling abuse.

I am happy to say that Olivia, thankfully, was rescued by law enforcement in 2013 at the age of eight, five years after her abuse began. Her physical abuse ended when the man who stole her childhood was imprisoned, but those images remain in circulation to this day. We know from speaking with adult survivors who have experienced revictimisation that it is the mental torture that blights lives and has an impact on their ability to leave their abuse in the past.

This Bill is supposed to help children like Olivia—and believe you me, she is just one of many, many children. The scale of these images in circulation is deeply worrying. In 2022, the IWF removed a record number of 255,000 web pages containing images of the sexual abuse and exploitation of children. Each one of these web pages can contain anything from one individual image of a child like Olivia, to thousands.

The IWF's work is vital in removing millions of images from the internet each and every year, day in, day out. These guardian angels work tirelessly to stop this. As its CEO Susie Hargreaves often tells me, the world would be a much better place if the IWF did not have to exist, because this would mean that children were not suffering from sexual abuse or having such content spread online. But sadly, there is a need for the IWF. In fact, it is absolutely vital to the online safety landscape in the UK. As yet, this Bill does not go

anywhere near far enough in recognising the important contribution the IWF has to make in implementing this legislation.

Victims of sexual abuse rely upon the IWF to protect and fight for them, safe in the knowledge that the IWF is on their side, working tirelessly to prevent millions of people potentially stumbling across their images and videos. This amendment is so important because, as my noble friend said, any delay to establishing roles and responsibilities of organisations like the IWF in working with Ofcom under the regulator regime risks leaving a vacuum in which the risks to children like Olivia will only increase further.

I urge the Government to take action to ensure that Ofcom clarifies how it intends to work with the Internet Watch Foundation and acknowledges the important part it has to play. We are months away from the Bill finally receiving Royal Assent. For children like Olivia, it cannot come soon enough; but it will not work as well as it could without the involvement of the Internet Watch Foundation. Let us make sure that we get this right and safeguard our children by accepting this amendment.

Baroness Merron (Lab): My Lords, as the noble Lord, Lord Clement-Jones, observed, we have approached this group in an interesting way, having already heard the Minister's feelings about the amendment. As I always think, forewarned is forearmed—so at least we know our starting point, and I am sure the Minister has listened to the debate and is reflecting.

I start by welcoming government Amendment 98A. We certainly value the work of various commissioners, but this amendment does not provide for what I would call a comprehensive duty. It needs supplementing by other approaches, and these are provided for by the amendments in this group.

The noble Baronesses, Lady Morgan, Lady Benjamin and Lady Kidron, and my noble friend Lady Healy and others, have made a powerful case for the Internet Watch Foundation being the designated expert body. I too wish to pay tribute to those who tackle online child sexual exploitation and abuse. They do it on behalf of all of us, but most notably the children they seek to protect, and their work is nothing short of an act of service.

Amendment 220E is in the names of the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Morgan. Despite the recommendation by the Joint Committee that scrutinised the draft Bill in December 2021 for the Internet Watch Foundation's role in the future regulatory landscape to be clearly identified within the timescale set, it would require a role to be agreed with Ofcom, which has not yet happened. Perhaps the Minister can give the Committee some sense of where he feels Ofcom is in respect of the inclusion of the Internet Watch Foundation.

9.30 pm

This amendment is designed to confirm IWF's role as the recognised body dealing with notice and takedown procedures of child sexual abuse imagery in the UK. It would ensure that its long experience and expertise continue to be put to best use, which I am sure the Committee wants to see.

We have already heard evidence that the severity of child sexual abuse is becoming ever worse. In the past two years, category A child sexual abuse—the most severe form, including the rape and sexual torture of babies and toddlers—has doubled. In 2022 there were 51,369 web pages containing category A material, compared with 25,050 web pages in 2020. As the noble Baroness, Lady Morgan, reminded us in linking to the earlier debate, girls are now appearing in 96% of the imagery removed from the internet—up almost 30 percentage points from a decade ago. The abuse of boys is also on the rise. In the last year, the IWF has seen a 138% increase in images involving boys, often linked to sexual extortion, and often self-referred by children through the world-leading Report Remove portal.

I turn to Amendment 226 in the name of my noble friend Lord Knight. The number one message here is that user advocacy is the missing piece in this regulatory regime. Ofcom will be navigating extremely complex child safeguarding issues. These will develop at a rapid pace, yet there are no formal mechanisms in the Bill for Ofcom to gather insight directly from children and from safeguarding experts. These amendments seek to put this right.

As many noble Lords have said, it is essential that we hear from children and young people. Of course, I understand that the role of statutory consultees, such as the Children's Commissioner, is extremely important. As noble Lords have already indicated, this role is narrowly focused on the codes of practice, at the very start of the regulatory cycle, rather than providing ongoing, real-time information and an understanding of children's experiences, as we are trying to do. These will show how effectively—or not—platforms are complying with their new duties.

I am grateful to leading children's charities—5Rights, Barnardo's and YoungMinds—as well as to the organisations that have been set up by bereaved parents campaigning for child safety online. These include the Molly Rose Foundation and the Breck Foundation. All these groups have joined with the NSPCC to call for the introduction of an advocacy body for children.

The noble Baroness, Lady Kidron, spoke from her own experience through 5Rights of the value of the contribution of children in tackling online harms. I hope that the Minister will draw on this extremely valuable experience when thinking about what Amendment 226 seeks to do.

My other point in this regard is that we know from other regulated settings that user advocacy is extremely effective. Those user advocacy organisations assist regulators rather than getting in the way, and they assist them by identifying areas of harm or user detriment. Importantly, they can provide something of a counter-balance to lobbying from regulated sectors. For example, Citizens Advice is a consumer advocate in the essential service market, while Transport Focus speaks up for transport users.

Given the scale of online harm and the vulnerability of child users, I put it to the Minister that similar advocacy arrangements should be introduced in the Bill, otherwise we are going to be in the invidious position of children at risk of sexual abuse online

[Baroness Merron]
receiving fewer statutory user advocacy protections than, say, users of a Post Office or passengers on a bus. I am sure that is not the intention, but we must make sure that we are not in that place.

All the amendments in the name of my noble friend Lord Stevenson would ensure that relevant voices were heard. There are repeated debates in your Lordships' House about the need to consult and to get the right people around the table. All these amendments seek to do that, so I hope the Minister will take them in the spirit in which they are intended, which is to strengthen the arm of those who seek to protect children.

Lord Parkinson of Whitley Bay (Con): I am grateful to noble Lords who have spoken to their amendments. Regarding the lead amendment in the group, I take on board what was said about its inevitable pre-emption—something that I know all too well from when the boot is on the other foot in other groups. However, I have listened to the points that were made and will of course respond.

I join the tributes rightly paid by noble Lords to the Internet Watch Foundation. The Government value its work extremely highly and would support the use of its expertise and experience in helping to deliver the aims of the Bill. My noble friend Lady Morgan of Cotes is right to say that it is on the front line of this work and to remind us that it encounters some of the most horrific and abhorrent content in the darkest recesses of the internet—something that I know well from my time as an adviser at the Home Office, as well as in this capacity now. Both the Secretary of State for Science, Innovation and Technology and the Minister for Safeguarding at the Home Office recently provided a foreword to the foundation's latest annual report.

Clearly, Ofcom will need a wide variety of relationships with a range of organisations. Ofcom has been in regular contact with the Internet Watch Foundation, recognising its significant role in supporting the objectives of online safety regulation, and is discussing a range of options to make the best use of its expertise. The noble Lord, Lord Clement-Jones, asked what consultation and discussion is being had. We support the continuation of that engagement and are in discussions with the Internet Watch Foundation ourselves to understand how it envisages its role in supporting the regulatory environment. No decisions have been made on the co-regulatory role that other organisations may play. The Government will work with Ofcom to understand where it may be effective and beneficial to delivering the regulatory framework. Careful assessment of the governance, independence and funding of any organisations would be needed if co-designation were to be considered, but officials from the Department for Science, Innovation and Technology and the Home Office are in discussion with the IWF in relation to a memorandum of understanding to support ongoing collaboration.

On the designation of regulatory functions, we are satisfied that the powers under the Communications Act and the Deregulation and Contracting Out Act are sufficient, should other bodies be required to deliver specific aspects of the regime, so we do not see a need to amend the Bill in the way the amendments in this group suggest. Those Acts require an order from the Minister in order to designate any functions. The Minister has to consult Ofcom before making the order, and that is the mechanism that was used to appoint the Advertising Standards Authority to regulate broadcast advertising. It remains appropriate for Parliament to scrutinise the delivery of these important regulatory functions; accordingly, such an order cannot be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

The noble Baroness, Lady Merron, dwelt on the decision not to include a child user advocacy body. As I said in my earlier remarks and in relation to other groups, the Bill ensures that children's voices will be heard and that what they say will be acted on. Ofcom will have statutory duties requiring it to understand the opinions and experiences of users, including children, by consulting widely when developing its codes. Ofcom will also have the flexibility to establish other mechanisms for conducting research about users' experience. Additionally, the super-complaints process, which we began discussing this afternoon, will make sure that entities, including those that represent the interests of children, will have their voices heard and will help Ofcom recognise and eliminate systemic failings.

We are also naming the Children's Commissioner as a statutory consultee for Ofcom in developing its codes of practice. A further new child user advocacy body would encroach on the wider statutory functions of the Children's Commissioner. Both bodies would have similar responsibilities and powers to represent the interests of child users of regulated services, to protect and promote the interests of child users of regulated services, and to be a statutory consultee for the drafting and amendment of Ofcom's codes of practice.

The noble Baroness, Lady Kidron, when discussing the input of the Children's Commissioner into the regulatory framework, suggested that it was a here and now issue. She is right: the Children's Commissioner will represent children's views to Ofcom in preparing the codes of practice to ensure that they are fully informing the regime, but the commissioner will also have a continuing role, as they will be the statutory consultee on any later amendments to the codes of practice relating to children. That will ensure that they can engage in the ongoing development of the regime and can continue to feed in insights on emerging risks identified through the commissioner's statutory duty to understand children's experiences.

The Bill further ensures that new harms and risks to children are proactively identified by requiring that Ofcom make arrangements to undertake research about users' experiences on regulated services. This will build on the significant amount of research that Ofcom already does, better to understand children's experience online, particularly their experiences of online harms.

The super-complaints process will enable an eligible entity to make a complaint to Ofcom regarding a provider or providers that cause significant harm or significant adverse impact on users, including children. This will help Ofcom to recognise and eliminate systemic failings, including those relating to children, and will ensure that children's views and voices continue to inform the regime as it is developed.

The Bill will also require that Ofcom undertake consumer consultation in relation to regulated services. This will, in effect, expand the scope of the Communications Consumer Panel to online safety matters, and will ensure that the needs of users, including children, are at the heart of Ofcom's regulatory approach.

I draw noble Lords' attention to the provisions of Clause 141(2), which states that Ofcom must make arrangements to ascertain

"the experiences of United Kingdom users of regulated services".

That, of course, includes children. I hope, therefore, that noble Lords will be satisfied that the voices of children are indeed being listened to throughout the operation of the Bill. However, we have high regard for the work of the Internet Watch Foundation. I hope that noble Lords will be willing not to press their amendments—after the noble Lord, Lord Clement-Jones, asks his question.

Lord Clement-Jones (LD): My Lords, I am in the slightly strange position of not having moved the amendment, but I want to quickly respond. I was slightly encouraged by what the Minister said about Ofcom having been in regular contact with the IWF. I am not sure that that is mutual; maybe Ofcom thinks it is in good contact with the IWF, but I am not sure the IWF thinks it is in good contact with Ofcom. However, I am encouraged that the Minister at least thinks that that has been the case and that he is encouraging consultation and the continuation of engagement.

9.45 pm

What the Minister absolutely has not said is what role he envisages for the IWF in all this in terms of possible co-regulation. He went swiftly on to talking about other co- regulation arrangements which had not yet been determined. He did not actually say what kinds of co-regulation arrangements might be appropriate with the IWF. Then he went on—he keeps going swiftly on—to say that an MoU with the Home Office is in prospect. This sounds very interesting, but no doubt we will want to know more about precisely what is envisaged as part of the MoU.

Of course, the Minister's conclusion is that there is no need to amend the Bill because we have parliamentary procedure and draft regulations, and because Ofcom will be consulted and so on. That is all fair enough. As the noble Baroness, Lady Morgan, said, this is a probing amendment. If we have done something to speed up the process, all well and good, but the essence of this is to get something cracking. I hope that the debate has at least had some impact, but this is still incredibly vague. We do not really know what role is envisaged for the IWF. The Minister has heard around the Committee the regard in which the IWF is held. He has heard our desire to see that it is an integral part of the protection process and the procedures under the Bill, and to see it work with Ofcom.

Baroness Stowell of Beeston (Con): My Lords, I have held back from contributing to this group, because it is not really my group and I have not really engaged in the topic at all. I have been waiting to see whether somebody who is engaged in it would raise this point.

The one factual piece of information that has not been raised in the debate is the fact that the IWF, of which I too am a huge admirer—I have huge respect for the work that it does; it does some fantastic work—is a registered charity. That may lead to some very proper questions about what its role should be in any kind of formal relationship with a statutory regulator. I noticed that no one is proposing in any of these amendments that it be put on the face of the Bill, which, searching back into my previous roles and experience, I think I am right to say would not be proper anyway. But even in the context of whatever role it might have along with Ofcom, I genuinely urge the DCMS and/or Ofcom to ensure that they consult the Charity Commission, not just the IWF, on what is being proposed so that it is compatible with its other legal obligations as a charity.

