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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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House of Lords

Tuesday 13 June 2023

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Archbishops' Commission on Families and Households: *Love Matters* Report

Question

2.36 pm

Asked by ***The Lord Bishop of Durham***

To ask His Majesty's Government what assessment they have made of the report of the Archbishops' Commission on Families and Households, 'Love Matters', published on 26 April; and what steps they plan to take in response to its findings.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I thank all members of the Archbishops' Commission on Families and Households for their report, which underlines the importance of love in family life. This has particular importance for those children with a disrupted family life, hence the focus in our recent strategy for children in the social care system, Stable Homes, Built on Love. We will consider the report's recommendations alongside the Government's response to the Office of the Children's Commissioner Family Review.

The Lord Bishop of Durham: I thank the noble Baroness for her Answer. There are five key messages in the archbishops' commission report. The second is that relationships need to be supported all the way through life. Obviously, relationships education in school is one thing, but the thrust is how we support adults in relationships. Adults have to take responsibility for themselves, but there are ways in which support can be offered. How might the Government encourage relationship support, particularly at life transition points?

Baroness Barran (Con): The right reverend Prelate makes an important point, and the question about when and how the state gets involved in adult relationships is obviously a very sensitive one. Underpinning our approach we have the family test, which means that all departments need to think about the impact of their policies on families, including at the key transition points which the right reverend Prelate referred to. Where the state must be involved in adult relationships, we strive to do so sensitively and effectively. Where families want to engage with the state, those services should feel accessible and non-judgmental.

Baroness Taylor of Stevenage (Lab): My Lords, I echo the thanks given to the archbishops for their report, which is a thoughtful and compassionate approach to putting families at the heart of policy-making. One of the key recommendations of the report is to give every child the best possible start in life. Successive cuts to local government funding and other funding have decimated the provision of the Sure Start programme, started under the last Labour Government to provide comprehensive and vital support to children and their families. In the wake of Covid, such support is more important than ever. Will the Minister outline how future funding settlements will take account of the archbishops' recommendations?

Baroness Barran (Con): My Lords, some of the work that we are doing has already anticipated the recommendations, including the one to which the noble Baroness referred. She will be aware of our significant investment of around £300 million to enable 75 local authorities to create family hubs designed to give children the best start in life and of our childcare reforms which include £4.1 billion of investment by 2027-28 to fund 30 hours of free childcare for children over the age of nine months.

Lord Farmer (Con): My Lords, as co-founder of the Family Hubs Network, I am pleased that the archbishops' report, *Love Matter*s, mentions family hubs more than 30 times and recommends that they also help separating families. The Ministry of Justice's mediation reforms for England and Wales anticipate family hubs helping separated or separating parents to access services. However, there are not yet family hubs in Wales. While recognising that social care is a devolved matter, how might the Government encourage Wales to integrate family support in this way?

Baroness Barran (Con): Like my noble friend, the Government are committed to championing family hubs. I will ensure that my officials engage with colleagues in the devolved Administration to share evidence and best practice about them.

Baroness Armstrong of Hill Top (Lab): My Lords, it is very clear that despite the very important report from the archbishops' commission, and indeed other reports, the Government have still not grasped the seriousness of this issue. In the north-east, we now have more children in families living in poverty than ever before, or at least in recorded time, and more than elsewhere in the country. It is also the region where the heaviest cuts to local government spending are and where the difference between children who are achieving and those who are not has grown and remains starkly difficult. Do the Government begin to grasp the nature of the problem in areas and regions such as the north-east and what are they going to do to work with those of us from the north-east, including the right reverend Prelate, on how we tackle these urgent issues?

Baroness Barran (Con): I am pleased to say that I was in the north-east on Friday visiting schools in Hartlepool and was very impressed. The noble Baroness rolls her eyes, but I can only tell her what I saw on the ground, which was teachers working tirelessly with children, children with aspiration striving, and opportunities in their local area which the Government are supporting. Time does not permit me to go through all the initiatives that the Government are taking, but in everything from children's social care to levelling-up areas to the education investment areas we are very focused on exactly the areas the noble Baroness cites.

Baroness Burt of Solihull (LD): My Lords, on a slightly less serious note, the Beatles sang "All You Need Is Love", but does the Minister agree that while love matters, we need more than that to achieve the worthy recommendations in the report? Does she agree that, specifically, we need more compassion, more political will and more hard cash? Can she tell the House which, if any, of the recommendations the Government are minded to implement and how much additional hard cash they have set aside to achieve that?

Baroness Barran (Con): In terms of which recommendations we plan to implement, I refer the noble Baroness to my original Answer, which is that we will be responding as part of our response to the Family Review by the Office of the Children's Commissioner and will reflect at that point on the recommendations in this excellent report. I absolutely agree with the noble Baroness about compassion, and I agree with her about hard cash. That is why we are making such a significant investment in the children's social care system, in our support for early years and in children with special educational needs so every child in this country has the best start in life.

Baroness Deech (CB): My Lords, one of the transition points in a family is divorce and, predictably, no-fault divorce has pushed the rate up. At a seminar yesterday we heard evidence not only on how acrimony over money on divorce depletes children's assets but on how the bitterness in that process has a lasting effect on their lives. When will the Government set out a timetable for reforming financial provision on divorce and will they ensure that child maintenance is paid? It is shamefully neglected at the moment.

Baroness Barran (Con): On the noble Baroness's last point, I know that my colleagues in DWP are making important progress in terms of the payment of child maintenance and I think they would share the noble Baroness's sentiments when it is not paid. In terms of financial provision on divorce, in April this year the Government asked the Law Commission to carry out a review of the law in this area. It will look at whether the current law on financial provision provides a cohesive framework in which parties can expect fair and sufficiently certain outcomes.

Lord Brownlow of Shurlock Row (Con): My Lords, I declare my interest as a patron of Dingley's Promise and thank my noble friend the Minister for her comments on investment and funding. I particularly congratulate the Government on their investment through the safety valve fund and acknowledge that £6.9 million has just been given to Wokingham Borough Council, which is the next-but-one authority to where I live.

Baroness Barran (Con): I am in such shock to have such appreciation for the Government's actions, but I thank my noble friend for his comments.

Lord Sikka (Lab): My Lords, inequalities identified in the archbishops' commission's report ultimately blight life. Last year, a study estimated that the Government's austerity policies caused 335,000 excess deaths between 2012 and 2019 alone. Will the Minister answer just two questions? First, what forgiveness have the Government sought from the families of individuals killed by their policies? Secondly, will the Minister ensure that all Bills from now on are accompanied by an assessment showing their capacity to cause premature death?

Baroness Barran (Con): I am happy to look at the research to which the noble Lord refers, but my own experience of looking at linking mortality to policy is that it is an extremely complicated business and I take exception to the suggestion that any Government—and this Government—would ever intentionally do anything that they believed would harm their people.

Elections: Voter ID

Question

2.47 pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask His Majesty's Government what assessment they have made of the impact of voter ID rules on people's ability to vote, and what plans they have to review these rules before the next general election.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, we are encouraged by the first rollout of voter identification and are confident that the vast majority of voters will have cast their vote successfully based on sector feedback and our own observations on the day. As set out in legislation, we will be conducting an evaluation of the implementation of voter identification at the May polls and intend to publish the report no later than November this year.

Baroness Jones of Moulsecoomb (GP): I am quite surprised at that Answer, because initial reports suggest that thousands, if not tens of thousands, of people were not able to cast their votes. Of course, the really disturbing thing is that a former member of the Government—still a Member of the other place, recently knighted, Sir Jacob Rees-Mogg—said at the National Conservatism Conference in Westminster last Monday:

> "Parties that try and gerrymander end up finding their clever scheme comes back to bite them, as dare I say we found by insisting on voter ID for elections".

So a member of the Minister's own party has called it "gerrymandering".

Baroness Scott of Bybrook (Con): The successful introduction of voter identification at May's elections was to ensure the future integrity of our voting system. Comments from elsewhere do not reflect the reality of the reason for or the administration of that change. The Parliamentary Under-Secretary of State for Local Government and Building Safety, Lee Rowley MP, made the Government's position absolutely clear in a letter responding to a point of order raised in the House of Commons on 16 May. This letter has been deposited in the House of Commons Library.

Viscount Hailsham (Con): My Lords, several years ago I was concerned in a case involving allegedly forged postal votes. In the course of that time it became clear to me that many heads of family in some communities were providing postal votes that were, in my eyes, highly questionable. I very much hope that the Government are still keeping the matter under review.

Baroness Scott of Bybrook (Con): I assure my noble friend that voter identification is just one of a series of measures within the Elections Act that are aimed at tackling voter fraud and ensuring the future security of our electoral system. Further changes will be delivered later this year to introduce sensible safeguards against the abuse of absent voting, clamping down on the practice of postal vote harvesting and tightening the rules around postal and proxy votes.

Baroness Hayman of Ullock (Lab): My Lords, according to the Electoral Commission, 1.2% of people who attended a polling station at this year's local elections were turned away because they lacked photo ID. We are not talking about ID but photographic ID; that is the concern. If the next general election reflects the turnout of 2019, this could mean that 380,000 voters are sent home and prevented from exercising their right. On this basis, can the Minister really say that these photographic voter ID requirements, as they stand, are fit to be applied at the next general election?

Baroness Scott of Bybrook (Con): As I have said, we are undertaking a review. It is essential that, before we make claims such as we are hearing from the other side, we understand how the policy has operated in practice, what has gone wrong and where there are any areas for improvement in the future. Of course, where there are lessons to be learned, we will do so and we will change at the point of that evaluation. We are already gathering evidence as a Government. Also, the Electoral Commission is conducting extensive evaluation; we expect its initial findings later this month and a full report in September. I suggest that the whole House waits until we get that full evaluation before we start throwing stones.

Lord Udny-Lister (Con): My Lords—

Lord Wallace of Saltaire (LD): My Lords—

Baroness Williams of Trafford (Con): My Lords, it is the turn of the Liberal Democrats.

Lord Wallace of Saltaire (LD): My Lords, we already have a problem with fewer young people turning out to vote than others. The clear implication of what Jacob Rees-Mogg said was that this was intended to discourage more young people from voting, but it ended up discouraging some older people from voting as well. Would not one of the easiest things be to expand the number of possible means of identification that young people could present when voting, and make it clear that that is being relaxed?

Baroness Scott of Bybrook (Con): We will look at the evidence of that. We have said we that we will look at other forms of identification when we have the evidence to do so; that is what the Government will do.

Baroness O'Neill of Bengarve (CB): Do the Government have any intention of specifying what sort of ID is acceptable? I decided to test this out in the recent local elections. I took my House of Lords pass; it has a photograph, as we all know, but it was not acceptable. Luckily, in my pocket I also had a passport, so I was able to vote. This should not be left unclear.

Baroness Scott of Bybrook (Con): The returning officers have a clear list of acceptable forms of photo identification that they use. They have been fully trained on those. As I have said, we will look at other methods of photo ID and get the evidence to say when something is particularly useful. ID is changing all the time, but we have to ensure that it is secure ID that is being used in a polling station.

Lord Udny-Lister (Con): My Lords, there is plenty of anecdotal evidence in London and, indeed, councillors have reported cases of voter fraud to the police in previous elections and been ignored. Can we have an assurance that there is going to be proper evaluation, particularly in some of the London boroughs where this evidence exists?

Baroness Scott of Bybrook (Con): We have made it very clear in the legislation that will be doing a review, not only after this general election but after the next two to ensure that the voter identification system we are putting in place is right, is correct and is not disenfranchising any voters from electing.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, does the noble Baroness agree that this Question would not be relevant if the introduction of biometric ID cards by the last Labour Government had not been opposed by the party opposite? Does she also agree that such a measure would also have addressed the scourge of criminal identity theft that blights our country as fraud offences go through the roof?

Baroness Scott of Bybrook (Con): A national identification card is a totally different subject; it is much wider and further than this. That debate is perhaps for another day.

Viscount Stansgate (Lab): My Lords, the integrity of our electoral system is important. In the light of what the Minister has told the House about the Government's review, will she now undertake in advance to raise with her noble friend the Leader of the House that we should have an opportunity to debate that review in government time in the autumn?

Baroness Scott of Bybrook (Con): I do believe that it was agreed in the legislation that when the review came out it would be discussed by both Houses. If that is not correct, I will correct it in a letter in the Library—but I am pretty sure that that is what was agreed.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, whenever photographic ID was introduced for elections in Northern Ireland, it was supported by

[Lord McCrea of Magherafelt and Cookstown] all parties and all Members in both Houses of Parliament. Why should it be different for any other region of the United Kingdom?

Baroness Scott of Bybrook (Con): We took the good practice from Northern Ireland that has been in place for 20 years and we thought that it was correct and right for the integrity of our democratic system to bring it across the whole of the United Kingdom.

Lord Hayward (Con): My Lords, I welcome the comment that my noble friend made in relation to the Electoral Commission report, which is due in the next few days, but is she aware of the Democracy Volunteers report, already published, which would appear to indicate deficiencies in terms of communications and publicity, particularly with the ethnic communities, and also, as indicated previously, that certain returning officers did not have adequate information as to what photo ID was acceptable at polling stations?

Baroness Scott of Bybrook (Con): I am certainly well aware of that report and we will take into account any comments made and any evidence in it. We will also be doing quite a lot of talking to people who went into those polling stations and taking their views as we move through the review. What I have to say is that some local authorities were exceptional at reaching out to their communities in many different ways in order to ensure that people had full access to their polling stations We need to use that best practice across the whole of the local government sector.

Renewable Transport Fuel Obligation

Question

2.58 pm

Asked by ***Baroness Walmsley***

To ask His Majesty's Government when they intend next to review the renewable transport fuel obligation.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the department continually keeps the renewable transport fuel obligation under review to ensure that it delivers cost-effective emission reductions and is best placed to meet our carbon targets.

Baroness Walmsley (LD): I thank the Minister for her information, but at the last estimate over 107,000 hectares of land in the UK grew crops for biofuels—land that could have fed 3.5 million people. First, given the pressure on land, the need for greater UK food security and the global shortage of cereal crops caused by the war in Ukraine, will the Government end biofuel production from food crops in the UK? Secondly, on imported biofuels, will the Government ensure that only biofuels produced from waste, agricultural or otherwise, are imported for use in the UK?

Baroness Vere of Norbiton (Con): The Government have incredibly high standards of sustainability for the fuels that we allow under the renewable transport fuel obligation. As I am sure the noble Baroness is aware, many of the crops grown for biofuels are not fit for human consumption. However, they are grown because they are useful not only for biofuels but for animal feedstock. There is a very careful balance to be struck. The Government are well aware of the land use issue and the need to be able to develop enough human-supporting crops. As I say, we keep all of this under review.

Lord Ravensdale (CB): My Lords, I declare my interests in the register. I have two questions. First, what progress is being made with regulations to enable support for nuclear-derived fuels and recycled carbon fuels within the RTFO following the recent amendment to the Energy Bill? Secondly, quota-based systems such as the RTFO are being implemented in other countries for the purposes of decarbonising ammonia and fertiliser production. What plans do the Government have for similar schemes to clean up ammonia?

Baroness Vere of Norbiton (Con): As the noble Lord will be aware, the Energy Bill is currently working its way through the other place. I am very pleased that we were able to get the amendment for recycled carbon and nuclear-derived fuels, as it goes into primary legislation. We are working concurrently on the secondary legislation to bring that into effect as it is needed and into the various schemes. On ammonia and various other renewable fuels, we are looking very carefully across the entire suite of low-carbon fuels. The Department for Transport will be publishing a low-carbon fuel strategy later this year.

Baroness Ritchie of Downpatrick (Lab): My Lords, the logistics sector is calling for a stronger partnership with government over the use of low-carbon fuels. What arrangements will the Government put in place with the logistics industry for this to happen, including the much-promised publication and delivery of a low-carbon fuel strategy? It was promised last year and then at the end of this year. When will that be published?

Baroness Vere of Norbiton (Con): As I mentioned in the previous answer, it will be published later this year. The low-carbon fuel strategy is incredibly important. We have been working very closely with the freight and logistics sectors to understand their needs in terms of decarbonisation. For example, we have invested £200 million in the zero-emission road freight demonstration programme. An enormous amount of work is going on in this area. The low-carbon fuel strategy is but one of those things.

Baroness Boycott (CB): My Lords, I refer back to the original Question asked by the noble Baroness, Lady Walmsley. We import 90% of the fuel we use for transport. It is coming from land that could be used to grow food. Last year we imported crops from Ukraine that were then used in biofuels in this country. It is a question of due diligence. Can the Minister reassure the House that we are genuinely using stuff that would otherwise be wasted?

Baroness Vere of Norbiton (Con): I agree that there is an issue of due diligence here. The Government are always willing to hear from anyone who has any insight as to crops or biological items that may be coming from places that are not within the sustainability criteria. It is not fair to say that renewable fuels come from biogenic materials. It is the case that biofuels from waste represent 76% of the renewable fuels supplied; for example, 93% of all biodiesel comes from used cooking oil, which has very few other uses. While I accept that we need to look at crops and whether they are for human consumption or not—obviously, the latter is the one we focus on—we need to recognise that alternative sources of bioethanol are fairly thin on the ground at the moment.

Lord Tunnicliffe (Lab): My Lords, the Renewable Transport Fuel Obligations Order 2007, as amended, says in Article 1A:

"The Secretary of State must from time to time … carry out a review of the regulatory provision contained in this Order; and … publish a report setting out the conclusions of the review … The first report must be published before 15th April 2023".

Now, I think that date has passed. Has such a report been published? I spent time with my friend Google this morning, and after two hours, could not find it, but with the messy way our legislation is formed, I may have missed it. If it has not been published, why not? It is crucial that commitments such as this are honoured.

Baroness Vere of Norbiton (Con): I agree with the noble Lord, and I accept that it should have been published by 15 April. It is in its very final stages of preparation and will be published as soon as possible. There is an important component of this post-implementation review: there will be an opportunity for feedback on the scheme as it currently exists. Therefore, I hope that the noble Baroness, Lady Walmsley, and anyone else with an interest will look at the post-implementation review, consider various reports which have recently come into the public domain, and think carefully about how we can improve the scheme. We are always looking for improvements, we keep the scheme under review, and I am willing to keep an open mind.

Lord Lucas (Con): My Lords, does my noble friend agree that, looking at the long term and particularly our 30 by 30 commitment on land use, we should not be devoting agricultural crops to vehicle fuels—certainly not ordinary vehicle fuels—and that anything we can get from waste should be directed at aviation and other sectors where it is extremely difficult to create substitutes, rather than ordinary domestic road vehicles?

Baroness Vere of Norbiton (Con): The noble Lord is right. It is the case that the road vehicle sector is at a transition moment, as we go to battery electric and hydrogen fuel cells, but we can use it in this transition period. We are focused on using things such as recycled carbon fuels for sustainable aviation fuels, because we see that as a key way to decarbonise sectors that are much harder to abate, such as aviation. We will be looking at similar technology for maritime, if that exists.

Baroness Randerson (LD): My Lords, long-haul flying looks to be the most challenging sector to decarbonise. It is likely that sustainable aviation fuels will have a major role in doing that. Will the Minister commit to introducing a price stability mechanism, to encourage the development of a UK-based sustainable aviation fuel industry, so that we have the jobs and investment coming to this country, rather than going to our competitors overseas, as it looks like at the moment?

Baroness Vere of Norbiton (Con): The Government have already recognised the strong case for sustainable aviation fuel for all types of flying, whether short- or long-haul. We will implement a sustainable aviation fuel mandate requiring operators to use 10% SAF by 2030, which acts as a pull on the market. Therefore, we are considering what else needs to be done to make SAF plant projects in the UK investible. This will not be a government-sponsored contract for difference as the SAF mandate does an awful lot of the heavy lifting, but we are working very closely with industry to look at an industry-led solution to improve the revenue certainty when it comes to SAF.

Lord Watts (Lab): My Lords, is it not the case that this small island is crying out for a land strategy policy, and that the House of Lords Land Use in England Committee recommended that we have the strategy and resources for it, and that all departments take part? Does the Minister share my disappointment that this is not happening?

Baroness Vere of Norbiton (Con): I understand that it is happening, but I am slightly more excited by the biomass strategy, which will look at all the elements of biomass—what their potential uses are for our domestic environmental goals but also how they interact with our land-based goals. Therefore, we will also have the opportunity to look at our sustainability criteria, and how they can be strengthened in the context of looking at land strategy.

Nova Kakhovka Dam

Question

3.09 pm

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

To ask His Majesty's Government what is their assessment of the destruction of the Nova Kakhovka dam and the international response.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, at least 80 communities and 40,000 people are affected by flood water. Damage to homes, infrastructure and agriculture will affect thousands more. Our partners are working hand in hand with the emergency services to evacuate people and provide vital relief. We have also provided an additional £16 million to the United Nations and the Red Cross to help civilians, including those affected by flooding and

[Lord Ahmad of Wimbledon]
others elsewhere in Ukraine in humanitarian need. To bolster efforts, we are also sending boats, water filters, pumps and waders to Ukraine.

Lord Harries of Pentregarth (CB): I thank the Minister for his reply; it is particularly good to hear of the support the British Government are giving to those affected by the floods. My Question concerns a different aspect of the matter: adherence to the Geneva conventions. Article 56 of the 1977 Protocol 1, additional to the 1949 Geneva conventions, says that dams and nuclear sites must not be the object of attack if civilians are going to suffer. Over 170 nations have signed up to this, including Ukraine; Russia originally signed up and then withdrew ratification. Will His Majesty's Government reaffirm the importance of adhering to that in a world where there are now so many dams and nuclear power stations?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble and right reverend Lord. The essence of all the Geneva conventions was to ensure that these important elements are protected during conflicts, so I very much support his sentiments. However, I remind the House that, as my right honourable friend the Prime Minister has said, our intelligence communities are still looking at the incident, and it remains too soon to make a definitive judgment as to the cause.

Lord Berkeley (Lab): My Lords, vast areas of Ukraine are now under water. Is the Minister aware that there is a big shortage of boats there, as he might expect? Will he work with me to try to repurpose some of the boats coming across the channel with so-called illegal immigrants, so that they can be reused in Ukraine, instead of being wrecked to stop them being reused in this country?

Lord Ahmad of Wimbledon (Con): My Lords, the basis of what the noble Lord says is important: we need to ascertain what the needs of Ukraine are and to meet them. If boats are required, as I said in my first Answer, we will seek to provide them.

Lord Stirrup (CB): My Lords, the consequences of the breach of the Nova Kakhovka dam have been described as "generational" in their impact. Does the Minister agree that this underlines the importance of next week's Ukraine Recovery Conference and the need for it to address ecological issues as well as infrastructure and economic development matters?

Lord Ahmad of Wimbledon (Con): My Lords, I totally agree with the noble and gallant Lord. In preparation for this Question, I saw the mapping made of the flooding, which is on both sides of the Dnipro river; half is on the Russian side. Even organisations such as the ICRC cannot access the area, and people are suffering. I agree with the noble and gallant Lord that there are issues concerning agriculture and the natural habitats, which will be impacted, but as the waters recede we will be able to make a better assessment. However, we will not be able to make that assessment unless Russia allows access to its side of the river.

Lord Purvis of Tweed (LD): Further to the noble and gallant Lord's question, it is very welcome that London is hosting the second Ukraine Recovery Conference jointly with Ukraine, but if that is to be successful for the state's future, proper scrutiny, oversight and accountability of any private sector reconstruction work for Ukraine will be necessary. The Ukrainian Parliament, the Verkhovna Rada, is not included in the agenda for the recovery forum. Does the Minister agree with me that Parliaments and their scrutiny are very important for effective, sustainable recovery after any conflict? Will he ensure that there is always an eye on proper parliamentary involvement in these fora?

Lord Ahmad of Wimbledon (Con): My Lords, my understanding is that parliamentarians are also attending that conference. As the noble Lord will be aware, it is primarily aimed at the private sector and focused on reconstruction, but I note what he said.

Lord Selkirk of Douglas (Con): Does the Minister accept that a lot of the water will be undrinkable?

Lord Ahmad of Wimbledon (Con): I accept what my noble friend says. The challenge has been that, as the dam broke, pollutants and other substances such as oil and petrol contaminated the whole river. As I said to the noble and gallant Lord, Lord Stirrup, there are implications for both agricultural land and the ecological habitats along the river. The assessment is still yet to be made fully.

Lord Browne of Ladyton (Lab): My Lords, I draw attention to my entry in the register of interests. Like many other parliamentarians, I am an ambassador for the Halo Trust. The breach in the Kakhovka dam is flooding extensive minefields and dislodging many thousands of landmines. In fact, Halo has cleared 5,000 landmines from that area in the last month alone. Looking ahead, as the noble Lord is constantly being invited to do, to 21 June and the Ukraine recovery conference, there can simply be no talk of reconstruction in Ukraine without first focusing on making the land safe from explosions. What steps are the Government taking to ensure that landmines and unexploded ordnance, of which there is an incredible amount in that country, are firmly at the forefront of delegates' minds as they gather in London later this month?

Lord Ahmad of Wimbledon (Con): My Lords, I agree with the noble Lord. What is very evident, as he said, is that large sections around the dam and the river have been cleared of landmines. The United Kingdom Government have worked with the Halo Trust, and its CEO, James Cowan, will be addressing the Ukrainian conference on the specific issue of demining in advance of reconstruction in Ukraine.

Lord Collins of Highbury (Lab): My Lords, I return to the question of agriculture. I know it is early days to undertake a full impact assessment, but can the noble Lord reassure us that our expertise will be used fully to support Ukrainian agriculture in the long and medium

term? Will he ensure that the issue of the impact on agriculture is properly addressed at the Ukraine recovery conference?

Lord Ahmad of Wimbledon (Con): My Lords, I can give the noble Lord that assurance. In a previous Question, we talked about the importance of Ukraine's supplying the world's economies with grain. We have yet to see how this will impact, for example, the Black Sea grain initiative. The Dnipro river goes straight into the Black Sea, so of course there are implications. As the noble Lord, Lord Browne, pointed out, many mines have been washed through and that assessment has still to be made, but specific parts of the conference are allocated to agriculture. Half a billion people used to get their grain from Ukraine, so there is a major task ahead of us.

Lord Hamilton of Epsom (Con): My Lords, further to my noble friend Lord Selkirk's remarks about drinking water, is it right that this reservoir provided drinking water for Crimea, and what are the implications long term for that?

Lord Ahmad of Wimbledon (Con): My Lords, I assure my noble friend that we are seeking to make early assessments of the full implications. What is clear is that this provided water to many parts of Ukraine, including those areas currently occupied by Russia. Frankly, a full assessment cannot be made until we get full and unfettered access. I regret to say—I would be glad to be proven wrong—that I do not think we will be able to make that assessment until Russia does the decent thing and withdraws from Ukraine.

The Earl of Devon (CB): My Lords, one of the perhaps unintended consequences of this tragedy is the recreation of considerable areas of wetland that previously had been drained. Will thought be given to the preservation of some of that wetland and the biodiversity that it might offer to the people of Ukraine?

Lord Ahmad of Wimbledon (Con): Again, the noble Lord is correct. When we look at the devastation, many of the natural habitats and wetlands have been impacted. A full assessment has yet to be made but what is clear from early reports is that much has been damaged and impacted. Of course, areas are being damaged further downstream because of the pollutants being carried forward by the river, and there is the impact of the mines. The noble Lord is correct and I assure him that that will be very much part of the work of the international community. That is why it is necessary to involve the private sector at this time, next week, to make sure we can have a collective effort in rebuilding Ukraine.

Lord Anderson of Swansea (Lab): My Lords, the Government should be congratulated on their initiative in convening the reconstruction conference next week. Has an attempt been made to estimate the cost of reconstructing the dam when conditions allow? It can only add to the costs of the damage Russia has caused, and of course add considerably to food prices and affect food availability in the developing world.

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Lord's final point, of course, the developing world, particularly parts of north Africa, is severely impacted by the lack of grain supplies from Ukraine. On his earlier point, I have asked that specific question, and assessments are being made. According to an early assessment, the dam is irreparable and would require rebuilding. Then, of course, there is a timeline associated with that, which runs into not weeks or months but years. The other issue to bear in mind is that one side of the dam is in Russian-controlled Ukraine territory. A concerted effort will be required to ensure that, first and foremost, we see peace and see Russia withdraw, so that all arrangements can be put in place to rebuild the dam, which serves so many people across Ukraine and the wider region.

Business of the House

Motion on Standing Orders

3.20 pm

Moved by ***Baroness of Williams of Trafford***

That Standing Order 38(1) (*Arrangement of the Order Paper*) be dispensed with on Wednesday 14 June 2023 to enable Committee stage of the Illegal Migration Bill to begin before oral questions that day.

Baroness Williams of Trafford (Con): My Lords, on behalf of my noble friend the Lord Privy Seal, I beg leave to move the Motion standing in his name on the Order Paper.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, when we had a similar Motion to this some weeks ago, calling us in on a Wednesday morning at short notice, I raised some objections, particularly on behalf of people who do not live round the corner in London and who are expected to change all their plans to get here without proper advance notice. On that occasion, I got virtually a promise from the Government Front Bench that we would not have it again. But here we are, having it again, because the Government's legislative programme is in total disarray. We sat until 4 am last week and 2 am this morning; they cannot organise their legislative programme. It is really ridiculous that Members should be treated in this way.

I wonder if Boris's friends who are going to be joining us have been told what to expect. How is Ben Houchen going to manage to get down from Teesside suddenly on a Wednesday morning? What about Charlotte Owen? It is going to interfere with her social life, that is one thing for sure. Indeed, Nadine Dorries does not realise what she is gaining by not being nominated to this place.

This is ridiculous. This place is being treated disgracefully and Members are being treated disgracefully. We are human beings. We need to sleep at night, we need to be treated properly, and we need to be consulted on the programme. This is not happening, because this Government are in total disarray.

Baroness Williams of Trafford (Con): My Lords, I am sure the noble Lord was sleeping soundly in his bed when the Committee stages were being heard last

[Baroness Williams of Trafford]
night and on Wednesday of last week. Sitting early was the suggestion of one of the usual channels and was agreed to by all the usual channels.

I also want to say, if I may, that I find it utterly condescending that the noble Lord would speak about a young lady and her social life in such a way.

Motion agreed.

Strategic Highways Company (Name Change and Consequential Amendments) Regulations 2023

Motion to Approve

3.23 pm

Moved by ***Baroness Vere of Norbiton***

That the draft Regulations 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.

Employment Relations (Flexible Working) Bill

Order of Commitment

3.23 pm

Moved by ***Baroness Taylor of Bolton***

That the order of commitment be discharged.

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

Motion agreed.

Equipment Theft (Prevention) Bill

Order of Commitment

3.24 pm

Moved by ***Lord Blencathra***

That the order of commitment be discharged.

Lord Blencathra (Con): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move manuscript amendments or to speak in Committee. In these circumstances, and if no noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Financial Services and Markets Bill

Report (3rd Day)

Relevant document: 23rd Report from the Delegated Powers Committee

3.24 pm

Amendment 91

Moved by ***Baroness Boycott***

91: After Clause 65, insert the following new Clause—

"Forest risk commodities

(1) FSMA 2000 is amended in accordance with subsection (2).

(2) After section 410 insert—

"Forest risk commodities

410ZA Forest risk commodities

(1) A person must not carry on a regulated activity in the United Kingdom that may directly or indirectly support a commercial activity in relation to a forest risk commodity or a product derived from a forest risk commodity unless relevant local laws were complied with in relation to that commodity.

(2) A person that intends to carry on a regulated activity that may directly or indirectly support a commercial activity in relation to a forest risk commodity or a product derived from a forest risk commodity must establish and implement a due diligence system in relation to that regulated activity to ensure compliance with relevant local laws.

(3) The due diligence system referred to in subsection (2) must be in place within 24 months of the day on which the Financial Services and Markets Act 2023 is passed.

(4) Within the period of one year beginning with the day on which the Financial Services and Markets Act 2023 is passed, the Secretary of State must by regulations made by statutory instrument make provision about the details of the due diligence system referred to in subsection (2).

(5) A statutory instrument containing regulations under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(6) In this section, "due diligence system" means a system for—

(a) identifying and obtaining information about the commercial activities of any beneficiary of the regulated activity and of their group regarding the use of a forest risk commodity,

(b) assessing the risk that relevant local laws were not complied with, or that free, prior and informed consent was not obtained from local communities, or from indigenous people in accordance with their rights under international law, in relation to that commodity, and

(c) mitigating that risk.

(7) A person that carries on a regulated activity in the United Kingdom that directly or indirectly supports a commercial activity in relation to a forest risk commodity or a product derived from a forest risk commodity is subject to—

(a) the reporting requirements under paragraph 4 of Schedule 17 to the Environment Act 2021 ("the Environment Act") in relation to the due diligence system required under subsection (2), and

(b) Part 2 of Schedule 17 to the Environment Act as though they are a person to whom Part 1 of that Schedule applies.

(8) Terms used in this section that are defined in Schedule 17 to the Environment Act have the meanings given in that Schedule."

(3) In paragraph 17(1) of Schedule 17 to the Environment Act 2021 (use of forest risk commodities in commercial activity), for "and any Part 2 regulations ("relevant

provisions")" substitute ", any Part 2 regulations ("relevant provisions") and section 410ZA of the Financial Services and Markets Act 2000"."

Baroness Boycott (CB): We debated this amendment last Tuesday but it has taken until today to get to the vote. Needless to say, its importance has not diminished. The Amazon is the lungs of the world, and this is a straightforward amendment that aims to clamp down on illegal deforestation. While I thank the noble Baroness for her response last week and much appreciate all the points that she made, we need to move faster in this direction, and so I would like to test the opinion of the House.

3.26 pm

Division on Amendment 91

Contents 212; Not-Contents 203.

Amendment 91 agreed.

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3.37 pm

Amendments 92 and 93 not moved.

Clause 68: Liability of payment service providers for fraudulent transactions

Amendment 94

Moved by ***Lord Vaux of Harrowden***

94: Clause 68, page 85, line 9, at end insert—

"(8A) At least annually after the Payment Systems Regulator has imposed the requirement set out in subsection (5), it must publish a report on the impact of the requirement, including its assessment of the impact on the protection of consumers and the behaviour of payment service providers in relation to consumer protection.

(8B) Reports published under subsection (8A) must provide at least the following information for each payment service provider subject to the requirement—

(a) the number and value of authorised push payment (APP) scams notified to them;

(b) the percentage by number and value of APP scams that have been reimbursed;

(c) the percentage by number and value of APP scams initially rejected and subsequently appealed and the results of such appeals;

(d) the percentage by number and value of APP scams that have been finally rejected;

(e) the shortest, longest and average time from notification to decision about reimbursement."

Member's explanatory statement

This amendment aims to ensure that the impact of the APP reimbursement requirement is assessed and reported on regularly and to ensure that consumers can see whether the rules are being applied consistently and which institutions are better and worse at reimbursing victims fairly and promptly.

Lord Vaux of Harrowden (CB): My Lords, I introduced a number of amendments on the subject of authorised push payments fraud in Committee. At the time I said I was broadly happy with the Minister's responses but would look to return to the reporting question again, which is what Amendment 94 does. I should say at the outset that I support what the Bill is trying to do in respect of APP fraud to make it easier, and in particular fairer, for victims of APP fraud to get their money back. Before I go any further, I remind the House of my interest as a shareholder of Fidelity National Information Services, Inc., which owns Worldpay.

My new Amendment 94 has two elements to it. First, it would introduce requirements on the PSR to report annually on the impact that the reimbursement requirement had had on consumer protection and on the behaviour of payment service providers. Secondly,

it would effectively create a league table to enable consumers to see how each bank is actually performing both in preventing fraud and in reimbursing victims.

On the first point, the annual impact report is necessary because the mandatory reimbursement requirement could have unintended consequences that might damage consumer protection. I shall give a couple of possible examples of that. First, there is the possibility of moral hazard. If the mandatory requirement means that consumers start to take less care about protecting themselves because they will be repaid anyway, that could have the undesirable consequence of actually making it easier for the fraudsters to commit fraud and so actually increase levels of fraud. While, as we discussed in Committee, we must not put the blame on the victims, there is a balance to find in this area to avoid making it easier for the fraudsters while improving consumer protection and outcomes. We will know whether we have found the right balance only when we start to see the results.

A second example might be that the banks change their behaviour in an undesirable way. Rather than improving their fraud detection and prevention processes, they might simply decide that the easiest thing to do would be to stop providing services to people whom they see as being at the highest risks of fraud in order to reduce their potential reimbursement liability. I think many Members of this House have seen similar behaviour in respect of PEPs—politically exposed persons—where, rather than undertaking sensible risk-based steps, banks have on occasion just decided that it is too difficult or expensive to deal with PEPs and have refused to open accounts or have even closed accounts. We will come to that later today, but it is a good example of a well-intentioned risk measure having undesirable consequences. In the case of APP fraud, if the banks see it as too great a financial risk to provide banking services to those deemed to be at a higher risk of fraud, then we might see a whole swathe of more vulnerable people unable to obtain banking services.

These are just two examples, but I hope that they demonstrate the importance of the PSR keeping the impact of the requirement for mandatory reimbursement under regular review and amending it if it turns out to have unintended negative consequences. Reporting on this regularly and publicly will ensure that the impact assessment is robust.

Turning now to the second element of the amendment, the requirement to report annually on the performance of the banks, a major criticism of the current voluntary reimbursement code is that it is completely non-transparent. While numbers are published, they are anonymous. Consumers cannot see which banks are behaving best, and which are behaving worst, unless, as TSB does, they tell us voluntarily. The TSB example is encouraging—it is using its 100% reimbursement policy as a selling point. Introducing competitive good behaviour is highly desirable, and this amendment would help achieve that.

The amendment would effectively create an annual league table that would enable consumers to see which banks have the lowest levels of fraud—which will give an indication of how good they are at detecting and preventing fraud—which banks are better and quicker at reimbursing victims when fraud occurs, and, by including the appeal information, which banks make it more difficult for victims. That would allow consumers to take this information into consideration when deciding whether to stay with their existing bank or when considering opening a new account—something that would otherwise not be possible. That would, I hope, provide a real competitive incentive for banks to change their behaviour both in detecting and preventing fraud and in treating victims promptly and fairly.

This would not introduce a significant additional burden; the PSR will have all this information anyway, so reporting it is not a significant job. However, the benefits to consumers of making this information public are potentially significant.

When we discussed this in Committee on 13 March, the Minister stated in relation to the impact assessment that the PSR

"has committed … to a post-implementation review"

and that the Government would also

"monitor the impacts of the PSR's action and consider the case for further action where necessary".

That does not go far enough. Fraudsters keep changing their business models in reaction to actions by industry and the authorities, so it is essential that this is kept under continual review rather than only a one-off, post-implementation review. It is also important that the impact assessments are published. Can the noble Baroness provide any greater comfort in those respects?

On the league table, the noble Baroness said on 13 March that the PSR

"is currently consulting on a measure to require payment service providers to report and publish fraud and reimbursement data".—[*Official Report*, 13/3/23; col. GC 166.]

It is now nearly three months later, so can the noble Baroness provide an update on whether this consultation has progressed and whether the data will in fact be published? It would be better if such data was published by a single source such as the PSR rather than piecemeal by payment service providers. I beg to move.

Baroness Bowles of Berkhamsted (LD): My Lords, I support this amendment and I can be relatively brief. It is important not only to collect the statistics but also at times to dig underneath to see how they might be being gamed. From personal experience, I know of instances where banks are treating microbusinesses more strictly than they are treating consumers, saying that a business should know and therefore rejecting them out of hand at the first time of asking, if I can put it that way. I have heard, in a similar case, stories of someone making contact by telephone repeatedly, their inquiry getting lost and the person having to go through the whole story with a case handler multiple times, the strategy obviously being, "Let's try and make them give up". That was with a very large bank; I will not name it because I do not have absolutely all the detail. Therefore it is quite important that different criteria are not being used between sole traders and individuals when it has already been determined via the ombudsman that both have a route.

3.45 pm

Finally, there is the behaviour of banks and how fraudsters pick up on it quickly. The instance that was brought to my attention was the behaviour of banks

[Baroness Bowles of Berkhamsted]
divesting themselves of accounts. Fraudsters were using this, saying "Pay this genuine-looking invoice, but the bank has closed down my normal account so please pay it into this other account". Since there are so many instances of banks divesting themselves of people who they find slightly a nuisance or whatever, that rings true, and it helps the fraudster to con the person into making a payment to another account. I think that those kinds of things that underlie the statistics also have to be looked at. I hope that the Government can ensure that it is not just bald statistics that are now disguising the deterrent effect.

Lord Naseby (Con): My Lords, this amendment has to be seen in the context of the statement by the Payment Systems Regulator on 7 June, which was only a few days ago. It seems to me that that is the key starting point. I say to my noble friend on the Front Bench that that statement is enormously welcome. It states clearly that:

"For the first time, our new reimbursement requirement will introduce consistent minimum standards to reimburse victims of APP fraud".

I do not want to detain the House by going through some of the detail of that because that is not what we are doing here today, but it seems to me that that is a significant step forward.

Secondly the PSR says quite clearly:

"We are increasing protections within Faster Payments",

and that is also a key issue. There is a timeline in the statement which states that there will be consultation on:

"The allowable claim excess that Payment Service Providers can charge".

That is to be done in August and the whole lot will be finished by October. I wish it were to be done a little quicker, but it seems an excellent start.

The only part of the amendment which I think is extremely valuable is the one-year report. Frankly, with the volume of illegal activity that there is at the moment, if it were me—and I was the marketing director at a couple of the companies I used to work for—I would not wait a year; I would like to see what happens within the first six months of the new regime being in place. Later on, you can decide if there is some consistent reason that you move to a six-month situation.

Finally, I would like to know exactly what the starting point was before the new regulations came in. At the moment, I do not know that we have any official statistics. We may do and, if so, it would be very helpful to the House to know, not necessarily at this moment but in the near future, the starting point for the number of these terrible situations that people are being faced with today.

Lord Livermore (Lab): My Lords, the Payment Systems Regulator is now putting in place requirements to ensure more consumers will receive a refund if they fall victim to authorised push payment scams. This is very welcome. Many banks have already taken steps to make customers aware of the risk of scams, but the sophisticated nature of many such scams means there is a need for even stronger efforts to prevent fraud occurring in the first place. Not all of the detail is yet settled, with consultation on key aspects of the new scheme to follow later in the year, but we hope the Minister can give an indication of the levels of protection likely to be offered.

We welcome the tabling of Amendment 94 by the noble Lord, Lord Vaux, which we understand to be a probing text. As the new system beds in, it will be vital for banks and other financial institutions to collect data and share that with the regulator, in order to inform future changes to guidance and regulation. The amendment also proposes public reporting of data to enable consumers to see which institutions have a good or bad track record. This is an interesting idea and we look forward to hearing the Minister's response on this specific point.

