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

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[Continued from column 1508]

Clause 11: Period for which persons may be detained

Amendment 71

Moved by ***Lord Anderson of Ipswich***

71: Clause 11, page 17, leave out lines 32 to 36

Member's explanatory statement

This amendment seeks to remove the possibility that the Secretary of State may extend the period of detention indefinitely in the circumstances referred to in this subsection.

Lord Anderson of Ipswich (CB): My Lords, I have put my name to Amendments 71 and 72, tabled by the noble and learned Lord, Lord Hope of Craighead. These amendments are designed to probe the meaning of two similar subclauses. I can almost taste the enthusiasm. They could have been multiplied because similar wording appears in three other parts of the clause. I said that I would deal with the noble Lord's points on Hardial Singh on another day; little did I realise how soon that day would come, but I will do so.

Clause 11 is described in the Explanatory Notes as "codifying, in part, the Hardial Singh principles". However, the Constitution Committee, on which I have the honour to serve, said in paragraph 13 of its report that it represents a departure from that jurisprudence in at least one important respect: by making the Secretary of State herself rather than the courts the judge of whether a period of time is reasonable.

On that last point, I will read two sentences from the judgment of Lord Justice Keene in the Queen on the application of A against the Secretary of State for the Home Department in 2007:

> "It is to my mind a remarkable proposition that the courts should have only a limited role where the liberty of the individual is being curtailed by administrative detention. Classically the courts of this country have intervened by means of habeas corpus and other remedies to ensure that the detention of a person is lawful, and where such detention is only lawful when it endures for a reasonable period, it must be for the court itself to determine whether such a reasonable period has been exceeded."

I do not need to ask the Minister whether the intention of the Bill is to reverse that authoritative statement of the separation of powers in our constitution because the Explanatory Notes make it perfectly clear at paragraph 94 that it is. The purpose of the clause, it would seem—and this is a striking application of the logic of deterrence—is to allow detention to endure in circumstances when, in the objective view of a court, it would be unreasonable.

1 am

I have a short question for the Minister and a longer one. First, is it right that this power, which the Bar Council describes as an "emergency wartime-style power", can be applied to all immigration detention, including those who entered lawfully as visitors or via intracompany transfers? I had not appreciated that until I read the Bar Council's briefing. I would be grateful if the Minister could clarify. Regarding the longer question, it is lucky that we are debating at 1 in the morning, since minds need to be alert for this one. Can the Minister explain the intended effect of the subclauses which are subject to Amendments 71 and 72, tabled by the noble and learned Lord, Lord Hope, and their equivalents elsewhere in the clause?

The clearest example, because it does not depend on cross-references and can be understood from the Bill, is that Clause 11(6)(3) appears to say that a person may be detained pending a decision whether to remove even if there is nothing to prevent that decision being made. Does that mean that a person may be detained even if everything is in place for a decision not to remove them? Is the Secretary of State deemed to have acted reasonably by continuing detention in those circumstances? If the Minister can explain the point of these subclauses, I will be grateful, because I am genuinely, not forensically, baffled.

Finally, since the night is yet young, I hope that I may be permitted a short comparison. Noble Lords who have been here longer than me will remember the issue of how long persons arrested on suspicion of terrorism could be detained before a charging decision. The period used to be 28 days. Attempts by Labour Governments to extend that period, first to 90 days and then to 42 days, were beaten back in this House. The coalition Government eventually reduced the period to 14 days, which is where it stands today, although repeated visits to the court, initially at intervals of 48 hours, are required by any police force wishing to detain someone for anything like that period. The law is full of anomalies but is it not remarkable that those who are not suspected of terrorism but may be fleeing from terrorism can be held for far longer periods than this, with the reasonableness of that period being judged by the Executive and with the possibility of applying to a court being specifically excluded under Clause 12 until 28 days have passed?

Baroness Chakrabarti (Lab): My Lords, I must congratulate the noble Lord, Lord Anderson of Ipswich, on such a clear and articulate tour de force, explaining a very important legal principle at five past 1 in the morning. His simple and clear speech poses a question to the Minister. Will the question of what is a reasonable period of detention now be the preserve of the Government and Home Secretary of the day, or will we keep with our traditions in this country? I do not mean this new-fangled human rights stuff; not this international stuff that some noble Lords in the Committee might have an aversion to, but principles that go back to 1305, give or take—some would say earlier. This is a contentious matter in legal circles, and no doubt someone will have a pop at me, but I think that we can say 1305 with some certainty when we are talking about habeas corpus.

The Hardial Singh principle makes it clear that this applies to migrant people too—they should be able to challenge the reasonableness and lawfulness of their detention in a court. It is not up to just the Home Secretary, not even for the purposes of deterrence, to say that somebody should be subject to indefinite detention. It was of course the legendary English

[Baroness Chakrabarti]
jurist and Conservative politician William Blackstone who wrote so powerfully about this writ or order, requiring that a person's detention be accounted for in a court. That was in 1305, but we believe that similar procedural writs were probably used even earlier. The noble Lord, Lord Anderson, will correct me, but there has been some discussion that some of these writs were available in English courts even before 1305.

This is not 1965; it is not hippie stuff. This is not 1945, post-war stuff. This is 1305. This is such an important principle that informed constitutions and bills of rights all over the world, when people had their liberation struggles. Of course, it then informed the post-war human rights framework, but it is not to be punished for that. If there are rights nationalists in the Committee, who like English rights or British rights but do not like international rights, that is fine: that people should not be indefinitely detained at the behest of the Home Secretary has an old and British enough provenance. The reasonableness of their detention for the purposes of effecting their removal, in this case, really ought to be capable of being tested and ultimately decided in a court.

For the clarity of the amendments and for their exposition, particularly under these circumstances, I am incredibly grateful to the noble Lord, Lord Anderson of Ipswich.

Baroness Bennett of Manor Castle (GP): My Lords, it is a great pleasure to follow the noble Baroness, Lady Chakrabarti. Members of your Lordships' Committee who are dedicatedly glued to their third Marshalled List of amendments to the Illegal Migration Bill will, I am sure, have noted that my noble friend Lady Jones of Moulsecoomb has attached her name to Amendments 71 and 72, both of which have been very ably introduced by the noble Lord, Lord Anderson of Ipswich. I have to say that I was extremely pleased to see the noble Lord in his place, as it did not fall to me to try to do that job.

That makes me reflect that we are missing two of the key people whose names are on these amendments—the noble and learned Lord, Lord Hope of Craighead, and the noble Lord, Lord Blunkett. In our debates on the Bill, we have been discussing impact assessments and equality assessments a great deal. There is an extreme inequality in the way in which so many Members of your Lordships' House have been excluded from amendments in which they clearly have a very strong interest by the ridiculous hour at which we are now debating.

However, in one way my noble friend Lady Jones and I are in our normal position, because my noble friend is a lark and I am an owl. Normally, we hand over around the late evening when my noble friend goes home and I pick up from her. The way we are going, we will be doing a morning handover for the first time, because my noble friend will be awake in about four hours, so perhaps we will hand over then.

I must admit that 1 am is probably not the ideal time to fully bone up on Hardial Singh principles, because my noble friend is much more of a specialist in this area of law than I am. So I was thinking about how I could usefully add to this debate. From my understanding and from reading the Explanatory Notes, it seems to me that the key sentence is:

> "If the Secretary of State does not consider that the examination, decision, removal or directions will be carried out, made or given within a reasonable period of time, the person may be detained for a further period".

So the question I put to the Minister from looking at that is, how long do the Government really think this can go on for? We have incredibly overcrowded prisons with an increasing need for provision for old-age pensioners. Are we going to see the same thing in immigration detention? Is that really what the Government perceive as likely?

The other point that I want to make is a comparative one. If we look around other parts of Europe, we see that, already, even before the recent and planned extensions, we have one of the largest immigration detention suites in Europe. Why is that? France has a maximum of 32 days of immigration detention; in Germany, it is a sliding scale of six weeks, six months, or in extreme cases 18 months; in Hungary, it is six months. I know that the Government do not really like comparisons with Europe, but are we not putting ourselves as an utter global outlier through these provisions, unless they are changed along the lines of these amendments?

Lord German (LD): My Lords, I will come to my Amendment 71A in a moment; I will also speak to the opposition to the clause standing part.

I am grateful to the noble Lord, Lord Anderson, for enlightening us on the Hardial Singh principles and for reinforcing the view, expressed by lawyers in all sorts of documents that have come to us, that this clause increases the power of the Government and reduces the power of the courts, and that the balance of power between the three branches of our constitution is therefore being altered by this clause.

The first stage is quite clear: Clause 11 overturns the long-established common law principle that it is for the court to decide for itself whether the detention of a person for the purposes of removal is for a period that is reasonable. That is absolutely critical to prevent people, including the most vulnerable, languishing in detention and having their freedoms curtailed unjustifiably. The United Kingdom Government have always justified not having a time limit on detention because of the involvement of the courts. This is being done away with, and we will now see that detention for a short period pending removal may be much less likely. Again, the poor treatment of people is being used as a deterrent to others, and their rights are being infringed in the process. We believe on these Benches that the courts must have effective oversight. We cannot allow the Government's power of administrative detention to be expanded. The balance is going in the wrong direction.

The purpose of immigration detention is to facilitate removal, and there is no evidence that these changes are needed to improve removals. They will mean that the Home Office will be able to detain people where there is a barrier to removal or where they are not pursuing removal as diligently as they could be. Given the lack of returns agreements in place—we have just one—this is likely to result in a growing number of

people being detained indefinitely. That is hugely concerning. It would appear that it creates specific powers that people can be detained for longer than the current limited grace period after release has been decided upon: the Home Secretary will be able to detain for a period of time "reasonably necessary" to enable release.

This leads me to my amendment's point. I would like to probe the Government to find out how and why they can marry the obligations under Article 5 of the ECHR with Clause 11. In its legal observations on the Bill, the UNHCR notes:

"Detention for the purpose of making arrangement for release … is arguably not permissible under Article 5 ECHR".

How do the Government marry that view with the obligations under Article 5? Has the UNHCR, in their view, got it wrong? If so, what are their reasons for thinking this?

The period for which people will be detained will therefore be very uncertain. This uncertainty has profound mental health implications, including increasing feelings of hopelessness, which is one of the most prominent risk factors linked to suicide. The extended use of detention in such circumstances could leave tens of thousands of people in a long-term state of uncertainty and at an increased risk of suicide.

Of course, Clause 11 applies to all forms of detention, not just for those who arrived irregularly. For example, it is intended to allow a software engineer who overstayed her visa to be detained for far longer than a suspected terrorist, with far less judicial oversight. That is particularly concerning given how extraordinarily complex the Immigration Rules are anyway.

1.15 am

In line with the Hardial Singh principle, it should be for the courts to assess whether the period of detention is reasonable, and habeas corpus is insufficient as a defence because it is a defence only about whether the detention is lawful, and clearly this Bill would make it lawful. That is the problem about habeas corpus; it is an insufficient tool to deal with these powers. Where we are detaining people is also critical. Judicial oversight must not be purely in the hands of the Secretary of State. I believe that the power in Clause 11 has taken the relationship between the three parts of our constitution in the wrong direction.

Lord Coaker (Lab): My Lords, I thank the noble Lord, Lord Anderson, for his introduction to Amendment 71. It raises a hugely significant point of principle for us in the consideration of the Bill, as did the noble Lord, Lord German, with his point about Clause 11.

I am going to spend a couple of minutes reiterating this because I think it is important. As we all know, the Illegal Migration Bill basically means that everybody who arrives irregularly will be detained, without exception. Therefore, the rules around that detention are paramount. The noble Lord, Lord Anderson, reminded us that Clause 11 deals with the detention period. In the Explanatory Notes, it is clear that it is the Home Secretary, rather than the courts, who will determine what is a reasonable period. I suggest that is a phenomenal digression from normal jurisprudence in this country. I am not a lawyer or a judge, but one of the bulwarks of our constitution and our democracy has always been that it is for the courts to determine reasonableness, not for politicians or Home Secretaries.

The truth of it is that, across the world, we criticise Governments and politicians for interfering and making judicial decisions. We quite rightly do that, for obvious reasons, as the noble Lords, Lord Anderson and Lord German, have just made clear. But it is the Home Secretary who will determine what is a reasonable period for somebody subject to the Illegal Migration Bill to be kept in detention. I find that quite astonishing. The noble Baroness, Lady Bennett, quite rightly and half jokingly, said that it is good to see a lot of noble Lords here—more than would normally be here—because that is what noble Lords opposite are being asked to support. I am sure that nobody believes that the Conservative Government want an autocracy, but it undermines one of the fundamental principles of our democracy to allow a politician to determine for how long somebody should be detained. As I understand it—and the noble Lord, Lord Anderson, will correct me if I am wrong—that goes to the heart of what Amendment 71 is about.

It is totally and utterly unacceptable, given the extent of the power which we are going to give the Home Secretary, that the Government will not—or cannot—tell us how long someone can actually be detained for. It is an unlimited period of time. The expectation is 28 days, but supposing you cannot remove somebody after 28 days. Can you keep them for 29 or 30? What if you still have not removed them—is it 31? Tell me when it is too many; we can go on and on, and if I was doing a filibuster, I would. The noble Lord, Lord Alton, and one or two others will have been in the other place when that has happened, but we will not do that here.

The serious point is: how many days are too many? The Minister has to answer this, because he is asking this Parliament—this Chamber—to allow legislation to go through where people, including children, can de detained for an unspecified period on the say-so of the Home Secretary. How on earth can that be something we think is appropriate? Let the Minister answer that, please, specifically: why is it appropriate for the Home Secretary rather than the courts to determine what is a reasonable period, and how long can someone actually be detained for? Can we have a maximum rather than a minimum? What happens after 28 days?

I have a couple of other points because we want to talk about this properly, so we will do that. I am not going to rush this, because it is a really important point of principle about detaining people on the say-so of the Home Secretary. What are the practicalities of that? As the noble Lord, Lord Sharpe, and others will know, I went to the Government's helpful fact sheet on the Bill. It asks:

"How many new detention spaces will be required?"

It says that they are building two but does not say how many, so they do not know. It then asks:

"Will the necessary … accommodation be available?".

I say to the Government: if your Illegal Migration Bill is predicated on detaining everybody who arrives illegally or irregularly—and Clause 11 is headed "Period for

[LORD COAKER]
which persons may be detained"—how on earth can the Government not say in their own fact sheet that the places will be available? It just does not make sense.

We not only have a Bill which in principle, in Clause 11, gives real, genuine concerns about undermining one of the pillars and principles of our democracy. We also have a government fact sheet dealing with Clause 11 which cannot tell this Parliament, or the people who read Home Office fact sheets—this one was published on 11 May 2023—that the new detention centres required by the Bill will be built. They cannot say categorically that the numbers of places will be available. If we have a period for which persons may be detained under Clause 11 but the Home Office cannot say where they are going to be detained, what is going to happen? We are told that the Home Secretary needs all these people to be detained, so how will that work when the Home Office cannot tell us where they are going to be detained and whether there will be enough places?

It starts with the very serious principle that the noble Lord, Lord Anderson, outlined for us, which was followed up by the noble Lord, Lord German, about the arbitrary nature of the power that the Home Secretary will have to determine the detention of individuals for an unspecified amount of time rather than that being something which, in the past, this country has said that the courts should do and that a judge should determine. That is a really serious move away from something that has stood our country proud for centuries; and alongside our criticism of the fact that the Bill does not conform to the principles that we would want is its unworkability.

This Chamber deserves some answers on those points. It does not want any platitudes such as, "The Government are considering how to deal with this". We need some genuine answers with some genuine facts for us to make a determination about the best way forward.

Lord Murray of Blidworth (Con): My Lords, Clause 11 clarifies the period of time that the Secretary of State may detain individuals for by placing two of the common law, so-called Hardial Singh, principles on a statutory footing. The Hardial Singh principles provide that a person may only be detained for a period that is reasonable in all the circumstances and if, before the expiry of the reasonable period, it becomes apparent that the Home Secretary will not be able to examine, effect removal or grant leave within a reasonable period, the Home Secretary should not seek to continue the detention.

Clause 11 also makes it clear that it is for the Secretary of State, rather than the courts, to determine what constitutes a reasonable time in which to detain an individual for the specific statutory purpose. This is as it should be, I suggest to the Committee. I can confirm that this change, further to the question from the noble Lord, Lord Anderson, will apply to all immigration detention powers.

I put it to noble Lords that it is properly a matter for the Home Secretary rather than the courts to decide such matters as it will be the Home Office which is in full possession of all the relevant facts—

Noble Lords: Oh!

Lord Murray of Blidworth (Con):—and which is best placed to decide whether continued detention is reasonable in all the circumstances. It will of course continue to be the case that a person's detention will be subject to judicial oversight.

As we will come to when we debate Clause 12, while it is the case that a person will not be able to challenge their detention before the First-tier Tribunal or seek a judicial review within the first 28 days, they will at any time be able to make an application for a writ of habeas corpus or the equivalent in Scotland. This was elided in the contribution from the noble Lord, Lord Anderson, when he suggested that judicial oversight was not available. In fact, it is, through the mechanism of habeas corpus.

Lord Anderson of Ipswich (CB): My Lords—

Lord Murray of Blidworth (Con): Forgive me, I will take the point in just a second. The point was made good in the fact that Hardial Singh, the great decision of the noble and learned Lord, Lord Woolf, from the early 1980s, was a case concerning a habeas corpus application. I give way to the noble Lord, Lord Anderson.

Lord Anderson of Ipswich (CB): I wondered if the Minister has seen what the Constitution Committee had to say about that argument.

"Although a writ of habeas corpus is available to a detainee in the first 28 days of detention, it is unlikely to be successful given the wide range of powers to detain in clauses 10 and 11".

And did he see what the Bar Council had to say?

"While habeas corpus would remain available, that is a remedy rather than a limitation on the power of detention. Further, it does not test whether detention is reasonable".

It is a fine old remedy, now fallen into disuse, but it is no substitute for the power in a court to determine whether a period of detention is reasonable or unreasonable.

Lord Murray of Blidworth (Con): I thank the noble Lord for reminding me of those two contributions, but I am afraid I do not agree with their analysis for the reason I identified immediately before the noble Lord's contribution. The case of Hardial Singh was a habeas corpus application and in that decision the evaluation of reasonableness featured as part of the challenge of the lawfulness of detention.

Baroness Chakrabarti (Lab): I am grateful to the Minister. He will understand why some of us are very concerned about this aspect of the Bill. He said a moment ago that the Secretary of State will now determine what a reasonable period is. The Minister made that very clear. There were gasps in the Committee, and not just from the lawyers. If the Secretary of State is now going to determine what a reasonable and therefore lawful period is—that could be a very long time or an indefinite period—then how will habeas corpus help anyone? Habeas corpus is only there to challenge the legality of detention, but if it is legal

under the statute to detain someone indefinitely, how on earth will habeas corpus help in the way that it once helped Hardial Singh?

Lord Murray of Blidworth (Con): The noble Baroness overlooks the fact that the Home Secretary's discretion is subject to the other condition in the operation of the detention power. As I made clear earlier, if it becomes apparent that the Home Secretary will not be able to examine, effect removal or grant leave within a reasonable period, the Home Secretary should not seek to continue detention. It is not an unfettered decision of the Home Secretary to determine the length of custody, as it has been portrayed by the noble Lord, Lord Coaker, and the noble Baroness, Lady Chakrabarti—that is simply a mischaracterisation of the power in the Bill.

1.30 am

Baroness Ludford (LD): It may be because of the hour that I have momentarily forgotten, but can the Minister remind us how the Home Secretary's powers will be constrained if there is no court supervision? I agree with what the noble Baroness, Lady Chakrabarti, said about habeas corpus and leaving that aside. How will the Home Secretary be checked in any way?

Lord Murray of Blidworth (Con): One cannot leave habeas corpus to one side. The ancient writ of habeas corpus is available before the High Court to challenge the legality of the detention, and it is a very important safeguard. From the expiry of the 28-day period, the person detained will be able to make application for bail or a judicial review. One will therefore see that there is ample avenue for a person believing themselves to be unlawfully detained to challenge that detention.

Lord Bach (Lab): I think I heard the Minister right when he said that the Government think it better for the Secretary of State to decide, because she has all the facts. To me at least, that is a comment that could be made in any tinpot dictatorship. It is the way that you get rid of a decent judicial system and allow executive power to run riot. Does he not know the consequences of saying that in a British Parliament about our system? It is absolutely outrageous.

Lord Murray of Blidworth (Con): I am afraid that I disagree with the noble Lord. In a "tinpot dictatorship", they would not have recourse to the writ of habeas corpus, which entitles the High Court to review the legality of detention. I do not think many dictatorships would afford a detainee those safeguards.

Baroness Bennett of Manor Castle (GP): I return to the same point about the suggestion that the Home Secretary has the most information so is the person who should decide. My reflections on this are undoubtedly influenced by being involved in the Financial Services and Markets Bill later today and with the upcoming economic crime Bill. I wonder whether the Government are considering making the same arguments when it comes to aspects of the financial sector and major commercial businesses. Are they going to decide that they know best about how those things should go and take the courts out of all that, with just the Government deciding how businesses are to be able to operate?

Lord Murray of Blidworth (Con): I am not sure that the noble Baroness's suggestion is a very insightful parallel, but no doubt she can ask my noble friend Lady Penn that in the morning.

Noble Lords: It is the morning.

Lord Murray of Blidworth (Con): Later in the morning—I am grateful for the correction.

In considering the lawfulness of detention and a writ of habeas corpus, the High Court would undoubtedly apply the Hardial Singh principles. Given his remarks, I remind the noble Lord, Lord German, that those principles were established in that habeas corpus case, as I have already pointed out.

As the noble Lord, Lord Anderson, has set out, Amendments 71 and 72 seek to restrict the use of detention where there is a barrier that prevents the purpose of detention being carried out. The fear is that the provisions in Clause 11 will be used to extend detention indefinitely. This is simply not the case; the Bill does not provide for indefinite detention. Moreover, our aim is to ensure that people are not held in detention for any longer than is absolutely necessary. Circumstances can change in detention. Barriers are anticipated and, in many instances, can be resolved quickly with examination, decisions or removal still able to take place within a reasonable period. Where there is a significant and/or material change in a person's circumstances, our policy is clear that detention must be reviewed. If it is considered that the anticipated period of detention is not reasonably necessary, the individual will be bailed.

Amendment 71A tabled by the noble Lord, Lord German, probes whether detention for the purpose of making arrangements for release is permissible under Article 5 of the European Convention on Human Rights. The Government's position, as set out in our published ECHR memorandum, is that giving a discretionary power to the Secretary of State to detain an individual for a period that is reasonably necessary to enable arrangements for the person's release is Article 5 compliant. It is a matter of common sense that it may be necessary to detain an individual for a short period of time to make practical arrangements for their release from detention. In accordance with Article 5, an individual will be able to challenge the lawfulness of their detention via the courts at all points of their detention, either via an application for a writ of habeas corpus, via judicial review or via an application for bail to the First-tier Tribunal after the first 28 days of detention have elapsed.

We continue to study the Constitution Committee's report, and in preparing our full response we will take account of what has been said in this debate, but I do not accept the conclusion of the Constitution Committee that the detention provisions in the Bill are inappropriate. No doubt we will return to this at the next stage, by

[Lord Murray of Blidworth]
which time we will aim to have responded formally to the Constitution Committee's report. In the meantime, I invite the noble Lord to withdraw the amendment.

Lord Anderson of Ipswich (CB): The Minister will say that I have been very slow, and it is quite possible that I have, but if I have heard the answer to the simple question of what these clauses mean, to which Amendments 71 and 72 are directed, I have not understood it. I took the simplest example from Clause 11(6), which says that a person may be detained, pending a decision whether to remove that person,

"regardless of whether there is anything that for the time being prevents the decision from being made".

What does that mean? Does it mean that it is deemed to be reasonable for the Secretary of State to perpetuate the detention, even after a decision is ripe for the making and even after it becomes possible immediately to decide that the person should not be detained? I genuinely do not understand what these subsections seek to achieve, and I have not heard from the Minister what the Government say about that. I do not get it from the Explanatory Notes either, so I have some sympathy with him. Will he please do his best to explain this? If he cannot do it now, let us have it in writing.

Lord Murray of Blidworth (Con): I see that it is a complicated piece of drafting. Out of the respect for the hour, I will put the explanation into writing, send it to the noble Lord and circulate it appropriately.

Baroness Chakrabarti (Lab): I am very sorry, but I did not choose the hour; others chose the hour on my behalf, which may be how a detainee feels under this proposed legislation.

I want to understand the Minister's position and explanation. Previously, he has been very clear that it is for the Secretary of State alone, with command of all the facts—just as a prosecutor always has command of all the facts, so that we can get rid of criminal custody time limits pre-charge as well—to determine what is a reasonable period. It has been made absolutely clear that it is not for a court but for the Secretary of State to determine what is a reasonable period for detention.

That gives concern to some of us that detention could be indefinite, not least because the Minister's noble and learned friend from the Ministry of Justice said some hours ago—or was it days ago? I forget—that we do not necessarily have return agreements with everyone yet, so this could take rather a long time. We therefore have people who are potentially detained for a very long time or such period as the Secretary of State determines reasonable.

Then, however, in response to our concerns, the Minister says, "Don't worry", because people will be able to challenge their detention on habeas corpus. They may not be able to do very much for 28 days but, after 28 days—which is rather a long time to be detained—they will be able to go to a court. What can a court possibly do if it is for the Secretary of State alone to determine what is a reasonable period? Against what test will this court be able to say that a detention was unlawful? Can he give us some example of an occasion when it would be open to a court to say that a particular detention under this legislation was not lawful?

Lord Murray of Blidworth (Con): The noble Baroness consciously disregards the other aspects of the test carefully set out in the draft legislation. Clearly, the decision on reasonableness will be subject to judicial review on conventional public law grounds. If it is Wednesbury unreasonable, it will of course be capable of challenge on those grounds.

If the noble Baroness looks at Clause 11, she will see that the apportionment of the decision on the period of time is very carefully hedged about with the case law that has flown from the decision of Hardial Singh, which is reflected in the subsections amending the various categories of detention. She will see in Clause 11(1)(b) the amendments to paragraph 17 of Schedule 2 to the 1971 Act; that relates to the period to enable the examination or removal to be carried out. Then, in Clause 11(2), at line 25 of page 18, there is the insertion into paragraph 2 of Schedule 3 to the 1971 Act, whereby a period of detention is authorised if it is "reasonably necessary" to enable a deportation to be made or the removal to be carried out. Clearly, a court would view the test of reasonable necessity in the context of the statutory provision enabling deportation or removal to be carried out.

As the noble Baroness reads on, the purpose of all these provisions is clear. I simply do not accept the characterisation that she makes that this is some overarching power for the Home Secretary to detain someone at will for an indefinite period; that is plainly not the case.

Baroness Lister of Burtersett (Lab): I am being slow now, but the Minister has said on a number of occasions that this Bill does not provide for "indefinite detention". Where in the Bill does it place a limit on how long someone will be detained, and will someone going into detention know how long they will be in detention for? If not, then it is indefinite.

Lord Murray of Blidworth (Con): I am very grateful to the noble Baroness for asking me that question, because it allows me to point out that, under the present law—under Schedule 2 to the 1971 Act and the case law on Hardial Singh—there is no limit. On the same basis, it is now codified in the Bill. The power to detain is exactly the same, save for this change from an objective test of reasonableness to reasonableness in the view of the Home Secretary, governed by the other provisions in the Bill. It is impossible to set a time limit, as I was invited to by the noble Lord, Lord Coaker. Although the noble Baroness suggests that there should be a time limit, that is simply not the way that the law has evolved in this area following Hardial Singh—there is no upper limit.

The court will evaluate and, obviously, a time would logically come when somebody had been detained for a long period and the court could not form a view that that period was reasonably necessary, for example, to

enable the examination or removal to be carried out. It is a fact-sensitive decision in relation to the duration of detention.

1.45 am

Baroness Ludford (LD): Can the Minister help me with the powers of the court? I know we are going to discuss Clause 12 in the next group, but it provides that

"In relation to detention during the relevant period, the decision is final"—

that is, the decision of the Secretary of State—

and is not liable to be questioned or set aside in any court or tribunal".

What does that mean in light of what the Minister has just been telling us about the powers of the court?

Lord Murray of Blidworth (Con): We will discuss Clause 12 in detail in the next group. Clause 12 relates to the powers to grant immigration bail. In Clause 12(4) the text of new paragraph 3A is inserted into Schedule 10 to the Immigration Act, which deals with immigration bail. I will address this in detail on the next group. It would make more sense to deal with it then, rather than now.

Baroness Lister of Burtersett (Lab): My Lords, may I go back to the question of "indefinite"? In effect, the Minister has said that the period is indefinite. We know that the current situation allows for indefinite detention, and many of us have argued many times that it should not because most other countries place a time limit on it. The Home Office comes back and says, "Oh no, it is not indefinite because you are not there for ever". It uses a very unusual definition of indefinite. What does the Minister mean by indefinite if he is saying that this does not provide for indefinite detention, but has also just clearly said that it does?

Lord Murray of Blidworth (Con): I appreciate that the noble Baroness has campaigned for a time limit, but that is not the way it is done at present. This provision simply codifies the existing rule. While she and I may disagree on the meaning of "indefinite", the context of the word—as perhaps advanced by the noble Lord, Lord Coaker—is the idea of a period of detention such as that perhaps envisaged in circumstances of a whole-life sentence without any possibility of release. That is, in its purest form, indefinite detention. That is clearly not what is authorised by these provisions.

Baroness Chakrabarti (Lab): With respect, I would say to the Committee that I think the Minister answered the point, but the answer was very telling. The answer was that the current situation, which is an objective test for what is a reasonable period—an objective test will ultimately be second-guessed and supervised by a court—is to be replaced with the opinion of the Home Secretary on what a reasonable period of detention is. That, I think, is the concern of the Committee. It may be indefinite already, and it is, but now it will be indefinite and subject to the opinion of the Home Secretary—not an objective test that can be reviewed properly and robustly in a court of law.

Lord Murray of Blidworth (Con): I disagree with the noble Baroness that the Home Secretary's decision would in any way lack objectivity. The point I made—I think, powerfully—is that the Home Secretary is in possession of all the facts that relate to the interlocking factors which justify detention. Therefore, the Home Secretary is best placed to make the decision, not any other abstract body. That is why it is appropriate that the Home Secretary has that power.

Baroness Ludford (LD): I thank the Minister. Again, as I think was picked up—I cannot remember by whom; it was either the noble Lord, Lord Coaker, or the noble Lord, Lord Bach—the Minister has just repeated his insistence that it is the Home Secretary who uniquely is in a position to decide the length of detention. Then the Minister told us that there are all these powers for the court, and he recently said that Clause 12, which I cited, applies only for seeking bail. I do not think that is right; commentaries from people much cleverer than me say that it ousts judicial review challenges to detention during the period. It is not just about bail; it ousts judicial review challenges to detention. The Minister has claimed that there is the ability to go to a court to challenge the length of the detention—that is what he said a few minutes ago. Is that true or not? Is it the Home Secretary who has carte blanche to decide, or can someone go to a court to challenge the length of their detention—or is that ousted by Clause 12, as I understand it?

Lord Murray of Blidworth (Con): The noble Baroness is perhaps a little confused by the way that these provisions interrelate. The detention power is contained within Clauses 10 and 11, and the detention period is regulated by a number of factors set out in the provisions and depending on the purpose of the detention for which the person is held. For the Home Secretary, the question is how long is reasonable in the context of the particular act for which they are being held. As we know, a 28-day period is provided for by the legislation before which a person cannot apply for either bail or judicial review. That is the passage the noble Baroness refers to. Before that 28-day period, the writ of habeas corpus is preserved, as I think I made clear in my remarks. I hope that clarifies matters for the noble Baroness, and we will no doubt retread these waters at some length when we discuss Clause 12 in the next group.

Baroness Bennett of Manor Castle (GP): My Lords, we have been presented with the picture of the Home Secretary impartially and carefully considering the facts—rather like a judge, it would seem. Is the Home Secretary no longer to be a politician?

Lord Murray of Blidworth (Con): Clearly, it is the Home Office which will have possession of the relevant facts and a court will be able to review, as we have already discussed, in the event of there being a challenge by the routes that I have identified.

Lord Anderson of Ipswich (CB): It is for me to conclude this fascinating debate. I am grateful to everyone who has spoken. The amendments to which

[Lord Anderson of Ipswich]
I spoke were very small and technical ones. I am afraid that I am no wiser now than when I first stood up as to what the clauses I sought to amend mean, but I am grateful to the Minister for offering to write to me about that. I hope he will spread that letter around; I am sure it will attract huge interest around the Committee.

The debate of substance that we heard is one of huge importance. It was a relief to hear the Minister say that there is no intention to degrade the Hardial Singh principles or to depart from them. When the Explanatory Notes say they are to be partially codified, that does not mean to say the other part is to be discarded. I understood the Minister to be saying, from the Dispatch Box, that the Hardial Singh principles remain part of our law.

I think the noble Baroness Chakrabarti was absolutely right to identify the true issue of principle as that of who shall decide: which is the impartial body best equipped to decide whether a period of detention is reasonable? To take rather a simple analogy, the police have to detain people when they have arrested them and are wondering whether to charge them. You could say that the police have the best knowledge of all the elements of the case—they know the evidence as it is developing, they have access to the person and they can tell what kind of state they are in—so why not let the police decide how long they should be detained? No civilised country would do that. We entrust this to the powers of an impartial court.

I am sure that, when we come on to Clause 12, we will discuss just how extensive those powers are. However, when you see that the Explanatory Notes themselves say that the intention of this Bill is too reverse the paragraph of the judgment I read out, saying that it must be for the court and not the Home Secretary to make that decision, you have a pretty good idea of what Clauses 11 and 12 are all about. Obviously at this stage, I beg leave to withdraw my amendment.

Amendment 71 withdrawn.

Amendments 71A to 72 not moved.

Clause 11 agreed.

Amendments 73 to 76B not moved.

Clause 12: Powers to grant immigration bail

Amendment 76C

Moved by ***Lord Bach***

76C: Clause 12, page 21, line 3, leave out "(4)" and insert "(4A)"

Member's explanatory statement

This amendment is consequential on the insertion of new subsection (4A).

Lord Bach (Lab): My Lords, before speaking to Amendment 76C, can I say for my own part how disgraceful I think it is that we are debating these important and serious matters at this hour in the morning? It is also disgraceful that Ministers of the Crown, who are busy, with real jobs to do, are having to stay here, obviously because they have been told to do so. I think the same applies to those sitting on their Back Benches. If it is any comfort to the Government, I do not intend to call a vote tonight which they might lose. I do not think any of my noble friends or anyone else on this side of the Committee plans to do that. It is so disappointing that the Bill is being dealt with in this way, at this hour of the morning.

I turn to Amendment 76C, which is consequential on Amendment 79 in the name of the noble Baroness, Lady Hamwee, who has very kindly allowed me to speak to it. We are now on Clause 12, on immigration bail. The amendment would amend the existing provision that requires an automatic bail hearing after four months of detention so as to require instead such a hearing after 28 days of detention. It would ensure that the provisions in the Bill authorising detention for a period of 28 days—which can be legitimately described as draconian because they involve no recourse to a bail application and no recourse to judicial review of the decision to detain—are ameliorated by a protective bail provision at the 28-day point in a person's detention. That would serve as an essential safeguard for migrants, giving them certainty that their detention is subject to further independent judicial oversight.

That is particularly important given that the power to review detention by way of judicial review will be curtailed so that even an irrational decision cannot be challenged by a person who has been detained. Recourse to an automatic bail application would allow an independent court to assess the continued need and justification for the Home Office to maintain detention, alongside assessing the prospect of absconding if bail was granted.

The Minister can say, quite rightly—this takes us on to my second amendment—that existing provisions in the Bill will allow a person to apply for bail at the 28-day point. However, relying solely on the person detained to make an application will deter some people from applying, for reasons ranging from a belief that they need a legal representative to not being able, frankly, to properly understand the process. I am informed that the organisation Bail for Immigration Detainees comes across people who have not, and have never, applied for bail for these very reasons, despite the fact that they have been held under immigration powers for several months.

2 am

In addition, it is likely that a bail hearing would not take place for some days after an application is submitted after the 28-day point. Only at that point will it be listed for hearing, resulting in sometimes weeks of delays. Therefore, ensuring that a bail application is automatically listed for hearing at the 28-day point would act as a protective measure. The Government would not be giving very much away by allowing such a course to happen.

I want to put just three questions to the Minister. First, do the Government agree that some people who are detained for immigration reasons may be vulnerable and may not understand how to apply for bail? Is this not why the Government themselves introduced provision for automatic bail after four months? Secondly, if the

Government intend to prevent people being able to make any applications for bail for at least 28 days, would it not assist access to justice and the protection of the right of the individual to ensure that persons who are detained for at least 28 days have an automatic opportunity for the decision to detain and not to grant bail to be considered by an independent court? Thirdly—we revert back to the position about children—is it not fair and right that vulnerable people, including children, who are alone, should have their detention reviewed and justified by the Secretary of State, and that an independent court should consider whether bail should be granted? I would be grateful to the Minister for an answer to that question.

I concede straightaway that the wording of the amendment is not perfect. I want to make that clear, so the Government do not need to make that point. It is the principle behind what I say that matters.

Amendment 79A is not about automatic bail but about the right to ask for bail, which, of course, as the Minister has reminded us, exists. Previously, a person could apply for immigration bail at any point when they had been present in the UK for eight days, during the course of their detention, and as often as they needed it. At present, the Immigration Act 2016 prevents a person applying for bail within 28 days of a previous refusal of bail unless there is a material change of circumstances. The proposed new clause in my Amendment 79 would amend that so that a person can apply for bail within the 28-day period, but, of course, the hearing of the application cannot take place until the 28-day period has expired, absent a material change of circumstances.

The advantages of such a course are that, first, it would be fairer to the detained person. Secondly, the amendment would enable the tribunal to plan listings according to the 28-day separation between hearing dates. Thirdly, tribunals and hearing centres sometimes have delays of two weeks before a case can be listed for hearing. This means that an application made after 28 days have passed will not be heard for 42 days after the previous hearing. That is unlikely to be what Parliament intended when it limited bail applications to every 28 days. This amendment seeks to ameliorate that problem and do it fairly.