Lord Stevenson of Balmacara (Lab): If I might follow up that comment, I agree entirely with what the noble Baroness has just said. It is very tricky for an independent charity to have the sort of relationship addressed in some of the language in this debate. Before the Minister completes his comments and sits down again, I ask him: if Ofcom were to negotiate a contracted set of duties with the IWF—indeed, with many other charities or others who are interested in assisting with this important work—could that be done directly by Ofcom, with powers that it already has? I think I am right to say that it would not require parliamentary approval. It is only if we are talking about co-regulation, which again raises other issues, that we would go through a process that requires what sounded like the affirmative procedure—the one that was used, for example, with the Advertising Standards Authority. Is that right?

Lord Parkinson of Whitley Bay (Con): Yes, I think it is. I am happy to confirm that in writing. I am grateful to my noble friend Lady Stowell, who of course is a former chairman of the Charity Commission, for making the point about the charitable status of the foundation. I should clarify that officials from the Department for Science, Innovation and Technology and the Home Office are in touch with the IWF about its role.

Speedily moving on, Ofcom is in discussion with the foundation about a memorandum of understanding. I hope that reassures the noble Lord, Lord Clement-Jones, that they are in reciprocal contact. Obviously, I cannot pre-empt where their discussions are taking them in relation to that MoU, but it is between Ofcom and the foundation. Careful consideration of governance, funding and issues of charity, as my noble friend raised, would have to be thought about if co-designation were being considered.

Amendment 98A agreed.

Amendments 99 to 101 not moved.

Clause 36, as amended, agreed.

Clause 37 agreed.

Amendment 102 not moved.

Schedule 4: Codes of practice under section 36: principles, objectives, content

Amendments 103 to 108 not moved.

Schedule 4 agreed.

Clause 38: Procedure for issuing codes of practice

Amendment 109 not moved.

House resumed.

House adjourned at 9.52 pm.

Grand Committee

Tuesday 16 May 2023

Arrangement of Business

Announcement

3.46 pm

The Deputy Chairman of Committees (Lord Geddes) (Con): 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.

Non-Domestic Alternative Fuel Payment Application Scheme Pass-through Requirement Regulations 2023

Considered in Grand Committee

3.46 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Non-Domestic Alternative Fuel Payment Application Scheme Pass-through Requirement Regulations 2023.

Relevant documents: 37th Report from the Secondary Legislation Scrutiny Committee and 36th Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, this instrument was laid on 17 April 2023 and debated yesterday in the other place. Its purpose is to ensure that the financial benefits from applications to the non-domestic alternative fuel payment scheme are passed through to end consumers. I thank the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee for their consideration of and comments on the regulations.

In response to the unprecedented rise in energy prices resulting from the Ukraine war, we have delivered critical support to households, businesses and other non-domestic consumers. Moving at considerable pace, the Government brought forward emergency legislation on energy support last year, paving the way for financial support to be delivered rapidly across the entire United Kingdom. The non-domestic alternative fuel payment scheme serves a crucial purpose in ensuring that businesses and organisations which are not on the gas grid and instead rely on alternative fuels for heating are not left behind and receive comparable support to users which are on the gas grid. Businesses, organisations and other non-domestic customers that use alternative fuel are receiving £150. These payments were disbursed through electricity suppliers, in most cases as a credit into the electricity supply accounts registered at qualifying properties. The vast majority of customers entitled to a payment will have already seen this credited to their bills.

We are providing the additional top-up payment to businesses and organisations consuming a very high volume of kerosene heating oil. An application service was opened on 20 March so that eligible non-domestic customers could claim this additional payment. We also provided an application process for businesses and organisations to apply for the basic £150 payment in the limited circumstances where this would not have already been received through electricity suppliers—for example, for alternative fuel users who do not have an electricity supplier and therefore did not receive a payment through this route.

This instrument plays an important role in making sure that support reaches those who need it. We have already brought forward regulations with respect to the main part of the scheme: the £150 payments delivered through electricity suppliers. This instrument complements those earlier regulations and extends that principle of pass-through to payments made in relation to the application process that commenced on 20 March.

I appreciate that some noble Lords are already familiar with the purpose of pass-through requirements, as we have brought forward several similar instruments before, not least the previous instrument in relation to this scheme. For those who may not be so familiar, let me explain what they do.

This instrument makes it mandatory for intermediaries to pass the financial benefit of the scheme on to end-users. It takes the same approach as the previous instrument and those relating to other price support mechanisms such as the energy bills support scheme and the energy bill relief scheme. That is needed because some payments will necessarily be made to intermediaries such as commercial landlords rather than the end-users, who ultimately bear the brunt of inflated energy bills. Where support is provided to an intermediary, we need to make sure that it can be appropriately passed on to the end-user.

Perhaps it would be appropriate to clarify what we mean by "end-user". In the case of the non-domestic alternative fuel payment, an end-user is an individual, business or organisation which consumes energy or energy products and pays for that consumption indirectly through an intermediary. An example would be a tenant business paying for its energy usage through a service charge or all-inclusive rent.

As with the other energy schemes, this instrument requires support to be passed on in a just and reasonable way. The Secondary Legislation Scrutiny Committee has previously asked about the term "just and reasonable", so let me clarify what these regulations are working to achieve. The regulations have been drafted in this way to account for the many kinds of relationships between an intermediary and an end-user. If the Government took a narrow definition of "just and reasonable", there is the risk of inadvertently excluding some intermediaries from the pass-through requirements. This also accommodates scenarios where intermediaries have multiple end-users to pass the support on to. The regulations also make it clear when and how intermediaries should communicate with end-users, regarding the benefit being passed on.

I now turn to enforcement. The approach in this instrument is consistent with other energy schemes. If an intermediary does not pass on the benefit to an end-user who is entitled to it, that end-user will be able

[Lord Callanan]
to pursue recovery of the benefit debt through civil proceedings. Should a court rule in the end-user's favour, they would be entitled to the payment plus interest. The interest is set at 2% above the Bank of England's base rate.

The regulations also require intermediaries to provide information to end-users. For example, intermediaries must inform end-users of the amount of scheme benefit that has been received, the amount that will be passed on and the remedies available to the end-user. I thank the Joint Committee on Statutory Instruments for its comments on the enforcement of this requirement. Again, our approach is consistent with that taken in the earlier pass-through regulations for this scheme and across the other energy schemes.

With respect to that requirement to pass on information, it is important to reiterate that, in our view, there would be insufficient incentive for end-users to make use of an enforcement mechanism given the time and administrative burden involved in doing so. For that reason, the regulations do not provide a specific enforcement mechanism in relation to the obligation on intermediaries to provide information to end-users. Nevertheless, we consider that there remains value in retaining this requirement in the instrument, on the basis that we expect the vast majority of intermediaries to comply. This is aided by the Government's publication of guidance on the GOV.UK website to ensure that requirements are clear to all parties. The guidance includes template letters to support end-users, such as tenants, that they can use to contact their landlords, should they be concerned about the application of pass-through requirements.

In conclusion, this instrument is vital to ensure that support reaches the people that it is designed to help. It is essential to the effectiveness of the non-domestic alternative fuel payment across the UK. It will ensure that intermediaries pass on the support to those who really need it, and that businesses and organisations paying for energy indirectly as tenants are properly supported at this time of high energy costs. It is with all these important reasons in mind that I commend these regulations to the Committee.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend and the department for bringing this measure forward—it is deeply appreciated among businesses. Do we know what the duration of the support will be in this regard?

I take this opportunity to thank the department for bringing forward the impact assessment as part of this, because we are very quick to criticise departments when they do not include such assessments. On this occasion, however, it is very thorough and greatly appreciated. I have learned a new term—counterfactual. I am not quite sure what it means, but we are told that the option of this support is being considered against a "counterfactual of doing nothing". I do not know whether this is yet another Americanism that has crept into the English language.

I shall just press my noble friend on one point. He has been quite clear about how the intermediaries are responsible for identifying the end-user, yet on page 4 of the 36th report, printed on 10 May by the Joint Committee on Statutory Instruments, it is clearly stated that the committee wishes to report defective drafting in Regulation 5. This refers to the fact, stated in paragraph 3.2 of the report, that there is

"no mechanism in the Regulations for enforcing these requirements. This reflects an approach adopted in previous instruments dealing with the pass-through of scheme benefits by intermediaries".

How does my noble friend and the department respond to that charge against them?

That is the only question that I have. I wholeheartedly welcome the regulations before us this afternoon. It is extremely important that the support is given, particularly in areas such as rural areas which are off grid.

I know I said that that was the only comment that I had, but I have one last question. On the £150 going to the smaller users, does that mean that the civil action can be pursued through the small claims court, which obviously would not significantly add to their costs, if they had to bring such a claim to which my noble friend referred? I thank my noble friend and the department for bringing forward the statutory instrument before us today.

Lord Teverson (LD): I thank the Minister for a very familiar speech. Obviously, in principle, we very much support the statutory instrument. What struck me about it, if I am honest, is that when it arrived in my inbox I thought, "I thought we'd done all this". If you look at the graph on the impact assessment—like the noble Baroness, Lady McIntosh, I welcome it—the big heist in energy prices was in June last year, so we are a long way through from that, by almost one year. Maybe I have misunderstood something, but it seems to have taken a huge amount of time. I realise that the statutory instrument came into effect in April, but it seems an awfully long time has been taken in managing to get this amount of money. It may not be large, but it is important to non-domestic users.

I would be interested to understand from the Minister how well the pass-through mechanism has worked to date on the other scheme. Have there been complaints and have there been any court procedures for people to claim their 2% on their proportion of the original amount of money? Have there been complaints to the department, or has the Minister found that the scheme has worked fairly well so far, as I would hope?

I would also be interested to understand the number of businesses that the department expects should benefit from this scheme. That may be in the impact assessment—I tried to find it there, but I could not, and my apologies if that is so.

I want to come back to the area of enforcement. The Joint Committee was strong on this and rightly so. Big amounts of money may not be involved here but whoever wrote this statutory instrument, as with the previous one on pass-through, must have had their tongue well in their cheek when they said that people could go through a civil claim and get 2% on the money outstanding, given that, at most, it is a fraction of £150. This is still an invitation for people to say, "What the heck? I'm not going to bother with this bureaucracy and I'm not going to do it". For a country that takes the rule of law seriously, it is a principle that when one has a statutory obligation, there is a method of enforcement if that is ignored. It may not be used but it should be there.

I therefore should be interested to hear from the Minister on those areas, particularly on how successful the existing pass-through arrangements have been to date.

4 pm

Lord Lennie (Lab): My Lords, I thank the noble Baroness, Lady McIntosh, and the noble Lord, Lord Teverson, for their repeated comments from previous similar discussions.

This instrument provides for pass-through requirements on intermediaries in respect of non-domestic alternative fuel payments in Great Britain and Northern Ireland. The Energy Prices Act enables energy support schemes to help households and businesses with energy costs for winter 2022 and future periods. As we have heard, this scheme will provide a single £150 payment to non-domestic users of alternative fuels in Great Britain and Northern Ireland. In Great Britain, payments are made to non-domestic premises in an off-grid postcode. In Northern Ireland, payments are enabled to on and off-grid postcodes.

Intermediaries are individuals in receipt of a scheme payment who, under these regulations, should pass on the payment in a "just and reasonable" way to end users. If this is less than the full amount, the intermediaries must justify the reduction to end users. This must be made in writing within 30 days of the scheme's benefit being provided and payment made as soon as reasonably practicable. That is all well and good so far.

However, as we have asked of previous pass-through schemes, what is the remedy if this plan is not followed? How can an end user challenge the reduction in a payment or a delay in receiving either the full or reduced payment? There is no mechanism to enforce these regulations, as the noble Lord, Lord Teverson, and the noble Baroness, Lady McIntosh, said. Of course, most intermediaries will comply with the requirements built into the scheme but that does not achieve the policy objective that requires all intermediaries to do so.

We do not oppose these regulations but they fall down because no one actually has to do anything about them to ensure full compliance. There is a theoretical remedy through the civil courts, as the noble Lord, Lord Teverson, said, but how does an end user who has not been notified that they are due a payment mount a claim for such a payment to be made? Just because the Government have made corresponding regulations for other comparable schemes does not justify doing so again here. Labour and other opposition parties have previously raised this concern about effective enforcement and the Government have batted it away—and no doubt will do so again here today. But a scheme that relies upon people acting in a just and reasonable way without the means to ensure that they will do so is not a foolproof scheme but a best-endeavours scheme. Its success cannot be measured by less than 100% effectiveness. What does the Minister say on that?

Lord Callanan (Con): I thank my noble friend Lady McIntosh, and the noble Lords, Lord Teverson and Lord Lennie, for their comments.

This instrument is necessary to ensure the proper delivery of the non-domestic alternative fuel payment scheme by allowing support to reach those who need it. The scheme is already in place and delivering much-needed support to non-domestic consumers across the UK. The scheme supports a wide range of businesses and other non-domestic consumers that are not connected to the gas grid. As I said, it is delivering a payment of £150, thereby helping businesses and organisations that rely on alternative fuels to meet their eligible costs. Most eligible customers should have already received their £150 payment by the end of March as a credit from their electricity suppliers. Where these payments were received by an intermediary, the pass-through regulations that we previously made ensure that they passed it on to the end users in a just and reasonable way. Although a relatively small proportion of businesses and organisations are entitled to a top-up payment, these payments are also important in ensuring that those consumers are not left behind and receive support comparable to those received by consumers on the gas grid and who have benefited from other schemes.

We opened an application service for the top-up payment on 20 March, and we are processing payments as quickly as possible. In addition to the top-up payment, we provided a route for customers to apply for the basic £150 payment in the limited circumstances where it was not possible for them to receive it through an electricity supplier. These regulations ensure that in all these circumstances, where a payment is made following an application, end-users benefit from the requirement that intermediaries pass on that support in a just and reasonable way. It is a case of extending the safeguards already in place for the earlier part of the scheme to payments made following an application.