While APP scams fall within the financial services realm, anti-fraud initiatives cut across departments and legislation. That is why one of our priorities for the Online Safety Bill is to ensure robust media literacy provisions, so internet users are able to better identify which articles, websites or emails are legitimate. With a significant amount of financial fraud taking place online but with the limited scope of that Bill, we hope the Minister and her department will engage with the Online Safety Bill as it approaches Report stage. Scams cause a significant amount of emotional distress, as well as coming with financial costs, so we hope that the Government and the regulators will do everything possible to keep ahead of the curve.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, the Government and the Payment Systems Regulator recognise the importance of regular, robust data collection. This is crucial for monitoring the effectiveness of the reimbursement requirement and ensuring that firms are held accountable. I am grateful to the noble Lord, Lord Vaux of Harrowden, for his considered engagement on this issue. I reassure noble Lords that the PSR has committed to half-yearly publication of data on authorised push payment scam rates and on the proportion of victims who are not fully reimbursed.

I can tell my noble friend Lord Naseby that a voluntary system is already in place and the PSR has already begun collecting data from the 14 largest banking and payment groups. The first round of transparency data is due for publication in October this year. The data that the PSR will publish includes the proportion of scam victims who are left out of pocket, fraud rates where the bank has sent customers' money to a scammer, and fraud rates where the bank has hosted a scammer's account. That means that, from October this year, the PSR will publish data for total fraud rates, both for sending money and receiving fraudulent funds, and reimbursement rates, on a twice-yearly basis for the 14 largest banking groups. This so-called league table will provide customers with the information they need to consider the relative performance of different banking groups on these metrics, and to factor that into their banking decisions.

Further to this data, once the reimbursement requirement is in place the PSR will use a range of metrics to monitor its effectiveness on an ongoing basis. These include the length of reimbursement investigations, the speed of reimbursements, the value of repatriated

funds, the treatment of and reimbursement levels among vulnerable customers, and the number and value of APP scams. Data on appeals will be captured and reported by the Financial Ombudsman Service separately.

More broadly, the PSR will publish a full post-implementation review of the reimbursement requirement introduced by this Bill within two years of implementation. The review will assess the overall impact of the PSR's measures for improving consumer outcomes. That does not mean it will not also consider the effectiveness of this measure on an ongoing basis. Indeed, more widely, the PSR will consider risks across different payment systems and, where necessary, address them with future action. This includes a commitment to work with the Bank of England to introduce similar reimbursement protections for CHAPS payments, and with the FCA in relation to on-us payments.

The PSR has been working closely with industry to develop effective data collection and reporting processes for its work on fraud. While the Government recognise the intention behind the noble Lord's amendment, they do not consider it necessary or appropriate to prescribe specific metrics to be collected in primary legislation. I hope that, given the reassurance I have been able to provide today, he would agree with that point.

The noble Lord, Lord Livermore, spoke about the wider impacts of fraud and the duties that go beyond financial services companies or payment system providers in addressing those risks of fraud. That is being looked at through both the Government's counter-fraud strategy and other Bills. He mentioned the Online Safety Bill. I disagree with his assessment of the measures in there. The measures that we have to tackle fraud in that Bill are a significant step-change in what we expect of companies in this space, and I think they will make a real difference. We are committed to working across all sectors to look at what more we could do in this space once we have implemented those measures and see how effective they are. I hope noble Lords are reassured by our commitments more broadly on this issue, and specifically by the fact that the PSR will be publishing data in this space once we have implemented the measures in the Bill.

Lord Vaux of Harrowden (CB): My Lords, I thank all those who have taken part in this debate, particularly the Minister for her constructive engagement on this and the reassurance she has just given. In fact, in one area, she has actually gone further than my amendment suggested, as the noble Lord, Lord Naseby, pointed out: the annual report is now to be six-monthly, which is hugely welcome. It is only for the top 14 payment service providers, which will cover the bulk of the market, but that is something that the Government and the PSR might want to keep under review, particularly as different players come in and out of the market. I thank her very much for her reassurances.

I will make one comment more generally, echoing some of the comments made by the noble Lord, Lord Livermore. It is not only the banks that are players within the fraud chain, it is all those other parties that enable or facilitate fraud, from the tech companies to social media companies, the web-hosting companies, the telecom companies, et cetera. This measure puts all of the liability on to the banks. While it is a simple solution for victims—and that is to be commended—we need to find some way of incentivising all those other players in the fraud chain to behave properly and to stamp down on their services being used by fraudsters. I am hoping that we will see progress on that in the Online Safety Bill, and also in the failure to prevent fraud clauses in the economic crime Bill that is coming forward. With that, I beg leave to withdraw my amendment.

Amendment 94 withdrawn.

Amendment 95

Moved by ***Baroness Penn***

95: After Clause 71, insert the following new Clause—

"Arrangements for the investigation of complaints

(1) The Financial Services Act 2012 is amended in accordance with subsections (2) and (3).

(2) In section 84 (arrangements for the investigation of complaints)—

(a) omit the "and" at the end of subsection (1)(a);

(b) omit subsection (1)(b);

(c) after subsection (1) insert—

"(1A) The Treasury must appoint an independent person ("the investigator") to be responsible for the conduct of investigations in accordance with the complaints scheme.";

(d) omit subsection (4);

(e) in subsection (5), in the opening words, for "regulators" substitute "Treasury".

(3) In section 87 (investigation of complaints)—

(a) in subsection (9A), after paragraph (b) insert—

"(ba) for the regulator's response under paragraph (b) to include a summary of—

(i) the cases in which the regulator decided not to follow any relevant recommendations, and

(ii) the reasons for not following those recommendations;";

(b) in subsection (9B), after paragraph (e) insert—

"(f) such other matters as the Treasury may from time to time direct.";

(c) after subsection (9B) insert—

"(9C) In subsection (9A)(ba) the reference to "relevant recommendations", in relation to the regulator's response in respect of an annual report, is a reference to—

(a) any recommendations to the regulator contained in that annual report, and

(b) any recommendations to the regulator contained in final reports relating to individual complaints given during the period to which that annual report relates."

Member's explanatory statement

This new Clause would amend the Financial Services Act 2012 to make the Treasury, rather than the regulators, responsible for the appointment of the Complaints Commissioner and would impose additional reporting requirements.

Amendment 95 agreed.

Amendment 96

Moved by ***Baroness Penn***

96: After Clause 71, insert the following new Clause—

"Politically exposed persons: money laundering and terrorist financing

(1) The Treasury must exercise the power conferred by section 49 of the Sanctions and Anti-Money Laundering Act 2018 (power of appropriate Minister to make regulations about money laundering etc) for the purpose mentioned in subsection (2).

(2) The purpose is to make provision amending Part 3 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692)("the 2017 Regulations") (customer due diligence) so as to secure the result required by subsection (3).

(3) The result required by this subsection is that, where a customer is a domestic PEP, or a family member or a known close associate of a domestic PEP—

(a) the starting point for the relevant person's assessment under regulation 35(3) of the 2017 Regulations is that the customer presents a lower level of risk than a non-domestic PEP, and

(b) if no enhanced risk factors are present, the extent of enhanced customer due diligence measures to be applied in relation to that customer is less than the extent to be applied in the case of a non- domestic PEP.

(4) In this section—

(a) "customer" includes a potential customer;

(b) "domestic PEP" means a politically exposed person entrusted with prominent public functions by the United Kingdom;

(c) "enhanced risk factors", in relation to a customer who is a domestic PEP or a family member or a known close associate of that domestic PEP, mean risk factors other than the customer's position as a domestic PEP or as a family member or known close associate of that domestic PEP;

(d) "non-domestic PEP" means a politically exposed person who is not a domestic PEP;

(e) the following terms have the same meaning as in regulation 35(12) of the 2017 Regulations—

"politically exposed person" or "PEP";

"family member";

"known close associate".

(5) Section 55 of the Sanctions and Anti-Money Laundering Act 2018 (Parliamentary procedure for regulations) does not apply to regulations made in compliance with the duty imposed by subsection (1).

(6) Regulations made in compliance with the duty imposed by subsection (1)—

(a) are subject to the negative procedure, and

(b) must be laid before Parliament in accordance with paragraph (a) before the end of 12 months starting with the day on which this section comes into force.

(7) The Treasury must, before the end of 6 months starting with the day on which this section comes into force, lay before Parliament a statement setting out what progress has been made towards making the regulations in compliance with the duty imposed by subsection (1).

(8) The duty in subsection (7) does not apply where the regulations have been laid before Parliament in accordance with subsection (6)(a) before the end of 6 months starting with the day on which this section comes into force."

Member's explanatory statement

This new Clause would impose a duty on the Treasury to amend the money laundering regulations with the effect of ensuring that a politically exposed person who is entrusted with a prominent public function by the UK (or their family members or known close associates) should be treated as representing a lower risk than a person so entrusted by a country other than the UK, and have lesser enhanced due diligence measures applied to them.

Baroness Penn (Con): My Lords, there has been significant discussion throughout the passage of this Bill, and more broadly in parliamentary debates, around the treatment of politically exposed persons—PEPs—under the money laundering regulations. Noble Lords have made many valuable contributions on this issue, sharing their personal experiences and those of their family members. I appreciate the concern expressed across this House that noble Lords and their family members can face disproportionate treatment as a result of their PEP status, including burdensome requests for information and even being prevented from accessing financial services. The Government are clear that action is needed to address this. In looking at this issue, we have sought to balance the need to maintain our adherence to the international standards in this area, as set by the Financial Action Task Force, with the need to ensure proportionate treatment of PEPs.

Therefore, the Government are tabling amendments to this Bill to achieve this in two areas. The Government are clear that domestic PEPs are lower-risk than foreign PEPs, and this must be reflected in both policy and practice. Noble Lords will be aware that while the money laundering regulations require all PEPs to undergo enhanced due diligence, the Government require the FCA to publish guidance on how banks and other financial institutions should meet this requirement. The FCA's current guidance, published in 2017 following a provision introduced in the Bank of England and Financial Services Act 2016 with cross-party support, makes it clear that financial institutions should treat domestic PEPs as lower-risk than non-domestic PEPs in the absence of other high-risk factors.

4 pm

If this distinction was comprehensively applied, it would strike the right balance between recognising the need to mitigate the risks that domestic PEPs face while preventing such protection becoming needlessly burdensome and disproportionately affecting both PEPs and their family members. However, the Government have heard the concerns and evidence provided in this area that this distinction is not being made consistently in practice and that some banks, in particular, are taking a blanket, one-size-fits-all approach, failing to take into account individual circumstances.

It is critical, therefore, to identify whether this is a systemic failure by banks to adhere to the FCA's guidance. Therefore, Amendment 97 will require the FCA over the next 12 months to conduct, and publish the conclusions of, a review into how financial institutions are following its guidance. This review will also consider whether the FCA's guidance on PEPs remains appropriate and Amendment 97 requires the FCA to amend its guidance if the review finds it necessary to do so. If the FCA finds that the guidance is no longer appropriate, it must publish draft revised guidance for consultation within the 12-month timeframe given for the review.

I recognise that some noble Lords have raised concerns about the FCA's approach to this issue in the past. The amendment therefore requires the FCA to publicly set out, within three months, the terms of its review. As part of its review, the FCA will consult affected consumers to ensure that their views are taken into account. I have also today written to the FCA to set out the

Government's expectations of what the review should cover and have made it clear that the treatment of the family members of domestic PEPs is a key issue that must be properly considered as part of the review.

Amendment 96 clarifies that the risk associated with domestic politically exposed persons is generally lower than for non-domestic politically exposed persons. The Government have tabled this amendment to address the potential issue that the FCA's guidance is not being fully adhered to, by seeking to place the explicit difference between domestic and foreign PEPs, currently established in guidance, into law.

The amendment will require the Treasury, within 12 months of Royal Assent, to amend the money laundering regulations to make it clear that the starting point for regulated firms in their treatment of domestic PEPs should be to treat them as inherently lower-risk than foreign PEPs, and to reflect this in the approach to due diligence measures that they use.

The Government will undertake a technical consultation with industry to ensure that the wording of the amendment has the desired effect. As this distinction is not currently present in legislation, it is crucial that necessary time is given for the Government to develop an approach that will lead to a significant impact on the behaviour of regulated firms that are not following the current guidance. To demonstrate to noble Lords that sufficient progress is being made, this amendment contains a legislative requirement for the Treasury to, within six months, provide Parliament with an update on the work that is being undertaken to deliver this change.

Amendment 119 provides that the provisions I have just detailed come into force on the day of Royal Assent.

I hope that, on the basis of the government amendments, noble Lords will feel that we have listened to and acted on their concerns, and that we are committed to ensuring that domestic PEPs are treated in an appropriate and proportionate manner, while effectively maintaining our anti-money laundering framework and remaining fully compliant with international best practice. I beg to move Amendment 96.

Lord Forsyth of Drumlean (Con): My Lords, when I went home after the last time we discussed accountability of the regulators to Parliament, my wife said to me, "I was watching you speaking on TV and, very unusually, you were praising the Minister to the skies". Here I am having to do it again. My noble friend Lady Penn, the Minister, has listened very carefully to all the points that have been made and has come forward in these amendments with a package that makes my Amendment 101 look rather feeble, for which I am extremely grateful.

I do not propose to spend much time talking about Amendment 101 but want to make just a couple of points. First, I declare my interest as a chairman of Secure Trust Bank. Secondly, it is not just the banks causing difficulty here; it is also credit card providers such as American Express, which seems to have been particularly heavy handed.

I have had an American Express card since 1979 and yet, only recently, I got an email which I assumed was a spoof that said I had to provide copies of my passport and bank statements, details of my investments and income, and my payslips—such as they are—to American Express within a certain number of days. I assumed this was some fraudster. Then I got another email telling me that my card had been suspended because I had failed to produce this material. When I rang American Express and said: "What is going on here?", they said: "Unless you produce it, your card will remain suspended". Of course, there were a number of payments on my card, which caused me some embarrassment.

That is a completely disproportionate use of the regulations. I am not even sure that some of the financial institutions are even looking at this work themselves. They may be contracting it out to other people who are simply involved in box ticking.

I will give another example from some years ago. My daughter had an account at the same bank as me, Coutts, and the manager said to her: "Is there any chance that you could move to another bank because you are such a pain to look after because your dad is a politically exposed person?". In my view, that is an absolute disgrace. Our children find it difficult to get mortgages. People find it difficult on probate. What my noble friend is proposing today goes further than my amendment and I hope it will result in change.

There is a problem, however, in that the regulator is judge and jury in their own court on this matter, although I appreciate the measures which my noble friend has put in place to hold them to account. Of course, if we set up a committee of this House or a Joint Committee, I think this will be very high on the agenda if they have not actually dealt with it.

I have one slight niggle with Amendment 97 in my noble friend's name, which is that she gives the FCA 12 months to publish. That seems an inordinate length of time. In the previous amendment we discussed today, my noble friend reduced the time to six months from 12 months. Perhaps she might reflect on whether it really needs 12 months to carry this out. At first, I thought it might be a move in the hope that perhaps there might be a general election and it might get lost in that and there might be a change of government and it might not happen. But one thing is clear: everyone on all sides of this House feels very strongly about this issue and I commend my noble friend for having taken this action, which I know has not been easy, and for the care with which she has listened to colleagues in coming forward with these proposed changes.

Lord Moylan (Con): My Lords, I shall speak to my Amendment 105 in this group. I express enormous gratitude to my noble friend the Minister for all the effort she has put in to resolving this problem in the last couple of years and now in this Bill. I have had a number of meetings with her, for which I am grateful. I have learnt much from her in the course of those meetings and in Committee. I think this is also an appropriate occasion for me to apologise for the fact that in Committee I insisted on one particular point of detail that I was right and, of course, it turned out on closer inspection afterwards that she was 100% right and I had got it wrong, so I apologise for that.

She has made sterling efforts, and what she is proposing today is welcome. None the less, those efforts—at least until we came to this debate today—have not been

[LORD MOYLAN]
successful in scrapping a system which is cruel, capricious and unjust. In part, that is because of resistance in parts of the Civil Service. While I accept her proposal today, it worries me—I am wary—that 12 months is being sought in which to come forward with proposals which will resolve it definitively.

I would prefer, in principle, my Amendment 105. I am grateful for the support given to it by the noble Baroness, Lady Hayter of Kentish Town, the noble Lord, Lord Sharkey, and my noble friend Lord Forsyth of Drumlean—which I think pretty well represents most sides of the House.

The legal background, which my noble friend explained to some extent, is that this all originates with the Financial Action Task Force—an international group in which British officials play an important part. It is not binding. It is not law, but it is like a standard of good behaviour, if you like. I can understand why my noble friend and the Government at large wish to continue to adhere to those standards. I have no problem with that.

However, it is clear that the FATF—I am afraid that is the expression I am going to use for the Financial Action Task Force—recommendations make a distinction between domestic and foreign PEPs. It is difficult for the European Union to make such a distinction internally—I think the noble Baroness, Lady Bowles, who was involved with the European Union at the time, will confirm this—so when the FATF recommendations were incorporated into a European Union directive, that distinction between domestic and foreign PEPs was lost. So, as it was then transposed into UK law through the money laundering regulations, that distinction no longer appeared. However, it is clearly there in the FATF recommendations.

Since we are no longer obliged to adhere to the European Union directive, it is entirely possible for us, and entirely consistent with any sense of international obligation we have, to restore that original distinction. That is what my amendment would do in law straightaway. The FATF recommendation is that domestic PEPs should not be subject to the money laundering regulations unless they are in what is described as a "higher risk business relationship". I have stuck very closely to that wording in my amendment.

It is also my view that when the Government come back in a year's time, or maybe sooner—I hope it will be sooner; it does not have to be a year—they will end up more or less with my amendment. If they want to stick to the FATF recommendations and yet alleviate some of the burden on domestic PEPs, this is more or less where they will have to be. That is what I would prefer, but I am clearly not going to see it today.

I will add a few other points. As I say, I think my amendment is the standard against which within a year we will be judging what the Government come back with. There are a few other points not captured in the amendment that I think the Government have to address in the course of the review. First, at the moment, banks claim that the tipping-off provisions in the money laundering regulations mean that they cannot tell us when they are investigating us as PEPs. So, one gets these bizarre requests, as described by my noble friend Lord Forsyth, but if you try to have an intelligent conversation with them about what is going on, you are completely blanked and no explanation whatever is forthcoming. They claim that this is mandated upon them. I think that is possibly a misinterpretation, but in either event, it has to go. We have to be able to talk sensibly to people who are trying to make such inquiries if we are indeed within scope of them at the end of this process.

Secondly, it must be made clear to the banks that the closing or freezing of accounts should be very much a last-resort action, and only if there is already evidence of a suspicious transaction. It cannot be resorted to in the way that some banks have been doing. It is simply unconscionable that perfectly ordinary people who are family members—not necessarily Members of this House—are having their accounts closed down or frozen while investigations take place, when there is no evidential basis for doing so. It is simply, "Your turn has come round on the agenda to be inquired into". Can my noble friend say whether we can look forward to any alleviation in practice during the next 12 months while we are waiting for this to happen, or is the full rigour of this unjust system to be persisted with while we are waiting?

4.15 pm

I will deal with another point raised in Committee. We have been told that there are concerns in the Security Service that this system should remain in place. I have to say that I find that unconvincing. I can understand why the service might want to have a special legal right to some sort of access to the finances of people likely to be engaged in money laundering or terrorist financing—the activities at which all these instruments are aimed—but I would not myself populate that list with the King, members of the Royal Family, Members of the House of Lords, admirals, judges and former diplomats. Those are not the people I would instantly think of; I would probably populate it with people engaged in running brothels or Turkish barbershops or operating American sweetshops on Oxford Street. The Security Service might have a more fruitful time investigating and having a grip on these people, rather than those currently on the list. So I really do not accept that it is a very credible argument and I hope we will not hear any more of it.

I appreciate the efforts made by my noble friend and I have confidence in her, but we should be clear about the standards against which we will judge whatever the Government come back with over the next 12 months. My amendment does that, along with the other comments I have made, but, in the meantime, I will not be moving it.

Baroness Hayter of Kentish Town (Lab): My Lords, it is exactly three months ago today that we debated this issue in Committee, when the Minister heard many examples of what had been going on. She has done rather more than any of her predecessors in acknowledging that there is a problem with how the AML rules are applied to PEPs and that change needs to happen—but she has gone even further and done something about it. I will not say that it is simply because she is a woman and that is what we do, but it is interesting that she has done it. As we heard, she has tabled Amendments 96, 97, 118 and 119, which she has outlined.

I have added my name, as the noble Lord, Lord Moylan, said, to Amendment 105, which goes a bit further and is more specific than the Government's amendment. Ideally, they might have accepted it and made a carve-out for our family members; as we have heard, we may be guilty because we are here, but they have done nothing wrong and it is awful that they are caught by it. So I welcome the Minister saying in her introduction that the review will specifically look at whether it is possible to tweak that somewhat.

As I said in Committee, this has been going on for rather a long time. The noble Lord, Lord Flight, was the first noble Lord to raise it that I could find, in 2013, and I have been on about it since 2015, as the House knows. We have had Written Questions, Oral Questions, meetings, press coverage and all of that. In addition to the inconvenience for us, this has also meant that all these banks and others are wasting their time looking at our business instead of, as we have heard, at some other people. It is not just Amex and others; it is car purchase firms and everybody else inconveniencing us and wasting their time.

The Minister has acknowledged that it is time for legislation. The key part of her proposal is distinguishing between domestic and foreign PEPs and a requirement both on HMT and the FCA to do something. What the Government have done may not be perfect, but it is a real step forward. I think the Minister is well aware that we will keep a rather beady eye on what is happening, and we will be back here if nothing changes.

In the meantime, we should thank the Minister for what she has done. We have made a big step forward and I am delighted that the noble Lord, Lord Moylan, will not be pressing his amendment. It is right that we accept where we have got to with the Minister, and we will watch that being implemented.

Lord Sharkey (LD): My Lords, I have added my name to Amendment 105 in the name of the noble Lord, Lord Moylan, and I congratulate him on his determination and persistence. I do not quite understand his dislike of Turkish barbers, but we can deal with that some other time.

His amendment's simplicity and its direct modification of the regulation is an appealing approach, as is the absence of the word "review". I was very pleased to see the government amendments in this group, chiefly because, of course, they are government amendments. I am very grateful for the Minister's clear and long-standing commitment to resolving, or at least ameliorating, the problem. I have only a couple of observations about the government amendments.

The explanatory statement to Amendment 96 says that UK PEPs

"should be treated as representing a lower risk than a person so entrusted by a country other than the UK, and have lesser enhanced due diligence measures applied to them".

The amendment itself, in proposed new subsection (3)(b), states that

"if no enhanced risk factors are present, the extent of enhanced customer due diligence measures to be applied in relation to that customer is less than the extent to be applied in the case of a non-domestic PEP".

Neither of those offers a definition or sets an upper limit to what this lesser form of due diligence should be. Is that decision to be left entirely to the financial services companies? If it is, can we reasonably expect uniformity of definition and behaviour?

Why would we expect the banks to significantly change their current behaviour? Would it not be more likely that they will simply water down some minor aspect of the diligence they currently feel is due and carry on otherwise much as they do now? In a way, that is what is happening anyway. The banks mostly ignore the FCA's current guidance, as set out in paragraph 2.35 of FG17/6. The FCA, in response to that, applies no sanctions. Nowhere in the government amendments is there mention of sanctions for non-compliance with the new arrangements.

Given the rather cavalier disregard some banks have displayed towards the current guidance, do we not need some sanction for future non-compliance, or a way of making the FCA properly enforce its own guidelines? What use are guidelines if they are not enforced? I would be very grateful if the Minister could say how a workable definition of "lesser due diligence" is to be arrived at and how the new regime may be enforced.

Viscount Trenchard (Con): My Lords, I declare my interest as a director of two investment companies, as stated in the register. I was interested to hear the remarks of my noble friend Lord Forsyth of Drumlean about American Express. He said that he had had a gold credit card with that company since 1979. Well, I had a gold card issued by American Express in 1978. I was very proud of having that card. I did not use it often, but it is one of those cards that clears automatically every month so there is no danger of running up unpaid debts and paying 20% or 30% interest.

In November 2021, I missed an email from them asking me for KYC information, including my passport details, proof of address and a utility bill, and I omitted to reply. I then got another email a month later—with no telephone call or letter through the post—saying that my account will be closed down. I telephoned them and, after waiting for three-quarters of an hour or so, I spoke to someone who agreed that they did not really need KYC information on me, but if I supplied it and uploaded it to their website, my account would not be cancelled, and all would be fine. I duly did that, but the account was still cancelled in about February 2022. I was not happy about this, because, as I said, I rather liked my gold card issued in 1978, so I took issue with them.

Over the past 15 months, I have spoken with them about six times; I have been on the chat function about six times. I now have two names of individuals and an email address I have been corresponding with, but my account is still cancelled—although they still send me a monthly statement through the post giving me a credit balance. I will print out the *Hansard* report of this debate and attach it to my next email to American Express, because I am not giving up on this.

Lord Clarke of Nottingham (Con): I will not make a speech giving my experience of American Express, but it is remarkably like that of my noble friends Lord Trenchard and Lord Forsyth. I decided that I could not be bothered with such outrageous burdens being

[Lord Clarke of Nottingham]
placed on me. Having had my card from some time in the 1970s, I have allowed them to cancel it. Having heard of my noble friend's experience, I am rather glad that I just let it go and reverted to using my Barclays visa card on all occasions.

Lord Naseby (Con): I will take my noble friends' points further. My experience was identical to that of my noble friend Lord Forsyth. Frankly, I have cancelled the whole thing; Barclaycard does a far better job.

Viscount Trenchard (Con): Both my noble friends have a much more sensible approach to this matter.

I echo the other remarks of my noble friend Lord Forsyth, whose Amendment 101 I was minded to support. I too am most grateful to my noble friend the Minister for listening to the opinions of your Lordships expressed in Grand Committee. I added my name to Amendment 227 in Grand Committee, tabled by my noble friend Lady Noakes. Her amendment was debated on 13 March alongside Amendment 215, tabled by my noble friend Lord Moylan and other noble Lords. I would have added my support to my noble friend Lord Moylan's Amendment 105, but it was too popular and there was no room.

My noble friend the Minister will recognise the disproportionate difficulties which UK PEPs must endure as a result of the money laundering regulations 2017. On balance, I would have preferred to be excluded by virtue of being a UK citizen, but my noble friend has decided that exclusions will apply to domestic PEPs, which does not sound so nice, but will achieve the same outcome.

Unfortunately, it will take years for British citizens resident abroad who are connected to UK PEPs to be released from similar regulations in many different jurisdictions. For example, my son has found it impossible to be appointed as a bank account signatory in Taiwan and South Korea. However, my noble friend the Minister's amendment should make the life of UK PEPs easier. I am interested to see whether, in a year's time, the amendment proposed by my noble friend Lord Moylan will be the triumphant, most successful and best one of these. In any event, I am most grateful to her for taking up this point, as she said she would.

Lord Eatwell (Lab): My Lords, we seem to be predominantly discussing personal experiences at the moment, so I declare an interest as the former chairman of the Jersey Financial Services Commission.

The definition of a politically exposed person in Amendment 96 refers to persons

"entrusted with prominent public functions by the United Kingdom".

Presumably, that would not apply to the Crown dependencies, since they are not part of the United Kingdom. I think that this is a mistake; it should be corrected by the Government, given the important role many UK citizens play in the Crown dependencies and in the financial services industry in the Crown dependencies. Would the Minister agree to take this away and see whether the omission of the Crown dependencies is just an error that has been made in drafting this amendment.

4.30 pm

Baroness Kramer (LD): My Lords I rise because this amendment allows me to do two things that I do not do very often. One is to thank the Minister because the amendments that she has brought forward are constructive, as others have described. The second is to say to the noble Lord, Lord Moylan: finally, a benefit from Brexit. One down, which pleases me, I have to say.

I want to ask the Minister if, in the course of the review, she will look at the industry that has mushroomed from the vetting of PEPs. I dealt with the American Express problem that others have described. I filled in my forms and still have my card—I am afraid that the BA miles win me over. I decided that I would open a savings account at Chase Bank as they were offering some good rates but discovered that I was caught up in this PEP process and the bank asked for a raft of information that, frankly, I should have never been asked for. The breaking point was a phone call asking me for payslips for my husband. On his death, I had inherited from him and therefore the bank wanted historical payslips. My husband died 17 years ago and I do not know how many people still have their payslips from 17 years ago, never mind those of a dead spouse.

To me, that was typical of the overstepping and exaggeration—gold-plating is almost an understatement—that has been going on in this process. It caused me to go on to the web and discover that there is a raft of consultants, advisers and legal entities that have become engaged in this process and taken straightforward guidelines from the FCA and blown them up into something extraordinary and complex. I am furious with the FCA because it does not enforce the guidelines; I hope the Minister will convey that and that the Government will become furious with the FCA for not enforcing its own guidelines. I hope that she will also encourage it to use the review to look at the vast industry that has burgeoned and makes its profits from making life an absolute misery for anybody it can catch in the system.

The Earl of Erroll (CB): My Lords, I should like to add to this because I have had enough trouble with the PEPs issue for a long time. First, I thank the noble Lord, Lord Moylan, for explaining an important point about why I can get no information from Northern Trust on administering an investment trust in which my wife owned shares in Ireland. We had to get probity in Ireland, but the trust will still not release the money and will not say why. I am getting an absolute blind spot. Even Barclays, which wants money over here to pay off something does not seem to be getting any joy. I suspect that it is because the trust is not allowed to tell us that we are under investigation. That is wrong. If there is a problem, we could unlock it if the trust could just say, "We are trying to investigate this because we think we have to".

I personally find it offensive that I am deemed to be a risk and a crook. I thought that in this country we were innocent until proven guilty. Actually, this is the other way around. Just because I happen to be a Member of the House of Lords, it is assumed that I am corrupt. This has caused a lot of problems for me and my family, but I am not going any further into detail.

We have heard good stories from others, but I do not understand why we are PEPs. I have no access to government contracts and there is no reason to bribe me, sadly. I do not understand the logic behind that, and something should be done. The classification of PEPs should be looked at and revised because a lot of other people who are not PEPs are in places handling government contracts. As far as I know, they are not under permanent scrutiny, so I think you have got the wrong people and it is a nightmare.

Lord Naseby (Con): My Lords, the noble Lord, Lord Eatwell, mentioned the Crown dependencies. I want to ask my noble friend on the Front Bench about the position of the British Overseas Territories.

Baroness Chapman of Darlington (Lab): My Lords, I accept that we are politically exposed people—of course we are—and we can be bribed, so it is right that there are rules around this. This topic has attracted a lot of interest throughout the passage of the Bill, along with a number of questions and debates. I completely understand why that is.

While the enhanced checks faced by politically exposed persons are often onerous, as we have heard—all power to the elbow of the noble Viscount, Lord Trenchard; well done to him for finding the names of two actual human beings to speak to at American Express, and I hope he gets his situation resolved—it is vital that this country maintains strong anti-money laundering regulations and acts in a manner consistent with international standards. Unfortunately, to an extent that involves us, but I think the Government's amendments in this group do what is needed in making the distinction, as do many other jurisdictions, between domestic PEPs and those from other countries, which is consistent with the Financial Action Task Force guidelines.

We welcome the support for the amendments from the noble Lord, Lord Forsyth, and my noble friend Lady Hayter of Kentish Town, both of whom have raised this issue consistently for some time. Most of all, though, it is right that we thank the Minister for bringing the amendments forward. She has worked hard to try to resolve colleagues' concerns on this issue, and we hope that those will be dealt with by the upcoming changes to the regulations and the accompanying guidance.

Baroness Penn (Con): My Lords, I reiterate what the noble Baroness, Lady Chapman, has just said: our approach in this area has always been guided by ensuring that the rules in place in the UK maintain the international standards that are set in this area. That has been the guiding principle in looking at resolving this issue. Nevertheless, we felt that it was right that action be taken. Examples such as that from the noble Baroness, Lady Kramer, demonstrate clearly that the approach taken by institutions is not always proportionate, and we need to address that.

I have heard from noble Lords, including my noble friends Lord Forsyth and Lord Moylan, questions about the timescale for the two pieces of work that are committed to in the amendments. I understand that feeling, but we have engaged closely with the FCA on the review that it is committed to undertaking through the government amendment, and it is clear that if there is to be a thorough assessment of the treatment of domestic PEPs at a systemic level—we have already raised individual issues or individual institutions in response to previous debates—then it must be given adequate time to be conducted.

The 12-month timeframe will allow the review to benefit from fuller engagement with industry and with affected PEPs, and it will ensure that the FCA is able to develop a full understanding of the scale and extent of this issue. I think it gives the FCA time to address issues such as those raised by the noble Baroness, Lady Kramer. Included in that timeframe is the fact that, if it deems it necessary to update its guidance, it will produce the draft within that timeframe.

The Government have 12 months to amend the money laundering regulations. As I said, the distinction between domestic and foreign PEPs does not currently exist in law, and we want to make sure that we get the drafting right to ensure that it achieves the intended outcomes without unintended consequences. That will require us to consult with industry to ensure that the language in the amendment has the desired outcome of altering firms' behaviour in how they treat low-risk domestic PEPs. These points relate to the questions posed by the noble Lord, Lord Sharkey, because this definition will come in part through the amendment of the regulations but in part from looking at the FCA's guidance, and what needs to be set out more fully there when it has done its review.

Acknowledging the interest from parliamentarians—perhaps we should all have declared our interest as we stood up to speak, in respect of PEPs—we have committed to updates on progress both from the FCA and the Government in delivering on these amendments.

My noble friend Lord Moylan and the noble Earl, Lord Erroll, raised the interaction with tipping-off requirements and communication to customers. We have asked the FCA to consider this as part of its review. The noble Baroness, Lady Hayter, and others, mentioned the impact on family members. Again, we have asked the FCA to consider this in its review.

My noble friend Lord Moylan also asked if we need to wait for 12 months for action. The FCA remains committed to taking action where it identifies non-compliance with its current guidance on PEPs and will do so throughout the course of the review. I encourage noble Lords to use the contacts provided in my letter on this issue in November, if they encounter difficulties while the Government amendments are being implemented. I am sure that those in the FCA responsible for this area will look at this debate carefully.

The noble Lord, Lord Eatwell, raised a question on Crown dependencies, and my noble friend Lord Naseby asked about overseas territories. I will write to noble Lords on that. If it is right or appropriate that this should extend that far, there is nothing in the amendments to prevent the Government doing that, but I would want to double-check the right interaction and the right locus for addressing those concerns. With that, I beg to move.

Amendment 96 agreed.

Amendment 97

Moved by ***Baroness Penn***

97: After Clause 71, insert the following new Clause—

"Politically exposed persons: review of guidance

(1) The FCA must review its guidance on politically exposed persons ("PEPs") given under section 139A of FSMA 2000 and in compliance with the requirements under regulation 48 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692)("the 2017 Regulations").

(2) The review required under subsection (1) must include—

(a) an assessment of the extent to which the guidance is followed by those persons to whom it is given under regulation 48 of the 2017 Regulations, and

(b) in the light of that assessment, consideration as to whether the guidance remains appropriate or whether it should be revised.

(3) The FCA must—

(a) before the end of 3 months beginning with the day on which this section comes into force, publish an update on the FCA's plan for the review required under subsection (1), and

(b) before the end of 12 months beginning with the day on which this section comes into force—

(i) publish the conclusions of the review, and

(ii) where the FCA concludes that the guidance should be revised, publish draft revised guidance for consultation.

(4) Publication as required by subsection (3) must be in the way appearing to the FCA to be best calculated to bring the publication to the attention of persons likely to be affected by it.

(5) The FCA is not required under this section to publish any information whose publication would be against the public interest.

(6) In this section—

(a) "domestic PEP" means a politically exposed person entrusted with prominent public functions by the United Kingdom;

(b) the following terms have the same meaning as in regulation 35(12) of the 2017 Regulations—

"politically exposed person" or "PEP";

"family member";

"known close associate"."

Member's explanatory statement

This new Clause would impose a duty on the FCA to review the guidance that the FCA produced in 2017 on the banks' treatment of politically exposed persons, and publish draft guidance alongside the review, if the FCA concludes that the guidance should be revised.

Amendment 97 agreed.

Amendment 98

Moved by ***Earl Attlee***

98: After Clause 71, insert the following new Clause—

"Withdrawal of banking services

(1) When a provider of banking services in the United Kingdom decides to cease to provide banking services to an existing customer, or decides not to offer banking services to a specific prospective customer, because of one or more of the reasons specified in subsection (2), the bank is required to inform the FCA about that decision within the period of 4 weeks after the decision is taken.

(2) The specified reasons are—

(a) there is a reasonable suspicion that the customer is, or has, engaged in money laundering;

(b) there is a record or specific instance of the customer not complying with requirements under money laundering regulations in a significant and easily-avoidable manner;

(c) the provider cannot accept the regulatory risk of providing banking services to the customer despite the reasons set out in paragraphs (a) and (b) not applying;

(d) ethical reasons;

(e) the customer is in the defence industry.

(3) The FCA must maintain a record of decisions notified to it under subsection (1)."

Earl Attlee (Con): My Lords, I will also speak to my Amendments 99 and 100. In Committee, I moved an amendment similar to Amendment 99. I will not weary the House with the arguments I made in Committee in detail. Suffice it to say that, in the new year, I became aware of a small business that was exporting armoured fighting vehicles to Ukraine under export licences granted by His Majesty's Government's Export Control Joint Unit. I will call the businessman in question "Peter" for reasons of security.

Peter's major high street bank has withdrawn provision of banking facilities and will give Peter no reason—exactly the problem discussed in the previous group. In these circumstances, I understand that the banks will generally stonewall a Member of another place. However, the bank in question was very helpful to me, and explained that the problem was the money laundering regulations and the attendant unacceptable regulatory risk. I tried as hard as possible to resolve this problem discreetly and behind the scenes. The bank indicated that it could continue to provide financial services if it received a suitable letter from a Treasury Minister. Sadly, Ministers would not provide one. I am grateful to the Minister for meeting with me many weeks ago, but she was unable to change her position, which is why I moved a suitable amendment in Committee.

All export licences for lethal military equipment are very carefully considered. In Committee, the Minister correctly made the point that the export licensing machinery tests whether or not the equipment should be exported, while the money laundering regulations are a different test to check for, and counter, illicit finance. The reason I drew the export licence point to the attention of the Committee was that it proves that it is within the defence and security policy of His Majesty's Government for these vehicles to be exported to Ukraine. If it was thought undesirable, or even just unhelpful, a licence would not be granted. I therefore contend that the money laundering regulations are thwarting the intent of His Majesty's Government.

4.45 pm

Unfortunately, rather than becoming aware of a little problem that I could resolve by the close of play at the end of the first week, I found I was just touching the tip of an iceberg. I found that it was not just Peter being adversely affected. For instance, I quickly found that a man dealing in helicopters all around the world, and outside of the OECD, was having his bank accounts closed, presumably because of the money laundering

regulations, although of course we cannot tell. He is a member of the respectable ADS trade association and deals with both Governments and commercial concerns. I can understand why the banks would act as they have done: it is simply not worth the regulatory risk for the sake of a few large currency transactions that do not actually generate much income.

In Committee, the Minister did not believe that there was a systemic problem but indicated that, if there was, the Government would act. I drew this to the attention of ADS, the aviation and defence trade association. It asked its members to contact me if they were experiencing similar problems. While the numbers who came back to me were not large, the problems were very serious indeed. Not only do we have the problem of money laundering regulations but the ESG agenda means that banks are reluctant to deal with defence businesses, particularly ones that make things that go bang. This includes businesses supplying the MoD, according to ADS.

SME defence firms are in a difficulty because they have to be very discreet for reasons of security and to avoid further difficulties. I talked to one firm which said that it had lost its premises because of the nature of its business and had had to find alternative premises. Your Lordships could be forgiven for wondering why affected defence suppliers do not simply call for the great clunking fist of the MoD. The difficulty here is that a junior procurement official will simply assume that the bank is being difficult because of financial problems at the SME and will therefore cancel the contract. For the SME, it is better to keep quiet than ask for help from the MoD.

I am pleased to say that, earlier this afternoon, I had a meeting with my noble friend Lady Goldie, your Lordships' Defence Minister. I think she now understands that there might be a much wider problem than just those of Peter. We will have to see what transpires, but I will be helping her and her officials as much as I can. I am absolutely convinced that we have a systemic problem, which is why I have brought this matter back to the House for consideration on Report. My noble friend the Minister could solve Peter's problem today by writing to the bank directing it to ignore the money laundering regulations in certain specific ways, but I know that she will not and probably cannot.

Turning to my amendments, I contend that my noble friend the Minister does not have the foggiest clue what is going on with banks terminating accounts, simply because the FCA does not either. The FCA will claim to Ministers that it is doing a great job in countering money laundering, and it may or may not be, but forgive them for they know not what they do. As far as I am aware, there is no data, so nobody knows what is going on. If the House agreed to my Amendment 98, data would be collected and Ministers would soon have a clear picture because the banks would have to inform the FCA when they restrict the provision of banking services. Unfortunately, I did not include PEPs as one of the categories in my amendment.

My Amendment 99 seeks to protect respectable and bona fide aerospace and defence companies from being caught up in money laundering regulation problems. It does this by requiring the Treasury to amend the money laundering regulations so that banks are not prevented from providing financial services. However, for a business to benefit from this protection, it would have to be a member of a designated trade association and have satisfied the Secretary of State that it is beyond reproach.

My Amendment 100 is designed to help the Peters of this world. It works in the same way as Amendment 99 but is specific to the export of military equipment to Ukraine under export licence. It is of course unnecessary, because my noble friend the Minister could simply write a letter to the relevant bank.

I have not made a long and impassioned speech about Ukrainian soldiers unnecessarily running around the battlefield in soft-skin vehicles. Nevertheless, these are exceptionally important defence and security matters. If the Minister does nothing about it, they will surely bite her or some other Minister, hard, at some point in the future. My question for the Minister is this: is it the settled policy of His Majesty's Government that the complete integrity of the money laundering regulations is more important than facilitating the supply of armoured fighting vehicles to Ukraine? I beg to move.

Viscount Trenchard (Con): My Lords, I declare an additional interest as stated in the register as a provider of geostrategic advice to Safe Security (SSL) Ltd. I will not repeat the arguments so well put by my noble friend Lord Attlee, who has given much voluntary military service over the years. I have added my name to my noble friend's Amendment 98, but I also support both Amendments 99 and 100.

The Export Control Organisation at the former Department for International Trade grants export licences for controlled goods for military purposes. Its online export licensing system is called SPIRE. The organisation's website states:

"We advise that you register your company on SPIRE, benefits include: More Control … Time Saving".

I understand that it takes much time to obtain a SPIRE licence, but I am not convinced that it saves any time in carrying out this control business. It is of course right that companies wishing to receive licences to conduct this kind of business should be properly vetted and undergo the most stringent checks. However, once they have done that and been granted SPIRE accounts, why do they then find that the money laundering regulations prevent banks opening accounts in order to execute this kind of business under any circumstances?

In Committee, my noble friend the Minister acknowledged that

"the government process for the granting of export control licences focuses on the end use of goods rather than the source of funds paying for them".