I finish by telling the Committee that the former president of the First-tier Tribunal, Mr Clements, some time ago had what I am putting to your Lordships as an amendment put to him as a proposal. He wrote to the Home Office recommending that he and his fellow judges felt that this was a fairer way of doing things. The Home Office refused. I could read out the letter that Mr Clements sent but I am certainly not going to at this time of night. So there was some high-level judicial support for this some years ago. It seems, at least to me, that this is a possible change that sacrifices nothing of the controversial matters that surround every part of this Bill, and one that the Home Office should consider carefully. I hope the Minister will take that on board. I beg to move.

Baroness Ludford (LD): My Lords, I speak to Amendment 77 in my name and that of my noble friend Lord Paddick. Before I get to that, I express my frustration and anger, as have colleagues on this side of the House, that we are discussing at 2 o'clock in the morning this crucial issue of whether we are going to have arbitrary detention of vulnerable people. The Government have clearly encouraged their backers on the Benches behind them, but we have not heard a peep out of any of them. There are people there I respect, and I cannot believe that they have nothing to say on the issue of whether the Executive should have practically untrammelled powers to lock people up. We have been told how important the laws of the English courts are. This is not some foreign muck law that is being imposed on us; it is the law, developed through revolt and civil wars in this country, that there should be a restraint on the powers of the Executive to keep people in prison. Apparently, there is insufficient interest on the other side of the House, which deeply disappoints me.

The noble Lord, Lord Coaker, said a little while ago that no one thinks the Conservatives want autocracy. I fear that some of the replies we have had from the Minister in the meantime have somewhat unsettled that conclusion. He has rather disabused us of the idea put forward by the noble Lord, Lord Coaker. It is a misapprehension that this Government do not want a warrant to act unlawfully, because apparently they do. I agree with the Bar Council, which has expressed the view that

"the Bill as currently drafted is incompatible with the principles which underly the rule of law"

in particular because it

"ousts the jurisdiction of the courts in key areas leaving the executive able to act without scrutiny (often a hallmark of authoritarianism)".

That is the Bar Council—no doubt regarded as lefty lawyers by the other side of the Chamber, but for many of us it is flying the flag for justice and the rule of law.

The noble Lord, Lord Anderson, who dealt very capably with this question on Clause 11, ended up concluding that he was still a little unsure what all the explanations added up to. On Monday, he usefully summarised what we are talking about when he said:

"The Government's theory of deterrence is based, in significant part, on the neutering of the courts".

That is really the whole flavour and point of this Bill: to deter people coming and then saying, "We will lock you up and give you no rights whatsoever and, if we can, we'll chuck you out to Rwanda or somewhere else"—somewhere where there is currently no agreement. If I may carry on quoting him, the noble Lord, Lord Anderson, said:

"Some ouster clauses are aimed at restricting appeals or reviews from the decisions of a legally qualified tribunal. Examples include Clauses 49 and 51",

which we have not yet got on to. He went on:

"More fundamental in their scope are the ousters in Clauses 4, 12 and 55. They bite not on claims that have already been adjudicated by tribunals but on claims that have never been adjudicated by any court or tribunal".—[*Official Report*, 5/6/23; col. 1181.]

He raised this issue in relation to Clause 4; I do so now in relation to Clause 12.

In our debate on the previous group, we discussed the fact that Clause 12 appears to imply pretty much untrammelled powers for the Home Secretary—indeed,

[Baroness Ludford]
for a civil servant—to keep someone in detention. My contention is that new paragraph 3A, to be inserted by Clause 12(4), takes such insulation of detention decisions a step further by expressly ousting the powers of the court and making the Home Secretary's decision final and not liable to be overturned in court for 28 days. The Minister made much of what powers the courts have. It is true that there are apparently exceptions for judicial review on limited grounds—those being "bad faith" and the fundamental denial of natural justice—but those are unlikely to arise in reality. The grounds for a challenge in the courts are therefore very limited.

Then there is the writ of habeas corpus, but it would be difficult to succeed via that means because a person would have to argue that they were being unlawfully detained when the Bill authorises the detention. As the noble Baroness, Lady Chakrabarti, asked, what is the handle or the purchase for someone trying to pursue a writ of habeas corpus when the whole point of the Bill—at least one of the points of it—is to authorise a blanket power of indefinite detention? How does someone argue to the court that the Home Secretary has exceeded her powers when the Bill is intended to give her precisely those unchallengeable powers? Habeas corpus is a historical but little-used legal route because judicial review has become more predominantly used and because it is so difficult. It is true, apparently—no doubt the lawyers will correct me if I am wrong—that the Hardial Singh case was a habeas corpus case but that was when the principles that are now being overturned applied.

The apparent force of the paragraph to be inserted by Clause 12(4) is to limit the grounds on which someone can challenge immigration detention to very narrow ones. I am afraid that the Minister still has to convince me—he did not manage to do so in our debate on the previous group—that there is much wiggle room for the courts beyond those exceptions of bad faith and the fundamental denial of natural justice, which are cited further down the paragraph.

2.15 am

The right to liberty—to be free of arbitrary detention—is one of the oldest and most emphasised human rights in constitutional thought, which is why our Constitution Committee is so troubled by this clause, among others. It is surely for the courts, not the Government, to decide on the reasonableness of detention, including what is a reasonable period. The committee concluded:

"Clauses 11 and 12 are partial ouster clauses of great constitutional concern".

That is a pretty strong warning to us. The committee invites Members of this House

"to seek clarity on the operation of this provision and to examine the Government's reasoning as to why such potential threats to the liberty of the individual are appropriate".

That is the reason many of us, at least on this side of the House if not on the other, are extremely concerned about the Bill's provisions and what the Minister has said about them tonight—or this morning—which has not removed our concerns. I hope that a Conservative Government who are true to some of their older traditions, rather than the modern impulses that have seized them, will begin to care about this issue as much as those of us on this side of the House do.

The Lord Bishop of Southwark: My Lords, I will speak to Amendment 78, tabled by the right reverend Prelate the Bishop of Durham, who is unable to be here at this early hour. I know that he is grateful to the noble Baronesses, Lady Lister and Lady Neuberger, for their support.

A statutory regime of clinical screening for people at risk of harm in detention and for healthcare professionals to be able to report concerns to the Home Office has been a cornerstone of safeguarding in immigration detention since 2001—and rightly so. This amendment looks to ensure that this process does not become inconsequential by preventing the necessary legal oversight of detention decisions. Given the technical nature of the issues relating to medical reporting in detention centres, I will focus my comments on the context of this amendment and set out a few key questions for the Minister.

The harmful impact of being in detention on people's mental health is widely evidenced. Professor Mary Bosworth's literature review for Stephen Shaw's 2016 *Review into the Welfare in Detention of Vulnerable Persons* summarised that evidence. She concluded:

"Literature from across all the different bodies of work and jurisdictions consistently finds evidence of a negative impact of detention on the mental health of detainees".

This conclusion should not be set aside. It is most acute for those with pre-existing vulnerabilities. Given that, and the limitations of treating mental illness in detention, it is current Home Office policy not to routinely detain highly vulnerable people, including those with pre-existing mental illnesses and survivors of torture. Decisions to detain must be consistent with detention policies, in particular the adults at risk policy. This policy has statutory force under Section 59 of the Immigration Act 2016. The Government stated then that this policy would introduce into detention decision-making a clear presumption that people who are at risk should not be detained.

The right reverend Prelate the Bishop of Durham has, I believe, thanked the Minster personally for the opportunity to visit two immigration removal centres—visits he greatly valued. Officials and operational staff alike spoke to him of how Shaw's recommendations have filtered through to every level of working, while recognising that improvements are still to be made. A key component of this is the statutory duty of medical staff to provide clinical safeguarding reports, known as rule 35 or rule 32 reports, where it is believed that detention may cause significant harm to an individual. These are then brought to the attention of those with direct responsibility for authorising detention.

How will this system of detention review on medical grounds be impacted by the provisions in the Bill? Do the Government agree with Stephen Shaw, the adults at risk policy and former ministerial colleagues that those whose care and support needs make it particularly likely that they would suffer disproportionate detriment from being detained would generally be considered unsuitable for immigration detention?

I shall of course listen carefully to the Minister's answer, but the Bill suggests that the answer is no. By refusing to allow those who are detained to challenge their detention during the first 28 days by way of judicial review, there is no longer a clear presumption that the vulnerable will not be detained. The adults at risk policy provides that vulnerable adults at particular risk of harm in detention should not normally be detained and can be detained only when immigration factors outweigh the presumption to release, but the Bill legislates that the immigration factors at play, namely the Secretary of State's new duty to detain and deport, will supersede this. If I am incorrect in this assumption, I shall be happy for the Minister to state the true position.

Judicial review is a key mechanism to challenge the tension where professional evidence of medical harm is believed to have been given insufficient weight. In this situation, without recourse to the courts a vulnerable person would be at risk of clinical harm from continuing detention. I appreciate that Rule 35 is a reporting mechanism, not an automatic method of release for an individual in detention, but without legal safeguards, detention for whom it poses a greater risk of medical harm will almost certainly be guaranteed. This is not merely conjecture: the High Court has found a number of breaches of Article 3 of the European Convention on Human Rights in relation to the detention of severely mentally ill people and found that continued detention would have amounted to inhuman and degrading treatment.

If the Bill proceeds in its current form, what weight will the Home Secretary give to medical evidence from professionals, given that detention decisions will be entirely at her discretion and withheld from independent scrutiny? The ability to judicially review the lawfulness and reasonableness of decisions to detain is particularly important given recent independent evidence showing that safeguarding policies are not consistently followed. This concern has been raised often by the independent chief inspector.

Given that the Government have been honest in accepting that improvements are still to be made to safeguarding systems to identify the most medically vulnerable in detention, I ask the Minister why disqualifying those with a clinical report from judicially reviewing their detention was deemed an acceptable risk. Stephen Shaw labelled the adults at risk policy in his progress report as "a work in progress". How will the Government ensure that this further progress is not halted entirely by the Bill?

Amendment 78 would make an exception to the general ouster of judicial review during the first 28 days of detention where a person has been the subject of a report from a medical practitioner. To be clear, this is where the Home Office has evidence that a person's health is likely to be injuriously affected by continued detention, they have suicidal intentions or there is concern that they may have been a victim of torture. It is hard to conceive of a more vulnerable grouping, where the stakes are higher, when considering detention.

I fear that preventing any means of legal challenge for those in a very dangerous and precarious medical state could be a disaster waiting to happen. I therefore agree with the Royal College of Psychiatrists that:

"The Bill is not compatible with the fundamental medical principle of doing no harm".

For that reason I urge the Government to consider the amendment tabled by the right reverend Prelate the Bishop of Durham and the safeguarding issues it highlights with due care.

Baroness Neuberger (CB): My Lords, I declare an interest as chair of University College London Hospitals Foundation NHS Trust and of Whittington Health NHS Trust which, given what we are discussing now, is perhaps relevant. There is very little that I can add to the extraordinarily powerful arguments just made by the right reverend Prelate, but I do want to say two things. One is about torture. If someone has been the victim of torture and medical professionals make a report to the Home Secretary to that fact, that person ought to be able to appeal against detention in those first 28 days. The reason for that—for those who have not spent time with those who have been victims of torture—is the very considerable terror that many of those people experience if detained in any way. If they experience that form of terror, they are then very likely to be suicidal and in a situation within detention where the sort of holistic treatment they would need is simply not available.

The second point is about young people particularly who have come to these shores and have experienced detention in their own countries. They have perhaps not been tortured but have been detained for very long periods away from families and friends. I have talked to quite a lot of them because we have a small family charity that provides access to education for young asylum seekers who have no recourse to public funds. They would say that they are unable to cope with being confined in small spaces because of their experience in their home countries. That is another group of people, not necessary those who have been tortured but those who already have either a defined mental illness or a predisposition to one, who ought to be given a protection in those first 28 days.

I very much hope that the Minister will be able to answer the points made by the right reverend Prelate and these two additional points and allow those people who have a medical report to make an appeal for judicial review within their first 28 days.

Baroness Lister of Burtersett (Lab): My Lords, I was going to make a speech in support of Amendment 78, to which I have added my name, but the case has been made so well by the right reverend Prelate and by the noble Baroness, Lady Neuberger, that I simply say that I hope the Minister will take note of what has been said and look kindly on this amendment. I am sure everyone will be very pleased that I am now going to sit down.

Baroness Bennett of Manor Castle (GP): My Lords, after the powerful speech from the noble Baroness, Lady Neuberger, I feel rather sad to return to the technical detail. But a point was raised by the noble Baroness, Lady Ludford, that I thought was worth addressing, particularly in the context of the Bar Council briefing. The noble Baroness asked: where is the purchase for the courts to take action? The Bar Council briefing has some really interesting reflections

[Baroness Bennett of Manor Castle]
on this. It says that the Bill is unlawful by design and incompatible with the constitutional principle of the rule of law because the law forbids

"the exercise of state power in an arbitrary, oppressive or abusive manner; and that principle 'cannot be set aside on utilitarian grounds'".

None the less, the Bar Council says that the courts are

"unlikely to consider that these foundational constitutional principles could alter the government's intended operation of the Act",

and that the courts will see that Parliament has decided to trade off the fundamental rights of the rule of law against the Government's utilitarian principles.

The Minister does not seem to like me cross-referring to other Bills, but I will cross-refer to the Law Society briefing and the Financial Services and Markets Bill, on which we have had a huge debate about the Government's intention to make the UK's financial sector competitive. The Law Society says that our global reputation for upholding the rule of law underpins all of our attractiveness to global investment.

2.30 am

Lord German (LD): My Lords, we have heard some powerful speeches on these amendments. Those powerful messages underline that this clause restrains the courts' ability to protect individual liberty. When the Minister replies he should pay attention to the issues that have been raised across the Chamber concerning the individual liberties of very vulnerable people—the most vulnerable people.

These provisions risk creating a situation where there is no meaningful avenue for judicial scrutiny of the exercise of the power to detain for the first 28 days of detention, and then only extremely limited scrutiny thereafter. Clause 12(3) and (4) are particularly significant because the majority of immigration detention is relatively short term. In 2022, 73% of the 20,446 people detained under immigration powers were held for 28 days or less, and 49% were held for seven days or less. The removal of the right to bail or the right to High Court review is therefore a de facto denial of the right to access the court for the majority of detainees and gives rise to a serious risk of the abuse of detention powers. This is a radical development. It aims at significantly expanding the power of administrative detention, denying or curtailing judicial scrutiny and drastically reducing remedies to challenge unlawful or unjustified detention.

It is obvious to me, and I expect to many Members of the Committee, that a large increase in detention facilities will be required as a result of the Bill, with many more people, including asylum seekers, children, pregnant women, and survivors of torture and trafficking, experiencing the devastating suffering and harm that detention is known to inflict, which can, in some cases, be permanent. There are no exceptions for medical vulnerabilities. I hope we will now receive some response to the amendments concerning those issues.

As we have heard, the Bar Council is seriously doubtful whether Clause 12 is compatible with Article 5(4) of the ECHR. Once again, I hope the Minister will tell us how Clause 12 is compatible with Article 5(4). Again, we have heard that it interferes with the principles of the rule of law and the separation of powers—something that we as a Parliament, standing between the Government, the Executive and the judiciary, should be very mindful of maintaining.

I have a series of questions. First, what evidence does the Minister have that there was a need to limit the power of judges in this way? The purpose appears to be to allow detention to endure in circumstances in which a court would likely conclude that detention could no longer reasonably be justified, but I would like to hear the Government's evidence of why there was a need to increase this power.

Secondly, what is the justification for extending from eight days to 28 days the period in which an individual can seek judicial review of their detention? Again, we are trying to understand what lies behind this. What is the Government's purpose?

It has long been acknowledged that vulnerable people in particular, including torture victims, should not be detained. Although not effectively enforced, the agreement has been there. What has changed that makes the Secretary of State now believe that it is justified to detain people in that category? Has the Secretary of State had any conversations with those operating detention centres about their willingness to support the detention of children, families and vulnerable people, not people in the current detention cohort? What training will be provided for those who work with such increasingly vulnerable detainees?

I think that all the speeches that we have heard have, once again, serious implications, not just for the individuals concerned but for the constitution of our country. I look forward to the Minister's replies to try to make some sense of this.

Lord Ponsonby of Shulbrede (Lab): My Lords, this group is about Clause 12, which severely restricts the jurisdiction of the High Court to review the lawfulness of the first 28 days of detention of people held under the new power in Clause 10 and a decision of the Home Secretary to refuse bail in that period. Currently, someone can challenge their detention through judicial review by arguing that the detention period breaches Hardial Singh principles or Home Office policy.

I thought that it might be useful, partly for myself, to read out those Hardial Singh principle. There are four of them. The first is:

"The Secretary of State must intend to deport the person and can only use the power to detain for that purpose".

The second is:

"The deportee may only be detained for a period that is reasonable in all the circumstances".

The third is:

"If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention".

The fourth is:

"The Secretary of State should act with reasonable diligence and expedition to effect removal."

These principles can be used in both public and private law. There is no mention of a deterrent effect in those founding principles.

I was reflecting on my role as a magistrate when I make bail decisions and when I sentence people. When I sentence people, I take into account the deterrent effect in determining the appropriate sentence, which may be something I say when I give my reasons for sentencing somebody for an offence. However, when I make a bail decision, the deterrent effect is not a factor that I take into account. There may well be an analogy with what we are talking about in this different context.

My noble friend Lord Bach raised important questions in introducing this group and I look forward to the Minister's answers to those questions. I could have quoted from the Bar Council, but the noble Baronesses, Lady Ludford and Lady Bennett, did so very effectively. I thought that the intervention of the noble Baroness, Lady Neuberger, supported by the right reverend Prelate the Bishop of Southwark and my noble friend Lady Lister, was particularly poignant, given her experience of hospitals, people with suicidal ideation and the increased vulnerability of the people we are dealing with. That point was picked up by the noble Lord, Lord German.

look forward to the Minister's response to this group. We are talking about extremely vulnerable people. I know that this is rather abstract in the law and how the law is interpreted, but I think that the whole Committee is conscious of the vulnerability of these people.

Lord Murray of Blidworth (Con): My Lords, this has been a thoughtful and interesting short debate. I was particularly grateful for the speeches from the noble Lord, Lord Bach, the noble Baroness, Lady Neuberger, and the right reverend Prelate the Bishop of Southwark.

Clause 12 will prevent the First-tier Tribunal from granting bail, where an individual is detained under the new statutory powers, for the first 28 days of detention, and it will place a restriction on someone challenging their detention during this period by way of judicial review. If I may, I will try to clear the fog that somehow descended during the speech of the noble Baroness, Lady Ludford, on the last group, on how the ouster works in Clause 12. Perhaps I could invite the noble Baroness to look at Clause 12. She will see that Clause 12(4) inserts into Schedule 10 to the Immigration Act 2016, on provisions relating to bail, what will be new paragraph 3A. Sub-paragraph (2) provides the ouster. So the second part of the sentence states that

"the decision is final and is not liable to be questioned or set aside in any court or tribunal".

Of course, that is prefaced by the words before the comma:

"In relation to detention during the relevant period".

Turning the page, we see that "relevant period" for these purposes is defined in sub-paragraph (6) as

"the period of 28 days beginning with the date on which the person's detention under the provision mentioned in sub-paragraph (1) began".

While we are here, we can also see in sub-paragraph (5) the clarity of the drafting, which makes it clear that the ouster clause that the noble Baroness, Lady Ludford, identified, which is of course contained in sub-paragraphs (2) and (3), does not affect the right of any person to

"apply for a writ of habeas corpus"

or its equivalent in Scotland. I hope that that clarifies the issue that arose in the last group.

Amendment 77, tabled by the noble Baroness, Lady Ludford, seeks to remove that general ouster. The use of detention is an integral means of ensuring that the Home Secretary can comply with her statutory duty under the Bill to make arrangements for removal. However, we should remember that a detained person can apply to the Home Secretary for bail at any time and can also apply for their release through an application to the High Court for a writ of habeas corpus. There will be no restriction on an individual's ability to access damages in respect of unlawful detention in relation to the 28-day period.

I turn to the issue of preventing the First-tier Tribunal from granting bail in the first 28 days. Amendment 79, tabled by the noble Baroness, Lady Hamwee, seeks to increase the existing four-month automatic referral for consideration of a grant of First-tier Tribunal bail to 28 days. Amendments 76C and 79A, tabled by the noble Lord, Lord Bach, similarly require an automatic referral for consideration of a grant of First-tier Tribunal bail at 28 days and every 28 days thereafter.

The existing four-month automatic bail referral acts as an additional safeguard and does not change the fact that those who fall under the duty can apply for bail from the Home Secretary at any time and from the tribunal from 28 days. An application for habeas corpus, as I said, can be made at any point after an individual is detained. The scheme is designed to enable those within it to be promptly removed from the United Kingdom. Consequently, any period of detention will be kept as short as possible and can be only for a timeframe that is reasonably necessary. But holding people in detention is necessary to make sure that they are successfully removed under the scheme.

Our detention policy, which will be updated to reflect the new powers in the Bill, is clear that detention must be reviewed at a minimum of every 28 days or where there is a material and/or significant change in circumstances. It is important to remember that the Bill provides, in line with the current common-law position, that an individual may be detained only for a period that is reasonable, with reference to the specific statutory purpose for which they are detained. In response to a point raised by the noble Lord, Lord Bach, legal aid funded advice would be available to detainees through the detention duty advice scheme.

2.45 am

Amendment 78, spoken to by the right reverend Prelate the Bishop of Southwark, would provide exceptions to the general ouster of judicial review during the 28 days of detention for a person for whom the Secretary of State has received a medical report evidencing their vulnerability to suffering harm in detention, including victims of torture or trafficking, pregnant women and those with mental health conditions.

[Lord Murray of Blidworth]

The Home Office recognises that some groups of people can be at particular risk of harm in immigration detention and it already operates a bespoke policy that specifically considers all levels of vulnerability in immigration detention. As I said during the debates on previous groups, the policy on adults at risk in immigration detention, in an updated form, will continue to apply where detention decisions are made for those in the scope of the Bill, including where a medical report has been provided. In accordance with the policy, vulnerable people will be detained only where the evidence of vulnerability in their case is outweighed by immigration considerations. I assure the right reverend Prelate that this balancing process will not change as a result of the Bill.

The provisions in Clause 12 provide an appropriate and proportionate balance between effective detention powers and judicial oversight of continued detention and I accordingly invite the noble Lord, Lord Bach, to withdraw his amendment.

Lord Bach (Lab): My Lords, I will of course withdraw my amendment. This has been an excellent debate and I have to say that, were it not for the late hour, it would have been even better. This is a substantial issue. I am most grateful, as I am sure the Committee is, to the noble Baroness, Lady Neuberger, for her contribution and, of course, to the right reverend Prelate. I beg leave to withdraw my amendment.

Amendment 76C withdrawn.

Amendments 77 to 79 not moved.

Clause 12 agreed.

Amendment 79A not moved.

Clause 13: Disapplication of duty to consult Independent Family Returns Panel

Debate on whether Clause 13 should stand part of the Bill.

Lord German (LD): My Lords, the purpose of this stand part debate is to discover the rationale behind the Government's disapplying the existing duty to consult the independent family returns panel prior to a decision to detain or make removal arrangements. The independent family returns panel was established to provide advice to the Home Office on safeguarding and welfare plans for the removal of families who do not have permission to remain in the UK. The IFRP comprises professionals with a range of relevant experience across the professions of social care, education, police and medical doctors. They look at the safeguarding and welfare needs of families with children who face an ensured return.

Removing the independent safeguard prior to the detention of children or families with children again increases the risk of arbitrary detention, without adequate regard to the best interests of the child, contrary to the duty in Section 55 of the Borders, Citizenship and Immigration Act 2009 to treat the welfare of children who are in the UK as the primary factor in exercising immigration functions. In its evidence to the Joint Committee on Human Rights, the Independent Advisory Panel on Deaths in Custody gave the view that

"the removal of this independent oversight … risks the safety of children during potentially dangerous enforced removals".

The questions I have for the Minister are, first, why did the Home Office consider it necessary to remove this duty to consult, where the panel is purely advisory and has no decision-making capacity? Secondly, if the Bill is enacted and the time limit on the detention of children is brought into force, the IFRP will have an even greater role in ensuring that the welfare and safeguarding of children is properly taken into account in their detention. How can the disapplication of the duty to consult the IFRP be justified in this context?

Thirdly, the IFRP was introduced in the wake of the UN Convention on the Rights of the Child, when the Government introduced Section 55 of the Borders, Citizenship and Immigration Act 2009, which replicates Section 11 of the Children Act 2004. We already have a sense of the duties which Section 55 of the 2009 Act placed on public bodies to carry out their functions. This is a case where we could very much do with an independent assessment of what the needs are. How does the Home Office propose to meet its duties under the principle of "every child matters", and under Section 55, in relation to children subject to removal and detention if it gets rid of the expert advice it has been receiving to enable it to do this?

Fourthly, what measures are being put in place to ensure that similar protections are in place once the IFRP's work ceases? The Home Office's fact sheet on detention states that the Bill limits

"the duty to consult the Family Returns Panel in relation to the detention of accompanied children".

Does the Minister acknowledge that this is misleading with regard to what Clause 13 will do? For example, is Clause 13 much broader than what is stated in the fact sheet?

Fifthly, the role of the IFRP is to ensure that any use of detention is for a limited period and only that which is necessary. Given its absence, what measures will the Secretary of State have in place to ensure that detention is used only for a period that is necessary for a child's removal? What timescale does the Secretary of State envisage to be reasonable to detain a child for the purpose of removal?

Finally, without the advice of the specialist panel, what measures will the Secretary of State put in place to support children not only while they are detained and removed but in the event that they are released after the traumatising experience of a period in detention? Those are a number of probing questions we would like answered in order to judge the impact of this clause.

Baroness Lister of Burtersett (Lab): My Lords, I was pleased to add my name to the notice opposing Clause 13 standing part, to which the noble Lord, Lord German, has spoken. It challenges the disapplication of the Home Secretary's duty to consult the Independent Family Returns Panel regarding the families covered by this Bill.

The panel's website says that, importantly, its role is to ensure that the return process

"considers the best interest of children and the welfare of a family".

According to the Children's Commissioner, it plays a vital role in safeguarding families and children from harm while awaiting removal by ensuring that they are returned to a country that is safe and can meet their needs.

As the noble Lord said, the Independent Advisory Panel on Deaths in Custody has also voiced its concern. The panel noted in its evidence to the JCHR that, when asked about this clause, the Prime Minister said that

"the Home Office can do that itself",

betraying a complete lack of understanding of the meaning and value of independence: it is the Independent Family Returns Panel. It is akin to saying that Herod can just as well take responsibility for the best interest of infants. As the Children's Commissioner has asked, how exactly will the Government ensure that there is appropriate scrutiny of the plans for the removal of a child? Can the Minister explain, please?

In its unanswered letter to the Home Secretary, which I mentioned in an earlier group, the panel asked her to clarify why the Bill proposes to remove this duty and whether she will publish any risk assessment she has completed. Will the Minister please answer the question now? Of course, first, can he tell us whether a risk assessment has indeed been carried out and if not, why not?

The answer to the question why in fact came in a Written Answer to Caroline Nokes, MP, from the Immigration Minister. He said that the duty to consult is being removed

"in order to swiftly remove those families who fall for removal under the … Bill".

He said a dialogue was continuing with the panel and that it

"will continue to play an important role in the removal of families with children who do not fall within the remit"

of this Bill. While there may be some families who came here before this March who will be removed, it is difficult to see that we are talking about many families here. Can the Minister explain to us the assumption about the panel's future workload underlying this comment?

I fear that once again, the best interests of children are being treated as of secondary rather than primary importance, this time in the name of speedy removal. In the words of the Children's Commissioner, this clause

"must be removed from the Bill".

Lord Ponsonby of Shulbrede (Lab): My Lords, this group is about Clause 13, which removes the safeguard of the duty to consult with the Independent Family Returns Panel for accompanied and unaccompanied children. This increases the risk of decisions being made without adequate regard to the best interests of children, and on an arbitrary basis. The Independent Family Returns Panel is designed to ensure that the best interests of children are properly taken into account when decisions to remove and detain families with children are considered.

The noble Lord, Lord German, set out six clear questions and my noble friend Lady Lister added further questions. I am not sure there is much I can add, other than to say that the Government's reason for doing it—which my noble friend just read out and which was given in response to a Question from Caroline Nokes in the other place—to make the whole process quicker, seems to value speed above the interests of children. I would be interested to hear what the noble Lord has to say in answer to the questions.

Lord Murray of Blidworth (Con): My Lords, Clause 13 disapplies the duty to consult the Independent Family Returns Panel in respect of those families who fall to be removed under the provisions of the Bill. The Independent Family Returns Panel provides independent advice to the Home Office on how best to safeguard children's welfare during a family's enforced return. The panel has no decision-making responsibility, as the noble Lord, Lord German, observed, in respect of whether a family is returned. Instead, the panel considers how the specific welfare needs of the children and family are met and comments on the suitability of detaining a family in pre-departure accommodation pending their removal from the- United Kingdom.

While I recognise the valuable role performed by the Independent Family Returns Panel, a key feature of the scheme provided for in this Bill is that those who arrive in the UK illegally are promptly returned to their home country or removed to a safe third country. It follows, as the noble Baroness, Lady Lister, observed, that the intent is underlined by the fact that we need to remove all barriers to such prompt removals, and it is therefore necessary to disapply the duty to consult the panel in the case of those families to be removed pursuant to the duty in Clause 2.

3 am

That said, as Mr Jenrick said in answer to Caroline Nokes, we remain in open dialogue with the Independent Family Returns Panel about the role it can have in the removal of those families with children who fall within the remit of the Bill. I remind the Committee that the Independent Family Returns Panel will continue to play an important role in the removal of families with children who do not fall within the remit of the Bill—for example, those who are to be removed having overstayed their leave to remain.

All that having been said, I ask that Clause 13 stand part of the Bill.

Baroness Lister of Burtersett (Lab): I specifically asked the Minister what the assumption is about how large the panel's workload will be. Are we talking about it advising on many families or very few? I also asked about the question raised in the Independent Advisory Panel on Deaths in Custody's letter to the Home Secretary, which still has not been answered. The noble Lord, Lord German, had a whole string of questions that I do not think have been answered. I do not necessarily expect the Minister to answer them now, given that it is 3 am, but perhaps he could write to the Committee with the answers to all the questions we have asked.

Lord Murray of Blidworth (Con): Of course, my officials and I will look through *Hansard* and make sure that we have answered all the questions, although I think I addressed all the key questions that I was asked. I will check that.

The panel workload question is dependent on the extent of family crossings and illegal entries. That will predicate the workload. The dialogue with the Independent Family Returns Panel and the role it can have on removal is progressing, but there can be no hard and fast figures about what its workload might be.

Lord German (LD): The one question that particularly interests me, which has not yet been answered, is what provision the Home Office has made to deal with the sort of advice that previously came from the independent panel. Given the mix of people involved, a range of skills are needed to inform the Secretary of State's decision. The Minister may want to write to me about this, but what provisions are being put in place to assist in providing advice to the Secretary of State?

Lord Murray of Blidworth (Con): I am certainly happy to write to the noble Lord about that but, as I say, the Independent Family Returns Panel will still have a role. It simply will not have a duty or obligation, as at present, but I will write to the noble Lord on that.

Clause 13 agreed.

Clause 14: Electronic devices etc

Debate on whether Clause 14 should stand part of the Bill.

Lord German (LD): I think this will be a very short debate on how the Government intend to deal with the confiscation of mobile phones from those who are seeking support in entering this country. As the Minister may recollect, there was a court case last year which had two principal features. The first was that it was declared illegal to confiscate the phones, the basis for which was that there was no legal standing in the country's law to permit that to happen.

More importantly, the second part of the decision of the High Court was that the Government were also wrong to try to extract information that was concealed behind PINs on phones. Think about the situation faced by migrants entering this country. As we all know, they have had tortuous journeys and their only means of communication with family, friends or anyone in their own language is their mobile phone. That mobile phone is people's lifeline.

Therefore, it is important to understand what the confiscation is intended to find out. Is the intention to go through all the material contained on the phone? Is it simply to ensure that they have no means of communication? These are matters which the High Court determined were more important than simply that of confiscation. So do the Government have in mind what they want to do with the handsets and mobile phones they are going to confiscate from those being put in detention? If so, how do they propose to find a route which allows them to do it beyond the decision of the High Court last year?

Baroness Hamwee (LD): My Lords, I have Amendment 79B in this group. When I drafted it, it did not stem from the proceedings and findings of the court to which my noble friend has just referred. Like him, I am aware of how many asylum seekers have contacts stored on their phone. If the phone is retained—and it appears that many have been retained for a long time and that not every phone has been returned to its owner—and they cannot get at the contacts, they are not able to get in touch with their family to let them know where they are. This is an extremely mild amendment that merely provides for arrangements so that contact can be made.

There must be people who are even more of a dinosaur than me, because I do understand that the mobile phone is a central element of modern life. It is not a luxury. I am never comfortable about having the whole of my life recorded on a tiny device. I do it, and I am reassured because my contacts are also available through my computer and so on, and we have the luxury of having technical support to help us retrieve what sometimes seems to go astray. I well understand why an asylum seeker—to the extent that I can put myself in an asylum seeker's shoes—regards the phone as essential. Cutting off contact with family at home piles cruelty on cruelty.

Baroness Chakrabarti (Lab): I rise briefly to support noble Lords who have spoken to their amendments, and I totally endorse what has been said. Crucially, we want to hear from the Minister what the purpose of the searches is. I remind the Committee that these are not criminal suspects or criminal defendants, let alone convicted people. They are, on one analysis, illegal migrants because they came in an irregular fashion, but on another analysis some of them are refugees; none the less, they are not in the criminal justice system. We understand the purposes of searches in that context, and we have to understand the purpose here.

I wholly agree with the noble baroness, Lady Hamwee, because we have seen what it does to victims in the criminal justice system, rape complainants in particular, when, for the purpose of investigating crimes against them, their mobile phones are taken. It is devastating because a lot of people do not even keep notes of their loved ones' phone numbers any more. The name is in the phone next to the number, so to be deprived of one's electronic device for any length of time is crippling, even for us. We probably feel like detainees in this Committee at the moment but, generally speaking, we are not in these people's state of vulnerability. We need to hear from the Minister about the purpose of this, and about the protections for these people. We are talking as if these people have no rights at all. They are going to be detained for 28 days without the possibility of bail. In our system, it is only suspected terrorists who get held for 28 days without charge. These people are being robbed of their dignity and humanity, and it seems to me that this is just another aspect of the same thing.

Baroness Bennett of Manor Castle (GP): My Lords, extremely briefly, I wish to make a point about the amendment of the noble Baroness, Lady Hamwee. It

is about the other people who are being punished by the seizure of these devices and the loss of their contact details. We all know how many tragedies and disasters have happened, where people drowned in oceans or suffocated in the back of lorries. Think about all the families and friends who these refugees are then not able to contact to say that they are alive. That is what we are doing to those families who are left without knowing what has happened to their loved one.

Lord Ponsonby of Shulbrede (Lab): My Lords, it seems that the reason the Government are putting these provisions in the Bill is to try to respond to the High Court decision in 2022, which the noble Lord, Lord German, referred to. The fundamental question was raised by the noble Baroness, Lady Hamwee, and by my noble friend: what is the purpose behind this? We all know how important our communication devices are and how much more important they must be for people in these situations. However, I will say that, on the trip my noble friend Lord Coaker and I made to Manston a couple of weeks ago, one of the officials we were dealing with pointed out that access to mobile phones aided youths to abscond and to be taken away. When we were talking, that was a concern of his because these youths are going missing, and it is through the use of their mobile phones. Nevertheless, it is for the Minister to say what the purpose behind this is, given that they are such vital pieces of equipment.

Lord Murray of Blidworth (Con): My Lords, Clause. 14 and Schedule 2 are included to ensure that we have the necessary broader powers to tackle and prevent illegal migration. I am going to address head-on the questions posed by the noble Lord, Lord German, as to the purpose of these provisions.

These powers enable immigration officers to search for and seize electronic devices, such as mobile phones, provided certain conditions are met. They allow for such devices to be retained for as long as necessary. They also allow for the information stored on them to be accessed and examined, and for any relevant information to be copied, retained and used for any purpose relating to a function of the Home Secretary in relation to immigration, asylum, nationality or a function of an immigration officer.

The noble Lord, Lord German, suggested that this is a confiscation power; that is not the case. Mobile phones and other electronic devices contain a wealth of information which can directly or indirectly facilitate the confirmation of a person's identity and an understanding of their activities. They can therefore assist in determining a person's immigration status or right to be in the UK, as well as in developing a better understanding more broadly of the wider illegal migration picture, providing evidence which can be used in criminal prosecutions of the people smugglers.

We all know that mobile telephones contain a wealth of data relating not just to the owner of the phone but to where that phone has been and who they have been with—all of which can be used to build up an intelligence picture which can facilitate criminal prosecutions. While a number of powers enabling immigration officers to seize electronic devices already exist, these new powers seek to address the gaps in the current powers and provide immigration officers with additional tools—vital, I suggest, to investigate, disrupt and prevent the dangerous crossings of the channel and other dangerous forms of illegal migration.

3.15 am

Amendment 79B, put forward by the noble Baroness, Lady Hamwee, would have the effect that electronic devices cannot be retained

"unless the immigration officer makes arrangements for the relevant person to record the contact details of such persons as they request and enables the person to make contact with such persons for the primary purpose of informing them of the person's whereabouts".

I thank the noble Baroness for this amendment, which raises an important issue. Given that these are new powers, I reassure her that associated guidance will be developed to underpin their use. This guidance will consider how access will be provided to an individual's information, including the contact details stored on the device.

Lord German (LD): My Lords, I am conscious of the words used around accessing these mobile phones, but the court ruled that you could not demand the PIN number from the owner. I do not know whether there are now technical ways by which you can bypass the PIN number on Apple phones—I have no idea whether that is possible. Is that the process being made legal here, rather than the demanding of the PIN number?