On the specific points made in the debate, the noble Baroness, Lady McIntosh, asked about the duration of the support and the latest report from the JCSI. We are providing one-off payments to eligible businesses and organisations to ensure comparable support to that received by on-grid customers who have benefited from the energy bill relief scheme, and we are in the process of issuing payments to applicants. In response to the noble Baroness's point about the JCSI's comments on enforcement, also raised by the noble Lord, Lord Teverson, our view remains, as the noble Lord, Lord Lennie, correctly predicted, that there is little value in establishing a formal enforcement mechanism. However, we believe that it is important to include a provision on pass-through of information, as most intermediaries will comply with this.

The noble Lord, Lord Teverson, asked how successful the existing pass-through arrangements have been. We are not aware of any significant issues in the delivery of this scheme or the pass-through arrangements. Nevertheless, the scheme remains in progress, and we will continue to keep it under review and respond to any issues as they arise. As the scheme is still in progress, we are not yet in a position to say precisely how many businesses will benefit, but we believe that around 400,000 end-users will receive some level of payment under the scheme. That is a considerable amount of support.

Lord Teverson (LD): I am grateful to the Minister for that. To clarify, is that the number of businesses that will benefit from this pass-through, as opposed to the scheme altogether?

Lord Callanan (Con): No; that is the scheme altogether.

Lord Lennie (Lab): Is that the payment to intermediaries, who are expected to pass it on, or is it the payment received by end-users?

Lord Callanan (Con): It would be the end-users, irrespective of whether they received it directly or via an intermediary.

As I said, we have published extensive guidance for both the intermediary and the end-user to ensure that they know their obligations and entitlements. Although we are mindful of the comments that we have received regarding these and previous pass-through regulations, in our view it is important that the non-domestic alternative fuel payment is delivered consistently as one coherent scheme. As these regulations cover only a small part of a much wider scheme that is already in place, it is right that we maintain essentially the same approach followed in the previous regulations for other parts of the scheme. Nevertheless, we will continue to update and publicise the guidance on GOV.UK to ensure that end-users and intermediaries understand their rights and obligations. I therefore commend these regulations to the Committee.

Motion agreed.

Russia (Sanctions) (EU Exit) (Amendment) Regulations 2023

Considered in Grand Committee

4.09 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Grand Committee do consider the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2023.

Relevant document: 38th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, the Russia Sanctions EU Exit Amendment Regulations 2023 amend the Russia (Sanctions) (EU Exit) Regulations 2019. The instrument was laid on 20 April 2023 under powers provided by the Sanctions and Anti-Money Laundering Act 2018. It contains measures that we have co-ordinated with our international partners to increase the pressure on Mr Putin for waging an illegal and brutal war against Ukraine. These measures place further constraints on Mr Putin's war machine and on Russia's economy, adding further force to the largest and most severe package of economic sanctions that Russia has ever faced.

On Trade 6, this instrument delivers on the commitment made by the UK Government to ban the export of all items that have been used by Russian forces on the battlefield to date. It builds on extensive bans made in previous legislation, widening export prohibitions to include additional aircraft and vehicle parts, radio and other electronic equipment, biotechnology assets and 3D printing machinery. The second tranche of measures contained in this legislation prohibits the import of nearly 150 additional goods which generate export revenues for the Russian economy. It catches products as diverse as cigars, wood, tools and machinery. The third tranche of new restrictions covers the import of iron and steel products, including metal coming from Russia that has been processed in third countries. These additional sanctions underline the UK's leadership role on Russian trade sanctions and will inflict further economic damage and constrain Mr Putin's ability to equip and fund this war. These measures were applied from 21 April 2023, with the exception of the prohibition on iron and steel products processed in third countries, which will enter into force on 30 September 2023, on the same date as the EU's equivalent ban.

Before I conclude my opening remarks, I hope noble Lords will allow me to extend slightly beyond the scope of this debate as I would like to take this opportunity to update your Lordships on the Government's position on a proposed separate sanctions measure announced by the Government in April 2022, but not introduced through a statutory instrument. After careful consideration, the Government have decided not to proceed with legislation on a cap on funds held by Russian nationals in UK bank accounts. Having made a detailed assessment of this policy option, we have concluded that carefully targeted sanctions against high net worth supporters and beneficiaries of Mr Putin's regime is a more effective way to achieve our objectives. I assure noble Lords that this follows rigorous scrutiny of the policy by relevant officials across government and, importantly and as we have done with other sanctions, consultation with key industry partners, and it is in line with our objective of ensuring that our sanctions are targeted, practical and effective.

As this latest package demonstrates, we will continue to impose hard-hitting sanctions against the Russian state and its supporters. This package alone adds a further £280 million-worth of exports and around £145 million-worth of imports to our prohibited list. As with all our sanctions, this latest package has been developed in co-ordination with our international partners, a point made by noble Lords in all previous debates, and I assure noble Lords that we will continue to work with them to identify and address any gaps or loopholes that emerge in our sanctions regimes.

To conclude, these latest measures demonstrate our determination to target those who participate in or facilitate Mr Putin's illegal war of choice. Since Russia's full-scale invasion, the UK has sanctioned more than 1,500 individuals and entities, including 130 oligarchs and their family members with a global net worth of £145 billion, and we have sanctioned more than £20 billion-worth of trade, 96% of the total UK-Russia goods trade in 2021.

Sanctions continue to work. Russia is increasingly isolated and out of Western markets, services and supply chains. Key sectors of the Russian economy have fallen off a cliff, and its economic outlook is bleak. I assure noble Lords that the UK Government will use sanctions to ratchet up the military and economic pressure on Russia until Mr Putin ends this brutal invasion of Ukraine, and we welcome the clear and continued cross-party support for this important course of action, for which I am grateful. I beg to move.

4.15 pm

Baroness Northover (LD): My Lords, I thank the Minister for introducing these regulations. As was reiterated again yesterday at Oral Questions, and as the Minister has acknowledged, there is support across the House for the Government's stance in opposing the Russian invasion of Ukraine and recognising the threat not only to Ukraine but to the whole of Europe. We have supported sanctions on those individuals who have clearly gained by their support of President Putin and are complicit in the actions that he has taken. We have seen, too, how President Putin has used global trade to put pressure on countries that oppose him and to seek to deter other countries from opposing him. Energy prices, food crises and so on all hurt the poorest most, and Putin knows that. The sanctions we are considering today seek to put pressure on Putin's military resources as well as the Russian economy. The Government argue that this is

"the largest and most severe package of economic sanctions that Russia has ever faced".

Can the Minister give us a breakdown of the pre- and post-invasion proportion of trade affected by these sanctions?

The Government also say:

"As with all our sanctions, the latest package has been developed in co-ordination with our international partners".—[*Official Report*, Commons, Delegated Legislation Committee, 15/7/23; cols. 1-4.]

We agree—we have discussed it many times—that sanctions are most effective when they are brought in by a number of countries, particularly the economic might of the EU and the United States. Can the Minister tell us whether we are completely in lockstep over these or whether there are any variations and, if so, in what areas?

The Delegated Powers Committee wonders why these measures were not brought in before, stating:

"We were particularly perturbed to read in the Explanatory Memorandum that UK goods are still being used by Russia on the battlefield. This prompted us to question how effective the 17 sanctions instruments we have already seen have been".

It also asked why any trade is still being permitted and speculated that goods found on the battlefield may have been supplied by third countries. I have seen the FCDO response to these questions and concerns, but will the Minister put it on record? Perhaps he could add details of what types of products have been circumventing the sanctions that were already in place and how this was happening.

The committee also asked why the restrictions on iron and steel do not come in until September 2023. The FCDO noted that UK businesses in the sector needed time to prepare for such a ban, and that this aligned with the EU. Why was it concluded that this sector needed time to prepare while others were judged not to need it? How will these sanctions be monitored and enforced, and what happens with contracts already agreed or in the pipeline? I also note that the regulations bring in scope providing financial services to source these materials or brokering them. Are law firms also included? What assessment has been made of the effect on global supply chains of, for example, the inclusion of fertilisers? Are the EU and US also involved in this? Given the effect on developing countries of lack of fertilisers, might this depress prices and increase supplies to them, or will it have a negative effect as the West seeks other sources of supply? Have we looked at the indirect impacts and how these might be mitigated?

I am concerned about the Minister's second announcement on large bank balances held in the UK. I hear what he says, but this seems like a potential loophole. I look forward to hearing his reply, and meanwhile I welcome in general these sanctions and certainly their intent.

Lord Collins of Highbury (Lab): My Lords, I know the Minister is fully aware of His Majesty's Official Opposition's position in fully supporting the Government in the action they are taking to back Ukraine in its defence against Russian aggression, including providing military, economic and diplomatic support. We fully recognise that this is a fight to maintain the international rules-based order, and such aggression cannot and should not be tolerated. As my noble friend Lord Coaker said yesterday, is not one of the greatest misjudgments that Putin made that Europe would not stand together shoulder to shoulder with Ukraine and would not support Ukraine against his illegal attack, and, even if we did, that support would be limited and short-term? It is therefore extremely welcome to see the solidarity across Europe that President Zelensky received, particularly this weekend in Italy and France. It was especially good to see the German Defence Minister commit to and promise an additional €2.7 million in military aid.

Turning to the regulations, I wish to raise the issue of £50,000 cap, which was a government commitment. I have just been looking at *Hansard* for yesterday's debate in the Commons. My honourable friend Catherine West interjected to ask whether there would be an opportunity for the decision not to proceed with this to be properly debated. According to the Minister and the Chair, it was agreed that there would be an opportunity to debate that. I just want to place on record the Opposition's view that there should be measures such as the cap. If there is a decision not to proceed, what alternative measures are we taking to restrict the flow of finance, particularly when it is so easy to circumvent the £50,000 cap with the use of family members and others? There may be good reasons for not proceeding, but there should be a full debate.

As the noble Baroness, Lady Northover, said, the regulations come into force on 21 April and on 30 September for the iron and steel bans. The Minister mentioned that 30 September was to coincide with the EU equivalent ban, but why is there that time lag? There have been plenty of occasions when we have moved faster on certain sanction measures. It is very important that we act in concert, but we have understood why other countries may move faster than us and so on. We need a better explanation of why all the measures cannot be introduced straightaway.

In his introduction, the Minister mentioned the nature of certain items in these regulations. He particularly identified items found on the battlefield in Ukraine, such as electronic equipment, vehicles, 3D-printing machinery and biotechnology. Given that the sanctions seem to cover mostly electronic items found on the battlefield, has the department or the appropriate authorities in it explored ways to restrict the use of

[Lord Collins of Highbury]
relevant firmware in the area—for example, by blocking the digital export of the firmware necessary for running 3D-printing machines? It would be good to hear how we may be working with our allies to look at ways of dealing with that. Of course, many of the items listed are quite small and easily hidden. What sort of advice and support would be given to the appropriate officials to ensure that they can be properly identified to prevent them reaching Russia?

I turn to the 190 goods, including iron and steel products processed in third countries. I welcome the extremely helpful briefing that I received from the department. It states that they are largely in line with the action taken by our European and US partners. What does "largely" mean? What are the differences? Where have we not been able to replicate fully the measures of our allies, particularly all our NATO allies?

The provision of services was a key part of trade before the Russian invasion. The December 2022 regulations banned the export of advertising, architectural, auditing, engineering, IT consultancy and design services to Russia. That is quite a comprehensive list of banned services. What assessment has been made on the extent of that service ban and its impact? I understand from the briefing that the department may be looking at the provision of legal services and how they may be brought into the scope of those sanctions. Can the Minister give us an update on them?

The briefing also touches on the exceptions for goods that are essential for humanitarian assistance activity. I fully support the need for that, but how are we actively monitoring those exceptions, and how can we be confident that the goods are going for the purpose intended? Obviously, pharmaceuticals and pharma products are important for humanitarian purposes, but they can be used in other ways.

The G7 summit is coming up later this month, and the briefing covers how it will be an opportunity to collaborate with all our allies to increase economic pressure. Will the Minister tell us how we are working towards a much more comprehensive agenda at that meeting?

It is one thing having regulations and laws on sanctions, but another is how we ensure compliance. That is a major issue. I hope that the Minister can tell us how Whitehall departments are working together to ensure compliance. I was thinking about the iron and steel trade and the reasons for the delay in implementation. Has the department looked at how we can incentivise faster implementation of sanctions, not simply giving time for firms to adjust, but considering other options to ensure speedy implementation?

What steps are we taking to raise awareness of the sanctions that we are imposing, so that they become an effective deterrent to those who may be tempted to circumvent them? Whenever sanctions are introduced, people look at every possible way to avoid and circumvent them, particularly with flows going into other countries.

What capacity do we have across Whitehall departments to ensure compliance and to police these sanctions? It would be good to know whether there has been an increase in the relevant staff. There have been stories in the media recently about countries—I mention Cyprus in particular—that have brought in sanctions but then ignore violations for one reason or another; it could be a capacity issue. I hope the Minister can give us an update on those issues and on how we provide support to ensure that our allies fully implement these sanctions.

4.30 pm

I have raised the British Overseas Territories with the Minister before, and I know that he has assured the House that all the territories are fully compliant in terms of the relevant sanctions, but it would be good to hear exactly how we are ensuring that the BOTs have the capacity properly to police and ensure that these sanctions are effective. With those few comments, I reassure the Minister that we fully support the Government's actions and these regulations.

Lord Ahmad of Wimbledon (Con): My Lords, I thank the noble Baroness, Lady Northover, and the noble Lord, Lord Collins, for their strong support of the Government's actions. Once again, it demonstrates the unity of purpose and, importantly, the unity of action on these important measures. I thank them for their careful scrutiny and consideration of the various measures. I will certainly seek to answer some of the specific questions and issues that have been raised in the time allocated. I will also follow up in the usual customary way with specific responses, particularly to some of the technical questions that the noble Baroness, Lady Northover, raised.