She told the Committee that the Treasury has

"engaged with the Export Control Joint Unit, the Financial Conduct Authority and other partners on this issue".

She said that she was

"not aware of a systemic issue",—[*Official Report*, 21/3/23; col. GC 297.]

but would "act to address it" if the Government identified one. I rather think there is a systemic issue here, because banks run a mile when anyone, particularly an SME, tries to open a bank account to do this kind of business. Banks are not aware of the SPIRE system

[Viscount Trenchard]
and give absolutely no recognition to any licence granted under it to a prospective customer. The result of this, at least in some cases, is that the business is being carried out in other jurisdictions, such as Finland, that do not apply these regulations in such a stringent manner. This obviously deprives the Exchequer of corporation tax revenues and results in the official statistics understating the extent of British support for Ukraine.

This does not apply only to military equipment but includes the provision of vehicles to be used as field ambulances. I want to ask the same question of my noble friend the Minister as that asked by my noble friend Lord Attlee: do the Government think that absolute observation of the money laundering regulations is more important than permitting those who are licensed to do this business to do so?

Baroness Kramer (LD): My Lords, we should thank the noble Earl, Lord Attlee, for raising a set of significant issues. I have no specialist knowledge in this area, but I am very well aware that SMEs generally are disadvantaged under our current framework arrangements. As the Minister will know, individuals and micro businesses—usually a small sole trader or somebody of that ilk—fall within the FCA's regulatory perimeter, but the SMEs that have just been described fall outside of it.

Therefore, where there are gaps or where their treatment is completely inappropriate, they have nowhere to turn. In those circumstances, they face significant disadvantage compared to their competitors across the globe. So I hope the Minister will understand that this is a reflection—I think "tip of an iceberg" was the correct term—of something that is quite systemic in many different ways, and an area where the Treasury, and the regulators, need to focus attention.

Baroness Penn (Con): My Lords, as I set out previously in Grand Committee, I commend my noble friend Lord Attlee for his strong role in supporting Ukraine and bringing the value of his expertise in support of efforts to provide Ukraine with vital supplies. I understand that my noble friend wishes to ensure that the money laundering regulations do not hamper the private export of armoured vehicles or military vehicles to Ukraine. However, this cannot come at the expense of weakening the regulations in a way that would allow them to be circumvented by those wishing to launder money or finance terrorism.

The Government are committed to providing economic, humanitarian and military support to Ukraine. That is why the UK is proud to have pledged £6.5 billion in support of Ukraine, including £1 billion of World Bank guarantees to go towards closing Ukraine's 2023 financing gap and £2.3 billion in military support for 2023. In 2022, 195 standard individual export licences and three open individual export licences were granted for the export of military items to Ukraine.

I recognise that my noble friend has concerns about a wider issue relating to provision of banking services to those involved in the defence industry and the refusal or withdrawal of services for other reasons connected with money laundering or ethical concerns. As I said in Committee, I am not aware that banks are taking a blanket approach to such customers. I am grateful to my noble friend for setting out some further specific cases today and I am glad that he had the opportunity to meet my noble friend the Defence Minister. The Treasury would be happy to look further into these cases with my noble friend and the Ministry of Defence. Equally, if the defence industry has wider concerns, I would encourage it to bring them to the attention of the Government and the regulators.

My noble friend made a comment on the Government's ESG policy and its impact on defence companies. Our ESG policy is focused on delivering the net-zero commitment and there is nothing in that policy framework that prohibits or otherwise disadvantages defence companies and the war in Ukraine—

Earl Attlee (Con): I am sorry to interrupt the Minister, but it was not the Government's ESG policy that had caused me a problem but the banks' ESG policies.

Baroness Penn (Con): I understand the point that my noble friend makes, but I think that is rather a matter for the banks. Nevertheless, as I have said to my noble friend, if there are wider or more systemic issues in this area, I would encourage him to draw this to the attention of the Government and the regulators. The Government are clear that investment in the defence sector remains important.

My noble friend suggested again that I or another Treasury Minister write to the bank which withdrew services from his associate telling it to relax steps to be taken to comply with MLRs. However, it would be extraordinary and inappropriate to override the MLRs in this way. Further, banks would still be under obligations in relation to the Proceeds of Crime Act which relate to dealing with such money.

I thank my noble friend for raising this issue. I am glad that he has met the Ministry of Defence on it. If there are wider issues that he would like to highlight to the Government, the Treasury is committed to working with the MoD to look at them. None the less, I hope my noble friend does not press his amendments at this time.

5 pm

Earl Attlee (Con): My Lords, I am grateful for the response of my noble friend the Minister. I detect a little bit of movement, but I am not surprised at her response. Of course, I am very happy to withdraw my amendment.

Amendment 98 withdrawn.

Amendments 99 to 101 not moved.

Amendment 102

Moved by ***Earl Attlee***

102: After Clause 71, insert the following new Clause—

"Performance bonds for small or medium-sized enterprises

(1) Within six months of the passing of this Act, the Secretary of State must lay before each House of Parliament a report on the availability of performance bonds to small and medium-sized enterprises from the financial markets to cover stage payments in capital projects.

(2) The report must, among other things, cover collateral requirements."

Earl Attlee (Con): My Lords, during my research into the money laundering problems identified in the previous group, I identified another problem for SMEs: the availability of performance bonds from the financial markets to cover stage payments in capital projects. I do not need to explain to your Lordships what stage payments are or how bonds work, and it is certainly something that I do not have any expertise in. The difficulties are that the banks require so much collateral that the system is intractable. It is not a problem for large firms with correspondingly large balance sheets; this problem affects only SMEs and tends to keep them small. I talked to a manufacturer of hovercraft, and if all their current enquiries came to fruition, they would simply not be able to secure the necessary bonds to finance the work. I beg to move.

Baroness Kramer (LD): My Lords, this is an issue that I have raised in the House before, having run into the same set of issues—I suspect with some of the same companies down in the West Country involved particularly in large-scale exports which require performance bonds to be able to meet their contractual obligations. In these instances, performance bonds were denied by the banks unless the collateral included the homes and personal possessions of the directors and senior managers of the company. This was despite the fact that the firms had long-standing records of being able to deliver on the projects they engaged in and indeed the customers at the far end had reputations, again, of being excellent payers.

It is a real weakness in the system that we have no one who deals with market gaps, particularly when it applies to SMEs. I attribute part of this to the regulatory perimeter, but regardless of where the fault lies, there needs to be a remedy if we are to build a future economy which will be based very largely on SMEs and, hopefully, very significantly on exports.

Lord Harlech (Con): My Lords, the Government recognise the importance of ensuring that SMEs are able to access appropriate financial products, including performance bonds, and of ensuring the availability of useful information on such products. As noble Lords are aware, performance bonds are a type of financing product that provides a financial guarantee to one party in a contract in the event of the failure of the other party to fulfil its obligations.

More broadly, SMEs already benefit from a diverse financial market, made up of high-street banks, smaller banks and a range of non-banks, to ensure they can continue to access suitable finance. The Government support SMEs' access to finance through a variety of debt and equity finance programmes through the British Business Bank. These programmes were supporting more than £12 billion of finance to more than 94,000 smaller businesses as of June 2022.

The British Business Bank also produces several reports on access to finance on an annual basis, including the *Small Business Finance Markets* report, providing expert and independent assessment of the availability and options within the wider funding landscape for SMEs. Fundamentally, the commercial terms that banks and insurers offer, including the collateral they require for performance bonds, are a matter for the firms, subject to meeting the relevant regulatory requirements.

The Government remain committed to maintaining the highest international standards of regulation, and the Financial Services Act 2021 granted the PRA the powers to implement the latest international standards, known as Basel III.1. These include revised capital requirements for performance bonds for banks. The PRA recently consulted on its proposals and specifically requested comments and data from firms and wider stakeholders on its proposals for capital requirements for products such as performance bonds, and it will be considering feedback provided by respondents in formulating its final proposals. For insurers providing performance bonds, the Government are reforming one of the capital requirements, the risk margin, removing a barrier to lower product pricing.

As noble Lords are aware, under the provisions in the Bill, our independent regulators will take on new responsibilities. This means that the PRA will take on responsibility for setting the relevant regulatory requirements that are currently set through retained EU law, acting within the framework set by the Government and Parliament.

As we have discussed a number of times in relation to the Bill, when making rules designed to ensure the safety and soundness of financial services firms it is also important to consider how those firms can support the wider UK economy. That is why the Government have introduced the new secondary growth and competitiveness objectives, which will require the regulators to act to facilitate the competitiveness of the UK economy and its growth in the medium to long term. The PRA's current consultation has been undertaken before the provisions in the Bill will come into effect. However, the Financial Services Act 2021 requires the PRA to "have regard" to the Government's economic policy, including investment in SMEs and infrastructure, as well as the effect of its requirements on the UK's international standing and the provision of finance to businesses and consumers in the United Kingdom on a sustainable basis.

Measures in the Bill also allow for parliamentary scrutiny of the regulators' performance, including how they have advanced their new secondary competitiveness and growth objective. In addition, the Bill requires the regulators to produce statements of policy on how they will review their rules. Recent government amendments will require these statements to include information on how stakeholders can make representations to review rules, and on the arrangements for ensuring that these representations are considered.

In conclusion, the Government are committed to ensuring that SMEs have access to suitable financial products which are subject to suitable prudential safeguards to appropriately manage any risks. This is particularly important to ensure that UK SMEs are accessing finance to support their goals and contribute to the UK's growth agenda. I therefore ask my noble friend to withdraw his amendment.

Earl Attlee (Con): My Lords, I am particularly grateful to the noble Baroness, Lady Kramer, for her intervention, which showed how much more she knows about finance than I do. She did a great job. I am not convinced that industry will be cracking open the champagne after listening to my noble friend's

[Earl Attlee]
response to my amendment; nevertheless, I am grateful for it. In the meantime, I beg leave to withdraw my amendment.

Amendment 102 withdrawn.

Amendment 103

Moved by ***Lord Forsyth of Drumlean***

103: After Clause 71, insert the following new Clause—

"Bank of England digital currency: legislation

The Bank of England may not issue digital currency unless authority to do so is granted by an Act of Parliament which is passed after this Act."

Lord Forsyth of Drumlean (Con): My Lords, I will speak to Amendment 103 in my name. It is supported by my noble friend Lord Bridges of Headley, who is currently chairing the Economic Affairs Committee, where the Governor of the Bank of England is before the committee. I hope he is giving him a good roasting on the issue of central bank digital currencies, which is the subject of this amendment.

I shall not bore the House by explaining what central bank digital currencies are and why they represent a threat as well as an opportunity, because all that was well set out in the Economic Affairs Committee's report *Central Bank Digital Currencies: A Solution in Search of a Problem?* which was published in January 2022. The report was debated in the House in February this year. In the report's recommendations was a simple suggestion that the Government give a clear indication that, should they decide to go forward with introducing a digital currency, it would be subject to primary legislation. To the astonishment of the committee, the Government have consistently refused to do so. They are arguing that they have not yet decided whether they think a central bank digital currency would be appropriate.

More recently, the Chancellor wrote a letter addressed to the chairman of the Treasury Select Committee and my noble friend Lord Bridges, addressing him as "Dear James" rather than "Dear George". Ah—my noble friend is now in his place, so I do not need to elaborate too much. My noble friend Lord Bridges has been a vigorous champion of the need to have parliamentary accountability concerning this matter.

A main theme in Committee and throughout consideration of the Bill has been accountability. I have on several occasions now paid tribute to the Minister for responding to that. There are real issues about having a central bank digital currency. The first point is it is not a currency; it is simply a means of having digital banknotes. However, the fact that people are able to have an account in which their money is in digital form through a clearing bank with the central bank has huge implications for financial stability, depending on how much can be held in a digital account. The ability to move money from a conventional bank account to a digital wallet instantly would mean people would be able to react to financial events almost instantaneously. The fact that people could move their money to a central bank digital wallet would mean there would be less money—I should declare my interest as chairman of Secure Trust Bank—available to be lent, which would have huge implications for credit and, if taken to the extreme, would amount to the nationalisation of credit in our country, although no one is suggesting that.

There are also huge implications for privacy. If a digital currency is to operate effectively and not be prey to crooks and organised crime, it is essential that it is organised in a way that will monitor people's transactions, and that, plus the ability to limit transactions, has big implications for civil liberties. For the first time in my life, I have had left-wing libertarian organisations writing to me saying how much they appreciate what I have been saying on this subject.

I will not take up the time of the House—and by the way, this Report stage is the very model of how Report on a Bill should be conducted. I will simply say to my noble friend that the notion that the Treasury and the Bank of England could get together and introduce a central bank digital currency without having proper parliamentary scrutiny and debate about these issues is utterly ridiculous in my view and I do not understand why the Government have been resisting doing so.

5.15 pm

As an aside, as far as the Bank of England is concerned, another report which the committee produced was *Quantitative Easing: A Dangerous Addiction?*, which predicted the inflation we are now experiencing. The Governor of the Bank responded at the time by saying that we should not have used the word "addiction" as it might offend people who had real illnesses. Our report said that there was a real danger that continuing with quantitative easing on that scale would result in inflation. He said in response that inflation—at the time at less than 3%, I think—was a transient phenomenon.

The Bank has been able to increase its balance sheet from about £90 billion to 10 times as much—short of a trillion. It has done so because of its independence. Therefore, it seems to me that it is very important that we have parliamentary accountability. You can have independence but you can also have accountability. This area is very dangerous and I feel it is one of these fashionable issues about which people say, "Other central banks are doing it, perhaps we should be doing it too. We don't want to be left behind—it is essential that Parliament does it".

In moving this amendment, I say to my noble friend that I would be satisfied by an absolute undertaking—although I would prefer it in the Bill because it would then apply to all Governments, and I would want to hear it from the Opposition Front Bench as well—that the Government would not consider introducing a central bank digital currency in this country without having primary legislation and the opportunity for both Houses to consider it, and all the implications, and consider how it is going to be constructed.

Where I sympathise with the Government it is that they have an argument in saying that they do not know how it is going to be constructed, if at all. I understand that, but it is not a reason to not give an undertaking that a matter of this kind has to be properly considered by Parliament, and that the public need to understand what the implications are for them and their privacy, and for the stability of our economy. I beg to move.

Lord Bridges of Headley (Con): My Lords, I will speak very briefly and I apologise for being late.

The Governor of the Bank of England was just in front of the Economic Affairs Committee and our final question was on CBDCs. He gave an answer that I thought was lukewarm at best in his support for them, which was very interesting in and of itself. Before going any further, I remind the House of my interest as an adviser to Banco Santander.

The last time I debated a CBDC, I think there were five of us in the Chamber. Just as I was summing up my speech, suddenly the Chamber filled up, and I thought: "My God! Everyone is suddenly interested in my thoughts on CBDCs". Only then did I realise that there was just about to be a debate on Brexit for the 231st time, and my views on CBDCs were completely and utterly irrelevant.

As my noble friend has just so eloquently summarised, this is an issue that we really need to focus on a lot more in Parliament as a whole. You may be a fan of CBDCs—here I am looking at my friend the noble Baroness, Lady Kramer, who I think is more persuaded by the merits of them and may see them as the best thing since sliced bread, or perhaps in this case one should say decimalisation—or, like me and my noble friend Lord Forsyth, you may be of a more conservative disposition and need to be convinced of the need for change. Whichever view you have, as my noble friend has just said, it is imperative that Parliament has the chance to debate, scrutinise and vote on primary legislation before a CBDC is introduced.

My noble friend has summarised many of the most important points, including privacy, financial stability and the impact of bank disintermediation. There is also the entire issue of how a CBDC might affect the operational independence of the bank, as my noble friend pointed out. One estimate is that a CBDC could—I stress "could"—increase its balance sheet by £400 billion, and it would obviously give the bank entirely new tools in monetary policy.

Then there is the entire issue of cost. I have to say that the words "IT infrastructure project" are possibly the most expensive three words that you can put together. I am very concerned about how much this will cost. No one seems to be able to say how much it will cost or who will pay.

Then there are issues of cybersecurity. The Bank states that new infrastructure needed to support a digital pound would make

"an attractive target for hackers and fraudsters who wish to steal funds"

and

"may become a target for hostile attacks with the aim of disrupting the system and, potentially, the wider economy".

According to GCHQ, while a digital currency presents "a great opportunity", it goes on to say:

"If wrongly implemented, it gives a hostile state the ability to surveil transactions".

Those are just some of the enormous issues that a CBDC raises, and why we must have primary legislation to be able to scrutinise and vote on all this. I am very grateful to my noble friend the Minister, her colleague the City Minister, Mr Griffith, and the Chancellor for focusing on this.

I should actually say that the Chancellor may be forgiven: I am christened James George, so he might have just been signing this late at night, even though I have known him for 20 years. I will put that to one side. I got a very nice letter from the Chancellor, as did Harriett Baldwin. The problem is that, although it is signed by Jeremy Hunt, I feel that it is almost signed by Lewis Carroll because it gives you the feeling that it comes from *Alice in Wonderland* at a certain point.

If I may, I will detain your Lordships by reading two paragraphs:

"The Government and the Bank of England are at an early stage of policy development and have not made a decision on whether or not to introduce the digital pound"—

that we all know. It goes on:

"As a result, we do not yet know whether a digital pound will require primary legislation".

When you read that back a few times, it begs a question, and I would be grateful if my noble friend the Minister, when she sums up, could answer it. Could a digital pound be introduced without primary legislation? This seems to suggest that potentially you could have one and it would not require primary legislation.

Be that as it may, the letter then goes on to say:

"However, in recognition of the potential significance of a digital pound, and the views of Parliamentarians, the Government commits to introducing primary legislation before launching a digital pound".

So even though one might not need primary legislation, the Government are committing that there would be primary legislation.

Obviously, that is a great step forward. My problem is that it is still is not watertight. Much as I would like to say that my noble friend, Mr Griffith and the Chancellor are going to be there for years to come, I somehow do not know whether that is going to be the case. That is why I very much echo what my noble friend has said, and would like the Minister to go as far as possible in saying why it is not the case that they are not willing to put this into primary legislation. Moreover, I would be very interested to know the view of the Labour Party and the Liberal Democrats on this, and whether they too would say that they will commit not to introduce a CBDC without primary legislation.

I end by echoing my noble friend. The introduction of a digital pound—a "Britcoin", as you might call it—would be an enormous undertaking. We cannot and we must not leave it to be passed by statutory instrument one wet Wednesday afternoon in the Moses Room. That would be an absolute disaster. It needs to be debated on the Floors of both Houses and voted on.

Baroness Altmann (Con): My Lords, I too apologise to the House for being late.

I have added my name to my noble friend's amendment. I urge my noble friend the Minister and the House to think very carefully about what possible advantages there could be relative to the disadvantages of having a central bank digital currency. We have seen so many people lose so much money, and so many money launderers, thieves and so on make so much money from digital currencies. This may be one of the biggest scams of the century.

It is very difficult to see why we need digital currencies at all. The risks for money laundering and economic crime, the lack of transparency and security for anyone

[Baroness Altmann]
putting money in, and the opportunity that this would offer to rogue states and actors to try to undermine our entire financial system require significant warning. The possibility that this could be introduced without primary legislation seems to me to be unconscionable and a dereliction of our duty to make sure that we are looking after the currency of this country.

Baroness Kramer (LD): My Lords, I had the privilege of serving on the Economic Affairs Committee, with the noble Lord, Lord Forsyth, as chair, when it produced the report. Your Lordships will gather that my views on whether we adopt a digital currency are distinctive somewhat from others who have spoken today. It is not that I am some enthusiast for it; I recognise all the issues and disadvantages that have been named today, particularly financial stability and privacy. However, 18 countries will be adopting a central bank digital currency this year—including China, initially for its domestic market. It has been piloting it in 12 cities, but eventually it will become an offering that it takes to the many other countries where it expects to exercise influence, in both Asia and Africa.

I am afraid that we are facing potentially a King Canute situation: we may not particularly want such a currency but might simply have to accept that to remain in the forefront and in play within financial services and as a major exporter and participant in global trade, we may have no choice but to go down this route. But I absolutely share with every other speaker the view that this should be determined by Parliament in primary legislation. The issues are sufficiently fundamental and far-reaching. They carry risk, and they require judgment and perspective—and it is in debates in the other place and here that that can happen.

It seems to me that something so fundamental as currency surely is the responsibility of a democratic Parliament. It cannot be transferred, in effect, to either the Treasury to run through an SI, or to the regulators to not even bother with an SI but largely to put it in place through various regulatory changes. So, here we have absolute common ground; this should be on the face of the Bill. I am concerned that this may be the last piece of legislation coming forward where we have the opportunity to put it in the Bill. There might be a further opportunity in a year's time, but it depends on the speed of change that we experience.

Guarantees from the Government would be good. I am glad that a letter has been written to Harriett Baldwin and the noble Lord, Lord Bridges, but we need something that recognises the significance and importance of doing this through primary legislation.

Lord Livermore (Lab): My Lords, we welcome the amendment in the name of the noble Lord, Lord Forsyth, which has enabled this short and informative debate on the process for establishing a central bank digital currency. As technology develops and people's habits change, it is vital that we keep pace. Therefore, the principle of a digital pound has much to commend it, although the arguments, implications and details clearly need to be properly worked through. The introduction of a digital pound would represent a significant step, and it is therefore right for the noble Lords, Lord Forsyth and Lord Bridges, to ask about the underlying processes, though it is a novel experience for the two noble Lords to be asking for commitments from this side of the House.

We very much welcome the clarification offered by the Chancellor in his letter to the noble Lord, Lord Bridges, and the Economic Affairs Committee that there would be primary legislation before a digital pound could be launched. We agree that this is an important safeguard.

Baroness Penn (Con): My Lords, I thank my noble friends Lord Forsyth and Lord Bridges for their leadership in the House on this important topic. I do not intend to relitigate the debates around the question of a central bank digital currency; I was one of the five or so noble Lords who debated the Economic Affairs Committee report in February, and I enjoyed it very much.

As we set out then and in Grand Committee, the Government have not yet made a decision on whether the digital pound should be introduced, and that remains the case. But we also take the view that a digital pound may be needed in the future, so further preparatory work is justified. Therefore, the Treasury and the Bank of England issued a joint consultation on a potential digital pound on 7 February. As that consultation paper makes clear, the legal basis for a digital pound will be determined alongside the consideration of its design.

5.30 pm

To answer the question from my noble friend Lord Bridges, we do not yet know whether primary legislation would be needed to make it work. To answer the subsequent question, and in response to the EAC's report and others, my honourable friend the Economic Secretary and I raised the matter with the Chancellor, and he has made a clear commitment to Parliament. I draw noble Lords' attention to the Chancellor's letter to the chairs of the Economic Affairs Committee and the Treasury Committee, which informed us that my noble friend's given first name is indeed John and not George—although I have always known him as George. In that letter, dated 23 May, the Government commit to introducing primary legislation before launching a digital pound. A copy of the letter has been placed in the Library and has also been published by both committees. That commitment to having primary legislation before introducing a digital pound is straightforward and unequivocal.

Another question was asked by my noble friend Lord Bridges and the noble Baroness, Lady Kramer, on why the commitment is not in the Bill. There could be unintended consequences, such as inadvertently preventing the Bank carrying out its existing day-to-day duties. For example, the term "digital currency" is not defined in the clause or elsewhere. However, in practice, the Bank already issues some forms of digital money other than cash which could be considered digital currency without further definitional clarity—for example, in the form of reserves it issues to financial institutions, which are used in wholesale settlement. I reassure all noble Lords that, while we cannot support the amendment placing the commitment in the Bill, it does not change in any way the Government's commitment, made very

publicly to both Houses, to the intention to introduce primary legislation should a decision be taken to go forward with the digital plan.

Lord Forsyth of Drumlean (Con): My noble friend has made valid arguments for not putting the amendment, as drafted, in the Bill. However, she and her very clever officials could get around this by tabling an amendment at Third Reading to that effect.

Baroness Penn (Con): I am afraid that I am not in a position to commit to my noble friend's suggestion. I hope that the reassurance he has heard from all Front-Benchers on this issue will persuade him not to press his amendment at this time.

Lord Forsyth of Drumlean (Con): My Lords, once again, my noble friend has gone beyond what we might expect in responding to the debate, so it is a pleasure to beg leave to withdraw my amendment.

Amendment 103 withdrawn.

Amendment 104

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

104: After Clause 71, insert the following new Clause—

"Defined contribution and defined benefit pension funds investment review

(1) The Treasury must publish a review of how to incentivise defined contribution (DC) and defined benefit (DB) pension funds to invest in high-growth firms and a diverse range of long-term assets in the United Kingdom, which must include green infrastructure.

(2) The review must consider how best to do this while protecting the safeness and soundness of pension funds.

(3) In carrying out the review, the Treasury must consult—

(a) the Department for Work and Pensions,

(b) the Department for Business and Trade,

(c) the Pensions Regulator,

(d) the FCA,

(e) the PRA,

(f) the Pension Protection Fund,

(g) pension trustees, and

(h) relevant financial services stakeholders.

(4) The review must consider the merits of—

(a) amending the definition of "specified scheme" within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) so as to increase the threshold of such DC schemes in respect of which trustees and managers are required to produce a value for members assessment under regulation 25 of those Regulations;

(b) adjusting the terms of reference for DB Local Government Pension Schemes (LGPS) funds to consider regional development as an investment factor;

(c) establishing frameworks to enable DB pension funds to invest in firms and infrastructure alongside the British Business Bank.

(5) The Treasury must prepare a report on the outcome of the review, and lay it before Parliament within one year of the passing of this Act."

Member's explanatory statement

This amendment would compel the Treasury to publish a review within a year of Royal Assent on how to incentivise pension fund schemes to invest in high-growth firms and green infrastructure. The review would have to consider requiring DC schemes to assess the merits of: consolidation, establishing frameworks for British Business Bank investments (so that DB pension schemes will be able to invest alongside them), and adjusting the terms of reference for Local Government Pension Schemes (so they consider regional development as an investment factor).

Baroness Chapman of Darlington (Lab): My Lords, we are pleased to bring back Amendment 104. I am grateful to the noble Baronesses, Lady Bowles of Berkhamsted and Lady Altmann, for signing the amendment.

Since Committee, and following the suggestion from the noble Lady Bowles, we have incorporated an additional consultee in the form of the Pension Protection Fund. If we are looking at different and better ways to utilise pension funds, it is only right that that body be formally involved in the process. It is important to note that the amendment would not directly lead to changes in how defined contribution and defined benefit pension funds are invested; it merely seeks consideration via a formal review of a number of potential ways forward.

I draw colleagues' attention to subsection (2) of the proposed new clause in the amendment, which puts

"the safeness and soundness of pension funds"

front and centre. While no investment fund is risk-free, this is about identifying how funds could be used to support high-growth firms and long-term assets, including green infrastructure.

In 2019, the British Business Bank and Oliver Wyman published research which found that the UK's defined contribution firms are not investing in fast-growing and innovating companies. It is a problem because the UK is home to incredible tech start-ups and life science companies. They are Great British success stories, but their growth potential is sometimes limited by a lack of access to finance. The research found that retirement savings could be increased by a significant amount with just a modest investment in these firms. For example, a 22 year-old whose defined contribution scheme made 5% of investments in the UK's fastest-growing companies could see an increase in their retirement pot of 7% to 12%.

Having amended the Bill to include a nature target, we must also consider how pension funds can do their bit to help the environment. This review would look at investments to the types of green infrastructure which will fuel our future economic growth and help deliver the transition to a net-zero economy. The Government recently included nature-based solutions as part of the definition of infrastructure in the UK Infrastructure Bank Act. If investment in nature is a suitable purpose for a Government-backed investment bank, we should harness the power of pension funds as well. This review would be timely, with the recent collapse of Silicon Valley Bank and its UK subsidiary and the demise of Credit Suisse sparking panic in the financial markets and hitting the value of pension funds.

The world is changing. More people shop online and work from home, meaning that investment in things like shopping centres and office blocks no longer produces the returns it did in the past. If done properly, small changes to how pensions are invested could have a significant impact on UK economic growth and, more importantly, a significant impact for the scheme members themselves. I beg to move.

Lord Naseby (Con): I declare an interest as trustee of the Parliamentary Contributory Pension Fund. As a trustee, but also on my own behalf, I have no concern about pension funds being incentivised. We are there, as trustees, to look after our pensions in the future. Incentives are one thing, but, as a trustee, I am not sure I want to be dictated to and told I have to consider high-growth funds in particular.

When I look at proposals from our fund managers, I look at the return expected over a period of time. Obviously, we are long-term investors, and it may be that a firm has the potential to be one that produces excellent returns. I do not think, on the whole, that pension funds are there to help smaller and newly created firms grow. On the other hand, I can say quite honestly that proposals are in front of us in relation to infrastructure which have considerable merit. I suspect that positive decisions will follow in due course. I ask my noble friend and the Opposition to bear that in mind.

I will also comment on the proposed new subsection (3) on consultation. In addition to the parties listed, I would like to see the trade associations of, for instance, investment trusts, the associations of fund managers and a number of other organisations in the financial world which group together. If we are going to help our country in terms of growth, consultation should be with those at the coalface and those varying funds, et cetera.

I have reservations. I understand the driving force behind the amendment, but it does need some refinement before it is considered as a possible way forward.

Baroness Hayman (CB): My Lords, I support this amendment, which fits very well alongside the discussions we had on the fiduciary duty of pension fund trustees. I will not push those amendments to a vote, but the work being done, as the Minister described, on having a clear and close look at the fiduciary duty for pension fund trustees would complement this amendment. I do not think it is threatening in any way to pension fund trustees; it is very carefully framed and asks the Treasury to publish a review on incentivisation. It is perfectly possible, in the words of the noble Lord, Lord Naseby, to fine-tune it after the review—that is the purpose of the consultation.

This amendment is worth while. The noble Baroness, Lady Chapman, referred to the UK Infrastructure Bank and its recognition of nature-based projects and types of infrastructure as assets that could be invested in. I was involved in that amendment, on which the Minister, in her usual helpful style, listened and took action. I hope that she will similarly recognise the virtues of this proposed new clause and I support the amendment.

Baroness Bowles of Berkhamsted (LD): My Lords, I added my name to this amendment and suggested the inclusion of the Pension Protection Fund, partly because there is already quite a big conversation around how we will incentivise investment and be prepared to take a bit more risk, because the UK seems to have become very risk-averse. There has been regulatory encouragement, if you like, for pension funds to be somewhat risk-averse; I am not sure it is actually risk-averse to end up in a situation where you invest everything in sovereign bonds and have a systemic risk but, setting that conversation aside, gilts have always been regarded as a very steady investment. It has perhaps been forgotten how to invest for reward.

The fiduciary duty is important and we need to look at it, because there are implications if you suggest in any way to trustees what they ought to do. Of course, that does not mean that you have to take zero risk as a trustee—you must understand the risk and reward dynamic—but, if we move through legislative steps, we would have to add to the list of consultees a whole load of lawyers to help sort out how we deal with the common-law fiduciary duty. Overall, this is a good amendment, making the Government part of this conversation and drawing in more consultation so that more people can input with common purpose, instead of there being lots of consultations all over the place.

Of course, there is work being done by parliamentary committees and I hope notice will be taken of those, and maybe care taken, looking at proposed new subsection (4)(b) and

"adjusting the terms of reference for DB Local Government Pension Schemes (LGPS) funds to consider regional development as an investment factor".

To some extent they can do that already, especially in the amounts that are retained where the local authorities are investing directly rather than through the pooled funds—and I have to declare an interest here in potentially listing a fund.

5.45 pm

I have been talking to local authorities, but they are also very conscious that they want diversity. If we are going to have regional development, it is not, "Let us go off and all invest in our local shopping centre" again, which led to a slight disaster; they need to spread it around. So it may not be just regional development in their region, it would be regional development somewhere else to get the balance of risk. That is something that pension funds themselves are already very aware of. They are very interested in things such as place-based impact investing, but not solely in their own place. If everybody is taking that same attitude, they will have the diversity and we will also have that kind of development and the funding for it.

Overall, you could put many more things into this and it will not be the end of the story, but I think it is important to put this into the Bill so that work starts on it quickly, because we are almost in an emergency with the state of investment in this country and, therefore, the sooner we begin to address to address it and to make our money work for the things that are better for the economy, the sooner we will get results.

Lord Eatwell (Lab): My Lords, this is not just a good amendment, it is a very important and timely one. Noble Lords will recall that after the death of Robert Maxwell and the exposure of the way in which he had looted the Mirror Group pension funds, the Government introduced a new pensions structure to protect defined benefits pensions, as well as new accounting standards which needed to be obeyed by pension funds. The effect of this protective barrier placed around defined benefits funds has been that they have adopted

extremely conservative investment strategies and the return on investments has correspondingly been extremely low compared with what could be achieved by quite modest amendments of investment strategy.

These issues are now a matter of widespread discussion where the unfortunate unintended consequences of the post-Maxwell legislation have been revealed. It is necessary quite rapidly to take account of the discussions, to assess the performance of pension funds since the last significant pensions legislation, and to come up with sensible proposals for reform. That is why this amendment is crucial, for both the pensions funds industry and the wider economy. I encourage the Minister to support this amendment because by doing so the Government would make a major contribution to the future prosperity of a whole raft of pensioners in this country and to the success of pension funds as investment vehicles within the UK economy.

Lord Blackwell (Con): My Lords, I am concerned that, while seemingly innocuous, this amendment might turn out to be the thin end of the wedge of government intervention in pension investment. Clearly, the obligation on pension trustees should be to do their best to get the right returns for their investors. Once we start incentivising trustees to take decisions based on incentives offered to them, that raises the question of who then bears the consequences and the responsibility if those investments turn out in the long term not to be the right thing for their pensioners to be invested in.

I do not dispute the point that pension fund investments have not been optimal in the past, but to my mind that is to do with regulatory restrictions that have been placed on pension funds and the requirements to meet those restrictions. I think there is a case to look at the regulations around pension funds that restrict their investment choices and to enable them to invest in a wider set of assets, but I do not think the right way to do that is to start proposing incentives that would turn into the Government mandating the way that pension funds should be invested.

Lord Davies of Brixton (Lab): My Lords, I support the amendment. I still think of myself as a relatively new Member of the House, so it is useful to remind the House of my lifetime spent working in the pensions industry, broadly in support of scheme members. I have been a scheme trustee, I have chaired the Greater London Council investment panel and I have advised trustees of pension schemes as the scheme actuary. I am just stating my expertise here.

I support the amendment because I think a review is required. I take on board the remarks about the thin end of the wedge, but unless we have the review those concerns cannot be addressed. As the noble Baroness, Lady Bowles, said, there is now a big conversation about using pension scheme money to promote the British economy. There is actually a long history of that sort of proposal going back over many years, but it seems to have reached a crescendo over the last year or so.

It is essential that we have a review. What is also essential, of course, is that the review is undertaken by those who know what they are talking about, but that has not necessarily been true about all the comments made so far. For example, I draw the attention of the House to the recent useful report produced by the Pensions and Lifetime Savings Association—not a body that I consistently agree with—on supporting pension investment in UK growth and thinking up quicker and simpler ways to promote pension fund investment in our economy.

I was going to raise two issues. One has already been explained clearly by my noble friend Lord Eatwell: the funding standards that have been established work against the principles that I am sure we all support. Another problem that we have is the Conservative Government's introduction of freedom and choice. It is difficult to oppose freedom and choice but, when you come to pensions, which are long-term arrangements depending on long-term investment, giving people freedom of choice weakens the very basis upon which they are being organised. It is all very well saying to pension funds, "You've got to invest in infrastructure", but if the members of that scheme have the right to pull their money out at any time, it is very difficult to take the long-term view. That is a fundamental incoherence behind the so-called policy of freedom and choice. Those issues need to be addressed in the review.

I also hope that the list of consultees for the review is not a complete list; to the extent that it is possible to consult the scheme members, they should be consulted as well. I also hope that the issues can go somewhat broader than those listed in the amendment.

In general terms, a review is needed, and I hope it will lead to the objective being clearly set out of promoting the UK economy.

Baroness Altmann (Con): My Lords, I fully support and have added my name to this amendment. It is a pleasure to follow the noble Lord, Lord Davies. We both go back a long way in the pensions industry. My entire career has been in pensions—examining occupational pension schemes as an academic, then managing occupational pension investments in the City, then advising schemes and Governments. I have also been a trustee on investment committees for pension schemes.

I have to say that the current position that members of pension schemes find themselves in—both members of defined benefit schemes and members of too-often-forgotten defined contribution schemes—has not been positive in terms of the experience of the 2022 markets. As we have heard, trustees and managers of pension schemes have been encouraged to believe that the right way in which to invest a pension fund is in supposedly low-risk—which actually also means relatively low-return—investments, rather than in the traditional and older-fashioned way of managing schemes that persisted until the noughties, which was to try and maximise returns.

We have now moved to a position whereby we were supposed to be minimising risk, but I argue that that entire movement away from supporting the British economy and away from supporting UK equities and UK growth assets has been underpinned and misled somewhat by quantitative easing. The Bank of England's policy, which effectively offered a natural large buyer that underwrote and underpinned the government bond market, perhaps led people to believe that that was the best or safest way in which to invest pension

[Baroness Altmann]
funds. That was partly because the long-term value of the liabilities, as well as their present value, is discounted and measured as of today by using the gilt yield or bond yield measure. In corporate reporting it is double-A corporates; in actuarial valuations it is typically gilt yields.

In 2022, conventional gilts lost 20% and index-linked gilts 30% of their value. The FTSE 100 rose a little. Yes, smaller companies did not do so well, but the idea that pension schemes were investing in a low-risk manner was actually confounded last year, and I would argue that, as we move into a post-QE world and as we have recognised and I have been warning since 2011, or even earlier than that, the policy of quantitative easing is a significant danger for pension scheme investments and members.

We must recognise that we do not fully understand what investment risk means any more. The capital asset pricing model is based fundamentally on the idea that gilt yields are the lowest-risk assets and all assets are more risky—even if they offer more returns, potentially they are more risky—and may need to be considered with a little more circumspection.

That leads on to the idea that, if we do not quite know whether gilts and fixed income are indeed low risk in the way that we thought they were and they have been in the past—because central banks are going to need to offload at some point and are certainly no longer underpinning the markets—diversifying investments and supporting the domestic economy in the way that this review would be investigating must come into the public debate.

6 pm

I know that the Chancellor will be looking to do something on this in the autumn. However, when you consider that taxpayers fund at least, and probably more than, 25% of every pension fund, and that 25% of everyone's pension is tax free when they take it, the taxpayer does have a direct interest, over and above what has happened to members' and employers' money, in ensuring that these pension schemes can support the economy, whether in infrastructure, in investments that will boost sustainable growth, or in social housing.

So far, in a range of different investments over the last 15 years, domestic pension funds, despite having so much money—at least £50 billion a year of taxpayers' money—have neglected our own stock market and small companies. So, if the Government want to boost growth—and they need to—and if we have a fiscal constraint post Covid, which we clearly do with the fiscal deficits we have, there is a rationale for the Government to look into how much of the money currently going into pension funds, and has already been put into pension funds, which suffered such huge loses last year in what were supposed to be safe investments, could and should be directed to boost growth from now on. Let us face it, when you boost domestic growth in the UK, you will also be helping to boost the retirement prosperity of our future pensioners, as well as current pensioners.

At the very least, I hope the Minister can see the merits of adopting this review and promoting the idea that there are important reasons why the long-term investments of our domestic pension funds, which had been the jewel in the crown of our financial system for many years, should be directed to work to the benefit of the economy and the pension scheme members themselves.

Baroness Kramer (LD): My Lords, I speak from these Benches on behalf of my party, as a group of realists. The current Government, and any future Government, look at the pools of money in pension funds, whether defined contribution or defined benefit, and see them as a tempting source of investment in the area of scale up and infrastructure, where we are desperate to find additional investment. I point out that pension funds are not disadvantaged in investing in investment-grade assets in any way. It is in investing in sub-investment grade assets where they carry a burden under the current arrangements.

These investments in scale up and infrastructure are, by definition, high risk and illiquid, and we have to face up to that. Some 40% of scale-ups fail and infrastructure projects run notoriously late, and well over budget. I challenge people to come up with a very long list of infrastructure projects that have come in on time and on budget. It is hard to identify virtually any project that meets that test. It means that pension obligations must be fully protected if we are to open up these funds to be able to invest in a far more illiquid and high-risk way.

That is why I am comfortable with this amendment, because proposed new subsection (2) insists:

"The review must consider how best to do this while protecting the safeness and soundness of pension funds".

I was also pleased that the noble Baroness, Lady Chapman, introduced the additional consultee identified by my noble friend Baroness Bowles—the Pension Protection Fund—in this process, because that is clearly a mechanism which could provide the kind of protection for pensioners who may be exposed if we change the risk profile of pension fund investment.

I insist that the first responsibility of a pension fund is to pay out its obligations on time and in full. I suspect that everyone who is invested in a pension believes that that is, and must continue to be, true. Often when we discuss these issues the Canadian pensions funds are cited because they do indeed invest in illiquid and high-risk assets, but anyone reading the credit rating agencies discussing those pension funds will find that the pension funds are pretty much backstopped by the Canadian Government.

What I hope will come out of this review process are new opportunities to fund our economic growth but also protections commensurate—it may not be the same strategy but through some mechanism—with those that the Canadians have put in place, to make sure that our pensioners will still be paid on time and in full. If that no longer remains true, we end up in a very serious pickle but, having read through this set of amendments, I think they get us to the right place to be able to achieve that.

Baroness Penn (Con): My Lords, the Government welcome the further discussions that this debate has given us the opportunity to have on the issue of unlocking pensions capital for long-term, productive investment where it is in the best interests of pension

scheme members. Indeed, as I set out in Committee, the Government have a wide range of work under way to deliver the objectives set out by this review. While I was a little disappointed not to hear those initiatives referenced in this debate—apart from, perhaps, by my noble friend Lady Altmann—I will give it another go and set out for the House the work that is already under way in this area.

As previously set out, high-growth sectors developing cutting-edge technologies need access to finance to start, scale and stay in the UK. The Government are clear that unlocking pension fund investment into the UK's most innovative firms will help develop the next generation of globally competitive companies in the UK.

The Chancellor set out a number of initial measures in the Budget to signal a clear ambition in this area. These included: increasing support for the UK's most innovative companies by extending the British Patient Capital programme by a further 10 years until 2033-34 and increasing its focus on R&D-intensive industries, providing at least £3 billion in investment in the UK's key high-growth sectors, including life sciences, green industries and deep tech; spurring the creation of new vehicles for investment into science and tech companies, tailored to the needs of UK defined contribution pension schemes, by inviting industry to provide feedback on the design of a new long-term investment for technology and science initiative—noble Lords may have seen that the Government launched the LIFTS call for evidence on 26 May; and leading by example by pursuing accelerated transfer of the £364 billion Local Government Pension Scheme assets into pools to support increased investment in innovative companies and other productive assets. The Government will come forward shortly with a consultation on this issue that will challenge the Local Government Pension Scheme in England and Wales to move further and faster on consolidating assets.