Lord Murray of Blidworth (Con): I think the noble Lord is referring to the case of HM. In that case, the court was evaluating whether the practice of taking phones from those arriving at Western Jet Foil, under a certain statutory power, was within that power. The court held that it was not. That is really the long and short of that case. These are fresh powers. The case of HM was decided on the powers that we used in that particular case. These are a new suite of powers. I suggest that it is a fresh source of intelligence that can be used to tackle the crimes we see being committed by the people smugglers and to prevent illegal migration.

Returning to the amendment of the noble Baroness, Lady Hamwee, it would not be wise, in our view, to put provisions in the Bill similar to this amendment, given the need to cater to the wide range of circumstances in which a relevant person or relevant article may be encountered. Additionally, it will be important fully to consider any potential perverse consequences that could arise from implementing such a measure in the wrong way. For example, if a person was to know that their mobile phone was going to be seized and retained and that they could access the contact list once more beforehand, they could use this as an opportunity to delete important evidence of criminal offending. We therefore consider that the best way to address this issue is through guidance. For those reasons, I commend Clause 14 and Schedule 2 to the Committee, and hope that the noble Baroness will be content to withdraw her amendment.

Baroness Hamwee (LD): My Lords, I will withdraw my amendment. I probably do not understand all the complexities related to this, but I am very uneasy at the prospect of the retention of the device and the information on it without that being subject to the sort of arrangements that I have referred to. We will not have an opportunity to debate the guidance, unless it is in regulations, which I do not suppose it will be. Let me make it quite clear that I think that the sine qua non of the retention of those two aspects should be subject to, and not possible unless there have been, arrangements to treat asylum seekers as human beings and not the criminals that they are being cast as now. That was rather the way that the Minister was portraying them: as suspects who will make dodgy use of their own phones, contacts and information. The primary consideration is extracting the information, as if they were criminals and not victims.

Clause 14 agreed.

Schedule 2: Electronic devices etc

Amendment 79B not moved.

Schedule 2 agreed.

Clause 15: Accommodation and other support for unaccompanied migrant children

Amendments 79C and 80 not moved.

Debate on whether Clause 15 should stand part of the Bill.

Lord Scriven (LD): My Lords, it is 3.20 am, and we are about to start discussing the accommodation and services for unaccompanied children seeking asylum—some of the most vulnerable children in the world. They will have experienced great trauma on their journey to the UK and will have many needs which should be taken into consideration in terms of where they are accommodated, their rights under the Children Act, and their absolute right to have all the services and protections afforded to them that corporate parenting brings.

The Children's Commissioner has made it clear very loudly that the Home Office should not be provided with the legal power to accommodate children, in Clause 15, or to direct a looked-after child to be returned to Home Office accommodation, in Clause 16. The Children's Commissioner is clear that every child should be living in a setting that can provide them with care under Section 20 of the Children Act. The Children's Commissioner says that it is not clear, under the Bill, whether the Home Office-run accommodation will be registered as a children's home and will therefore be subject to the Ofsted inspection regime. The first question I ask the Minister is: will the accommodations that will be provided by the Home Office be Ofsted-inspected, and will they be registered as children's homes?

The provisions in Clause 15 are quite wide:

> "The Secretary of State may provide, or arrange for the provision of, accommodation in England for unaccompanied children in England".

I ask the Minister: under what circumstances will such accommodation be provided? How long is the maximum time that is envisaged that a child will be held in such accommodation?

Clause 15(3) is quite telling, in terms of the provisions in the Children Act and of what may or may not be provided in these accommodations. It says:

> "While a child is residing in accommodation for unaccompanied migrant children, the Secretary of State may provide, or arrange for the provision of, other types of support to the child".

How does that clause fit with the legal duties under the Children Act 1989? I do not know which Minister will answer, but the Front Bench should be listening, because there are provisions which the Home Office will have to take into consideration. How does Clause 15(3) sit with the legal duties of the Children Act, particularly the Section 20(3) provisions on what should be provided for accommodation? What minimum standards will be provided in such accommodation?

My other worry about Clause 16 is the potential for children to become pawns on a chessboard. The Government and the Home Office are talking about children being moved between local authority accommodation and this new type of accommodation. Once a child is in the care of a local authority, under what circumstances does the Home Office expect that child to leave the care of the local authority, with all the provisions that the Children Act and corporate parenting bring for a child under local authority care? If they are moved back to unaccompanied migrant children's accommodation, will the provisions that they had in local authority care under the Children Act still be afforded to them?

I am not clear under what circumstances the Home Office would wish to bring a child out of local authority care, other than potentially removing the child to their parents for a short period or back to their home country or to what the Government call a safe third country. Can the Minister explain in what circumstances a child would be moved by the Secretary of State to Home Office accommodation and away from local authority accommodation? If a child was in Home Office accommodation, would a local authority employee be allowed to enter to see whether the corporate parent provisions of the Children Act applied and, if so, to remove that child, or would the Home Office have the final say on whether such a child was removed?

I am asking these detailed questions because the Committee needs to understand exactly what the Home Office is thinking. All it seems to be doing is putting in law the ridiculous situation we have at the moment, where unaccompanied children are residing in hotels. It seems to be finally putting into law the mess that has been created in those hotels. I see no other reason for doing this. As we discussed earlier, there is detention in the Bill, in case somebody is being removed, so I am not at all clear what this provision is for. This accommodation seems absolutely vital to deal with unaccompanied migrant children. I think most people in the Committee will be clear that once a child is under the care of a local authority, that is where they should stay.

Under what circumstances would the Government seek to get the information they require from a local authority? It is quite interesting that certain information is specified in Clause 17(2)(a), but Clause 17(2)(b) says that

"such other information as may be specified in regulations made by the Secretary of State"

may be required from a local authority. Other than the information specified in Clause 17(2)(a), what information would the Home Office require? What does it think is missing from Clause 17(2)(a) that it will require under Clause 17(2)(b), and for what purpose would information over and above that specified in Clause 17(2)(a) be used?

The other amendments in this group that I and others have put our names to, particularly Amendment 83, would ensure that that nothing in the Bill will undermine the Children Act 1989. With the current provision of accommodation, particularly hotel accommodation, before a child is put under the care of the local authority there is no corporate parent, and the Home Office does not have corporate parent responsibility. In the Explanatory Notes it is clearly stated that it will not have corporate parent responsibility and that the Government are not going to change the provisions of the Children Act 1989. Therefore, when a child is in this Home Office accommodation, who will be their corporate parent and what provisions under the Children Act 1989 will they not be afforded if they are under the care of a local authority?

3.30 am

It is clear that, at the moment, when children are in Home Office hotel accommodation, they are not afforded the full protection of the Children Act 1989. That is very clear indeed. If the Minister says that they are, the local authority will be able to enter that accommodation and, if it decides that it is not in the interests of the child, it will be able to remove that child. That is very clear. If the local authority is not able to do that, the full provisions of the Children Act 1989 are not complied with. This amendment tries to make sure that every single provision that is in the Children Act 1989 that protects the rights and needs of the child is in the Bill.

Amendment 83A, the final amendment, on the guidance and welfare of children, is also signed by my noble friend Lady Brinton, so I will leave it to her to speak to that.

With those questions and that general overview of these clauses and amendments, I wait with interest to hear the detailed responses of the Minister.

Baroness Chakrabarti (Lab): My Lords, I share the concerns of the noble Lord, Lord Scriven, about the way the Home Office has been looking after unaccompanied children—or not. I share the concerns that were expressed in this Committee by my noble friend Lord Touhig the other day in no uncertain terms. We think that about 100 children have gone missing from Home Office care, which is appalling negligence on the part of the Home Department.

I slightly smell a rat with Clause 15, because it is now creating a power for the Secretary of State to arrange accommodation. We are very fortunate to have, even at this early hour of a new day, a law officer answering on behalf of the Government. Does it mean that the Government have discovered that in fact they have been acting in breach of the law to date? We are now creating a new power for the Secretary of State to provide or arrange for this accommodation for unaccompanied children. Is that because currently, under the law as it stands, there is no such power? In other words, are the Government currently in breach of the Children Act? I think this Committee would probably be grateful for an answer to that question.

Whether or not the Government are in breach, of course it is open to Ministers to cite parliamentary sovereignty and say, "We are now going to override the Children Act with this new legislation and discriminate between unaccompanied British children and lawfully resident children, and these illegal entrants". That is all very well except that, as was put so well in Committee not that many days ago by the noble and learned Baroness, Lady Butler-Sloss, the Children Act implements the United Nations Convention on the Rights of the Child, which cannot just be trumped, even by parliamentary sovereignty. That convention, like other human rights conventions, does not allow discrimination between this child and that child. Their best interests come from the fact that they are children and are little human beings, and they cannot be treated so callously.

I particularly want to know what the legal basis has been for holding these children in hotels, losing them and, as far as I can tell, doing nothing about finding them, such is the responsibility, and care and concern, of the Home Office with its crocodile tears for these poor people who have been smuggled by the people smugglers. If people are illegal entrants and must be punished, I do not think the children should be punished. We have real concerns.

I hope that this is the last group, but I am conscious that this was the target group for yesterday and there may be a new target for today that I am not aware of. I am thinking that this might be the last group. I want to speak in support of Amendment 81A, tabled by the noble Baroness, Lady Brinton, about protecting medical confidentiality. It is yet another amendment that noble Lords have put down to restore some basic decency and humanity to these vulnerable people who have had so much stripped away by their circumstances and will now have so much more of their human dignity stripped away by way of this legislation.

Baroness Brinton (LD): My Lords, I declare my interest as a vice-president of the Local Government Association. I have signed Amendment 83A, tabled by my noble friend Lord Scriven, and will come back to that. I am very grateful for the help of the General Medical Council and the British Medical Association.

My Amendment 81A in Clause 17 is a probing amendment to understand the information that the Secretary of State may require from local authorities, including health information, and registered individuals looking after an unaccompanied migrant child. Clause 17(2)(b) refers to

[Baroness Brinton]

"such other information as may be specified in regulations made by the Secretary of State".

That is so general that it could include requests for a migrant child's health data. I can see some eyebrows being raised on the Front Bench, but I am particularly pleased that the Chief Whip is in her place, as she may feel a sense of déjà vu. The previous Home Secretary demanded similar access to information held by certain public authorities, including doctors and local authorities, which included patients' confidential personal data, during the passage of the Police, Crime, Sentencing and Courts Bill. This then reappeared in the Bill that became the Health and Care Act of last year. Both Bills were amended, and satisfaction was given by the Minister at the Dispatch Box, who made it absolutely plain that the Home Secretary and the Home Office could not demand any information that overrode the confidentiality rules that doctors and other registered professionals must follow.

The General Medical Council, in its regulation of doctors, sets ethics frameworks by which they and only they can release confidential data without the consent of the patient, usually at the request of the police or some other body because somebody else's life is at risk. The problem with how it was framed in the Police, Crime, Sentencing and Courts Bill was that it was so general. When I probed, it could have related to witnesses at scenes of crimes, or to somebody connected, but not to somebody who was just suspected of a crime. So I was really grateful to the then Home Office Minister for her assistance in making this happen.

The difficulty with Clause 17 is that we must protect the data of that patient—in this case, the migrant child—as confidential to them and to the healthcare professionals who look after them, for example the child's social worker or the care worker where they are residing, since all three of them may have access to shared care records. I am sorry that the noble Lord, Lord Markham, is not in his place, because shared care records are very important in the improving of services to looked-after children, to ensure that all those who need to know have access to the relevant information. We are moving into a world where we have social workers, the social care providers who are looking after looked-after children, the doctors and, imminently, pharmacists, because they too will be able to provide some medical care under changes that are happening.

All of those professionals are bound by confidentiality rules. The problem with the text at the moment is that there is no boundary on any information that the Secretary of State might demand. Can the Minister tell us whether the corporate parent—the local authority—or the child's social care provider currently has any discretion on whether and when to share personal information? Obviously, I am asking particularly about health-related information, but I suspect it also raises a wider issue about the non-health information held in a child's shared care record.

There is another perspective to this too. Social workers, in a similar way to doctors and other health professionals, depend entirely on establishing a relationship of trust with their clients, and they may owe them a common-law professional duty of confidence. If this is the case, the provision could undermine that relationship of trust and interfere with these duties, which would be highly problematic. It would place social workers in a very different position to health professionals, because social workers work for the local authority, and it is the local authority that the Secretary of State is asking for that information.

At present, shared care records are controlled by health integrated care boards. However, this controllership and the composition of ICBs is naturally subject to change, depending on the will of government—it seems to change about every two years at the moment. As such, we want to take steps to ensure that, as far as reasonably possible, patients' data is protected, unless it is given up by a doctor who has consulted the GMC framework and then come to their own decision. Will the Minister agree to have a meeting with me, the General Medical Council and the British Medical Association? I know that a number of civil servants in the Home Office are familiar with this argument. The Information Commissioner's Office may wish to be present as well: it was at two sets of meetings in the course of the other Bill. This is a very serious matter. It may seem outwith the scope of this Bill, but because of the powers that the Home Secretary is giving herself, it is absolutely not.

I move extremely briefly to Amendment 83A, which is after Clause 20 and picks up a point that is also reflected in Amendment 82 from the right reverend Prelate the Bishop of Durham. It is designed to ensure that, where there is any transfer of a child between different authorities and any relevant partners interacting with that child, the child is protected from maltreatment and from impairment of their mental and physical health and development and to ensure their well-being and, most importantly, safeguarding.

There is a particular relevance to the issues we were discussing earlier this evening, when we discussed how Kent does not have on its books any of the children who arrive in Kent. They have been allocated all over the country, and the Afghan children, in particular, are now sometimes being moved to their third local authority, but the first local authority they were booked with remains responsible for their care; that does not transfer. As a result, there needs to be something explicit about the work of any other agency and partners looking after these children in their area, as they will be. Perhaps the Minister could respond to that as well.

Baroness Bennett of Manor Castle (GP): My Lords, I will be extremely brief, but I must begin by commending the energy and attention to detail of the noble Lord, Lord Scriven, in introducing this group and both noble Baronesses, Lady Chakrabarti and Lady Brinton. At 3.44 am as I speak, their energy and attention to detail is truly impressive. I shall address just one of the amendments, Amendment 83, which would make it clear that nothing in the Bill would conflict with the duties and responsibilities of the Children Act 1989, which, as the noble Baroness, Lady Chakrabarti, said, essentially seeks to deliver the UN Convention on the Rights of the Child.

Since I have quite a lot of Bills to make comparisons with, I am going to make a comparison with the Online Safety Bill. About two weeks ago, we were

debating a remarkably similar amendment that was seeking to write into that Bill the UN Convention on the Rights of the Child. What I am saying now was being said then: how could anyone not say that a Bill should include the provisions of what the world has agreed are the basic protections that every child should have available to them? How could there be an objection to that?

3.45 am

Let us imagine two 12-year-old children, both of whom have sadly had a whole range of adverse childhood experiences, as the jargon goes. One of them is a child who has grown up in Britain—as we know, sadly there are many children growing up here who are exposed to a number of adverse childhood experiences and end up with no real related responsible adult looking after them—and the other is a refugee child who has arrived in the UK by irregular means. How can they not be covered by the same basic protections? What could be a more awful example of discrimination than that?

Lord German (LD): My Lords, I thank everybody who has entered into this discussion today. I think I can sum it up very briefly, in the words of my noble friend Lord Scriven: what is this clause for? Given that the clause is only for England, it is not needed in Wales, Scotland or Northern Ireland—so why is it needed in England?

Lord Coaker (Lab): My Lords, I have a couple of questions about this important group dealing with the accommodation and support for unaccompanied migrant children. I will try to be specific for the Minister.

First, do these clauses mean an attempt by the Government to end the use as far as possible of hotels for unaccompanied children? As my noble friend Lady Chakrabarti just referred to—it is an interesting point that I also had down—it appears that Clause 15 gives the Home Secretary more power, or a new power, to create accommodation rather than just searching randomly for hotels. Is this giving the Home Secretary the power to build her own accommodation, or more of it, for unaccompanied asylum-seeking children? It would be interesting to know the answer to that.

The other point associated with that is whether the Minister could say something about the relationship between Home Office accommodation as it is now and local authority accommodation, which is where all unaccompanied children should be. It would be helpful for us to have some statistics. How many unaccompanied children are in Home Office accommodation, in hotels, and how many are in local authority accommodation? What are the current figures for that?

My next question is about the point that my noble friend Lady Chakrabarti made. What are the Government doing to stop children going missing? There are 200 missing children—is that still the latest figure, or is there any update on the number of missing children? As I say, the latest figure I think we have all had is 200 children. Is there any update on that? Have any of them been found? It would be helpful if the Minister could say something about the latest statistics on that.

The last question is: what happens to unaccompanied migrant children in terms of accommodation if they are to be removed and they reach the age of 18? What happens to them then as they wait to be removed on attaining that age? I would be interested to know what happens there.

I have asked a few questions. The noble Lord, Lord Scriven, the noble Baronesses, Lady Brinton and Lady Bennett, and my noble friend Lady Chakrabarti made some of the more general points, which are very important. I just wanted to add a couple of specific points and questions about the statistics and the Government's thinking around this area to add to that.

Lord Stewart of Dirleton (Con): My Lords, these clauses and amendments bring us on to the provisions regarding the accommodation and support of unaccompanied children.

I will explain briefly what Clauses 15 to 20 seek to do. As the Committee heard in the context of Clauses 2 and 3, unaccompanied children are not subject to the duty to make arrangements for removal while they remain children, but there is a power to remove them in limited circumstances, with decisions being taken on a case-by-case basis. It follows that, if an unaccompanied child is not to be removed before they turn 18, provision needs to be made for their accommodation and care. The Government expect local authorities to meet their statutory obligations to unaccompanied children from the date of arrival, and the Bill does not change that.

However, in answer to the noble Lord's point, we need to recognise that it is not always possible immediately to transfer an unaccompanied child who has just arrived in Dover on a small boat into the care of a local authority. It has therefore been necessary for the Home Office to accommodate them on a temporary basis. Our intention is—here I agree with the noble Lord, Lord Coaker, and indeed the sentiments of the entire Committee—that a child's stay in Home Office-provided accommodation will be a temporary one and for the shortest possible time, and that they will be transferred into local authority care as soon as practicable. These clauses simply formalise the current position, building on the existing burden-sharing arrangements in the Immigration Act 2016.

On the question posed—again, I think initially by the noble Lord, Lord Scriven—as to the status of Home Office accommodation and Ofsted inspections, we are currently considering with the Department for Education appropriate inspection arrangements. The matter is under consideration. No doubt we will revert to the matter in due course.

The noble Lord, Lord Scriven, and the noble Baroness, Lady Chakrabarti, asked about the status of the corporate parent and the role of the Home Office in that regard. The Home Office does not have, and therefore cannot discharge, duties under Part 3 of the Children Act 1989. It is for the local authority where an unaccompanied child is located to consider its duties under the Children Act 1989. Nothing in this Bill changes that position.

Lord Scriven (LD): My Lords, there is a fundamental issue here that I think the Home Office really does not understand—I do not think that it has been done out

[LORD SCRIVEN]
of malice, but there is a real misunderstanding. There is a difference between safeguarding and a looked-after child. That is the key issue that we are trying to determine. Once a child hits the shores, they should have the same status as if they were under a local authority as a looked-after child, with all the provisions that come in the Children Act 1989. Why will there be two classes of unaccompanied children seeking asylum depending on what type of accommodation the Home Office is able to put them in? That is the key question.

Lord Stewart of Dirleton (Con): My Lords, as I explained—or sought to explain—it will not necessarily be possible immediately to transfer an unaccompanied child into local authority care and local authority accommodation. Something must be done to bridge the gap until that can be done.

Baroness Chakrabarti (Lab): I am now concerned as to what the legality has been to date. I take entirely the Minister's point that he wants any Home Office responsibility for these children to be absolutely minimal, from when they have just come on the boat until they can be dispersed to a local authority; I hear him, and that seems quite right to me. But what is the current legal basis for what has been happening to date? There are children who have been housed in hotels and have gone missing from those hotels—what was the legal basis for putting them in the hotels? Who was responsible and under what statutory provision were they acting? It may just be that it is 4 am, but I am now really concerned about the legal basis for what has gone on. They have disappeared and someone has been grossly negligent. This will no doubt all be resolved at some point in the future, but what was the purported legal basis for putting those unaccompanied children in hotels?

Lord Stewart of Dirleton (Con): My Lords, that is not a question that arises at this stage in considering the provisions of the Bill, and I do not intend to answer it.

Baroness Brinton (LD): I am sorry that I cannot stand up, but I thank the Minister for giving way. This is exactly the issue that I raised with his colleague earlier this evening: the gap before a child is allocated to a local authority. While it was good news that yesterday the number of those who had not been allocated was zero, we know that there have been gaps and, because there have been gaps, there is concern. That is why we are trying to find out what the status is and who is responsible. If the Home Office is not responsible and the child has not been allocated to a local authority, who is responsible for them—even if it is for only a few days?

Baroness Hamwee (LD): My Lords, this is exactly the problem that the children's organisations raised, even before the legislation saw the light of day, when the problems in hotels became clear. It certainly took me a little while to get my head around the problem. The Minister has his brief and it is understandable that he does not have all the answers—this is historical, from before the publication of the Bill—but it is a very serious and continuing issue.

Lord Stewart of Dirleton (Con): My Lords, I recognise that this point has now been raised by three respected Members of the Committee. The noble Baroness, Lady Hamwee, is correct: I do not have the answers in my brief. I think the best thing is if I undertake to correspond with the noble Baronesses; indeed, my noble friend Lord Murray of Blidworth will write.

The noble Lord, Lord Coaker, from the Opposition Front Bench, asked a couple of questions about statistics. I will come to them; I am not wrapping up what I have to say yet. The position in relation to unaccompanied children in Home Office accommodation, as we heard earlier from my noble and learned friend Lord Bellamy, is that there are none. In relation to unaccompanied asylum-seeking children in England who are not in Home Office accommodation, the most recent figure I have is 5,570.

Lord Scriven (LD): How many children who have been in Home Office accommodation are still missing? What is the latest statistic?

Lord Stewart of Dirleton (Con): Again, my Lords, that is not a question that arises directly from consideration of the Bill in Committee—but I appreciate the basis on which the noble Lord posed it. I now have the answer, thanks to the benefits of mobile technology, about which the Committee has been hearing. The number is 154.

I reiterate that the clauses formalise the current position, building on the existing burden-sharing arrangements set forth in the Immigration Act 2016.

I now turn to the amendments. Amendment 80A tabled by the noble Lord, Lord Scriven, seeks to remove the Secretary of State's power to transfer a child out of local authority care into accommodation provided by the Secretary of State. Amendment 81 tabled by the right reverend Prelate the Bishop of Durham addresses the same point, save that it seeks to limit rather than remove the Secretary of State's power in this regard.

Clause 16 provides the power to direct a local authority in England to cease looking after an unaccompanied migrant child and to transfer that child into Home Office-provided accommodation after five working days of the direction being made. In making decisions about transfers back into Home Office accommodation, the Home Office will continue to comply with its duties under Section 55 of the Borders, Citizenship and Immigration Act 2009 to make arrangements to safeguard and promote the welfare of children in the UK in discharging its immigration functions.

4 am

Lord Scriven (LD): I am sorry to keep interrupting the Minister. In a previous answer a couple of moments ago, he said in relation to safeguarding that, as soon as the child hit their local authority area, they were the

responsibility of the local authority. Will it have access to the Home Office accommodation and, if in carrying out its safeguarding responsibilities it decides it is not a safe place for a child, will it have the ability to remove them?

Lord Stewart of Dirleton (Con): As I said a minute ago, I think we are still looking into the inspection regime which would apply.

Lord Scriven (LD): Sorry—the Minister needs to understand. This is not about an inspection regime. It is about the safeguarding responsibility that a local authority has legally, and it is about understanding how the local authority's safeguarding responsibility for its area interacts with the Home Office accommodation. Will it be able to use its safeguarding responsibilities under the Children Act in the Home Office accommodation and determine, if it is unsafe, that a child can be removed under the statutory duties that a local authority has for safeguarding?

Lord Stewart of Dirleton (Con): Again, I mentioned the inspection regime which is presently under discussion and the same applies: this matter is still subject to negotiation.

The subsections which Amendment 80A seeks to omit are a necessary corollary of the power in Clause 3 to make arrangements for the removal of an unaccompanied child. It may be, for example, that an unaccompanied child is in the care of a local authority but, after a period of weeks, a parent has been located back in the country of origin, and arrangements are made to reunite child and parent. Ahead of their return to the home country, it may be appropriate for the child to come into Home Office-provided accommodation for a short period, pending their return home. This would naturally be preferable to detention of the child, which may be the alternative. As I said a moment ago, and I am grateful to my noble friend Lord Murray for the direction, we are still working through the operational processes relating to unaccompanied children and the circumstances in which we will use the power in these subsections.

Baroness Brinton (LD): I am sorry to interrupt the Minister again. Just to be clear about this, his arguments so far have been about the practical implications of delivering this Bill when he say things are still being worked on. Does that mean that for the 5,570 children who have arrived, of whom 154 are still missing, there has not been an arrangement in place to provide safeguarding for these children in the gaps before they are allocated to a local authority? Or what happens if things change and the only people who could be responsible for them are the Home Office, although he has told us that it is not?

Lord Stewart of Dirleton (Con): In relation to the question posed by the noble Baroness, we will include that detail in the letter, which will be framed.

The process of working through arrangements, being carried out at some speed, in relation to unaccompanied children and the circumstances in which we will use the power in these subsections, is a matter which is being worked through with interested bodies and stakeholders to understand their concerns relating to this power to transfer unaccompanied children into Home Office accommodation.

In relation to Amendment 83A, this proposed new clause, touched on by the noble Baronesses, Lady Chakrabarti and Lady Bennett of Manor Castle, is not necessary as the Department for Education already issues statutory guidance, entitled *Working Together to Safeguard Children*, on interagency working to safeguard and promote the welfare of children.

In relation to Amendment 81, I add that Section 55 of the Borders, Citizenship and Immigration Act 2009 already requires the Secretary of State to have regard to the need to safeguard and promote the welfare of children when exercising immigration functions. To that extent, the amendment is unnecessary. The Section 55 duty does not mean that it is the only factor that must be considered, and other relevant factors must be taken into account.

I turn to points and amendments raised in relation to information sharing. Amendments 81 and 82 seek to limit the information-sharing power in Clause 17. Clause 17 is based on a very similar information-sharing power in Section 70 of the Immigration Act 2016, which applies for the purpose of the transfer of responsibility for the care of unaccompanied asylum-seeking children from one local authority to another. As with the existing powers in the 2016 Act, Clause 17 is intended as a backstop. In practice, it has not been necessary to use the direction-making powers in Section 70 of the 2016 Act as the Home Office and local authorities readily make use of the existing data-sharing process for the national transfer scheme, which relies on permissive data-sharing gateways under other existing legislation and related statutory guidance, including under the Children Act 2004 and Section 55 of the Borders, Citizenship and Immigration Act 2009, which offer guidance on the sharing of data. We envisage the provisions in this Bill operating on a similar basis. None the less, we consider it important to retain the backstop power in Clause 17 should relevant information for whatever reason not be forthcoming.

In relation to a point raised by the noble Baroness, Lady Brinton, I can assure her that any information provided pursuant to a direction under Clause 17 may be used only for the purpose of helping the Secretary of State make a decision under Clause 16(1) to (4). As for Amendment 81A, the power in Clause 17 can be used only to direct a local authority to provide information that it holds. The power cannot be used to request a third party, such as a child's doctor, to provide information. Nor can the regulation-making power in Clause 17(2)(b) be used to expand the power in this way—any regulations may specify only other information that would be held by a local authority. That being said, I think the Committee needs to be clear that there is information that it is appropriate to share about a child's medical needs to allow agencies to carry out their statutory functions and to safeguard children and ensure their needs are met. A local authority which held such information may, for example, wish to tell the Home Office that the child is seriously ill and not fit to travel.

[LORD STEWART OF DIRLETON]

The noble Baroness sought a meeting with a range of bodies. I can undertake to say that that proposal will be considered—

Baroness Brinton (LD): With me as well.

Lord Stewart of Dirleton (Con): With the noble Baroness present as well, but I am sure she will understand that from the Dispatch Box I cannot commit to if or when.

Baroness Brinton (LD): I hope it will be before Report. What the Minister has just said is extremely serious. He referred to information being shared and it is one thing for the local authority to choose to give it, but Clause 17 says:

"The Secretary of State may direct"

and direct the form in which it is received. My particular concern is that this new arrangement over shared care records means that that data is much more available for a local authority to provide. The person who is responsible for sharing that information remains the doctor even if the local authority holds it. I am very aware of the hour, but this is a very complex area. It is about the most important confidential information that any individual can have and all the laws and arrangements that he quoted earlier did not include anything relating to medical confidentiality. I would be really grateful for that meeting as soon as possible.

Lord Stewart of Dirleton (Con): I am grateful for that indication. The noble Baroness has my original position and we on the Front Bench have the points which she wishes to raise in any such meeting from the official record and from the note taken.

Concerning Amendment 83, the noble Lord, Lord Scriven, has explained that this proposed new clause seeks to ensure that the established duties under the Children Act 1989 are not undermined by the requirements of the Bill. On a point of drafting which goes to the heart of the amendment, the proposed new clause refers to the Secretary of State's obligations, duties and responsibilities under the Children Act 1989, whereas the 1989 Act is principally about the duties and functions of local authorities and the courts. As I have indicated, the Bill does not alter local authorities' existing statutory duties in relation to unaccompanied children, so in practice Amendment 83 does not take us any further forward or change the current legal framework, and there is a risk that, in seeking to clarify the current law, the amendment will sow confusion and doubt.

Amendment 83A calling for guidance, which was spoken to by the noble Baroness, Lady Brinton, and the noble Lord, Lord Scriven, would require the Secretary of State for Education to issue guidance to local authorities and others with duties and responsibilities under the Bill. There is already a wealth of guidance available to local authorities and others, notably *Working Together to Safeguard Children*, which is the core statutory guidance for all organisations, agencies and individuals involved in safeguarding and promoting the welfare of children in England. We will work with the Department for Education to ensure that any relevant guidance is updated as necessary to reflect the journey of children under the provisions of this Bill. I submit that it would not be helpful to issue freestanding guidance in the way envisaged by the amendment against that background of existing guidance.

The provisions in Clauses 15 to 20 provide clarity under the law. I was asked by the noble Lord, Lord German, I think, about the devolution point towards the end of our discussion. On the issue of the geographical extent of accommodation and the transfer powers in Clauses 15 to 18, the noble Lord pointedly said that this applies to England and not anywhere else—I think he put it more pithily yet. The provisions will initially apply to England but the Bill includes a power by regulation to apply them to Scotland, Wales and Northern Ireland. These provisions relate to immigration, including asylum, which are reserved matters in Scotland, Wales and Northern Ireland, and therefore matters for the UK Government. I am not able at this time to provide specific details on the operation of these powers, including regulations or timings. I think we can as a Committee agree on the importance of national distribution relating to the care of these children so that all parts of the UK pay their fair share.

These clauses are not a device by which the Home Office can take over the long-established responsibilities of local authorities for the care of unaccompanied children. If it is necessary for the Home Office to provide for the accommodation of children who meet the conditions in Clause 2, this will be, as I said earlier, for the shortest possible time. I have sought to reassure noble Lords about the need for these provisions and about how they will be applied. On that basis, and standing my commitments to correspond with noble Lords on a variety of matters, I ask the Committee to support Clause 15 standing part of the Bill.

Lord Scriven (LD): I thank the Minister for such a detailed response to the issues that have been put in this particular group. Having said that, I think there is still far too much confusion about these clauses, which I assume we will probably want to come back to on Report, depending on what the correspondence from the Minister says. The crux of the issue for the Committee is that these children should have looked-after status from the moment they arrive in the care of the UK. If the Government are going to use money for accommodation, that money should be distributed to local authorities so that they can purchase places and those children can automatically become looked-after children. That would seem to be the right way for this to happen, and therefore I think this will be an issue that we will return to on Report.

Before I finish I want to congratulate the stamina of the Deputy Chairman of Committees, who has sat through this long session and carried out his duties diligently. I beg leave to withdraw my opposition to Clause 15 standing part.

Clause 15 agreed.

The Deputy Chairman of Committees (Lord Lexden) (Con): The Deputy Chairman says that he is very content with the kind words from the noble Lord, Lord Scriven.

4.15 am

Clause 16: Transfer of children from Secretary of State to local authority and vice versa

Amendments 80A and 81 not moved.

Clause 16 agreed.

Clause 17: Duty of local authority to provide information to the Secretary of State

Amendments 81A and 82 not moved.

Clause 17 agreed.

Clauses 18 to 20 agreed.

Amendments 83 and 83A not moved.

Clause 21: Provisions relating to removal and leave

Amendment 84 not moved.

House resumed.

House adjourned at 4.16 am.

House of Lords

Thursday 8 June 2023

11 am

Prayers—read by the Lord Bishop of Leeds.

Schools: Curriculum Update

Question

11.06 am

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

To ask His Majesty's Government whether they plan to launch a commission to consider how the school curriculum may be updated to include (1) data literacy, (2) digital literacy, (3) financial literacy, and (4) character and resilience education.

Lord Holmes of Richmond (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare my technology interests as set out in the register.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, the Government have no plans to launch a commission to review the curriculum. Data literacy is covered within mathematics, science, computing and geography; digital literacy within computing, and relationships, sex and health education; and financial literacy within citizenship and mathematics. Relationships, sex and health education, and citizenship, directly support the development of character and resilience, and schools can reinforce personal development in other curriculum subjects and through their extracurricular enrichment offer.

Lord Holmes of Richmond (Con): My Lords, if AI is to human intellect what steam was to human strength, your Lordships will see the extent of the issue. Steam literally changed time. This is just AI; when it is considered alongside the other emerging technologies, issues around data and privacy, the platforms and the approaching metaverse, is it not clear that it is high time to launch a commission to consider a complete overhaul of the curriculum? It should enable young people—ultimately, all people—to be safe, secure and successful, optimising the opportunity for human talent to lead technology.

Baroness Barran (Con): I agree with my noble friend's point about the importance of data and AI and how they may transform many aspects of our lives. The Prime Minister has been absolutely clear about our national commitment to be a leader in this space. There is a great deal of work going on across government but, in the interim, we are absolutely committed to elements within the curriculum that deliver on all the issues my noble friend raises.

Baroness Thornton (Lab): My Lords, everyone would agree on the need for a relevant curriculum, so the noble Lord, Lord Holmes, makes a very good point, particularly on building character and resilience. Can the Minister explain to the House how children's resilience can be built when the Public Accounts Committee report published yesterday found that the attainment gap in respect of the most disadvantaged children has continued to grow? The Government appear to have no specified measurement for the success of the additional investment in the National Tutoring Programme.

Baroness Barran (Con): This country is not unique in its disadvantaged children having suffered particularly during the pandemic. We have been very clear about our vision for the National Tutoring Programme, which is particularly relevant in giving disadvantaged children access to some of the privileges enjoyed by children from more socially advantaged homes. Tutoring on its own is not enough, which is why we have made a number of commitments including, at one end of the spectrum, putting senior mental health leads in our schools and, at the other, reinforcing our commitment to sport, music and other resilience-building activities in our schools.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that the building of character and resilience does not require the appointment of a commission? Teachings of right and wrong, and of responsibility and resilience, are common in our different religions and other world views, but are, sadly, badly obscured in formal RE, with its overfocus on rituals, artefacts and the shape and size of religious buildings. Does the Minister further agree that much greater emphasis should be put on the important ethical commonalities between religions?

Baroness Barran (Con): I am not sure that I agree with the noble Lord's description of the RE curriculum, but he makes the broader point that schools play a part—along with, obviously and incredibly importantly, families—in setting the moral compass of our children and our nation's future.

Lord Cormack (Con): My Lords, when my noble friend Lord Holmes asked a similarly important Question a little while ago and I raised the importance of our schoolchildren having a real foundation in the history of their country, my noble friend replied very positively and was encouraging. Has she any further progress to report?

Baroness Barran (Con): We are not changing the national curriculum, but we did a major review of it in 2014. A knowledge-rich curriculum, which evidence suggests is particularly important for children from disadvantaged communities, continues to be our focus.

Lord Blunkett (Lab): My Lords, I think we all agree that there will be a point when the improvement and radical updating of the curriculum are needed. If that is to happen, putting in place the required backing for teachers to get support will be necessary. The Minister gave a very helpful answer when she talked about

[Lord Blunkett]
citizenship. Will she reflect that some of the people who have the greatest character and resilience in reality are those living in the most desperate circumstances—often a single parent abandoned by their partner with three or four children in a high-rise block? Preaching to them is not what they need.

Baroness Barran (Con): I really hope that I did not give the impression that any element of preaching was going on. I absolutely recognise the description that the noble Lord gave. I just ask the House to reflect on this idea of radical improvement being needed in the curriculum. England just came fourth in the PIRLS global reading survey; we are, as we like to say in the DfE, the best in the West. That does not sound to me like a curriculum that needs radical overhaul.

The Lord Bishop of Leeds: My Lords, does the Minister agree that resilience is not something primarily that is taught? It is something that develops as you take what is thrown at you in the experiences of life. To that end, is any thinking going on in government about future curricula which allow for children in our schools, particularly secondary schools, to be exposed to opinions and things with which they do not agree in order that they are able to live in a world of conflicting dogmas and opinions, and do not have to run away from them?

Baroness Barran (Con): The right reverend Prelate makes a very important point. The House is obviously familiar with the emphasis we have put on freedom of speech, particularly in our higher education institutions, but the skills of critical thinking, analysis and debate—which data will feed into in coming to objective and balanced views and an ability to listen to others—obviously need to start in our schools and homes.

Lord McNally (LD): My Lords, these exchanges have already pinpointed the problem that the noble Lord, Lord Holmes, is trying to highlight. The skills required by the next generation to understand and deal with new technologies are real and present now. Quite frankly, the list he put forward of skills to be acquired are beyond the reach of a single department, including the Department for Education. His idea of a commission, possibly sponsored by the Prime Minister, who has skills in this area, is now needed to avoid moving into another era when most of our population are ill-equipped to deal with the technologies serving them.