Both noble Lords raised the issue of legal services. I will not speculate on that particular issue, but I note the fact that both the noble Baroness and the noble Lord have raised it, and I totally understand the wider context of application. When we look at key industries and sectors, we need to look at the wider context of how these sanctions can be effectively implemented.

The noble Baroness, Lady Northover, pressed slightly further on the impact of the sanctions, asking for a kind of compare and contrast of what the impact has been. I have a raft of statistics, including that there was a 99.1% reduction in UK goods imports from Russia in September to November 2022 compared to the same period in 2021. There have been various studies, including one by Yale University, for example, which showed that more than 1,000 foreign businesses have withdrawn, undoing the vast majority of foreign investment made in Russia not just since the war but dating back to the fall of the Soviet Union. There was a 79.7% reduction in UK goods exports to Russia in September to November 2022 compared to September to November 2021.

Export bans have contributed to the long-term downgrading of Russia's military and high-tech industry and prevented oligarchs accessing even luxury products. For example, UK exports of machinery and transport equipment decreased by 98% between February and August 2022. Russia's Transport Minister has admitted that Russia's logistical infrastructure is now broken as a result of these sanctions. Additional sectors have also been impacted, and I would be happy to share the facts and figures with the noble Baroness, but I hope that gives at least a sense that the sanctions are having a direct impact.

The noble Baroness and the noble Lord, Lord Collins, both raised, rightly, the importance of alignment. I assure them that we are on the same page here. I have said time and again that measures work best when we are aligned. Indeed, the delay to 30 September on one of today's proposed measures is reflective of that co-ordination. I will elaborate further: because of the complexity of supply chains and the interconnectivity of the global world that we live in, it is important that those sanctions are applied in the most effective manner. We have taken that decision with our key partners.

The noble Lord, Lord Collins, raised a broader point about co-ordination with those countries—he mentioned a number of them—where the sanctions may be introduced or even talked about but are not implemented effectively. With those key partners to us who are not implementing sanctions, I believe there are opportunities to change this, as I saw as recently as Saturday when I was in Stockholm. We focused in on Ukraine and there were countries present from the Indo-Pacific region who perhaps do not share the same objectives behind sanctions as us. This allows us and other key partners—including the US, which was in the room, and, importantly, our EU partners—to demonstrate the why: the need for these sanctions to be implemented. We will certainly avail ourselves of other opportunities in this respect. Indeed, after I finish here today I will go to the airport to attend the Council of Europe meeting in Iceland where, again, the focus will be on Ukraine specifically.

A question on fertilisers was also raised. Our sanctions are designed to minimise unintended consequences for critical supply chains, including for the important areas of food security and pharmaceuticals. Both the noble Baroness and the noble Lord acknowledged that in any sanctions we impose, we still have to address the false narrative that is sometimes put out by Russia that somehow these sanctions do not allow essential goods—such as humanitarian support and medicines—to get through. They do, and there are humanitarian carve-outs for that.

On some of the points that the noble Lord raised about the overseas territories, I assure him that we work very closely with them. Although some may legislate for themselves, a number require support in terms of legislative capacity. We are very much in lockstep to ensure that these sanctions are implemented, and they have the resources and support required to implement them. Of course, we review our general relationship with the OTs over a raft of areas, as we have done recently, including through the joint ministerial council. Many overseas territories were represented at the coronation a couple of weeks ago.

On whether we are going far enough, quickly enough and whether we have enough staffing, in December 2021 there were 48 substantive roles in the sanctions unit, which has now become a sanctions directorate. My work in government allows me to say that when a unit becomes a directorate and a directorate becomes a department, you can see where the trajectory is heading. It is not quite a department, and one hopes we will not need to get to that stage. However, we have now doubled the number of officials focused on our response and have over 100 permanent staff delivering our response. That does not include those working across the FCDO and its overseas network, who are also part of some of the wider roles that we undertake.

I have already talked through some of the detailed impacts of the sanctions themselves. The noble Baroness, Lady Northover, and the noble Lord, Lord Collins, referred to the debate yesterday which was also about the issue of the cap on UK bank funds. I would certainly be happy to have a discussion about that, but I assure the noble Lord and the noble Baroness that, as I said in my opening remarks, we are looking at all these measures to ensure that they are effective and implemented in a way that will allow for the most practical outcome. It is certainly the Government's view that a proposal to introduce an indiscriminate cap on funds that Russian nationals are allowed to hold in UK bank accounts would in effect punish those Russians in the UK who do not support Mr Putin and his illegal actions.

To give a personal anecdote, I remember when I started in banking many years ago in 1991 and the Iraq war happened. One of the places where I was doing my training had the highest net worth of Iraqi clients, and when restrictions were imposed, they were also imposed on the very people who were opposing the regime. We have reiterated time and time again—I know the noble Lord, Lord Collins, and the noble Baroness, Lady Northover, share the same sentiments—that our dispute is not with the Russian people or ordinary Russian citizens, or indeed the many Russians who have made their lives in the United Kingdom. It is with Mr Putin and his illegal war in Ukraine. We believe that in our approach—again, I am grateful for the support on this—we are targeting those who support Mr Putin and his illegal actions in Ukraine. The measures debated today are targeted specifically at those who participate in, facilitate and support this illegal war.

I assure both noble Lords that the UK is committed to using sanctions to keep up the pressure until Mr Putin ends his brutal and senseless war. We stand resolute in our firm support: indeed, the recent visit of President Zelensky underlined our commitment not just in terms of the support we give in the markets but also our support for Ukraine's direct defences. As I have intimated already and said yesterday, my right honourable friend is already in Reykjavík meeting some of our key Council of Europe partners. Equally, I hope during the course of my engagements there once again to make the case very strongly about the need for unity, purpose and action. Sanctions are one of the key instruments that allow us to ensure that Mr Putin realises the real cost to him, to those who support him and to the Russian economy if he continues with this brutal and senseless war.

As I said earlier, a number of smaller technical questions were raised, particularly by the noble Baroness—I will of course write to her in this respect. I put on record again my sincere thanks to the noble Lord, Lord Collins, and the noble Baroness, Lady Northover, and indeed to all across your Lordships' House, whichever party they represent. Today, once again, through the debate on these important measures, we have sent a very consistent and unified message that this House and this country stands with Ukraine.

Lord Collins of Highbury (Lab): Before the noble Lord sits down, I just want to be clear. In yesterday's debate on the Commons, it appears that the Minister was suggesting that there would be an opportunity to debate and vote upon the decision not to proceed with the cap. There may be good reasons for that, but can the noble Lord clarify what that means?

Lord Ahmad of Wimbledon (Con): I think I sought to clarify part of that. A vote would come on something that is there already: a statutory instrument was never introduced in that respect and of course the Government, when various announcements were made by the previous Prime Minister and Foreign Secretary, were alluding to a raft of different measures that we would look to evaluate. I know the noble Lord appreciates that, consistent with our approach, we would talk to industry and look to consult effectively to ensure that these are practical measures. As I said in my opening and concluding remarks, the view of the Government, after consulting across government and with industry, is that the most effective way is to target through our sanctions the specific individuals and organisations who directly support Mr Putin.

Just to be clear, although announcements were made on a range of measures, the key votes—I am thankful, again, that we have not had to take any votes on sanctions introduced—are on those measures that have been introduced through statutory instruments. I hope that clarifies the position.

Motion agreed.

Insider Dealing (Securities and Regulated Markets) Order 2023

Considered in Grand Committee

4.43 pm

Moved by ***Baroness Penn***

That the Grand Committee do consider the Insider Dealing (Securities and Regulated Markets) Order 2023.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, this statutory instrument updates the UK's criminal insider dealing regime to ensure that all market participants are held to high standards and that there are meaningful consequences for those who break the law. As noble Lords will be aware, insider dealing is a form of market abuse. In broad terms, it is where an individual trades in a financial instrument based on material, non-public information about a company. Insider dealing compromises the integrity and orderly functioning of financial markets. For this reason, it is both a criminal and civil offence in the UK.

The Financial Conduct Authority is responsible for identifying and taking enforcement action against cases of insider dealing. The FCA can impose a variety of criminal and regulatory sanctions under the criminal and civil market abuse regimes. The intention of this framework is to enable the FCA to take action against market abuse in a way that is commensurate to the seriousness and market impact of the abusive behaviour.

The legislation that defines the current criminal offence for insider dealing was first introduced in 1993. The Criminal Justice Act 1993 lists the securities and regulated markets to which the insider dealing offence applies. However, financial markets have evolved since the lists of instruments and regulated markets were last updated. As a result, these lists are narrower than the more recently updated civil market abuse regime.

4.45 pm

The Government believe that this gap between the civil and criminal insider dealing offences needs addressing, and this SI does that by aligning the list of securities in scope of the criminal insider dealing offence with the civil insider dealing regime. The SI also replaces the named regulated markets in scope of the criminal insider dealing offence. The use of general definitions will future-proof the list going forward, avoiding relevant markets inadvertently falling out of scope. Closing this gap between the criminal and civil insider dealing regimes implements one of the recommendations from the *Fair and Effective Markets Review*, a joint review by the Treasury, the Bank of England and the FCA into the structural risks in the fixed income, commodities and currency markets.

This SI will reinforce the UK's reputation as a fair and transparent place to invest, with robust regulatory standards and serious consequences for those who do not comply with our laws. I beg to move.

Lord Sharkey (LD): My Lords, this SI seems admirably straightforward and uncomplicated. We support it and I can be brief. I have only a couple of questions and one observation.

The first question relates to paragraph 7.7 in the EM. Why is it necessary to keep NASDAQ and the successor to the SWX Swiss Exchange explicitly in scope, and to add the New York Stock Exchange for that matter? Are they not already brought into scope by this SI's adoption of the definitions in Article 4? I am sure that there is a good reason but I would be grateful if the Minister can explain what it is.

My observation concerns paragraph 7.8 of the EM. It points out that

"the set of securities to which the criminal offence of insider dealing applies to is narrower than the securities covered … in MAR".

It goes on to give examples of the missing securities. It lists currency options, credit default swaps and units in collective investment undertakings, such as exchange traded funds—and says that the list is not exhaustive. It rather coyly says that this is "not optimal". I agree entirely. I understand that this SI corrects that but, given the historical absence of these securities in the list of activities that may be pursued in the criminal courts for insider dealing, today's SI rather looks like having just noticed that the stable door has been left open for 20 years and hastily closing it. It is good that no more horses will be able to bolt but that invites the question of how many have already bolted and how many, if any, were caught by the civil procedures in MAR. Does the Minister have an assessment of how many criminal cases would or could have been brought had the missing securities categories been within the purview of the Criminal Justice Act and how many were taken forward instead under the MAR provisions?

Finally, why does this instrument not come into force immediately? Does not the 21-day delay provide a further window for possibly unactionable criminal malfeasance? I look forward to the Minister's reply.

Baroness Chapman of Darlington (Lab): We agree with the Minister's assertion that there should be serious consequences for those who break the law. We also agree with the comments from the Liberal Democrat Benches and echo the comments about the seriousness of insider dealing. We share the curiosity shown in the other place when this instrument was considered about the length of time it has taken to bring in this measure, given we understand that it came about as a result of a review that took place in 2015. I am not asking this to be facetious, but what assessment have the Government made of the number of criminal offences that would have been caught had this measure been in place sooner, which were treated under the civil regime because this instrument had not yet been brought? We want to highlight the consequences of leaving things quite this late, because we are concerned. That underscores our support for this measure. The Government are right to address this gap between the two regimes and we support this instrument.

Baroness Penn (Con): My Lords, I thank both noble Lords for their support for this statutory instrument.

On the time it has taken to deliver this measure and the potential impact in the meantime of not having the criminal regime and the civil regime aligned, it is important to note that since the *Fair and Effective Markets Review* was published, considerable work has been undertaken to modernise the UK's market abuse legislation. For example, the civil regime for market abuse was updated in 2016 by the EU market abuse regulation and the Government and UK regulators have implemented the majority of the recommendations from the *Fair and Effective Markets Review*, including making changes in the Financial Services Act 2021 to increase the maximum sentence for criminal market abuse from seven to 10 years, bringing it into line with comparable economic crimes such as fraud and bribery. The Government have also recently completed a broader review of the criminal market abuse regime as part of the 2019 to 2022 economic crime plan. While this measure has taken longer to implement, there has been other action in this space in the meantime, including delivering on other recommendations from that review.

On the impact of the length of time in which the scope of the criminal offences has been different from that of the civil offences, it is important to note that the FCA has a number of tools available to tackle market abuse, of which the criminal insider dealing offence is only one. In addition to prosecutions under the criminal regime, between 2013 and 2022 the FCA has had 36 regulatory outcomes relating to market abuse, with regulatory fines totalling more than £70 million in that period.

The Government do not have data on the number of criminal prosecutions that have not been pursued due to the difference in the scope of the regimes. The FCA does not routinely record and track cases that it cannot take forward. This includes cases taken forward under the civil regime that could have resulted in a criminal prosecution with the changes made by this SI. Moreover, it is important to remember that there are a number of reasons why the FCA may choose to pursue a civil rather than a criminal prosecution other than the scope of the two regimes. For example, the FCA will consider the severity of the offence in question and whether the evidence meets the higher legal threshold needed to secure a criminal conviction.