At Budget, the Chancellor committed the Government to undertaking further work with industry and regulators to bring forward an ambitious package of measures in the autumn. I reassure the noble Baroness opposite that this package aims to incentivise pension funds to invest in high-growth firms, and the Government will, of course, seek to ensure that the safety and soundness of pension funds are protected in taking this work forward, as in proposed new subsection (2). Savers' interests will be central to any future government measures, as they have been to past ones. The Government want to see higher returns for pension holders in the context of strong regulatory safeguards.

In addition, the Government are already working with a wide range of interested stakeholders, including the DWP, the DBT, the Pensions Regulator, the FCA, the PRA and the Pension Protection Fund, as well as pension trustees and relevant financial services stakeholders. Proposed new subsection (3) in the amendment seeks to set out this list in legislation. I reassure the House that this is not necessary as the Treasury is actively engaging with them already, as appropriate. The Government would also be happy to engage with other interested stakeholders, as raised by my noble friend Lord Naseby and the noble Lord, Lord Davies of Brixton.

I note the specific areas of review outlined in subsection (4) of the proposed new clause, and I reassure noble Lords that the Government are considering all these issues as part of their work. In particular, proposed new subsection (4)(a) references the existing value-for-money framework. As I set out in Grand Committee, one area of focus for the Government's work in this area is consolidation. To accelerate this, the Government have been working with the Financial Conduct Authority and the Pensions Regulator on a proposed new value-for-money framework setting required metrics and standards in key areas such as investment performance, costs and charges, and the quality of service that schemes must meet.

As part of this new framework, if these metrics and standards were not met, the Department for Work and Pensions has proposed giving the Pensions Regulator powers to take direct action to wind up consistently underperforming schemes. A consultation took place earlier this year, and the Government plan to set out next steps before the summer.

Turning to proposed new subsection (4)(b), I have already set out the forthcoming consultation to support increased investment in innovative companies and other productive assets by the Local Government Pension Scheme. Noble Lords may also be aware that the levelling up White Paper in 2022 included a commitment to invest 5% in levelling up. This consultation will go into more detail on how that will be implemented.

I turn to proposed new subsection (4)(c). The Government are committed to delivering high-quality infrastructure to boost growth across the country. We heard references in the debate to the UK Infrastructure Bank, which we will work with. The Treasury has provided it with £22 billion of capital. Since its establishment in 2021, it has done 15 deals, invested £1.4 billion and unlocked more than £6 billion in private capital. Furthermore, we have published our green finance strategy and *Powering Up Britain*, setting out the mechanisms by which the Government are mobilising private investment in the UK green economy and green infrastructure.

The Government wholeheartedly share the ambition of the amendment to see more pension schemes investing effectively in the UK's high-growth companies for the benefit of the economy and pension savers. We agree with noble Lords on the importance of this issue. Where we disagree with noble Lords is on how crucial this amendment is to delivering it. Indeed, the Government are currently developing policies to meet these objectives, so legislating a review would pre-empt the outcome and might delay the speed at which the Government can make the changes necessary to incentivise investment in high-growth companies. Therefore, given all the work under way, I hope the noble Baroness feels able to withdraw her amendment.

Baroness Chapman of Darlington (Lab): My Lords, I am grateful to everyone who has taken part in this debate. The Minister's response was not awful. It was encouraging to hear some of the things that she had to say, and we recognise the work the Government are leading on this issue. However, the benefit of taking the approach outlined in the amendment, notwithstanding some of the comments that have been made about it, is

[Baroness Chapman of Darlington]
that it would give focus and prominence to this issue and would bring together some of the threads that the Minister referred to. It is an important piece of work that, given everything the Minister said, ought to be not too onerous and is something that the Government ought to be a little more enthusiastic about starting—because it needs to start. This is something we would like to see proceed quickly. I think there has been sufficient support for the amendment from all sides of the House, and I wish to test the opinion of the House.

6.13 pm

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6.25 pm

Amendment 105 not moved.

Amendment 106

Moved by ***Baroness Kramer***

106: After Clause 71, insert the following new Clause—

"Protection of banking reform: ring-fencing and SMCR

(1) Parts 1 (ring-fencing) and 4 (conduct of persons working in financial services sector) of the Financial Services (Banking Reform) Act 2013 and amendments made by them to FSMA 2000 may not be modified or revoked except by an Act of Parliament.

(2) No change or revocation may be made by secondary legislation, including by the PRA and FCA, to—

(a) the requirements for ring-fenced bodies, and

(b) the senior managers and certification regime, or other rules for the conduct of persons working in the financial services sector,

that departs from the principles set out in the final report of the Parliamentary Commission on Banking Standards.

(3) For the avoidance of doubt, subsection (2) includes secondary legislation that would allow ring-fenced bodies permanently to carry out excluded activities.

(4) This section may not be amended except by an Act of Parliament."

Member's explanatory statement

This amendment would prevent the Government from making substantive changes to the policy on ring-fencing and SMCR by statutory instrument, and would prevent policy from being amended in a way that departs from the report from the Parliamentary Commission on Banking Standards.

Baroness Kramer (LD): My Lords, in Committee the Minister reassured the House that the principles of ring-fencing and the senior managers regime which protect our banking system could be changed only by primary legislation. Then came the Silicon Valley Bank UK crisis and we discovered that breaking down the ring-fence in particular can be done by simply using statutory instruments and without the full engagement of Parliament. My Amendment 106, which is written from the two tabled in Committee, is intended to reassert the fundamental principle that change has to be driven by primary legislation and it removes the loophole which we experienced with Silicon Valley Bank.

I shall explain very briefly the Silicon Valley Bank issue. As part of their agreement with HSBC to acquire SVB UK, the Government permitted HSBC to transfer funds from its ring-fenced retail bank into SVB UK, which is outside the ring-fence. The transferred funds can now be used for activities which the HSBC retail bank would be prohibited from, including high-risk and speculative transactions.

If this was a temporary state of affairs, I could understand this awkward response to an emergency, but on Thursday the Minister will bring a statutory instrument to this House to make that breach of the ring-fence for HSBC permanent and notably with no limits on the amount of funds that can be transferred

[Baroness Kramer]
from ring-fenced to unring-fenced. Unless I misunderstand the SI, there are no conditions on the use of those funds, even though last month the Minister seemed to imply that we could expect conditions or limits. In effect, the ring-fence is now fully breached for HSBC. Its rival banks, not surprisingly, expect further government action soon to give them exemptions in order to level the playing field. We have in effect destroyed the ring-fence.

Ring-fencing and the SMCR, I would argue, are vital protections against another 2007 banking crisis. They limit the incentives and mechanisms for banks to mingle the culture and capital behind retail banking with the very different and high-risk world of investment banking, with the SMCR establishing individual responsibility for bad or abusive management. The Government have posited in discussion that these protections can be safely weakened because banks now have resolution plans to protect the taxpayer from a bank failure. But that presumption, frankly, has been blown out of the water. Both the Swiss and the US regulators in the last few months facing bank failures—one Credit Suisse and the other the three regional banks in the US—decided that, in the circumstances, resolution would be far more damaging to their economies than seeking taxpayer support to extract those banks from their predicaments and failure.

We have had an illustration that makes it clear that the resolution plans that we have in place for banks may work in certain limited circumstances but very often, particularly when there is high risk in the economy, may indeed not work and are more damaging to use than to discard. In that situation, it is absolutely crucial that we return to the protections provided by ring-fencing and the SMCR.

That is my view. If the Government disagree with me and believe this is time for weakening the ring-fence or diluting the SMCR, I argue they have to come to Parliament and do it under primary legislation, not through the backdoor that we experienced over the last couple of months through the mechanism of the purchase agreement for Silicon Valley Bank UK.

I am not asking this House to make the decision on whether we keep ring-fencing or the SMCR. What I am saying is that it is this House and the other place that need to actively understand and make the determination if that change is to happen. It is fundamental to the financial stability of our country and therefore that is the way this issue would be addressed. My Amendment 106 combines into one the two amendments from Committee and adds a clause to require primary legislation for any permanent exclusions from ring-fencing rules, closing the loophole used by the Government and reasserting the original intent of the law. I beg to move.

6.30 pm

The Archbishop of Canterbury: My Lords, I have joined the noble Baroness in supporting her Amendment 106, as I did her two amendments on this topic in Committee. This amendment seeks to prevent change which goes against the two years of work of the Parliamentary Commission on Banking Standards, which looked in detail at both issues and produced its final report, *Changing Banking for Good*, 10 years ago. I declare an interest: I sat on the commission along with the noble Baroness.

As I said in Committee on 21 March, the underlying motivation of this amendment is to ask us not to forget the hard lessons learned after the 2008-09 financial crash, for which the whole country, especially the poorest, paid, then and to this day. Recent events show that the memory in the markets is strong, even if it is not in the Government. Alarm spreads easily.

Both the ring-fence and the SMCR were designed to better align the incentives and risk calculations of the financial sector to avoid the privatisation of profits and the socialisation of losses, and to force the financial sector to be conscious of the cost its action has, not only on itself but on the wider economy. The SMCR enables us to make sure that those individuals who are making decisions which have significant consequences are held accountable. It goes some way to bringing individual incentives in line with high collective standards.

The electrification of the ring-fence, which the Parliamentary Commission on Banking Standards recommended, was designed to deter banks from the inevitable temptation to test it. The commission's first report said:

"any ring-fence risks being tested and eroded over time"

and the new framework at that time

"will need to be sufficiently robust and durable to withstand the pressures of a future banking cycle".

SVB showed that the concept of a non-systemic bank is a very dubious one, as even banks with good resolution plans, and of very moderate size in the global context and systemically, create a sense of contagious alarm. Banking, as we know—and some noble Lords know very well indeed—is not based on logic but on confidence. There is logic there somewhere, but the confidence is that the bank is secure, despite the fact that its equity is a very small part of its total balance sheet. The contagion caused by the failure of SVB is not yet over among US regional banks, which continue to fail or need rescuing. That moment may come, but let us wait and see.

The Swiss taxpayer is on the hook for Credit Suisse and the US taxpayer for several regional banks that were meant to be non-systemic. Not to learn from the past or the present is, frankly, reckless. Reform may come—there are good arguments for it—but it should not come outside a proper parliamentary process of primary legislation. People and sectors can have short memories. I urge the Government to accept this amendment, which would go some way to making sure that we remember the hard and bitter lessons learned and do not repeat the same mistakes.

Baroness Bennett of Manor Castle (GP): I will speak very briefly to offer Green support for the amendment in the name of the noble Baroness, Lady Kramer, and the most reverend Primate. The amendment, in a way, is a smaller and lighter version of my attempt to strike out the competition clause, on setting a competitiveness objective, which has sadly remained in the Bill.

In November last year, City Minister Andrew Griffith told the *Financial Times*:

"The overall thrust of things is to allow more risk … you shouldn't be risk"

averse;

"we just need to manage that in an appropriate way".

He went on to say that the aim of reducing ring-fencing was

"to release some of that trapped capital over time".

I acknowledge that the Minister said that before the collapse of SVB and Credit Suisse, and the other crunches in the American banking system.

In an April piece in the *Financial Times*, Martin Wolf said:

"A shock like this should make mindless deregulation less appealing to politicians".

As has been clearly outlined already, the amendment does not actually make anything happen; it just ensures parliamentary oversight. When we get to the dinner break business, my noble friend will seek to ensure that parliamentary oversight is included there. Surely, this is what democracy is supposed to be about.

Lord Davies of Brixton (Lab): My Lords, I support the amendment. We will return to these issues on Thursday, when we discuss the regulations in Grand Committee. However, it is worth mentioning to the House the clash today between this Bill and a meeting of the Economic Affairs Committee, of which the noble Baroness, Lady Kramer, and I are members. By chance, the committee was interviewing the Governor of the Bank of England. The issue of this arrangement arose, and the governor was quizzed on these very issues. It will be useful on Thursday to explore further why and how this action was taken. The governor provided a justification, but, in the light of his remarks, it will be worth while exploring these issues in more detail when we get the regulations.

Viscount Trenchard (Con): My Lords, the noble Baroness, Lady Kramer, and the most reverend Primate have retabled as a single amendment—Amendment 106—the two amendments that were debated in Grand Committee: Amendment 241C on ring-fencing, and Amendment 241D on the senior managers and certification regime.

As my noble friend Lady Noakes said during that debate, these amendments are trying to set in stone for all time the conclusions of the report of the Parliamentary Commission on Banking Standards. Times change, and I cannot support this amendment because it introduces an inappropriate degree of rigidity.

As my noble friend also pointed out, the lesson of the HSBC and Silicon Valley Bank episode was that the ring-fencing rules were not, after all, considered inviolable. It was necessary to provide HSBC with special statutory exemptions from the ring-fencing rules to enable it to acquire Silicon Valley Bank. That exemption has brought permanent changes to the ring-fencing regime for HSBC which affect it alone. Can my noble friend say whether that means it has a permanent competitive advantage over rival ring-fenced banks in the UK?

In any case, I rather doubt whether the introduction of ring-fencing has reduced the risks to which bank customers' deposits are exposed. I disagree that it is therefore important to make it very difficult to weaken the ring-fencing regulations in any way. As I said in Committee, I worked for Kleinwort Benson for 23 years, for a further 12 years for Robert Fleming and then for Mizuho. All three banks operated both commercial and investment banking businesses. Internal Chinese walls between departments made it quite impossible for customers' commercial banking deposits to be diverted to risky investment banking activities. As I said in Grand Committee, there is no positive correlation between the two cash flows of retail and investment banking. It follows that universal banks are in fact gaining diversification benefits. There is little global evidence that splitting up the banks has made them less likely to get into trouble.

Following the Lehman shock, is it not interesting that the US Government did not go for the reintroduction of a kind of Glass-Steagall Act? I am not convinced that ring-fencing is a good thing, and in general I am opposed to market distortions of this kind, which actually make the consumer less safe rather than safer. Ring-fencing also makes it harder for smaller banks to grow, because they must compete for a small pool of permitted assets against the capital of the larger banks. Will the Government conduct a review of the effectiveness of ring-fencing?

As for the senior managers and certification regime, I am sceptical as to whether it has been effective, because there is no hard evidence that it has been used as the stick that was originally intended. Most well-run banks operate in a collegiate manner, and I think it rather odd to attempt to attribute personal responsibility to managers and directors of banks for the decisions and actions of those banks, beyond the responsibilities that the directors carry in any event.

The SMCR has especially inconvenienced foreign banks operating in London. As an example, I refer to the Japanese megabanks. It used to be their practice to assign a very senior executive to London to take responsibility for all the bank's activities in the UK and in most cases the whole EMIR region. Often, this might be the executive's last major management position before retirement, and would typically be for two to three years leading up to his retirement date. Such executives have typically worked for 40 years or more for that bank and have managed regulated financial businesses in Japan for many years. However, the FCA has consistently been extraordinarily slow in approving those executives under the SMCR.

Therefore, the Japanese banks have given up on this strategy and feel compelled to appoint as head of their UK and EMIR operations not the person most appropriate for the job, but the most senior person who has already been working in London for three years or so, merely in order to meet the criteria of the SMCR regime. This has caused considerable inconvenience, because it is unreasonable to send a trusted senior executive overseas for five or six years in the last years of his active career, rather than a more reasonable stretch of two to three years. I know that the SMCR is much resented by Japanese and other foreign banks and I ask my noble friend if she will agree to conduct a review of how it is being implemented by the FCA.

Lord Eatwell (Lab): My Lords, I must say that, listening to the noble Viscount, Lord Trenchard, just now, I think he has given strong arguments in favour

[LORD EATWELL]
of this amendment—strong because what the amendment asks for is accountability to Parliament on the performance of the ring-fence and the SMCR. If that accountability existed, the noble Viscount would have the opportunity to present his views in a framework, which might then have greater effect than, I am afraid, his speech had without such a mechanism.

6.45 pm

I simply want to argue in favour of the ring-fence because I think the competitive future of the City of London depends upon it. The reason for this is that the City of London is a financial entity that does not have its own savings hinterland, as I have argued previously. It therefore depends on attracting funds from around the world and other forms of financial business. What it does is repackage risk; it is extremely skilled, and has almost unique skills in this process. But this is a unique position which it cannot preserve if it also has the problem that, in repackaging risk, it deals with instability that could be imported into the domestic economy. If that instability is imported into the domestic economy, there is natural resistance to the continued internationally competitive performance of the City of London.

The great virtue of the ring-fence, as proposed by the Independent Commission on Banking, is that it provides some insulation from the instability that is inherent in the successful operation of the City of London and for the domestic economy—households and small and medium-sized firms, which are targeted by the banking structure, as set out by the Independent Commission on Banking.

The ring-fence is not a restriction; it is both a benefit to the performance of the investment banking activities so ably performed in the City of London and a protection for commercial banking that is necessary for families and small and medium-sized firms.

This amendment, requiring that any changes in the ring-fencing system should be a matter of parliamentary discussion, seems to me to place the importance of the ring-fence and the accountability of the regulatory management of the ring-fence exactly where they should be, which is in Parliament.

Lord Livermore (Lab): My Lords, we fully support the steps taken by the Treasury, the Bank and the regulators in relation to Silicon Valley Bank UK. The system worked at pace to ensure SVB UK could continue its operations. However, while we endorse the outcomes, legitimate questions have been asked about the ring-fencing exemption granted to HSBC and the potential long-term implications.

The arguments have been excellently outlined by the noble Baroness, Lady Kramer, the most reverend Primate the Archbishop of Canterbury and my noble friend Lord Eatwell, and I will not repeat them now. The financial system has experienced much volatility in recent months, so preventing major changes to ring-fencing being made by secondary legislation is a sensible step and one that we believe the Commons ought to consider before this Bill goes on to the statute book.

Baroness Penn (Con): My Lords, it has been over 10 years since the Independent Commission on Banking recommended important structural changes, including the introduction of ring-fencing for the largest UK banks, and the Parliamentary Commission on Banking Standards recommended the introduction of the senior managers and certification regime, or SMCR, to embed a culture of greater accountability and personal responsibility in banking. I pay tribute to the important work of these commissions and their lasting legacy in improving the safety and soundness of the UK's financial system. Amendment 106 from the noble Baroness, Lady Kramer, covers the ring-fencing and SMCR reforms.

In response to my noble friend Lord Trenchard, the legislation that introduced the ring-fencing regime required the Treasury to appoint an independent panel to review the regime after it had been in operation for two years. That independent review was chaired by Sir Keith Skeoch and concluded in March 2022. The review noted that the financial regulatory landscape has changed significantly since the last financial crisis. UK banks are much better capitalised and a bank resolution regime has been introduced to ensure that bank failures can in future be managed in an orderly way, minimising risks to depositors and public funds.

In the light of these considerations, the independent review concluded that changes could be made in the short term to improve the functionality of the ring-fencing regime while maintaining financial stability safeguards. In December, as part of the Edinburgh reforms, the Chancellor announced a series of changes to the ring-fencing regime that broadly follow the recommendations made by the independent review. The Treasury will consult later this year on those near-term reforms. The panel also recommended that, over the longer term, the Government should review the practicalities of aligning the ring-fencing and resolution regimes. In response, the Government published a call for evidence in March. This closed at the beginning of May and the Government are in the process of considering responses.

The noble Baroness, Lady Kramer, and other noble Lords referenced the resolution of Silicon Valley Bank UK, which was sold to HSBC on Monday 13 March. The Government and the Bank of England acted swiftly to facilitate the sale of SVB UK to HSBC after determining that action was necessary to protect depositors and taxpayers and to ensure that the UK's world-leading tech sector could continue to thrive. To facilitate the sale, the Government made modifications to the ring-fencing regime that apply to HSBC only in relation to its acquisition of SVB UK.

It is critical that the Government have the necessary powers to act decisively to protect financial stability, depositors and taxpayers. The power under the Banking Act 2009 enables the Treasury to amend the law in resolution scenarios. Parliament gave the Treasury this power recognising the exceptional circumstances that can arise. However, I say to the noble Baroness that the changes made to the ring-fencing requirements are specifically in relation to the acquisition of SVB UK and should not be viewed as an indication of the future direction of government policy on ring-fencing. The Chancellor has been clear that, in taking any reforms forward, the Government will learn lessons from the crisis and will not undermine financial stability.

The core features of ring-fencing are set out in primary legislation, which generally may be amended only by primary legislation, so the Government are

already constrained in one of the ways that this amendment seeks to ensure. In passing that legislation, Parliament delegated certain detailed elements of the regime to the Government to deliver through secondary legislation, given its technical nature and to allow it to evolve over time, where appropriate. Parliament also included clear statutory tests and objectives within the framework, which the Treasury and the PRA must satisfy when making changes to the regime. These statutory tests continue to reflect the underlying objectives and purposes of the regime. The Government are of the view that they remain appropriate and that no further constraints are necessary.

Turning to the SMCR, I can confirm to the House once more that the framework of the SMCR is set out in primary legislation, so it is already the case that significant amendments can be made only via primary legislation.

Let me also reassure the House that the Government continue to recognise the contribution of the SMCR in helping to drive improvements in culture and standards. The principles of accountability, clarity and senior responsibility that are emphasised by the PCBS report were reflected in the SMCR. We should take confidence from the findings of separate reports by UK Finance and the PRA, which both show that these principles are now more widely embedded in financial services than before the introduction of the regime.

The Economic Secretary made it clear to the Treasury Select Committee on 10 January that the purpose of the review was to seek views on the most effective ways in which the regime can deliver its core objectives. It is important to review significant regulation from time to time to ensure that rules remain relevant, effective in meeting their aims and proportionate to those aims. The Government are grateful to those who have submitted responses to the SMCR call for evidence. This information will help the Government, alongside the regulators, build a proper evidence base for identifying what, if any, reforms to the regime should be taken forward.

I hope that I have sufficiently reassured noble Lords that the Government remain committed to high standards of regulation, and to the important reforms introduced following the global financial crisis. Therefore, I ask the noble Lady, Baroness Kramer, to withdraw her amendment.

Baroness Kramer (LD): I thank the Minister, but she has essentially repeated the speech she gave in Committee. At the time, I took her assurances at face value that primary legislation would be necessary to make a fundamental change to the structure of the ring-fence. I was therefore frankly shocked when, within a matter of days, the Government took a different point of view in the acquisition of Silicon Valley Bank UK by HSBC. There is no reason why HSBC should have used its ring-fenced arm to make the purchase of SVB; it chose to do so because it got, as a consequence, this opportunity to take that ring-fenced money and put in into non-ring-fenced activities, with no constraints whatever in terms of amount or activity.

The Government are bringing forward another statutory instrument to make that change permanent for HSBC. It is unconscionable that our largest bank should have a competitive advantage like that and other banks not be given it. I am extremely concerned about the way in which statutory instruments are being used to undermine the principle that changing the principles should be only by primary legislation. Therefore, I wish to test the opinion of the House.

6.56 pm

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7.08 pm

Amendment 107

Moved by ***Lord Sharkey***

107: After Clause 71, insert the following new Clause—

"Interest rates for mortgage prisoners

(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) After section 137FD insert—

"137FE FCA general rules: interest rate for mortgage prisoners

(1) The FCA must make general rules requiring authorised persons involved in regulated mortgage lending and regulated mortgage administration to

introduce a cap on the Standard Variable Rates charged to mortgage prisoners and to ensure that mortgage prisoners can access new fixed interest rate deals at an interest rate equal to or lower than an interest rate specified by the FCA.

(2) In subsection (1)—

"mortgage prisoner" means a consumer who cannot switch to a new mortgage deal (with a new lender or with their existing lender) and includes—

(a) all 195,000 mortgages identified in CP576 Mortgage Prisoners Review, and

(b) those who have a regulated mortgage contract with one of the following types of firms—

(i) inactive lenders: firms authorised for mortgage lending that are no longer lending;

(ii) unregulated entities: firms not authorised for mortgage lending and which contract with a regulated firm to undertake the regulated activity of mortgage administration; or

(iii) closed mortgage books within larger financial groups: a closed mortgage book that is within a larger financial group but in a different entity to an active lender;

"new fixed interest rate deals" means the ability for the consumer to fix the rate of interest payable on a regulated mortgage contract for periods of 2 years and 5 years with their existing lender;

"Standard Variable Rate" means the reversion rate which is a variable rate of interest charged under the regulated mortgage contract after the end of any initial introductory deal.

(3) The general rules made under subsection (1) must set the level of the cap on the Standard Variable Rate at a level no more than 2 percentage points above the Bank of England base rate.

(4) The general rules made under subsection (1) should make new fixed interest rate deals available to mortgage prisoners who meet criteria determined by the FCA.

(5) When specifying the criteria which mortgage prisoners need to meet to access the new fixed interest rate deals required by subsection (1) the FCA should take into account the criteria used by active lenders to enable their existing customers to access product transfers and ensure that similar criteria apply in the rules required by subsection (1).

(6) When specifying the interest rates for new fixed interest rate deals required by subsection (1) the FCA should specify rates for a range of Loan-To-Value (LTV) ratios taking into account the average 2-year and 5-year fixed rates available to existing customers of active lenders through product transfers.

(7) The FCA must ensure any rules that it is required to make as a result of subsection (1) are made not later than six months after this Act is passed.""

Member's explanatory statement

This new Clause would require the FCA to introduce a cap on the Standard Variable Rates charged to mortgage prisoners and ensure their access to fixed rate interest deals.

Lord Sharkey (LD): My Lords, I declare an interest as co-chair of the APPG on mortgage prisoners and I thank the noble Viscount, Lord Trenchard, for adding his name to this amendment.

The amendment is similar to the one we debated in Committee: the only difference is that it gives the FCA the power to determine which mortgage prisoners may qualify for new fixed interest rate deals. The Committee amendment was more prescriptive. Its chief purpose was to allow discussion of the new Martin Lewis-funded LSE report on resolving the plight of mortgage prisoners. I said then that we would bring back the amendment on Report if no discernible progress had been made. No discernible progress has been made. The LSE report contains detailed and costed proposals and was published on 8 March this year. HMT officials were present at the launch and copies of the report were made available. When we debated the amendment in Committee on 13 March, the Minister committed to arranging an urgent meeting to discuss the report.

That urgent meeting with HMT, interested Peers, Seema Malhotra MP, researchers and representatives of the mortgage prisoners finally took place on 26 April, six weeks after the Minister had promised to arrange it. I am pretty sure that that long delay was not the fault of the Minister but simply a clear indication of the very low priority that HMT gives to the matter. In fact, the Minister had written to me to say that he was extremely disappointed that HMT had made no contact, and that his team had called for the meeting to be organised on multiple occasions and had stressed the urgency of the situation.

The Minister was absolutely right to stress the urgency. We stressed it again in our letter of 17 May to the noble Baroness, Lady Penn, asking HMT to make a full response to the LSE proposals before Report. We have had no response to the letter or to the LSE report.

Interest rates are rising significantly and the already intolerable burden on mortgage prisoners is growing steeply, increasing their misery, despair and uncertainty. HMT seems not to understand that or even to care much about it. We know that HMT officials have recently had contact with the academic authors of the LSE report. We also know that those officials told the academics that they hoped to have a response to the report before the Summer Recess. That would be five months since HMT first had sight of the report—an intolerable and unjustifiable delay and a clear indication of the low priority the Treasury is giving the matter.

The treatment of mortgage prisoners is certainly uncaring and at times almost contemptuous. Whatever the outcome of today's debate on this amendment, I urge the Minister to galvanise the Treasury team and replace what seems to be a leisurely approach with real urgency. After all, in February 2020 the then Economic Secretary to the Treasury said in a letter to Martin Lewis:

"My officials … will take any new proposals under full consideration if they meet our strict requirements that they a) deliver value for money for government (not just individuals), b) are a fair use of taxpayer spending, and c) address any risks of moral hazard".

The LSE report explains how its proposals satisfy those requirements. I ask the Minister to deliver urgently on John Glen's promise.

Mortgage prisoners are not to blame for the very high SVRs that are ruining or have ruined their lives; the Government are to blame. HMT sold mortgages to vulture funds without protection for the mortgagees. It later claimed to have been misled by those funds but in fact, research funded by Martin Lewis found that the Treasury was aware of the potential problems as

[LORD SHARKEY]
early as 2009, when it recognised that the sale of closed books to investors had the potential to harm borrowers. Martin Lewis's report went on to say:

"It has subsequently become clear that many prisoners did suffer harm; our first report detailed negative effects including paying high interest rates and difficulty in remortgaging, leading in some cases to anxiety, depression, physical and mental ill health and the prospect of losing the family home".

Interventions by the Government to date have helped at most 2,200 of the 195,000 mortgage prisoners, and in fact only 200 borrowers have been directly helped to switch as a result of the modified affordability tests run by the FCA. As things now stand, the Government and the FCA are not proposing any further action to help mortgage prisoners. All this misery and harm could have been prevented, but even now the Government still refuse to acknowledge their responsibility or to provide any help.

The amendment would provide immediate and practical support to mortgage prisoners. It would introduce a cap on the standard variable rates paid by mortgage prisoners. Capping at 2% over the base rate would return the margins to what they were prior to the financial crisis. That should stop firms exploiting their captive customers but would have no impact on the wider market.

To ensure that mortgage prisoners can gain some certainty over their mortgage payments, the amendment would also require mortgage prisoners who meet FCA criteria to be offered fixed rates. These fixed rates would vary according to the loan-to-value of the mortgage prisoner, so would be reflective of risk.

The amendment does not single out mortgage prisoners for help that is not available to other borrowers in the active market. It just ensures that mortgage prisoners are able to access fixed-rate deals on the same terms as others in the active market. It stops mortgage prisoners being exploited by vulture funds and inactive lenders and it ensures that they are treated fairly. The amendment requires the FCA to set the criteria for accessing new fixed-rate deals and interest rates based on those in the active market so that mortgage prisoners are treated the same as those in the active market and can access new deals with their existing lender.

7.15 pm

There will be no cost to the Government in ensuring that mortgage prisoners are treated in the same way as borrowers in the rest of the market. Taken together, these changes will tackle the harm being caused to mortgage prisoners and their families. It is surely time for the Government to acknowledge their moral obligation to help solve the problem they have created and do something to relieve the plight of mortgage prisoners. I beg to move.

Viscount Trenchard (Con): My Lords, I am pleased again to support the noble Lord, Lord Sharkey, in his noble quest to protect mortgage prisoners, as I did when he tabled a similar amendment in Grand Committee.

I appreciated the commitment of my noble friend Lord Harlech in his winding up that the Government would consider the proposals of Martin Lewis, the LSE and the APPG on Mortgage Prisoners that have been put forward. As he said, mortgage prisoners are the forgotten victims of the financial crash. The banks were bailed out at the expense of these borrowers. Furthermore, the margins between the Bank of England base rate and typical standard variable rates have expanded by more than double.

The problem is that the unlicensed lenders that bought the mortgage books of this group of borrowers do not offer the fixed-rate products that are available to borrowers in the active market. I stress that my motive in supporting the noble Lord's amendment is to support this group of genuine mortgage prisoners, who are unable to switch to a new fixed-rate mortgage despite having been up to date and not missed any payments.

The Government have acknowledged the detriment caused to mortgage prisoners. This Bill offers an opportunity to provide them with some relief from the difficulties that they are trying to cope with. I hope to hear from my noble friend some concrete plan to assist them as the Government have done for many disadvantaged groups—as a result of the Covid pandemic, for example. I look forward to the Minister's reply.

Baroness Bennett of Manor Castle (GP): My Lords, I rise briefly, having spoken on this issue both in Committee and back in the last financial services Bill, just to put a human face on this. In doing that, I remind the Minister of the representatives of the mortgage prisoners whom we heard from at the meeting in the Treasury a couple of months ago.

The face I have chosen to put on is that of 63 year-old Jacqueline Burns, who spoke to the *I* newspaper in April about what her life is like now that she is a mortgage prisoner. She said:

"I am cutting back on food because I can't afford to eat … I am so stressed out right now, I am at the end of my tether".

The story, as Ms Burns told the *I*, was that she bought her home in Cambridgeshire for £69,000 in 2006 from SPML, which was an arm of Lehman Brothers. Ms Burns remembers that the broker "was really nice" and "pushed me … towards SPML". We can all probably imagine why that was. The situation in which Ms Burns now finds herself is that she is on the standard variable rate and owes £109,000; remember that she paid £69,000 for the house. Because of the rise in interest rates, her mortgage payments have gone up from £333 a month to nearly £700 a month. She simply cannot pay.

She is in this situation because of a failure of government regulation, and because of arrangements made by the Government that made a significant profit. There is a huge moral responsibility. If we think about the costs that must be being imposed on the NHS by people who eventually become homeless and need council homes et cetera, it is clear that the Government should look not just at their moral responsibility; they also need to ensure that people get a fair deal and do not end up—even if the Government are not thinking of anything else—costing the taxpayer a great deal.

Baroness Chapman of Darlington (Lab): My Lords, we are grateful to the noble Lord, Lord Sharkey, for bringing back this amendment and for his persistence

on this issue over many years. We are also grateful for the work of the APPG, particularly to Rachel Neale, who herself is a mortgage prisoner and has become a champion for those people who have been affected by this problem. I also want to mention my colleague in the Commons, Seema Malhotra, who is doing a lot of work on this issue.

We are hugely sympathetic towards mortgage prisoners, who have endured difficulties over so many years now, and wish that the Government had acted earlier to ease the burden on them. We were pleased to back this amendment during the passage of the Financial Services Bill in early 2021, when it passed by 273 votes to 235. However, we are mindful that at that point the House of Commons rejected that amendment, and did so at a time when a much larger proportion of the population was experiencing issues with mortgage affordability. In recent weeks, however, we have seen hundreds of mortgage products pulled and rates hiked on those that remain available. A number of major banks have even temporarily withdrawn offers for new customers, putting the brakes on the aspirations of many first-time buyers.

Of course, mortgage prisoners are in a different position, in that they have been facing problems for many years and are just not able to simply switch products in the way that others can. As the Minister will no doubt outline, while this amendment did not make it into the Financial Services Act 2021, it did prompt some new and welcome actions from the Treasury, regulators and banks. New advice was available and a number of lenders relaxed their criteria in certain cases. We know that the elected House has already rejected this proposal and, realistically, it is unlikely to reconsider in the current context, but more does need to be done. Can the Minister let us know whether the Government intend to respond to the recommendations that were made by the LSE in its report? If they are, when will that response be forthcoming? The Government urgently need to get a grip on the issues facing the mortgage market generally and, once that situation has calmed, we hope they will be able to do what they can to ease the difficulties faced by mortgage prisoners.

Baroness Penn (Con): My Lords, I thank all noble Lords who have spoken in this debate, and in particular the noble Lord, Lord Sharkey, for tabling this amendment. I start by emphasising that the Government take this issue extremely seriously. We have a great deal of sympathy for affected mortgage borrowers and understand the stress they may be facing as a result of being unable to switch their mortgage. That is precisely why we, and the FCA, alongside the industry, have shown that we are willing to act, and have carried out so much work and analysis in this area, partly in response to prior interest from this House, as alluded to by the noble Baroness, Lady Chapman. This has included regulatory changes to enable customers who otherwise may have been unable to switch to access new products.

The Government remain committed to this issue and welcome the further input of stakeholders. For this reason, during Committee, the Government confirmed that they were carefully considering the proposals put forward in the latest report from the London School of Economics. Since then, as noted in the debate, I have met with the noble Lord and further members of the APPG and representatives of the Mortgage Prisoners Action Group to discuss the findings of the report and the issue of mortgage prisoners more widely.

The Economic Secretary to the Treasury has also written to the noble Lord, including to provide further clarity on the proceeds from the sale of UKAR assets. The LSE report recommends free comprehensive financial advice for all. That is why the Government have continued to maintain record levels of debt advice funding for the Money and Pensions Service, bringing its budget for free-to-client debt advice in England to £92.7 million this financial year.

The other proposals put forward by the London School of Economics are significant in scale and ambition. While the Treasury has been engaging with key stakeholders, including the LSE academics behind the report, for some time, including since Committee, we have concerns that these proposals may not be effective in addressing some of the major challenges that prevent mortgage prisoners being able to switch to an active lender. For example, the proposals would not assist those with an interest-only mortgage ultimately to pay off their balance at the end of their mortgage term.

We continue to examine the proposals against the criteria put forward originally by then Economic Secretary to the Treasury, John Glen, to establish whether there are further areas we can consider. I remind the House that those criteria are that any proposals must deliver value for money, be a fair use of taxpayer money and address any risk of moral hazard. This does not change the Government's long-standing commitment to continue to examine this issue and what options there may be. However, it is important that we do not create false hope and that any further proposals deliver real benefit and are effective in enabling those affected to move to a new deal with an active lender, should they wish to.

I will not repeat the arguments against an SVR cap, as we discussed them at length previously in this House. An SVR cap would create an arbitrary division between different sets of consumers, and it would also have significant implications for the wider mortgage market that cannot be ignored. It is therefore not an appropriate solution, and I must be clear that there is no prospect of the Government changing this view in the near term. In the light of this, I ask the noble Lord to withdraw his amendment.

Lord Sharkey (LD): I thank all noble Lords who have spoken in this customarily brief debate on mortgage prisoners. I especially thank the noble Viscount, Lord Trenchard, for his contribution today and in Committee.

I am uncertain about what the Government's response consists of. It seems to me that perhaps it consists of three things. The first is exculpatory—it was not our fault. It was the Government's fault; it cannot be anybody else's fault that these mortgage prisoners are in the position they find themselves in.

The second thing I am uncertain about is what the Government are actually going to do. I hear expressions of good will and care for mortgage prisoners but I do not hear anything at all that amounts to a plan, or the sight of a plan, or an objective, or something concrete

[LORD SHARKEY]
that would help these people. I did not even hear whether we will get a response to the LSE report any time before the Summer Recess, or indeed whether there is a date by which response can be made—perhaps the Minister can enlighten us. I remind her again that by the Summer Recess it will be five months since the LSE report was presented, and the Treasury surely has had time to analyse it in some detail and to make a considered response.

It is quite clear that the real distress experienced by these mortgage prisoners is not understood or felt deeply within the Government or the Treasury. When we had a meeting with the Minister, we had a couple of the leaders of the Mortgage Prisoners group alongside us who told us some terrible stories about what has happened to their families over the past 10 years; 10 years of paying too much money—more than they should have done and more than they needed to in many ways—to these vulture funds.

7.30 pm

I remind the Minister that, in the beginning, what happened was this: after the Northern Rock debacle, when the Treasury took over the mortgage books and then decided to sell them on, it sold them to vulture funds without any of the normal protections. The Treasury at the time—or UKAR—said it had an agreement with these vulture funds that would allow changes to fixed rate mortgages and changes out of the mortgages themselves. The vulture funds, of course, deny all that, and there was nothing in writing. In other words, the Treasury chose to sell these products on to the closed market without any protection because it knew that if it did that it would get a higher price for the mortgage books than if it had installed the protections it said it had but turned out not to have done at all.

It seems to me that this leaves us not knowing whether the Government are committed to helping or not. It would be enormously valuable if the Minister could at some point say exactly what they think they can do, or should do or will try to do, to help these people whose lives are being ruined—suicides have taken place and illnesses are common among these people, with stress and anxiety afflicting entire families. We should not leave them without any help, which is effectively what we have been doing up until now.

I am not going to ask the House to divide on all this because, as the noble Lord, Lord Tyrie, memorably said a couple of days ago, the troops do not seem to be here for that. However, I repeat that the Government are being cold-hearted and cruel with these mortgage prisoners and should offer some meaningful support. With that, I beg leave to withdraw the amendment.

Amendment 107 withdrawn.

Lord Harlech (Con): My Lords, I beg to move that further consideration on Report be now adjourned until 8.31 pm.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I do not think that the debate on our regret amendment is time-limited.

Lord Harlech (Con): My mistake. I did not mean to imply that it was time-limited. I meant to say that Report stage on the Bill would resume not before 8.31 pm.

Consideration on Report adjourned until not before 8.31 pm.

Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023

Motion to Approve

7.32 pm

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

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

Relevant document: 38th Report the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument).

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I thank all noble Lords for attending this debate. These regulations amend Sections 12 and 14 of the Public Order Act 1986, which grant the police the power to place necessary conditions on public processions and assemblies to prevent specific harms from occurring. One of these harms is serious disruption to the life of the community. These regulations do not create new powers but define this harm.

Once in force, these regulations will ensure that public order legislation is clear, consistent and current. They will carry over a definition of "serious disruption" which has already been approved by Parliament and provide greater clarity on the circumstances in which the police can exercise their powers to manage public processions and assemblies. Most importantly, they have given the House of Commons the opportunity to consider these measures.

Without these changes there is potential for confusion over what is the lawful extent of protest activity. The police and public will have to grapple with one threshold for criminal offences in the new Public Order Act and another for the use of discretionary police powers in the 1986 Act. With these changes, it will be easier for all to understand when disruption from a protest is no longer legitimate.

The provisions in these regulations are broadly similar to those brought to the Public Order Act 2023 as a government amendment during its passage through Parliament. The only difference is that these regulations do not allow the police to place blanket conditions on multiple protests. I will detail exactly what the regulations do shortly.

The government amendment was narrowly defeated by 14 votes in this House, and was not considered by the elected Chamber. This vote occurred before the vote for adopting the current definition of "serious disruption" in the 2023 Act, which was approved by both Chambers. As both Houses have agreed on a

definition, we are sensibly extending it across the statute book and bringing further clarity to public order law. That is something which has been sought by senior police officers and by many in this Chamber today.

The Commissioner of the Metropolitan Police has said:

"The lack of clarity in the legislation and the increasing complexity of the case law"—

the increasing complexity that the case law is making between the right to protest and the rights of others to go about their daily lives free from serious disruption—

"is making this more difficult and more contested".

The delegated power being used existed prior to the introduction of the Public Order Act 2023. The power was available for the Government to use during the passage of the Public Order Act 2023. These delegated powers were scrutinised by the Delegated Powers and Regulatory Reform Committee, which recommended that a definition of "serious disruption to the life of the community" be included on the face of the Police, Crime, Sentencing and Courts Act 2022, coupled with a power to amend the definition by affirmative procedure regulations. This recommendation was accepted and implemented in full.

It is entirely right that the Executive use powers conferred by both Houses of Parliament to allow the elected Chamber to consider the proposed change in law. The other place has now had the opportunity to consider these measures and has approved them following debate on the Floor of the House yesterday.

The Motion of the noble Baroness, Lady Jones, is highly unusual, and seeks to strike down legislation passed by the elected House and undermine sensible changes which bring clarity and consistency to the law. During the passage of the Public Order Act, the Government listened and responded to the strength of feeling in Parliament on many issues. Changes were made on many of those issues, including serious disruption prevention orders, protections for journalists reporting on protests, and others.

The need for clear powers to improve the management of highly disruptive protests has been well rehearsed, but I will reiterate them quickly. The current Just Stop Oil slow-walk campaign has resulted in the use of over 13,770 police officer shifts, diverting police attention away from local communities. Financially, this has cost the taxpayer £4.5 million in just six weeks, and this is in addition to the £14.5 million it cost last year. These near-daily protests—as of yesterday, I think it was 156 separate protests in six weeks—have pushed the public to their limit. We have seen people taking matters into their own hands. Therefore, as a Government, we must do what we can to empower the police to respond swiftly and effectively.