Baroness Barran (Con): It would help to understand some of the specific areas of concern. Data and its use are firmly embedded in the mathematics, science, geography and computing curriculums. Computing is a statutory national curriculum subject from key stage 1 to key stage 4. We have introduced, and are introducing, a number of digital-focused T-levels. The fundamental point is that, as shown in the OECD PISA surveys, without strong mathematics and reading, you cannot achieve literacy in any of these things. That is why our focus on those building blocks is so crucial.

Baroness Sater (Con): My Lords, numerous reports, including the publication in February from the APPG on Financial Education for Young People, of which I am vice-chair, have consistently highlighted that the provision of financial education is severely lacking in our schools. Can the Minister tell me why the Government do not prioritise this issue, given that doing so would result in more of our children leaving school with a crucial life skill?

Baroness Barran (Con): I cannot accept my noble friend's assertion that we are not providing this effectively. We appreciate that there are some issues in the delivery of financial education—for example, we know that only 69% of secondary schools say that they teach money management. I know that reviews have shown a lack of confidence among some teachers in delivering financial education, which is why the Oak National Academy is producing more dedicated materials to support teachers. The Money and Pensions Service produced financial education guidance for schools in 2021. We are working on this across every aspect, but I reiterate that without mathematics and reading, we will not achieve financial literacy.

Housing: Modular Construction

Question

11.17 am

Asked by ***Lord Rooker***

To ask His Majesty's Government whether they plan to improve the rates of home ownership by the use of modular construction techniques.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, the Government are committed to increasing the number of homes built using modern methods of construction—MMC—across all housing tenures. MMC offers a range of benefits, such as delivering high-quality energy-efficient homes more quickly, and the Government are supporting the sector with our £1.5 billion levelling up home building fund and providing funding for up to 40,000 MMC homes through the affordable homes programme to help deliver these benefits at scale.

Lord Rooker (Lab): I thank the Minister for her Answer. Does she agree that modern methods of construction are safer for employees, create less waste and avoid the corner-cutting of Friday afternoons on wet building sites? However, the technology requires a systematic pipeline: you cannot switch factories on and off. Are the Government taking action to ensure that mortgage providers are confident in modern technology and, above all, that planning departments, which have a prejudice that remains today, accept modern technology?

Baroness Scott of Bybrook (Con): I know that the noble Lord has been interested in this sector for many years. I assure him that the Government are taking this very seriously. We are focusing on removing all the barriers to growth. These are about insurance, finance, warranties and, as he mentioned, mortgages. It is all

about stimulating that pipeline so that these companies can invest and keep those factories going until this becomes a normality in our housing system.

Lord Young of Cookham (Con): My Lords, has my noble friend read the government publication *Modern Methods of Construction*, published in September last year? It says:

"The government is committed to using its position as the single largest construction client to support the adoption of a more productive and sustainable business model",

and goes on to say that there is

"a presumption in favour of off-site construction for relevant departments".

What progress have the Government been able to make in using MMC for the prison and hospital building programme? If there is success there, might it not encourage the housebuilding industry to take renewed interest in MMC for homes?

Baroness Scott of Bybrook (Con): On my noble friend's last point, that is exactly what we are doing: we are encouraging all the time through investment and support to help housebuilding. On other issues of building public buildings in particular, we want to encourage the take-up of MMC across the whole range of traditional building sites. We can do that by sharing across government. We have introduced a presumption in favour of MMC in our capital programmes, such as within the Department for Education's school rebuilding programme and the Ministry of Defence accommodation programme. Significant progress has been made on schools and prisons programmes, and we are using those examples of best practice to help shape future policy for MMC.

Lord Beith (LD): My Lords, in the social housing sector, Legal & General stopped production on the basis that there was an insufficient pipeline of orders and it had had six years of losses. What discussions are the Government having with the social housing sector to see whether modular construction can contribute not just to owner occupation but to dealing with a very serious shortage of social housing?

Baroness Scott of Bybrook (Con): As I have said, it is across all sectors. We need to support the MMC sector to increase the amount of housing across the board, whether that be private, affordable or social rented.

Baroness Taylor of Stevenage (Lab): My Lords, in recent discussions in your Lordships' House and in Grand Committee, noble Lords have expressed huge concern about the Government's plans to lower the standards of licensing for houses in multiple occupation, specifically those to be used for asylum seekers. Local councils are now using modular construction to provide high-quality, low-cost, self-contained accommodation for the homeless. Has the Minister considered this method of housing asylum seekers?

Baroness Scott of Bybrook (Con): I am not aware that we have looked at this for asylum seekers particularly, but if there is a requirement for high-quality housing to be delivered quickly then we will of course work across government, as I said we are doing, to ensure that all departments look at MMC as a method of delivering quickly and safely.

Lord Kamall (Con): What conversations have there been across government departments on the environmental impact of introducing modular housing, particularly the use of shipping containers for modular homes, which are seen to be a more environmentally friendly way of avoiding waste and providing homes for the future?

Baroness Scott of Bybrook (Con): One of the main things with modular homes is that they are more environmentally friendly: they are energy efficient and use more environmentally friendly products. We need to keep pushing this to get this sector to be a far more major part of our whole building industry.

Lord Patel (CB): My Lords, in 2019, the Science and Technology Select Committee produced a report on off-site construction. I am pleased to hear that the Government accepted the recommendation for procurement for government buildings to be on that basis. One of the other recommendations was on the skills gap that needs to be filled, particularly for the Government to work with the construction industry and the Construction Leadership Council to develop the skills that we require for off-site construction.

Baroness Scott of Bybrook (Con): Skilling up in modern methods is extremely important for the whole construction industry. There are two ways that we are doing this. First, the Construction Industry Training Board levy applies to all employers engaged wholly or mainly in construction industry activities. Secondly, the Government's apprenticeship levy funds slightly different activities, but these funds are ring-fenced to support apprenticeships across the whole construction industry, which is what we require to skill up the workforce to deliver what we want, particularly in MMC.

Lord Sikka (Lab): My Lords, today, 62% of the population owns a home of any kind in the UK, compared with 71% in 2003. The main reason for that is the government-backed wage freezes. The real average wage today is lower than in 2007 and workers' share of GDP is at a 50-year low. People simply cannot afford to buy a home. Can the Minister explain what steps the Government will take to increase workers' share of GDP, which necessarily requires a reduction in capital's share of GDP as well?

Baroness Scott of Bybrook (Con): The question is slightly off-piste and I could be standing here for quite a long time answering it, but I will certainly ask the Treasury. The noble Lord mentions home ownership, which is really important. Since spring 2010, as I think I said yesterday, 837,000 households have been helped to purchase a home through government-backed schemes. That is the important bit. Continually putting up the living wage for people and encouraging them to be homeowners is something that this Government have done, and done well.

Lord Sterling of Plaistow (Con): My Lords, I totally support the view of the noble Lord, Lord Rooker. One of my previous companies, Bovis, can erect a modular home in six weeks flat. They are wonderful places to live and hugely energy efficient; planning is the major problem.

Baroness Scott of Bybrook (Con): My noble friend is absolutely right. These homes can go up quickly but the long period of time is often in the planning system. That is why the levelling-up Bill is going through, through which we hope to make the planning system simpler and quicker for developers.

Lord Porter of Spalding (Con): My Lords, I declare my interests as on the register. Is there any evidence to show that planning is actually a barrier to modern methods of construction?

Baroness Scott of Bybrook (Con): My noble friend would ask that question. I suggest that it is a barrier not just to this method of construction, although the sector needs to consider how it sells itself to the public. There is all this talk about MMC not being proper housing, whereas if anybody goes to see it they can see that it is beautiful housing. It is not ugly and can look like any other traditionally built house. However, the planning system needs to be faster for all types of construction, including MMC.

RAF: C-130J Hercules

Question

11.28 am

Asked by ***Lord Coaker***

To ask His Majesty's Government what assessment they have made of the impact of withdrawing the C-130J Hercules aircraft on the capacity of the RAF transport fleet.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the Atlas A400M is the next generation of air mobility aircraft. It is a more modern and capable aircraft than the Hercules C-130J, offering the opportunity to approach those tasks carried out by the Hercules in a different manner. Compared with Hercules, Atlas has an improved lift capacity and range. It is increasingly capable in the tactical role and has proven operational credibility in the airlift role.

Lord Coaker (Lab): A month ago, two-thirds of the incoming Atlas A400 fleet, which will at the end of this month replace the Hercules craft that were, for example, so important in Sudan, were still listed as unavailable for flying missions as they cannot carry out all the niche functions of the C-130s, such as in Special Forces missions. The response from the defence sector has been scathing; some I cannot quote but others have said that the UK will be "dangerously exposed". Does the Minister accept that criticism? From 1 July, how many transport aircraft will be in operation until the remaining planes are fit for purpose, whenever that will be?

Baroness Goldie (Con): As the noble Lord will be aware, we have taken delivery of the full cohort of flight, that being 22 of these aircraft. It is the case that there were some niche challenges and some availability issues to do with global supply, but I reassure your Lordships about two things: all critical operational commitments are met and all critical operational commitments continue to be met. The issues around niche capabilities boiled down to two things: a small range of niche airdrop capabilities and a small range of air dispatch capabilities. I cannot give further detail on those but they are now being accelerated in terms of being addressed. On availability, I am pleased to confirm that the improvement there has been manifest. We have seen a 25% to 30% improvement in availability compared with 18 months ago.

Lord Stirrup (CB): My Lords, the reference to niche capabilities makes this sound like something minor but we are talking about Special Forces operations here. Can the Minister tell the House by what date the Atlas fleet will be capable of the full range of Special Forces missions? Can she also say, given the difficulties with the serviceability of the Atlas, what the target rate of availability is for that aircraft fleet and how it compares with its current availability?

Baroness Goldie (Con): As the noble and gallant Lord will be aware, on availability, if we factor in planned maintenance for the whole fleet and retrofitting for some of the older A400Ms to bring them up to modern standards, there will always be an element of unavailability. On the matter of the Special Forces, the noble and gallant Lord will understand that I cannot comment specifically on their activities, but I refer him to the meeting on 17 May of the Defence Select Committee in the other place, when Air Chief Marshal Sir Richard Knighton—now Chief of the Air Staff—reassured the committee that he had spoken to Director Special Forces. He was clear that he was very impressed with the A400M and that it could achieve all potential courses of action.

Lord Lancaster of Kimbolton (Con): My Lords, I declare my interest as the Government's defence export advocate. The Hercules has given loyal service for more than 60 years but its successor, the A400M, has been planned for some 20 years. It has double the range and double the payload, and it flies faster. It does all the things that the Hercules can do, or it will do in time, but there have been some niche problems, as has been explained. However, my understanding is that some of our European allies will now not seek to buy their initial order of A400Ms, meaning that there will be some spare capacity in the production line. If the price is right, will the Government consider buying some more?

Baroness Goldie (Con): My noble friend never hesitates to tempt me to give the Chamber interesting titbits from the Dispatch Box. The current fleet of 22 aircraft is the basis on which we are currently working. As my noble friend will be aware, the Atlas will not completely replicate what the Hercules did; it is a more versatile plane and there are other activities that other aircraft can carry out.

Baroness Smith of Newnham (LD): My Lords, the Hercules has been taken out of service. Fourteen of them were due to continue until the 2030s but are being withdrawn this year. In December last year, the National Audit Office indicated that, instead of there being more Atlases, 22 was going to be the total number. Is the Minister reassured that we have sufficient capabilities, niche or otherwise? If not, could she go back to the department and suggest that the noble Lord, Lord Lancaster, is right that we should be seeking to increase the number of A400Ms?

Baroness Goldie (Con): I will take the last bit of the noble Baroness's question first. There is no evidence to suggest that the size of that capability is inadequate. I have been frank about the acceleration of the capabilities where improvement had to be effected; that is happening. In fact, what was evident from Operation Polar Bear, the evacuation from Sudan, was that the Atlas acquitted itself with distinction. It got a lot of people out—more than a Hercules could ever have done—so, as I say, it is fit for purpose. I repeat: all critical operational commitments are being met.

Lord Trefgarne (Con): My Lords, I refer to the two special occasions when I was exposed to the capabilities of the C-130. The first was a no less than 12-hour flight from Ascension Island to the Falklands; we refuelled at least twice in the air on the way. That flight was commanded by Wing Commander Carrington, whose younger brother is, I believe, now the noble Lord, Lord Carrington of Fulham. The second occasion was when I did a parachute jump into Poole Harbour from the back of a C-130. Happily, I was rescued very quickly by the Royal Marines.

Baroness Goldie (Con): I must observe that my noble friend is much more intrepid than I am.

Lord Bellingham (Con): My Lords, the Minister will probably be aware that A400Ms from the UK, France and Germany performed quite superbly during the Caribbean disaster relief operations after Hurricane Irma in 2017, landing on rougher strips and carrying heavier loads, including Puma helicopters. Further to my noble friend Lord Lancaster's question, exports are going to be crucial—not just to the UK economy but to BAE in particular. How is the export programme going?

Baroness Goldie (Con): I have no specific information on that. I shall undertake to write to my noble friend with whatever information I can procure.

Lord Kamall (Con): Could my noble friend the Minister give us some more information about the reports there have been that 15 nations, 11 of which are NATO members, are interested in buying RAF Hercules C-130s? Is the intention to sell them before we get the required number of A400Ms? Can she give us any more information about those proposed sales?

Baroness Goldie (Con): I can confirm that the Hercules will be withdrawn from service at the end of this month, and that sales activity is already being managed through the Defence Equipment Sales Authority. Disposal is at a very early stage, but we are already looking at activities to support the potential sale of the aircraft, support equipment, specialised C-130J spares and flight simulators. We are exploring potential sales on a Government-to-Government basis.

Covid-19 Inquiry

Question

11.36 am

Asked by ***Lord Foulkes of Cumnock***

To ask His Majesty's Government what range of information they have now agreed to provide to the COVID-19 inquiry.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): My Lords, we have provided, and will continue to provide, the inquiry with all relevant material as requested. Following the request of the chair, the Cabinet Office will share a schedule of WhatsApp messages by the end of this week, and additional witness statements will follow. We have provided enormous quantities of material to the inquiry so far and will continue to do so. We remain determined to provide any potentially relevant material that the chair requests so that we can learn the lessons from this dreadful pandemic.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, this is a total shambles—and there is more to come. As well as this totally futile dispute, I understand that the noble and learned Baroness, Lady Hallett, has met with Lord Brailsford, who is chairing the separate Scottish report. Members will recall that the separate guidance and response in the different countries of the United Kingdom caused confusion and distress. Two separate reports could cause additional confusion and distress. Will the Minister give a clear indication as to when the reports will be published so that those whose relatives died needlessly will know who was responsible?

Baroness Neville-Rolfe (Con): It is indeed the case that the Scottish Government are doing their own separate inquiry, and they organised separate arrangements during the pandemic. The inquiry is in the hands of the noble and learned Baroness, Lady Hallett. She is doing a very wide-ranging inquiry, and the timing of its results depends on her work, which, as I have explained, we are trying our very best to progress. We are providing a huge amount of support from right across government.

Lord Robathan (Con): My noble friend will recall that, back in 2020 and 2021, the opposition parties were very keen to lock down for longer and harder than we actually did. Could my noble friend tell us what assessment the Government have made of the efficacy of lockdowns and the costs to the country in social, economic, health and educational terms, and whether anybody now believes that the lockdowns were a good idea?

Baroness Neville-Rolfe (Con): My noble friend speaks powerfully, as always. However, this is a matter for the inquiry. We have set up this wide-ranging inquiry so that these points can be looked at. It is right that different witnesses are recounting their experiences and that the inquiry is able to call upon the sorts of findings that my noble friend has mentioned.

Lord Wallace of Saltaire (LD): My Lords, does the Minister recall an earlier government-appointed judicial inquiry in which the Government chose what material to release to the judge rather than allowing the judge, under the rule of law, to choose for himself or herself? Also, does the Government's recourse to judicial review mean that they have now reversed their previous attitude to limiting the judicial review and that therefore we can expect not to see ouster clauses in any future Bills under this Government?

Baroness Neville-Rolfe (Con): Although this is a much wider inquiry even than other previous important inquiries, the process that has been followed by the Cabinet Office and across Whitehall is very similar in terms of providing information to the chair. There is a judicial review because of a specific technical point raised by the Section 21 notice that has been issued. In terms of judicial review, the noble Lord is right that judicial review must be used with circumspection. However, there is an important technical point here about whether it is right to provide unambiguously irrelevant material to the inquiry which is the subject of the review.

Lord Butler of Brockwell (CB): My Lords, there is a strong public interest in this inquiry being carried out constructively and expeditiously, and that should also be a public interest between the Government and the investigation. Does the Minister agree that it would be helpful if judicial review proceedings were stayed so that the Government and the inquiry could reach a reasonable accommodation on this issue?

Baroness Neville-Rolfe (Con): I agree with the noble Lord about the possibility of an accommodation being reached. We have had discussions with the inquiry to bridge the gap between sincerely held views. However, we have also requested that any judicial review is held expeditiously, and we are very glad that the court has agreed to deal with this before the end of June. In the meantime—and I cannot emphasise this more strongly—every day more material is being sent into the inquiry and the large teams working on this important matter are co-operating.

Lord Clark of Windermere (Lab): My Lords, does the Minister guarantee that the inquiry will be provided with the figures outlining the serious loss of personnel in the NHS, which is causing serious problems in the cancer field, as we have heard about today, and which have occurred over the period that it is investigating?

Baroness Neville-Rolfe (Con): I assure the noble Lord that anything that is Covid related is being made available to the inquiry, subject to some security points. The impact of the Covid measures on the wider NHS and health is a matter for the chair but is inherently relevant.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend not think that the noble and learned Baroness, Lady Hallett, might draw some lessons from the experience of France and Sweden? They have completed their inquiries and been able to give guidance on where mistakes were made and what should happen in the future. Why on earth has this inquiry been extended in scope such that we cannot get the answers which the entire country is waiting for?

Baroness Neville-Rolfe (Con): This is an independent inquiry, and its conduct is for the chair. However, clearly the experience of other countries is also important, and I am sure that material in respect of those will be submitted to the inquiry and taken into account.

Baroness Smith of Basildon (Lab): My Lords, I raised this issue of the timing during the Minister's Statement earlier this week. The amount of information that the Government say is relevant is enormous. They have said that 20 million documents may be relevant to the inquiry and, so far, something like 55,000 have been submitted. Why were the terms of reference of exactly what was required, and a timescale, not agreed between the Government and the inquiry prior to it starting? What is the Government's assessment of the time that it will take them to go through these 20 million documents?

Baroness Neville-Rolfe (Con): As I explained, ever since the inquiry was agreed, the Government have been helping it to ensure that, as is the precedent of other inquiries, the key documents are made available and appropriate witness statements are prepared. We have extended that process to wider material at its request, to reflect modern communications. The terms of reference were wide and a lot of discretion was left to the chair. The Government are keen to see the inquiry's conclusions and findings as soon as possible. It is being phased by modules, and we look forward to hearing the chair's conclusions.

Lord Alton of Liverpool (CB): My Lords, will the Minister assure the House that key documents will include information to the inquiry on the role of procurement, including concerns raised about transparency by the National Audit Office? It does not take an inquiry for the Minister to establish from her noble friends when the issue of the 118 million items still stored in the People's Republic of China, costing this country £250,000 every day, will be resolved. If she cannot answer that now, will she agree to write?

Baroness Neville-Rolfe (Con): Arrangements for procurement are very much at the heart of some of the issues in the inquiry, as I remember we discussed here on many occasions with the noble Lord. Of course, this was covered by the terms of reference; I look forward to hearing the conclusions just as much as he does.

Baroness Chakrabarti (Lab): My Lords, I wonder what kind of example the Government think they are setting for other parties to litigation or, indeed, to judicial inquiries. The noble Lord, Lord Wallace, deserved a better answer; who is the ultimate arbiter of what is relevant when that is in dispute? Is it the Government or the trusted senior judge?

Baroness Neville-Rolfe (Con): Of course we trust the senior judge. She has control over what she decides within the framework of the inquiry, as we have been discussing, which has advantages and disadvantages. In the judicial review, we are addressing the narrow point of whether it is right to provide unambiguously irrelevant material. This could cover anything from civil servants' or families' medical conditions to matters totally unconnected with the Government's handling of Covid. It seems right to have a ruling on how that should be handled, not least given the implications for future inquiries and future Governments.

Business of the House

11.47 am

Lord Newby (LD): My Lords, before we move on to further business, I will refer to events yesterday. As noble Lords will be aware, the House sat until 4.20 am this morning. In my 26 years in your Lordships' House, I cannot remember a Committee stage going so late. When the House has sat very late in recent times, it has been because of extreme and legitimate time pressures to get legislation on to the statute book.

I do not think that debating extremely important legislation in the middle of the night is sensible or acceptable in the absence of unavoidable time pressures. It is even less acceptable given that there was no agreement in advance, at least from these Benches and, I believe, the Cross Benches, on what sitting "late" meant. There was also clearly inadequate communication with the Lord Speaker's office, as I believe the noble Lord, Lord Lexden, the last Deputy Speaker to be rostered, found himself having to sit on the Woolsack for a continuous six hours.

I therefore have several questions for the Leader. Will he explain what urgency impelled him to believe it necessary for the House to sit so late? Does he believe that it is acceptable for staff to have to work until 4.20 am and then to expect the House to be fully operational by 11 am this morning? Does he accept that, as a self-regulating House, all groups in the House need to be informed in good time of the Government's proposals for sitting and rising times? Can he give an assurance that the House will not sit into the early hours again except in cases of extreme urgency? Finally, will he agree to an early meeting with group leaders, the Convenor and Whips to discuss how we can avoid such circumstances as occurred last night being repeated during the lifetime of this Parliament?

Baroness Smith of Basildon (Lab): My Lords, it is quite clear that, while some Members may be looking fresh-faced, bright and breezy this morning, others are looking a bit bleary-eyed. The difficulty with very late—or, I should say, early morning—sittings is that they exclude Members who have contributions to make who cannot remain as late.

This is a complex and controversial Bill that we are discussing, which needs examination and scrutiny. May I put forward three suggestions? First, we still have no impact assessment for the Bill. It has been through the Commons; it is now in Committee here and we have Report to come. It would be very helpful if the noble Baroness could commit that, before we get to Report, the impact assessment will be ready. The guidance on legislation says that it should be ready at the start of a Bill's consideration; I do not think it unreasonable to ask to have the impact assessment before Report.

Secondly, I appreciate that the Minister is relatively new to his job, but I hope he will come to recognise that the House appreciates full answers, co-operation and collaboration. It is possible to disagree agreeably. That kind of co-operation across the House would help the passage of a Bill that is contentious.

Thirdly, it would be helpful to the entire House if all of us, when speaking—and to coin a phrase from the radio—avoided hesitation, repetition and deviation. My noble friend Lord Kennedy has been giving this a great deal of thought—he had until 4.30 am to do so. It would be helpful to have an early meeting of the usual channels to look for a way forward. We recognise that the Government want to get their legislation through and to proceed in a timely manner, but we also want to have the proper debate and discussion that we need.

I agree that, if we are sitting late, it is a courtesy to Parliament as a whole that the caterers, doorkeepers, Lord Speaker's office and others involved be made aware of that—if there is any possibility of it happening again.

The Earl of Kinnoull (CB): My Lords, it is slightly "three in the hoose" to say the same thing, but I think it is worth underlining these points. Yesterday's events were, by any measure, extreme. They underline the absolute importance of communication, which came up short yesterday.

Our community is quite a big one. The community of Members is part of that, and we were under the impression that things would be wrapped up shortly after midnight. The deputies community—I am of course a deputy as well—had rostered for the hour after midnight, so it was caught short. I note that the noble Lord, Lord Lexden, is not in his place; I hope he is sleeping the sleep of heroes.

There are other members of the community as well; I have written down a few: our doorkeepers, our clerks, Hansard, the catering staff, the broadcast staff, and even a gentleman in the facilities department who is always here when we are sitting. Communication with these people is essential, and I think we can do better. I therefore ask the noble Baroness the Chief Whip—I suppose it is she who is going to respond—to confirm that she is committed to the principle of even-handed treatment of and strong communication with our community on these things, because then we can manage much better.

Baroness Williams of Trafford (Con): Good morning, my Lords. The last point made by the noble Earl, Lord Kinnoull, is absolutely right. The points that I make this morning will underline that consistency in those principles is very important.

One of the first things to say is that Governments should get their business through. I stand here as Chief Whip to say that what the Opposition commit to doing, I will also commit to doing if I am ever the Opposition Chief Whip. That is a really important principle. Regarding that principle, the Liberal Democrats, when they were a partner in government, spent from 2.15 pm one day until 12.51 pm the following day on getting the AV vote through. Whether the House feels that that was an important, urgent thing to have got through, they did get it through. The House sat until they did, and that was the Committee stage of a Bill.

I endorse the point from the noble Baroness, Lady Smith, about the repetition of arguments. At 3.15 am, I thought that I had fallen asleep, because the noble Lord, Lord Scriven, was repeating arguments from earlier in the day—important though they were. The *Companion* includes an important principle on the repetition of argument.

Baroness Bennett of Manor Castle (GP): Oh!

Baroness Williams of Trafford (Con): The noble Baroness, Lady Bennett, shakes her head at literally everything, but this is in the *Companion*. Unless noble Lords want to change the *Companion*, it remains there.

I was also accused of detaining the House. The House detained the House, because, on the point of the repetition of argument, it was the Committee's decision to keep making the same arguments again and again.

On the point about the usual channels, I was planning to speak to the usual channels 23 minutes ago, but I accommodated the Liberal Democrat Chief Whip, and we will speak later.

My noble friend Lord Lexden is a national treasure. He sat here for hours, without complaint, because that is the sort of professional that he is.

On the point raised by the noble Baroness, Lady Smith, about the impact assessment, I will certainly take that back. I will speak to the Minister and we will do what we can.

The most important thing I will take away is about communication with the people who support the running of this House.

Baroness McIntosh of Hudnall (Lab): Although I am sure that the noble Baroness has made some extremely valuable points, could she respond to the question that was put to her by several noble Lords on the subject of what the plans are for similarly late sittings in the future?

Baroness Williams of Trafford (Con): I think that my first point answered that: the Government will get their priority business through.

Baroness Jones of Moulsecoomb (GP): My Lords, does the noble Baroness understand that, if the Bills were better when they came to the House, there would be fewer amendments and it would take less time to get them through?

Baroness Williams of Trafford (Con): That is a judgment call from the noble Baroness. This discussion is not about how much people do or do not like Bills. What is clear is that Committee and Report stages are lasting an awful lot longer, and that goes back to my first point about the constant repetition of the same point.

Lord Alton of Liverpool (CB): Does the noble Baroness not agree—I made this point to her at about 12.30 am—that important debates on the detention of women and pregnant mothers were questions that were not dealt with in a repetitious way? They were important issues, raised by her own Government Benches as well. I appealed to her and the Leader of the House last night that, rather than keeping us here until the early hours of morning, another day will be necessary for the Bill. The Minister is right that the issue is not whether or not you are in favour of the Bill; this is about the way that Parliament does its business and the reputation of Parliament. It is important, therefore, that time is made available so that we can complete this—maybe even with a morning sitting as well, if necessary, rather than keeping Members of your Lordships' House here until the early hours. Whether we are responsible for that ourselves or whether it is the Government is not the point; we should not be here in the early hours of the morning dealing with important and controversial questions.

Baroness Williams of Trafford (Con): I refer the noble Lord to my previous comments; I will not repeat myself and make them again. I point out that the first group yesterday was, in essence, the same as the previous group on Monday night, and it took one hour and 43 minutes to make exactly the same points.

Lord Forsyth of Drumlean (Con): In my noble friend's discussions with the usual channels, will she make the point that there are some conventions in this House? I have watched debates, even on Report, where noble Lords—not looking in any particular direction—read out speeches for 14 or 15 minutes which were not actually on the subject concerned. That is unfair to our Ministers.

I remind those outside who are so quick to criticise the House of Lords that, this Tuesday, the House of Commons finished at 2.30 pm, while we sit into the early hours because this House does a proper job. However, it cannot do its job if noble Lords do not observe the conventions and operate in accordance with our rules.

Noon

Baroness Williams of Trafford (Con): Maybe my noble friend brings up a beneficial point at this time. We are very patient and courteous but the reading of speeches irritates the House. If I may express my own opinion, quite often that happens when the speaker has not listened to the previous speech.

Lord Brownlow of Shurlock Row (Con): I agree with everything my noble friend said. I was one of the Peers here—there were about 80 of us for the majority of the time. I put on record my sincere thanks to all the House staff who supported us, such as the doorkeepers and so on.

Baroness Williams of Trafford (Con): I second that. They are absolutely wonderful.

Lord Scriven (LD): Can the noble Baroness respond to what the noble Baroness, Lady Smith, said? One of the reasons why a lot of questions have been asked, over and again, is because of the lack of an impact assessment, which is absolutely vital for this House to do its job. Will the impact assessment be available to the House before Report?

Baroness Williams of Trafford (Con): The noble Lord completely underlines the point that the noble Baroness, Lady Smith, made.

International Criminal Police Organisation (Immunities and Privileges) Order 2023

Motion to Approve

12.01 pm

Moved by ***The Earl of Courtown***

That the draft Order laid before the House on 20 April be approved. *Considered in Grand Committee on 5 June*.

Motion agreed.

Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023

Motion to Approve

12.01 pm

Moved by ***Lord Caine***

That the draft Order laid before the House on 24 April be approved.

Relevant document: 38th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 5 June.

Motion agreed.

Medical Devices (Amendment) (Great Britain) Regulations 2023

Motion to Approve

12.02 pm

Moved by ***Lord Markham***

That the draft Regulations laid before the House on 27 April be approved.

Relevant document: 38th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument). Considered in Grand Committee on 5 June.

Motion agreed.

Financial Services and Markets Bill

Report (2nd Day)

Relevant document: 23rd Report from the Delegated Powers Committee

12.02 pm

Amendment 11

Moved by ***Baroness Penn***

11: After Clause 24, insert the following new Clause—

"Competitiveness and growth objective: reporting requirements

(1) Each regulator must make two reports to the Treasury on how it has complied with its duty to advance the competitiveness and growth objective.

(2) The reports prepared by each regulator under subsection (1) must in particular explain—

(a) the action taken by the regulator to ensure that the competitiveness and growth objective is embedded in its operations, processes and decision-making, and

(b) how any rules and guidance that the regulator has made advance that objective.

(3) The first report under this section must be made before the end of 12 months beginning with the first day on which section 24 of this Act comes into force, and must relate to that period.

(4) The second report under this section must be made before the end of 24 months beginning with the first day on which section 24 of this Act comes into force, and must relate to the period beginning with the day on which the first report is published.

(5) The Treasury must lay a copy of each report prepared under this section before Parliament.

(6) Each regulator must publish its reports prepared under this section in such manner as it thinks fit.

(7) In this section—

(a) "regulator" means the FCA and the PRA;

(b) references to the competitiveness and growth objective, and the duty to advance that objective, are—

(i) in relation to the FCA, references to its objective in section 1EB of FSMA 2000 and to its duty to advance that objective under section 1B(4A) of that Act, and

(ii) in relation to the PRA, references to its objective in section 2H(1B) of FSMA 2000 and to its duty to advance that objective under section 2H(1)(b) of that Act."

Member's explanatory statement

This amendment would insert a new Clause to ensure that the FCA and the PRA, in addition to their annual reports, each provide for two consecutive years a report on the new competitiveness and growth objective, as inserted into the Financial Services and Markets Act 2000 by Clause 24 of the Bill.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, as your Lordships know, the Bill delivers the outcomes of the future regulatory framework, or FRF, review. It repeals hundreds of

[Baroness Penn]
pieces of retained EU law relating to financial services and, as we have discussed, will give the regulators significant new rule-making responsibilities. The Government have been clear that these increased responsibilities must be balanced with clear accountability, appropriate democratic input and transparent oversight. The Bill therefore introduces substantial enhancements to the scrutiny and accountability framework for the regulators.

Following Grand Committee, the Government have brought forward a series of amendments which, taken together, seek to improve the Bill through further formalising the role of Parliamentary accountability, supporting Parliament through independent analysis and scrutiny, and increasing reporting and transparency to drive overall accountability. The group we are now debating covers proposals aimed at increasing reporting and transparency to drive overall accountability. I look forward to discussing the Government's other amendments on accountability later today.

There has been significant interest in ensuring sufficient reporting, in particular of how the FCA and PRA are operationalising and advancing their new secondary competitiveness and growth objectives. The regulators are required to publish annual reports setting out how they have advanced their objectives, which are laid before Parliament. Clause 26 ensures that, in future, these reports must also set out how they have advanced the new secondary objectives.

Clause 37, introduced following the debate in Commons Committee, enables the Treasury to direct the FCA and PRA to report on performance where that is necessary for the scrutiny of their functions. To further support transparency, the Government published a call for proposals on 9 May, seeking views on what additional metrics the regulators should publish to support scrutiny of their work advancing their new objectives. This closes on 4 July.

The Government have been clear that they expect there will be a step change in the regulators' approach to growth and competitiveness following the introduction of the new objectives, while maintaining high regulatory standards. It will therefore be important to have detailed information available to scrutinise how the regulators embed their new objectives into their day-to-day functions.

The Government have therefore tabled Amendment 11, which will require the FCA and the PRA to produce two reports within 12 and 24 months of the new objectives coming into force. These reports will set out how the new objectives have been embedded in their operations, and how they have been advanced. Once the new objectives have been embedded, it is appropriate that the regulators report on them in the same way as their other objectives, through their annual reports.

The Government have also heard the calls for further transparency to drive overall accountability in other areas of the regulators' work. Clauses 27, 46 and Schedule 7 require the regulators to publish statements of policy on how they will review their rules. The Government's response to the November 2021 FRF review consultation set out the regulators' commitment to providing clear and appropriate channels for industry and other stakeholders to raise concerns about specific rules in their rule review framework.

Reflecting representations made during my engagement with noble Lords between Grand Committee and Report, the Government have tabled Amendments 20, 52 and 56, which strengthen this commitment. The amendments will place a statutory requirement on the regulators to provide a clear process for stakeholders, including the statutory panels, to make representations in relation to rules and a statutory requirement to set out how they will respond.

I hope that noble Lords will support these amendments, which seek to provide Parliament, the Government and stakeholders with the relevant information to effectively scrutinise the regulators' performance and drive overall accountability. I therefore beg to move Amendment 11, and I intend to move the remaining government amendments in this group when they are reached.

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to take part in the second day of Report. I declare my financial services interests as set out in the register. I thank my noble friend the Minister and all the Treasury officials for their engagement during and particularly after Committee with the issues in this group of amendments.

I will speak to Amendments 12, 19, 40, 41 and 92 in my name. Noble Lords with an eagle eye on the Marshalled List will note that there is more than a similarity between the amendments I tabled in Committee and in this group, and the government amendments. I thank the Government sincerely for taking on board not just the issues but also my wording.

Ultimately, as the Minister said, this is one of the most significant changes to financial services regulation in a generation. It is important that, in structuring the role of the regulator, we have at this stage the right level of scrutiny and the right requirements for the regulators to provide the information required at the right time to undertake that scrutiny.

The arrival of the international competitiveness objective is a positive thing within the Bill. These amendments give scrutiny the right opportunity to see how that objective is operationalised. Does the Minister agree that it is important to look at every element of information and the timeliness of all the elements being given to both financial services regulators to enable the right level of scrutiny to take place? To that extent, I ask her to comment particularly on Amendment 92, alongside my other amendments, because this seems like no more than the base level of detail that one would want to be able to form that crucial scrutiny function.

Having said that, I am incredibly grateful to the Minister, the Government and all the officials for taking on board so many of the issues and the wording from Committee, and bringing them forward in this group.

Lord Forsyth of Drumlean (Con): My Lords, I find myself in the very odd position of having to say that the Government have handled Committee stage consideration of the Bill brilliantly. The Minister listened

to a lot of quite robust criticism of the Bill, some of it from me, on the issue of accountability. It is fair to say that, across all sides of the Committee, there was a feeling that it was essential that there be proper accountability and scrutiny, given that we are, in effect, giving the regulators all our financial services legislation. She spent a great deal of time talking to all noble Lords in Committee and listening to those concerns. I therefore support the government amendments and thank her and her colleagues for the brilliant way in which they responded to what was a very robust Committee.

Lord Eatwell (Lab): My Lords, there is a certain amount of confusion about the competitiveness objective and it is important to clarify it in discussion on Report. To illustrate this point, we have to understand that London is a rather peculiar financial centre, because it has a very limited hinterland of domestic savings. It is unlike the United States, where New York has a huge hinterland of domestic savings. It is therefore necessary for London to attract savings and funding from around the world, and it does that brilliantly well.

An important component of that is that London is seen as a well-regulated and efficiently regulated centre. The primary objectives set out in FSMA of maintaining market confidence, financial stability, public awareness, protection of consumers and the reduction of financial crimes are competitiveness goals in and of themselves. They make London more competitive and are a crucial component of the success of London at attracting funds from around the world.

The competitiveness objective that was introduced as a subsidiary objective is rather different, because there competitiveness means being allowed to take more risk. As everyone knows, in financial affairs the balance of risk and return is one of the key elements in making sensible decisions. This is true as much in regulation as it is in the operation of financial services business. It is particularly true in regulation when it applies to systemic risks, which only the regulator can understand and deal with.

It is therefore important that we do not overegg the competitiveness objective. It is important—it has introduced an important element in discussing the relationship between risk and return—but we should recognise that the primary objectives are the key to London's competitiveness as a financial centre.

Lord Vaux of Harrowden (CB): My Lords, I will comment briefly on government Amendment 11. The competitiveness and growth objective is a long-term, ongoing objective and, with the best will in the world, it is highly unlikely that we will see any discernible change in measurable competitiveness or growth in just two years. The objective does not end in two years and yet the amendment put forward by the Government has only two years' worth of reporting.

As usual, the noble Lord, Lord Holmes of Richmond, has put together an elegant solution in Amendment 12, which would create an ongoing annual reporting requirement, as well as being a bit more specific about what should be included within the reports. I understand from the Minister's earlier speech that she expects this to be covered off in the normal annual reporting thereafter, and I think we can probably live with that.