It is not possible to say with certainty whether the FCA's decision not to pursue criminal proceedings in a particular case was due to the issues that this statutory instrument addresses or to other factors, and we do not believe that attempting to determine that retrospectively would be a good use of government legal resources. It is a perfectly legitimate question to ask but, given that other mechanisms were available to the FCA to tackle market abuse under the civil regime—and it has also continued to bring prosecutions under the criminal regime—we can be reassured that it has been able to take action in this period. The Government are confident that the FCA has a strong track record of identifying, investigating and prosecuting insider dealing.

The noble Lord, Lord Sharkey, asked why we include specific US and Swiss exchanges and why they are not covered under the more general definitions that have been used in this SI to avoid the need to update this list again as specific named instruments change. My understanding is that for the more general definitions there are commonly understood definitions used in the UK and EU markets that this can work for, but that when you are looking at other exchanges further afield outside that scope, there remains a need to name those trading venues. That is the difference between continuing to need to name some trading venues versus going for the more general definition-based approach that this SI has done.

As to why we have chosen to include specific US and Swiss exchanges in addition to the UK and EU exchanges that will be covered by this measure, the FCA has seen a persistent trend of organised crime groups recruiting UK insiders to disclose inside information relating to securities traded on those markets. While of course this abusive behaviour is also possible for other third-country venues, this SI includes the third-country markets where the FCA has observed the greatest risk of harm. With regard to other third-country trading venues, and indeed in respect of these ones too, you would expect the home regulator to take action to tackle market abuse in those cases.

I hope that with those remarks I have answered the questions put forward today.

Lord Sharkey (LD): Will the Minister address the point about the 21 days?

Baroness Penn (Con): I can write to the noble Lord on that. It is probably the standard implementation period for a change of this nature. As I said in answering on the assessment of the FCA's tools and track record on being able to tackle market abuse before this update was made, we do not think that will have a substantial impact on the ability to tackle these issues in that implementation period. I think that that addresses the point but, if there is anything further to add to that, I shall also write to the noble Lord.

Motion agreed.

Public Service Vehicles (Accessible Information) Regulations 2023

Considered in Grand Committee

5 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Public Service Vehicles (Accessible Information) Regulations 2023.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these draft regulations are being made to require audible and visible announcements on local bus and coach services across Great Britain. The powers to make these regulations were conferred by the Equality Act 2010, as amended by the Bus Services Act 2017.

The Government believe that everyone should be able to use their local buses confidently, safely and independently. For many disabled people, however, this can be incredibly difficult. Despite the strides made since the Public Service Vehicle Accessibility Regulations were introduced in 2000, certain stubborn barriers continue to frustrate, deter and in some cases prevent disabled passengers travelling by bus. Not least among these is the lack of information on board some buses. Using the bus might be straightforward enough for many passengers, but if you do not know where you are or where your stop is, your experience can quickly turn into a significant challenge.

Consider visually impaired people, for example. A survey by the charity Guide Dogs found that 70% of visually impaired respondents had missed their stop because the driver forgot to tell them when to get off. Faced with having to guess where to get off or to rely on strangers, many visually impaired people are understandably deterred from using the bus. On the London Underground, London buses and trains across Great Britain, noble Lords will have seen audio-visual announcements in action. This is not new technology: on-board announcements have been required on new trains since 1998. For more than 15 years, most bus services in London have provided on-board information, and certain operators, such as Brighton and Hove Buses and Transdev Blazefield, have led the way in their own areas. However, as noble Lords will be aware, there is still much more to be done.

Despite some good work by the industry, only 25% of vehicles in England outside London have the necessary equipment installed. This figure is 22% for Scotland and 34% for Wales. It cannot be right that from one town to the next the experiences of disabled passengers can be so radically different. Buses support people to lead fuller lives, connecting them to their communities. Unlocking the benefits of buses for everyone is key to this Government's mission to level up and spread opportunity across the country. We want everyone to travel with confidence, whether they board a bus in London or Leeds, Edinburgh or Elgin, Cardiff or Carmarthen.

This is why we have introduced these draft regulations, which will require operators of local bus and coach services in Great Britain to provide audible and visible information on board the vehicle. They specify that this must include information about the route, the next stop, route termination, diversions and hail-and-ride sections. The regulations will establish a minimum standard of information that passengers should expect across the whole country. The Government's goal is to see audible and visible information provided on virtually every vehicle used on local services, and we want to see it used to its full potential, not turned down or switched off. With this in mind, the regulations specify minimum requirements for text size and volume.

Since Ofcom research has consistently shown smartphone ownership to be lower among disabled people than non-disabled people, the regulations also prevent operators requiring passengers to use smartphones to access information. For the most part, however, these regulations are broadly "technology neutral" and focus on the information that must be provided. Operators will be able to choose the solutions that suit their services best. The emphasis on outcomes means that the regulations will make a clear and obvious difference to passengers, regardless of the technology used. For disabled people, this will mean the ability to travel much more confidently and independently, no matter where they are in Great Britain or which operator they travel with.

I think noble Lords will agree that all passengers stand to gain from having this information on board. Under the new regulations, any passenger will no longer have to rely on the goodwill or memory of a driver or passenger to tell them whether they are on the right bus or, indeed, when to alight, particularly when they are in unfamiliar territory.

In developing the regulations, we have struck a careful balance between the benefits to passengers and the costs of compliance to operators. Our extensive consultation with representatives of passengers, the industry and the devolved Administrations since 2018 has been vital to achieving this. As a result of this dialogue during the consultation period and subsequently, we have exempted certain types of services and vehicles from the new requirements, which will help keep them on the road and serving their communities. However, these exemptions are very limited.

By October 2026, the vast majority of local buses and coaches will have to provide audio-visual information to comply with these regulations. We have prepared guidance which will help the industry to understand the new requirements and go even further in capitalising on opportunities to enhance and promote upgraded passenger experiences for everybody.

As we look to achieve the aims of the national bus strategy, onboard information will have an important part to play in attracting those with a disability, and indeed those without one, back to buses. On enforcement, we know that operators will want to do the right thing; we will give them the information they need to comply. However, bus passenger groups such as Bus Users UK and London TravelWatch will be involved from day one in arbitrating on passenger complaints and referring them to the Driver & Vehicle Standards Agency where appropriate. If the DVSA identifies sustained, negligent, or intentional cases of non-compliance, the cases will be referred to the traffic commissioner. This measured,

proportionate approach will empower passengers to secure and enjoy the benefits of these regulations. This will help to establish accessible information as a staple of the Great British bus user experience.

In summary, these regulations will drive significant improvements to the accessibility of local transport in this country. They will bring us closer to realising our vision of a country where local services truly work for everyone and nobody is left behind. I beg to move.

Lord Borwick (Con): My Lords, I declare my interests in that I have a son with learning difficulties, and have trusteeships of charities in the register and lots of past interests in the accessibility industry and public transport.

This is an excellent statutory instrument filled with good ideas that will be helpful to a range of people with many different disabilities. However, I gather that consultation for it started in June 2018. Presumably work in the department started some time before that. Can my noble friend tell us when? After consultation, how can it possibly have taken five years to bring this statutory instrument in? Surely, if the consultation confirms that the idea is good, it must become a priority for the department to achieve it.

This is not particularly original technology; as my noble friend mentioned, it is available in many different countries around the world and in London. Yet a mature plan copying the system in other countries has taken five years to bring in. Is not the pride in having done so eclipsed by the shame that it took so long? Does the department consider five years to be reasonable in this matter? Can my noble friend say how many other disability measures are now outstanding? How long does the department expect it to take for them to be brought into action?

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to speak in support of these regulations. I congratulate my noble friend the Minister on the manner in which she introduced them. Were it not for her assiduity, we might still be waiting for them. Perhaps, if the regulations were a bus, we might all have chosen to walk by this stage. Having said that, the bus is such a critical part of public transport. Public transport is transport for the totality of the public. As we have already heard, seven in 10 guide-dog users say that they have missed their stop for want of the driver remembering to tell them. It should not be on the driver. This technology could have been in place years ago. Public transport should and must be inclusive.

It is more than just inclusion; it is inclusion as the golden thread to levelling up. Some 98% of buses in London have audio and visible devices, but the figure falls to less than a quarter of that in many other parts of the country. I was privileged to launch the Manchester talking buses, not this year or last year but in 2016, and in London buses had audio and visible displays before then. It cannot be that if you happen to be a person with access needs outside a major metropolitan area and you want to use the bus, it is a case of, "Good luck getting on board and getting off at the correct stop".

Buses have the potential to connect people and places, but they must be built on inclusive design. Audio and visible displays are a critical part of that. The explanatory notes to these regulations are good—they highlight the benefits for disabled people, but would the Minister agree that these are benefits for all people? The critical point to understand about inclusive by design is that if you make a change that benefits disabled people, everybody benefits.

If you had access needs and you wanted to go to work, the shops or the pub, or to meet a mate, why would you do that if you thought the bus might not stop? You may not have any way of knowing when it is the correct stop to get off at—if you manage to get on board. All that anxiety and stress can and must be taken away by buses being inclusive by design. Audio and visible displays are critical to that.

I have a number of questions for my noble friend the Minister. First, in terms of extent, the regulations cover England, Scotland and Wales. What will the situation be for those with access needs, and indeed for people who may just not know the area, in Northern Ireland? Secondly, can she update the Grand Committee on where the proposed guidance currently is and what progress is being made on that?

Thirdly, will bus companies be able to see how they can go further, beyond the requirements of these regulations, and potentially look at opportunities to give more information to passengers, not by crowding the audio and visible displays but through other allied means, potentially giving more information on history or sites of interest to make the bus journey not only inclusive but more interesting and engaging?

Fourthly, can the Minister inform the Grand Committee what research has been undertaken on the impact of journeys moving from cars, taxis and other modes of transport to the bus? What economic analysis has been undertaken, and what does that mean when one balances those modes of transport with the hopeful increase in bus travel that these regulations will deliver?

Fifthly, the Secretary of State has an obligation to review the regulations within five years. Does the Minister agree that, particularly in that first five-year period, it would be critical to have a review far sooner than that five-year end point?

5.15 pm

As we are on the subject of buses, will my noble friend tell the Committee what the Government's current position is on eradicating the mistake of floating bus stops from our public realm? They are inaccessible, unsafe and a planning disaster.

These are positive regulations. They will make a difference to disabled people and to all people. Does my noble friend agree that all bus companies should be encouraged to get on side with the RNIB's charter, which simply says "Stop for me. Speak to me"? In so many ways that sums up the right way to start any bus journey. "Stop for me. Speak to me", and then the potential of the bus can truly be realised. These regulations could be a key part of inclusive buses connecting people and places, unleashing potential, and being part of the next chapter of positive bus travel for all members of our community.

Lord Young of Cookham (Con): My Lords, I apologise for missing the beginning of my noble friend the Minister's journey as she introduced her remarks. I very much

[Lord Young of Cookham]
welcome the regulations before us, which build on the PSV regulations 2000 and use modern technology to bring in improvements for those with a sight or hearing impairment. I particularly commend the department on its very thorough analysis on pages 4 to 42, looking at all the various options. I only wish that every government policy was subjected to the very thorough analysis that the Department for Transport has subjected this proposal to.

Building on what my noble friend Lord Borwick said, I do not propose to chastise the department quite so violently as he did, but page 4 in the department's defence refers to the high volume of consultation responses and the technical subject matter as reasons for the delay—but there were only 101 responses, apart from the supportive campaign by Guide Dogs, which produced 229. Like my noble friend Lord Borwick, I wonder whether the technical matters needed to preoccupy the department for quite so long. Perhaps my noble friend the Minister could address that.

The document refers to the risk of what is called network contraction due to the cost of implementation impacting on smaller bus operators and thereby services being withdrawn. It goes on to say that the accessible information grant of £3.5 million rising to £4.5 million might mitigate this. Is the grant meant to cover all the installation costs for smaller bus operators or will they have to fund part of it themselves? If it funded all the costs, the network contraction issue would not arise, but it is not quite clear from the document whether the grant will cover all the cost or only part of it.

My noble friend the Minister said that the instrument is technology neutral. It is not quite clear from reading it whether the bus driver simply announcing the next stop would qualify. The regulations state:

"Passengers must be given the following information … at each stopping place on the route".

It is not clear whether if the driver just announces that over the intercom it would qualify or whether there has to be some technology-based system to make sure that, as my noble friend Lord Holmes said, the driver does not just forget to announce it. Perhaps my noble friend the Minister could clear that up.

I have two final points. First, on enforcement, how would we know whether bus operators have done what they are meant to do? Will the department rely on feedback from customers? Will the traffic commissioners be proactive in going out and making sure that the bus routes in their area have the necessary kit?

Secondly, the regulations will provide information while you are on the bus, but in London at any rate, at many bus stops there is a visible sign telling you when the next bus is going to arrive. That is quite useful and I wonder whether the department has any plans to roll out that information at bus stops, which would again encourage use and build up confidence in the system. At the moment, some bus stops in London have this but not all of them. Does my noble friend the Minister have any strategy for improving the information available at the bus stop, as well as that provided on the bus? Having said that, I very much welcome this as an important step forward and I endorse what my noble friends Lord Borwick and Lord Holmes said in welcoming these regulations.

Baroness Randerson (LD): My Lords, I thank the Minister for her explanation, and congratulate the speakers so far on raising a whole range of important information that we really need from her. I strongly welcome these regulations, which flow, as noble Lords have already said, from commitments made in the Bus Services Act 2017—which is, of course, back in ancient history, as the noble Lord, Lord Borwick, made clear to us. It is five years since the consultation. I know we have had Covid in between, which possibly interrupted things, but that did not last five years and it is very unfortunate that we have waited so long, because we have another three years to wait in some cases before full implementation. I recall that there was a Secretary of State recently who had a penchant for complaining about audible announcements on public transport, and I wonder whether that is why it has taken so long for these regulations to come forward.