Given the scale and impact of the disruption caused by slow walks and sit-ins on roads, it is in the public interest to clarify these police powers as a matter of urgency. The Government have always been clear that the delegated powers were needed to be able to respond quickly to evolving protest tactics. The intensive use of slow walks across London has proven that. Once in force, the regulations will provide the police with the legal clarity they need to protect the public from this tactic.

As I have already mentioned, these regulations do not grant new powers to the police, but clarify the extent of existing ones. Therefore, it was deemed disproportionate to carry out a full public consultation. Targeted engagement with the National Police Chiefs' Council, the Metropolitan Police Service and other police forces was the appropriate approach. All have welcomed clarity in the law. The Metropolitan Police Service specifically welcomed clarity on how the police should consider serious disruption in relation to imposing conditions.

The regulations achieve this by making the following clarifications. First, these regulations will clarify that the police may consider the cumulative impact of concurrent and repeated protests in the same area when assessing whether "serious disruption to the life of the community" may occur. Although a single protest may not in itself cause serious disruption, it is undeniable that a community subjected to repeated or concurrent protests will suffer due to the compounding effect of multiple protests.

Secondly, they allow the police to consider the absolute disruption caused by a protest. That is to say, police should be able to consider the disruption a protest may cause, regardless of what disruption may be common in an area for other unrelated reasons. Without these regulations, "serious disruption to the life of the community" is often considered with reference to what is regarded as normal for a given area, rather than the nature of the disruption caused at that moment in time.

Thirdly, the regulations define the term "community" to mean,

"any group of persons … affected by the procession",

or assembly, and not just those who live or work in the vicinity of that procession or assembly. This change clarifies that a broader definition of community is to be used when interpreting the meaning of "serious disruption to the life of the community". This definition better reflects the modern way of life in major cities.

Finally, as I have previously mentioned, the instrument aligns the definition of "serious disruption" with that in the Public Order Act 2023, simplifying protest law. During the passage of the Public Order Act, the appropriate definition of "serious disruption" was debated at length. I would again like to thank all noble Lords for what was an exceptional debate with high-calibre contributions from all sides.

I remain of the view that the definition rooted in protest case law proposed by the noble and learned Lord, Lord Hope, strikes the right balance between legitimate and illegitimate protest. This definition has been scrutinised and approved by both Houses of Parliament. It should now be carried across to the Public Order Act 1986 to ensure consistency across the statute book.

As well as aligning public order legislation, the regulations also bring further clarity by building on the non-exhaustive list of examples of serious disruption to the life of the community to include

"the prevention of, or a hindrance that is more than minor to, the carrying out of day-to-day activities",

such as making a journey. This provides legal clarity that it is entirely appropriate for the police to place necessary conditions on protests that are obstructing the public from going about their daily business.

[Lord Sharpe of Epsom]

Finally, I remind the House that the Government are legally required to publish a report on the operation of amendments made to Sections 12 and 14 of the Public Order Act 1986 by the Police, Crime, Sentencing and Courts Act 2022. The report must be published and laid before Parliament by 28 June 2024. I can confirm that this paper will also report on the operation of the changes made by this statutory instrument.

In summary, the regulations are necessary changes to the law to ensure that public order legislation is clear, consistent and current. They will improve the protection of the public—who this Government support—against the minority of protesters who repeatedly trample on their rights. Current and former police officers, as well as Peers and Members of the other place on both sides of the debate, have called for public order legislation to be both easy for officers to interpret and specific. This statutory instrument achieves these objectives. I beg to move.

Amendment to the Motion

Moved by ***Lord Coaker***

Leave out all the words after "that" and insert "while approving the draft Regulations laid before the House on 27 April, this House regrets that the Regulations propose as secondary legislation, which is subject to reduced scrutiny, measures that were recently rejected in primary legislation, and that His Majesty's Government has not addressed the concerns raised in the House when the measures were in primary legislation, or undertaken a full public consultation on these controversial measures; and therefore calls on His Majesty's Government to withdraw the Regulations".

Lord Coaker (Lab): My Lords, I will make a brief statement before I start my remarks on the regulations. As a Nottinghamshire resident and a former Nottinghamshire Member of Parliament with an obvious close attachment to the city, I am shocked, appalled and saddened at the awful events in Nottingham earlier today—as we all will be. I am sure the whole House will want to join with me in thanking the emergency services and in sending our condolences to the families and friends of the victims and the whole community.

Noble Lords: Hear, hear!

Lord Coaker (Lab): My Lords, in moving the regret amendment in my name on the Order Paper, I should say that there were contentious and furious debates over the Public Order Act in the Chamber and beyond, although you would not have recognised that from the Minister's comments.

Let me spell out from the beginning that I do not defend the actions of Just Stop Oil for one minute and neither does my party; I think that it has gone beyond the bounds of reasonableness. However, the police have the powers to deal with these protests, if they had the confidence to use them. Indeed, I agree with the chief constable of Greater Manchester, who said in the media a couple of weeks ago,

"we have the powers to act and we should do so … quickly".

Our message to the police should be to use the powers they have and that they have our support.

The regulations before us make very real changes to the public order legislation we have. They reduce the threshold for the policing of protests to prevent serious disruption to the life of the community from "significant" and "prolonged" to "more than minor". They also refer to the cumulative impact of repeated protests.

I remind the Minister and noble Lords that, in the passage of the then Public Order Bill, I asked whether the Government intended to use secondary legislation to overcome the fact that they had lost their vote on measures that were introduced without the Minister knowing a thing about it—namely, the amendment introduced into the Lords, which the Minister no doubt found out about like the rest of us, when we heard it on the radio in the morning. I specifically asked him about this on 14 March, and he said:

"They do not permit this or any future Government to make changes to the meaning of 'serious disruption' in this Bill".—[*Official Report*, 14/3/23; col. 1209.]

My contention is that that statement implied that the Government would not, in any circumstance, bring forward secondary legislation to change primary legislation. These changes to the law presented to Parliament are via secondary legislation, which I remind noble Lords is unamendable, so there is no ability for meaningful debate.

All protests could be duly affected across the country, with no opportunity for anyone in this Chamber or indeed the other place to say that these changes go too far; no ability to debate whether these changes would impact on protests, or to say that although we do not like Just Stop Oil, we might support protests which deal with extensive housing developments, with inappropriate third runways at Heathrow Airport by lying down in front of bulldozers, or against new nuclear power stations and so on. All these protests are potentially affected by the changes to the legislation that the Government have brought forward. There is no opportunity for us to table amendments to change that, and the Government Minister just dismisses that as somehow irrelevant.

7.45 pm

This is all done without proper consultation. An appalling Explanatory Memorandum was changed only today to try to take account of the criticisms in the 38th report of the Secondary Legislation Scrutiny Committee, which absolutely eviscerates the Government and what they have done. I received an email at 2.27 pm today—I do not know whether anyone else did—saying that the Government were changing their Explanatory Memorandum: "Later today, the House is debating the public order draft, et cetera … The Home Office has just laid a revised memorandum to these regulations". Honestly, you could not make it up—2.27 pm.

I do not know whether noble Lords will be aware of the extensive publication of this change; why on earth does the Minister think that is acceptable, in particular the way the Government justify themselves in answer to the criticisms of the Secondary Legislation Scrutiny Committee? I will tell noble Lords—

Viscount Hailsham (Con): I have not seen the additional Explanatory Memorandum. Would the noble Lord tell us what additional material is in it? If it is substantial, surely it should be provided to all Members of this House before the debate proceeds.

Lord Coaker (Lab): I will read a couple of sentences from it. Paragraph 6.8 provides a reason why the measures are being brought back in this instrument; the justification of promoting "consistency" across the statute book is similar to that provided to the SLSC in advance of the report, and is discussed at paragraphs 16 and 18 of the report. I could not quote what paragraphs 16 and 18 actually are. There is a new paragraph 10.1; it provides a reason why:

"A full consultation was not necessary".

I have no idea what paragraph 10.1 says, so I apologise to the noble Viscount. And so it goes on. The Government seek to justify themselves—

Lord Harris of Haringey (Lab): I am sorry to interrupt my noble friend in full flow, but I am shocked by what he is saying. Can he just confirm that this change to the Explanatory Memorandum was therefore tabled after the House of Commons had its debate?

Lord Coaker (Lab): My noble friend predicts what I was going to say next, in a calm, reasonable, rational way. I was going to ask whether the Minister could confirm whether the other place considered these changes to the Explanatory Memorandum before it had the opportunity to consider the regulations. As a football fan, I say that if this was a football crowd, it would be chanting to the Government, "They don't know what they're doing". It would be quite right.

At heart, what do we believe? I will tell noble Lords what I think, and what I think the SLSC and many noble Lords said. What has taken place is an absolute, fundamental constitutional outrage. This House defeated these, or similar, proposals, brought forward in a panic, as I said, by the noble Lord, Lord Sharpe, without knowing really that he was going to have to do it, earlier this year. Primary legislation was defeated. So what do the Government do? They do not bring forward new primary legislation. They try to sneak through secondary legislation in an underhand way without proper public consultation.

As the Secondary Legislation Scrutiny Committee said:

"We are not aware of any examples of this approach being taken in the past".

Is this what it has come to? Our Government have, in a shocking betrayal of our unwritten constitution, undermined the conventions on which our way of doing things is based, and on which our Parliament is based. How many times have I stood here and spoken of the need to protect conventions, to recognise the right way of doing things? These conventions protect our democracy, our rights and our freedoms. They are not just something for the Government of the day to dismiss because they are inconvenient. That undermines the workings of our parliamentary democracy. As such, it is shocking.

Of course, the elected Government should have their way, but this was not passed by the other House before being defeated. The Minister says, in a piece of political theatre, "Oh, don't worry, we passed it yesterday in the House of Commons". Embarrassed and in a panic in the face of today's criticism, this was so the Government could say: "Don't worry about that. We'll be able to tell Coaker and everybody else who has mentioned it that we passed it yesterday through secondary legislation. That completely torpedoes their argument that the House of Commons hasn't discussed it". Such was the rush that they could not even ensure that an amended Explanatory Memorandum was put before the other place before it decided on the legislation.

Like many noble Lords, I have been in this Parliament for a number of years, and I have never seen anything like this. Nothing changes. The fundamental principle is that this Government are using secondary legislation to overcome primary legislation; hence my regret amendment deploring it and calling on the Government to think again. We will abstain, as I say, on the fatal amendment. We will not block this legislation.

Let me be clear to those who keep asking me whether His Majesty's Opposition's position is to block the SI: we will not do that. I understand why some people would wish that to be otherwise but, as His Majesty's Opposition, we will respect convention. We will respect tradition and the right way of doing politics in our country. I do not believe that it necessarily shows any respect for the way that democracy works by voting down the opinion of the elected Government of the day.

The way to change that is, in my view, to get rid of this Government at the next election and put another Government in their place. That is the way forward. We have opposed these measures and will continue to argue that they are unnecessary. But we should not, in my view, be debating this among ourselves. The true adversary in all of this is a bankrupt Government turning in on themselves. We will respect the right way of doing things even if the Government do not. If we are to be the next Government, we will expect those who may oppose us then to act in the proper way, respecting the will of the elected House. That is what I am saying to this Government: that they are not respecting the traditions of our country.

This is a sign of His Majesty's Opposition doing all they can to prepare for government and to look like a Government in waiting. This shoddy piece of constitution-disrespecting legislation, put forward with no consultation, shows just how far this Government have fallen. It is a moral and constitutional outrage, of which the Government should be ashamed. I beg to move.

Lord Hope of Craighead (CB): My Lords, I feel some sense of responsibility for the situation in which your Lordships find yourselves this evening because I devised the formula quoted in the regulations before us.

I drafted that particular formula with very specific reference to the locking-on and tunnelling offences described in the Public Order Act, which we were considering as a Bill at that time. I confess that I was not looking forward at that time to any other use of that formula. I understand why the Government have found it attractive and the point they are making that it is better to have a uniform test across the board. However, as the noble Lord, Lord Coaker, has said, this is a debate about the right way of doing things.

I have been making strenuous efforts on the REUL Bill to make it clear that parliamentary accountability requires debate in the Chamber on things that we can discuss and amend if necessary, and not be driven by

[Lord Hope of Craighead]
statutory instruments. While I stand by the formula which I devised—I believe it is the right formula, pitched at exactly the right point for the police to decide when they should intervene—I deeply regret that the Government have felt it necessary to approach a situation in this way. I endorse exactly what the noble Lord, Lord Coaker, has been saying and therefore wish to make it clear that while I stand by my formula, I greatly regret the procedure that is being adopted.

Baroness Jones of Moulsecoomb (GP): I actually told the noble and learned Lord, Lord Hope of Craighead, that he should not have helped the Government. I am prepared to forgive him, from a sense of generosity, because I know he was trying to help, but it did not actually help at all. The opening speech by the Minister was quite interesting because it lasted nearly nine minutes and focused almost entirely on what the police and the protesters were going to do. It avoided the talk of the constitutional novelty that the Government have introduced.

For me, this is a make-or-break moment for democracy. It is a crossroads that we really have to face up to because, in spite of what the noble Lord, Lord Coaker, said about respecting conventions, the fact is that the Government have not respected our conventions. There are two issues at stake here. The first is suppression of freedom, with a measure that your Lordships' House rejected as unreasonable only very recently. In some ways more seriously, and secondly, this government move sets a precedent that the Government can use secondary legislation to overrule Parliament's will as expressed in votes on primary legislation. This means that any future Minister, at any time, could decide to change any law in any way. This to me is deeply disturbing and we will hear from other people, I hope, who find it disturbing as well.

The shadow Attorney-General has said that we have to stick to the conventions and allow this statutory instrument to pass, but that argument seems to be based on a fundamental misunderstanding of the conventions. By convention, your Lordships' House does not block primary legislation, but this is not primary legislation. Your Lordships' House can, does and has blocked statutory instruments. I recognise that there is no convention that the Government cannot use a statutory instrument to overturn parliamentary votes on primary legislation, but that convention does not exist because no Government have ever tried to do this before.

What we face here is a novel issue—a turning point for our parliamentary democracy—and the decision in your Lordships' House on the following question will establish a new constitutional understanding. The key question is: should the Government be allowed to overturn parliamentary votes on primary legislation by using secondary legislation? That is the question we have to think about here today. We have talked before in your Lordships' House about our discontent about overreach by secondary legislation. I ask your Lordships: is this not the day to act on this? If we refuse to act today, when are we going to act?

The Labour Party has tabled an amendment to regret, and regret is what I believe we will all experience in the future if we fail to support this fatal amendment today. The whole country will have cause to regret the further erosion of the right to protest, which is part of our basic British way of life, and the enfeebling of this House, which many in this House might regret as well. We will regret it when Ministers start regularly to use their power under secondary legislation to overturn existing laws that Parliament has debated and voted for. We will regret it when we read headlines about the police arresting a group of parents and their children who are protesting about pollution outside their school.

What about the community up in Stone in Staffordshire who, just last week, protested about having HS2's HGVs rushing past their houses 42 times a day? They protested quite hard; I think they would have fallen foul of this piece of law. Or what about arresting people holding a vigil for a victim of police violence, which has of course happened? We will definitely regret it when we hear about a big march against a government policy, as when a million of us protested about the Iraq war, and the police will then have to say, "Sorry, that protest is banned because it may cause more than minor disruption". That is a very low bar.

8 pm

This is an authoritarian law that hands over to the police and the Home Office the power to decide what is a good or a bad protest. It erodes the rule of law because any protest will be permitted only at the discretion of the police, rather than being a fundamental right that can be interfered with only in limited and proportionate circumstances. It is being enacted in an authoritarian manner by ministerial decree. If we let the Government overturn votes by ministerial decree, what is the point of this House and all our work? If the justification for allowing the Government to act in this way is that your Lordships' House is not elected, then who is left to defend Parliament and the UK's uncodified constitution against encroachment by an out-of-control Government?

This is not a one-off. It is part of a trend of legislation that undermines parliamentary democracy. In the past four years, we have seen a whole series of skeleton Bills passed through Parliament that hand powers and discretion over to Ministers to make decisions, with minimal parliamentary scrutiny. These Bills that hand over the power to Ministers to make and amend rules and laws have become the norm. It means that in recent years we have seen a major shift in power away from Parliament, giving it instead to Whitehall. If the Government are allowed to do this today, the precedent will have been set. They will do it again next month and then the next Government will do it as well, and parliamentary democracy will seep away until this House is less than a talking shop.

In a few days, more than 55,000 people have signed a petition that I put out against this legislation. That is a huge number in a brief time, especially on something that appears to be so technical and small. But the regret amendment misses the seriousness of the issues before us and the consequences of allowing this law to pass. If Labour, Lib Dems, Greens, sympathetic Cross-Benchers and even principled, sympathetic Conservatives, support my amendment, we could beat this. We could defeat it. It is possible. Your Lordships have the power,

the right and constitutional duty to stop this statutory instrument, which is an assault on democracy. And if not now, when?

Lord Hunt of Wirral (Con): My Lords, I speak in my capacity as chair of the Secondary Legislation Scrutiny Committee. The noble Lord, Lord Coaker, already referred to the report that we have published on the regulations that we are debating. In our report, we raised a number of issues. First and foremost, we wanted to alert the House to the fact that this instrument did, as the noble and learned Lord, Lord Hope, has referred to, bring back a measure that was rejected by the House during the passage of the Public Order Bill—a point that we felt was particularly important because, regrettably, it had not been mentioned in the Explanatory Memorandum laid at the same time as the instrument itself.

It cannot be denied that primary legislation receives more thorough scrutiny than secondary legislation. Where a measure is rejected during the passage of a Bill, only for it to reappear in secondary legislation, we had no doubt that the House would want to be made aware of it. We concluded in our report that the House would probably wish to consider the possible constitutional issues that arise, and to decide whether it wished to retain its earlier view on the measures.

We are an advisory committee only. We cannot tell this House what to do. Our role is to highlight matters about which we believe the House may want to challenge Ministers and ask for explanations. This debate demonstrates how true it is that the House is concerned to debate these regulations thoroughly.

It is a testament to the sterling work of the team that supports the Secondary Legislation Scrutiny Committee that the committee has been able to contribute to this important debate, and that my officials spotted this and questioned the government department about it as thoroughly as they then did, with further developments today, to which I will refer in just one moment.

These regulations are not only significant in their own right but illustrate issues of greater concern to those who sit on our committee. In May, we published our interim report on the work of the committee, in which we made observations on the instruments laid during the previous 12 months. I pay tribute to my predecessor, my noble friend Lord Hodgson of Astley Abbotts, who identified with me a range of matters to which our committee agreed. One was the inadequacy of consultation. We set out examples in that report where inadequate consultation had had the effect of undermining the operation of an instrument.

In our report on the regulations which we are now debating, we were also critical of the level of consultation, arguing that a considerably greater degree of consultation would have been more appropriate given the specific history, the range of interested parties and the strength of views. Above all, these regulations demonstrate the committee's major and recurring concern that all too often the quality of the explanatory material accompanying secondary legislation is found wanting.

As I mentioned, our report on these regulations criticises the Explanatory Memorandum because it failed to mention that the measures had been defeated in the House on an earlier occasion, and, as a corollary of that omission, failed to explain the reasons why the Home Office takes the view that it should make a second attempt in this matter. This was important information that should have been included, and provides more than ample evidence of the finding in our interim report that poor-quality explanation was the most unwelcome feature of the secondary legislation that has been laid in the last 12 months.

Just today, in the early hours, the Home Office laid a revised Explanatory Memorandum for these regulations, responding to some of the points in the committee's report. The House can form its own view on whether the revisions address our criticisms; it is not for us to publish any further commentary. However, departments should not have to revise explanatory material at our prompting. The original version should always provide sufficient information to scrutinise the instrument fully.

In that interim report, we urged all government departments to strengthen their quality assurance systems so that explanatory material, particularly that in support of secondary legislation, is clear, accessible and comprehensive. We will do our best to remain vigilant in identifying when departments fail to do this and are committed to drawing your Lordships' attention, as on this occasion, to instruments where the quality of explanatory material has fallen significantly short of the standard that I believe this House has a right to expect.

Lord Rooker (Lab): My Lords, I do not propose to address the public order issues. It is a fairly simple issue, really. It is not the role, and can never be the role, of the unelected House to seek to have the last word. The last word on every issue belongs in the elected House. Sometimes, it is true, it has to wait a year, if the Parliament Act is used, but at the end of the day it has to be in a position of owning what it has passed, so that the electorate can take a view of what it has done. That is where the Government are formed, not here. It is a simple issue, really.

Our conventions have been tested and have been found wanting. I agree very much with the speech that we have just heard—I am a member of the Delegated Powers Committee—but that is not the issue. We have had case after case of the Government taking away powers from Parliament to give executive authority to Ministers. The House has debated this two or three times, but we have not done much about it so far. The simple issue is this: the elected House must own the decision.

I will upset a few people at the end of the evening; I am happy to vote for my noble friend's amendment but if the fatal amendment is put then I intend to vote with the Government. I will not be in a position after the next election of allowing the then Opposition to claim, when issues arise, "You never voted against it". I will have at least one name in the Lobby. This is not the first time this has happened; the noble Lord, Lord Strathclyde, voted in opposition against fatal amendments. We know that it has been reviewed, but maybe it is time to look again at our conventions. I think the last time they were reviewed properly was in 2006, by a Joint Committee chaired by my noble friend Lord Cunningham of Felling.

[Lord Rooker]

I will not get confused—I agreed with about two sentences of the speech from the noble Baroness, Lady Jones, on constitutional issues. She has spent all week on social media misleading the public about the powers in Parliament. The powers belong to the elected House. It must be in a position to have the last word on every issue.

Baroness Jones of Moulsecoomb (GP): Can the noble Lord tell me how I misled anyone? I think it has been the Labour Party that has misled people.

Lord Rooker (Lab): Anyone can look at what has been happening this week. It has been misleading. The fact is that we are in a democracy and we are an unelected House. Our job is very simple: we just ask the other place to look at things again and again. At the end of the day, it has to own the decision. How can it go to the public in a general election if there are decisions that it cannot own? That is our present system and no one has come up with a plan to change it at this time.

Lord Pannick (CB): My Lords, I support both amendments before the House—that tabled by the noble Lord, Lord Coaker, and that tabled by the noble Baroness, Lady Jones. I do so because, as the noble Lord said, this is a constitutional outrage.

I take that position even though I have great sympathy with the Government's position on the substance of these regulations. They are absolutely right to say that those who demonstrate are not entitled to inflict more than a minor hindrance or delay on those going about their daily business. Whatever the merits for which the demonstration is held, protesters need to recognise that their rights to freedom of expression and assembly are not the only rights in play. The noble Baroness, Lady Jones, says that this is an authoritarian law. It is not. Members of the community have the right to get to work, take their children to school and attend hospital appointments without being caught in a traffic jam caused by protesters sitting in or walking slowly along a road with the very purpose of disrupting the lives of other people. That is simply outrageous.

However, the issue tonight is whether we approve regulations that defy the will of Parliament, as expressed by this House when we voted down on 7 February Amendment 48 of what is now the Public Order Act, in the light of which Amendment 49 was not moved. I voted with the Government on Amendment 48, and I was in the minority. As we have heard, they are now bringing forward regulations to achieve exactly the same objective. Respectfully, it is all very well for the noble Lord, Lord Rooker, to talk about the other place being the dominant House, which it is, and say that we must give way to it, but we should not do so when there is a constitutional outrage, and not when, as we all know, scrutiny of regulations is cursory at best.

The Government know very well that they can bring forward regulations which we cannot amend and that the normal practice of this House is not to vote them down on a fatal Motion. How is that democratic? How can it be democratic that one of the Houses of Parliament is unable to express its view in relation to the substance of this matter?

8.15 pm

Lord Reid of Cardowan (Lab): With respect, no one is trying to stop this Chamber expressing its view on this or anything else. What it is trying to stop is the assumption that it is this Chamber that makes the final decision. It is not. It is essential for the maintenance of the constitutional arrangements we have that we always respect the elected House, which, as my noble friend said, has to own those policies because it is directly responsible to the electorate. So it is not about discussing, it is not about revising, it is about who takes the final decision.

Lord Pannick (CB): I totally understand that, and it is customary in this House to ask the other place to think again. I am not suggesting that we should have the final word; I am suggesting that tonight we should vote down these regulations and invite—require, ask—the other place to think again and to consider whether it really thinks it appropriate to proceed by way of what we all agree is a constitutional outrage, as the noble Lord, Lord Coaker, said. There are occasions when we have to stand up for constitutional principle, and this is one of them. If the other place sends it back again, no doubt we will give way because it is the elected House, but we are entitled to express our view in an effective manner. It is all very well regretting, but it has no effect whatever.

I agree with the comments of my colleague Tom Hickman KC and his co-author Gabriel Tan in the blog that they put on the website of UK Constitutional Law Association. They wrote, and they are right, that the Government are seeking to obtain through the back door of Parliament what they have been denied at the front door. It is, they say, a

"remarkable act of constitutional chutzpah",

and they are absolutely right.

It does not stop there because, as the noble Lord, Lord Hunt, rightly said, the original Explanatory Memorandum to these regulations—I have not seen today's amended, improved version—nowhere mentions that these amendments were defeated when they were proposed to the Public Order Bill. It is worse than that, as the noble Lord, Lord Hunt, knows, but it is astonishing that the Explanatory Memorandum at paragraph 3.1, under the heading "Matters of special interest to Parliament: Matters of special interest to the Joint Committee on Statutory Instruments", has this entry: "None". Is that not extraordinary? Does it not demonstrate the contempt which the Government have in this context for the proper processes of legislation in these matters?

Lord Brownlow of Shurlock Row (Con): I have been here for only four years, and I am still learning. The noble Lord said earlier that if this statutory instrument is voted down, the other House could be asked to think again and it could bring it back. My understanding is that a statutory instrument cannot be brought back.

Lord Pannick (CB): The Government can table a new statutory instrument any time they like. They are perfectly entitled. They can table a statutory instrument and invite us to consider it—or, far better than that

would be to produce primary legislation which we can debate properly and can amend if we think it appropriate to do so and which will then go back to other place for it to consider.

If it does not agree with us, we will, I am sure—as the noble Lord, Lord Reid, rightly said—follow our customary practice and give way, because it is the elected House. What is so objectionable about this is that all of those procedures are removed. All we can do, as he said, is express regret: we are very sorry about this. Well, I express regret that the Labour Front Bench is not prepared to see through the implications of its own view that this is a constitutional outrage. It is something that we should stand up against and vote against.

Viscount Hailsham (Con): My Lords, with little exception, I agree with what the noble Lord, Lord Pannick, has said. I start by having considerable sympathy with the motives that have caused the Government to come forward with this statutory instrument. However, for the reasons that were advanced by the noble Lord, Lord Coaker, I feel that the process is very defective. However, again, for constitutional reasons, which I shall mention very briefly, I cannot support the fatal amendment.

That, in summary, is my position; if I may, I shall elaborate a little further. So far as the motives of the Government that lie behind the statutory instrument are concerned, I share very many of these views, as indeed does the noble Lord, Lord Pannick. In a free society, individuals have a right to demonstrate. However, their fellow citizens have a right to go about their daily business without unreasonable obstruction. I fear that, increasingly, we are seeing on the part of demonstrators a disregard for the obligations they have to their fellow citizens.

So I can well understand the motives that activate the Government in bringing forward the changes in the statutory instrument. However, for the reasons advanced by the noble Lord, Lord Coaker, I have very real reservations about the process that is being adopted. The process and its defects were identified by my noble friend Lord Hunt of Wirral. He is entirely right, and his report is extremely direct on the subject. The statutory instrument is in fact designed to reverse the defeat in this House earlier this year.

If that is a desirable thing to do, it should be done by primary legislation. That is the point made by the noble Lord, Lord Pannick. Amendments made to a Bill by this House on Report can always be considered further in the House of Commons and, where appropriate, they can be the subject of ping-pong; that is the proper way forward.

A statutory instrument is an unamendable legislative device and, in my view, one that should not be used to make significant changes to the law, in particular to the criminal law. So one needs to go to the purpose of this statutory instrument. The Home Secretary set it out in yesterday's debate in the House of Commons. At column 55, she set out the four purposes of the instrument, and said later, of the police, that

"we are trying to clarify the thresholds and boundaries of where the legal limit lies, so that they can take more robust action and respond more effectively".—[*Official Report*, Commons, 12/6/23; col. 74.]

Now, that raises at least two pertinent questions. Either this statutory instrument, in effect, does no more than tidy up existing legislation and ensure that existing case law applies equally across the statutory waterfront, or it is intended to make significant changes to existing law. In the first case, it must be doubtful whether the statutory instrument is required; in the second case, if, as I suspect, the statutory instrument does make substantial changes to existing law, it should be done by primary legislation—and that is what this House intended to do in January.

So, finally, we get back to process, which is fundamental to tonight's debate. I share all the reservations expressed in the amendment of the noble Lord, Lord Coaker. They constitute good reasons why the procedure adopted by the Government is flawed. I would like to think that if the amendment is passed—and in all probability, I will vote for it—the Government will withdraw the statutory instrument and resort to primary legislation.

I am afraid that I cannot support the fatal amendment moved by the noble Baroness. Here, I find myself in agreement with the views expressed by the noble Lords, Lord Reid and Lord Rooker. The House of Commons passed this statutory instrument last night by a very substantial majority. The fatal amendment has a much more dramatic consequence than those occasions when the House amends a Government Bill. In such cases, the Bill can be further considered by the Commons. However, if this House carries the fatal amendment, the statutory instrument is killed. That goes beyond that which an unelected House should in general do.

Lord Paddick (LD): The noble Viscount seems to be saying that the difference here is that if this House votes down a measure in primary legislation, it goes back to the Commons to be reconsidered. That is not what happened in this case: the amendment was introduced in the House of Lords, not the other place, we voted it down and it disappeared. It did not go back to the other House. Exactly the same thing will happen tonight if noble Lords vote for the fatal amendment.

Viscount Hailsham (Con): I entirely understand this point, but we need to draw a distinction between amendments that this House makes in Committee and on Report, when it is possible for the House of Commons to consider again and come back to this House, and—

Lord Paddick (LD): Will the noble Viscount give way?

Viscount Hailsham (Con): May I just finish this point?

In this particular case, if we pass a fatal amendment, as advocated by the noble Baroness, we will be killing a statutory instrument which was supported by the House of Commons last night. I am very unwilling to support that proposition as a precedent, and I agree with the views expressed by the noble Lords, Lord Rooker and Lord Reid.

I say this as one who was in the House of Commons for 30 years. I am under no illusion as to the nature of the House of Commons. My father used to speak and write about the "elective dictatorship". He was entirely right, but at the end of the day we have to decide

[Viscount Hailsham]
where authority lies, and however imperfect its authority may be down the road, it does have the authority of an election, and we do not have that. I give way to the noble Lord if he wishes to intervene further.

Lord Paddick (LD): I am very grateful, but the noble Viscount makes another error in his assertions. This was not an amendment to the Bill introduced by the Opposition in this House. It was a Government amendment introduced in this House, which was defeated by this House, which means that the amendment could not then be considered by the House of Commons. Therefore, there is no practical difference between the voting down of that Government amendment, killing it completely, and voting for a fatal amendment to the statutory instrument, which would kill it completely.

Viscount Hailsham (Con): The noble Lord is cavilling at this point. We are, in a sense, talking about principle. Where does authority, in the end, lie? It lies down there because they are elected. It does not lie here because we are not elected. It is for that reason that I shall vote for the amendment moved by the noble Lord, and I do not feel able—although I agree with a great deal that the noble Baroness said—to vote for the fatal amendment.

8.30 pm

Lord Jackson of Peterborough (Con): My Lords, I fear I may be ploughing a lonely furrow tonight in supporting the draft regulations, speaking to the regret amendment in the name of the noble Lord, Lord Coaker, and against the fatal amendment in the name of the noble Baroness, Lady Green.

Noble Lords: Lady Jones.

Lord Jackson of Peterborough (Con): I beg her pardon—the noble Baroness, Lady Jones of Moulsecoomb. I have in fact read her round robin email and the accompanying legal opinion, and we have discussed these regulations, and of course I have read the report of the Secondary Legislation Scrutiny Committee.

I will not dwell on the process or the constitutional issues as such; the latter were well encapsulated by the noble Lords, Lord Reid and Lord Rooker, respectively. However, I do not agree with the catastrophist rhetoric of the noble Baroness, Lady Jones, on this being somehow a constitutional crisis.

The statutory instrument is quite simple and straightforward, seeking to strike a balance between freedom of speech, freedom of protest and assembly and the rights of the public to go about their daily business unhindered and unmolested. It is also about legal clarity for both the front-line police and the courts. The upsurge of large-scale disruption is not something any Government can ignore, especially as the effectiveness of the police and the public perception of them will be impacted by operational and legal uncertainty. As of last Thursday, as the Minister said, £4.5 million has been spent on diverting local policing priorities—equivalent to over 13,000 shifts—away from theft, burglary, violence against women and girls, knife crime, et cetera, and there have been 86 arrests and the bureaucracy that that involves, mostly for breaching Section 12 of the Public Order Act 1986.

Any Government—every Government—have a responsibility and a duty to protect its citizenry. Let us also remember that the police are currently in a very difficult and unenviable position. Slow walking has an impact not just in a confined geographical area but in a wider community and economic sense, and it has an effect on working people, businesses and public services, emergency services, hospital appointments, funerals, et cetera. At present the police have to balance the rights of protesters to exercise their rights under the Human Rights Act and the European Convention on Human Rights, and the impact of taking time to consider these competing interests. That leaves the police open to charges of partiality, bias, weakness and incompetence. Such a situation obviously gives rise to anger from those most affected by protestors' selfish exhibitionism, which is often enacted to garner social media coverage, as well as to vigilantism, which of course causes further public order incidents. It is unrealistic not to imagine that such a situation arises not from a single event but from cumulative and repeated events and actions, perhaps over several days, which are more than minor.

I posit that giving the police different, not enhanced, powers to close down demonstrations more expeditiously is in the wider public interest. The regulations do not create more powers but make existing powers clearer and policing more consistent. It is important to remember, as the Minister said earlier, that they also align the threshold of serious disruption with that in the Public Order Act 2023, a definition arising from recent case law, and as such, the Government are right to use the delegated powers in Sections 12 and 14 of the Public Order Act 1986.

Like policing, governance is best undertaken not just by democratic accountability and authority but by consent. Quite evidently, the wider public are demanding that Ministers tackle the problem of deliberate and wilful disruption—actions that do nothing materially to change policy but which also do not persuade sceptical citizens and are in fact punitive and pointless in equal measure.

I do not believe that this statutory instrument is a radical departure that sets a dangerous constitutional precedent. It is certainly not, for instance, a draconian assault on freedom of speech and civil liberties. Comparisons with the Suffragettes, which I think have been used by some members of the Green Party, are of course specious: we have had universal suffrage elections since 1928.

It might be appropriate to turn now to some of the criticisms and observations in the committee's report—

Noble Lords: Oh!

Lord Jackson of Peterborough (Con):—as I wind up.

A noble Lord: Hear, hear.

Lord Jackson of Peterborough (Con): On consultation, I think it is unreasonable to expect the Government to undertake a comprehensive consultation process

when the imperative is to correct quickly a legal loophole. I do have sympathy with the late tabling of the amendments on Report; I think that is a very fair point to make.

I shall finish with the words of the noble and learned Lord, Lord Hoffman. The noble Lord, Lord Coaker, talked about the importance of conventions. With that in mind, the noble and learned Lord, Lord Hoffman, said in 2006 that

"civil disobedience on conscientious grounds has a long and honourable history in this country … But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint".

That is what this regulation is about.

Lord Lisvane (CB): My Lords, I make no comment on the merits of the policy that this proposal would introduce; it is the manner in which the Government have proceeded that has caused me, as it has my noble friend Lord Pannick, great concern. The Home Office has behaved in a way for which I can find no kinder word to use than "disreputable".

For a start, the Explanatory Memorandum—whichever edition we are in now—did not mention the fact that the proposal had been rejected by your Lordships. When the committee quite rightly inquired why that was not mentioned, the reply could have won an Oscar for weasel wording:

"The details that have been included … are those which we … considered relevant to the document".

When you are caught bang to rights, the proper response is an apology, not an obfuscation. Yet more astonishing —my noble friend Lord Pannick has already referred to this—is that in the section of the Explanatory Notes outlining anything that might be of interest to Parliament or the JCSI, the single word "None" appears.

Then there is the question of consultation. The Home Office ignored the Government's own consultation principles and consulted on a selective and skewed basis. It brought to mind the Sellar and Yeatman description of the passage in Magna Carta which they alleged said:

"No baron should be tried, except by a special jury of other barons who would understand".

In this case the Home Office set out to consult a selection of people it knew would support it, not those who might have a different view. A kind description would be that that was "not straightforward".

Tom Hickman KC, the professor of public law at UCL, who has already been mentioned, pointed out:

"Where a public authority chooses to conduct a consultation process, that consultation must be conducted properly and fairly".

He pointed to a ruling by the Court of Appeal that a consultation conducted before certain Covid-19 regulations had been unlawful because it had been conducted on an entirely one-sided basis. I do not see how the consultation carried out by the Home Office in this case could be described as proper and fair.

This instrument and the Explanatory Memorandum —again, whichever edition you care to quote—must have been signed off by a Minister. I think we might be told which Minister it was, and which Minister took the view that this was an appropriate way to treat Parliament. I hope the Minister here will be able to tell us. I do not want to see, and I am sure your Lordships do not want to hear, any pabulum about collective responsibility.

As I suggested earlier, I do not take a view about the merits of what this instrument would achieve. My concern is for the way in which Parliament is being treated and for the apparently resentful and sullen way in which the committee's questions have been answered.

I am sorry—and I do understand what the noble Lord, Lord Coaker, was saying earlier on—that His Majesty's Opposition do not wish to go further than regretting what is in front of us. Governments shrug off regrets; they make no difference. As the noble and learned Lord, Lord Judge, said in the Queen's Speech debate last year, if we make no difference, why do we not just go on talking? Incidentally, I should tell your Lordships that, in my recent email conversations with the noble and learned Lord, we have focused on England's chances in The Ashes, and I know that we all send him our warmest good wishes in his convalescence.

This brings me to the fatal amendment in the name of the noble Baroness, Lady Jones of Moulsecoomb. At this point, it is very important to recall that it is a very easy thing for a Government to withdraw an SI, redraft it, relay it and start the process again. It is also—and, of course, the business managers will balk at this—not that difficult to achieve a change by primary legislation in a relatively short time. As some noble Lords have said, that is actually the right way to proceed. It is not just what you want to achieve: it is the propriety of the means that you use to get there. If noble Lords do not want this sort of thing to happen again, we should vote it down, so if the noble Baroness presses her amendment to a Division, I shall support her.

Lord Pannick (CB): May I ask the noble Lord whether, with all his decades of experience of parliamentary procedure, he has ever seen a set of regulations that so defies constitutional propriety?

Lord Lisvane (CB): I think the noble Lord will know the answer, and it is no.

Baroness Stowell of Beeston (Con): My Lords, I start by joining the noble Lord, Lord Coaker, in the comments that he made about my beloved home city. I also pay tribute to the Nottinghamshire Police and all the emergency services for their responses to the dreadful events in the city today. Clearly, I send my condolences to the friends and families of those who were dreadfully murdered.

I should also start by saying that I very much understand some of the frustration that has been expressed in the debate so far today, whether it has come from the noble Lord, Lord Coaker, my noble friend Lord Hunt on behalf of the committee, or in various other speeches that we have heard. It is important that the Government produce good-quality Explanatory Memorandums. They have not covered themselves in glory in this particular situation. I care about procedure—I do, very much—but I also care very much about the way in which this House conducts itself and the

[Baroness Stowell of Beeston]
relationship that we have between this House and the Executive. I feel that, over the last few years, it has deteriorated. It has become increasingly hostile, and that has been clearly evident in the way in which some of the debates that we have held on a range of legislation have occurred. Sometimes, we have made our points in ways that have not showed any sense of disrespect to the Government—because that is not for the House to worry about—but have too often, I feel, shown disrespect to members of the public who take a particular position on things that some of us may not agree with.

8.45 pm

As much as this debate is about procedure and good order, if we are to move beyond the situation we seem to have got ourselves stuck in—how we deal with some of these difficult issues and how we react to some of the ways in which the Government bring forward legislation, which are not necessarily always as good as they need to be—and to be even more effective in discharging our responsibilities as the second Chamber of Parliament, we have to look also at the bigger picture when we consider today's issue.

Before I move on to the bigger picture, I will address some of the points raised about procedure. In introducing this debate, my noble friend the Minister set out that the situation in respect of this secondary legislation is not quite as straightforward as some noble Lords are trying to portray in their opposition to this procedure in this context. As I understand his argument, some of the substance of this secondary legislation did go into the relevant primary legislation, but in in a way that was inconsistent across the piece. We have this very unsatisfactory situation now whereby there is a lack of consistency for the police in being able to uphold and meet their various responsibilities. That needs to be understood and remembered; it is not as if the Government have come forward with secondary legislation to introduce something that has not already featured in legislation.

On the issue raised in the exchange between my noble friend Lord Hailsham and the noble Lord, Lord Paddick, it is important to understand that, while it is true that the rejected amendment in the primary legislation was a government amendment, in ping-pong, it is not possible for the Government to reintroduce an amendment there. We are therefore in very different situation. The reason I lay all that out is that some of the arguments against what the Government are trying to do here do not quite add up. We have to concentrate on the substance of this secondary legislation and what the Government are trying to do through it, rather than just on the procedure.

We hear a lot in our debates about the importance of various human rights and things which are important to uphold in the context of peaceful protest. All of that is very important, but those are not the only essential ingredients to a healthy and cohesive society. Common standards and social norms are critical to underpinning our communities. When we look back to 2019 and the events of that summer, what we saw was a completely new way of protesting in London. London was brought to a standstill for five whole days. I was pleased to hear the noble Lords, Lord Coaker and Lord Pannick, criticise that form of protest and to make it clear that it is unacceptable. However, we also have to remember that we did not do that in 2019. For several days, Waterloo Bridge was closed and our police were not doing anything about it. A lot of us in positions of authority were supporting that situation because we were sympathetic to the cause of the protesters. A lot of our fellow citizens felt completely confused and let down, and they could not understand why we found that acceptable.

Since then, of course, the Government have introduced a range of different legislation to try to deal with these matters. As we have heard, in the course of trying to pass that legislation, things have become increasingly tense and hostile. The laws we have passed are more complex than they should be to enable the police to do what our fellow citizens want them to do. They want to be sure that when protesters are bringing our roads and cities to a standstill, the police act swiftly, do what is expected of them straight away and do not create a situation where people feel it necessary to take the law into their own hands, and in doing so attract the criticism of the police.