I will add to the comments made by noble Lord, Lord Eatwell, with this caveat: I support the competitiveness and growth objective, but only as a secondary objective. The primary objective of stability must remain paramount. Can the Minister confirm that, as part of the reporting on the competitiveness and growth objective that is expected, the regulators will consider and report on the impact it is having on the primary stability objective? The two are not unconnected, as we have just heard, and it is really important that when we report on one, we also report on its impact on the other.

12.15 pm

Viscount Trenchard (Con): My Lords, I declare my interests as a director of two investment companies, as stated in the register. I agree to some extent with what the noble Lord, Lord Eatwell, said, but I am not sure I can agree that the United Kingdom's financial markets are uniquely peculiar in any sense. It is true that we do not have such a large domestic hinterland as the United States, but compared with financial centres such as Switzerland and Singapore, we have a rather larger domestic hinterland. I do not think what he said is therefore so relevant as he perhaps believes.

Furthermore, I agree that our high standards and what used to be called "my word is my bond", which was what I was taught on day one when I went to work for Kleinwort Benson in the City, are very relevant. We have always been proud, and rightly so, of the very high standards and honourable way, in the main, in which our financial institutions have conducted their business. Indeed, competitiveness of the market depends, to a degree, on maintaining those high standards. But competitiveness also depends on having clear, comprehensible and proportionate regulation, and in recent years our regulation has become too cumbersome, particularly after the FSA was split into two regulators. If you are a dual-regulated company, it is a nightmare to have to report much the same information but in different formats to the two regulators. This is why the time spent by executive committees of operating financial companies in the City is so greatly taken up by compliance, reporting and regulatory matters, rather than innovation and the development of new businesses to attract more international companies to do their business in London, thus providing more revenue for the Exchequer and more jobs for British people, and indeed for non-British people to come and work here.

I support the Government's amendments to strengthen the reporting requirements of the regulators, and Amendments 40 and 41 tabled by my noble friend Lord Holmes of Richmond. I agree with those noble Lords who have thanked the Minister most sincerely for her response to concerns expressed across the House about accountability and scrutiny. However, the British Insurance Brokers' Association has expressed concern that the Bill, as drafted at present, largely allows the regulators to decide how to fulfil the reporting requirements for the competitiveness and growth objective.

[Viscount Trenchard]

Clause 37 acts as a backstop that allows the Treasury to compel additional reporting. What assurances can the Minister give that the Government's response to the ongoing consultation on the appropriate metrics for the regulators to publish will lead to concrete changes to which metrics are published, given that the Bill will have been passed by the time the Government respond to the consultation? Given that it will not be possible to include any details of specific metrics or how the Treasury will exercise its powers in Clause 37 in primary legislation, how can the Government ensure that the consultation will lead to a sufficient challenge to the regulators, allaying concerns about them marking their own homework in their reporting? Will the Minister also give assurances that the Government's response to the consultation will reflect the parliamentary debate in this area, where noble Lords have consistently stressed the need for extensive metrics to be published by the regulators with regard to the new objectives?

Lord Davies of Brixton (Lab): My Lords, I do not want to run the risk of repeating myself, but I have made plain in previous debates my concern about the inclusion of the competitiveness objective in this legislation. Just to be clear, I think it has no place, but I welcome these provisions that there should be a report on the competitiveness objective. My concern is that the wording does not get to the heart of the problem that I believe exists, which is the interaction between the competitiveness objective and the other objectives. My reading of the way this is worded is that the report just has to talk about the competitiveness objective and does not have to say how it affected the other objectives. Maybe the Minister in her reply could allay my concerns and make it clear that the regulatory bodies are required to look across the whole gamut of their obligations when reporting on the competitiveness objective.

Lord Ashcombe (Con): My Lords, I remind the House of my interest as an employee of Marsh Ltd, the insurance broker. I offer my support to the amendments in this group, so thoughtfully proposed by my noble friend Lord Holmes of Richmond. My noble friend the Minister has indeed made improvements since Grand Committee, and for that I thank her, but I wonder whether the Government have gone quite far enough. I particularly thank the Minister for the generous amount of time she spent with me the other evening.

My noble friend the Minister's amendment proposes two reports, 12 months apart, as has been mentioned, but I believe that it is important that reports from the regulators should become an annual occurrence concerning the competitiveness and growth objectives. The financial sector of the United Kingdom is a major driver of revenue for the country and we must ensure consistency over time, not just the immediate future. In turn, this suggests the need for consistent metrics on which to report, allowing for the proper comparisons.

Amendment 19 concerns the principle of proportionality, recognising that not all financial services are the same. Again, I will look at the insurance market in particular, but I suspect there are similarities in other financial lines. I am all for keeping individual retail and small business customers safe when working with insurance companies, but there are significant differences to be found between them, users of the London wholesale insurance market—which is used by knowledgeable buyers, using one of many potential advisers—and captive insurance entities. Smaller customers need a level of protection not required by either of these other two groups.

In the debate on this amendment, I wish to refer particularly to captive insurance companies. Captives are wholly owned subsidiaries set up to provide risk mitigation services—insurance—for their parent company and/or related entities. The parent is inevitably a sophisticated entity, almost certainly hiring advisers. They should require a very different approach from the retail customer.

There currently seems to be a one-size-fits-all approach by the regulators when reviewing insurance companies that does not take into account the nature of the purchaser. This is not only time consuming but costly in comparison with other overseas regimes. Captives provide low risk to the financial system and the buyer of their services requires a significantly different level of regulation from an insurance company trading with individuals. They are fundamentally different.

There is no captive company authorised in the UK and even those of our major companies, including UK public bodies, are located in overseas jurisdictions. The captive insurance business generates in excess of $50 billion annually, and here lies a significant opportunity for growth in the insurance sector which, should the regulator alter its stance and act with proportionality, could, as an example, add significant additional capital into the country.

Amendments 40 and 41 refer to the requirements to publish regulatory performance on authorised firms and new authorisations. The Government certainly recognise in Clause 37 the need to improve the regulatory culture, but we need more teeth in terms of reporting metrics so it becomes standard practice within the regulators. This culture needs to become ingrained.

The metrics being proposed in Amendment 40 are granular concerning timing and would bring some needed haste to the system. In business, time is often of the essence and being held up disproportionately by a UK regulator, as opposed those in other jurisdictions, acts as a deterrent to trade in this country. The metrics being proposed in Amendment 41 link together to give a consistent window into the activities of the regulators. With quarterly reporting it will be possible to gain some comparative statistics that will tell a story.

Lastly, Amendment 92 concerns determination of application. London remains one of the world centres of insurance and we must do all we can to preserve its status, but there are for sure a number of other locations that can attract capital more easily and so challenge it. Unfortunately, regulatory burden is regularly raised as an issue damaging London's ability to attract additional capital and support the market.

Concerns have been raised about the overall performance of the regulators in terms of timing, with authorisations and approvals taking longer they should. It is recognised that they are falling behind their KPIs. Insurance companies here have experienced delays in case handler assignment, which is the beginning of a

domino effect. In addition, concerns have been expressed over some of the questions asked and the appropriateness of the data being requested, leading to additional time and expense. The regulators need to streamline their activities by being relevant.

These amendments refer to a great extent to measures designed to bring some more accountability to the reporting by the regulators. I realise there is a consultation with the financial markets, but I believe that the measures being proposed are the bare minimum that should be required and included in the Bill. These sets of metrics will prevent the regulators deciding which of their own sets of data to publish. Certainly, from an insurance perspective, this will allow life to proceed way more freely. This will ensure transparency from the regulators, which is surely what is being strived for.

Baroness Kramer (LD): My Lords, the amendments in this group fall essentially into two categories. Those that improve communication and representation to statutory panels are small but positive improvements and, although I remain of the view that these panels should be given proper independence, I am glad to see that at least there is some improvement in the regime.

The other amendments I view very differently, and I will pick up the issues raised by the noble Lords, Lord Vaux and Lord Davies of Brixton, that if the reporting requirements included a proper consideration of how the competitiveness and growth objectives as they became operational were also impacting on financial stability, systemic risk and consumer protection, I would find myself very much in favour of them. But actually I regard them as a sort of slightly disguised mechanism to enhance the status of the secondary objectives to something which I think the noble Lord, Lord Eatwell, described on Monday as "secondary plus", or even "secondary plus plus". I think that is exactly what these various amendments are intended to do.

This House knows well that I join Sir Paul Tucker, Sir John Vickers, pretty much every former Governor of the Bank of England and many others in regretting the introduction of these objectives because, for exactly the reason that others have said, they will incentivise and drive risky behaviour and we will come to rue that. So this further enhancement of these secondary objectives, very much driven by the industry—we heard from the noble Lord, Lord Ashcombe, how strong the feeling was that we try and get towards making these objectives either primary or close to primary—should be a warning to all of us. So I cannot give these amendments my support, although we are obviously not going to vote on them today. However, it is necessary that the House takes note of some degree of warning.

12.30 pm

Lord Forsyth of Drumlean (Con): My Lords, I realise that we are on Report, but I should have declared my interest as chairman of Secure Trust Bank. I understand that it is not enough to have done so in Committee; it needs to be done at each stage.

Lord Livermore (Lab): My Lords, I will be very brief so as not to detain the House further. Much of the substance of these issues was debated in the previous group on Tuesday evening, when I said that we strongly support the inclusion in the Bill of the new secondary objective for the regulators of international competitiveness and economic growth.

While the introduction of this secondary objective is a positive step, it is also important to ensure that it is meaningfully considered in the regulators' decision-making. One of the main ways of doing this is by introducing some proven accountability measures to require the regulators to report on their performance against the objective. We therefore welcome the government amendments in this group, which will provide for initial reports on implementation of the competitiveness and growth objective, as well as other provisions that seek to improve regulatory accountability.

Baroness Penn (Con): My Lords, I thank all noble Lords for that constructive debate and I seek to engage only with the points that have been raised.

I agree with the noble Lord, Lord Eatwell, that high regulatory standards are a key to London's and the UK's competitiveness as a financial centre. That is why the growth and competitiveness objective is a secondary objective to the primary objectives already in existence. However, high regulatory standards are not the only contributor to the growth and competitiveness of our economy or the sector. The new secondary objective, therefore, has an important role to play.

To address specifically the concern expressed by the noble Lord, Lord Eatwell, on day one of Report—the noble Baroness, Lady Kramer, reflected on that again today—that the government amendments in this area somehow seek to elevate the secondary objective from its position within the hierarchy, that is not the case. These amendments reflect the fact that they are new objectives for the regulators and it is right that we have a focus on new objectives being added through the Bill to understand how they are being embedded into the operation of the regulators.

The noble Lords, Lord Vaux and Lord Davies of Brixton, asked how the reporting will take into account the fact that the objectives are secondary and how they will impact on the primary objectives. It is in the structure of the objectives that the growth and competitiveness objective can be delivered only in the context of achieving the primary objectives. That is built into the system. Each year, in addition to these two reports provided for in our amendment, there will be the annual report from the regulators looking at their delivery across all their objectives.

Several noble Lords asked whether having a report on this specific objective for just two years was the right approach. We think it strikes the balance between reflecting the new nature of these objectives and, over time, integrating them into the working of the regulators and reporting them in future annual reports. However, I point out to noble Lords that the Government have the power to specify certain matters to be addressed in those annual reports if we think it necessary in future. Under Clause 37, we also have the power to require further reporting on certain matters, so if the Government felt that further focus on the embedding of these new objectives was needed, there are powers in the Bill that would allow that to be drawn out.

[Baroness Penn]

My noble friends Lord Trenchard and Lord Ashcombe, and others, raised concerns about the need for specific metrics for reporting the regulators' delivery against their objectives, as set out in my noble friend's amendment. As noble Lords recognise, that is exactly the purpose of the Government's current call for proposals. We do not think it is right to have the metrics in the Bill, because that would hinder the objectives that my noble friends are talking about, in terms of having the best possible set of metrics that can be adapted and updated to ensure that Parliament, industry and the Government get the information that they need on the regulators' performance.

My noble friends Lord Holmes and Lord Ashcombe also drew attention to Amendment 92 in this group. I am aware that the speed and effectiveness with which the regulators process applications for authorisation remains an area of concern for both Parliament and industry, and the Government share those concerns. In December, the Economic Secretary to the Treasury wrote to the CEOs of the PRA and the FCA, setting out the importance of ensuring that the UK has world-leading levels of regulatory operational effectiveness. Publishing more and better data detailing the FCA and PRA's performance is critical to meeting these aims. That is why, in their reply to the Economic Secretary's letter, both CEOs committed to publishing more detailed performance data in relation to authorisation processes on a quarterly basis.

On 19 May, both the FCA and the PRA published their first set of enhanced quarterly metrics relating to their authorisations performance, including the average time taken to process applications. The reports demonstrate that the regulators, particularly the FCA, are making progress towards meeting service-level targets, while recognising that there are further improvements to be made on some measures. The Government will continue to monitor this data to assess performance and discuss continuing efforts to improve operational efficiency with the regulators.

I am glad to have heard the general support for the Government's amendments in this group. As my noble friend Lord Holmes said, we drew heavy inspiration from his contributions in Committee, and those of other noble Lords.

Amendment 11 agreed.

Amendment 12 not moved.

Amendment 13

Moved by ***Lord Holmes of Richmond***

13: After Clause 24, insert the following new Clause—

"Financial Inclusion Objective for the FCA

(1) FSMA 2000 is amended as follows.

(2) In section 1B (FCA's general duties), after subsection (4A) insert—

"(4B) When discharging its general functions in the way mentioned in subsection (1) the FCA must, so far as reasonably possible, act in a way which, as a secondary objective, advances the financial inclusion objective (see section 1EC)."

(3) After section 1EB insert—

"1ECFinancial Inclusion Objective

The financial inclusion objective is: facilitating as far as is practical, the inclusivity of the UK's financial system.""

Lord Holmes of Richmond (Con): My Lords, there are currently quite a few difficulties with the UK economy, but one that seldom gets the focus, attention and commentary that it requires is the lack of financial inclusion for so many people right across the United Kingdom. At its extreme, it is best summed up as: those who have the least are often forced to pay the most for financial services and products. However, it is a question not just for individuals but for micro and small businesses, which can find themselves effectively financially excluded.

Amendment 13 simply seeks to introduce a secondary objective for the FCA on financial inclusion. It would not in any sense fetter any of the other objectives, not least the primary objectives. It could operate effectively and efficiently within that current stream of objectives for the regulator.

Without in any sense seeking to pre-empt my noble friend when she comes to wind up, I think that she may well say that it is not the right approach to introduce a new objective for the financial service regulators without first undertaking a significant and serious consultation. That is a fair point. If she is unable to accept my Amendment 13, would she agree to take away the opportunity and possibility to launch the consultation into a secondary objective for our financial service regulators on financial inclusion? I beg to move.

Lord Davies of Brixton (Lab): My Lords, my Amendment 14 proposes a new clause to the objectives, adding the principle of protecting the mental health of consumers. I set this out at some length in Committee, and I think it is worth repeating the point. I should perhaps say at the beginning that I support the other two amendments, although I prefer the one from my Front Bench. I would like to see an explicit statement that the concept of financial inclusion extends to people who have problems dealing with financial services because of problems with their mental health.

Financial services have to understand and recognise the nature and scale of the mental health problems faced by some people. They need to be placed under an explicit duty of care to their customers who suffer from these problems, and they should be required to take explicit additional steps to minimise the potential difficulties faced by those who have or are at risk of having mental health problems associated with their finances.

I am sure that all noble Lords accept the principle that financial regulation should pay regard to the problems faced by people who have problems with mental health. It goes almost without saying. The issue is not about the principle but about whether it should be referred to explicitly in this bit of the legislation. I think that it should, but I am willing to take small mercies if the Minister can make clear the explicit and implicit responsibilities on the regulators to undertake to provide this sort of support and explanation for people who have mental health problems.

The experience works both ways: financial problems lead to mental health problems, and people with mental health problems have difficulty in handling their finances. That is an established fact. I ask for general support for the principle and an indication that, one way or another, the legislation will provide these people with the support they require.

Baroness Chapman of Darlington (Lab): My Lords, I thought it might be useful to speak at this point to introduce Amendment 18, the amendment in my name in this group. I have taken part in many discussions in this House on financial inclusion. It is to this House's credit that such a keen interest is taken by Members on all sides on this topic. Financial exclusion is a priority concern for the Labour Party. It is often caused by the way that financial products are designed and marketed. Of course, poverty and the cost of living crisis plays a huge part in this: they mean that the poorest often pay more in fees for products, but there are even things like mobile phones not being available on a contract unless you have a bank account. We know that all these issues can make life more expensive for people who can least afford it.

12.45 pm

I am very grateful to the noble Lord, Lord Holmes, and my noble friend Lord Davies of Brixton for their amendments and the way in which they introduced them. I agree with everything they said. Their contributions highlighted the importance of ensuring that our financial system is inclusive and understanding of the challenges that consumers face.

Many challenges relating to financial inclusion, and their consequences on mental health, have become even more apparent in recent years. Various financial inclusion amendments were tabled and debated in Committee. It was apparent to us that although the Government say that they recognise and share our concerns, and those of many consumer organisations, they do not seem willing at this point to match the ambition that we have.

To get the previous Financial Services Act through, the Government ultimately conceded on giving the FCA a consumer duty, but this stopped short of a full duty of care towards consumers and required a lengthy consultation process. None the less, it was a positive step in the right direction. We welcome the steps being taken by the FCA to implement its consumer duty, but organisations such as Fair By Design have rightly pointed out that its scope is limited and that not all financial inclusion issues will be adequately addressed, even once it is fully in force.

We completely understand the desire of the noble Lord, Lord Holmes, for a secondary objective in the style of the new competitiveness objective we have been debating. However, it seems that the Treasury and the FCA are in a bit of a standoff over this, with each saying that it is for the other to act. With that in mind, we think that our "have regard" proposal is a realistic way forward and hope that the Government might be tempted by it. It would provide an important additional tool for the FCA, ensuring that it explores financial inclusion issues across its work and properly considers the inclusion implications of its policy interventions.

As Fair By Design and many others have observed, a formal requirement for the FCA to have regard to issues around financial inclusion would accelerate change where it is so badly needed by less well-off households. My Amendment 18, supported by the noble Baroness, Lady Tyler, would not close the financial inclusion gap overnight, but it would become a tool in the arsenal and accelerate change in a number of important areas where the Treasury and the FCA sadly have so far been too slow to act. We will of course listen to the Minister's response, but as things stand we are minded to test the opinion of the House on this amendment.

Baroness Bennett of Manor Castle (GP): My Lords, I have attached my name to Amendment 14 in the name of the noble Lord, Lord Davies of Brixton, who very powerfully introduced it. I associate myself with all his comments. Essentially, he was talking about reasonable adjustments for people with mental health conditions in dealing with the financial sector.

I will briefly address this consumer protection objective from the other side, which is that the financial sector should not make people ill. I am sure the Minister will recall the meeting we had a couple of months ago with mortgage prisoners. At that meeting, we heard some testimony about the impacts of how people had been trapped in the system and suffered enormously as a result.

I want to reflect on two things. The first is the figures that have come out since Committee and the fact that the head of UK Finance has labelled the UK the fraud capital of the world, with fraud last year estimated at £1.2 billion. That reflects the fact that very many people now approach any interaction with the financial sector with a sense of fear, asking, "Is this true?", "Is this right?", "Is this a proper email?" This is something that the financial sector needs to do more to address so that people are not suffering that stress and pressure.

The second thing is that I know some individuals who are somewhat older than me who find that there is an inability to walk into a branch and deal with an issue by having a person solving your problems face to face. People spend weeks and weeks trapped in cycles of emails and phone calls. No one can ever solve your problem and you never speak to the same person twice. That has serious impacts on people's lives and well-being. We need to acknowledge that and say to the banks that this is not acceptable and not good enough.

On the financial inclusion amendments, I have spoken about this at some length so I will not go over the same ground. However, it is clear, in all the amendments in this group, that the financial sector is not meeting the needs of our society. As a Parliament, we need to ensure we do more to make sure that it does.

Lord Eatwell (Lab): My Lords, I support Amendment 18 in the name of my noble friend Lady Chapman, while also recognising the contribution made in the amendments tabled by the noble Lord, Lord Holmes, and my noble friend Lord Davies.

This is an extremely urgent matter because between 6 million and 7 million of our fellow citizens conduct all their financial affairs in cash. Cash is becoming

[Lord Eatwell]
increasingly unacceptable in a whole series of financial transactions that are conducted by electronic means. This means that cash is ceasing to be money, because money is something which is generally accepted in payment of a debt. If you cannot use cash to buy things, it is no longer money.

It is therefore necessary for both the Bank of England and the Treasury to consider making available to all citizens in this country a means of electronic payment. That is a big challenge, but it is urgent because we are all aware that, over the next decade, virtually everything will be entirely electronic and cash will be unacceptable in most transactions. My noble friend Lady Chapman has hit the nail right on the head by saying that this is a consumer protection objective. That 10% of our fellow citizens needs to be protected by financial inclusion in this way. This is an urgent matter which should not be postponed.

Baroness Kramer (LD): My Lords, in speaking to this group I am channelling my colleague, my noble friend Lady Tyler of Enfield, who is unwell and, to her distress, cannot be here. I will focus on Amendment 18, which she has signed, which would require the FCA to have regard to financial inclusion within the consumer protection objective. My noble friend Lady Tyler chaired the Select Committee on Financial Exclusion in 2017 and this was a cornerstone recommendation. A further Lords review in 2020 came to the same conclusion, as did the Treasury Select Committee in 2022.

My noble friend Lady Tyler made a powerful speech in Committee so I will not repeat the detail, but I will cite the briefing I have received from Fair4All Finance, which finds that more than 17 million people—I previously used the number the noble Lord, Lord Eatwell, used of between 6 million and 7 million people who are under stress for this—in the UK are in financially vulnerable circumstances, with access to credit being increasingly difficult. We will discuss access to cash later.

Endless years of discussion on this topic have failed to significantly move the dial. Basic bank accounts are a little improved but still limited. The hopes for credit unions or fintech solutions have faded. Frankly, nothing will change unless the FCA puts its shoulder to the wheel. Amendment 18, if noble Lords look at it in detail, is not the introduction of a new objective; it is a clarification of the consumer objective through a "have regard" duty. In that way, it is different from the amendment proposed by the noble Lord, Lord Holmes—which I do not object to, but the Government have frequently said that we cannot have additional objectives. This is not an additional objective; it is clarification and emphasis of a key aspect of an objective.

Amendment 18 does not ask the FCA to step into territory which the Government have said is theirs—to close the gap on financial inclusion—but to use powers within its existing scope, which it has shown us it will not do without this emphasis from Parliament. I very much support Amendment 18 and consequently hope that the noble Baroness, Lady Chapman, will ensure that it is tested in the House if the Government do not accept it—although government acceptance is of course the preferred route for us all.

Baroness Penn (Con): My Lords, the Government are committed to ensuring that people, regardless of their background or income, have access to useful and affordable financial services and products. We work closely with the FCA in pursuit of that goal.

The FCA's strategic objective is to ensure that relevant markets function well. Its operational objectives are to secure an appropriate degree of protection for consumers, to protect and enhance the integrity of the UK financial system and to promote effective competition in the interests of consumers. The FCA's objectives are at the very core of its work, and it is its statutory remit to advance those objectives. While I therefore commend the intention behind Amendments 13 and 18, the FCA's objectives should not be changed lightly and without detailed consultation, given the potential for unintended consequences for the way financial services are regulated in the UK.

Noble Lords will be aware that the new secondary growth and competitiveness objectives introduced by the Bill were the subject of in-depth consultation in several stages, to ensure that the legislation will have its intended effect. While some respondents to that consultation process raised the issue of requiring the regulators to have regard to financial inclusion, there was no consensus on this proposal in terms of approach or effect.

My noble friend invited me to take up the opportunity to consult further on this matter, anticipating what I might say. However, as I have just reflected, this was, in part, considered in the work that was done in the lead-up to the Bill, which took place over several years, and we have been considering the Bill before us for nearly a year. So, while I have heard the views raised in this debate, there has also been a strong feeling over the course of the Bill that there is a desire for the Government and regulators, once we have the Bill in place, to press ahead and use the powers in it to deliver regulatory reform. I do not think that further consultation on further changes to the objectives at this stage would be the right approach.

As I said, this was considered as part of the FRF review. Indeed, in its consideration of these matters, the Treasury Select Committee specified in its future of financial services regulation inquiry that it did not recommend that any changes related to financial inclusion should be made to the regulator's objectives, noting that financial inclusion is a broader social issue and that the primary role of the FCA should not be to carry out social policy.

The FCA's consumer protection objective requires it to protect consumers from poor conduct by financial services firms. Financial exclusion is driven by many factors which may not be attributable to firms' conduct. Given this, the consumer protection objective is not the appropriate place to seek to address financial inclusion. Indeed, an objective to protect consumers from harm may, at times, be in tension with an objective to increase financial inclusion. For example, certain credit products or investments may not be appropriate in all circumstances and could be detrimental to a consumer's financial situation and well-being. The FCA will already seek to balance this through developing its rules and interventions, but that means that adding

a formal requirement to advance financial inclusion as part of the consumer protection objective risks adding complexity and uncertainty to one of the most important parts of the FCA's work.

Where there are gaps in the market which mean that some consumers struggle to access appropriate products, it is right that the Government seek to tackle these. I hope that noble Lords will be reassured that we are taking, and will continue to take, action. The noble Lord, Lord Eatwell, spoke of the importance of cash to many. That is why the Government are taking unprecedented action in the Bill to protect access to cash.

The noble Baroness, Lady Kramer, referred to—

1 pm

Lord Eatwell (Lab): I actually said the opposite; access to cash will not be useful if the cash cannot be used to make a transaction. Increasingly, transactions cannot be made with cash but only electronically.

Baroness Penn (Con): Some of the implications of the noble Lord's contribution on potentially obliging people to use certain payment systems show that including financial inclusion under the consumer protection objective could have quite far-reaching consequences that we would want fully to think through and consult on before changing the objectives. That lies behind the Government's concern about this approach.

As I was saying, this does not mean that there is no action to promote financial inclusion by the Government and the regulators. Major banks are required to provide basic bank accounts for those who would otherwise be unbanked. As of June last year, there were 7.4 million basic bank accounts open and during 2020-21 around 70,000 basic bank account customers were upgraded to standard personal current accounts, graduating to more mainstream financial services products. The FCA's financial lives survey has shown that those aged over 75 are becoming more digitally included, with 64% digitally active in 2020 compared to 41% in 2017. However, we absolutely recognise that there is more work to be done in this area. The Government have allocated £100 million of dormant asset funding to Fair4All Finance, which is being used to improve access to affordable credit, with a further £45 million allocated recently to deliver initiatives to support those struggling with the increased cost of living.

While the FCA has an important role to play in supporting financial inclusion, it is already able to act where appropriate. For example, it has previously intervened in the travel insurance market to help consumers with pre-existing medical conditions access affordable cover. As the noble Baroness, Lady Chapman, recognised, the new consumer duty developed by the FCA is yet to come into force and we are yet to feel the full benefits of that. However, importantly, these issues cannot be solved through regulation alone. Where there are gaps in the provision of products to consumers, the Government will continue to work closely with the FCA and other key players across industry and the third sector to address them.

I turn to Amendment 14 from the noble Lord, Lord Davies of Brixton. I reassure him that the FCA is already well placed to take into account the protection of consumers' mental health within its existing objectives. The regulator's vulnerability guidance sets out a number of best practices for firms, from upskilling staff to product service and design, and specifically recognises poor mental health as a driver of consumer vulnerability. Where FCA-authorised firms fail to meet their obligations to treat customers fairly, including those in vulnerable circumstances, the FCA is already empowered to take further action. Since the publication of the vulnerability guidance, the FCA has engaged with firms that are not meeting their obligations and agreed remedial steps.

In summary, the Government believe that this is an incredibly important issue but consider that it is for the Government to lead on the broader issues of financial inclusion. Where necessary, in the existing framework the FCA is able to have the appropriate powers to support work on this important issue. While the Government do not support these amendments, I hope that I have set out how they are committed to making further progress in this area. I therefore hope that my noble friend Lord Holmes will withdraw his amendment and that the noble Lord, Lord Davies of Brixton, and the noble Baroness, Lady Chapman, will not press theirs when they are reached.

Lord Holmes of Richmond (Con): My Lords, I thank everyone who has participated in this debate, and my noble friend the Minister for her response. This will continue to be a significant issue until we have something in the country which looks far more like financial inclusion for all those who are currently feeling the sharp end, or the wrong end, and who are shut out of so much of what passes for financial services today. However, having listened to my noble friend the Minister, I will not push this matter any further today. I beg leave to withdraw Amendment 13.

Amendment 13 withdrawn.

Amendment 14 not moved.

Clause 25: Regulatory principles: net zero emissions target

Amendment 15

Moved by ***Baroness Hayman***

15: Clause 25, page 39, leave out lines 11 to 13 and insert—

"(c) the need to contribute towards achieving compliance with sections 1 (the target for 2050) and 4(1)(b) (net UK carbon account) of the Climate Change Act 2008, and the conservation and enhancement of the natural environment, including compliance with relevant targets approved by Parliament, the Scottish Parliament, Senedd Cymru, and the Northern Ireland Assembly."

Member's explanatory statement

This amendment adds nature to the new regulatory principle on net zero emissions.

Baroness Hayman (CB): My Lords, when we debated this on Tuesday evening I was greatly encouraged by the support from all sides of the House for adding nature, alongside net zero, to the regulatory principles in the Bill. We also had support externally, particularly from Professor Dasgupta himself. I am afraid that I did not find the Minister's arguments compelling, and therefore I would like to test the opinion of the House.

1.06 pm

Division on Amendment 15

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Amendment 15 agreed.

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1.17 pm

Clause 26: Sections 24 and 25: consequential amendments

Amendments 16 and 17

Moved by ***Baroness Penn***

16: Clause 26, page 39, line 15, at end insert—

"(1A) In section 1JA (Treasury recommendations in connection with general duties), after subsection (1)(c) insert—

"(ca) how to discharge the duty in section 1B(4A)(duty to advance competitiveness and growth objective),".

(1B) In section 1K (guidance about objectives), after subsection (1) insert—

"(1A) The reference in subsection (1) to the FCA's operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB).".

(1C) In section 2I (guidance about objectives), after subsection (1) insert—

"(1A) The reference in subsection (1) to the PRA's objectives includes, in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).".

(1D) In section 3B (regulatory principles to be applied by both regulators), for subsection (3) substitute—

"(3) "Objectives"—

(a) in relation to the FCA means—

(i) operational objectives, and

(ii) in its application as a secondary objective, the competitiveness and growth objective (see section 1EB), and

(b) in relation to the PRA means—

(i) the PRA's objectives, and

(ii) in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).".

(1E) In section 3D (duty of FCA and PRA to ensure co-ordinated exercise of functions), for subsection (4) substitute—

"(4) In this section, "objectives"—

(a) in relation to the FCA means—

(i) operational objectives, and

(ii) in its application as a secondary objective, the competitiveness and growth objective (see section 1EB), and

(b) in relation to the PRA means—

(i) the PRA's objectives, and

(ii) in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).

(5) Where a regulator is proposing to exercise a function that is not one of its general functions, the reference to "objectives" in subsection (1)(a) does not include the secondary objectives mentioned in subsection (4)(a)(ii) and (b)(ii).

(6) In this section, "general functions"—

(a) in relation to the FCA, has the same meaning as in section 1B(6), and

(b) in relation to the PRA, has the same meaning as in section 2J(1).".

(1F) In section 138I (consultation by the FCA), in subsection (2)(d) after "1B(1)" insert ", (4A)"."

Member's explanatory statement

This amendment would ensure that provisions of the Financial Services and Markets Act 2000 that refer to the objectives of the FCA and the PRA also include a reference to the new competitiveness and growth objective, as inserted by Clause 24 of the Bill.

17: Clause 26, page 39, line 20, at end insert—

"(2A) In section 232A (scheme operator's duty to provide information to FCA)—

(a) the existing words become subsection (1), and

(b) after that subsection insert—

"(2) The reference in subsection (1) to the FCA's operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB).""

Member's explanatory statement

This amendment would ensure that section 232A of the Financial Services and Markets Act 2000 includes a reference to the competitiveness and growth objective, as inserted by Clause 24 of the Bill.

Amendments 16 and 17 agreed.

Amendment 18

Moved by ***Baroness Chapman of Darlington***

18: After Clause 26, insert the following new Clause—

"FCA to have regard to financial inclusion within consumer protection objective

(1) FSMA 2000 is amended as follows.

(2) In section 1C (the consumer protection objective), after subsection (2)(c) insert—

"(ca) financial inclusion;"."

Baroness Chapman of Darlington (Lab): My Lords, we are very disappointed with the Government's response on this matter so far. They are wilfully not engaging with this topic in the way that we would like. Financial inclusion is relevant to the regulation of financial services. How products are designed, marketed and administered and how advice is provided are all of concern to the FCA and directly important to financial inclusion. There have been piecemeal interventions, which the Government say are welcome, but we would like to see more at this stage. I wish to test the will of the House.

1.19 pm

Division on Amendment 18

Contents 191; Not-Contents 154.

Amendment 18 agreed.

Division No. 2

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1.29 pm

Amendment 19 not moved.

Clause 27: Review of rules

Amendments 20 to 22

Moved by ***Baroness Penn***

20: Clause 27, page 40, line 6, at end insert—

"(1A) The statement must provide information about—

(a) how representations (including by a statutory panel) can be made to each regulator with respect to its review of rules under section 3RA, and

(b) the arrangements to ensure that those representations are considered.

(1B) In this section "statutory panel" has the meaning given by section 1RB(5)."

Member's explanatory statement

This amendment would impose a duty on the FCA and PRA to ensure that those regulators include in their statements of policy about the review of rules (required by section 3RB of the Financial Services and Markets Act 2000, as inserted by Clause 27) information about how representations (including by statutory panels) can be made and considered.

21: Clause 27, page 41, line 13, at end insert "and

(iii) advance the competitiveness and growth objective;"

Member's explanatory statement

This amendment would ensure that new section 3RD of the Financial Services and Markets Act 2000, as inserted by Clause 27 of the Bill, includes, for the purposes of the FCA's report, a reference to the competitiveness and growth objective, as inserted by Clause 24 of the Bill.

22: Clause 27, page 41, line 15, at end insert "and

(ii) advance the PRA's competition objective and the PRA's competitiveness and growth objective;"

Member's explanatory statement

This amendment would ensure that new section 3RD of the Financial Services and Markets Act 2000, as inserted by Clause 27 of the Bill, includes, for the purposes of the PRA's report, a reference to the competition objective and the competitiveness and growth objective, as inserted by Clause 24 of the Bill. (The words after "review" in section 3RD(2)(b) would become sub-paragraph (i)).

Amendments 20 to 22 agreed.

Consideration on Report adjourned.

Strikes (Minimum Service Levels) Bill

Commons Reasons

1.30 pm

Motion A

Moved by ***Lord Callanan***

That this House do not insist on its Amendment 1 to which the Commons have disagreed for their Reason 1A.

1A: Because it is not appropriate to restrict application of the Bill to England only.

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, with the leave of the House I will also speak to Motion B. I will speak to both the Motions to not insist on these amendments and to resist Motions A1 and B1, which are amendments in lieu tabled by the noble and learned Lord, Lord Thomas, and the noble Lord, Lord Fox.

I am delighted to be in the Chamber again following the consideration of this House's amendments to the Bill in the other place. Although there was a thorough debate of these amendments and those we will look at next, they have been thoroughly rejected by the other place, which has resolved against amendments that would either delay implementation of the Bill or prevent it from achieving any of its policy objectives.

I recognise that this is a topic that Members of both Houses are passionate about and I agree with my colleague, the Minister for Enterprise, Markets and Small Business, that we have had a robust debate on it. However, I point out to the House that the other place resolved against these amendments by significant majorities of 61 and 55 respectively, which are significantly

[Lord Callanan]
larger than the majorities of 24 and 31 that amended the Bill in the first place. That is also the case for the amendments that we will discuss in the next group. The elected Chamber has therefore given the Bill and the amendments made here its due consideration and Members there have made the position of their House very clear.

The House will be delighted to know that I do not intend to repeat the debate and the arguments that we have heard on the detail of the Bill here; the Government have already clearly set out their intentions and perspective here, which are reflected in the reasons for disagreement that have come back to us. The Government's position, and that of the elected Chamber, is clear and I can confirm that the Government have no plans to concede on these issues given the ongoing industrial disputes that show the need for this Bill now more than ever. I therefore ask that noble Lords respect the clear wishes of the other place and, while of course I am always grateful for noble Lords' insight, passion and expertise on this matter, I hope that this House does not insist on these amendments.

I will now address the amendments in lieu that have been tabled. I thank the noble and learned Lord, Lord Thomas, for his Motion A1, which seeks to limit the application of this Bill to England only, unless the Scottish Parliament and Senedd Cymru agree by resolution for it to apply in those nations. The noble and learned Lord submitted a similar amendment on Report and the Government continue to resist this change for the reasons that I set out then.

First, it is a statutory discretion for the employer as to whether to issue a work notice, taking into account any other legal requirements that the employer may have. However, more fundamentally, the purpose and substance of the Bill is to regulate employment rights and duties and industrial relations. This is a reserved matter, so the consent of devolved Parliaments for this legislation is rightly not required. To add in a requirement for this, as the amendment seeks to do, would create significant inconsistency with wider employment law and I suggest that it would also disturb the careful balance of the UK's devolution settlement. We will of course, as we have throughout the passage of the Bill, continue to seek to engage with the devolved Governments as part of the development of minimum service levels in those areas.

Finally, Motion B1, tabled by the noble Lord, Lord Fox, relates to additional consultation requirements, assessment of impacts of the legislation and parliamentary scrutiny. As has been made clear to this House many times, sufficient checks and balances are already built into the legislation before regulations can be made. Motion B1 would delay implementation of minimum service levels for an indefinite period and thus extend the disproportionate impact that strikes can have on the public. I am afraid that the Government simply cannot accept that.