The point I am making in relation to Covid is that if these regulations had been in place more quickly, I think we would have attracted people back on to the buses much more quickly. We have to attract new passengers to deal with congestion and emissions. It is easy, of course, to take what is in the regulations for granted, if you spend a lot of time in London—as the noble Lord, Lord Holmes, said, 98% of buses and all Tubes have notification of this nature—but there is a failure rate, and I will come to that point later on. Outside London, it is only 25%, and in some areas there is nothing at all.

I draw attention to Regulation 7(3), which specifies what information should be provided, and I am very pleased to see details on volume. Noble Lords may not be aware, but I wear two hearing aids and actually I have very little residual hearing. Without the hearing aids, I would not understand a word anyone was saying here today: even with them, I often miss things. I know the Minister often thinks I do not listen to what she says, but it is not for lack of trying. I am also pleased to see details on hearing loop in priority seats and the wheelchair space, and I am very pleased to see specification on character height for visible information.

I have one point though: the issue of contrast is specified in Regulation 14(5)(b) on page 7. There are good practice guidelines on contrast, which organisations representing people with visual loss are very well aware of, and I am hoping that the Government will take advice and pass it on in terms of the use of the best possible contrast for written information.

There is clearly a public information job to be done as well as training for drivers on these issues, and I would be grateful if the Minister could give us some details about what the Government plan to do to spread this information and good news and raise public awareness of things such as priority seats on buses. We take that for granted on the Tube in London, but that would not necessarily be the case in every part of the country, especially because you cannot see the hearing loop. For someone to have to sit in those seats, public information would need to be available.

I am pleased to see the support from the Scottish and Welsh Governments. It is good to see something on which the Governments across the UK can agree wholeheartedly. It is logical that these regulations exclude

demand-responsive transport, but my question to the Minister is about ensuring that any vehicle used on a variable basis—in other words, sometimes for scheduled work and sometimes for demand-responsive work—would have the capacity to provide that information.

My final question relates to something raised by the noble Lord, Lord Young. What happens if the system breaks down, and what happens about the failure by the driver to switch on the information system or to update it from one route to another? What are the penalties for non-compliance and what are the mechanisms to ensure that all bus companies do comply and, if the system has broken down, that the driver makes the announcement? What is the process by which passengers can make complaints if they believe that this is not being implemented properly? Having said all that, the sooner this is introduced, the better.

Lord Tunnicliffe (Lab): My Lords, I, too, thank the Minister for introducing this SI. For 10 years, I was managing director of the Underground and, as such, was part of the top team in LT. It is nice to see my former boss smiling at that point rather than frown. For two years, I was chief executive of LT and chairman of London Buses, and programmes from that period resulted in the 98%, of which I am personally proud and proud on behalf of the institution.

I want to introduce an idea of how to make these things happen. The reason why we were so successful is that we would have rules, standards and all that sort of stuff, but we also had a cultural issue. I will get the title wrong, but essentially we had a disability tsar, which meant that whenever hard-nosed people were trying to do things, they were asked whether they had taken account of all sorts of disabilities. It was not just about audio-visual disabilities; it was about things such as stairs, handrails and so on. If you can do that activity from a customer-focused point of view, you get to a cultural difference.

I hope that, insomuch as the department can have some influence in this, it will encourage operators to try to think from the point of view of the customer because there are things that can be done beyond this. One of the most difficult things that we found was the invisible disabilities. The most obvious one is deafness, but you also have intellectual capacity and mental health problems. The more you think from the customer's point of view, the better results you get .

5.30 pm

So I am not going to criticise this too much but I have two little question areas. One is the issue of marginal non-compliance. Regulation 14(4) states that the letters must be a minimum of 22 millimetres high, which sounds to me awfully like just under an inch. If a fleet happens to have a good working system but the letters are only 20 millimetres high, do we tear it out or is there a mechanism for discretion? Is there some way in which common-sense solutions to inherited equipment can be catered for?

The second question is can operators add to the elements of information in this package? I think that the answer is yes but I should like that to be confirmed. In other words, if operators think that they want something else—perhaps to do with emergency situations or whatever; I am not going to guess what they may be—it would be useful if it were clear that the information that operators would like to use in the audio-visual systems is allowable. I think that it is. If some area over time is found to be valuable, is there a mechanism for introducing a new element into the information and making it mandatory?

I am getting old and I have done literally hundreds of SIs. I do not know what the number is, but I shall tell noble Lords one number that I know—the number where I have made any impact. It is zero. It has often been a painful zero because I have struggled with the paperwork and poorly written Explanatory Memorandums. While it is attractive to leap on the bandwagon of know-all Ministers' friends and bash Ministers about the head regarding delays and all that, I praise the paperwork associated with this SI. It is well written, comprehensive and sets a standard—I say this loudly to the Minister—that in future I will expect all DfT SIs to meet.

Baroness Vere of Norbiton (Con): My Lords, I am extraordinarily grateful for all the comments from my noble friends and all other noble Lords. They mostly welcome this SI because there is nothing in it that cannot be welcomed. I also welcome the enormous experience of the noble Lord, Lord Tunnicliffe, and his description of the time when he was working at TfL and the Tube. I agree with him; it is about culture, and one of our challenges is to inculcate that culture onto the buses. I do not know how many bus operators there are—the number 140 is in my head but I cannot remember—but it is a lot. Some operators are extremely small with fewer than 20 vehicles. This is about making sure that we bring everyone along with us, although I have to say that I expect some of the big operators in the larger metropolitan areas to be very much on the front foot with this. I expect that disability campaigners and representative groups will be on their cases—I hope that they are—to get dates for implementation from those companies that, frankly, have the wherewithal to do so quickly and set an example that others might follow.

I turn to some of the comments from my noble friends. The first was from my noble friend Lord Borwick. He was duffing me up a little. The "violent chastisement" of my noble friend Lord Borwick were the words of my noble friend Lord Young. I should like to say in mitigation that I was the Buses Minister for a vast period when we as the Government were considering this SI. I was pushing for improvements and to move things faster. It was disappointing every time when, as a Minister, I had to decide whether to reprioritise and re-timeline various things.

Covid has faded into the rear-view mirror, but it is extraordinary to me how, for more than two years of my life, it was all-consuming. For that time, as Buses Minister, saving the bus at all was my absolute priority, and it was a priority for the sector. I think there were two issues why the delay due to Covid happened. First, there was reprioritisation within my department as we were coming out of Covid—and we could potentially see the endgame—and we tried to get the

[Baroness Vere of Norbiton]
national bus strategy out there to help in that recovery and to provide that strategic framework that we needed. Secondly, there was the ability of the operators to be able to give headspace to the very technical and detailed arrangements that they needed to consider to make these regulations right. Frankly, they were more concerned about keeping the buses on the road, keeping the drivers trained and recruiting drivers—all of the challenges that have either happened during Covid or subsequently.

While it is always regrettable when one has to deprioritise anything because there are other more pressing issues, having a stable bus network was the right priority at the time. I wish that we had been able to do everything at once but sometimes in Government, one just cannot. When it comes to these regulations and the technicality around them, it is because buses are not standard, and they can come from all sorts of manufacturers in various parts of the world. Therefore, there had to be a reassurance that whatever we put in the regulations worked on the buses that were available. Of course, the older buses are not particularly standard at all—some of them have very random seat configurations—and they often operate on the rural routes, the less profitable routes, or sometimes the supported routes by local transport authorities. They are the ones with the greatest vulnerabilities—so it is about getting that balance right between implementing those very important changes while making sure that we maintain all the benefits of buses which all noble Lords have already discussed today.

This was particularly reflected in the comments by my noble friend Lord Holmes in the way that buses can be the most inclusive form of transport and they are the best-loved form of public transport in our country. I thank my noble friend Lord Holmes for his positive remarks; he has been an assiduous campaigner in this area for many years. I completely agree that these benefits are for all people. There cannot be a noble Lord in this room who has not forgotten to get off the bus at some point or another. Our reflections in our analysis show that we do believe this will encourage more people on to buses—not just those with disabilities, but other people too as they feel reassured about the information provided on their journey. This is part of the mitigation for the cost of putting it in place in the first place.

My noble friend Lord Holmes also mentioned Northern Ireland. The matter of equalities is devolved to Northern Ireland. However, Translink, the bus operator there, has got audio-visual equipment widely deployed on its buses. I would encourage anybody to go to Northern Ireland, because it is a fantastic place for a holiday. Extra information can be added, but that is up to the discretion of operators. As I said previously, we expect some sort of increase in patronage as a result of this. It is difficult, obviously, to put a firm figure on it, but we do think it will be a positive outcome.

On floating bus stops, the Department for Transport is undertaking some research to ensure that they do the job they are intended to and can be operated safely. My noble friend Lord Holmes also mentioned bringing forward the review of the regulations. It is our intention to review them after five years, but noble Lords will be able to see our progress due to the annual bus statistics. This is a key document issued by the department, which collates all sorts of interesting information about buses, whether they are zero emission et cetera. One of the stats that we will put in that will be the extent to which this is being rolled out. I think that will enable the Government to think about whether it is going quickly enough.

My noble friend Lord Young mentioned support for smaller bus services. It is envisaged that the roughly £4.5 million will cover all the costs of implementation for those operators with fewer than 20 vehicles, which is incredibly welcome. He asked whether the bus driver could just shout, but visual information needs to be provided as well and the two often go hand in hand, so I do not think it would fulfil the requirements in the regulations for the bus driver just to shout.

Lord Young of Cookham (Con): I am looking at Regulation 13, which is entitled "Requirements regarding audio information". There is a lot about the volume, but it does not say that the information must come from a machine; it seems that it could come from the driver. I do not see where Regulation 13 excludes the driver providing the information.

Baroness Vere of Norbiton (Con): This might be one of those grey areas. My officials say that it is right that the driver could provide the information, but there is a minimum and a maximum volume for that information. I suppose that the driver could provide it, but I do not think this would be widespread across the bus industry, given that much of the technology links audio and visual together and the computers behind it project that information at the same time.

Information at bus stops is a key part of the national bus strategy. It is not the responsibility of the operators; they provide the information that is used for those real-time scoreboards at bus stops, but bus stops are operated by local transport authorities, as I am sure my noble friend knows. The BODS is the DfT's means of collating as much real-time information as is available and making it available to local transport authorities, which can then put it into bus stops. Some of the BSIP funding we issued to successful local transport authorities recently will go into boosting the information at bus stops. I agree that it is very helpful to know when your bus will arrive.

The noble Baroness, Lady Randerson, mentioned contrast. There will be further information on that; we have discussed it with campaigners and representative groups in this area. It will be in the guidance, which will come out this summer. There will be training for drivers; it will not be centralised as such, but the operators will be encouraged to make use of the REAL training syllabus and can sign up to the inclusive transport leaders scheme to make sure that staff have the knowledge and skills to support all disabled passengers.

The regulations apply to a service and not a vehicle. Therefore, if a vehicle is being used in different services—it might sometimes be running a scheduled service and sometimes be doing something else—it would still have to provide the information set out in the regulations.

I shall finish on enforcement, as I am conscious that I have spoken a fair amount. There are two main ways of enforcement. First, the Government will be able to

check progress via the annual bus statistics, which come from industry, so we can chivvy people along as such. However, if elements go wrong for a certain customer or there is persistent non-compliance on a particular route or vehicle or by a particular operator, we would expect that passenger to escalate a concern to Bus Users UK outside London and to London TravelWatch inside London. That is the standard method; in my experience, passengers are very good at escalating concerns, particularly as this is such an important issue. We expect that bus operators will want to make their passengers aware of when they have fitted this technology in their area.

5.45 pm

It can then get bumped up the chain from Bus Users UK and London TravelWatch to go through alternative dispute resolution or a complaints handling process. Eventually it gets bumped up to DVSA and if it thinks it is serious enough, it goes to the traffic commissioner. If it gets to the traffic commissioner, that is probably a bad thing for the operator, and I imagine that that will not happen very often because the traffic commissioner has the ability to take away its operator licence or to put other sanctions in place. It is not the Government's ambition to enforce this heavily. We want operators to comply so that this does not have to be heavily enforced because at the end of the day, if you end up with traffic commissioners taking licences away, essentially they are taking buses away, and we do not want that.

I will conclude now, but I will write with any further information that I have.

Motion agreed.

Houses in Multiple Occupation (Asylum-Seeker Accommodation) (England) Regulations 2023

Considered in Grand Committee

5.46 pm

Moved by ***Baroness Scott of Bybrook***

That the Grand Committee do consider the Houses in Multiple Occupation (Asylum-Seeker Accommodation) (England) Regulations 2023.

Relevant document: 37th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, there are currently more than 50,000 asylum seekers living in hotels, given that our asylum system has been overwhelmed by the large volume arrival of asylum seekers by small boats. Hotels are neither intended nor adequate to be used as long-term accommodation. This is also burdensome on local communities and expensive for the taxpayer. It is important to recognise the significant challenges we are grappling with. The Home Office is working tirelessly, along with other government departments, to reduce the Government's dependency on hotels by introducing a suite of short and longer-term measures. It is not right that the country is spending millions of pounds a day on hotels, and we are determined to put the asylum accommodation system on a far more sustainable footing. This reform is one of the many measures being taken to provide adequate and cost-effective accommodation in line with our statutory duty.

The Home Office is also bringing forward a range of alternative sites, such as disused holiday parks, former student halls and surplus military sites, to add thousands of places at half the cost of hotels. All local authority areas in England, Scotland and Wales became an asylum dispersal area in April 2022, thereby increasing the number of suitable properties that can be procured to accommodate asylum seekers across the UK.