Our inaction and unwillingness to stand up and call this out in 2019 has had consequences. The consequences are legislation. The Government have tried to pass that legislation in as straightforward a way as possible and it has proven to be incredibly difficult for all sorts of reasons, as we have heard and discussed this evening. If we believe that there is an opportunity for us as a House to show that we really want to respect the law-abiding citizen, who wants this clarity, and show them we are on their side, I hope that all noble Lords will join me tonight in supporting my noble friend the Minister by following him through the Division Lobby.

Baroness Fox of Buckley (Non-Afl): My Lords, the noble Baroness, Lady Stowell of Beeston, raises some important broader questions to consider but I think she has overcomplicated what is a more straightforward problem. These instruments were brought into this House by the Government on Report, which was extraordinary enough in itself; the Government lost, and they have come back again. We are told that they have to come back because something really dramatic has happened: there is a whole new set of circumstances and the police do not have the powers to police this really difficult situation. Then, we find out that the new tactics are basically a load of people walking slowly in the middle of the road. People think, "Why don't the police just arrest them, then?" They have a huge amount of power under public order legislation.

I was speaking at a meeting the other night and somebody said, "Why are the police not using the Highway Code to stop people walking slowly down the middle of the street?" It makes no sense that the only way the police can deal with this is if a statutory instrument is brought in that, constitutionally, completely warps the way the law should be made.

There is a serious danger that the law, and secondary legislation in particular, is being used because there is somehow a failure of the police to police and a failure of the Government to ensure that the police police. The frustration in all this is that while the police say that they do not have the powers to stop people

marching slowly in the middle of the road, blocking everyone off, they suddenly spring into action rather quickly as soon as a member of the public gets frustrated and starts pulling down the barriers, dragging that person off, arresting them and so on. You can see that this is a mess. The Government have made the situation worse, and using the law in this way is discrediting in every possible way.

I saw somebody waving a placard at me on the way in that said, "Kill the Bill", and I agree. I want this Bill to go away. I would love it to disappear. I hate everything about a lot of the things that were brought in through that policing Bill. Any civil libertarian does not want to lose liberties in the way we did; I agree with all of that. The noble Baroness, Lady Jones of Moulsecoomb, has said—and I take her at her word—that she has not brought in her fatal amendment lightly. She has lost sleep over it. That is fair enough; she is doing what she thinks is right in good conscience.

In the end, if the Government are behaving constitutionally irresponsibly and tearing up conventions, I am not prepared to imitate them. As far as I am concerned, the only way that we can behave, in good conscience, is to condemn the Government for what they have done, call on them to get the police to do their job and stop using the law inappropriately, and ultimately express our regret. We should not imitate them by unconstitutionally asserting in an unelected Chamber that we overthrow the elected House.

I so often disagree with the elected Members up the Corridor that it is boring. Who cares what I think? I am here not through the electorate or the public. We are all here because somebody put us here—goodness knows, that is a controversial enough matter—and we have no more legitimacy other than that somebody somewhere thought we were a crony at some point. They made a mistake there with me, let me tell you.

I am afraid that we should not put a fatal amendment through. However, this should be condemned absolutely through the regret amendment. I support the Labour amendment.

Lord Hogan-Howe (CB): My Lords, I will be very brief, your Lordships will be grateful to know. I support the regret amendment in the name of the noble Lord, Lord Coaker, which I think is the right thing. I think the arguments made by the noble Lords, Lord Reid and Lord Rooker, are profound. The vote last night was clear. The Commons had the chance to get rid of it and did not.

The comments of the noble Baroness, Lady Fox, made me think that it is important to remind us of just one thing. All the criticism of the police has been that, in the past, they have done too little when protestors have been doing too much. They have not done that just because they were being incompetent—although some may argue they were—but because the Supreme Court made a decision a few years ago which left them with some dilemmas. It said that obstruction of the highway was not merely a simple offence anymore. Obstruction of the highway requires no intent or recklessness. It is an absolute offence; you either block the road or you do not. But the Supreme Court said that far more than that has to be considered when making a decision about arresting someone. Is there an alternative route? Is there something else you could do to avoid this obstruction? That is fine if there is a planned protest. It is not fine if, at 5pm today, some poor inspector is confronted with a problem and has to resolve it. That is why this Act has been really important.

Part of this conclusion is about the definition. I agree entirely that this is the wrong way to include this definition. I do not think anyone, even the Government, argued that it is the right way. That is why I support the regret amendment. Providing an increased lack of clarity for the police is likely to lead to more problems rather than less. The problems were not just around the lack of clarity from the Supreme Court decisions but due to some of the protests that were taking place and the disruption they were causing—for example, around Heathrow and many significant things we need to keep our people safe and secure. The law was being abused in a way that was hurting too many people.

For all those reasons, I support the regret amendment put forward by Labour. I cannot support the noble Baroness, Lady Jones, although in my humble view it was the most powerful speech she has made while I have been here—though I am sure she has taken other opportunities that I have not seen.

Noble Lords: Front Bench!

Baroness Hayman (CB): I am extremely grateful to the House, and I will be very brief.

No one has mentioned the last time we had a debate, with great passion, on the issue of statutory instruments and voting them down in 2015. I was torn on that occasion between what was a rather elegant delaying Motion, rather than one defeating an SI, and the standard regret Motion. I find myself in a very similar position now. I will not repeat the constitutional outrage that I think this statutory instrument is, or the arguments for maintaining the precedent, protocol and conventions of this House in not defeating statutory instruments, but this cannot go on for ever.

9 pm

The situation regarding statutory instruments is unacceptable. They are 40% of our legislation but they are not legislation—they are executive orders that come before Parliament. I hear my friends, the noble Lords, Lord Rooker and Lord Reid, talking passionately about the supremacy of the House of Commons, and I passionately agree. The noble Lord, Lord Rooker, said that we can ask it to think again and again and can push that forward, but we cannot do that on these executive instruments. On statutory instruments, we cannot ask the Government to think again. We cannot amend or delay them. It is take it or leave it, and that is not a satisfactory way to make legislation on issues as complex and nuanced and difficult to resolve as those that we are facing today.

For that reason, I would like to see from this debate a shared understanding. I do not think that anyone other than the Minister, God bless him, has suggested that this has been a satisfactory process. It has been a disgraceful process. We ought to take away from this a real conviction that we must look carefully and change the way in which we deal with statutory instruments.

Lord Paddick (LD): My Lords, we on these Benches associate ourselves with the remarks of the noble Lord, Lord Coaker, on the tragic events in Nottingham.

Like the noble Lords, Lord Pannick and Lord Lisvane, I will not say much about the substance of the SI. If the Home Office had realised that the Public Order Act 1986 needed to be amended before the Bill had left the other place, we would not be here now.

I want to talk about the constitutional issue, described by the noble Lord, Lord Hunt of Wirral, of a Government changing primary legislation by means of secondary legislation within months of this House having voted against that primary legislation. As we have heard, this is unprecedented, or, as the noble Lord, Lord Pannick, put it, a constitutional outrage.

On Monday, this House will have the Second Reading of the British Nationality (Regularisation of Past Practice) Bill. This primary legislation retrospectively changes primary legislation by means of a two-clause fast-tracked piece of primary legislation. Not only is this the proper way of amending primary legislation but it shows that it can be done quickly and easily. There is no need for the will of this House, expressed through a recent Division, to be overruled by means of secondary legislation when a single-clause fast-tracked Bill could have done the same job without creating an unconstitutional precedent.

Noble Lords opposite may say that it is no big deal, but the Prime Minister said that his Administration would have

"integrity, professionalism and accountability at every level".

I will return to the issue of integrity in a moment, but failing to amend the 1986 Act in the other place clearly shows a lack of professionalism, and failing to correct the mistake by means of primary legislation shows a clear lack of accountability because, as the noble Lord, Lord Pannick, said, scrutiny of secondary legislation is cursory.

On integrity and the Boris Johnson resignation honours row, Michael Gove, a senior Government Minister, said yesterday on the BBC Radio 4 "Today" programme:

"The appropriate procedure was followed".

He went on to describe it as

"a process we are all familiar with as part of the constitution … it is appropriate to look at all these processes. They all have their own coherence in accordance with past practice and due process … All Governments work according to precedent … those are protocols that govern this particular procedure, and I think Governments overall have been criticised sometimes for departing from due process. I think it was appropriate and right that the Prime Minister and the Government followed due process in this way … I know it's old fashioned to want to use precedent and independent institutions to establish how all these sorts of things should be decided, but then precedent and independent institutions are, I think, the two of the constitutional bulwarks that are important".

This House is an independent institution, and this SI breaks long-established precedent. In answer to a question about changing precedent in connection with resignation honours, Michael Gove said:

"The inference of the question is that we should alter precedent, and that we should in some way say to independent institutions that they should operate in a different way from which they have been constituted. I think what we have here are the existing constitutional machinery working as it was designed to do".

So there we have it: a Conservative Government who believe that independent institutions should not operate differently from how they have been constituted, and that precedent should not be altered apart from when it suits them. That is the very definition of a lack of integrity.

This House voted against the provisions in this statutory instrument by a majority in a Division on primary legislation in February this year. There is no precedent to overturn a decision of this House on primary legislation by means of secondary legislation. I am reminded of the words of the noble Lord, Lord Forsyth of Drumlean, addressing the amendment to deny the Illegal Migration Bill a Second Reading, which he considered unconstitutional. He said:

"I do not think that any Member of this House who respects its values and its role could possibly go through the Lobbies and vote for that amendment".—[*Official Report*, 10/5/23; col. 1801.]

I adapt his words and apply them to this situation: I do not think that any Member of this House who respects its values and its role could possibly go through the Lobbies and vote to allow this statutory instrument to pass.

Noble Lords on the Labour Benches will be complicit in undermining the status of this House if they do not vote for the fatal amendment. The noble Lord, Lord Coaker, said that the Official Opposition will respect convention and not vote for the fatal amendment. Why, when the Government have not respected convention? I say to the noble Lords, Lord Reid and Lord Rooker: of course it is right that the other place should have the final say, but if we vote down this statutory instrument, the other place can introduce a one-clause Bill to achieve exactly what this statutory instrument is trying to achieve in a non-constitutional way.

If, as appears ever more likely with each passing day, there is a change of Government at the next general election, noble Lords on the Conservative Benches will have created a precedent that they are likely to regret for many years to come, when the incoming Government use this precedent to undermine the will of this House in future. We will vote for the fatal amendment.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords for their contributions to what has been a fascinating and powerful debate. Before I start my response, I join the noble Lord, Lord Coaker, in his remarks about the situation in Nottingham. As he did, I thank the emergency services and express my sympathies to the victims and their families.

I am obviously going to refute the allegation that this is in some way unconstitutional, or indeed an outrage. I have already set out why the Government have brought forward the measures, and the fact that it is indeed proper. The sequencing of debates and votes during the passage of the Public Order Act 2023 meant that the House of Commons was unable to consider the measures. Now that the elected House has approved the measures, we must respect its will and do the same—a point that has been made powerfully by a number of noble Lords.

The delegated powers being used existed prior to the introduction of the Public Order Act 2023. The powers were available for the Government to use during the passage of the Act—these are comments

I made in my opening speech. Those powers were scrutinised by the Delegated Powers and Regulatory Reform Committee, which recommended that a definition of

"serious disruption to the life of the community"

be included in the Police, Crime, Sentencing and Courts Act 2022, coupled with a power to amend the definition by affirmative procedure regulations. This recommendation was accepted and implemented in full.

It is entirely right that the Executive use powers conferred by both Houses of Parliament to allow the elected Chamber to consider the proposed change in law. The other place has now had that opportunity to consider these measures and has approved them, following debate on the Floor of the House. So this is not defying the will of Parliament, as some have suggested, or committing a constitutional outrage. As the noble Lords, Lord Reid and Lord Rooker, pointed out, we are actually respecting it. This cannot be sent back, so to not do this now would be to enshrine a lack of clarity and consistency in protest law, as my noble friend Lady Stowell noted. That will affect the police, the public and of course protesters themselves. Any delay in this fast-moving situation risks, as I pointed out in my opening remarks, continuing to encourage the public to take matters into their own hands—a point that was very well articulated by my noble friend Lord Jackson.

To the noble Baroness, Lady Fox, who knows I respect her greatly, I say that this is enabling the police to do their job with more clarity—a point that the noble Lord, Lord Hogan-Howe, made with considerable force.

My noble friend Lord Hunt asked some very sensible and searching questions about the Explanatory Memorandum, which I would like to address. To the noble Lord, Lord Lisvane, I say that the Government published the Explanatory Memorandum and have updated it. The primary focus of an Explanatory Memorandum is to provide clarity on the content of a statutory instrument's provisions. Additionally, the vote excluding the similar measure from the Public Order Act was only held earlier in the year. All the information on the vote is readily available in *Hansard*.

That said, we recognise the Secondary Legislation Scrutiny Committee's criticism and the importance of transparency in Explanatory Memoranda. So I can confirm, as has been noted, that the updated memorandum has been published. It was not published before the debate in the House of Commons, but the changes to the Explanatory Memorandum are relatively minor; they do not add new information. They reference the votes and clarify the extent of targeted engagement, and are in direct response to concerns raised by the Secondary Legislation Scrutiny Committee. The Home Secretary set this out clearly in yesterday's debate in the other place.

On the consultation, another subject that has been raised, I again have to refer back to my opening remarks. This statutory instrument does not create new powers. The Government have always been clear that the delegated powers were needed to be able to quickly respond to evolving protest tactics. As they do not grant new powers to the police but clarify the extent of existing powers, it was deemed disproportionate to carry out a full public consultation. Targeted involvement with the National Police Chiefs' Council, the Metropolitan Police Service and other police forces was the appropriate approach. All have welcomed clarity in the law, and the Metropolitan Police Service specifically welcomed clarity as to how the police should consider serious disruption in relation to imposing conditions.

The noble Lord, Lord Coaker, suggested that new powers were being created and referenced the Chief Constable of Greater Manchester Police. As I have mentioned, and I have to stress again, these measures do not create new powers but clarify existing ones. The Commissioner of the Metropolitan Police Service, the force most affected by protest in England and Wales, has asked for further clarity in the law. I think it is very evident from the events we are seeing at the moment how significant and necessary that clarity is.

I do not think there is much point in me saying very much else in answer to the questions. I think I have addressed the majority of the issues that I did not address in my opening remarks. As I said earlier, I am grateful for the constructive and helpful questions. I will take some of these reflections back to the department and to my noble friend the Leader of the House, who is not here at the moment. These regulations are designed to ensure public order legislation is clear, consistent and current. They will also support the police in striking the correct balance between the rights of protesters and the public. I commend them to the House.

9.15 pm

Lord Coaker (Lab): My Lords, I thank everyone who has taken part in what has been an interesting debate. I start by saying to the noble Lord, Lord Jackson, that nobody is saying that the current protests that we have seen are acceptable. We all agree that something needs to be done about it and that they are unacceptable. The whole debate about the instrument before us is around the appropriate way for the state to respond in balancing the rights of protesters and the public.

My contention is that the Government, through secondary legislation, are changing various measures that we only just passed in the Public Order Act—including, for example, the threshold that the noble and learned Lord, Lord Hope, referred to, where "more than minor" was linked just to the particular offences of tunnelling and locking on. Indeed, I was rebuked when I said that that threshold was too low and we should have a higher threshold; it was said to me that it refers only to the offences of locking on and tunnelling. As the noble and learned Lord, Lord Hope says, what the Government have done—they actually pray in aid the noble and learned Lord, who we have heard is very unhappy with the process—is extend that. That is what this is about.

There has been no opportunity for anyone in this House to say that that is inappropriate as a way of controlling protests. Nobody has been able to say that that threshold is inappropriate; we just have to accept it because it is done by secondary legislation and is unamendable. That is the point.

[Lord Coaker]

Then we come to the whole point of process, which is the point of my regret amendment and the point of debate for us all here. There are choices before us in how we respond to the fact that the Government have driven a coach and horses through the way that parliamentary democracy in this country works. There is absolutely no question that that is what they have done.

The convention does not say that you change primary legislation by secondary legislation. The Secondary Legislation Scrutiny Committee says that it cannot find another example of that being done. If you cannot find another example of it being done, it probably means that the convention is that you do not do it. Therefore, the convention must be that, if you want to significantly change legislation with respect to protests, you do so through primary legislation. I think that is the majority view—apart from one or two people shaking their heads at me, which is fine. The challenge before us is how we respond to the fact that the majority of people, I suggest, in this place think that the Government have acted inappropriately in dealing with this issue. That is the question.

You might say that we should do nothing about it and that it does not matter. The Tory Whip will say, "Pour in. Vote down Coaker's amendment. Support the right to lock up all these Just Stop Oil people. It doesn't matter. Convention doesn't matter. The way the constitution operates in this country doesn't matter. Pour in. Just vote it down. He'll shut up in a minute, it's fine". But what has happened is absolutely outrageous. I say to noble Peers opposite that this is an opportunity for the Conservative Members of this House to abstain and say that they accept that this is the wrong way for Parliament to proceed with respect to this matter. Do not just pour in and say it does not matter. It fundamentally matters.

Baroness Stowell of Beeston (Con): The noble Lord, Lord Coaker, is giving a customarily powerful closing speech. Will the noble Lord at least acknowledge that it is not just, as he is alleging, the Government who have driven a coach and horses through convention over the past few years, but that Parliament, in this House and down the Corridor in the other place, has also done that? My contention earlier was that it takes two to tango. We have got to a situation here whereby the Government are being forced to do unconventional things because of the way in which we collectively have had to conduct ourselves. It should be for him and I to agree that we need to move on and find a better way in which to conduct business than we have seen of late. It requires us all to reflect and not just for the Government to do so—although I accept that they need to do so.

Lord Coaker (Lab): That leads me nicely on to the point that I am trying to make. Conservative Peers have a choice to make as to how they respond to the way in which the Government have undermined the conventions of this House by abstaining on the vote. I have a choice to make and I am saying to my party from the Front Bench that we should respect the conventions of this House by not voting down the will of the elected House of Parliament. I am being criticised for not supporting the fatal amendment. As the noble Lord, Lord Paddick, and the noble Baroness, Lady Jones, have just said, they think that I should be suggesting that to my party. That undermines convention and I will not recommend it to His Majesty Opposition; it is inappropriate. That is the way in which I am seeking to respect conventions of this House—by not suggesting to His Majesty Opposition that they oppose what the elected Government of this country have put forward.

I have to accept my responsibility and make suggestions on how my party should vote on this. The noble Lord, Lord Paddick, will have his view about how he thinks his party should vote. The noble Baroness, Lady Jones, has outlined how she thinks the House should vote. I am saying to Conservative Peers that they have an opportunity now, through the vote they make, to deliver their verdict on how the Government have operated with respect to the conventions of this House. I contend that they have driven a coach and horses through the conventions of this House, whereby primary legislation is not changed by secondary legislation.

At its heart, that is what my regret amendment is about—trying to respect the conventions of the House while expressing regret with respect to the way in which these public order regulations have been carried through. At the end of the day, that is a choice that people will have to make. I have made my choice with respect to my party. I am saying that we should abstain on the fatal amendment but support my regret amendment. Others will have to make their choice. I hope that they make the right one.

9.23 pm

Division on Lord Coaker's amendment

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9.33 pm

Amendment to the Motion

Moved by ***Baroness Jones of Moulsecoomb***

Leave out all the words after "that" and insert "this House declines to approve the draft Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 because Parliament

has already rejected during consideration of primary legislation the proposals contained within those Regulations".

Baroness Jones of Moulsecoomb (GP): There are two ironies here. The first is that I do not think for one moment that this piece of legislation is going to catch any more protesters. People who think that they are defending the planet are very dedicated and creative. They will come up with other ways of protesting, so this particular law is likely to catch other people.

The second irony is that I, who complain endlessly about all of the ridiculousness that happens here and am very short of patience when I am told not to run in the corridors and things like that, am defending the status quo. That is an irony—that I want us to respect the conventions. Therefore, I should like to test the opinion of the House.

9.35 pm

Division on Baroness Jones of Moulsecoomb's amendment

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Amendment disagreed.

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The Tellers for the Contents recorded 64 votes. See col. 1950 for the correction.

Motion, as amended, agreed.

Financial Services and Markets Bill

Report (3rd Day) (Continued)

9.46 pm

Amendment 108

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

108: After Clause 71, insert the following new Clause—

"Designated artificial intelligence officer

(1) The Secretary of State must by regulations provide that companies operating in the financial services sector who use artificial intelligence ("AI") must have a designated AI officer.

(2) The AI officer under subsection (1) has responsibility for ensuring the—

(a) safe,

(b) ethical,

(c) unbiased, and

(d) non-discriminatory

use of AI.

(3) The AI officer under subsection (1) also has responsibility to ensure that data used in any AI technology is unbiased.

(4) Regulations under this section are subject to the affirmative procedure."

Member's explanatory statement

This amendment would require firms in the financial services sector that use AI to have a designated AI officer.

Lord Holmes of Richmond (Con): My Lords, in moving Amendment 108 I will speak also to Amendment 109 in my name and, in doing so, I declare my technology interests as set out in the register. The purpose of both amendments is predicated on the fundamental truth that AI is already extraordinarily powerful and pervasive across our financial services, impacting so many elements of people's experience and ability to access and avail themselves of financial services. If AI is to human intellect what steam was to human strength, we see the extent of the issue.

In Committee, the Minister perhaps rightly suggested that it would be wrong from a policy perspective to have an AI reporting officer in financial services and not consider this across the whole of the economy. If so, will my noble friend take back to the Treasury the need to work across departments—with the Business Department and the newly formed DSIT—to consider an approach where an AI-responsible officer on the boards of all companies would be considered, for the benefit of all those involved in the provision of those services; in this context, financial services? Perhaps this would be a good topic to work up for the AI summit which will be taking place in London later this year. Similarly, the UK has an extraordinary opportunity to be a leader in ethical AI, and I ask my noble friend whether it would make sense, with colleagues across government, to expand the specificity of these amendments in financial services and look at how they might be implemented, coming off the back of the AI summit in the autumn.

The Bill provides an opportunity to raise the whole question of AI. I bring these amendments to do just that. I believe that it would make a real difference to financial services—consumers, businesses and regulators alike—if these amendments were considered in that context, but I completely accept that there is a broader context and would welcome my noble friend's comments on both the specific and the broader context. I beg to move.

Lord Harlech (Con): My Lords, I thank my noble friend Lord Holmes of Richmond for tabling these amendments for discussion. The Government are firmly of the view that artificial intelligence has the opportunity to revolutionise every aspect of our lives, and we are committed to unlocking the enormous benefits that it can bring, in a way that is fair and allows everyone in society to benefit.

In March 2023, the Department for Science, Innovation and Technology published proposals for a new regulatory framework for AI regulation in the government's AI regulation White Paper. This sets out a proportionate, adaptable framework for AI regulation, underpinned by five potential cross-sectoral principles, which include concepts such as fairness, safety and transparency, to strengthen the current patchwork approach to regulating AI indirectly.

Through the proposals for the new AI regulatory framework, we are building the foundations for an adaptable approach that can be adjusted to respond quickly to emerging developments. The vast majority of industry stakeholders we have engaged with so far agree that this strikes the right balance between supporting innovation in AI while addressing the risks it presents. We are committed to a proportionate approach to AI regulation that allows us to maximise the benefits that AI can bring to the economy and society and can effectively respond to the fast-moving risks presented by AI.

The White Paper is currently undergoing public consultation until 21 June 2023. We will continue to work with experts and stakeholders across the AI economy during the consultation period and beyond in order to identify emerging opportunities and risks and ensure that the regulatory framework can adapt to them. Furthermore, the FCA, the PRA and the Bank of England recently published a discussion paper on how regulation can support the safe and responsible adoption of AI in financial services. Last week, the Government announced that the UK will host the first major global summit on AI safety this autumn.

While I am very sympathetic to the intentions behind my noble friend's Amendments 108 and 109, the Government believe that they could result in unintended complications in the use of artificial intelligence in the financial services sector. I hope that I have sufficiently reassured noble Lords that the Government remain committed to an effective and consultative approach to the use of artificial intelligence within the financial services sector. Noble Lords can be reassured that the Government will continue actively to involve Parliament in decisions in this area, particularly in relation to the future creation of a digital pound. Therefore, I ask my noble friend to withdraw his amendment.

Lord Holmes of Richmond (Con): My Lords, I thank the Minister for his full response, which is appreciated. It is a thoroughly good thing that, particularly this year, we have heard more conversations and considered

[Lord Holmes of Richmond]
thought around AI, both in this place and in wider society, than we probably had in preceding years. I hope that we can have increasing public engagement and public debate around AI to ensure that everybody is enabled to take the benefits, understand the risks and understand that they are mitigated, managed and eradicated by regulators and legislators so that the UK can be the place where ethical AI is championed for the benefit of businesses, consumers and communities alike. I very much look forward to the global summit later this year. I beg leave to withdraw the amendment.

Amendment 108 withdrawn.

Amendments 109 to 115 not moved.

Clause 76: Regulations

Amendment 116 not moved.

Amendment 117 not moved.

Clause 78: Commencement

Amendments 118 and 119

Moved by ***Baroness Penn***

118: Clause 78, page 90, line 16, at end insert—

"(aa) Part 5 of Schedule 2, and section 2 so far as relating to that Part;"

Member's explanatory statement

This amendment would bring the amendments made in Part 5 of Schedule 2 to the Bill (which relate to the third country CCP run-off regime) into force on the day the Act is passed.

119: Clause 78, page 90, line 20, at end insert—

"(e) section (Politically exposed persons: money laundering and terrorist financing);

(f) section (Politically exposed persons: review of guidance)."

Member's explanatory statement

This amendment would ensure that the new Clauses on politically exposed persons to be inserted after Clause 71 would come into force on the day the Act is passed.

Amendments 118 and 119 agreed.

Amendment 120

Moved by ***Viscount Trenchard***

120: Clause 78, page 90, line 34, at end insert—

"(4A) The Treasury must make regulations under subsection (3) so as to bring section 1 and Schedule 1 into force for the purposes of revoking, within the period of two months beginning with the day on which this Act is passed, the provisions mentioned in that Schedule connected with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers."

Member's explanatory statement

This amendment ensures that the retained EU Law which replaced the Alternative Investment Fund Managers Directive and associated legislation will cease to have effect no later than two months after the passage of the Bill.

Viscount Trenchard (Con): My Lords, I have tabled Amendment 120 in the same form as I tabled Amendment 246 in Grand Committee, and I am again grateful to my noble friend Lady Lawlor for adding her name in support of it.

I confess to having been rather disappointed by my noble friend the Minister's response when she replied to that debate. She started by reminding the Committee that throughout this Bill the Government are seeking gradually to replace all retained EU law in financial services,

"so that the UK can move to a comprehensive FSMA model of regulation".—[*Official Report*, 25/1/23; col. GC 68.]

She said that the Government were prioritising those areas that offer the greatest potential benefits of reform and mentioned three such areas: the Solvency II review, the wholesale markets review, and the listings review undertaken by my noble friend Lord Hill of Oareford. She provided some statistics which show that the UK is the world's second-largest global asset management centre, with $11.6 trillion of assets under management, representing a 27% increase in the past five years. My noble friend rightly suggested that the asset management sector is in good health. However, I am bemused that she and the Treasury officials who advise her have already forgotten the controversy over the introduction of AIFMD. She suggested that the Government were not aware of any evidence that reform of the alternative fund sector is a widely shared priority across the sector. She specifically said that it is the Government's intention to move all retained EU law in the financial services field into the FSMA model and that this will apply to this area too, but not as one of the first wave of priorities.

I agree that reform in the three areas that the Minister recognises as priorities is also a priority, but all of them are more complicated and I do not believe that any of them are candidates for complete revocation without partial replacement. She may remember that I have long advocated the abolition of the unbundling provisions for research contained within MiFID II and have argued for many of the recommendations made by my noble friend Lord Hill with regard to listings. From the beginning, the Solvency II regulations were inappropriate and disproportionately severe for the UK insurance market, many of whose participants believed that they were a deliberate attempt by the EU to damage the London insurance markets. However, none of those pieces of legislation are, in their entireties, candidates for revocation without partial replacement. But AIFMD is such a candidate.

My point is that this Bill is principally an enabling Bill, and it hardly revokes any EU law right away. However, AIFMD was universally resisted by the industry, the regulators, the Treasury and the Bank. It was foisted on us. It is unnecessary, so why do we not get rid of it now? We do not need further consultations on it. It has diverted many small asset managers away from the UK over the years, and the costs and burdens involved in compliance with it are completely disproportionate. Many innovative, so-called alternative strategies are developed by small companies, and I am aware of many that have failed to bring their ideas to market or have been forced to merge with another firm because of these regulations. As I explained in Committee, the

motivation for the unexpected introduction of AIFMD was political, driven by French and German allies of Mr Manuel Barroso, who was seeking reappointment as Commission President. Charlie McCreevy, the Internal Market Commissioner at the time, was opposed to the measure.

I wish the Bill had been designed to abolish without delay not just AIFMD but parts of MiFID II, EMIR, et cetera. But AIFMD is the one piece of anti-UK bureaucratic red tape foisted on us by the EU, and more than two years have passed since the end of the transition period. It is depressing that my noble friend suggested that it will, in due course, be replaced rather than revoked. Those who are interested in the story should read *A Report on Lessons Learnt from the Negotiation of the Alternative Investment Fund Managers' Directive* by Dr Scott James of King's College London, prepared for the British Venture Capital Association.

10 pm

I hope that, this time, I may receive a slightly more positive response from my noble friend. That would be taken by many in the industry as a sign that the Government really are now determined to do what we were promised: replace the cumbersome EU financial services regime with one more suited to our needs and that will ensure that the City holds, and builds further on, its position as the world's most successful financial centre, ensuring the resumption of the growth in the economy that is so badly needed. I beg to move.

Baroness Lawlor (Con): My Lords, I support my noble friend Lord Trenchard's Amendment 120, to which I have added my name and which I spoke in favour of in Committee. He then spoke of the history of this legislation, which was unintended by one EU commissioner and then pushed through, for matters of politics, by his successor under José Manuel Barroso: Michel Barnier, who saw it as part of the plan for a banking and monetary union for the EU—a plan that the UK was and is not part of and has no intention of joining.

The whole UK financial sector accounts for 8% of our economy—the same proportion as in the US and Canada—whereas financial services account for only 4% of the two major economies of the EU. The ironic thing about this legislation is that 75% of alternative funds were in UK businesses then, and the funds account for that sort of proportion in our own sector today.

My main concern is that this diverse sector, which has flourished in the UK under UK law, remains under an opaque legislative system. EU regulation is unpredictable and the EU's system, with the precautionary approach, seems to cover every eventuality but in practice it can fall short. It often favours big players over small and nimble entrepreneurs and the challengers. There is little certainty about transactions in advance, and little predictability as to how the regulators will judge.

We spoke about this in respect of the whole sector in Committee, but it is important for the alternative funds industry in particular. If we move, we need to move away from the way of thinking into which our regulators have crept. They have absorbed this precautionary approach to regulation from the EU—as well they might, after two decades.

I was glad my noble friend suggested that the hope —the intention—is that we will end EU law, but I stressed then, and would like to stress again, the importance of ending the thinking about precaution and hesitation in grasping the opportunities once we are out. That is very important for the regulators in this sector.

I shall just give a few examples. We have in English law an approach to business which, given the principle of contractual autonomy, means that the law honours contracts and contractual arrangements. It does not rely on the subjective principle of good faith, which creates uncertainty for practitioners about the expected moral and other standards of behaviour. In German civil code, parties must observe good faith in both negotiation and in performance of contracts but, without a definition of good faith in German contract law, things are uncertain.

The other aspect of UK law that I think is good for the sector is that it is flexible. This is a very flexible sector, and the judiciary's ruling, interpreting and developing of law through its application to specific cases in different sectors moves with the times and adapts to innovation—the new structures and transactions of a fast-moving business. But that cannot happen under the rule books or their architects, the courts, or indeed in the thinking, because courts, by contrast, are not subject to the constraints of the legislative process and can react and achieve change more effectively, and this judiciary is recognised globally to be wise, deeply knowledgeable and authoritative.

I took heart from the Minister's assurance in Committee, and again during the first day of Report, about the intention to revoke all EU laws and replace those that were considered necessary with—I use her words—an "appropriate replacement" before eliminating any aspect of the legacy. But perhaps I could ask her to think again about AIFMD. Waiting for an "appropriate replacement" sounds more like Whitehall-speak for regulation of the type that has been absorbed and reflected by our regulators under the Treasury in recent decades. Perhaps this piece of legislation could be used as a pilot for ending something that, as the noble Viscount said, was not wanted by the sector, and which the Committee warned could have dangerous repercussions for the UK's role in global markets and in dealing with America. Because of that, there are very good reasons to let it go, because it is not a consumer-facing industry; it is for the sector itself. It can only be to the good if this sector is set free without any replacement, so that it can benefit under the benefits of UK law.

Lord Moylan (Con): My Lords, I will speak only briefly in support of my noble friend Lord Trenchard. It was commonly known, and widely reported in the newspapers at the time, that following the financial crash of 2008, the EU, which has always had its doubts and scepticism—indeed, hostility—about what it referred to as Anglo-Saxon finance, withdrew the indulgence that it had previously shown towards the City of London as part of the European Union and

[Lord Moylan]
started to enact legislation that was injurious to the City of London, and quite deliberately so, to the annoyance of the Chancellor of the Exchequer at the time, George Osborne, who was reasonably open about his opposition.

This instrument, the alternative funds directive, was the prime example of that, although there were others. It contributed significantly to the fact that there was much more support for Brexit in the City of London than people often wanted to admit at the time, or have admitted since, because they understood that that oppositional turn had taken place and the tide was now flowing against the City. So I agree with my noble friend that it is very difficult to see why, now that we have the opportunity to remove it, we continue not to do so year after year—and there are other examples of that.

I also support the remarks of my noble friend Lady Lawlor. There is a prevalent idea—and not just in financial legislation—that, as we get rid of European Union legislation that we no longer need, we need to replace it with legislation that almost replicates what the European Union was doing. A prime example of that outside the field of financial services is the Procurement Bill, a massively complicated piece of legislation replicating European Union legislation, almost in great detail. In fact, the procurement legislation of the European Union—which was obviously designed for 28 states, not simply for the United Kingdom—was there largely to deal with problems embedded in a history of municipal corruption, which were manifest in various European states but, I am glad to say, of which the United Kingdom has a long, proud history of being pretty free, with one or two exceptions. It was not necessary to replicate it in the detail in which it was done.

There are genuine concerns, certainly among those of us on this side of the House, that insufficient dispatch is being brought to getting rid of injurious legislation that we inherited from the European Union but can now get rid of, and that there is a mentality that the right way to get rid of something is, in effect, simply to re-enact something very similar after a period of consultation. I have great sympathy with what my two noble friends said, and I hope that the Minister, when she replies, will be able to give them some comfort.

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, I am afraid that, as my noble friend Lord Trenchard set out, his amendment has not changed since Grand Committee and neither has the Government's response, which he so adeptly summarised on my behalf. We are not able to support the amendment for those reasons.

While I recognise all three of my noble friends' strength of feeling on this issue, it is important that we do not inadvertently damage the UK fund sector or its access to international markets. However, I reinforce the Government's commitment to revoking all EU law in financial services—but with prioritisation and process. I hope that all three of my noble friends will take heart from the fact that we are on the last amendment on Report and near the end of the process by which we can see the Bill on the statute book. We can then begin the process of the revocation of EU law and its replacement—or perhaps not, depending on the individual circumstances—with an approach that is guided by what is best for the UK and our financial services sector, to support growth in that sector and across the whole country. That is something that we can all support as a result of the Bill. I hope that my noble friend is able to withdraw his amendment.

Viscount Trenchard (Con): My Lords, I thank my noble friend for her reply. I am slightly more reassured than I was by her reply in Committee. I nevertheless do not feel that she yet recognises the very clear point that this regulation was hugely controversial and was opposed by everybody involved in the financial services industry—there were no supporters of it. I am afraid that we have become rather inured to operating under it, but I can assure her that there are still very large sectors of the asset management industry that would be delighted if the Government would show that this is a priority area for revocation when she gets going with the job of revoking EU law and replacing it with a more reasonable UK-friendly alternative regime.

I thank my noble friend for her response. I also thank all those still in the Chamber for their patience in sitting here right to the end and sharing in this final amendment. I beg leave to withdraw my amendment.

Amendment 120 withdrawn.

Correction

Announcement

10.15 pm

The Deputy Speaker (Lord Beith) (LD): My Lords, I must report a correction to the voting figures on the amendment in the name of the noble Baroness, Lady Jones of Moulsecoomb, for the previous business. The corrected figures are: Contents 68; Not-Contents 154. That does not change the outcome.

Retained EU Law (Revocation and Reform) Bill

Returned from the Commons

The Bill was returned from the Commons with reasons.

House adjourned at 10.15 pm.

Grand Committee

Tuesday 13 June 2023

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, shall we begin with the usual proviso? I will let noble Lords know if there is a Division in the Chamber; we do not anticipate one in the next hour or so.

REACH (Amendment) Regulations 2023

Considered in Grand Committee

3.45 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the REACH (Amendment) Regulations 2023.

Relevant document: 38th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, this statutory instrument was laid before this House on 20 April 2023 and makes technical amendments to UK REACH. UK REACH is the retained version of EU REACH and is one of the key pieces of legislation that regulates the use of chemicals in Great Britain. This instrument is being made pursuant to powers in the Environment Act 2021. In accordance with the European Union (Withdrawal) Act 2018, UK REACH maintains the core approach and key principles of the EU REACH regulation. Its primary objectives remain focused on safeguarding a high level of protection of human health and the environment.

This SI introduces two changes. I should make it clear from the outset that the changes do not affect the key principles of UK REACH. The first change this SI introduces is that it amends Article 127P(4B) of UK REACH. This provides an additional three years for businesses to submit technical information on the hazards and risks of their substances to the Health and Safety Executive. This extension applies to all grandfathered registrations and chemicals being imported from the EU under the transitional arrangements. Industry will now be required to submit technical information on the hazards and risks of substances that it manufactures or imports by 27 October 2026, 27 October 2028 and 27 October 2030, depending on the tonnage and toxicity. These dates are changes from 27 October 2023, 27 October 2025 and 27 October 2027 respectively.

This SI supports the work that we announced in December to explore an alternative transitional registration model for UK REACH in order to address the significant potential cost, estimated at between £1.3 billion and £3.5 billion, of obtaining or accessing the full hazard information required to meet UK REACH registration requirements. Work on the alternative transitional registration model is ongoing. In response to concerns about the potential costs, we are currently engaging with stakeholders, including NGOs, to develop an alternative transitional registration model for UK REACH that will help reduce the costs associated with obtaining hazard information, including from expensive EU REACH data packages, while still ensuring that industry remains responsible for the safe use of chemicals throughout the supply chain.

The model also aims to place more emphasis on improving our understanding of the uses and exposures of chemicals in the GB context, which will enable better targeting of regulatory actions. Extending the deadlines will provide certainty to industry so that it can avoid making unnecessary investments towards obtaining information for the existing registration model when that information may no longer be necessary under an alternative model.

I now turn to the second change that this SI introduces. It moves the timelines for HSE to complete its compliance checks to ensure that the information submitted by industry is of sufficient quality. These timelines have been moved in order to align them with the extended submission deadlines. We need to move the dates for these regulatory checks because the current deadlines for compliance checking, as set down in Article 41(5) of UK REACH, would otherwise fall before the amended dates for submitting the relevant information. HSE will now have to complete its compliance checks by 27 October 2027, 27 October 2030 and 27 October 2035, corresponding to the three extended submission deadlines.

This is the first time we have prepared an SI using the powers to amend REACH set out in Schedule 21 to the Environment Act 2021. We have followed all the safeguards we attached to those powers: we received consent from the devolved Administrations of Wales and Scotland; we consulted widely with our stakeholders on our plans to extend the submission deadlines; and we published a consistency statement alongside the consultation, as required by the 2021 Act. This provides the Committee with the necessary assurance that extending the submission deadlines is consistent with Article 1 of UK REACH.

Our assessment, as outlined in the consistency statement, demonstrates that the UK REACH regime will still be able to ensure a high level of protection for human health and the environment for three main reasons. The first is the information and knowledge on chemicals registered under EU REACH available to both the Health and Safety Executive and Great Britain registrants. Secondly, importers from the EU will continue to receive EU REACH-compliant safety data sheets from their EU suppliers, which will enable them to identify and apply appropriate risk management measures. Thirdly, the Health and Safety Executive has the ability to seek risk management data from other sources, if necessary, as it did when acting as a competent authority under EU REACH. This could include calls for evidence or using data from EU REACH and other relevant sources that can provide Great Britain-specific hazard and exposure information.

Alongside the public consultation, we also published a full impact assessment on extending the deadlines. The impact assessment was awarded a green "fit for

[Lord Benyon]
purpose" rating by the Regulatory Policy Committee. The territorial extent of this instrument is the United Kingdom. The devolved Administrations were engaged in the development of this instrument and are content. The Joint Committee on Statutory Instruments did not report any concerns with this statutory instrument.

The Secondary Legislation Scrutiny Committee raised four main concerns in relation to this SI and the ATR more generally, including whether the implementation deadline of 2024 is achievable; concern from stakeholders about weakening protections for human health and the environment; and concerns about the HSE's regulatory function and the impact of the REUL Bill. As I have already commented, we are confident that UK REACH will still be able to ensure a high level of protection of human health and the environment. I will take the other concerns in turn.

In relation to the timeline for delivery of the ATR, this is a complex project. It is right that we take the appropriate time to develop the policy and test it with stakeholders. We are extending the transitional registration deadlines to ensure that we have a reasonable amount of time to do that. The earliest we can formally consult is the end of 2023, introducing legislation in 2024, and this remains our aim. The timetable is driven by both the technical and the sequential nature of the work. We are just coming to the end of an evidence-gathering project, including detailed interviews with companies including SMEs. Together with the new deadlines, this draft SI will give industry the time it needs to adapt to the new arrangements.

In relation to the HSE's regulatory capacity, I am pleased to say that it continues to increase its capacity to take on new regulatory obligations. The HSE's Chemicals Regulation Division increased by 46% between September 2020 and March 2022, and it has continued to build capacity over the last year. By 2025 the number of HSE staff working on UK REACH delivery is expected to grow to at least 50.

Finally, regarding the committee's concerns about the impact of sunset provisions in the REUL Bill on this SI, I confirm that REACH was not on Defra's list of retained EU law that it intends to remove from the statute book from 31 December 2023 following the retained EU law Bill becoming law.

I am confident that the provisions in these regulations mean that we will continue to ensure the highest levels of protection for human health and the environment, based on robust evidence and strong scientific analysis. At the same time, we are taking the necessary steps to provide industry with the legal certainty it needs to operate and to preserve the supply chains for the chemicals we depend on. For these reasons, I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I am extremely grateful to my noble friend for the opportunity to debate the regulations, which I broadly support, and to share with him some concerns that have been raised—in particular, by industry.