This Government recognise the significant role that the UK Parliament has played in scrutinising instruments. New Section 234F already ensures that the regulations will receive the appropriate level of scrutiny by both Houses and are subject to usual processes for consultation. I therefore urge this House not to amend the Bill in such a way that would cause significant delay to implementing minimum service levels, use up precious parliamentary time to duplicate parliamentary procedures and set some unhelpful precedents for future legislation. For all those reasons, the Government resist Motions A1 and B1 and I hope that noble Lords will agree not to press them. I beg to move.

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Thomas of Cwmgiedd***

At end insert "and do propose Amendment 1B in lieu—

1B: Page 2, line 13, at end insert "but applies only to England unless—

(a) the Scottish Parliament resolves that it should apply to Scotland from a date specified in the resolution, in which case it so applies, and

(b) Senedd Cymru resolves that it should apply to Wales from a date specified in the resolution, in which case it so applies.""

Lord Thomas of Cwmgiedd (CB): My Lords, as this is the first occasion on which a devolution issue has arisen this week, let me make one short observation about the enormous contribution that Lord Morris of Aberavon made to devolution and to using and utilising devolution within the context of the United Kingdom. He can truly be regarded as a father of Welsh devolution and he made an enormous contribution to strengthening the position of Wales within the union.

I turn to my Motion. There are six brief points that I wish to make—and they will be brief, I must emphasise. First, this is not a reserved matter; I fundamentally disagree with the position stated by the Government. If we look at the reality of this Bill, it is not to do with employment rights; it is plainly to do with services in Wales and Scotland. Indeed, it covers the most important services that are devolved. The legislation therefore did require a Sewel Motion and, as we know, that has not been forthcoming.

Secondly, the fact that the Government are prepared to legislate without observing the Sewel convention is, I regret to say, another illustration of the ignoring of this convention and, more generally, the Government's action in ignoring conventions that underpin our unwritten constitution, putting it in danger. Actions of this kind are imperilling the union, which is the bedrock of our constitution.

Thirdly, and more fundamentally, what is being done is undemocratic. The Scottish Parliament and Senedd Cymru are responsible and accountable for the very services for which this legislation is being brought forward.

Fourthly, the extension of this Bill to Wales and Scotland is bad for the people of Wales and Scotland. If we look at this as a matter of practical reality, the UK Government are the Government of England in respect of these services. They know nothing about education, health, ambulances or the fire service in Wales, or the relationships with staff and employees and how the services run. It is structured differently in England from how it is structured in Wales and Scotland.

Fifthly, I think that it is disingenuous again to say that employers in Scotland and Wales can choose whether to give a work notice. As the Minister in the other place made clear, it is not in the Government's view a free choice. Employers must consider contractual public law and other legal duties that they have. If this Government's view is right—I do not agree with it—there is the unspoken consequence of legal action against those who fail in their duties. That is a real threat to the Governments in Scotland and Wales and their ability to manage a service in a way that is in the real interests of the people.

Sixthly, and finally, what this Bill does, in applying its provisions to Scotland and Wales, is to take away power from those who have a responsibility for the management of the relationship and who are accountable to their electorate.

However, on this issue of devolution, the Government —as the Minister made clear just now—have not moved, and plainly do not intend to move, an iota. They maintain their characteristic disdain for devolution. They continue to legislate to override the devolution arrangements. I think that it can be said that they believe with a singular superiority that they know better what is right for Wales and Scotland than their democratically elected Governments and Parliaments do. They seem not to care for the long-term consequences of this persistent conduct.

For these reasons, although it is regrettable for our constitution, union and democracy, unless others urge me to take a different view, I see no point in seeking to divide the House on issues on which the Government do not appear to wish to engage. By using their majority in the other place, they can impose their will on Scotland and Wales, which the Governments and Parliaments of Scotland and Wales do not want.

Lord Wigley (PC): My Lords, I will intervene very briefly, as I did at earlier stages of the Bill, having taken good note of the comments made by the noble and learned Lord, Lord Thomas of Cwmgiedd.

I press on the Government the question of the definition of reserved powers. This goes broader than this amendment and may be something that needs to be looked at in another context, in its own right. Under those circumstances, I accept the lead that has been given by the amendment of the noble and learned Lord, Lord Thomas, and I hope the Government keep the issue alive in their mind.

Baroness Randerson (LD): My Lords, I thank the noble and learned Lord, Lord Thomas, for moving this amendment. I too will be brief. It is important to restate the principles involved here. The Bill is one of a series from this Government that trespass boldly—I would say foolishly—on devolution. The United Kingdom Internal Market Act, the Procurement Bill and the Retained EU Law (Revocation and Reform) Bill do so distinctly, but this Bill takes it to another level. The overwhelming majority of the list of services for which it seeks to set minimum standards and take control are devolved services, and the noble and learned Lord spoke about this. Add to this the Government's habit of ignoring the need for legislative consent Motions and we are well on the way to a constitutional crisis, which this Government seem openly to invite.

Even now, the Government do not seem to have decided how to develop and impose minimum service levels. Back in March, the Constitution Committee expressed surprise at this in its report, and it is significant that we are still at this point in June. It is nonsense to imagine that the Government can impose minimum service levels, in effect from a distance, on a service for which they have no responsibility at any level, and, in the case of Welsh-medium education, for which they do not even understand the language in which the rules and standards are written.

As it stands, the Bill is unworkable and damaging. The noble and learned Lord's original amendment, which was agreed by the House, sought to limit the scope of the Bill. The elegance of the new amendment is that it would allow the devolved Administrations to give agreement in the normal way.

In the different political climate of the past, in devolution as it used to be practised and operate, there would be discussions, co-operation, compromises and ultimately agreement between the UK Government and the devolved Administrations. There would be legislative consent Motions agreed before we agreed legislation here. The norms have gone and that is a serious problem for our future democracy.

1.45 pm

Lord Balfe (Con): My Lords, can I make a simple point? This is nonsense, because all the services are devolved, as has been said. I am not totally in agreement with the noble and learned Lord, Lord Thomas, but these are probably not reserved powers. Even if they were, how on earth can a Secretary of State for Health in Elephant and Castle or wherever he now lives make rules about hospitals in Glasgow, fire engines in Edinburgh or education establishments in Aberdeen? It just will not work. For that reason, I am very dubious about this legislation. It does not apply to Northern Ireland anyway. Putting it into a Bill is silly—that is the only word for it—because we are being asked to pass legislation which manifestly will do no good and will not work, and I am sorry that the Government are pursuing it.

Lord Collins of Highbury (Lab): My Lords, it is a sad fact that this Bill so casually breaches the Sewel convention, which exists to uphold democratic accountability and provide for stable provision of public services. Wherever you live in the United Kingdom, nothing should interfere with those basic considerations. They dictate how services are designed and delivered and who has a say over them, whether that be in the hospital you are rushed to or the school you take your children to. In overriding Parliaments in Wales and Scotland, United Kingdom Ministers are treating those services as incidental or of lesser significance and weakening the say of patients and parents.

This is a problem not just for Wales and Scotland; it is a problem for England and the entire United Kingdom when the Government so regularly choose to sow confusion and division by breaching a convention that exists to help prevent both. We should not be in a position where a former Lord Chief Justice for England and Wales is forced to spell this out in relation to so many Bills. It is a measure of the Government's consistent course that the noble and learned Lord, Lord Thomas

[Lord Collins of Highbury]
of Cwmgiedd, is put in such a position. I hope that the points he made will be taken on board, because the road that is going to be continued with is very dangerous for the union. That is why it is so important that Ministers listen.

I want to speak also to the other Motions in this group, which I had hoped the noble Lord from the Lib Dem Benches would move because I was intending to quote him. Nevertheless, on Motion B1, on which we are to hear from the noble Lord, across this House there is serious concern that, once again, Parliament is being sidelined. It is a fundamental issue of accountability and democracy. The Regulatory Policy Committee said that the impact assessment for the Bill is "not fit for purpose" and

"makes use of assumptions in the analysis which are not supported by evidence".

Again, policy comes later and legislation first; it is ridiculous. We should not have that sort of situation, especially as it impinges on fundamental rights, particularly the right which the Minister constantly says he is prepared to protect: the right to strike.

Employers as well as unions share concerns that the provisions are unworkable and have the opposite effect to that claimed by the Government, will damage co-operation and will undermine voluntary agreements that deliver minimum service levels, the very thing that the Bill is meant to address. This is an imposition and simply will not work. The Delegated Powers Committee said that ministerial powers to set minimum service levels through regulations and define what constitutes a relevant service are inappropriate in the absence of convincing explanation by Ministers. Throughout Report, we heard no convincing arguments on this. The fact of the matter is that, when we heard from Ministers responsible for relevant sections of the Bill, they all said that voluntary arrangements are best and that they work. But, when you undermine those voluntary arrangements, you put the public—the thing that you want to try to protect—at risk.

As the noble Lord, Lord Fox, said on Report—I will have to quote his speech from then rather than today—

"This amendment seeks to bolster Parliament's oversight. It would require a consultation to be carried out and … reviewed by a committee of each House of Parliament",—[*Official Report*, 26/4/23; col. 1223.]

prior to regulations being made. This is absolutely essential if we are to see good legislation rather than simply negative narratives. Those consulted would include relevant unions, employers and other interested parties across the United Kingdom. This is vital to ensure consistency. I conclude by saying that I hope the noble Lord, Lord Fox, will seek the support of the whole House.

Lord Fox (LD): My Lords, I was so enjoying the debate on Motion A1 that I failed to stand up and speak to Motion B1 in my name. I apologise to the noble Lord, Lord Collins, for not providing him with sufficient up-to-date quotations, but he seemed to manage. We have spent so much time on the Bill together that we probably know how each other thinks.

We are in familiar territory, and indeed were too with Motion A1, because this is a long-repeated trope of this Government. They seek to override not only the devolved authorities but our own Parliament here. Bill after Bill has measures that take powers that should rightfully be vested in Parliament and lodge them firmly with the Executive, with very little or negligible recourse. This amendment seeks to regain that balance.

We have had similar discussions many times. I will not go over all these, but I will remind the House very briefly why, in this case, it is very important. The centrepiece of this legislation is a system of predetermined minimum service levels which may be used by employers to determine the minimum manning levels in the event of a strike. If a strike is called, specific work orders have to be or may be issued, requiring named individuals to ignore the strike and go to work. If they do not, as the Bill stands, they can be sacked.

The scale of the minimum service level is key. The nearer it is to 100% of normal service, the smaller the number of people who can legitimately and legally strike becomes—to the point that it becomes almost zero, or zero, and strikes are banned. This is not an abstract argument: if you look at certain areas of emergency care or issues such as rail track signalling, it is clear that a very high level of presenteeism will be required to run those services. In effect, those people on that work order will therefore have their right to strike banned. Speaking as a Liberal, I say that this is a libertarian issue that we find very important.

The setting of these minimum services levels is a vital part of how this Bill will operate. As the Minister has said, some non-binding consultation is under way but as things stand, to all intents and purposes the scale of the minimum service levels is the Secretary of State's decision and theirs alone. We find that unacceptable.

The Commons declined our last amendment on the grounds that there is "adequate consultation". We think that there is not and would like to ask the Commons to revisit that process. This amendment would require that consultation takes place and is reviewed by a committee of each House of Parliament prior to regulations being made. That consultation would be more formal and set out in some detail compared to the informal and ad hoc nature of the consultation that is going on. As we heard from the noble Lord, Lord Collins, when he was quoting me, those consulted will include the relevant unions, employers and other interested parties and would include an assessment of the impact on the rights of those workers.

The Minister talked about time and how this would wrap up the process into indefinite time. I remind your Lordships that the original Bill from which this Bill is generated started about a year ago. That Bill of course referred to what was in the Conservative Party manifesto, unlike this one, which has been broadened way beyond the scope of what was in the manifesto. The Government have shown themselves very adept at setting up time for such things to be debated, yesterday being an example. I am sure that time is not the issue—"won't" rather than "can't" is what we are dealing with here.

In short, we seek through this Motion to regularise the consultation process and give a mandatory role for Parliament that is far more than we see. With most Governments, this might not be controversial but with this one there has been a pattern and it is systematic, so here we seek to reassert the role of parliamentary democracy. My noble friend talked about there being the potential for a constitutional crisis around the treatment of government and the devolved authorities, I think we are already heading in the same direction with the treatment by this Government of our Parliament.

Lord Callanan (Con): My Lords, I thank all those who have contributed. The House will be pleased to know that I do not intend to detain noble Lords for very long. We have debated these matters extensively on a number of occasions in a very rigorous manner, so I do not intend to repeat all the arguments. But, let me just say very briefly, particularly in response to the noble and learned Lord, Lord Thomas, that we are certain that the minimum service levels are a reserved matter. They are reserved because they obviously apply only when there are strikes, which fall within employment rights and industrial relations. This is clearly a reserved matter under each of the devolution settlements for Scotland and Wales. Put another way, the Bill amends the Trade Union and Labour Relations (Consolidation) Act 1992, the subject of which is specifically reserved under each of these settlements. I always hesitate to disagree with distinguished lawyers on matters of law but I am afraid that we just have a different opinion on this.

I addressed the points from the noble Lord, Lord Fox, in my opening remarks and will not repeat that. I acknowledge all those who have spoken. I understand the strength of opinion in the House on this but once again I point the House towards the other place—the elected place—and the clear will it has expressed on these matters. I urge the House not to prolong this matter unnecessarily and, while it looks as though we are going to vote on the Motion from the noble Lord, Lord Fox, I am grateful that the noble and learned Lord, Lord Thomas, indicated that he would not be dividing the House.

Lord Thomas of Cwmgiedd (CB): I beg the House's leave to withdraw my Motion.

Motion A1 withdrawn.

Motion A agreed.

2 pm

Motion B

Moved by ***Lord Callanan***

That this House do not insist on its Amendment 2 to which the Commons have disagreed for their Reason 2A.

2A: Because the Bill already contains adequate consultation requirements.

Motion B1 (as an amendment to Motion B)

Moved by ***Lord Fox***

At end insert "and do propose Amendment 2B in lieu—

2B: Page 3, line 31, at end insert—

"(5) Minimum service regulations may only be made if—

(a) the Secretary of State has published draft regulations;

(b) the Secretary of State has conducted an impact assessment of the effect of the draft regulations on the services to which the draft regulations relate, addressing, in particular, the effect—

(i) on the general public,

(ii) on the conduct of these services, and

(iii) on the conduct and effectiveness of the exercise of the right to strike in those services;

(c) the Secretary of State has conducted a consultation with the representatives of trade unions, employers and any other interested party on the draft regulations and on the effect of the draft regulations on the services to which they relate, and in particular on the effect—

(i) on the general public,

(ii) on the conduct of those services, and

(iii) on the conduct and effectiveness of the exercise of the right to strike in those services,

and has laid before Parliament a report on that consultation;

(d) the Secretary of State has placed before a Joint Committee of both Houses of Parliament convened for the purpose of reviewing them the impact assessment under paragraph (b) and the report under paragraph (c) and the Joint Committee's review has been published in a report to Parliament.""

Lord Fox (LD): My Lords, having heard the arguments many times, I would still like to test the will of the House.

2 pm

Division on Motion B1

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Motion B1 agreed.

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2.11 pm

Motion C

Moved by ***Lord Callanan***

That this House do not insist on its Amendment 4 to which the Commons have disagreed for their Reason 4A.

4A: Because in order for the legislation to be effective, it is necessary for there to be consequences for an employee who fails to comply with a work notice.

Lord Callanan (Con): My Lords, in moving Motion C, with the leave of the House, I will also speak to Motion D.

Motions C and D in my name cover this House's Amendments 4, 5, 6 and 7, which removed key parts of the legislation that are necessary to make it effective and to ensure that minimum service levels can in fact be achieved. It is therefore unsurprising that the other place resolved against these amendments with, I remind the House once again, larger majorities than those that amended the Bill in this House. The Government continue to maintain that the approach taken by this legislation is fair and proportionate. To achieve a minimum service level, employers, workers and trade unions all have their part to play.

Motion C and the amendment in the name of the noble Baroness, Lady O'Grady, proposed in lieu of Lords Amendment 4, deal with the consequences of non-compliance with a work notice. As I have said previously, the approach taken by this legislation is fair and proportionate. It enables employers to manage instances of non-compliance in exactly the same way that they would with any other unauthorised absence.

As I have made clear on a number of occasions, an employee losing their automatic protection from unfair dismissal for industrial action, if they participated in a strike contrary to a work notice, does not automatically mean that they will be dismissed—just as failing to attend work without a valid reason normally does not mean that they will be dismissed. It simply enables employers to pursue disciplinary action if they believe it is appropriate, but it is ultimately at the discretion of the employer. I believe that this is the right approach to ensure that minimum service levels will be achieved, while protecting workers in a way that aligns with existing legislation. On that basis, I resist the amendment proposed in lieu.

On Motion D, which covers the role of trade unions, it appears in the amendment proposed in lieu of Lords Amendment 5 that the noble Lord, Lord Collins, accepts that there may be a role for unions to play in ensuring that minimum service levels can be met. However, I strongly believe that it cannot be at the discretion of a trade union as to whether and how it advises and encourages its members to comply with work notices. There must be some consequences if they do not take reasonable steps. On that basis, the Government therefore resist this amendment.

I have noted the feedback from the House, including in the Joint Committee on Human Rights. The Government are willing to consider whether there may be a case for providing further details on what "reasonable steps" are and what it means for trade unions. What we cannot do, however, is accept an amendment such as the one proposed. Without a responsibility for unions to ensure that their members comply, and without any incentives for employees to attend work on a strike day when they have been identified in a work notice, the effectiveness of this legislation is, I am afraid, severely undermined—and I suspect that is the purpose of the amendments.

I cannot therefore accept a continuation of the risk to lives and livelihoods as a result of the disproportionate impact of these strikes. I therefore ask that the House supports Motions C and D to address this, and I hope that the noble Baroness, Lady O'Grady, and the noble Lord, Lord Collins, will not move their respective Motions C1 and D1. I beg to move.

2.15 pm

Motion C1 (as an amendment to Motion C)
Moved by ***Baroness O'Grady of Upper Holloway***

At end insert "and do propose Amendment 4B in lieu—

4B: Page 4, line 40, at end insert—

"234CA Protection of employees

(1) A person is not subject to a work notice if they have not received a copy of it in accordance with the time limits specified in section 234C(3).

(2) It is for the employer to prove that the work notice was received in conformity with subsection (1).

(3) An employee may not be dismissed or subjected to any detriment for failing to comply with a work notice and any such dismissal shall be treated as a dismissal to which section 152 applies and any such detriment shall be treated as a detriment to which section 146 applies.

(4) A work notice does not place a contractual obligation on an employee to comply with it.""

Baroness O'Grady of Upper Holloway (Lab): My Lords, this Motion seeks to uphold a principle long established in British law: that workers on strike are protected against the sack. Noble Lords will recall the concerns of the noble and learned Lord, Lord Judge, at Second Reading. He said that

"this is a troublesome piece of legislation. It asks us all a very simple question: when does the right to withhold your labour … cease to be a right? It answers that question too … the right ceases when, following a ministerial decree, your employer can oblige you to work, and if you fail to do so you can lose your job".—[*Official Report*, 21/2/23; col. 1568.]

Not since the Second World War have a UK Government taken power to facilitate the requisitioning of people to work against their will. This would make the UK an outlier in Europe and flies in the face of human rights, equality and ILO conventions as reaffirmed by the Government in the EU–UK Trade and Cooperation Agreement. The Government have succeeded in uniting employers, unions, the devolved nations and service users against them. In the interests of transparency, I repeat that Labour is 100% committed to repealing this bad Bill.

My Motion returns to the core concern: that striking workers selected by the employer they are striking against can be forced to work or face the sack. Remember, this legislation would unilaterally change the employment contracts of potentially millions of people—and all through secondary legislation with no proper parliamentary scrutiny or accountability. Minimum service levels determined by a Secretary of State could be set up to 100% and require staffing levels to match. The union may have jumped every hurdle to secure a lawful ballot and the worker may have democratically voted to strike, but protection against the sack will be whipped away by an employer simply putting their name on a piece of paper. The worker may not even have received the work notice; there is no obligation on the employer to make sure that they do. Their automatic protection against dismissal will be annulled. This is manifestly unjust.

[Baroness O'Grady of Upper Holloway]

Remember, too, that minimum service levels apply only to strike days. For the rest of the year, a Secretary of State can close fire stations, see rail services fail, see asylum seeker backlogs grow, increase class sizes and let NHS waiting lists—shamefully now at 7.3 million—soar. I have listened carefully to the debates in both Houses. Ministers are trying to sweep the issue of sackings under the carpet.

On 10 January, the then Business Secretary Grant Shapps said it was wrong to frighten people about their jobs. The Minister has said on many occasions, including on 21 February:

"This legislation is not about sacking workers".—[*Official Report*, 21/2/23; col. 1563.]

On 22 May, the Under-Secretary of State told the House of Commons that

"nobody will be sacked as a result of the legislation".—[*Official Report*, Commons, 22/5/23; col. 103.]

The official reason from the Commons for rejecting my original amendment is that

"for the legislation to be effective, it is necessary for there to be consequences for an employee who fails to comply with the work notice".

So the consequence of exercising the human right to withdraw your labour is the removal of protection against unfair dismissal. In a free society, that is chilling. The very workers Ministers thanked for their heroism during the pandemic and stood on doorsteps to clap can be punished for striking with instant dismissal.

Key workers have already sacrificed so much for the rest of us. Unless the Government accept this amendment, Ministers now expect them to sacrifice their right to strike, or pay the price with their livelihoods. I sincerely hope that my amendment will be supported in this House and that it will give the opportunity for the Government to listen and think again. I beg to move.

Lord Balfe (Con): Noble Lords will not be surprised that I agree with the amendment as tabled. I have been a student of history for many years. You do not requisition labour except in times of dire national emergency. We did not even requisition it at the outbreak of the Second World War. Conscription did not come in until half way through the First World War. To deprive a person of the liberty to decide whether they go to work is something that is done carefully and very seldom. I think this goes far too far. It is an imposition not only on the workforce but on the trade union movement.

We spend a lot of time saying how much we want to build a prosperous Britain, but I remind noble Lords that 60%-plus of trade unionists have a higher education degree or more. We are not dealing with the trade union movement of the 1920s. We are now dealing with a trade union movement on which Britain depends for its prosperity. The people who look after the skies, fly the planes, run the National Air Traffic Service, keep our nuclear power plants going and manage our railways are highly skilled people who are in trade unions because they see a trade union as being a way of defending their interests.

Sadly for the party opposite, some one-third of them do not see that party as being the one that will deliver their political future. But that is a good thing, because I do not believe that we want sectarian trade unions. I want people to join trade unions because they want to better the welfare of their country. Taking steps such as this will just alienate people. They are not the sort of steps where people are going to be happy and say, "Oh it's a really good thing".

As for minimum service levels, I live in Cambridge. We seem to have had lots of strikes this year, but there has never been one that prevented me getting here, because many of the unions have a harder job keeping their people out on strike than getting the original ballot to put them on strike because, when push comes to shove, a lot of them do not wish to lose the money that they lose. So I think we need to be realistic about this.

All we are doing here is heating up the atmosphere and making it harder for the reasonable people in trade unions to make this country work. Every trade union has within it a group of people who hate strikes; they regard them as being the last thing they want, because it is a sign of failure. So I say to the Government as a whole—because it is not just this Bill—for goodness' sake, make peace with organised labour; it is fundamentally on your side. It is much more on your side than some of the people who are contributing to the political parties of this nation and doing so for reasons which I would not say are particularly honourable. So please, Minister, send this back to the Commons and look for a compromise. I certainly will not vote for it to go again because I believe that the Commons must, in the end, have its primacy; that is why we have it. But it is quite legitimate to send this back and I ask that, when it gets there, our Ministers on our Front Bench say, "Look, there are very genuine reasons for this. Please try and give us some concessions".

Baroness Fox of Buckley (Non-Afl): My Lords, I will say very briefly I have no doubt that the Government do not want to lead to the sacking of workers through this Bill. However, when the Minister seeks to reassure us with the conclusion that it will be left to the discretion of the employer, I say to the Minister that those are dread words for anyone who is an employee of said employer if you are in dispute. As this Bill is about enforcing consequences, nay punishment, I do not care whether the Minister intends that people are sacked, I simply point out that that could be the consequence even against what the Government want. I hope the Government will reconsider this and bear in mind that it is to do with freedom, rather than coercing people: the freedom to go on strike and withdraw your labour, which is something that all sides of this House should support.

Lord Collins of Highbury (Lab): My Lords, I will speak to my Amendment D1 and address some of the issues the Minister mentioned. Of course, when I spoke in the earlier debate, I focused on the fact that, when it comes to minimum service levels during disputes, what works are voluntary agreements—and that is across the world. I repeat that what this Bill does is undermine co-operation and voluntary agreements.

The fact is that this Bill will place trade unions in the unacceptable position of being asked to ensure that members who vote for industrial action do not

take part in that action. It is a complete contradiction of their role. My amendment would remove the obligation on the union to take undefined reasonable steps. The Minister referred to the report from the Joint Committee on Human Rights, and I appreciate the Minister attempting to meet me and my noble friend to discuss what "reasonable steps" might mean. Sadly, the two-page government amendment that he gave me placed huge burdens on employers and unions—the complete opposite of what this Government say they want to achieve.

The simple fact, as I mentioned on Report, is that if a union is deemed not to have followed the legislation, it could mean that the strike is regarded as unlawful and that protections such as automatic unfair dismissal protection could be removed from all striking workers, including those not named in the notices. Again, if a union is deemed not to have followed the legislation, the strike could be regarded as unlawful, and that then opens up all kinds of consequences.

2.30 pm

The Minister says that the Bill must have consequences. The real consequence is to undermine the democratic right to strike and remove the immunities that trade unions have historically had to ensure that that right can be exercised. That is why this amendment is so important.

I agree that it is not usual to keep sending things back to the Commons, but it is important that MPs have the opportunity to consider what the human rights committee said: how can you have a law that does not set out the thing that unions are required to do? If this law is passed, unions will not know what they are required to do. This is absolutely outrageous.

The fundamental issue, and what makes this so much worse, is that lawful disputes must be organised in accordance with trade union legislation, which requires proper notice and information going to the employer—steps that no other European country requires their unions to take, but we do. If, after all those processes, a union fails to deliver a work notice after that legal strike has been approved, it will then jeopardise the whole dispute. It is simply not right and I intend to seek the opinion of the House on Motion D1.

Lord Fox (LD): My Lords, Motions C1 and D1, as so excellently set out by the noble Baroness, Lady O'Grady, and the noble Lord, Lord Collins, seek to add protections into the Bill for workers and unions. The Bill as drafted, as we have heard, could have serious consequences for employees and unions that fail to comply with work notices imposing minimum service levels.

To pick up the point that the noble Baroness, Lady Fox, made very well, it does not matter what Secretaries of State or Ministers have said once this law is out there. We move from the situation we have at the moment, under existing industrial action legislation, where those on an official lawful strike are automatically deemed to be unfairly dismissed if they are sacked for taking part. The Bill would disapply this protection for those named by an employer on a work notice. This is a gross infringement of individuals' freedom and that is why these Benches support Motions C1 and D1.

Lord Callanan (Con): My Lords, we have once again had a reasonably full debate on these matters, so the House will be relieved that I will keep my response brief. We have largely covered many of these points before, so we do not need to repeat them.

Briefly, in response to the noble Baroness, Lady O'Grady, I restate the view of the Government that this Bill is not about sacking workers, and nor is it about forced labour, which is a frankly ridiculous exaggeration. It simply equips employers to manage instances of non-compliance with a work notice. That is exactly the same situation as any other strike action that is not protected under existing legislation.

To be clear, under the original drafting of the Bill an employee who went on strike contrary to being named on a work notice would lose their automatic protection from unfair dismissal only provided that they were notified in advance of the requirement for them to work and that they must comply with the work notice. We expect employees to be told if they are required to work and, in that case, what work they are required to do. In such circumstances, it is reasonable for an employer to consider, if it wishes, disciplinary action if an individual none the less chooses to continue to strike, thereby putting the public at risk. It is at the discretion of the employer as to what, if any, disciplinary action is taken in these circumstances. In response to the noble Baroness, Lady Fox, the Government expect employers to be fair and reasonable and to take this action only where it is necessary.

Unions must have a role to play in minimum service levels, otherwise they would be able to induce people to strike as normal and take steps to undermine minimum service levels being achieved. That directly counters the objectives of this policy. The consequences of a union failing to play that role are consistent with any other failures by a union to comply with any other existing law.

In response to the noble Lord, Lord Collins, as I said in my opening speech the Government are willing to consider whether there is a case to provide further detail on what reasonable steps are, what this means for trade unions and how they might fulfil those obligations.

I stress to this House that Motions C1 and D1 would continue the prolonged and disproportionate impact of strike action on the public. With this legislation, the Government are taking a fair and proportionate approach to balance the fundamental ability of unions and their members to strike, on the one hand, with the need for the wider public to access some of the key services that they expect and pay for, on the other. I therefore hope that the noble Lord, Lord Collins, and the noble Baroness, Lady O'Grady, do not push their amendments. I commend the government Motions to the House.

Baroness O'Grady of Upper Holloway (Lab): I wish to test the opinion of the House.

2.46 pm

Division on Motion C1

Contents 180; Not-Contents 150.

Motion C1 agreed.

Division No. 4

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Allan of Hallam, L.
Alli, L.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Balfe, L.
Barker, B.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Boycott, B.
Bradley, L.
Bradshaw, L.
Brinton, B.
Brooke of Alverthorpe, L.
Browne of Ladyton, L.
Bryan of Partick, B.
Burt of Solihull, B.
Campbell-Savours, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Clancarty, E.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Crawley, B.
Davidson of Glen Clova, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Doocey, B.
Drake, B.
D'Souza, B.
Dubs, L.
Dykes, L.
Eatwell, L.
Falconer of Thoroton, L.
Faulkner of Worcester, L.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox of Buckley, B.
Fox, L.
Freyberg, L.
Gale, B.
German, L.
Giddens, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Grender, B.
Griffiths of Burry Port, L.
Grocott, L.
Hacking, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hogan-Howe, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Janke, B.
Jay of Paddington, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L. [Teller]
Kerr of Kinlochard, L.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Lennie, L.
Leong, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Ludford, B.
Mallalieu, B.
Manchester, Bp.
Mann, L.
Marks of Henley-on-Thames, L.
Maxton, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Monks, L.
Murphy of Torfaen, L.
Newby, L.
Nye, B.
Oates, L.
O'Grady of Upper Holloway, B.
Osamor, B.
Palmer of Childs Hill, L.
Pannick, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prentis of Leeds, L.
Prosser, B.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Ritchie of Downpatrick, B.
Rooker, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Skidelsky, L.
Smith of Basildon, B.
Smith of Newnham, B.
Somerset, D.
Stansgate, V.
Stephen, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Symons of Vernham Dean, B.
Taylor of Stevenage, B.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Turnberg, L.
Wallace of Saltaire, L.
Walmsley, B.
Walney, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watson of Wyre Forest, L.
Watts, L.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Winston, L.
Woodley, L.
Woolf, L.
Young of Old Scone, B.

NOT CONTENTS

Altrincham, L.
Arbuthnot of Edrom, L.
Ashcombe, L.
Ashton of Hyde, L.
Barran, B.
Bellamy, L.
Bellingham, L.
Benyon, L.
Berridge, B.
Bethell, L.
Blackwood of North Oxford, B.
Bray of Coln, B.
Brownlow of Shurlock Row, L.
Caine, L.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Colgrain, L.
Courtown, E. [Teller]
Craigavon, V.
Crathorne, L.
Cromwell, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Dundee, E.
Eaton, B.
Effingham, E.
Evans of Bowes Park, B.
Evans of Rainow, L.
Farmer, L.
Faulks, L.
Finn, B.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Frost, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hailsham, V.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Harlech, L.
Harrington of Watford, L.
Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hintze, L.
Hodgson of Abinger, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jackson of Peterborough, L.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Kamall, L.
Keen of Elie, L.
Kirkhope of Harrogate, L.
Lampard, B.
Lancaster of Kimbolton, L.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Leigh of Hurley, L.
Lingfield, L.
Livingston of Parkhead, L.
Lucas, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McInnes of Kilwinning, L.
Mendoza, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Morrissey, B.
Moylan, L.
Moynihan, L.
Moyo, B.
Murray of Blidworth, L.
Neville-Jones, B.
Neville-Rolfe, B.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Penn, B.
Popat, L.
Porter of Spalding, L.

Randall of Uxbridge, L.
Reay, L.
Redfern, B.
Risby, L.
Robathan, L.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Sewell of Sanderstead, L.
Sharpe of Epsom, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Stroud, B.
Sugg, B.
Swire, L.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Verdirame, L.
Vere of Norbiton, B.
Verma, B.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wrottesley, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

2.46 pm

Motion D

Moved by ***Lord Callanan***

That this House do not insist on its Amendments 5, 6 and 7, to which the Commons have disagreed for their Reasons 5A, 6A and 7A.

5A: *Because the amendment would remove the requirement for a union to take reasonable steps to ensure that members comply with a work notice in order for strike action to be protected, and this would reduce the impact of the legislation.*

6A: *Because it is consequential on Lords Amendment 5 to which the Commons disagree.*

7A: *Because it is consequential on Lords Amendment 5 to which the Commons disagree.*

Motion D1 (as an amendment to Motion D)

Moved by ***Lord Collins of Highbury***

At end insert "and do propose Amendment 5B as an amendment in lieu and Amendments 5C and 5D as consequential amendments—

5B: Page 5, line 11, leave out from "strike," to end of line 22 and insert "it is a matter for the union to determine what advice, if any, it gives to members of the union who are identified in the work notice, and any actions or inactions of the union in this regard shall not result in any tortious liability or the loss of any protection to which the union would otherwise be entitled pursuant to section 219."

5C: Page 6, leave out lines 19 and 20

5D: Page 7, line 28, leave out ", 234A and 234E" and insert "and234A""

2.47 pm

Division on Motion D1

Contents 179; Not-Contents 148.

Motion D1 agreed.

Division No. 5

CONTENTS

Addington, L.
Allan of Hallam, L.
Alli, L.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Balfe, L.
Barker, B.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Boycott, B.
Bradley, L.
Bradshaw, L.
Brinton, B.
Brooke of Alverthorpe, L.
Browne of Ladyton, L.
Bryan of Partick, B.
Burt of Solihull, B.
Campbell-Savours, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Clancarty, E.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Crawley, B.
Davidson of Glen Clova, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Doocey, B.
Drake, B.
D'Souza, B.
Dubs, L.
Dykes, L.
Eatwell, L.
Falconer of Thoroton, L.
Falkner of Margravine, B.
Faulkner of Worcester, L.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox of Buckley, B.
Fox, L.
Freyberg, L.
Gale, B.
German, L.
Giddens, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Grender, B.
Griffiths of Burry Port, L.
Grocott, L.
Hacking, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
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Haskel, L.
Haworth, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Janke, B.
Jay of Paddington, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L. [Teller]
Kerr of Kinlochard, L.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Lennie, L.
Leong, L.
Liddle, L.
Lipsey, L.
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Manchester, Bp.
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Maxton, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
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McNally, L.
McNicol of West Kilbride, L.
Merron, B.
Monks, L.
Murphy of Torfaen, L.
Newby, L.
Nye, B.
Oates, L.
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Osamor, B.
Palmer of Childs Hill, L.
Pannick, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prentis of Leeds, L.
Prosser, B.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Ritchie of Downpatrick, B.
Rooker, L.
Russell of Liverpool, L.
Sheehan, B.
Sherlock, B.
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Sikka, L.
Skidelsky, L.

Smith of Basildon, B.
Smith of Newnham, B.
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Stunell, L.
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Symons of Vernham Dean, B.
Taylor of Stevenage, B.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Turnberg, L.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Walmsley, B.
Walney, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watson of Wyre Forest, L.
Watts, L.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B. [Teller]
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Young of Old Scone, B.

NOT CONTENTS

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Berridge, B.
Bethell, L.
Blackwood of North Oxford, B.
Bray of Coln, B.
Brownlow of Shurlock Row, L.
Caine, L.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Colgrain, L.
Courtown, E. [Teller]
Craigavon, V.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Dundee, E.
Eaton, B.
Effingham, E.
Erroll, E.
Evans of Bowes Park, B.
Evans of Rainow, L.
Fairfax of Cameron, L.
Farmer, L.
Faulks, L.
Finn, B.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Frost, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hailsham, V.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Harlech, L.
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Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hogan-Howe, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jackson of Peterborough, L.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Kamall, L.
Keen of Elie, L.
Lampard, B.
Lancaster of Kimbolton, L.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Leigh of Hurley, L.
Lilley, L.
Lingfield, L.
Livingston of Parkhead, L.
Lucas, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McInnes of Kilwinning, L.
Mendoza, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Morrissey, B.
Moylan, L.
Moynihan, L.
Murray of Blidworth, L.
Neville-Jones, B.
Neville-Rolfe, B.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Penn, B.
Popat, L.
Porter of Spalding, L.
Randall of Uxbridge, L.
Reay, L.
Redfern, B.
Risby, L.
Robathan, L.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Sewell of Sanderstead, L.
Sharpe of Epsom, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Stroud, B.
Sugg, B.
Swire, L.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Verdirame, L.
Vere of Norbiton, B.
Verma, B.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wrottesley, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

Financial Services and Markets Bill

Report (2nd Day) (Continued)

2.58 pm

Clause 35: Engagement with statutory panels

Amendment 23

Moved by ***Baroness Penn***

23: Clause 35, page 49, line 40, at end insert—

"(ic) how it has complied with the statement of policy on panel appointments prepared under section 1RA in relation to the process for making appointments and the matters considered in determining who is appointed, and"

Member's explanatory statement

This amendment would ensure that the FCA includes in its annual report under paragraph 11 of Schedule 1ZA to the Financial Services and Markets Act 2000 a summary of how it has complied with the statement of policy on panel appointments in section 1RA as inserted into FSMA 2000 by Clause 43.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, I will speak to all the government amendments in this group, which are part of a package of changes that the Government have brought forward to support scrutiny and accountability of the financial services regulators.

This group of amendments focuses on supporting that work through independent analysis and scrutiny. The Government have listened to the view expressed by noble Lords that, for there to be effective scrutiny, it is critical that Parliament and others have access to accurate and impartial information to assist in assessing the performance of the regulators. The Government have carefully considered the proposal, put forward by my noble friend Lord Bridges in Grand Committee, to establish an office for financial regulatory accountability, or OFRA.