Currently, the Housing Act 2004 requires all houses in multiple occupation—HMOs—where five or more people from two or more households share facilities to be licensed. Local authorities can also introduce additional licensing in their area. This requires all HMOs housing three or more people from two or more households to be licenced. Home Office service providers have reported that these additional conditions set by local authorities present a challenge when procuring cost-effective, suitable and safe accommodation for asylum seekers. The Home Office is therefore seeking to remove this barrier.

These regulations will temporarily exempt from the HMO licensing HMOs used by the Home Office to house asylum seekers. This means that HMOs which begin use as asylum accommodation before 30 June 2024 will not need to be licensed for a period of two years. These regulations will cease to be in force on 1 July 2026, and after this point all HMOs used as asylum accommodation will require licences.

I am aware of the concerns that noble Lords and the Local Government Association have raised. I assure noble Lords that the Home Office asylum accommodation and support contract—AASC—standards are broadly equivalent to mandatory HMO licence conditions. This alignment between contracts and national housing standards is deliberate and was developed in consultation with the local authority property inspectors via their professional body, the Chartered Institute of Environmental Health.

Home Office service providers are contractually required to provide safe, habitable, fit for purpose and correctly equipped accommodation for all asylum seekers. The contracts also require providers to comply with the law and a host of best-practice guidance. Consequently, matters that stand to be enforced by local authorities in respect of unscrupulous landlords can also be enforced contractually by the Home Office via its service providers.

All asylum accommodation will continue to be subject to wider private rented sector regulations, including the duties set out in the HMO management regulations, and local authorities will retain their power to enforce these standards and take action against landlords who fail to meet them.

The Home Office contracts for housing also set out a minimum standard for all asylum accommodation, including conditions relating to gas and fire safety requirements, as well as compliance with wider private sector minimum standards. The Home Office is doubling

[Baroness Scott of Bybrook]
the size of its inspection team to ensure that its service providers are maintaining minimum standards in all its accommodation, and specifically all HMO properties that benefit from this exemption.

This dedicated assurance team is responsible for testing and reporting on providers' performance. In addition to the provider's monthly inspections, the Home Office inspects properties on a targeted basis, as well as testing providers' monthly performance against the contractual key performance indicators and conducting assurance reviews. The Home Office will ensure that the assurance regime is commensurate with existing arrangements for HMO licensing to avoid the risk of reducing quality. Where a provider fails to meet contractual obligations, financial penalties can be applied.

Separately, Migrant Help is contracted to provide a free, round-the-clock helpline and online portal available 365 days a year which asylum seekers can use to raise issues, request help, give feedback and make complaints. Maintenance issues raised via Migrant Help are referred immediately to the AASC—asylum accommodation and support contract—provider for action within contractual timescales. If a service user reports that a defect has not been fixed and they remain dissatisfied, it is escalated to a dedicated Home Office complaints team to adjudicate. In addition, the Home Office will put measures in place to allow local authorities to report poor standards or safety issues with any of the housing provided for asylum seekers. The Home Office will also take up the offer from the Local Government Association to enhance joint working to deliver suitable and safe accommodation for asylum seekers under its care.

The Home Office dispersal policy will focus on ensuring the fair and equitable placement of asylum seekers, as we recognise the strain on public services, including housing. The Government will do everything they can to mitigate the risk of homelessness in support of the existing cross-government commitment to end rough sleeping within this Parliament and to fully enforce the Homelessness Reduction Act.

We also recognise the general strain on public services in local authorities, and for this reason existing funding has been doubled for those local authorities which take on new accommodation and do so quickly. Subject to conditions of a grant agreement, this money is not ring-fenced and will incentivise co-operation and ease pressures on local services. However, payments will be subject to the conditions of a grant agreement.

The Home Office will develop a monitoring plan, which will cover service provider data in relation to the accommodation acquired as a result of this reform, reporting on quality and compliance/assurance to measure its effectiveness as well as to inform the assessment of wider homelessness impacts. More broadly, Home Office engagement with local authorities has significantly increased and improved since the introduction of an engagement strategy which is designed specifically to ensure that impacts on local services can be raised, discussed and mitigated through the multi-agency forums. Regular meetings are held between the Home Office and local authorities' key strategic fora, including the asylum and resettlement council senior engagement group and the strategic oversight group. The Home Office will also arrange an open forum for local authorities to attend, which is a further opportunity for local government colleagues to discuss issues of concern with senior Home Office officials. I beg to move.

Lord Scriven (LD): My Lords, I thank the Minister for introducing this SI, but this is yet another chapter in a book that is about dehumanising some of the most vulnerable people in the world seeking asylum in this country. It is bizarre that the Minister says that the reason why we need this SI is because the contract that providers of asylum accommodation have is exactly the same. In a moment, I shall go through what a mandatory HMO is licensed for, and I seek from the Minister an absolute assurance that every single clause that I give is covered in that contract. If not, the Minister has not been quite correct at the Dispatch Box.

It is not necessarily the case, as the Minister tried to portray, that the reason for the cost of accommodation for asylum seekers is because of the number of small boat arrivals. The House of Commons Home Affairs Select Committee reported recently that the reason for the strain on accommodation is the incompetence and inefficiency of the Home Office in dealing with the backlog. Some 68% of those waiting to have their claims assessed in March 2023 had waited more than six months. Even though the number of case workers has doubled from 308 to 614 since 2022, productivity has not changed at all. The number of people being dealt with or cases that have actually been closed in a month is exactly the same: one case per caseworker per month. That is what is causing the strain on accommodation, not the number of people arriving. It is clearly the incompetence and lack of productivity from the Home Office.

In her introduction, the Minister said that the number of those who are available to investigate will double in size to see whether the contractual arrangements are being carried out. How many individuals, full-time equivalent, will be available? On average, how many does that equate to for each local authority area?

6 pm

The Minister also said that getting rid of these arrangements for HMO licensing and adopting the statutory instrument will create "safer accommodation". I shall just go through the mandatory HMO licensing conditions that are being done away with in this statutory instrument, and I shall ask the Minister, as I said previously, to confirm that every single condition is in the contract that the Home Office has with the suppliers of accommodation for asylum seekers.

"The following conditions must be attached to all HMO licences"—

provided by a local authority.

"A gas safety certificate must be presented annually to the authority if there is a gas supply. Electrical appliances and furniture supplied by the landlord must be maintained in a safe condition. Smoke alarms must be provided for each storey of the property containing living accommodation and kept in working order. The landlord must provide the authority, on demand, with declaration as to the safety of electrical appliances and furniture in the property and the condition and positioning of smoke and carbon monoxide alarms … For licenses granted after 1 October 2022, a carbon monoxide alarm must be installed in every room

used as living accommodation in which there is a fixed combustion appliance other than a gas cooker, and kept in working order. For licences granted before this date, carbon monoxide alarms were required to be installed in rooms with a solid fuel burning combustion appliance. The license holder must also ensure that every electrical installation in the house is in proper working order and safe for continued use; supply the local authority with a declaration confirming the safety of the electrical installation if the authority requests one".

"Additional mandatory conditions for licences granted after 1 October 2018. For HMO licences granted on or after 1 October 2018, minimum size requirements should be included for all rooms used as 'sleeping accommodation' … The particular minimum sizes specified in the licence are a matter for the local authority to decide. However, they cannot be smaller than 6.51 square metres for a room used by one person aged 10 or over; 10.22 square metres for a room used by two persons aged 10 years or over; 4.64 square metres for a room used by one person aged under 10 years".

Can the Minister confirm that the same conditions that I have said so far are in the contract with the provider of accommodation for those seeking asylum?

Also, the suitability of the landlord and the property manager come into consideration in the licensing of an HMO. The landlord must be seen as a fit and proper person. So, in terms of the suitability of the person, are the same conditions provided as for the granting of a licence to those within the local authority HMO licence scheme?

"In deciding whether a person is 'fit and proper' to be a licence holder or the manager of an HMO, the local authority must have regard to any evidence available that the person has: committed any offences involving fraud, other dishonesty, violence, drugs, or any sexual offence that attracts notification requirements; acted other than in accordance with any code of practice approved under section 233 of Housing Act 2004; practised unlawful discrimination e.g. on grounds of sex, colour, race, ethnic or national origin or disability; contravened any provision under housing or landlord and tenant law; had a banning order made against them".

There is a lot in these licensing requirements. The Minister developed the reason why they are being put on temporary hold in this statutory instrument—the contract for those providing asylum seekers with accommodation has exactly the same provisions. I look forward to her confirming, line by line, whether everything I have said is in the contract. If not, it is clear that the chapter of the Home Office and government departments dehumanising some of the most vulnerable people is continuing.

Baroness Hamwee (LD): My Lords, I too thank the Minister for her introduction. I was not aware that my noble friend was going to speak. Fortunately, what I have made a note of is not inconsistent with what he said. I will try to edit as I go so that I do not repeat too much. I recognise the issue that the Government seek to address, though I am unconvinced that this is the solution, but I made my views on their asylum policy quite clear to the House last week. My noble friend has also given the context quite clearly.

HMOs under the current system are hardly luxury accommodation but the licensing requirements in force since 2004, I think, ensure certain standards. As my noble friend has said, these are not just about physical standards but the standards of conduct, and so on, of those involved in the provision—licence holders and managers must be fit and proper persons. I am making a foray away from Home Office debates into DLUHC ones, but in Home Office discussions I have expressed my concern several times that the people who run the hotels are not fit and proper. I have raised the question of disbarring orders and so on; we are all aware of the history of children going missing. Unaccompanied asylum-seeking children may not be placed in this accommodation, though perhaps we ought to get a confirmation from the Minister that they will not be placed in it by themselves. However, children will be; I gather that it is intended for families.

I have also gained a very clear impression that the providers of hotels have been quite distanced from what is happening on a day-to-day basis. I assume their contracts contain some requirement regarding the people who run the hotels, but it does not seem to be well enforced. The current assessment for a licence relates to compliance with housing, landlord and tenant law and codes of practice. Will we have codes of practice relating to this accommodation? My noble friend has mentioned the issue of discrimination on a number of grounds. When one thinks about asylum seekers, it is obvious how relevant that is.

The Minister has mentioned dispersal. There are different ways of looking at this. I understand the point she has made about the strain on different local authorities, but there is also an important advantage to placing people with similar backgrounds within what they might well regard as their community. It helps towards settlement, though I recognise that the Home Office is not particularly concerned about settling asylum seekers—probably the contrary. The people who live in HMOs are often vulnerable and not likely to complain. I would guess that this is even more the case with asylum seekers, who will not naturally have much trust in authority figures.

My noble friend talked about physical safety standards and the obvious concern about fire risks and so on. The Home Office may be doubling its personnel, but there are the questions of numbers and training. What inspection and monitoring arrangements will be in force? I do not have a picture of how often it will be. Will they carry out their work only at the start of a contract, or before? The scheme looks too much like a blank cheque for less scrupulous landlords and providers of asylum accommodation. We know that hotel accommodation is now being charged at rates unrelated to its standards.

Reading about how the temporary exemptions from licensing will operate, I wondered whether the administration will be cumbersome because of the varied start dates involved. Inevitably, I wondered what consultation there had been with local authorities. We are told about future work between central government and local authorities, but this sort of scheme, which is a significant change, should—perhaps I am too idealistic—have been one whereby local authorities were satisfied that they had had good involvement with the work of DLUHC.

I received briefings, as other noble Lords will have done, from the LGA, London Councils and Shelter, for which I am grateful. They did not give me the impression that the Government had met their concerns or of how they could do so in future. There is understandable concern that, even if a property is not brought into the scheme until it has been inspected by

[Baroness Hamwee]
the Home Office, the conditions will deteriorate and we will end up with a two-tier system. Landlords will surely be incentivised to switch properties away from their existing use to Home Office contracts because they are potentially rather more profitable.

What consideration has been given to continuing the current licensing arrangements but with lower standards? I am referring not to matters such as fire safety but the numbers of people who share bathrooms and kitchens—not that the standards are that high now. If a property is designated as asylum accommodation, what is to stop the landlord letting it to non-asylum seekers? I mentioned tenants being unaware of their rights and frightened to complain. That will be so much more the case than it is now.

Finally, there is the issue of the resourcing of local authorities, whose work in this area is part funded, I understand, by licence fees. Once an HMO is exempt, the local authority will not know where the potentially dangerous HMOs are. Would money not be better spent on inspections and enforcement than on going hunting for HMOs? As the Secondary Legislation Scrutiny Committee rightly suggests, will the Home Office make publicly and regularly available the numbers of asylum seekers placed in unlicensed accommodation? It defies logic to suggest that nothing significant will change in terms of standards—if that were the case, why have this statutory instrument?

6.15 pm

Baroness Taylor of Stevenage (Lab): My Lords, I thank the Minister for her introduction. I start by saying that my comments will mainly be directed at the Home Office. I am sure that the Minister, with her experience in local government, will be quite sympathetic to some of the things that I will say, even if she cannot say so here. I thank the noble Lord, Lord Scriven, and the noble Baroness, Lady Noakes, for their comments, much of which I totally agree with.

Coming as they do on the back of the complete disregard the Home Office afforded local government and other local stakeholders in the procurement of hotel accommodation for asylum seekers, the provisions in this statutory instrument represent another potential catastrophe as the Home Office once again rides roughshod over the asylum seekers directly affected—I agree with the noble Lord, Lord Scriven, about the dehumanising effect of successive actions that have been taken in this regard—the neighbours and communities of the housing this impacts and the local councils and other agencies that will once again be left to pick up the pieces. Why should our communities be subject to this turbulence because the Home Office has abysmally failed to tackle the weaknesses in its asylum processing capacity and capability? The noble Lord, Lord Scriven, gave the figures, so I will not repeat them.