I start with the last bit of what my noble friend said about the REUL Bill: that this is not currently on the Defra list of retained EU law that might be changed. Can he give us, and therefore industry, an absolute commitment that in the next two to three years there will be no attempt by Defra to amend or revoke this? When the REUL Bill, which is now in the other place, went through its initial stages, we learned that Defra has absolute power to review, amend and revoke any piece of primary or secondary legislation—I forget all the nomenclatures—on the statute book. We as a Committee, a Parliament and a House do not have the right to review that, so it would be fair to business to know that it is not within the sight, mind or intention of the department to amend or revoke within the next two to three years.

On 24 May my noble friend was kind enough to reply to a Question I tabled on REACH and maintaining compliance with the EU REACH programme. He repeated today that, as we speak, we do not know what the total cost of the statutory instruments and the measures therein will be. In his Answer my noble friend said that it will be £2 billion over six years, but he and the Committee will understand that it is not very helpful to those preparing—the NGOs and particularly the chemical firms involved—that the Government do not have an idea. He concludes by saying:

> "Although values of chemical exports are increasing, this is not generally reflected in volume, suggesting that inflationary pressures are contributing to the figures".

I do not expect my noble friend to be able to reply this afternoon, but I understand that the cost of paint went up hugely after the UK left the European Union and I wonder whether that is partly because of the instrument before us this afternoon and the fact that those who wish to export still comply with EU REACH and are now having to comply with UK REACH, albeit with the slight delay.

The UK chemical sector, represented by the Chemical Industries Association, was kind enough to brief me for this afternoon, and I will share with my noble friend and the Committee its concerns. It

> "would like to stress the importance of urgently providing legal certainty to businesses. The current level of uncertainty around future registration requirements, expected timelines and related costs is currently not encouraging new market opportunities. While the proposal to extend the deadlines is much welcomed by industry, clarity on the viability of the future registration model will also be needed very shortly to allow sufficient time for appropriate legislation to be developed and for authorities and industry to implement it".

When will the future registration model be available?

As regards the concerns raised by the Secondary Legislation Scrutiny Committee, I share its concern that the potential date of late 2024 is not achievable, because my understanding is that the Government are looking at a completely new design for UK REACH, including all the things that businesses are expected to do. Again, I ask my noble friend to put our minds at rest. If it is a whole new design, how, hand on heart, can he explain that the department will be in a position to complete it?

The CIA is also concerned that:

> "In considering a different approach to registration, it will be essential to avoid a situation where compliance costs are simply shifted rather than reduced, for example from buying access to data under the current system to new administrative costs due to the work needed to generate a dossier under the new model".

Therefore, I am sure my noble friend would accept that there is considerable uncertainty as to whether the

registration costs can be minimised and that the industry needs to know a workable alternative registration model. The CIA is

"of the view that an effective UK REACH regime could be achieved even without requiring a full resubmission of dossiers for all substances already registered under EU REACH".

I could go on—my noble friend the Minister is aware that I have tracked this issue for some considerable time—but I share the ongoing concerns raised by the Secondary Legislation Scrutiny Committee. I thank it for providing its report in time for us to consider it this afternoon. My main concerns are that 2024 is not achievable and that the REUL Bill gives my noble friend and his department complete power in this field to revoke or amend this without any consultation of businesses or real scrutiny in this place.

With those few remarks, I look forward to hearing my noble friend the Minister's response.

4 pm

Viscount Stansgate (Lab): My Lords, I rise briefly to make just a couple of points. I remember when the EU REACH legislation was going through the European Parliament. I was involved in a different capacity. It was, as Members will know, the biggest piece of legislation that the European Parliament had ever dealt with. This is a very complex area.

I appreciate the Minister's exposition of this statutory instrument but, like other noble Lords, I have a couple of questions. As the Minister mentioned, this is not the first extension. I am not surprised by that because this is a complex area. Nevertheless, I want to raise something that I think other Members will also raise; indeed, it has just been raised by the noble Baroness. Is the 2024 deadline realistic, bearing in mind especially that the Secondary Legislation Scrutiny Committee referred to concerns that the ATR might be weaker in its effect? Does the Minister care to elaborate a little more on that?

Another question that arises is whether the HSE has enough staff to cope with the complexity and volume of data and the examination that is necessary in this process. Does the Minister care to comment a little on the industry's concerns about cost? There are some legitimate concerns about that. Who did the Government consult in the course of preparing this SI? The Minister did not mention anyone specifically, but did the department consult the Chemical Industries Association or the professional body for chemistry, the Royal Society of Chemistry, which has taken a close interest in something of such importance over a period of many years? Does the Minister care to say anything about the capacity for confusion in Northern Ireland between the parallel systems of EU REACH and UK REACH?

Finally, in respect of the retained EU law Bill, I really do think—I hope Members agree—that this is too big an issue for us to allow a future Government to make a major change without consulting Parliament. I would be grateful if the Minister could address those points in his reply.

Lord Monks (Lab): My Lords, I too have experience of dealing with REACH at the European level. When I was the general secretary of the European Trade Union Confederation, we worked with the British chemical industry, including the Chemical Industries Association—often against opposition from the powerful German chemical industry lobby, which was hostile to the whole concept of REACH. I was very pleased when we got it through; as my noble friend Lord Stansgate just outlined, it was not without considerable difficulty and this is an extremely complex area.

I will make two points today. First, I want to give a little tribute to the Chemical Industries Association, which I have found over the years to be as good a lobby group as any in the business world in terms of taking a broad view of issues, as well as looking after its members' interests. That is important.

I am particularly concerned to ensure that in the extension that has been given, which I support, we continue to adhere to EU REACH, because we have nothing at the moment and the game plan is there. No doubt we will have some variations on it in due course, and I accept that, but in the meantime, in the absence of a British UK-EU arrangement, I hope that the Minister can ensure that the British industry follows the EU rules until they are replaced.

Baroness Bennett of Manor Castle (GP): My Lords, I rise to express significant green concern about this SI and the general direction of travel. We must look at the framework within which we are considering this. We have recently seen published peer-reviewed research showing that the world has exceeded the planetary boundary for novel entities. We have natural systems and, increasingly, human health systems, that cannot cope with the burden of novel entities. I usually talk about those as shorthand for pesticides, plastics and pharmaceuticals, but it is basically what is covered by the REACH directive.

There is now increasing scientific and public concern about the impact of these on environmental health and public health. PFAS forever chemicals are one example of an area that we are coming to understand in our understanding of biology. Most organisms on this planet are structurally holobionts, made up not just of their own entities but of bacteria, fungi and viruses. We are grasping the sheer complexity of life on this planet far more than we did 10 or 15 years ago, and the impact of these chemicals is increasingly understood—for example, the impact of chemical exposure creating antimicrobial resistance, a whole new area of research where there have been considerable advances in the last few years.

In that context, it is interesting to look at some figures. I pay tribute to CHEM Trust, which has provided me with a large amount of information on this issue, with significant expressions of concern. If we take the substances of very high concern, the UK has not added any hazardous chemicals to its list since we left the European Union, while 24 substances have been added to the EU's list. Defra is considering just four out of 10 substances for the UK list which the EU added in 2021 but is yet to publish assessments on them. In the meantime, another five substances were added to the EU list in 2022 and nine since January this year. This is happening at a very significant pace, and we are falling further and further behind. There seems to be no interest. Can the Minister suggest how we might catch up with the EU in this specific area?

[Baroness Bennett of Manor Castle]

There are obvious public and environmental health issues here, but there are also issues for trade. If our companies are operating on our standards, they will increasingly be excluded from other markets. The Prime Minister has this week been speaking of the desire to be world-leading in innovation. When substances of very high concern are put on that list, there is a push on companies to look for alternatives—to innovate and find new ways of doing things. If we are not creating an environment in which that is likely to happen, then even in the Government's own terms we are falling behind on the global stage of science and innovation.

Picking up on the points made by the noble Lord, Lord Monks, it is worth noting that the UK was one of the driving forces behind the creation of EU REACH and the restriction of chemicals regulations in 2007. Last night, I was at an Industry and Parliament Trust meeting, talking about trade. I heard there an expert in standards talking about how the UK has in recent decades been a leader in pushing the creation of ISO standards. However, it is our industry, our scientists and our NGOs that led that push towards higher standards. The Government must keep up, and support the drive in our industry, our NGOs and our scientists.

I shall pick up the points made by other noble Lords about the lack of regulatory capacity. The National Audit Office and the Public Accounts Committee have pointed to this lack, which is creating serious problems that are being identified on every side. Others have already spoken about the Secondary Legislation Scrutiny Committee, which also highlights concerns about human health and the environment, and the HSE's capacity. We are hearing the same messages from all angles.

In particular, the impact assessment says that the absence of data

"could lead to reduced regulatory oversight and regulatory delays",

but suggests that it would not be significant because other sources of information can be drawn on. However, the publicly available information about registered substances in EU REACH does not include details on safety tests, uses and how the industry reached its conclusion on the hazards and risks of substances.

The time factor needs to be focused on, as does the fact that we know that today, at this moment, we are exposing everyone in Britain and every bit of the UK's natural systems to harm from chemicals that we continue to release into the environment when we know we should not be doing so. That will keep piling the costs on. The slower we operate, the more costs there will be. Think of the pressure on our NHS and on one of the nature-depleted corners of this battered planet: if we act slowly, the costs will just keep mounting up. For example, I mentioned PFAS forever chemicals: once they are there, we cannot get rid of them. There is no going backwards if we allow their use to continue.

I have some very specific questions. Will the UK look towards mirroring, moving faster than and eventually matching the EU's pace of action, particularly on the chemicals of most concern? The UK Government talk about whether a control is right for GB. Do the Government see lower standards as being in some way better for us? How can the Minister say that lower standards of chemical regulation and safety are better for us?

An issue on which I have done a great deal of work and have a great deal of concern is microplastics. The Committee will remember microbeads. Indeed, the Government acted a few years ago on microbeads, but many intentionally added microplastics are still not covered by that legislation, which the REACH work programme of 2022-23 indicated as one of its five priorities. However, it has not yet published an evidence review or initiated any restrictions. Can the Minister tell me when we are likely to see that evidence review on intentionally added microplastics? In the light of that question, I note that EU national experts recently voted to adopt restrictions at the REACH Committee. That is now going to the European Parliament and the European Council, so the EU has steps in progress on these microplastics. When will we?

To be really concrete and scientific, and to focus on the importance of this for environmental and, potentially, human health, we—by which I mean scientists collectively: the human race—have identified the new disease of plasticosis. That was identified in one species of seabird, because we have looked for it in only one species of seabird. We are choking this planet with plastics and we have no idea what that is doing to us or to nature.

The Duke of Montrose (Con): My Lords, I had the honour to serve on the EU Energy and Environment Sub-Committee when it considered Brexit and the trouble with EU REACH, in that it was not in the least transferable so it is totally dependent on grandfathering, unless there is a stream in which we allow people to apply for new chemicals. We obviously started from zero in our collection and we rely on manufacturers to submit the EU REACH approvals. Do we keep track of how extensive our REACH is, compared with the European one? As the previous speaker said, the EU is expanding its schemes. Do we have tighter regulations than the EU imposes at present?

4.15 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his introduction. As with a number of SIs in the past, we have been facing this issue since 2019. At that time, the Government were urged from all sides, especially the chemical industry, to stay within EU REACH. The data analysis and licensing systems that would not be made available to the UK were and are extensive. This would not be the case if the country remained within EU REACH.

The need for registration, evaluation, authorisation and restriction of chemicals is obvious. It protects the public, plants and animals from the harm caused by toxic chemicals, all of which have to be licensed and registered. This is a complex process. Without access to EU REACH data, a completely new set of data had to be compiled and licensed from scratch. This involves animal testing. We cannot get away from this fact. It is necessary, but it could have been avoided. It will also involve huge financial costs to the chemical industry.

On 4 March 2019, my noble friend Lord Fox and I met Defra officials along with the then Minister. We stressed the huge costs involved, which we felt ran into billions, and the long timeframe needed to get the

necessary licences in place. I regret to say that we were treated with contempt and told that it would be much cheaper and quicker than our predictions.

The deadline before implementation has already been extended from that set on 26 March 2019. In answer to an Oral Question in September 2020, Defra revealed that EU REACH employed some 600 staff and took 10 years to deal with the difficulties in the system at a cost of £100 million. Defra proposed to achieve the same with 40 staff, at a cost of £13 million. By December 2020, in a debate on a regret Motion, a cost of £1 billion was mentioned.

Here we are today once again extending the already extended timeframe. This is a piece of elastic that has come to the end of its life. Defra's estimation of the current costs for completing the licensing is now between £1.3 billion and the figure that I think the Minister mentioned of £3.5 billion. I have tremendous respect for the Minister and his predecessor, but on this occasion I have to say to Defra: "We told you so".

In a debate in 2020, the noble Lord, Lord Cameron of Dillington, began his remarks by saying:

"My Lords, I would like to echo the regret that others have expressed that we have allowed ourselves to walk into this unnecessary nightmare".—[*Official Report*, 8/12/20; col. 1162.]

I could not agree more. It is clear than an extension of the timeframe is needed. Is the Minister sure that the timings now being requested will be sufficient? In its report of 11 May, the Secondary Legislation Scrutiny Committee, to which he referred, says that it does not believe that the alternative transitional registration—ATR—model deadline of 2024 is achievable. Can the Minister say whether, during this extended timeframe, animals will continue to be subjected to painful and harmful testing methods? Others have spoken about the effect and the danger of hazardous substances.

Given that the extended timeframe favours large businesses with the greatest tonnage, can the Minister assure the Grand Committee that the smaller but nevertheless vital businesses often providing subcontract work will be able to survive? How many, if any, businesses dealing with and producing chemicals have gone under since the country left EU REACH?

The Minister referred to the Retained EU Law (Revocation and Reform) Bill. How will the three-year extension period proposed today interact with the sunset provisions in the REUL Bill? I believe he said that there would be no impact, but I would be glad for confirmation. The Secondary Legislation Scrutiny Committee raised this issue and the proposed extended deadlines.

In November 2022, Defra extended the submission deadlines for the consultation outcomes. Some 82% of the 289 responses had a strong preference for a three-year extension. However, the NGOs preferred no extension at all. This was due to concerns that the ATR model would be weaker and less protective of human health and the environment than current transitional arrangements, which are also still under development. UK REACH is supposed to be bound by the Environment Act's precautionary principle. However, there is clear risk involved in the ATR model.

The Chemical Industries Association, the CIA, stresses the importance of urgently providing legal certainty to businesses. The current level of uncertainty around registration requirements, expected timelines and related costs is not encouraging new market opportunities. Extending deadlines is not providing the clarity needed on the viability of the registration model or allowing sufficient time for appropriate legislation to be developed and for authorities and industries to implement it. The noble Baroness, Lady McIntosh of Pickering, referred to this. Will the Minister please comment?

The CIA is of the view that an effective UK REACH could be achieved even without requiring a full resubmission dossier of all substances already registered under EU REACH. Sadly, so prejudiced is Defra to anything that might smack of the EU, it will not adapt EU REACH and insists that UK REACH will be better. If we ever get there, it certainly will not be cheaper.

I will give an example from the CHEM Trust. In its second-year programme, UK REACH deprioritised controls on nine hazardous substances targeted by the EU. These included concentration limits for eight polycyclic aromatic hydrocarbons used as infill and, in loose form, in synthetic football pitches and playgrounds. These are linked to increased cancer risk. A typical sports pitch uses 120 tonnes of these crumbs. According to a 2017 study, six tonnes of potentially carcinogenic material would be non-compliant with the current EU standards. Is Defra's prioritisation of fewer EU controls on harmful substances a short-term measure until it reaches capacity, or will it introduce other measures to close the protective gap that is opening up before our eyes?

I have serious concerns about the deliverability of the UK REACH regulations. However, I feel I have no choice but to support the extension of the timeframe for delivery. I have a terrible feeling that the ATR will not be achieved and that we will be debating this issue again before too long.

Baroness Anderson of Stoke-on-Trent (Lab): My Lords, I thank the Minister for his overview of the SI before us and for his correspondence in advance of today's debate. I also thank all noble Lords for their contributions, which highlight the importance of the discussion. Given the discussion in the other place, it will not surprise the Minister that His Majesty's Opposition will support this SI. However, we have some specific concerns relating to the direction of the post-Brexit REACH regulatory framework and the capacity of the HSE as a statutory body to provide effective enforcement.

As we discussed last week in our debate on the packaging waste statutory instrument—I am becoming a pro—the collation of this data is key to the implementation and enforcement of an effective regulatory regime. But that requires the Government to move at speed to ensure that they have the data available to make informed decisions. Paragraph 7.1 of the Explanatory Memorandum states:

"The changes provide sufficient time for the government to develop and introduce a new registration model that will cater for EU registrations transferred to Great Britain under Title 14A of UK REACH".

The Government have known about the need to develop and introduce this model for seven years. In fact, the Minister will remember that discussions regarding the future of REACH were a regular feature of the debate

[Baroness Anderson of Stoke-on-Trent]
around Brexit in the other place before and after the referendum. Given that the industry has been doing everything possible to support the department in reaching a new model, can the Minister inform the Committee why the department is so far behind schedule and why this is being addressed only now?

Paragraph 7.2 of the EM states:

"The statutory timelines for HSE to carry out their compliance checks on the information submitted by industry are also being extended to align with the data submission deadlines".

I sound like a stuck record, but this is a similar situation to the ones we have seen with imports of food and certain goods from the EU, with launch dates repeatedly postponed due to a lack of preparedness. Can the Minister inform the Committee why we repeatedly need to extend the deadlines?

Later paragraphs of the EM—from paragraph 7.7 onwards—explain why His Majesty's Government have opted to take a different approach and outline the likely timescales on implementing changes to IT systems. Why were industry concerns about the cost of the original proposal not given more weight at the time? How many civil servants have been used and how much financial resource has been spent on the original option? How much of the work that has already been done can Ministers carry over? While industry supports the changes being made, concerns have already been voiced about the workability of the alternative system and its potential implications for safety, which must remain paramount. We are not against divergence from the EU, but we must not allow gaps to form in our regulation of chemicals. Neither businesses, workers nor citizens will benefit if health and well-being are put at risk unnecessarily.

The Minister in the House of Commons, Rebecca Pow, addressed concerns about the HSE's capacity by saying:

"Its capacity is increasing all the time … by 2025 the number of HSE staff working on UK REACH delivery is expected to grow to 50, and the number is around 60 or 70 if we consider the wider support functions".

We welcome that ramping up of capacity, but is the Minister satisfied that this staffing level is sufficient given the areas that we are talking about? In that debate, the Minister also said that the department

"will be developing a chemical strategy"

and that we

"will hear more about that in due course".—[*Official Report*, Commons, Fifth Delegated Legislation Committee, 16/5/23; cols. 9-10.]

Can the Minister here, the noble Lord, Lord Benyon, be any more specific? How confident is he that this will not simply be added to the list of items that arrive late?

I sincerely believe that each and every one of us wants nothing more than a regulatory framework that keeps our population safe and secure. Given the nature and importance of the REACH regulations, it is therefore vital that we do not just get this right but get it done quickly.

Lord Benyon (Con): I am grateful for noble Lords' interest in this issue, their important contributions to this debate and their support for the REACH (Amendment) Regulations 2023. I will deal with as many of the points as I can.

On my noble friend Lady McIntosh's point, I can absolutely confirm that there is no intention to amend or revoke any of these measures in the next two years. I will come on to the point about cost.

On the 2024 date, which the Secondary Legislation Scrutiny Committee and a number of noble Lords raised, I repeat the point that I made earlier: the Government are confident that we will be able to meet that date. I am sure that noble Lords will be active in holding the Government to account on that.

On the point made by the noble Viscount, Lord Stansgate, the Health and Safety Executive continues to increase its capacity. The National Audit Office report from May 2022 details the increased staffing levels at the HSE, including the staffing level in its Chemicals Regulation Division going up by 46% between September 2020 and March 2022. The HSE has continued to build capacity in the last year. In the longer term, by 2025, the number of HSE staff working on UK REACH delivery is expected to grow to 50, or around 60 to 70 when considering wider support functions.

The noble Baroness, Lady Bakewell, mentioned that the staff in the EU directorate numbered 600. Of course, that covers the whole of the EU, which is a considerably larger area, but nevertheless we seek to align any regulatory changes we can with them, working with the EU, and I will give more assurances on that.

4.30 pm

We do not yet know what the costs of ATR for business would be. As the work is still ongoing, it is not possible to comment on any cost savings. We should have a better idea when we have completed gathering evidence against the developed model. Our estimate is that the existing model could cost industry about £2 billion by 2027. This figure is highly uncertain; it is expected to fall within the range of £1.3 billion to £3.5 billion, although the final cost will depend heavily on industry behaviour. For example, trade bodies in the UK and the EU have recommended that GB companies should not be charged a second time for data they have already used for the purposes of EU REACH.

The costs are composed mainly of business-to-business payments for data, with administrative costs and registration fees also contributing. The central estimate implies an average cost per substance of £91,000 for 22,400 substances. Substance costs are derived from a published evaluation of registration costs under EU REACH but discounted to take account of Great Britain-specific factors.

The noble Lord, Lord Monks, made a very important point about how aligned we are with EU decisions during this extension period. We do not believe it would be appropriate to adopt all future EU decisions under UK REACH. This is because the EU no longer considers the impact of its decisions on GB, including the use of exposure patterns in Great Britain. Nevertheless, the UK will continue to monitor EU decisions and consider whether they are right for GB. On his point about parliamentary scrutiny, ATR will be subject to public consultation, will require the devolved Administrations' consent and will be brought back to Parliament for affirmative resolution.

The noble Baroness, Lady Bennett, made a number of important points. I entirely agree with her and share her concerns about AMR. Although it is a slightly separate subject, it is top of our priorities to address. All 209 substances on the EU list were transferred to the UK list of SVHC on EU exit. While further substances have been added to the EU list under UK REACH, a substance will not be proposed for inclusion on the candidate list unless it is a good candidate for the authorisation list. Our approach to prioritising substances of very high concern was published on 9 December, 18 months ago. We believe that focusing the candidate list on identifying substances that are genuine candidates for authorisation—the statutory purpose of the list—will more effectively enable substitution away from the most hazardous substances.

On the noble Baroness's allegation that the UK is not keeping pace with the EU, since leaving the EU we have initiated regulatory risk management options analyses on four substances to assess whether they should be added to the candidate list. These will conclude shortly. Defra, together with the technical specialists at the Health and Safety Executive and the Environment Agency, monitors the European Chemicals Agency's work to introduce new substances of very high concern to the EU REACH candidates list. Since UK REACH came into force, our work programme has prioritised the issues that are most effectively addressed through UK REACH and where action would have the greatest impact for human health and the environment. Where this work is relevant for Great Britain, we will assess the scientific evidence and ECHA's rationale for taking this regulatory step. If inclusion on the UK REACH authorisation list would be an effective risk management measure for that substance, we will take action to recommend it for inclusion on the UK candidate list of substances of very high concern. That reflects the concerns of a number of noble Lords.

Now that we have left the EU, we have the freedom to make our own regulatory decisions where we believe that there is a strong case that there is a risk to human health or the environment in Great Britain that needs to be addressed. Defra, the Scottish and Welsh Governments, the Health and Safety Executive and the Environment Agency have sought to focus our work programme activities on those issues that are most effectively addressed through UK REACH and where actions should have the greatest impact for human health and the environment. We have conducted stakeholder engagement workshops with representatives from NGOs, industry, trade associations and academia to inform our priorities and articulate our prioritisation principles. The Government are certainly not interested in lower standards. The requirement in the Environment Act that any changes to REACH must be consistent with Article 1 of REACH demonstrates that.

The noble Baroness also raised important points about microplastics. We are commissioning a research project on microplastics to better understand the risks and consider the best policy options domestically. We will continue to play an active and ambitious role in the UN's landmark plastics treaty, which it will be critical to progress globally. One of my first jobs as a Minister over a decade ago was to attend the OSPAR talks in Bergen in Norway, where we were shown the revolting sight of the intestines of a fulmar that had ingested plastic. That has affected my view and my determination that cross-party—I know that we all agree on this—we should make this an absolute priority. We have created a nightmare, which this Government have done enormous amounts to try to turn around, but there is still massive work to do, both domestically and internationally.

On the key point raised by the noble Baroness, Lady Bakewell, the UK has long been at the forefront of opposing animal tests where alternative approaches could be used. The last resort principle remains a core part of our approach to UK REACH and has been retained and enshrined in legislation through our landmark Environment Act. The UK supports work internationally to determine which new approach methodologies can provide information on chemical hazards and risk assessment. She asked what impact extending the deadlines will have on animal testing. The alternative model that we are developing should remove any remaining risk by reducing the need to submit detailed information on chemical hazard. As I said, the UK has long been at the forefront of opposing tests where alternative approaches can apply.

Let me give the rationale behind extending the deadline for three years. We consulted on extending the registration deadlines last year. I am satisfied that, based on responses to the consultation, the three-year extensions are the best balance between timely access to registration data that the HSE will need to help it in its regulatory work under UK REACH and the impacts that the changes could have on businesses, especially the potential cost burdens on downstream users and SMEs. The timeframe should allow industry to submit better-quality registration and maximise its chances of compliance. The noble Baroness, Lady Anderson, is, as always, forthright in her determination that we all stick to deadlines and that there is no slacking off in standards. It is vital that we keep our engagement with the European Union and that we work off the data to make sure that we are up to date with all the information that it is receiving and vice versa.

The noble Viscount, Lord Stansgate, asked about consultation. I cannot give here the list of the many organisations, but I am happy to provide it—I am sure that it is available. It was and is an extensive list of continuing consultation and will remain so, because these things are not done in isolation and it is important that we work with all organisations to achieve this. We want to extend the deadlines for the reasons that I have set out. The European Union (Withdrawal) Act 2021 allowed us to start these changes, so we are moving at the greatest pace possible to achieve the necessary regulatory framework.

REACH never fails to generate high levels of interest, as has been said. Today is no exception. We have had a wide range of contributions and a number of questions have been asked. I endeavoured to answer as many as I could in the time available to me.

Putting aside wider issues, I must return to the SI in front of the Grand Committee. As I said at the start of the debate, this instrument is necessary to allow us to extend the existing UK REACH submission deadlines while we make the much-needed changes to the existing transitional requirements for submitting information to the Health and Safety Executive.

[Lord Benyon]

Without these changes, businesses would be forced to expend resources obtaining and then compiling dossiers as they would be statutorily compelled to submit information under a model that is likely to change and potentially require different information. This means that the existing deadlines need to be amended before October 2023, when the first deadline falls.

We have made these changes to UK REACH without any impact on the high levels of human health and environmental protections, as demonstrated by the consistency statement and the impact assessments that accompanied the public consultation in summer 2022. Our chemicals sector is world leading and one of the UK's largest manufacturing exporters by value. We fully recognise this sector's economic importance and its importance to the way we all live our lives. At the same time, we also recognise the risks to human health and the environment if chemicals are not used properly. We must continue to strike an important balance between these two factors. I commend the draft regulations to the Grand Committee.

Baroness Bennett of Manor Castle (GP): Before the Minister sits down, may I briefly raise two points? He said that a difference in exposure patterns would help to explain the differences in regulation between the EU and the UK. I tried to imagine what those differences might be. Some parts of the EU have considerably more heavy industry. We were at a joint event this morning where we were told that both have large areas of factory farming. Thinking about what people actually consume in the EU and the UK, I cannot think of any significant differences between the two that there would be in the pattern of life in terms of consumption. Either now or perhaps in writing, would he consider explaining what those different exposures are?

Finally, I acknowledge that the Minister very much welcomed and is enthusiastic about the microplastics review. What timeframe are we looking at there? I realise that he might not be able to be precise, but will it be this year or next year?

Lord Benyon (Con): The noble Baroness half answered her first question. An example is that river flow is often lower in England than in the EU. That is a factor, but I will certainly go back to the department and seek further answers on that and on her subsequent question on plastics. I will certainly write to her.

Motion agreed.

Animal Welfare (Electronic Collars) (England) Regulations 2023

Considered in Grand Committee

4.43 pm

Moved by ***Lord Benyon***

That the Grand Committee do consider the Animal Welfare (Electronic Collars) (England) Regulations 2023.

Relevant document: 38th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, these draft regulations were laid before the House on 27 April. The purpose of the instrument is to promote the welfare of cats and dogs by prohibiting the use of electronic collars capable of emitting an electric current when activated by a handheld device. As noble Lords will be aware, animal welfare is a devolved issue. Therefore, these regulations apply to England only.

These collars are sometimes described as electric shock collars or e-collars. The instrument will make it an offence for a person to attach, or cause the attachment of, an e-collar to a cat or a dog. It will also make it an offence for a person responsible for a cat or dog that is wearing an e-collar to be in possession of a remote control device designed or adapted for activating the collar. This proportionate and targeted ban will not prevent the continued use of other electronic collars which are not associated with such harm and abuse. These include those that emit a vibration or a spray, as well as invisible fencing or containment systems.

This instrument fulfils a commitment given by the Government in response to their 2018 consultation on electronic training collars for cats and dogs in England. This commitment was reiterated in Defra's 2021 action plan for animal welfare. Concerns about the capacity for e-collars to cause harm to cats and dogs have consistently been raised with the Government. In response, Defra commissioned research to understand the effect of these devices on the welfare of domestic dogs. The research showed that many owners do not read the manufacturer's instructions prior to use. It also showed that e-collars have a negative impact on the welfare of some dogs, even when used in compliance with the manufacturer's instructions. E-collars may also redirect aggression or generate anxiety-based behaviour, worsening underlying problems.

In developing these regulations, we have listened carefully to a range of views from pet owners and respondents and have consulted key organisations, including animal welfare and dog owning organisations, veterinary organisations, e-collar manufacturers, dog trainers and behaviourists. We engaged with both those who support the use of e-collars and those who do not.

I am aware of concerns raised by some colleagues regarding the implications of these regulations on livestock worrying. I assure noble Lords that very careful consideration was given to this matter. My officials liaised closely with the National Police Chiefs' Council lead on livestock worrying, and with several English police forces, as well as police from Wales. They noted that the vast majority of livestock worrying cases involve dogs that have escaped from the premises on which they are kept without their owners knowing. These are cases that hand-controlled e-collars could not have prevented. We therefore maintain that owners keeping dogs in secure premises and ensuring that they are kept on leads when walked in close proximity to livestock is the most effective line of defence against dog attacks of this nature.

We have also considered the impacts of the ban under the Equality Act 2010. Most people who reported having a protected characteristic, when responding to the 2018 consultation or writing to the department

since, noted that they relied on the vibration function of e-collars, so the impact of the ban on people with a protected characteristic will be minimal.

We consider that this instrument is an appropriate and measured response to the welfare concerns raised and to the outcomes of the Defra-commissioned research and public consultation. The Scottish Animal Welfare Commission has also recently conducted its own review. It concluded that e-collars should be banned for any training purpose. The same conclusion was reached by other nations that have already banned the use of these devices, including Wales, Austria and Germany. However, the instrument will allow His Majesty's Armed Forces to continue to use e-collars controlled by handheld devices where this is needed for national security reasons. The Government recognise that some pet owners and trainers have been using e-collars for some time. This means that they will need time to retrain their pets to respond to alternative training methods and devices. For this reason, we have built in a transition period until 1 February next year, when the ban will come into force. I beg to move.

Lord Jones (Lab): My Lords, I thank the Minister for his introduction. I acknowledge his confident signposting of where the regulation takes us. It is clearly a very welcome regulation; there are millions of cat and dog owners who are hugely fond of their pets and will, no doubt, greet the mention of electronic collars with quite some repugnance. The Minister can be congratulated on his regulation, which will surely be wholeheartedly greeted with no little relief by many pet owners.

The regulations are securely rooted in the Animal Welfare Act 2006—perhaps a landmark Act of its kind. We should thank the department for them. As a dog lover, and a dog owner at one time, I recollect our late dog: a black lab, named Sweep. He was a failed gundog and, for sure, he had neither courage nor aggression. When we were burgled, I rather think he was the welcoming group for that misdemeanour.

I have only a few brief questions. Mainly as a point of principle and for the record, will the Minister expand a little on paragraphs 4.1 and 4.2 of the Explanatory Memorandum? How did he or his department consult the Senedd? It is a trifle delphic. It is not sophistry, of course, but perhaps he might expand on those paragraphs a little.

Further, paragraph 7.13 refers to His Majesty's Armed Forces. How will this operate? In what circumstances does the Minister envisage paragraph 7.13 operating? One might presume that an MoD dog with an electronic collar would be very obedient and might even, if it is doing its work, in some circumstances cease to worry a trespasser. One does not know, so perhaps the Minister could indicate how that might work.

Paragraph 10.4 of the Explanatory Memorandum is about consultation. Can the Minister give a brief summary—a précis—of those involved? Maybe they are well-known national organisations, and it may come easily to his memory whom he or his department consulted. Again, I congratulate him on the regulations and a helpful Explanatory Memorandum.

The Duke of Montrose (Con): I thank my noble friend the Minister for laying out these regulations and the work that has gone into drawing them up. I declare my interest as a vice-president of the National Sheep Association. Of course, worrying by dogs is a major concern for the industry. I have had sheep worried by family pets, and it is very sad for all concerned because, at the moment, the only cure for a dog that is worrying sheep is to have it put down. If a dear family pet fails in this way, often people send it away somewhere else, which does not really solve the situation.

Recently, the secretary of the NSA issued a statement that some farmers in Wales are finding that they can train a dog not to worry sheep by using electronic collars. It is not a question of monitoring the collar but of training the dog. This could prevent the putting down of healthy dogs. Has this been considered? The collars are limited to shocks of about 5,000 volts, whereas electric fences and so on can be about 35,000 volts, which animals quickly come to recognise. This is an area where the limits covered by this measure might have to be reconsidered.

The Earl of Leicester (Con): My Lords, I declare my interest as a landowner and farmer. We have a flock of sheep and, of course, I keep dogs. These days, it seems that every public document states that it is evidence-based, but too often the scientific research and the evidence involved are pre-organised to produce a political result—and so it is with this legislation, prepared by Defra.

Wales, a country with a great deal of sheep farming, banned electronic dog collars a few years ago. A year after the ban, Welsh farmers reported four times more dog attacks on sheep and that they had needed to shoot three times as many dogs. At home, in 2020, our flock lost five sheep to dog attacks and two in 2021. One was saved but was never the same again, and perhaps we should have euthanised the poor thing when we found it. Last year, we lost 23 sheep. I am not saying that this legislation would have saved all those dogs, because clearly there is an issue with responsible dog ownership. Most responsible dog owners keep their dogs on leads. However, we are about to pass this legislation. Defra understood that 500,000 electronic dog collars were in operation in this country. The RSPCA's 2021 figures for cruelty to animals reported 1,094 killings of animals and 38,087 abandonments. How many e-collar incidents of cruelty were reported? Zero.

I have had 15 dogs. I have had five generations of working spaniels. In answer to the emotive speech by the noble Lord, Lord Jones, about dog owners loving their dogs, of course I love my dogs. The fifth generation of my working spaniels is a batshit crazy spaniel. I am sure that noble Lords with spaniels will agree with this. I try to love him. Well, I do love him. For Christmas, he got an e-collar. The first thing that I did was use the "vibrate" button on him, but in worst-case scenarios I use the "shock" button. I am lucky that the Government are allowing me a transition period to February 2024; I am certain he will be a brilliant dog by then. He wants to do a good job but he is a lively animal.

What will happen after February 2024 to the 500,000 people in this country who own an electronic dog collar? This legislation says that they will be subject to unlimited fines. I know about this, so I will have to destroy my electronic dog collar and put it in the bin,

[The Earl of Leicester]
but what will happen to someone found with one who is unaware of this legislation? What sort of fine will they get?

5 pm

I turn to the policy background on this. The Explanatory Memorandum says at paragraph 7.2:

"The Government's decision was based on the concern"—

I suggest that concern is supposition—

"that electric shock collars can be all too easily"—

"can" is again supposition; it is not evidence based—

"be open to abuse and can be harmful for animal welfare, and as there was a lack of evidence of the capacity for electronic shock collars to correct unwanted behaviour without also impacting the animal's welfare".

I suggest that there is no scientific evidence because research has not been carried out. This is well-meaning legislation but it is ill thought through and will lead to more animals, specifically sheep, being killed and more dogs being put down prematurely.

Baroness McIntosh of Pickering (Con): I support the remarks of my noble friends who spoke about the use of collars in livestock, but I will ask my noble friend the Minister a brief question. Why has the department provided an exemption for the use of e-collars by the Armed Forces? What was the basis for that? It would be helpful and interesting to have sight of the internal animal welfare standards and permissions of the Armed Forces if they are available.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his introduction to the SI. He will be pleased to know that I am happy with it and have only a couple of points to make.

In contrast to the previous SI, this one seeks to protect animals from harm and amends the Animal Welfare Act 2006. Once implemented, it will ban the use of handheld devices and prohibit the use of electric shock collars. Anyone found guilty of using a handheld device will be subject to unlimited fines. This is quite clearly a good thing.

Defra conducted a public consultation in 2018. Most respondents supported a ban on all types of electronic training collar but some were in favour of retaining the ability to use them provided they did not deliver an electric shock. Animals quickly learn from these devices and they are useful in keeping animals safe near busy roads by keeping them contained in a restricted area. There is also an opportunity for their use in preventing dogs escaping and chasing livestock, as we have heard. Sheep worrying is a very serious matter—

The Earl of Leicester (Con): Might I suggest that the seven-week public consultation in 2018 received 6,700 responses, of which 64% opposed making it an offence to attach an e-collar to a cat or a dog and 63% opposed making it an offence to be responsible for a cat or a dog who had an e-collar?

Baroness Bakewell of Hardington Mandeville (LD): I thank the noble Earl for his correction. However, I was going on the information that I had received in the SI.

As I was saying, sheep worrying is a very serious matter and one where every effort should be made to prevent it happening.

I welcome the consultation but wonder why it has taken so long since its completion in 2018—five years ago—to bring forward the SI. In the intervening period, many dogs will have suffered electric shock treatment, which could have been prevented.

It is useful to make a distinction between domestic dogs and working dogs. I would support that.

There is a great difference in the way the two systems work. Collars that make a sound or vibrate are not prohibited under this SI. Paragraph 7.12 of the Explanatory Memorandum is very clear on that. It says:

"As electronic training collars that emit sound, vibration or some other non-shock signals are not prohibited under this instrument, they will remain available for situations where voice, sound or other recall methods cannot be used".

An electric shock is a form of punishment for a dog or a cat, whereas the other system is a more humane way of encouraging domestic animals to adopt a different behaviour. I have seen some of the comments made in response to the consultation, including from those who believe that dogs will go on killing if electric shock collars are banned—the noble Earl, Lord Leicester, seems to indicate that this will be the case. This is the response, I believe, of the farmer and the shepherd, and some weight should be attached to that response. A collar that provides an electric shock is the tool—certainly in a domestic situation—of the uncaring. A better option is for a collar that emits a sound or a vibration.

The noble Lord, Lord Jones, raised an important point about the Armed Forces, and I am very interested in the Minister's response.

From my point of view, this SI is long overdue in preventing unnecessary suffering endured by dogs and cats. I fully support the ban and the measures contained in the SI; there are exclusions, but I am happy with them.

Lord Ponsonby of Shulbrede (Lab): My Lords, I was not intending to intervene in this short debate but, through sitting here, I think I have something to contribute as a sitting magistrate. I deal with dogs and dog owners in magistrates' courts in London, and a number of times I have put in place what are effectively dog death sentences for those that have misbehaved. Before one gets to that stage, of course, one would have mandatory chipping and neutering of animals, but sometimes they continue to attack people or other dogs.

It is a very interesting debate, but I have just one specific question for the Minister. We have heard about the unlimited fines on the owner if there is no compliance with these regulations, but can I check that there is no change in the powers of the courts when they are dealing with the dogs themselves as a result of this statutory instrument?

Baroness Anderson of Stoke-on-Trent (Lab): My Lords, it is a pleasure to follow my noble friend Lord Ponsonby. This SI is a necessary piece of legislation and His Majesty's Opposition will support it. Many of us have and have had wonderful family pets who are

and were central to our family life. I come from a family of dog owners, having had an Alsatian and a crazy—maybe not batshit—springer spaniel as cherished childhood pets. I cannot imagine why anyone would wish to use an electronic shock collar for training, rather than treats.

A 2019 study carried out by the University of Lincoln found that electric shock collars compromised a dog's well-being, even when used by professional e-collar trainers. They were also found to be no more effective than training using positive reinforcement methods. This is far from the only evidence that collars cause harm to animals. We therefore strongly welcome the introduction of this SI.

Given that the consultation took place in 2018 and featured in the 2021 action plan for animal welfare, why has it taken the extra time to bring the measure forward? As acknowledged in the Explanatory Memorandum and by the Minister, the Welsh Government acted on this back in 2010. Can the Minister inform the Committee why we are legislating 13 years later? Do our colleagues in Wales care more about corgis than this Government care about bulldogs?

We welcome the decision to include an exemption—outlined in paragraph 7.12 of the EM—for those with protected characteristics. This will help those who have a legitimate need for collars that emit sound, vibration or other non-shock signals, whether for the owner's benefit or the animal's. After all, Labradors, golden retrievers and German shepherd dogs are so valuable for those of our citizens who are dependent on service dogs. It would be an anathema to them that anyone would seek to train their support dogs via shock treatment.

We also note the exemption on the use of electronic collars for the Armed Forces, where this is required for defence purposes. The Minister knows that we share a keen interest on issues pertaining to our Armed Forces. Does he have any estimate of how many dogs this is likely to affect and which breeds, and is he personally satisfied that the Armed Forces' animal welfare standards are robust in this area?

The Kennel Club is campaigning for the same measures to be introduced in Scotland. Its chief executive, Mark Beazley, was quoted in the *Independent* as saying:

> "More action is urgently needed in Scotland, where regulations are needed to replace the ineffective guidance currently in place, and we will not rest until we see the complete ban on these devices that cause suffering and harm".

What discussions, if any, has Defra had with Scottish counterparts?

We all have a favourite breed of dog, whether that is a Labrador retriever, a Border collie or a cockapoo. There are more than 13 million pet dogs in the UK. Their owners will expect us to do everything we can to protect their pets from harm, which is why we are supporting this SI. After all, who could countenance the image of a cocker spaniel, a Jack Russell or a labradoodle being subject to electric shock treatment?

Lord Benyon (Con): I am grateful to noble Lords for their important contributions to the debate. This instrument will deliver on another commitment made in the Government's action plan for animal welfare. As a nation of animal lovers, we are united in our commitment to do what is best for the welfare of our pets. Protecting them from unnecessary suffering is an important step towards that goal.

Almost unique in any animal welfare debate, I think, has been the absence of a response I get to almost any measure we bring in, which is, "That is all very well, but—". Usually, people want you to go further. I have been to enough animal welfare events and debates in this and the other place where people always want more. But we hope that we have introduced something that is proportionate, addresses the concerns of animal welfare organisations—I will come on to talk about who we consulted—and reflects the need for this.