While the Government cannot accept the proposal to establish an OFRA, we have considered what more can be done to support the provision of independent analysis and scrutiny. FSMA already requires the regulators to consult on rule proposals and establish independent panels to act as a "critical friend" in the rule-making process. The regulators seek to engage the panels at an early stage of policy development and the panels voluntarily produce reports annually on their work.

Through the Bill, the Government are already enhancing the role of the statutory panels to support scrutiny and accountability. This includes Clause 43, which requires the regulators to publish a statement of policy on how they recruit members of their statutory panels. In addition, following the debate in Commons Committee the Government introduced Clause 44, which requires panel members to be external to the regulators and the Treasury.

However, the Government have heard the calls from across the House for further reassurance that the regulators' approach to panel recruitment will ensure that panel members are drawn from a diverse range of stakeholders and are sufficiently independent of the regulators. The Government have therefore introduced Amendments 23, 24, and 57, which will require the FCA, the PRA and the PSR, as part of their annual reports, to set out how recruitment to their panels has been consistent with their statements of policy.

The Bill also already introduces measures to strengthen the quality of the regulators' cost-benefit analysis, including the introduction of new, independent panels to support the production and development of CBA. It is important that CBA reflect as accurately as possible the costs and benefits to firms and consumers of implementing and following regulation. In assessing this, the experience of regulated firms themselves is vital.

The Government are grateful to my noble friend Lord Holmes for raising this issue in Grand Committee, and again through Amendments 44 and 47 today. The Government have reflected on that earlier debate and introduced Amendments 43 and 46, which will require both the FCA and the PRA to appoint at least two members to their CBA panels from authorised firms.

To ensure that Parliament has access to the important work of the panels, the Government have introduced Amendment 50, which provides a power for the Treasury to require the panels to produce annual reports. The Treasury will then be required to lay these reports before Parliament. I can confirm that, in the first instance, the Government will bring forward the necessary secondary legislation to require the CBA panels and the FCA Consumer Panel to publish an annual report to be laid before Parliament, reflecting the fact that the work of the Consumer Panel and the new CBA panels has been of keen interest to noble Lords in earlier debates. The Government will keep this under review, and the legislation will allow the Government to require other panels to publish annual reports and lay these before Parliament if they consider that appropriate in future.

Finally, Amendment 95 seeks to strengthen the independence of the complaints scheme through which anyone directly affected by how the regulators have arrived at their decisions can raise concerns. The scheme is overseen by the independent complaints commissioner, and Amendment 95 seeks to strengthen that independence further by making the Treasury responsible for the appointment of the commissioner, rather than the regulators.

Existing legislation requires the complaints commissioner to publish an annual report, including trends in complaints and recommendations for how the regulators can improve, which is to be laid before Parliament. Amendment 95 also enables the Treasury to direct the commissioner to include additional matters in the annual report. This will ensure that, where appropriate, the Government can make sure that the report covers issues which the Government consider are important to support scrutiny of. Amendment 95 also requires the regulators to include a summary of where they have disagreed with the commissioner's recommendations, and their reasons for doing so, in their response to the commissioner's annual report.

The Government have been clear that the regulators' increased responsibilities as a result of the Bill must be balanced with clear accountability, appropriate democratic input and transparent oversight. The package of amendments we are debating in this group contribute to that and support Parliament through additional independent analysis and scrutiny.

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to take part in the debate on this group of amendments. I will speak to Amendments 42, 44, 45 and 47 in my name, and offer my support for all the amendments in the name of my noble friend Lord Bridges, to which I have added my name. I will leave him to set them out.

I again thank my noble friend the Minister, and the Treasury officials and team, for all the meetings and work done during Committee, and between Committee and Report, on the question of regulator scrutiny and accountability. I thank her particularly for adopting my Amendments 44 and 47 on the membership of the panels. On my Amendments 42 and 45, could she say a little more about the evidence base the panel will use to come to its recommendations? Would it be valuable to publish any dissenting opinions on the matters to be published? This would be extremely helpful for Parliament to scrutinise the panel's decisions.

Finally, I ask a broader question around cost-benefit analysis. How will HMT and the regulator seek to ensure that the whole CBA process is meaningful, balanced, considers all majority and minority views, and does not fall into the potential trap of being a utilitarianist pursuit, which cost-benefit analysis can sometimes fall foul of?

That said, I thank again the Minister and the Treasury officials for their support for the amendments and for the discussions we had to come to this point, particularly on Amendments 44 and 47. I look forward to hearing in detail, particularly from my noble friend Lord Bridges and the Minister, the suggestion around the office for regulator accountability.

Baroness Hayter of Kentish Town (Lab): My Lords, I will briefly speak to Amendment 39, to which I have added my name, and government Amendment 50. I declare that I am on the board of the ABI. More relevantly, as the amendments are about the Consumer Panel, I speak as a former vice-chair of one of the statutory panels, the Financial Services Consumer Panel. It was some time ago and our focus then was on the FSA rather than the present FCA, but our role was essentially the same.

[Baroness Hayter of Kentish Town]

I was on the panel before the events of 2007 and 2008. As a panel, we were warning about the risk to consumers of interest-only mortgages, high loan to value mortgages—which were really unacceptable to us—and high mortgages relevant to income. It was just before the crash, but I am not pretending that we foresaw what would happen, even though we were worried about those things. We did not anticipate what was happening in the financial sector, starting with Fannie Mae and Freddie Mac and Northern Rock. Our concern was about how consumers would fare should house prices tumble and their incomes not rise—or, indeed, if interest rates should increase. We saw them as a very vulnerable group of consumers.

What is interesting and relevant to Amendments 39 and 50 is that our role was only to advise the then FSA. Sadly, it did not pay enough attention to what we were saying. It might have given it a little bit more on its dashboard had it done so. Had our report been to Parliament and the Treasury perhaps someone might have noticed and taken an interest. That lives in the "What if?" category of history, but it explains my support of any report made by people who represent consumers being brought to public attention.

Amendment 39, to which I have added my name, was so brilliantly written and argued for in the Commons by my honourable friend Nick Smith. I should say that a long time ago we worked together when he was the Labour Party agent in Holborn and St Pancras and I was the CLP chair. Quite a bit seems to have happened since then to both of us. I knew at the time that he was able to take an issue with which he was dealing and see the broader context, which is how we come to the amendment he has essentially developed and which is in front of the House today.

My honourable friend's interest was sparked when he was campaigning on behalf of members of the British Steel pension scheme—a scandal which led the NAO and the PAC to conclude that the FCA fell drastically short of its proper role in protecting consumers of financial services. His interest in that brings me to where we are today.

In my time, we have witnessed nearly £40 billion being paid in compensation to consumers who were mis-sold PPI, although the full costs were paid much later. Again, as consumer reps, we flagged up that this was not an appropriate product for most of those it was being sold to. Just occasionally, listening to consumers is good not just for them but for the industry and the whole economy. The voice of consumers is worth listening to.

The Government's Amendment 50 is very welcome. It requires the statutory panels—I am particularly interested in the Consumer Panel—to report to the Treasury and for their reports to be laid before Parliament. This will bring consumer interest to the heart of our public discourse, which will be good for all concerned. I thank the Government for their amendment on this. I am happy that this trumps, or at least meets, Amendment 39.

Baroness Bowles of Berkhamsted (LD): My Lords, in general I support all the amendments in this group. I am particularly pleased to see government Amendment 50 on the panel reports, assuming that they are implemented, and government Amendment 63 and its companions in the next group to require the regulators to state how they have taken account of parliamentary committee reports in rulemaking. I thank the Minister and the Bill team for covering some of the amendments that I tabled in Committee and similar ones from other noble Lords.

In this group, I have added my name to the amendments tabled by the noble Lord, Lord Bridges, which concern the setting up of an office for financial regulatory accountability, as I did in Committee. The noble Lord is unable to be here today and has asked me to give his apologies and to introduce his amendments.

There is no need to go through the debate that we had in Committee, except to say that since FSMA 2022 there has been a growth in voices calling for an independent oversight body, including the main industry bodies. Those bodies were somewhat disappointed by the Minister's suggestion in Committee that there was no industry support or suggestion along those lines, because they have made their views clear. I have received emails assuring me that they put points in the consultation responses as well as in published industry papers, although I acknowledge that those were early days and they may not have got as far as formulating ideas in the same way that I had in my consultation response.

There has also been a growth in support in this House. As has been said, if we had campaigned during the Brexit referendum that there would be this massive amount of power going to government, which would then be pressed onwards to unelected regulators, maybe some people would have had different thoughts, but that is water under the bridge. Going back to the amendments tabled by the noble Lord, Lord Bridges, the suite of amendments that cover the office for financial regulatory accountability—Amendments 64 to 72—includes some useful amendments from the noble Lord, Lord Eatwell, with which the noble Lord, Lord Bridges, agrees.

3.15 pm

Taken together, the amendments propose the set-up of the office, a Treasury charter for financial regulatory accountability, the main duties of the office and reports, and functional matters such as the right to information and data, membership and financial arrangements. It is of course a large group of amendments, and they will not be pressed to a vote, but the message that the noble Lord, Lord Bridges, particularly wished to give is that we said that this was needed and in due course government will regret that it was not set up. Down the line, as is so often the case, it will be, "We told you so".

The Government have made the changes to the panels. I acknowledge that it is an improvement that the statutory panels will have to report to Parliament, but that is not the same as having a wholly independent body. The panels are still too much within the web of the FCA. We have criticised them in the past for being captured. The proof of the pudding is perhaps yet to come in how they will be able to act, but they will not be the same as—if you like—an inquisitorial inquiry into specific things that are going on. They are much more in a consultee role, as far as I can see.

I will not disguise the fact that I wished to go further by in some way or another having a programme of independent thematic reviews, with which some other noble Lords agreed, such as the noble Baroness, Lady Noakes, who, unfortunately, cannot be in her place this week, as was explained on Tuesday by the noble Viscount, Lord Trenchard. I remain hopeful that, in the future, the Treasury will see fit to use the powers it has for thematic reviews, not least echoing the point made, on Tuesday as well as today, that the Government are introducing a great deal of emphasis and reporting around the new competitiveness and growth secondary objective—as the Minister said, because it is new, we need to check up on how it is going—but there are many other themes that are equally deserving of attention from time to time.

As I said, while reporting is being introduced around important matters, that is not the same as independent probing to find out about what is not reported. That independent probing, such as it is, will now be left to Parliament's committees. I appreciate the amendments that the Government have offered, which will be talked about in the next group, but it is clear that if we are to do the kind of scrutiny that gets anywhere near that which I was involved in in the European Parliament, it has to be funded so that the committees can have expert assistance and not just one clerk. That is particularly relevant when we look at the committees in this House of Lords. We already have history here of requests for a sub-committee being declined because there is competition for such things. That has to be fixed. It is no good us having legislation changed to enable us to do scrutiny and then us being impotent to do it, either because there is something else that is sexier for a committee or because there are not the resources to fund it properly.

Viscount Trenchard (Con): My Lords, I too thank my noble friend the Minister for again responding to the strong views expressed within your Lordships' House and for introducing the amendments that she has. I also agree with what my noble friend Lord Holmes said.

I also thank the noble Baroness, Lady Bowles of Berkhamsted, for the introduction of my noble friend Lord Bridges' Amendment 64 and the others in that group. I supported his amendments in Grand Committee and am pleased to do so again today. My noble friend set out with his usual clarity, as did the noble Baroness, why we should support these amendments, and I will not waste your Lordships' time in repeating them.

As my noble friend Lord Forsyth of Drumlean said in Committee, in order for Parliament to be able to hold the Treasury and the regulators to account, it is necessary to have an independent source of information. The proposed office would provide that. It is also welcome that the main duties of the office will include a duty to prioritise the analysis of regulations that restrict competition, negatively affect competitiveness and add compliance costs.

I do not believe that the new office would be a regulator of the regulators. Rather, it would be a means to ensure that the regulators really do get on with the job on which they are behind schedule—the promise made in 2016, in the general election manifesto and many times since that we will take advantage of our regulatory freedoms to eliminate or simplify those regulations which do not suit our markets and which place a disproportionate burden on market participants. We should not do this at the expense of standards, but to recast the rulebook in common law style will make it much easier for firms to maintain the high standards on which the regulators, the Treasury and noble Lords will all insist. The proposed office would greatly assist in ensuring that this will happen.

I also note—although we will discuss this in the next group—that, ideally, the office would deal principally with a Joint Committee of both Houses rather than two separate committees which might compete with each other. That would double the work and the costs that the office and the regulators would have to bear in carrying out their duties.

I believe the creation of an independent office such as the one proposed would be more helpful than the creation of a multiplicity of panels, which may be set up by statute but remain panels of the entities of which they form part. These are also duplicated between the two regulators, which doubles the cost and time taken by the regulators, and by the relevant committees of your Lordships' House, in discussing with them.

I hope my noble friend the Minister is prepared to consider further the creation of something which is truly independent of the regulators. I think we have too much legislation by statute to require entities to negotiate with panels of which they are a part, which conceptually I find rather odd in any case.

Lord Vaux of Harrowden (CB): My Lords, this is the first of two groups that seek to improve the level of parliamentary scrutiny and accountability. Arguably, I think the groups are the wrong way around from a logical point of view, but we are where we are. We had long debates on this in Committee, and it was clear that accountability and parliamentary scrutiny was probably the single biggest issue on which Members from across the House felt that the Bill fell woefully short, particularly given the huge amount that is being transferred to the responsibility of the regulators by the Bill.

We heard in Committee of the need for three legs to the whole process of scrutiny and accountability: reporting, independent analysis and the parliamentary accountability elements. This group is about the second leg—the independent analysis that will support the parliamentary scrutiny and accountability. The Government have listened, and that is welcome, but I am sure I am not alone in finding what they have proposed to be rather thin gruel.

The Government have introduced a number of amendments which enhance the role of the various policy panels, in particular the cost-benefit analysis panel. These are welcome, but I am afraid they really do not go far enough. Other noble Lords, especially the noble Lord, Lord Holmes of Richmond, have tabled further amendments to enhance and support the role of the panels. Again, that is very welcome but not, I think, sufficient. Despite these improvements, the panels remain appointed by the regulators and are not genuinely independent.

[Lord Vaux of Harrowden]

I remain strongly drawn to the amendments in the name of the noble Lord, Lord Bridges of Headley, introduced by the noble Baroness, Lady Bowles, to which I have added my name, to create a genuinely independent office for financial regulatory accountability. As I said, so much responsibility is being handed to the regulators that it must make sense to have a genuinely robust system of oversight over the regulators, not just responding to consultations about proposed changes to regulations that the Government have put into the Bill but a much more holistic oversight of the whole regulatory direction—something that deals with what the noble Viscount, Lord Trenchard, referred to as the multiplicity of panels. We need to draw this all together, and we need to be much more forward-looking about the direction of regulation, rather than backward-looking as to what is proposed.

This is such an important matter and such a huge volume of work that, if we are to scrutinise it effectively, we need to have something such as the proposed office for financial accountability to enable parliamentary committees and others to carry out the meaningful scrutiny. The noble Baroness, Lady Bowles, talked about the need for resources; we will come on to that in the next group, but she is quite right. This would really help because, if the independent information were available to the committees, it would save them the job of doing all the sifting and all the rest of it, and they would be able to concentrate on the bits that really matter.

Even with the amendments proposed by the Government, I do not think that we get anywhere near that real scrutiny. I am sorry to hear that the noble Lord, Lord Bridges, does not intend to push these amendments; I would have liked him to do so and would have supported him if he had. I hope that he will continue to use his influence as the chair of the Economic Affairs Committee to push for a similar approach.

Lord Eatwell (Lab): My Lords, I totally agree with what the noble Lord has just said and therefore I will not repeat his words. The office for financial regulatory accountability proposed by the noble Lord, Lord Bridges, would become an important part of the whole regulatory architecture in this country. The reason why I have proposed a couple of amendments—I am delighted to hear that the noble Lord, Lord Bridges, actually likes my amendments to his amendments—is to enhance the position of the office within that architecture.

We have to recognise that there will be virulent opposition to this in the Treasury. The Treasury's darkest day in recent years was the day that the Office for Budget Responsibility was established as an independent entity evaluating the performance of the economy. In the same way, having gone through that dark day, I can imagine the horror with which the Treasury observes the possibility of an independent entity evaluating the performance of regulators and the performance of the Treasury in its activity in guiding regulation. It is no surprise at all that we have what the noble Lord has quite appropriately called "thin gruel", instead of something that would be truly effective and would create both an independent assessor and a sounding board for the industry, consumers and others who have an interest to express in regulation to get their views on to the front line.

With my Amendments 67 and 72 I am again in slight opposition to the noble Viscount, Lord Trenchard, in the sense that I want to remove the lines in the amendment from the noble Lord, Lord Bridges, that specifically focus on the competition objective, because I do not want to second-guess what the office might do. The office could choose to travel over any part of the regulatory countryside. I regard my Amendment 72 as much more important because, as part of the architecture, the office should be funded through the levy in the same way as other parts of the regulatory system; the FCA, the Financial Services Compensation Scheme and so on are all financed via the standard levy on the industry. After all, this would be a trivial amount of money because—as has been pointed out—it would be only a relatively small entity. I am delighted that the noble Lord, Lord Bridges, liked my amendment to his amendment. I hope that he will be able to carry forward these proposals in the way that the noble Lord, Lord Vaux, suggested.

I will comment on Amendments 44 and 47 from the noble Lord, Lord Holmes, on the membership of panels at the FCA and the PRA. I support his view that placing practitioners on panels can have a very positive effect. I say this because I was an independent member of the board of the old Securities and Futures Authority, which was a practitioner-run regulatory authority with independent members, of which I was one. I was very impressed by the way that practitioners, when required to be regulators and placed in a regulatory role, assumed the role of regulators—they were not just representatives of their special interests. In fact, their special interests were left at the door; what came in with them was their specialist knowledge. I was sceptical when I first joined the board of the SFA but was won over by the performance of practitioners there. The proposal from the noble Lord, Lord Holmes, for practitioners will add to the regulatory effectiveness and knowledge of these panels.

3.30 pm

Lord Forsyth of Drumlean (Con): My Lords, I agree with everything that has been said by everyone in the debate so far and support all these amendments. I know that my noble friend Lord Bridges is mortified that he cannot be here today. We discussed the arguments and I supported them in Committee. The noble Lord, Lord Eatwell, is absolutely right about how this would have gone down in the Treasury. But I do not want to be grudging, given the amount of movement that the Minister has been able to achieve as a result of the debate, and the government amendments in this group will make a difference. We are dealing with the old "Quis custodiet ipsos custodes?" problem here. This group of amendments would have taken it a lot further forward, although the government amendments are helpful.

I do not want to anticipate the next debate, but the key question will be, as a number of noble Lords have pointed out, the resource that is made available. If it is not to be through a body such as the OBR, as my noble friend Lord Bridges was suggesting, it will have

to be provided by the parliamentary authorities. Whether that will work, and how effective it will be, will depend on the extent to which the Government give a clear indication that they would welcome it, although it would be a matter for the House. I suspect that would be helpful.

I thank the Minister for having listened to the debate in Committee, which we are in danger of repeating, and having taken some measures, if not going perhaps as far as my noble friend Lord Bridges's Amendment 64 would require. I also thank the noble Baroness, Lady Bowles, for so ably making the case for it.

Baroness Kramer (LD): My Lords, I will speak very briefly. It will be evident to the House by now that, as was true in Committee, essentially every speaker takes one position, other than the Government. Maybe one or two support the Government's position, but overwhelmingly there has been a common feeling across political ideologies and views. People from different perspectives, including those who are independent in this House, all share the same set of concerns.

We all particularly welcomed the amendment from the noble Lord, Lord Bridges, because it was a piece of completely new thinking—a way to break the conundrum very effectively by making sure that an office of financial regulatory accountability would change the game by providing Parliament and anyone else responsible for scrutiny and accountability with the analysis, information and data they need to do that effectively. I very much hope that the Government will take it away and consider it.

I join all other noble Lords in finding not only the amendments from the noble Lord, Lord Bridges, but those from the noble Lord, Lord Eatwell, and the others in this group extremely constructive. I vary slightly from the noble Lord, Lord Forsyth; I understand that the Government have moved a little in the amendments they have brought forward in this group but, my goodness, it is a baby step. This issue is far too big to be dealt with only by baby steps.

Baroness Chapman of Darlington (Lab): My Lords, I start by acknowledging the government amendments in this group, which make a number of changes that we think are sensible to ensure that the cost/benefit analysis panels have representatives from industry, to allow the Treasury to direct statutory panels to make annual reports and to make it the Treasury's job to appoint the complaints commissioner. These all represent steps in the right direction—even if, as the noble Baroness, Lady Kramer, has just said, they are not necessarily the giant leaps that some would hope to see.

We tabled Amendment 39 in this group, which would require the FCA consumer panel to produce annual reports on the regulator's fulfilment of its statutory consumer protection duties, and my noble friend Lady Hayter explained why we were backing this so firmly and spoke about the work with the British Steel pensioners, led by Nick Smith. She saved my blushes because Nick is my husband. I know that is not a declarable interest, but in the interests of transparency, I should probably let people know. We are pleased to see Amendment 50 and will not be pressing our Amendment 39 to a vote because of it. We believe that the government amendments go a significant way to addressing our concerns, so will not press our amendment, but that does not mean that we are convinced that consumer issues are by any means resolved, and we may have to revisit this topic in future.

The noble Baroness, Lady Bowles, helpfully introduced the amendments tabled by the noble Lord, Lord Bridges, and presented his proposal for an independent office for financial regulatory accountability. This is an interesting proposal but, when considering the Government's numerous concessions on scrutiny and accountability, at this point we would not be minded to support it at a Division, because the creation of such a body needs significant work and amounts to a fundamental change in how we regulate the sector. We do not want to pre-empt what the Minister has to say, but it was not a core focus of the future regulatory framework review, the outcomes of which the Bill seeks to implement.

The amendments from the noble Lord, Lord Bridges, raise important questions about the capacity of parliamentary committees to scrutinise the regulators' output, and this is something we have consistently raised with the Minister during our private discussions. When I say "we", that is very much the royal "we"—I obviously mean my noble friend Lord Tunnicliffe. I am sure that he is grateful to the Minister for the time she has given to him, to my noble friend Lord Livermore and to me in recent weeks. While we understand that it is for Parliament to make its own arrangements, both now and in future, we hope that the Government will acknowledge the substantial workload that committees will have and remain open-minded about whether and how the regulators can better facilitate Parliament's work.

I am especially grateful to my noble friend Lord Eatwell for his amendments to the OFRA texts, but I suppose this highlights in part the difficulties with supporting the detail of the proposal at a Division at this point. We see that many people agree with the principle, but there is probably a great deal more work to be done on the detail.

Baroness Penn (Con): My Lords, let me respond briefly to the points raised in the debate. I take first the amendments from my noble friend Lord Bridges, well introduced by the noble Baroness, Lady Bowles: Amendments 64 to 66 and 68 to 71, which would establish an office for financial regulatory accountability. As I said in my opening remarks, the Government agree that the provision of accurate and impartial information is extremely important for assisting Parliament in its important scrutiny role—and, indeed, others.

However, as the noble Baroness opposite acknowledged, creating a new body raises questions about how it would interact with the existing accountability structures and the balance of responsibilities between government, Parliament and independent regulators. As I noted in Grand Committee, the provisions for the establishment of the Office for Budget Responsibility referred to in this debate, on which OFRA is, at least in part, modelled, were brought forward in a stand-alone Bill after public consultation, where there was sufficient time to consider carefully its role and remit in advance.

[Baroness Penn]
The Government therefore do not think that establishing such a body through amendment to this Bill is the right way forward at this time. We acknowledge the strength of feeling and degree of consensus from different parts of the House on this idea, and noble Lords can rest assured that my noble friend Lord Bridges has made it very clear to me that this is not the last that the Government will be hearing from him on this subject.

I turn to the series of amendments from my noble friend Lord Holmes. Amendments 42 and 45 seek to make specific provision for the regulators' new CBA panels to be provided with the information required to perform their functions. The Government support the intention of these amendments but consider that the requirement in legislation to establish and maintain the panel already requires the regulator to ensure that the panel has the appropriate information and data to perform its functions.

My noble friend Lord Holmes asked how we could ensure high-quality cost-benefit analysis work. As he and the noble Lord, Lord Eatwell, noted, key to this is the composition of the panels. Panels with members who have diverse backgrounds, expertise and thought will be better placed to ensure that the FCA, the PRA and the PSR receive the most comprehensive appraisal of their policy. That is part of the reason why we have Clause 43, which requires the FCA and the PRA to set out a clear and transparent process for appointing members.

The FCA has also recognised the importance of improving diversity in the membership of its statutory panels and is undertaking a review to identify ways in which it can boost diversity so that the composition of panels appropriately reflects the range of practitioners and stakeholders in financial services. The Government welcome the work that is being done to move recruitment to the panels in this direction.

Amendments 41 and 45 seek to require the new CBA panels to make public their meeting materials and recommendations. The Government are not able to support this as it could undermine the confidentiality of the panels' contributions, which is crucial to their role as a critical friend to the regulators. The panels and the regulator will already be able to make public their deliberations and materials when they consider it appropriate, without undermining that confidentiality. Through an amendment in this group, the Government are taking a power to oblige the panels to publish their annual reports on their work and lay them before Parliament; we think that this will deliver sufficiently.

If a panel feels that its work or conclusions are being ignored by the regulator, or where there are issues on which the regulator and the panel differ, the Government expect that these will generally be resolved in the course of regular engagement between the regulator and the panel. However, as I have said, panels are able to express their views publicly, including through their annual reports or by publishing responses to consultations. For example, as it currently operates, the FCA's consumer panel regularly publishes its responses to the regulator's consultations.

I turn to Amendment 39 in the name of the noble Baroness, Lady Chapman. I am glad that she and the noble Baroness, Lady Hayter, feel that government Amendment 50 seeks the same outcome and should help to deliver that, although I note that, as the noble Baroness said, this is not the last word on consumer issues. However, at least when it comes to this particular focus, we have, I hope, delivered on that.

I know that not all noble Lords are satisfied with all of what the Government have put forward, but this is a step forward in the right direction. I expect to hear more from noble Lords in future on how the new system that we are establishing through this Bill is operating. For now, I commend the amendment.

Amendment 23 agreed.

Amendment 24

Moved by ***Baroness Penn***

24: Clause 35, page 50, line 6, at end insert—

"(za) after paragraph (ba) insert—

"(bb) how it has complied with the statement of policy on panel appointments prepared under section 2NA in relation to the process for making appointments and the matters considered in determining who is appointed,"

Member's explanatory statement

This amendment would ensure that the PRA includes in its annual report under paragraph 19 of Schedule 1ZB to the Financial Services and Markets Act 2000 a summary of how it has complied with the statement of policy on panel appointments in section 2NA as inserted into FSMA 2000 by Clause 43.

Amendment 24 agreed.

3.45 pm

Clause 36: Engagement with Parliamentary Committees

Amendment 25

Moved by ***Lord Forsyth of Drumlean***

25: Clause 36, page 50, line 30, leave out "chair of the Treasury Committee of the House of Commons" and insert "chairs of the relevant committees of Parliament"

Lord Forsyth of Drumlean (Con): My Lords, I fear that the Minister has stolen my clothes. In speaking to Amendments 25, 29, 31, 36 and 38, which are in my name, and in looking at the government amendments, including Amendment 30, I find myself saying that the government amendments are far more effective and do a better job. They achieve the same purpose, so I say a big thank you to the Minister for having taken this on board. But, just reflecting on the debate we have had, I say that this will work only if very substantial resources are made available to any committee, whether that is a committee of this House or a Joint Committee.

I entirely understand the autonomy of this House, and the Government are to be commended in respecting it. It is up to this House and the other place to decide what committees they will establish, but here we have a statutory opportunity for us to set up a Joint Committee of both Houses, which my noble friend Lord Trenchard has made strong representations for, or indeed another

committee of this House. But be in no doubt that any committee, whether joint or single, is going to have to look at the entire financial regulatory structure that has been taken from the European Union and given to the regulators. That is an enormous task. Although in this House we have many able people with expertise in this area, they have a finite amount of time and will absolutely need to be supported by people with technical expertise and knowledge, of the kind which the noble Baroness, Lady Bowles, would have been quite used to when she was in the European Parliament, so ably chairing a committee with similar responsibilities.

I very much support the government amendments and certainly do not feel the need to press any of mine to the vote in this House. I thank the Minister for having listened so carefully, and for the time that she and her officials have given to considering the arguments and points, which have been made pretty well with a degree of consensus across the Committee and the House. I beg to move.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): I must advise the House—this will not surprise the noble Lord, Lord Forsyth—that, if this amendment is agreed to, I will be unable to call Amendment 26.

Lord Eatwell (Lab): My Lords, I will comment briefly on the proposal which has emerged and is contained in Amendment 30 in the name of the noble Baroness, Lady Penn. It refers to the possibility of parliamentary committees being

"the Treasury Committee of the House of Commons … the Committee of the House of Lords"

or a Joint Committee. It says "and" but I presume that they would be mutually exclusive.

What is extraordinary about this amendment is that it contains a seriously bad idea which might lead to an extremely good outcome. The seriously bad idea is that the two committees, one in the other place and one here in the Lords, would be sitting at the same time and looking at the same material, requiring the same levels of expertise to advise them and the same commitment of time by the regulators—and, perhaps, producing divergent opinions which would lead to regulatory uncertainty. That is a very bad outcome. Why I fully support these amendments, however, is that the seriously bad idea will lead to an extremely good outcome, because people will see that the possibility of having a committee in the other place and a committee here doing the same thing, with all the negative connotations that I have just discussed, will lead to the rational outcome of a Joint Committee of both Houses.

Lord Vaux of Harrowden (CB): My Lords, I added my name to the amendments by the noble Lord, Lord Forsyth, so I thought I would stand and associate myself completely with his comments. I am delighted that the noble Baroness has effectively accepted the proposal. I will add my voice to say this: the subject of financial services is so huge, complex and important that it really requires a dedicated committee, whether a Joint Committee or committee of this House, not just to be part of, say, the Industry and Regulators Committee or the Economic Affairs Committee. It is much too big a subject to be covered by a committee that is not dedicated to the subject—and, if you have a dedicated committee, it must be properly resourced.

The Government rightly say that this is a matter for Parliament, but let us be realistic: they have huge influence on what happens there. I really hope that the Government and whoever the powers-that-be in this House who make these decisions are—even as the chair of the Finance Committee, this is still slightly opaque to me—are listening. This is so important. We must go ahead and must resource it properly.

Viscount Trenchard (Con): My Lords, I strongly agree with what my noble friend Lord Forsyth has said. I also put my name to his Amendment 25 and other amendments, and I think that he is entirely right.

I also thank the Minister for responding to the concerns expressed on all sides of the House and for recognising that the parliamentary oversight of the regulators may need to be done by a Joint Committee of both Houses. Like the noble Lord, Lord Eatwell, I had also noticed that the amendment says not "or" but "and", so there is a danger that there might be three committees doing the same thing, which would treble the work required by the regulator and, presumably, by the witnesses and experts who would be called to assist.

Also like the noble Lord, Lord Eatwell, I had the experience of serving on the 1999 Joint Committee of both Houses. This was established by resolution of your Lordships' House and another place separately but was effectively driven, or at least strongly encouraged, by the Government at the time. The noble Lord, Lord Burns, was a most effective chairman of the Joint Committee, and it was a pleasure to serve on it under his leadership. An added benefit of that Joint Committee was that it enabled noble Lords with an interest in financial services to work much more closely with Members of the other place and concentrated the expertise of both Houses in one committee. I agree with the noble Lord, Lord Eatwell, that it would be a seriously bad outcome were there to be two committees tasked with this huge job.

I also refer to what the noble Baroness, Lady Bowles, said. I was in Brussels at the same time that she was chairman of the ECON, the economic affairs committee of the European Parliament. I often visited the European Parliament at that time. I was struck by the large number of staff and the great facilities available to the committees to carry out their role of scrutinising the legislative proposals brought by the Commission. We have not experienced that burdensome type of work: in the past, under the European model, all our financial services regulation was in primary legislation. It will now be given to the regulators. We therefore need more resources than have been available to us to scrutinise and supervise them properly. This is really important.

Noble Lords should also be grateful to the Minister for restoring equality of involvement between another place and your Lordships' House. I thought that this was an unfortunate precedent for this type of legislation, particularly as many noble Lords have recent and continuing involvement with financial services firms. I look forward to the Minister's winding up.

Lord Carrington of Fulham (Con): My Lords, I will add my two cents' worth to encourage the establishment of a Joint Committee. I cannot believe that having a committee in each House of this Parliament would work effectively, for all the reasons that the noble Lord, Lord Eatwell, has suggested. The committees of this House and the other place are grossly underresourced in any case. We need a committee looking at something as detailed and complex as this which operates in the way that the Public Accounts Committee in the other place is set up, is dedicated to look at regulation and has the resourcing to double-guess not only the regulators but the advisers who advise them, so that it can stand up and come to its own opinion. In the small time that the members of those committees are able to dedicate to the committee, with all the other duties they have as parliamentarians, it should be able to analyse the evidence and come up with sensible, and inevitably highly technical, solutions.

I have some experience of the committees of both Houses. I chaired the Treasury Select Committee, donkey's years ago, and I served on the Economic Affairs Committee here for some time. Neither of those committees has the resources to be able to undertake this kind of task. It needs a completely new structure. Possibly the only model we can look at is the PAC, which has the National Audit Office advising it very closely. I am not suggesting we should set up a national audit office for regulation, although I know my noble friend Lord Bridges has suggested such a thing. We need to make sure that whatever is set up is properly resourced. I recognise that it is a matter for both Houses to decide how they do that, but we have to be absolutely clear that both Houses can do that only if the financial resources are made available by His Majesty's Treasury and the Government to enable them to do so. It will be a decision to be taken by His Majesty's Government and my noble friend the Minister to ensure that the resourcing is available.

It is a necessary step. However, it is a step and almost certainly not the conclusion. Once we have experience of regulating the regulators, we will be able to judge what other changes are needed to make sure that the regulation is effective and that financial markets in London are regulated in a way that is effective and convincing for participants in those markets on a global basis.

Baroness Kramer (LD): I congratulate the noble Lord, Lord Forsyth, on being so persuasive. The Government have listened carefully to his advice and have come forward with amendments that are identical in their outcome, even if perhaps they have found a more effective or legally acceptable way to set out the wording. I am sure that that is a step forward, but I want to join the chorus.

I had the privilege of being on the Parliamentary Commission on Banking Standards, which in effect was a Joint Committee of both Houses. It was very much driven by the Government, who set it up in the first place, and it was properly resourced. From the work we did over the two years, there are two lessons to be drawn. One is that, with that resource, you can genuinely produce the evidence and go into the detailed questioning that is necessary to expose what may not have been obvious from a superficial or limited inspection; in-depth was possible because of the resource that was made available. The second lesson is that as a Joint Committee—I am very attracted to Joint Committees, as they avoid the duplication that others have talked of—that commission received a degree of respect and significance that is probably not available to a committee that is the creature of one House but not the other. The joining together of the forces of both Houses was meaningful.

4 pm

We have a new situation: a regulator powerful now beyond any of its expectations because the powers that once lay in Europe, and which, as my noble friend Lady Bowles said, were subject to a great deal of expert and ongoing scrutiny on a regular basis, have now been removed to the regulators and the regulator faces no such scrutiny. That is not good for the regulator either. I hope very much that the lessons will be drawn.

Although I very much liked the suggestion from the noble Lord, Lord Bridges, of an office for financial regulatory accountability, in effect a resource such as that would need to sit underneath a committee, or committees, in order to make sure that they have the proper tools and information. I hope the Government will realise that what they have done is a step forward but that they will have to complete the process. We still have a deficit in scrutiny and accountability, and it is a deficit that matters.

Lord Livermore (Lab): My Lords, I join the noble Baroness, Lady Kramer, in congratulating the noble Lord, Lord Forsyth, on persuading the Government to adopt his amendments, albeit in a slightly different form. Given the amount of regulation coming forward in the months and years ahead, and with the expertise that your Lordships' House can offer, it was crucial that the Government extended the Commons-only provisions to include a relevant Lords committee, and we very much welcome these government amendments.

We are also pleased that the Minister included the option of a Joint Committee, as this future-proofs the legislation in the event that colleagues in both Houses feel—as does my noble friend Lord Eatwell—that such a body would provide a better form of scrutiny of the regulator's work. As my noble friend Lady Chapman mentioned in a previous group, and as the noble Lord, Lord Forsyth, stressed further, there are still significant outstanding questions about the level of staff resource and expertise that relevant parliamentary committees will be able to draw on. Although these questions cannot be adequately addressed through the Bill, these concessions will at least safeguard the role of your Lordships' House and enable conversations on resourcing to now proceed.

Baroness Penn (Con): My Lords, the amendments in this group focus on further formalising the role of parliamentary scrutiny of the regulators. The Government agree with noble Lords that effective parliamentary scrutiny, in particular through parliamentary committees, has a critical role to play in improving the quality of regulation, as the noble Baroness, Lady Kramer, said, and the performance of the regulators overall.

The Bill, through Clauses 36 and 47 and Schedule 7, seeks to ensure that the Treasury Select Committee has the information it needs to fulfil its role, by requiring the regulator to notify the TSC when publishing any relevant consultations. However, the Government have listened to the case made by noble Lords that the important role of this House was not adequately reflected by that approach. We have therefore tabled a series of amendments which will require the regulators to also notify the relevant Lords committee when they publish a consultation. These amendments will ensure parity between arrangements for the Commons and the Lords. They also provide that, if a Joint Committee is set up in future, the regulators will be required to notify it in the same way.

I am glad that my noble friend Lord Forsyth feels that these amendments fulfil the aims of his own; that is just as well, as his amendments in Committee and on Report formed the basis for the Government's approach—that is no coincidence. I am grateful to him for the work that he has put in on this issue and for the time that he has taken to discuss these matters with the Government.