The impact of government procurement of hotel space at such short notice and with little, if any, liaison with local authorities continues. Local tourism and events have been left short of hotel space. Some events have had to be cancelled or postponed. Weddings and other family celebrations have been cancelled. Staffing has been disrupted because of the need for different service levels. Unsuitable locations have been chosen, leaving asylum seekers stranded with no access to vital services. Local public services have found themselves, without warning, faced with the pressure of tackling complex needs and demands with no chance to prepare or assess the resources they need to deal with them.

Removing the protections in the HMO licensing requirements, which ensure the safety and quality of accommodation, by exempting for up to two years HMOs taking asylum seekers is potentially dangerous and divisive. It risks stacking up long-term problems for asylum seekers in terms of their mental and physical health, their safety in the properties and their recourse where conditions do not meet acceptable standards. The protections the licensing requirements afford around occupancy rates, compliance with safety requirements, sound management practices and the fit and proper test for landlords are essential protections. Councils take them very seriously as they carry out their inspection and enforcement duties.

We could potentially be creating a two-tier system here, where asylum seekers, many of whom are already suffering from trauma and other stress-related conditions, will be relegated to substandard accommodation. We note that the Government say that every property will be inspected by a Home Office contract inspector. What checks will be done to ensure that these contracts are carried out consistently by experienced and qualified inspectors? Will those inspectors be independent of the Home Office and, given current Home Office pressures and capacity, will there be enough resource in the department to manage this process as it rolls out across the UK?

What assessment will be carried out of the capacity of local areas that may already have high numbers of asylum seekers located there to cope with the additional numbers, and how will the potential for community tensions be assessed? Who will do that? The noble Baroness, Lady Noakes, referred to dispersal. How is this being monitored and managed? Can the Minister tell us what the minimum standards will be for this HMO accommodation in terms of, for example, space standards to avoid overcrowding, access to kitchen and bathroom facilities and the location of properties to enable access to other services that asylum seekers may need, such as health facilities?

The noble Lord, Lord Scriven, went through some of the other provisions, which I will not repeat, but a detailed statement of what is included in the Home Office inspections would be extremely helpful. Is it the intention that these HMO facilities will be used only for single adults or are they to be used for families as well? If the latter, can the Minister tell us what minimum level of provision the Government would expect to see for children living in HMOs? How are the Government liaising with local authorities about the potential impact on their existing supply of affordable housing and homelessness provision that may be exacerbated by government procurement of HMO capacity?

London Councils has data from 25 London boroughs showing that they procured 26% fewer private rented sector properties for homeless households in February 2023 than in the same month in 2022, and the total number of temporary accommodation properties requested back by landlords was 150% higher over the same period. As a result of this, the number of households

in unsuitable bed and breakfast accommodation in London was 167% higher in February 2023 compared to February 2022. Data provided by 23 councils show the number of families in bed and breakfast accommodation for longer than six weeks was up 823%. Those figures were for London. Have the Government done any assessment of how these figures are increasing outside London and what impact the policy in this SI may have on the availability of homeless accommodation? I am pleased to hear about the additional funding for local government, but it does not help with the availability of housing provision that it will be losing.

Can the Minister tell us what local liaison will be in place for asylum seekers placed in HMO accommodation when they need to raise issues of poor standards or health and safety? I hear what the Minister said about Migrant Help, but I remain to be convinced about the consistency of provision of that on a 24-hour basis, when there may be problems with properties. What engagement structures have been put in place with local government and other public services to ensure that they are able to do all that they can to make this work properly? If councils are not involved, will the Home Office take direct responsibility for safeguarding, health and safety and well-being?

The LGA has requested in its excellent briefing—I agree with what noble Lords have said about how good it is—that there is a commitment from the Government about the timescale with which they expect this provision to be in place and that they have requested that local government be involved in the ongoing review. I am pleased to hear the Minister's comments on this, but it is telling that the LGA had to write to us all on this issue to give its point of view. It should have been engaged from the very start of this process so that it worked with the Home Office on what the processes would be. Is that something that the Government will now put in place? I hope that that was the assurance from the Minister.

Both the LGA and London Councils—the latter also provided noble Lords with an excellent briefing—have questioned what evidence there is to suggest that this change in regulations will speed up procurement of accommodation. This is already a high-risk part of the housing sector, and the potential to undermine safety and standards seems very risky if there is not clear evidence to suggest that it will achieve the Home Office's intended outcomes. Can the Minister clarify how this proposed transfer of responsibilities away from local teams will speed up the assessment of properties?

There are so many questions—too many questions to make me feel comfortable that this is going to work at all. One has to ask, just who is this policy for? It is not for asylum seekers, who it seems are to be relegated to some lower-tier housing division which removes any protections, safety and security they may have had while their applications are processed. It is not for local authorities, or other public services, which are left in the dark again and then expected to pick up the pieces of a policy which it seems no one except the Home Office thinks will work. It is certainly not for the communities, which are being asked to pay the price for years of the Home Office's failure to act. You have to ask—just what is the Home Secretary thinking of?

Lord Scriven (LD): In my enthusiasm to speak, I forgot to put on record my interest as a vice-president of the Local Government Association.

Baroness Scott of Bybrook (Con): I thank noble Lords for their contributions to this debate today. Much of what has been discussed is obviously for the Home Office; in my responsibility as a Government Minister, I shall attempt to answer everything I can, but there will be things that I will have to come back to. I hope that I can persuade noble Lords to join me in supporting these regulations, which are a necessary step to accelerate moving asylum seekers from what is not suitable—we have had this debate many times in this House, and hotel accommodation is not suitable—into more suitable accommodation for them.

This is not dehumanising; this is actually giving them a better place to live, and trying to get people out of hotels as quickly as possible. Both the noble Lord, Lord Scriven, and the noble Baroness, Lady Taylor of Stevenage, asked why we are doing this. We are doing it because the asylum accommodation service people are telling us that they have identified that the whole process of licensing requirements is really a challenge to swiftly bring on board the properties that we need in order to get people out of the hotel system.

Baroness Taylor of Stevenage (Lab): I think either the noble Lord, Lord Scriven, or the noble Baroness, Lady Noakes, I cannot remember which, asked whether any thought was given to improving the resources for local government to take this on, rather than setting up a whole new system. Is the Minister able to comment on that?

Baroness Scott of Bybrook (Con): I will go through the support we are providing to local authorities, but I do not think the local authorities could have moved as fast as was necessary to do this: it takes training, et cetera. It is about getting people out of hotels and into better accommodation.

The noble Baroness, Lady Taylor of Stevenage, and the noble Lord, Lord Scriven, brought up the Home Office contracts. I have listed all the requirements under the licensing. I am sorry I have not got an answer to everything. Gas and safety requirements are there in the contracts for the Home Office, as well as compliance with wider private rented sector minimum standards, but I will go through each and every requirement in the licensing and we will send a letter explaining what is there and what is in the contract so that we are absolutely transparent about that.

Lord Scriven (LD): Therefore, the Minister, at this point, even though we are being asked to accept the statutory instruments, cannot give an assurance to the Grand Committee that it is like-for-like and that housing standards of quality and safety will be exactly as asylum seekers now have in accommodation in HMOs if they are licensed by a local authority? That is what is actually being said: that guarantee cannot be given on a like-for-like basis.

Baroness Scott of Bybrook (Con): No, I am not going to give that guarantee from this Dispatch Box, because there is a complicated list of things, and if

[Baroness Scott of Bybrook]
I say, "Yes, it is", there will be a tiny bit that the noble Lord will come back and quite rightly say, "You have got this wrong". I am going to make sure that I look at that licensing requirement, look at the contract, and see what differences there are.

Lord Scriven (LD): Will the Minister therefore give a commitment that that answer and letter will come before the statutory instrument hits the whole House? I think it is really important that we get it before the statutory instrument is before the whole House and agreed by the whole House.

Baroness Scott of Bybrook (Con): No, I cannot do that because I am not in control of when the statutory instrument comes before the whole House, but we will get it to noble Lords as soon as we possibly can from the Home Office. I am sorry, but that is as much as I can do.

The noble Baroness, Lady Hamwee, brought up the issue of the dispersal policy. I have to say, I hate that word. The noble Baroness, Lady Taylor of Stevenage, brought up the pressures on local authorities; she mentioned London specifically. We need to make sure that asylum seekers are located across the UK, not just in one or two areas. We know the pressures on public services, and we need to make sure that those are not overtaken by larger numbers. It is important that we look at that. Equally, we need to make sure that we do not put asylum seekers away from family, friends and their communities, so we have to do both.

6.30 pm

The noble Baroness, Lady Hamwee, asked why there was not any consultation. This is because we think that this is just a necessary step, and we want to get people out of hotel accommodation and into more suitable accommodation. It is not second-class accommodation. We are making sure that it is inspected, checked, safe and appropriate. We thought that it was important not to wait eight to 12 weeks, but to get on and actually deliver this further movement of people out of hotels.

The money for local authorities that the noble Baroness, Lady Taylor of Stevenage, brought up is important. The Home Office has worked and engaged more and more with local authorities. It is increasing that engagement even further. There are fora now for local authorities to work with senior people from the Home Office. As we go move forward through this strategy, I thank local authorities for the amount they are doing. I know just how much the local authorities have been doing and how they were impacted when the Sudanese refugees came in recently. Home Office engagement with local authorities is increasing and will continue to increase at higher levels to ensure that the Home Office knows what the impact on local authorities is.

Councils are receiving £750 per person for each and every existing asylum bed, and £3,500 for each new dispersal bed that comes online. In addition, as part of a four-month pilot, councils will receive a further incentive payment between £2,000 and £3,000 where a bed is brought online within an expedited timeframe following identification. We are supporting local authorities in funding to deliver this important move from hotels to better accommodation.

The noble Baroness, Lady Hamwee, asked if there will be codes of practice. The Home Office contracts require providers to comply with the law, obviously, with local authority licensing requirements, and with a host of best practice guidance. There are many checks and balances on those contracts and contractors to deliver decent homes.

Lord Scriven (LD): The Minister really confused me then. She just said that the providers of this accommodation will have to abide by the licensing conditions of local authorities on HMOs. Does not the statutory instrument actually remove the requirement on them to do that? Is that not its sole purpose?

Baroness Scott of Bybrook (Con): No, it removes the requirement for them having to get a licence, which takes time. The letter I am going to write to the noble Lord, and to all noble Lords, will then give the specifics to make sure that there is nothing missing between those two issues. That is what he wants to hear, I think. We will get that to him—that is what he is asking for.

Lord Scriven (LD): It is, but the logic behind this statutory instrument is to speed up the process of getting accommodation. However, if the accommodation has to be exactly the same as the HMO licensing conditions of local authorities and the Home Office does not have the number of people to be able to do the assessment of the properties, how does it speed up getting the properties? The number of properties will be the same in each area and they will have to be inspected before they can be brought on board to house asylum seekers. I do not understand the logic of how this will speed that up.

Baroness Scott of Bybrook (Con): The whole process of licensing takes time and, I have to say, a bit of paperwork and bureaucracy. Noble Lords know that these things take time, whereas, if we can get people out and into accommodation that is properly regulated and tested, and people go in there and check it on a regular basis, that is a quicker way of getting people into communities and out of hotels.

The noble Baronesses, Lady Taylor and Lady Hamwee, asked about unaccompanied minors—a really important point. I assure the Committee that they will not be placed in HMOs, which is extremely important.

I know I have not answered everything, but the difference between the licensing regime and the quality regime of the contracts and the Home Office is important, and I want to get it absolutely right and make sure that the detail is correct for noble Lords.

Lord Scriven (LD): The question that I and the noble Baroness, Lady Taylor of Stevenage, asked was: if the number of people enforcing from the Home Office is going to double, what will that number be and what is the average per local authority area?

Baroness Scott of Bybrook (Con): I asked for an answer on that, but I do not think it has come forward. I am really sorry; I will get these answers to noble Lords as quickly as I possibly can. I am conscious of what they are asking me to do.

Baroness Taylor of Stevenage (Lab): I know it is not the tradition of the Committee to not vote for SIs, or to vote against them, and I understand that—I will not do anything like that—but had this come before my council, with the lack of information that we have about why it is being done, not just what is being done, I could not have supported it. Whether local government could do this job equally well was never assessed. If the Home Office can recruit more inspectors, local government can do so too. If the Home Office are going to look at the same things that local government looks at, why is local government not looking at it? Can we have some clarity about what will be looked at? I am happy to have that in writing.

Before I sit down, I profusely apologise to the noble Baroness, Lady Hamwee, whom I called by the wrong name. I had written the wrong name on my papers, which is completely my fault, and I apologise profusely. I will not get it wrong next time.

Baroness Scott of Bybrook (Con): I cannot let it go that we are not making it clear why we are doing this. I want to make it very clear that we are doing it to speed up the movement of these people from what the House has clearly said many times is unsuitable hotel accommodation, which is not right over a long period of time, into better accommodation. That is why we are doing it. We want to do it as quickly as possible, and we fell that, in the short term of two years, the licensing regime was slowing that movement down.

Baroness Hamwee (LD): I will tell the noble Baroness, Lady Taylor, a tale about mixed-up names when we finish this Committee.

We have focused very much on safety standards. As I understand it, and I may be wrong, the standards of bathroom and kitchen facilities, and possibly the amount of space per person, will be different. I think that is covered by what the Minister has said she will find out about, but I do not want to lose that.

Baroness Scott of Bybrook (Con): No, absolutely not: I have written down everything that the noble Lord, Lord Scriven, asked to be checked against the Home Office conditions, and we will make sure we check *Hansard*. I know that things such as bathrooms, kitchens and room sizes were in that list because I have written them down. If there are no further questions, I assure noble Lords that these regulations are an important part of the Government's asylum dispersal plans—although I do not like that word. I thank noble Lords for the challenge and scrutiny they have given to them, and I will make sure that I get answers to them as soon as possible.

Motion agreed.

Committee adjourned at 6.40 pm.