I am also grateful to my noble friend Lord Bridges and the noble Lord, Lord Hollick, for their engagement as the chairs of the current committees in this House that look at the work of the financial services regulators. When I spoke with them, they explained how the EAC and the IRC currently split some responsibility for financial services policy, an example of which was their recent work on LDI, where the EAC focused on the work of the Bank of England and the PRA and the IRC focused on that of the FCA. The Government's amendments would allow for the two committees to continue with that approach if they wished to do so and for a different Lords committee to receive notifications of consultations from the FCA and the PRA. That structure would be for Parliament to decide.

I shall now pick up on the concern from noble Lords about having multiple committees looking at the same issues or the work of the same regulators. As I have said, the structure is a matter for Parliament, but currently we have the TSC in the Commons, and the Economic Affairs and the Industry and Regulators Committees in the Lords, which at the moment look at various aspects of the regulators' work without duplicating each other or creating unnecessary burdens. Given the scale of powers for the regulators being established in this Bill, there will be more than sufficient work to go round different committees, and they have already proven themselves able to co-ordinate their work so that it is not duplicative.

We have heard, given the scale of the task before us, that there is concern about the resource made available to those committees. Committee structures and their resourcing will remain a matter for Parliament to decide and I have noted that noble Lords agree that that is the right approach. However, the Government recognise that the new model for financial services regulation will require a step change in this House's scrutiny of the regulators and agree there must be suitable resource in place to support this. The Government will work with the usual channels and the House authorities in the appropriate way.

The Government have also heard concerns about the feedback loop when Parliament engages with regulatory proposals. There can often be a significant period of time between an initial consultation and the Bill's existing provisions regarding the regulators' engagement with parliamentary committees, and final rules being published. In particular, the Government recognise amendments tabled by the noble Baroness, Lady Bowles, in Grand Committee, seeking to require the regulators to explain how parliamentary recommendations have been considered. The Government have therefore tabled Amendments 61 to 63, which require the regulators, when publishing their final rules, to explain how they have considered representations from parliamentary committees. This will ensure that the regulators provide a public explanation of how the views of parliamentary committees have been considered at the point when rules are made. This complements the existing requirement in Clauses 36 and 47, and Schedule 7, for the regulators to respond in writing to the chairs of committees that have made representations. This will ensure not only that regulators appropriately consider Parliament's representations but that they set out publicly how they have done so.

The debates so far have shown that there is no single silver bullet to solve the problem of accountability. However, the Government are committed to creating an effective, overarching ecosystem in which the various different actors all play their roles in holding the independent regulators to account, ensuring high-quality financial services regulation in the UK. I am therefore grateful that my noble friend Lord Forsyth has said that he will withdraw his amendments, and I intend to move the Government's amendments, based on those amendments, when they are reached.

Lord Forsyth of Drumlean (Con): My Lords, I am most grateful to my noble friend the Minister for the way in which she has responded to this. I entirely agree with her point, as a former chairman of the Economic Affairs Committee, on the way in which we have worked with the Treasury Select Committee. I agree also with the noble Lord, Lord Eatwell, that it is carefully drafted and—who knows?—it may very well lead to both Houses deciding to have a Joint Committee, which would certainly be the best possible option. But that is obviously not a matter for me and I beg leave to withdraw my amendment.

Amendment 25 withdrawn.

Amendments 26 to 28

Moved by ***Baroness Penn***

26: Clause 36, page 50, line 30, leave out "the Treasury Committee of the House of Commons" and insert "each relevant Parliamentary Committee"

Member's explanatory statement

This amendment, together with the amendment at page 50, line 43, would extend the duties of the FCA to notify the Treasury Committee of the House of Commons so as to include a relevant Committee of the House of Lords and a Joint Committee.

27: Clause 36, page 50, line 40, at end insert—

"(4A) The reference in sub-paragraph (4)(a) to the FCA's operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB)."

Member's explanatory statement

This amendment would ensure that the references to the FCA's operational objectives in new paragraph 28 of Schedule 1ZA to the Financial Services and Markets Act 2000, as inserted by Clause 36 of the Bill, includes a reference to the competitiveness and growth objective, as inserted by Clause 24 of the Bill.

28: Clause 36, page 50, line 43, leave out "Treasury Committee of the House of Commons" and insert "relevant Parliamentary Committees"

Member's explanatory statement

See the explanatory statement for the amendment at page 50, line 30.

Amendments 26 to 28 agreed.

Amendment 29 not moved.

Amendment 30

Moved by ***Baroness Penn***

30: Clause 36, page 50, line 43, at end insert—

"(5A) References in this paragraph to the relevant Parliamentary Committees are references to—

(a) the Treasury Committee of the House of Commons,

(b) the Committee of the House of Lords which—

(i) is charged with responsibility by that House for the purposes of this paragraph, and

(ii) has notified the FCA that it is a relevant Parliamentary Committee for those purposes, and

(c) the Joint Committee of both Houses which—

(i) is charged with responsibility by those Houses for the purposes of this paragraph, and

(ii) has notified the FCA that it is a relevant Parliamentary Committee for those purposes."

Member's explanatory statement

See the explanatory statement for the amendment at page 50, line 30.

Amendment 30 agreed.

Amendments 31 and 32 not moved.

Amendments 33 to 35

Moved by ***Baroness Penn***

33: Clause 36, page 51, line 42, leave out "the Treasury Committee of the House of Commons" and insert "each relevant Parliamentary Committee"

Member's explanatory statement

This amendment, together with the amendment at page 52, line 11, would extend the duties of the PRA to notify the Treasury Committee of the House of Commons so as to include a relevant Committee of the House of Lords and a Joint Committee.

34: Clause 36, page 52, line 8, at end insert—

"(4A) The reference in sub-paragraph (4)(a) to the PRA's objectives includes, in their application as secondary objectives, the competition objective and the competitiveness and growth objective (see section 2H)."

Member's explanatory statement

This amendment would ensure that the references to the PRA's objectives in new paragraph 36 of Schedule 1ZB to the Financial Services and Markets Act 2000, as inserted by Clause 36 of the Bill, includes a reference to the competition objective and the competitiveness and growth objective, as inserted by Clause 24 of the Bill.

35: Clause 36, page 52, line 11, leave out "Treasury Committee of the House of Commons" and insert "relevant Parliamentary Committees"

Member's explanatory statement

See the explanatory statement for the amendment at page 51, line 42.

Amendments 33 to 35 agreed.

Amendment 36 not moved.

Amendment 37

Moved by ***Baroness Penn***

37: Clause 36, page 52, line 11, at end insert—

"(5A) References in this paragraph to the relevant Parliamentary Committees are references to—

(a) the Treasury Committee of the House of Commons,

(b) the Committee of the House of Lords which—

(i) is charged with responsibility by that House for the purposes of this paragraph, and

(ii) has notified the PRA that it is a relevant Parliamentary Committee for those purposes, and

(c) the Joint Committee of both Houses which—

(i) is charged with responsibility by those Houses for the purposes of this paragraph, and

(ii) has notified the PRA that it is a relevant Parliamentary Committee for those purposes."

Member's explanatory statement

See the explanatory statement for the amendment at page 51, line 42.

Amendment 37 agreed.

Amendments 38 to 41 not moved.

Clause 41: Cost Benefit Analysis Panels

Amendment 42 not moved.

Amendment 43

Moved by ***Baroness Penn***

43: Clause 41, page 57, line 29, at end insert—

"(7A) The FCA must appoint to the FCA Cost Benefit Analysis Panel at least two individuals who are employed by persons authorised for the purposes of this Act by the FCA, with each one being employed by a different person."

Member's explanatory statement

This amendment would impose a duty on the FCA to ensure that the FCA Cost Benefit Analysis Panel includes at least two members who are employed by persons authorised by the FCA under the Financial Services and Markets Act 2000.

Amendment 43 agreed.

Amendments 44 and 45 not moved.

Amendment 46

Moved by ***Baroness Penn***

46: Clause 41, page 58, line 22, at end insert—

"(7A) The PRA must appoint to the PRA Cost Benefit Analysis Panel at least two individuals who are employed by PRA-authorised persons, with each one being employed by a different person."

Member's explanatory statement

This amendment would impose a duty on the PRA to ensure that the PRA Cost Benefit Analysis Panel includes at least two members who are employed by PRA-authorised persons.

Amendment 46 agreed.

Amendments 47 and 48 not moved.

Amendment 49

Moved by ***Baroness Penn***

49: Clause 41, page 58, line 31, leave out "paragraph 10(1)" insert "paragraphs 10(1) and 10A"

Member's explanatory statement

This amendment ensures that the PRA Cost Benefit Analysis Panel (established under Clause 41) will be required to provide advice in relation to cost benefit analyses prepared for the purposes of consultation under the new paragraph 10A of Schedule 17A to FSMA 2000 (inserted by Clause 19).

Amendment 49 agreed.

Amendment 50

Moved by ***Baroness Penn***

50: After Clause 44, insert the following new Clause—

"Panel reports

(1) The Treasury may by regulations require specified statutory panels of the regulator to produce an annual report on their work and provide that report to the Treasury.

(2) Regulations under subsection (1) may make provision about the content of the annual report.

(3) The Treasury must lay a copy of each report prepared by virtue of this section before Parliament.

(4) Each specified statutory panel of the regulator must publish its reports prepared by virtue of this section in such manner as it thinks fit.

(5) In this section—

(a) "statutory panels of the regulator" means—

(i) in relation to the FCA, the panels mentioned in section 1RA(8) of FSMA 2000,

(ii) in relation to the PRA, the panels mentioned in section 2NA(8) of FSMA 2000, and

(iii) in relation to the Payment Systems Regulator, a panel established under section 103(3) of the Financial Services (Banking Reform) Act 2013;

(b) "specified" means specified in regulations under this section.

(6) Regulations under this section are subject to the negative procedure."

Member's explanatory statement

This new Clause would provide the Treasury with a power to make regulations to require annual reports to be produced by the statutory panels established under the Financial Services and Markets Act 2000 and the Financial Services (Banking Reform) Act 2013.

Amendment 50 agreed.

Amendment 51 had been withdrawn from the Marshalled List.

Clause 46: Bank of England: rule-making powers

Amendments 52 and 53

Moved by ***Baroness Penn***

52: Clause 46, page 67, line 14, at end insert—

"(1A) The statement must provide information about—

(a) how representations (including by a statutory panel) can be made to the Bank with respect to its review of rules under section 300I, and

(b) the arrangements to ensure that those representations are considered.

(1B) In this section "statutory panel" has the meaning given by section 1RB(5)."

Member's explanatory statement

This amendment would impose a duty on the Bank of England to ensure that the Bank includes in its statement of policy about the review of rules (required by section 300J of the Financial Services and Markets Act 2000, as inserted by Clause 46) information about how representations (including by statutory panels) can be made and considered.

53: Clause 46, page 68, line 23, at end insert "and

(ii) the Bank's secondary innovation objective (see section 30D(2) of the Bank of England Act 1998);"

Member's explanatory statement

This amendment would ensure that new section 300L of the Financial Services and Markets Act 2000, as inserted by Clause 46 of the Bill, includes, for the purposes of the Bank's report, a reference to the Bank's secondary innovation objective, as inserted by Clause 45 of the Bill.(The words after "advance" in section 300L(2)(a) would become sub- paragraph (i)).

Amendments 52 and 53 agreed.

Clause 47: Application of FSMA 2000 to FMI functions

Amendments 54 and 55

Moved by ***Baroness Penn***

54: Clause 47, page 72, line 32, at end insert "and the Bank's secondary innovation objective (see section 30D(2) of the Bank of England Act 1998)"

Member's explanatory statement

This amendment would ensure that new paragraph 33B of Schedule 17A to the Financial Services and Markets Act 2000, as inserted by Clause 47(14) of the Bill, includes a reference to the Bank's secondary innovation objective, as inserted into the Bank of England Act 1998 by Clause 45 of the Bill.

55: Clause 47, page 72, line 37, at end insert—

"(g) in sub-paragraph (5A)(b)(ii) and (c)(ii), the references to the PRA being notified were references to the Bank being notified."

Member's explanatory statement

This amendment would extend the duties of the Bank of England to notify the Treasury Committee of the House of Commons so as to include a relevant Committee of the House of Lords and a Joint Committee.

Amendments 54 and 55 agreed.

Schedule 7: Accountability of the Payment Systems Regulator

Amendments 56 to 60

Moved by ***Baroness Penn***

56: Schedule 7, page 152, line 44, at end insert—

"(1A) The statement must provide information about—

(a) how representations (including by a relevant panel) can be made to the Regulator with respect to its review of requirements under section 104B, and

(b) the arrangements to ensure that those representations are considered.

(1B) In this section "relevant panel" means—

(a) a panel of the Payment Systems Regulator established under section 103(3),

(b) a panel of the FCA mentioned in section 1RA(8) of FSMA 2000, and

(c) a panel of the PRA mentioned in section 2NA(8) of FSMA 2000."

Member's explanatory statement

This amendment would impose a duty on the Payment Systems Regulator to ensure that the Regulator includes in its statement of policy about the review of requirements (required by section 104B of the Financial Services (Banking Reform) Act 2013, as inserted by paragraph 7 of Schedule 7 to the Bill) information about how representations (including by statutory panels) can be made and considered.

57: Schedule 7, page 157, line 30, at end insert—

"(bb) set out how the Regulator has complied with the statement of policy on panel appointments prepared under section 104I in relation to the process for making appointments and the matters considered in determining who is appointed,"

Member's explanatory statement

This amendment would ensure that the Payment Systems Regulator includes in its annual report under paragraph 7 of Schedule 4 to the Financial Services (Banking Reform) Act 2013 a summary of how it has complied with the statement of policy on panel appointments in section 104I as inserted into the 2013 Act by paragraph 7 of Schedule 7.

58: Schedule 7, page 158, line 36, leave out "the Treasury Committee of the House of Commons" and insert "each relevant Parliamentary Committee"

Member's explanatory statement

This amendment, together with the amendment at page 159, line 5, would extend the duties of the Payment Systems Regulator to notify the Treasury Committee of the House of Commons so as to include a relevant Committee of the House of Lords and a Joint Committee.

59: Schedule 7, page 159, line 5, leave out "Treasury Committee of the House of Commons" and insert "relevant Parliamentary Committees"

Member's explanatory statement

See the explanatory statement for the amendment at page 158, line 36.

60: Schedule 7, page 159, line 6, at end insert—

"(5A) References in this paragraph to the relevant Parliamentary Committees are references to—

(a) the Treasury Committee of the House of Commons,

(b) the Committee of the House of Lords which—

(i) is charged with responsibility by that House for the purposes of this paragraph, and

(ii) has notified the Regulator that it is a relevant Parliamentary Committee for those purposes, and

(c) the Joint Committee of both Houses which—

(i) is charged with responsibility by those Houses for the purposes of this paragraph, and

(ii) has notified the Regulator that it is a relevant Parliamentary Committee for those purposes."

Member's explanatory statement

See the explanatory statement for the amendment at page 158, line 36.

Amendments 56 to 60 agreed.

Clause 50: Consultation on rules

Amendments 61 to 63

Moved by ***Baroness Penn***

61: Clause 50, page 74, line 9, at end insert—

"(4D) Where representations are made to the FCA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the FCA's account mentioned in subsection (4) must also describe how the FCA has considered the representations made by that Committee in making the proposed rules.""

Member's explanatory statement

This amendment would impose a duty on the FCA to include in the account that the FCA must publish under section 138I(4) of the Financial Services and Markets Act 2000 details about representations made by Parliamentary Committees.

62: Clause 50, page 74, line 23, at end insert—

"(4D) Where representations are made to the PRA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the PRA's account mentioned in subsection (4) must also describe how the PRA has considered the representations made by that Committee in making the proposed rules.""

Member's explanatory statement

This amendment would impose a duty on the PRA to include in the account that the PRA must publish under section 138J(4) of the Financial Services and Markets Act 2000 details about representations made by Parliamentary Committees.

63: Clause 50, page 74, line 36, at end insert—

"(5D) Where representations are made to the Payment Systems Regulator by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (3)(d), the Payment Systems Regulator's account mentioned in subsection (5) must also describe how the Payment Systems Regulator has considered the representations made by that Committee in making the proposed requirement."

Member's explanatory statement

This amendment would impose a duty on the Payment Systems Regulator to include in the account that the Payment Systems Regulator must publish under section 104(5) of the Financial Services (Banking Reform) Act 2013 details about representations made by Parliamentary Committees.

Amendments 61 to 63 agreed.

Amendments 64 to 72 not moved.

Schedule 8: Cash access services

Amendment 73

Moved by ***Baroness Penn***

73: Schedule 8, page 160, line 17, after "service"" insert ", "free cash access service""

Member's explanatory statement

This amendment is consequential on the amendment at page 160, line 29.

Baroness Penn (Con): My Lords, the Government recognises that, while digital payments are increasingly present in our society, cash continues to play a vital role in many people's everyday lives. That is why this Bill puts in place a framework to protect the ability of people and businesses across the UK to access cash withdrawal and deposit facilities for the first time in UK law and introduces new powers for the FCA.

It is important to recognise that, on the whole, cash access in the UK remains comprehensive. Industry is already funding a range of new and innovative services to support communities and ensure that they have

easy access to cash. To date, LINK has recommended new shared cash access services in over 100 communities across the UK. This includes the introduction of over 50 shared banking hubs. While the opening of these facilities is taking time to get right, I welcome the recent openings of new hubs in Troon in Ayrshire and Acton in west London. I also understand that the pace of delivery is due to accelerate over the coming months.

4.15 pm

Having said that, I recognise the strength of feeling on this matter in both Houses, in particular on ensuring free access to cash for individuals, as demonstrated by Amendment 81 in the name of my noble friend Lady Altmann. Over 1.2 billion cash withdrawals in the UK last year were from free-to-use cash machines and we have heard impassioned contributions highlighting the reliance on cash by some of the most vulnerable in our society. Therefore, the Government have tabled amendments which will require the FCA to seek to ensure reasonable provision of free cash access services for current accounts of personal customers. This forms part of the regulator's wider duty of seeking to ensure reasonable access to cash.

The Bill already requires the Government to publish a statement of their policies on access to cash, which the regulator must have regard to when determining reasonable access and informing the use of its powers. These amendments also require the Government to include their policy on free cash access services for current accounts of personal customers in that statement.

I trust that the Government will have the support of noble Lords in making these significant amendments to further strengthen the Bill in relation to access to cash and within the context of the related topics we will discuss today. I therefore beg to move Amendment 73.

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to take part in this debate and I will speak to Amendments 82 to 85 and 110 and 111 in my name. I start by thanking the Minister and Treasury officials for all the work they have done around access to cash and, indeed, the moves they have taken. It is great testament to all those organisations which have campaigned on cash for so many years, and will make a real difference to people up and down the country.

Without in any sense pre-empting the work that the regulator and others will do on this, I ask my noble friend the Minister to set out some thoughts on what reasonable access might look like. What are the Government expecting? Allied to that, while I join her in welcoming the increase in the number of shared banking hubs that are coming online, what do the Government see as a reasonable number of hubs to be open by the end of this year?

My Amendment 82 seeks to go further and is really predicated on a very simple belief: what point is access to cash if there are no places to spend it? What currency does cash have in those circumstances? The start point would be really to have all businesses with a physical presence mandated to accept cash. Stepping back from that, as my amendment does, does my noble friend the Minister not agree that any government service, be it central or local, and any public service, particularly that which involves a payment, must accept cash? Similarly, any third party acting on behalf of national or local government in performing a public service should be mandated to accept cash. Does my noble friend see it as reasonable for any business, private though it may be, with a turnover of £100,000—as set out in my Amendment 82—to have to continue to accept cash while we move and transition towards a more digital financial services system?

Amendment 83 seeks to make our cash network part of the critical national infrastructure. There are two key reasons for this. First, it would enable cash usage, enable the economy to work and enable financial inclusion. Secondly, does my noble friend the Minister not agree that, when one looks at the current geopolitical state of the world, making the cash network part of the critical national infrastructure would provide a good second and third line of resilience if the digital systems should go down or suffer an attack? As things stand, that is not beyond the realms of possibility.

Amendment 84 addresses banking services specifically and would enable the Treasury to determine that such services must be available on a high street with a certain number of shops and premises. Banking services would include withdrawals and deposits and must cover both individuals and businesses. Indeed, as the amendment sets out, if there is a last branch standing, that branch should not be allowed to close unless alternative provisions are already in place, such as a banking hub.

Amendment 85 addresses the accessibility of financial services and products. This is differentiated from access to financial services, although there are some obvious overlaps. The amendment points out the difficulties with the accessibility of certain financial services and products. The obvious and most easy example to understand is card payment machines where the buttons are removed and there is merely a flat screen. They are completely inaccessible for me and thousands of people.

In Committee, my noble friend the Minister talked about discussions between the Government, the RNIB and other organisations. Can she update the House on where those discussions have got to? How will the Government ensure that, whether one is paying for a meal or a bicycle, the means of payment is accessible for all those seeking to use it?

Amendment 110 addresses the need for a review of access to digital financial services and products. I raised this in Committee and do so again because it seems highly necessary and a logical next step from the Access to Cash Review, which was completed in 2019. Although I am a staunch supporter of cash and people's access to and acceptance of it, the future is digital. However, we must ensure not only that that future is accessible but, equally crucially, that the transition to it is accessible. Does my noble friend the Minister agree that further work by HMT in this area would not only make sense following the Access to Cash Review but do a great service in addressing issues which will be felt sharply if we do not address them at this stage?

I will give just one brief example. I could have on my handheld device the best mobile banking app ever created, but if I do not have the digital skills and the

[Lord Holmes of Richmond]
confidence to use that app, no payment will be made. Similarly, if, in those same circumstances, I have those digital skills but no mobile connectivity or broadband, that payment will not be made. We need this review of access to digital financial services, before these problems become acute and they affect not only people's finances but all elements of their lives.

Finally, Amendment 111 addresses the issue of the last branch standing in any particular location but seeks to push a bit further. If there is a remaining branch on a town high street, that is a good thing. However, if that branch does not offer a full banking service, particularly to small and medium-sized businesses and micro-businesses, and if it does not serve more than 20% of the local community, does my noble friend the Minister not agree that we should change the regulations to enable a shared banking hub to be opened in that area?

I look forward to my noble friend the Minister's response. I hope she will respond fully to all my amendments, but particularly to Amendment 111. A very simple change between Report and Third Reading would make such a potential difference for many of the areas in those circumstances.

Baroness Kramer (LD): My Lords, I will be exceedingly brief because we took, as we should have, a lot of time on this issue during Committee. We have also discussed financial exclusion already. Once again, I am channelling my noble friend Lady Tyler of Enfield, who wishes that she were not ill and could be here today. I will focus my remarks on Amendment 80 in the name of my noble friend Lady Tyler, and which is signed by me.

The numbers that have been provided to any parliamentarian of interest by LINK on the rate of bank branch closures are frankly scary. The number of bank branches is now below 5,000 across the country and is expected to fall to around 1,000 in the next few years. Amendment 80 gives the FCA power, where certain conditions are met, to direct the establishment of a banking hub. Banking hubs are the solution proposed by the banking industry, in association with LINK, to provide a physical banking facility which is essentially a collective of the relevant banks and the Post Office, in locations where bank branches have disappeared. I am very sympathetic to the idea that the noble Lord, Lord Holmes, proposed, where a branch in name but not in practice because its services are so limited would qualify as well.

LINK has recommended 100 of these shared hubs, but so far only six have opened. Quite often, that is because of the resistance of the banking institutions, which, in effect under the current scheme, have a veto on whether these hubs happen. The gap is yawning and the FCA needs to step in. Because this was raised in Committee, I say that anyone who thinks that online banking is a substitute for face-to-face banking can live only a very vanilla life. I found out the hard way that the systems online and the telephone constantly get it wrong. Often, the only way to resolve a complex issue is face to face. As others have said, including the noble Lord, Lord Holmes, the 5 million people who find digital difficult are even more disadvantaged.

I seriously hope that the Government will accept Amendment 80 because it is the missing mechanism to deliver the project—the Government themselves back the project—of banking hubs and shared banking. To get it delivered we need Amendment 80 to put powers into the hands of the FCA to make sure that it happens. This is a project, I repeat, that the Government themselves have sponsored, in a sense. We need the enablement and delivery to take place rapidly.

Baroness Chapman of Darlington (Lab): My Lords, I congratulate the noble Lord, Lord Holmes, on tabling his amendments and his tenacity in raising these issues on a very regular basis. He is absolutely right to do so. We were pleased to table Amendment 81 in Committee, and we re-signed it when retabled by the noble Baroness, Lady Altmann, on Report.

We strongly welcome the Government finally bringing forward meaningful protections for cash access. Just in case the noble Lord, Lord Tunnicliffe, starts to doubt his powers of persuasion, we wonder if the Minister could explain why the noble Lord did not seem to have the magic touch when it came to getting him to accept it. The position seems to have changed somewhat now.

It is good that organisations such as Which? have welcomed this concession, noting that cash continues to be hugely important for many households, particularly those which need to keep track of their spending during the cost of living crisis. People should not have to pay fees to access their own money. While we welcomed the Government's previous move to offer cashback at some retailers without a purchase, cashback services are not available anywhere near widely enough for that to be a substitute.

We welcome the progress made, but there is obviously a lot more to be done. An increasing number of people are finding themselves with little or no access to face-to-face banking services. While the banking hub initiative has promise, its coverage is too limited for it to be anything like a viable solution at this point. We welcome the fact that the noble Lord, Lord Holmes, has tabled several amendments on this. We hope that the Minister is able to go beyond previous assurances, and we look forward to her reply.

4.30 pm

Baroness Penn (Con): My Lords, I will first address the point made by the noble Baroness, Lady Chapman, on the change between Committee and Report. On a whole host of areas, we have reflected on the discussions we had in Committee. The Government have taken the time to do that work and were able to bring forward amendments at this stage, whereas we simply were not able to bring forward amendments on a whole host of topics in Committee. I do not think it is anything to do with differing powers of persuasion between the different stages.

My noble friend Lord Holmes has many of the amendments in this group. I am glad that he also welcomes the Government's amendments in this area. He asked what reasonable access would look like; that further detail will be for the policy statement. It is important to recognise that currently, on the whole,

cash access remains extensive. According to FCA analysis, over 96% of the population are within 2 kilometres of a free-to-use cash access point.

Turning to my noble friend's amendments, I too acknowledge his persistent campaigning on the provision of access to cash across successive financial services Bills. However, the Government are not able to support the approach in Amendment 82. We do not consider it necessary or appropriate to place additional requirements on organisations to accept cash across the public and private sectors. This should be a decision for individual organisations as they decide how best to operate. What I can say to my noble friend is that the provisions in the Bill do not reflect access just to withdrawal facilities but to deposit facilities, which will support organisations to continue to accept cash.

On Amendment 83, again, this is an issue that my noble friend has raised previously. The designation of critical national infrastructure is sensitive and is not made public. I reassure my noble friend and all noble Lords that appropriate arrangements are in place to ensure the resilience of the UK's financial system, including cash provision.

I turn to Amendment 80 from the noble Baroness, Lady Tyler, spoken to by the noble Baroness, Lady Kramer, and Amendments 84 and 111 from my noble friend Lord Holmes, which all relate to access to banking services. I acknowledge the strength of feeling on this topic and the perspectives that have been raised. As people acknowledge, it is clear that the nature of banking is changing, and the long-term trend is moving towards greater use of digital and telephone banking services over traditional branches. Of course, it is vital that those customers who rely on physical services are not left behind, which is why the FCA is taking an assertive approach to its guidance for firms on this issue.

Where firms are closing branches, the regulator expects them to put in place appropriate alternatives where reasonable. If firms fall short, the FCA can and will ask for closures to be paused or for other options to be put in place. Beyond digital access, several banks are rolling out community outreach initiatives when they close branches, maintaining key physical services in local libraries, shopping centres and roaming vans. Over 99% of personal and 95% of business customers can, and do, do their everyday banking at 11,500 Post Office branches.

On banking hubs, determining their location and the range of services provided is a commercial decision. My noble friend asked what would be a reasonable number of hubs to have open by the end of the year. As I said earlier, over 50 have been announced. We expect delivery on that commitment to pick up as this year progresses. Furthermore, since the last debate, several firms have made the commitment that, where a banking hub has been announced as a result of their branch closure, they will not close that branch until the hub is open, so we have a double lock of improving the speed of delivery but not losing services until we see improvement in the pace of delivery. That is welcome and shows that the industry is taking this issue seriously.

Regarding accessibility in my noble friend Lord Holmes's Amendments 85 and 110, I absolutely share his ambition for financial services to be accessible to all. He spoke about some of the work that we discussed in Committee and asked for an update. Perhaps I can write to him after today's debate with an update on that work.

I turn to the amendment on a review of digital inclusivity. Many financial services firms also support access to digital services through initiatives to distribute devices, teach skills, or facilitate support networks. The Government recognise that we need to be proactive in this space, and there is a range of work under way to ensure that financial services adapt to the needs of consumers in the digital age and to address the issues that my noble friend rightly raised. These include driving further progress on access to digital infrastructure, connectivity and skills to fully benefit from this transition.

I am grateful to my noble friend for his constructive challenge of the Government's approach to this important issue. I assure him and all noble Lords that the Treasury will continue to consider where there may be gaps in the Government's approach and ensure that no one is left behind as we evolve into new ways of managing our money. An example of this is that the Government recently held a call for evidence on the Payment Services Regulations, which invited views on this policy. We are currently considering responses, including where these are linked to financial inclusion.

I hope that, although the Government are not able to support the other amendments in this group, I have reassured noble Lords that the Government consider these issues very seriously through this work. I hope that noble Lords do not move their amendments when they are reached.

Amendment 73 agreed.

Amendments 74 to 77

Moved by ***Baroness Penn***

74: Schedule 8, page 160, line 29, at end insert—

"(3A) A "free cash access service" is a cash access service that is—

(a) a free of charge service which enables cash to be placed on a relevant personal current account, or

(b) a free of charge service which enables cash to be withdrawn from a relevant personal current account."

Member's explanatory statement

This amendment would provide a definition of "free cash access service" in new Part 8B of the Financial Services and Markets Act 2000, as inserted by paragraph 1 of Schedule 8 to the Bill.

75: Schedule 8, page 161, line 4, at end insert ", "relevant personal current account""

Member's explanatory statement

This amendment is consequential on the amendment at page 161, line 15.

76: Schedule 8, page 161, line 15, at end insert—

"(3A) A "relevant personal current account" means a relevant current account held by one or more individuals for purposes outside any business, trade, craft or profession of that individual or those individuals."

Member's explanatory statement

This amendment would provide a definition of "relevant personal current account" in new Part 8B of the Financial Services and Markets Act 2000, as inserted by paragraph 1 of Schedule 8 to the Bill.

77: Schedule 8, page 161, line 37, at end insert—

"(2A) The reference to cash access services in subsection (2) includes free cash access services."

Member's explanatory statement

This amendment would clarify that the cash access policy statement that the Treasury must prepare under new Part 8B of the Financial Services and Markets Act 2000, as inserted by paragraph 1 of Schedule 8 to the Bill, includes policies concerning free cash access services.

Amendments 74 to 77 agreed.

Amendment 78 not moved.

Amendment 79

Moved by ***Baroness Penn***

79: Schedule 8, page 164, line 7, at end insert—

"(1A) In this section references to cash access services include references to free cash access services."

Member's explanatory statement

This amendment would ensure that the FCA's duty, in new section 131U of the Financial Services and Markets Act 2000, as inserted by paragraph 1 of Schedule 8 to the Bill, of seeking to ensure reasonable provision of cash access services includes seeking to ensure reasonable provision of free cash access services.

Amendment 79 agreed.

Amendments 80 to 85 not moved.

Schedule 11: Central counterparties

Amendment 86

Moved by ***Baroness Penn***

86: Schedule 11, page 257, line 7, at end insert—

"(2A) Regulations under this paragraph may apply to partial property transfers generally or only to partial property transfers—

(a) of a specified kind, or

(b) made or applying in specified circumstances."

Member's explanatory statement

This amendment would provide consistency with other parts of Schedule 11 on Central counterparties by clarifying that regulations made under paragraph 75 (restriction of partial transfers) may apply to transfers generally or only to transfers of a particular kind or in particular circumstances, as specified in the regulations.

Amendment 86 agreed.

Schedule 12: Write-down orders

Amendments 87 to 89

Moved by ***Baroness Penn***

87: Schedule 12, page 311, line 11, at end insert—

"(5A) A liability, to the extent of its reduction by a write-down order under this section, is to be treated as extinguished unless and until revived by section 377H or 377I."

Member's explanatory statement

This amendment would clarify the effect of a write-down order under section 377A (to be inserted into FSMA 2000 by paragraph 1 of Schedule 12 to the Bill) on the treatment of liabilities reduced by the order.

88: Schedule 12, page 314, line 40, leave out "termination" and insert "revocation"

Member's explanatory statement

This amendment would correct a reference in the table of termination events in the context of describing when a write-down order regarding the value of an insurer's liabilities ceases to have effect.

89: Schedule 12, page 324, line 30, leave out "reduced value" and insert "reduction in value"

Member's explanatory statement

This amendment would provide a drafting clarification to ensure that the effect of a write- down order is more clearly reflected in this provision concerning compensation to policyholders where insurers are in financial difficulties.

Amendments 87 to 89 agreed.

Amendment 90

Moved by ***Lord Harlech***

90: After Clause 59, insert the following new Clause—

"The Ombudsman scheme

(1) FSMA 2000 is amended as follows.

(2) In section 429 (Parliamentary control of statutory instruments), in subsection (2B) after paragraph (c) insert—

"(d) provision made under paragraph 15(3) of Schedule 17."

(3) Paragraph 15 of Schedule 17 (the Ombudsman scheme: power of scheme operator to charge fees) is amended as set out in subsections (4) and (5).

(4) In sub-paragraph (1) after "respondent" insert "or other persons of a specified description".

(5) After sub-paragraph (2) insert—

"(3) The reference in sub-paragraph (1) to persons of a specified description is a reference to such descriptions of persons as may be specified in regulations made by the Treasury.

(4) The power conferred by sub-paragraph (3) to specify descriptions of persons may not be exercised so as to provide for eligible complainants to fall within a specified description of persons.

(5) The reference in sub-paragraph (4) to "eligible complainants" is a reference to complainants who are eligible in relation to the compulsory or voluntary jurisdiction of the ombudsman scheme (see section 226(6) and 227(7)).

(6) Before making regulations under sub-paragraph (3) the Treasury must consult the scheme operator.""

Member's explanatory statement

This new Clause would enable the scheme operator of the Financial Ombudsman Scheme to make rules requiring persons of a description specified in regulations, other than eligible complainants, to pay fees in connection with the investigation of complaints (in addition to the existing power to impose fees on persons who are the subject of complaints).

Lord Harlech (Con): My Lords, the Financial Ombudsman Service was established through the Financial Services and Markets Act 2000 to provide for the proportionate, prompt and informal resolution of disputes between consumers and financial services firms. The FOS offers a cost-free service for consumers, which is fundamental to its purpose.

The FOS is funded by a combination of an annual levy on regulated firms and case fees. Under the current framework, it is responsible for setting its case fee rules and can charge case fees only to firms that are subject to complaints. This means that claims management companies—or CMCs—and other professional representatives cannot be charged for bringing cases to the FOS. The Government heard the concerns raised by noble Lords, particularly by my noble friend

Lady Noakes during Grand Committee, about CMCs bringing large numbers of vexatious claims against firms to the FOS.

Amendment 90 therefore addresses those concerns by amending FSMA 2000 to give the Treasury the power to make regulations specifying categories of persons to whom the FOS can charge case fees. The Treasury intends to add CMCs and other professional representatives such as law firms to this list. This will enable the FOS to amend its rules to charge case fees to CMCs and other professional representatives for bringing complaints, subject to its usual consultation processes. By specifying who can be charged by the FOS in regulations, the Government can ensure that the full range of claims management models can be effectively captured. It also allows flexibility to amend this list in future if different models emerge.

The Government are clear that all consumers should be able to access the FOS free of charge and without the need for any CMC support. The FOS remaining a cost-free service for consumers is fundamental to its purpose. The amendment therefore expressly prevents the Treasury adding consumers to the categories of persons who can be included in the regulations.

In summary, Amendment 90 will ensure that the Treasury is able to empower the FOS to charge case fees to CMCs while ensuring that the FOS remains cost-free for consumers. I beg to move.

Baroness Kramer (LD): From these Benches, the amendment makes sense to us.

Baroness Chapman of Darlington (Lab): Happily, it makes sense to us as well. Without wishing to delay anybody—remembering the exchanges we had before this debate started today—I wonder whether the Minister could indicate the level of fees. He said that consumers would be excluded, which is very important. Are the Government confident that this will not in any way suppress the use of this service? Do they have anything in mind to improve awareness of the service among consumers?

Lord Harlech (Con): My Lords, I am grateful for the contributions in this short debate and thank both noble Baronesses for them.

On case fees, the amendment follows the existing approach under FSMA to allow the FOS to charge fees to respondents. Under this approach, the Government set out through legislation who the FOS is able to charge fees to and it will be for the FOS to set the detail of those case fee rules. This may include when firms should be charged; for example, from the first case or after a certain number of cases. Similarly, the amendment will not prescribe the specific approach the FOS will have to take in charging CMCs—it will be for the FOS to look at those fees. The FOS highlighted concerns from industry about this issue in its feedback statement following its recent consultation on its funding framework, and it acknowledged examples of poor behaviour by CMCs.

The Government agree that where there are wider implications it is critical that the bodies in the financial services regulatory framework, including the FCA and the FOS, co-operate effectively. That is why Clause 38 introduces a statutory duty for the FCA, the FOS and the Financial Services Compensation Scheme to co-operate on issues that have significant implications for each other or for the wider financial services market. Clause 38 also ensures that the FCA, the FOS and the FSCS put appropriate arrangements in place for stakeholders to provide representations on their compliance with this new duty to co-operate on matters with wider implications. These organisations already co-operate on a voluntary basis through the existing wider implications framework. Clause 38 will enhance that co-operation and ensure that these arrangements endure over time while retaining the operational independence of the bodies involved.

As I have set out, the Government are clear that all consumers should be able to access the FOS free of charge, without the need of any CMC support. Amendment 90 will enable this.

Amendment 90 agreed.

Consideration on Report adjourned.

House adjourned at 4.46 pm.