Several noble Lords asked about our exemption for the Armed Forces. They are right: this instrument includes an exemption for His Majesty's Armed Forces where required for defence purposes. This is a specific and limited exemption to ensure that important national security and public safety capabilities are retained. The use of an e-collar in such circumstances would be subject to the internal Ministry of Defence animal welfare standards and permissions. I say to my noble friend Lady McIntosh that it is entirely legitimate that she puts that question to Ministry of Defence Ministers. They have very high standards for animal welfare right across the Armed Forces. There is an exemption here, for reasons of a specialist nature, for certain uses of dogs. I will not go into any more detail, but I assure the Committee that I have been convinced by the evidence I have heard on that matter.

The noble Lord, Lord Jones, asked who Defra engaged with in drawing up the ban. We ran a public consultation on proposals for a ban in 2018. A total of 7,334 responses was received, including approximately 6,000 from members of the public. The remaining responses were from organisations or individuals involved in fields relevant to electronic training collars, dog trainers or vets. Animal welfare groups support the ban, as do veterinary surgeons, the training sector and assistance dog charities. In the way that the data was compiled, an individual's responded was counted as one and an organisation's was also counted as one, but those organisations may have reflected the views of many hundreds, possibly even thousands, of members. It may be not quite right to talk about it in terms of percentages. Of course, animal welfare is a devolved matter and we engage closely with the devolved Administrations on a range of issues, including this policy.

A number of people have raised the issue of the increase in sheep worrying in Wales subsequent to the ban. I investigated this closely in the lead-up to our debate on this statutory instrument. It is clear that, across police forces, there has been increased activity and an increased determination to work with both the public and farmers to report sheep worrying events; that may be the reason why we have heard of more cases. Sheep worrying is a disgusting thing to witness. I have had livestock killed and injured by dog worrying. This Government have taken immense pains to try to limit these sorts of activities. We will continue to work with others to make sure that we limit the number of livestock worrying incidents and dog attacks.

5.15 pm

Very careful consideration was given to the potential unintended consequences of these regulations. We liaised with the National Police Chiefs' Council lead on livestock worrying and several English police forces. They report that the vast majority of livestock worrying cases involve dogs that have escaped from the premises in which they are kept without their owners knowing. One police force reported that in 70% of such cases, no one in control of the dog was close by.

The police were also clear that they would not recommend the use of e-collars to prevent instances of livestock worrying. As I said earlier, we therefore consider that keeping dogs on leads around livestock and securing dog enclosures are the best measures. This aligns with the advice provided in the *Countryside Code*, which has just been updated and is supported by landowners, and the views of the Scottish Animal Welfare Commission, which recently reported on this issue.

The noble Duke, the Duke of Montrose, mentioned electric fences being used to deter livestock from crossing a boundary. They deliver a shock directly to the body and are of course different to e-collars. The use of electric fences in agricultural settings is subject to statutory guidance, which requires anyone installing an electric fence to ensure that it is designed, constructed, used and maintained properly so that, when animals touch it, they feel only slight discomfort. I can assure noble Lords that I have touched enough electric fences in my lifetime to know that they give quite a belt, but they are within regulatory parameters.

Last year, the Animal Welfare Committee prepared an opinion on the welfare implications of virtual fencing systems for livestock—something that could transform our nature conservation and agriculture use, particularly in the uplands. It found that the use of these systems could offer several potential welfare advantages over conventional electric fencing, such as improvements to livestock nutrition, health and welfare, as well as benefits for the land being grazed.

A question was asked about the evidence on which we based our decision. Concerns that e-collars can cause long-term harm have been raised by a number of trainers, behaviourists and dog-keeping organisations, as well as the animal welfare sector. Defra-commissioned research revealed that many shock collar users were not using them properly and in compliance with the manufacturer's instructions. The research was commissioned in line with the standard processes for the tendering and consideration of bids and in accordance with the rules on government procurement exercises. Data from the research was published separately in two different reputable scientific journals, which required additional independent peer-review exercises involving scrutiny from experts in the same field prior to publication.

As well as being misused to inflict unnecessary harm, there is also concern that, even when used in compliance with the manufacturer's instructions, shock collars can redirect aggression or generate anxiety-based behaviour in pets, making underlying behavioural and health problems worse. Further to that point, the Government are satisfied that the processes for the tendering and consideration of bids were carried out according to the guidelines, and data from the research was published in two separate reputable journals.

My noble friend Lord Leicester raised some really important points. We will proactively raise awareness of the prohibition and its scope in advance of 1 February 2024, when the regulations come into effect. We intend to work closely with welfare charities, the training sector and the veterinary profession to reach as many owners as possible. We also intend to update the *Code of Practice for the Welfare of Dogs*, which includes guidance and reminders for owners about their responsibilities to provide for the welfare needs of their animals; guidance on how to minimise the adverse effects of containment systems by having them installed by a professional and set up properly; and guidance on ensuring that the owner is provided with training in their use.

My noble friend will not have to throw away his electric collar: he can put it in a glass case, which he can smash to retrieve the collar if some future Government change the law. He will not be a criminal for possessing it; he will be breaking the law if he uses it. I want to be absolutely clear about that.

Organisational responses to the consultation counted as a single response, as I said earlier. The offence applies mainly when a collar is being used—a point I just made—or if a dog or cat is wearing an electric collar and the owner or keeper is in possession of a remote collar-control device which is connected to the collar, so they look as if they are about to use it.

The noble Baroness made a good point about the time it has taken; it has taken a long time. I think I first attended an event in this building shortly after I was elected to the other place in 2005, and I remember a friend of mine in the House of Commons, Roger Gale, putting an electric collar on his neck to feel the impact. He invited me to do it and I declined. I have four dogs: two whippets and two spaniels, one of which entirely fits the description that my noble friend Lord Leicester applied to his dog, but I am doing my best to change its behaviour through other means than the one we are outlawing today.

I conclude by thanking noble Lords for their contributions, and I commend the regulations.

Motion agreed.

Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2023

Considered in Grand Committee

5.22 pm

Moved by ***Lord Bellamy***

That the Grand Committee do consider the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2023.

Relevant document: 38th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, I beg to move that the Committee has considered the statutory instrument to amend the Rehabilitation of Offenders

Act 1974 (Exceptions) Order 1975 to add four occupations: chartered management accountants, fire and rescue authority employees, justice system intermediaries, as defined, and notaries public of England and Wales.

As your Lordships know, the Rehabilitation of Offenders Act 1974 governs the disclosure of cautions and convictions for most employment purposes. Under the Act, most convictions become spent following a specified period, which supports the rehabilitation of offenders, helping them to put their past behind them.

The exceptions order lists the categories of jobs where those protections are lifted so that individuals, if asked, are required to disclose spent convictions. There are certain jobs where more complete or relevant disclosure of an individual's criminal record may be appropriate, particularly when we are dealing with financial matters, professional persons, vulnerable persons or young persons, among others. There is clearly a balance to be struck here between the rehabilitation of the offender and the protection of the public.

The order proposes to add four occupations to the exceptions order. First, it adds members of the Chartered Institute of Management Accountants—CIMA. This is related to the functions that they carry out, which are fundamentally based on trust and present a particular opportunity to cause harm to the public through abusing that trust. The order already includes most accountants but, for historical reasons, it does not yet include CIMA, whose members carry out very similar functions to those already carried out by chartered accountants. The addition has been requested by the institute itself and it already exists in Scotland, so in the Government's view, it is entirely in line with the policy and intent behind the order in question.

The second category being added is employees of the fire and rescue service, where, in the Government's view, there exists a clear case for change. The *Independent Culture Review of London Fire Brigade* contains some troubling findings, and recent reviews into fire and police culture have also revealed certain failings. That has been confirmed by a report by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services. It is important that we vet people we employ in our public services. Firefighters in particular come into contact with the public in certain circumstances, so it is right that they should be included.

The addition is particularly sought by the National Fire Chiefs Council, representatives of which, I gather, are present today. It asked that this change be made. In the Government's view, this supports the ongoing reform of the fire and rescue service from a cultural and safety point of view, bearing in mind that firefighters in particular often attend schools or vulnerable persons' homes and incidents or accidents as first responders, exercising statutory powers and helping to safeguard others. Therefore, it is only right that the fire and rescue service should be included. We hope that this will protect and enhance the reputation of our fire and rescue service employees, who are deeply trusted: we admire their courage and dedication to duty. In the Government's view, this will enhance the trust that they must enjoy to carry out their roles effectively.

The third category being added is justice system intermediaries, whose role is essentially to enable communications with vulnerable witnesses and parties in police inquiries and court and tribunal proceedings, particularly those who assist the Ministry of Justice in the witness intermediary scheme or are appointed as intermediary advisers. Their participation is generally to help witnesses who are, for example, under 18 or suffering from some mental or physical disorder or impairment. These intermediaries are clearly in a position to have unsupervised access to vulnerable adults. In the context of their duties, they may have unsupervised access to children under the age of 18, and the role can involve discussions with vulnerable people concerning highly personal or sensitive matters, such as domestic or sexual abuse. The inclusion of such persons in this list will add to the safeguarding of the vulnerable people concerned and place the intermediary in a position of increased responsibility for the welfare of the vulnerable people. Again, that will increase trust in the system.

The fourth category being added is notaries. This is a quite different category. A notary—or notary public, to give the technical term—is a specialised lawyer who has undertaken further legal education and examination, and is typically responsible for certifying and authorising certain documents, particularly those relating to property deeds and other financial transactions, and to foreign court proceedings, foreign qualifications and the like. For those who enjoy the byways of history, notaries are still regulated by the Faculty Office of the Archbishop of Canterbury. Although most notaries are solicitors, they do not have to be. They attest the authenticity of documents, certify documents, take affidavits and swear oaths.

5.30 pm

The background to this, particularly in the light of the Ukraine crisis, is that the then Deputy Prime Minister, the right honourable Dominic Raab, asked the legal services regulators how the Government could support the upholding and enhancing of the economic crime regime. In response, the Faculty Office recommended adding notaries to the exempted professions under the exceptions order, so notaries are now added to barristers, solicitors and other similar professions that are already subject to these enhanced checks.

The effect of this order is that while there is a basic DBS check for many employees in the existing exceptions and those in the categories I outlined, the order now moves them up to a standard DBS check, where relevant convictions which would otherwise be spent are disclosable. That is to protect the public. However, it is important that this change is implemented proportionately, because the Government are still very much concerned with the rehabilitation of prisoners. Without taking up the Committee's time this afternoon, I draw attention to the proportion of prison leavers who are in employment six months after release having doubled in the last two years to March 2023. The Government have taken many active steps to help released prisoners to gain employment.

All the professions that I mentioned have agreed to produce updated guidance, developed with the support of MoJ officials, to ensure that employers are fair in their recruitment decisions. Just because a firefighter in his early 30s got into bad company 10 years before does not mean that he is not a trustworthy firefighter

[Lord Bellamy]
today. It must be borne in mind when we implement this that having to disclose a conviction does not mean that you will not get the job. This must be done in a fair and balanced way. The Government are very conscious of that.

Those are the main points that I would draw to the attention of the Committee.

Lord Ponsonby of Shulbrede (Lab): My Lords, the Opposition support this draft order. Supporting ex-offenders into employment is something that we must all endeavour to be better at, especially given the central role employment can play in preventing future offending. It is vital that our criminal records system does not unnecessarily trap people in the past when they are committed to reform and have stayed out of the offending cycle and rebuilt their career. However, the overriding concern when legislating in this area must always be the protection of the public.

The exemptions included in the 1975 order strike that proportionate balance because those areas of work, such as working with vulnerable individuals or potentially sensitive information, require a high degree of trust. We are satisfied that the proposed extensions to the 1975 order can be introduced while maintaining that vital proportionate balance. Given the culture that we have seen across some of our fire and rescue authorities, and the police, we must ensure that people are properly safeguarded. I am glad that representatives of the fire authorities are here today.

Justice system intermediaries have very high levels of responsibility for the vulnerable individuals they assist, including children, and they sometimes have unsupervised access to them. Notaries also frequently deal with vulnerable people and highly sensitive information, and it is right that individuals who undertake such work are subject to additional DBS scrutiny.

The relevant organisations are producing guidance to ensure that a proportionate approach is taken with regard to the disclosure of criminal records in these additional areas, to ensure that equality and individual privacy are upheld alongside public protection. What plans, if any, do the Government have to review this guidance to ensure that it is indeed proportionate, as the Minister emphasised, and drafted in line with the anticipated need of those professions, as recommended by the Secondary Legislation Scrutiny Committee?

Can the Minister share whether the draft order represents the extent of his department's current intentions to change the criminal records system? Will he also inform us whether he has had any recent meetings with the organisation #FairChecks, or whether the Government have any plans further to reform in relation to its campaign about offences committed in childhood?

When preparing for this short debate, I reflected on my experience with the DBS system. As somebody who has worked all their life in private industry, I have never been checked in the DBS system. I have recruited many people and been recruited, I have been a company director and various other things, and I have never been checked. However, I have been checked by the DBS system as a magistrate and as a coach for my son's sports clubs to make sure that I am a fit and proper person to carry out that coaching role. However, I have never had to jump that particular hurdle in my working life.

As the Minister said, this is a very live issue when one deals with youths, as I do as a magistrate. It is not unusual for me to have a youth in front of me who says that he aspires to being a football coach. Of course, if you are a football coach you will be coaching youths, which requires the highest level of DBS check. It is not necessarily a bar, but it is the highest level. When I sentence youths, I want to encourage them to go on to fulfil their ambition, if it is to be a football coach. While on the one hand we support these enhanced safeguards, I hope they will not be a bar on people fulfilling their ambitions. The fear is that these enhanced checks will act as a disincentive for people to go ahead and apply for certain types of roles, such as the example I gave.

I hope the Minister can expand a little further on what the Ministry of Justice is seeking to do with a wider review of the whole DBS system, and how it could be thorough on the one hand but on the other proportionate to the aspirations of people who seek to get a job as a firefighter, as in his example, or, as in my example, a youth who wants to be a football coach. The system is very cumbersome. The effect of that is that it discourages people checking and putting their names forward. I hope the Minister can expand a little further on the work the Ministry of Justice is doing to look at the whole criminal records review process.

Lord Bellamy (Con): My Lords, I thank the noble Lord for his contribution and for the support he offers to this statutory instrument. I will respond to his two main questions. First, on the guidance, officials from the Ministry of Justice, with the help of officials from the Disclosure and Barring Service, are working closely with representatives from these professions to develop and update their guidance to ensure that it is proportionate and fair. As far as I know, that is an ongoing process and a matter for ongoing review to make sure this scheme works proportionately.

As far as other plans are concerned, as I understand it—having regard to the Police, Crime, Sentencing and Courts Act 2022 and a recent judgment of the Supreme Court—the intention is to remove the disclosure of certain youth cautions, warnings and reprimands from the system altogether so that there is less clutter, if I can use that shorthand, in the system. There is also something called the multiple conviction rule, which I think necessitated disclosure when there was more than a single conviction. This will, I hope, reduce the likelihood of protection of the public unduly interfering with the important objective of rehabilitation; that is the intention, at least.

We have to find a balance. We are doing our best, particularly in the youth area. I am conscious of the point made by the noble Lord, Lord Ponsonby, about those who aspire to be a football manager and so forth. We really do not want, if we can possibly avoid it, to put obstacles in their way from when they got into trouble at 15, 16 or 17 when they are now 27 and settled down. We do not want the earlier criminal record to be a blight on their lives. We have to strike the right balance.

Work on this is ongoing. My good friend in the other place, the right honourable Edward Argar, is meeting criminal justice charities on 13 June—tomorrow, I think. It may even be today; I have slightly lost track of what day it is at the moment. They will discuss further reform of the criminal records system to see whether we can simplify it and tip it a little more in favour of youth, in particular, to ensure that the rehabilitation objective is properly followed.

That is the most I am able to say this afternoon. I am sure that there are further instalments to come in this important story. Unless noble Lords have any other questions, I commend this instrument to the Committee.

Motion agreed.

Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023

Considered in Grand Committee

5.43 pm

Moved by ***The Earl of Minto***

That the Grand Committee do consider the Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023.

The Minister of State, Department for Business and Trade (The Earl of Minto) (Con): My Lords, I beg to move that these regulations, which were laid before the House on 26 April 2023, be considered. They form part of a series of secondary legislation needed to effectively implement the register of overseas entities. The register of overseas entities, which I will refer to as the register, was created under Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022, which I will refer to as the Act.

The register will help crack down on dirty Russian money in the UK and corrupt foreign elites abusing the openness of our economy. Overseas entities owning or buying property or land in the UK must give information about their beneficial owners or managing officers to Companies House. Law enforcement agencies now have a wealth of new information to help them track down criminals using UK property or land as a vehicle for money laundering.

On 1 August 2022, the register went live, with the deadline for registering set at 31 January this year. There has been a high level of compliance, with more than 28,100 overseas entities already registered to date. Entities that disposed of land before the end of the transitional period were required to provide statements with information about their beneficial owners and details of the land disposals, such as the title numbers. More than 750 have provided details to Companies House, having disposed of all their interests before the end of the transition period. This means that just under 29,000 entities have complied with the requirements. While that leaves up to a few thousand entities still to register, some of these are believed to have been dissolved or struck off and others have not kept their addresses up to date with the land registries. This means that they may not have received letters from Companies House.

I know noble Lords will want reassurance that compliance and enforcement action is being taken. This takes time but is well under way. Companies House continues to work to increase compliance even further and is preparing cases for enforcement action. Any overseas entity that has failed to register is already restricted from selling, leasing or raising charges over land that they own. Overseas entities are also unable to register any new purchase of UK land without first registering. These are novel and severe sanctions.

It is worth reminding noble Lords that, when the draft Registration of Overseas Entities Bill was scrutinised by Parliament in 2019, the Joint Committee on Human Rights warned of the severity of these restrictions, in particular the "chilling effect" that this would have. The Government took these concerns seriously but felt that the sanction was proportionate given the register's policy objectives. This shows the seriousness of the sanction and the need for the Government to balance our approach to enforcement so as not to deter legitimate investment into the UK.

Once the Economic Crime and Corporate Transparency Bill receives Royal Assent, a further enforcement tool will be added to our arsenal. A person who receives a financial penalty from the registrar or is convicted of an offence may be disqualified from acting as a UK director. Once that Bill receives Royal Assent, I will also bring forward further regulations under new and amended powers to further strengthen the register's requirements.

I now turn to the details of this instrument. These regulations deal with two main areas: financial penalties arising from offences in relation to the register; and the treatment of land disposed of in Northern Ireland by overseas entities and the rights of those acting in good faith. The Bill sets out that the registrar may impose a financial penalty as an alternative to criminal prosecution. This instrument sets out the procedure for imposing and enforcing these financial penalties. A financial penalty could be imposed on a variety of persons depending on the offence in question. For example, it could be imposed on the entity and its officers where an overseas entity has failed to register, a verifier who has knowingly submitted a false filing or a person who has failed to respond to an information notice sent by an overseas entity.

If the registrar suspects that a person has committed an offence, she may issue them with a written warning, giving them 28 days to make representations about their conduct. If the registrar is satisfied beyond reasonable doubt that the person has committed an offence, she may issue a penalty notice in writing to that person, giving them 28 days to pay the penalty. If a person fails to pay, interest will accrue at the statutory interest rate of 8% per annum.

The instrument sets out that financial penalties imposed by the registrar may be fixed, set at a daily rate or a combination of both. Where the criminal fine set out in the Act is a fixed penalty, the registrar may impose multiple penalties in relation to the same conduct if the contravention continues. Subsequent penalties could be of increasingly higher amounts to encourage compliance. The instrument does not prescribe the specific financial penalties that may be imposed on

[The Earl of Minto]
each offence. Instead, it states that a financial penalty must not exceed the maximum fine that a court in the jurisdiction in which the offence was committed could impose under criminal proceedings. This flexibility allows non-compliant persons to be targeted proportionately and effectively and allows for penalties to be adjusted according to the seriousness and specifics of the case.

I will now briefly set out the approach that the registrar will take. Given that financial penalties are an alternative to criminal prosecution, the registrar will bear in mind the process that a court would follow. They will be proportionate, as the goal of the financial penalty regime is to encourage ongoing compliance with the requirements of the register. When deciding whether to prosecute and what sentence to give, courts follow sentencing guidelines to ensure that it is in the public interest to prosecute and that the sentence is proportionate to the seriousness of the offence. The registrar will also consider the public interest and be proportionate when imposing financial penalties.

The Act provides different maximum fine amounts and prison sentences commensurate with the nature of the offence. Contrary to recent reports, the Act does not set out that courts may impose daily fines for the failure to register offence. This means that the registrar cannot impose daily penalties either. Instead, the instrument allows the registrar to impose more than one penalty if non-compliance is ongoing.

For the failure to register offence, the Act sets out that, in England, Wales and Scotland, courts can impose an unlimited fine. In theory, this means that the registrar may impose an unlimited financial penalty if an overseas entity fails to register. As an indication of the seriousness of this offence, the registrar will review portfolios owned by overseas entities that fail to register.

The registrar will use a range of sources to estimate the value of the portfolio in question, including the UK house price index and data on business rates bands. The registrar will then apply different starting points for the financial penalties, depending on whether the estimated value of each property or piece of land falls into one of three bands. If its value is estimated to be in the lower band, the starting point for the penalty will be £10,000. If it is estimated to be in the middle band, that rises to £20,000. If it is estimated to be in the higher band, it rises again to £50,000.

If an overseas entity owns more than one property or piece of land, the penalty values will be added up to calculate its starting point. Given that interest will accrue at the statutory interest rate of 8% per annum, if an overseas entity fails to pay, the penalty will rise quickly. The registrar may also consider other aggravating factors, such as whether the person has committed the offence previously.

Where any financial penalty remains unpaid, it can be enforced as if it were a judgment debt, including by registering a charge against the property or land owned by an overseas entity. The registrar will keep the model under review before imposing financial penalties for failure to file the annual update on time. If the registrar finds that the level of penalties needs to be reviewed because they are not providing a sufficient deterrent, this instrument gives her the flexibility to do so.

The instrument gives the registrar the power to vary or revoke financial penalties on a case-by-case basis, for example if new information comes to light that aggravates or mitigates any offence. The instrument also sets out the grounds for appeal and the court's powers in relation to that appeal.

This measure adds to the tools at the registrar's disposal to promote compliance and maintain the register's credibility as a vehicle for improving transparency and reducing the misuse of UK property by overseas entities. Companies House has been preparing to operationalise these regulations and will be ready to issue notices as soon as they come into force.

The second part of this instrument sets out the grounds for registering dispositions in Northern Ireland that would otherwise be prohibited. It amends Schedule 8A to the Land Registration Act (Northern Ireland) 1970 to provide a mechanism to allow the Secretary of State to consent to the registration of a land transaction that would otherwise be prohibited.

If a third party transacts with an overseas entity at a time when that entity is non-compliant with the register's requirements, the third party will be prohibited from registering the transaction. For example, if they have purchased land from a non-compliant overseas entity, they will be unable to register themselves as the new proprietor. The intention of this sanction is to disincentivise anyone from transacting with non-compliant overseas entities. However, in certain circumstances, it is possible that a third party may transact in good faith without knowing that the overseas entity was non-compliant, resulting in their acquisition of a land title that cannot be registered with the Land Registry. The Act is not intended to penalise innocent third parties, so this mechanism is necessary for the effective functioning of land transactions. A similar mechanism is already available in England and Wales, and in Scotland.

The Bill's expedited passage through Parliament last year left no time to include this mechanism in the draft Bill for Northern Ireland. Instead, a power was taken to make regulations, ensuring that consistency in the application of the requirements could be maintained across the UK. The instrument also inserts a regulation-making power into Schedule 8A to enable regulations to be made to specify how applications should be made, and makes other consequential amendments to Schedule 8A.

I close by emphasising once again that the measures in these regulations are crucial for the effective operation of a register that will crack down on dirty Russian money in the UK and corrupt foreign elites abusing the openness of our economy. I hope noble Lords will support these measures and their objectives. I commend these draft regulations to the Committee.

Lord Wallace of Saltaire (LD): My Lords, I thank the Minister for that extremely clear and helpful explanation of the statutory instrument. As he will be well aware, we are now in the middle of considering the second economic crime Bill in two years. This deals with a number of issues that overlap with those two pieces of legislation, in particular the position of Companies House and how far it will have the additional staff needed to handle its new responsibilities and

ensure that this SI and the other elements of those two pieces of legislation will be effectively enforced. I would welcome any reassurance he might give on that.

It is encouraging how much compliance there has been so far. It will be interesting and useful to know how stubborn the remaining non-compliant areas are. What is the scale of the unregistered land and properties that we still face in England, Scotland and Northern Ireland? We are all aware of stories of large houses in Hampstead that have been unoccupied for many years and whose ownership is unclear. Is this SI likely to end that situation so that business rates can be properly levied, and so that ownership will be clear and, if necessary, come under scrutiny and be changed?

I am interested in the remark about an alleged chilling effect from forcing everyone to comply. I have a certain interest in this, since my wife and I are thinking about downsizing and are looking at aspects of the London property market. On looking at a major new development on the South Bank some months ago, we were told that just over 40% of the apartments had already been sold to foreign buyers. I wonder whether the Government have looked at the impact of full compliance with the new overseas ownership regulations and whether they think that will have a marked effect on the London housing market—and possibly on London house prices, which the Wallace family would welcome.

The extent to which over the last 20 years a number of new housing developments in London have been built specifically to be sold to foreign owners rather than to serve the needs of people who need housing here has been one of the scandals of our housing market, and we very much welcome this position now changing.

6 pm

I want to ask a little about how we can be assured that financial penalties themselves can be enforced, given that these overseas beneficial owners will be in a range of different jurisdictions, many of them not particularly friendly to the United Kingdom and not particularly open to the United Kingdom, whether it be Panama, Bahrain, Malaysia or Hong Kong, all of which have difficult arrangements.

The Minister mentioned charges on the property. Does that imply, as I hope it does, that, when a financial penalty is imposed, it is held against the property and that, if necessary, if it is not paid, the property will in effect be confiscated?

Are there any other specific issues that relate to Northern Ireland about which we should be aware, or is this simply a matter of slightly different legislation? Is a substantial amount of land in Northern Ireland owned by anonymous overseas owners? Are there particular security dimensions there which might require more people to want to maintain the anonymity of ownership than on the mainland? We are well aware of some of the complexities of the situation there.

In general, however, having asked those questions, naturally we welcome this SI as we welcomed both last year's Act and this year's Bill. We look forward to a stronger Companies House enforcing this regime and we hope that it will have a highly beneficial effect on the British housing market, on reducing the amount of illicit finance coming into the United Kingdom, and on what the Treasury receives from business rates and what local authorities receive from property rates in future.

Baroness Blake of Leeds (Lab): I add my thanks to the Minister for his opening remarks and the detail that he went into in explaining the nature of the SI before us. I preface my comments by picking up on one remark that he made, that the whole purpose of this is not to deter investment. We are always looking at finding the bad actors in this situation, rather than bringing in penalties that will have a detrimental effect on businesses' ability to attract investment.

We regard this as an important statutory instrument, and I am sure the Minister will agree with me that it is very overdue. We know that there were conversations around this and action was taken by David Cameron back in 2016. We have to acknowledge that it is a tragedy that it took the war in Ukraine to precipitate the action that we have seen thus far. I hope we do not get into a Groundhog Day situation, as I know that we will probably engage in further conversations around this when we head into Report on the Bill next week. However, that is the nature of the fast-moving situation that we are in. Many of the issues that have been touched on today have been discussed at length in Committee on the Economic Crime and Corporate Transparency Bill, so I do not want to repeat too much of that, knowing that we will come back to it.

As I say, we support provisions within this SI and believe that they are common sense, but we have to acknowledge that the delays have been at a cost.

I believe the fine is currently set at £2,500 per day. Is it the case that no one has yet been issued with a penalty? It would be good to clarify where we are in the process. We certainly want to see action stepped up against those failing to comply with the new legislation, and we know that there are those who are yet to face financial penalties. The spirit running through all the debates about the next stages of this is of wanting the system to be as robust as possible. In particular, as the Minister mentioned, this presents us with an opportunity to bring in further measures and strengthening, but the question that will run throughout this, which he probably cannot answer at the moment, is whether it will be fit for purpose and will cover all the issues that come up.

How soon after the passing of the SI will the registrar be able to issue financial penalties? I presume there will be a process of issuing warning notices. Has there been any provision for warning notices to be sent out in advance of the SI being passed? It would be helpful to know whether that is the case and therefore whether it will be possible for the registrar to move to those financial penalties as soon as the SI has been passed.

More generally, on timings, the dates of appeal on the warning notices suggest that a period of 28 days needs to be passed. Can we have some clarification? The draft regulations state that the period contained in any warning notices

"must be at least 28 days beginning on the day after the date of the warning notice"

[Baroness Blake of Leeds]
being issued. If a company or entity disagreed with what was in the warning notice, would it have to make representation to the registrar within 28 days or after a minimum of 28 days? There is a need for some clarification. Also, if warning notices have been issued, have any written representations been received?

I also emphasise the issue that we have raised significantly. I am grateful to the noble Lord, Lord Johnson, for arranging for us to meet the registrar and some of her officers; it was a very instructive meeting. But, as has been outlined, I want to put on record our continuing concern about whether the level of resources will be fit for purpose, given the scale of change being brought in, the number of companies that we have heard about and the fact that there will be stubborn cases that are difficult to bring to a conclusion. We have had some reassurance that this will not be fixed in stone and that if the registrar feels that more resources are required, they will be able to come back to that. The issue is the sheer capacity and the fact that the status of those working in Companies House is being changed from recording information to taking action when there is suspicion of wrongdoing.

The other area that has generated a great deal of concern is the 25% threshold for beneficial ownership and the possibility of anonymity that it gives, enabling overseas entities access to UK properties and markets. I know there will be more discussion around this, but it is important to flag these matters whenever we have the opportunity. I hope the Minister will acknowledge that this area still presents a problem in getting underneath all the issues that need to be addressed. I thank him for his very clear explanation of the powers in the SI to consent to Northern Ireland dispositions.

I conclude by saying that, yes, we support the changes being introduced, but it is an area of huge concern. Economic crime is still increasing, as we know, and coming back to deal with unforeseen loopholes that might ensue will be an important part of the legislation before us. I very much look forward to the Minister's response and to continuing the work on this important area.

The Earl of Minto (Con): I thank both noble Lords for their valuable contributions to this debate—not just now but in the past.

The Government are absolutely committed to ensuring that the register is robust and effective at tackling the use of UK property to launder money. These regulations provide mechanisms that ensure the register operates effectively. A clear and effective procedure for the imposition and enforcement of penalties will serve as a deterrent against non-compliance and bad actors, as well as punishing guilty parties, including by potentially imposing charges over their land.

The provisions relating to the dispositions in Northern Ireland extend the same treatment to the entirety of the UK. They allow the registration of land, where it would otherwise be prohibited, for the benefit of those who act in good faith, and ensures that their interests are not affected by the actions of non-compliant overseas entities.

The points that noble Lords have discussed today highlight the necessity of the measures contained in these regulations. I will try to address some of these now. The noble Lord, Lord Wallace, raised a number of extremely important issues, and I will take them in the order I wrote them down.

On the question of proper funding for Companies House, there are two elements of funding, which total a maximum of about £83 million in any one period; that should certainly be enough. I think one can see from the work it has already achieved that it has made great strides. I am not saying the work is finished, but it has made great strides towards achieving the whole purpose of the register and, through that, giving the registrar the leeway to concentrate on the people who have not yet fully complied.

On the continuous rate of compliance, I think we last met here on about 2 May. Since then, Companies House has had 600 more applications for compliance. That rate of about 100 a week is continuing, so the process is working.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I apologise for interrupting the noble Earl, but there is a Division in the Chamber. The Committee will adjourn for 10 minutes.

6.14 pm

Sitting suspended for a Division in the House.

6.23 pm

The Earl of Minto (Con): If I am right, I completed talking about the compliance rate, which I hope answers the noble Lord's query.

On the question of the marked effect on the market, I suppose one will have to wait and see what the market response is. As the noble Baroness said, we must not affect the investment market because inward investment into this country is extremely important. We are trying to catch the people who are trying to launder dirty money but there are many more people who are trying to invest legitimately. Whether the market is actually affected by this instrument, I am not so sure. It is an enormous market and we are not talking about a vast number of properties. It is a very difficult question to answer. It is a balance between having severe penalties for those who are flouting the law and allowing proper, genuine inward investment.

On the question about how enforcement action will take place, the answer is that the fine can be enforced as any judgment debt. This would include a charge on the property, which could indeed lead to repossession and, ultimately, the sale of the property.

I think I have answered the question on Northern Ireland. It is not a significant number of properties in Northern Ireland, as I understand it. The purpose of the SI is just to ensure that there is commonality—it is a levelling-up issue—throughout the whole of the United Kingdom.

Some of the issues that the noble Baroness, Lady Blake, raised have been covered by some of those answers. Her initial point about deterring investment was very well made: that is certainly something we do not want to do. We have already discussed the detail of this, but she mentioned the fine being set at £2,500 a

day. The actual amount can be limitless. The courts can issue and aggregate that fine, depending on the scale of the penalty. The instrument is as robust as possible, and I believe it is fit for purpose.

The statutory instrument sets out that the register must allow a minimum of 28 days for the person to make representation following receipt of the warning notice. That period of notice will be issued at the same time as the warning notice.

On the question of how much action has already been taken, the answer is that no one has had a penalty yet. This SI allows Companies House to impose financial penalties. It has written to property and service addresses, but warning notices cannot be issued until the SI is in force. However, Companies House stands ready to issue warning notices as soon as the SI is actionable.

The Government fully understand the 25% beneficial ownership point. It is one that really needs careful watching; the Government and Companies House are fully aware of the potential ongoing issue that is likely to provide. I hope that answers some of the specific questions raised by noble Lords.

The register sets a new global standard for transparency and levels the playing field with property owned by UK companies, which must already disclose their beneficial owners to Companies House. This register is a crucial part of the Government's fight against illicit finance. The Economic Crime and Corporate Transparency Bill, which is currently before Parliament, will feature substantial changes to UK company and partnership law and will complement the Act. The Bill will introduce amendments to the Act which will further strengthen the requirements for overseas entities wishing to own land in the UK. For example, new measures in the Bill will require more information about overseas entities, including the title numbers of the properties held. It also introduces minimum age limits for managing officers to ensure that the details of a person aged over 16 are always provided—a point the noble Lord made when we last discussed this.

The Bill will also make further provisions for registrable beneficial owners in cases involving trusts. It includes an anti-avoidance mechanism to ensure that those in scope of the register when the Act was first published as a Bill in Parliament cannot circumvent its requirements. The laying of these regulations will complement the measures in the Act to ensure the register is as effective as possible. I commend these draft regulations to the Committee.

Motion agreed.

Road Vehicles (Authorised Weight) (Amendment) Regulations 2023

Considered in Grand Committee

6.30 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Road Vehicles (Authorised Weight) (Amendment) Regulations 2023.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these draft regulations were published on 23 January and laid before Parliament on 26 April. They will be made under powers conferred by Sections 41(1), (2)(d), (3) and (5) of the Road Traffic Act 1988.

The highest greenhouse gas-emitting sector of the economy is transport, with road freight making a significant contribution to those emissions. In 2021, heavy goods vehicles produced 20% of greenhouse gas emissions from domestic transport. Shifting towards cleaner types of vehicles and fuels is therefore vital if emissions from this sector are to be brought down in line with the 2050 net-zero goal.

These regulations implement increases in weight limits for certain alternatively fuelled or zero-emission vehicles. The weight limit increase is up to a maximum of one tonne for an alternatively fuelled vehicle and a flat two tonnes for a zero-emission vehicle. In all cases, the maximum weights for individual axles will remain unchanged.

The vehicle types that are having their weights changed by this regulation include articulated lorries and road train combinations with five or six axles, normally limited to 40 tonnes, and four-axle combinations, normally limited to 36 or 38 tonnes. No additional weight allowance will apply to the heaviest articulated lorry and road train combinations of 44 tonnes or four-axle motor vehicles of 32 tonnes. As the noble Baronesses know, those are the standard limits and types of vehicle.

These regulations will also apply to certain smaller zero-emission lorries with two or three axles and zero-emission three-axle articulated buses. Alternatively fuelled versions of these types can already operate at up to one tonne above the normal limits.

A vehicle's power train consists of the components which generate power and then transmit it to the road to move the vehicle. Alternatively fuelled or zero-emission heavy goods vehicles may have a heavier power train compared to traditionally fuelled, heavy goods vehicles with internal combustion engines. For example, they may be fuelled by a gas stored in a pressurised fuel tank or they might use batteries. These components can be significantly heavier than a conventional petrol or diesel fuel tank and combustion engine used in an equivalent vehicle.

The typically heavier power trains of these vehicles means that, under the current vehicle weight limit rules, they may have to carry a reduced amount of cargo compared to an equivalent fossil-fuelled vehicle in order not to breach the weight limit. The higher weight of the empty vehicle essentially acts as a payload penalty. This decreases the commercial viability of these new types of cleaner vehicles, as more vehicles may be required to move the same amounts of cargo or they may just be restricted to moving lighter loads.

These regulations increase the maximum permitted weight for the relevant zero-emission vehicles by a flat two tonnes. That is most appropriate for a zero-emission vehicle, because the weight of the power train is usually significantly more than two tonnes. The weight limit increase for alternatively fuelled vehicles is up to one tonne, because it depends on the actual extra weight of

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the power train. That will be assessed and put into what I think is called the ministry certificate—the little chitty that goes inside the lorry and basically tells enforcers how much weight that lorry can take. It is key that these two things are different and are considered differently, because they take into account the variations and different features of the power trains of these cleaner vehicles.

However, the weight limit does not apply beyond the existing maximum for a six-axle vehicle of 44 tonnes. These vehicles are therefore within the current normal limits for infrastructure, such as roads and bridges. We see no reason why they cannot freely circulate on the road network. Furthermore, the per-axle weight is also not being changed because, if it is, one would see increased road wear and deterioration. It is also worth pointing out that operators in the European Union also have that flexibility and are using their vehicles when it comes to cabotage movements in the UK already, and there have been no significant issues.

There was a public consultation on this draft instrument, which ran from July to September 2021. There were 92 responses, with 59% in favour and 6% opposed, the remainder being "don't know". We obviously looked at the rationale and concluded that we were content to go ahead with that.

The only other thing to point out about the statutory instrument is that the regulations will include a requirement for the Secretary of State for Transport to conduct a review of them on a five-yearly basis, because there will be a rapid development in technology and they may not be appropriate in five years, for whatever reason. It is important to include that—but, otherwise, I see this as fairly straightforward, and I beg to move.

Baroness Randerson (LD): My Lords, I thank the Minister for her explanation. I understand the need for these changes for practical reasons, to develop and enable the rollout of the new generation of HGVs. I also realise that, as the Minister referred to just now, this measure is part of our international obligation derived from the TCA, if we want our goods vehicles to be able to operate abroad. But the Minister would be very surprised if I did not have some questions and comments.

She mentioned articulated buses, but what about non-articulated buses? I remember, about seven or eight years ago, having a ride on a prototype electric bus in the Westminster area, where it was made clear to us that there was a special dispensation for this bus. It was a two-level bus, not a single-storey bus. They made it clear that, because the battery was so heavy, there was a special dispensation to allow this bus to operate in the London area because of weight limits. Technology moves on and batteries may not be as heavy now, but it would be interesting to know where we are, because an awful lot of electric buses are being ordered at this moment.

That leads me on to an obvious question—to ask the Minister what we are talking about in terms of the number of goods vehicles, at which this is largely aimed, on our roads at the moment. Several paragraphs in the Explanatory Memorandum talk about this being the early stages of development, but we hope that this development is going to roll out very quickly, and it would be a good thing to have some kind of measure of what is happening at the moment. There will be—and this is severely underplayed in the Explanatory Memorandum—a cumulative impact on road structures, which are bad enough already in Britain. People are always complaining about the potholes and road surfaces, and there will be an impact on them.

Were the views of National Highways sought? Obviously, this will have an impact on its finances. Despite its name, National Highways is not in charge of motorways in Scotland and Wales, so were the views of the devolved Administrations sought? Looking at paragraph 10.4 of the Explanatory Memorandum, I think they probably were not asked. Of course, local authorities are in charge of local roads, and I am also interested in their responses about the impact of vehicles such as this on their road surfaces. The roads in the local area around a heavy goods vehicle depot are going to get quite a pasting over time.

I note that the consultation was two years ago. Why has there been a delay this long? Bits of the Explanatory Memorandum sound a bit out of date. It talks about the technology being in an "early stage", but things have moved on a lot since then. However, in paragraph 12.3, the EM mentions

"potential changes in accident severity".

This is a very serious issue, because heavier vehicles are more likely to kill when involved in an accident. The EM suggests, obliquely, the potential need for additional training and familiarisation, which could have a financial impact for businesses. Has any thought been given to formalising the need for additional training for the drivers of these bigger vehicles?

Before I move to my final point, I will mention the issue of road surfaces. I am stretching this a little, but I am sure the Minister saw coverage of the collapse of a multi-storey car park in America. That story led to a debate in the press about the impact of heavier vehicles—in that case, it was obviously cars and small vans. There will be a case for looking at and reinforcing our infrastructure. The Minister is clearly aware of it because she referred to the impact on bridges. Has the department looked at the impact on multi-storey car parks? Is there a programme to ensure that, before this technology is rolled out to a large percentage of people, the safety of car parks is reassessed?

My final point is that the impact on road surfaces and the possible training implications of this measure mean that there should have been an impact assessment and consultation with the devolved Administrations.

Baroness Taylor of Stevenage (Lab): I, too, thank the Minister for setting out the basis of these important regulations, which are fairly straightforward on the face of it. As she said, transport is our economy's biggest greenhouse gas-emitting sector and a huge amount of those emissions come from HGVs. The issues around commercial viability and making sure that there is no commercial disadvantage to those vehicles because they have an inherent weight disadvantage built in are also really important.

We have no objection to these regulations in principle. We also understand that the extensive consultation with the industry took place in 2021, with 59% of

respondents in favour. However, to add to the comments of the noble Baroness, Lady Randerson, this consultation was carried out over two years ago. In view of the urgency of tackling the climate emergency, can the Minister shed any light on why the regulations are only now being introduced? Was National Highways consulted on the regulations and on the long-term impact on the national roads infrastructure, which may be considerable?

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Other questions need to be answered, some of which the noble Baroness, Lady Randerson, has already referred to. There are concerns for all vehicle types about the impact of the additional weight of alternative and low-carbon fuel technology. Just last week, the AA was flagging-up the issue of weight for car parks. It is not just from America that the concerns are coming. Some of the car parks built in the 1960s and 1970s were not built to take the heavier vehicles that result from new technologies. I appreciate that, for the most part, HGVs will not be using multi-storey car parks, but this applies to all vehicles with alternative technologies.

The main issue arising from these weight amendments to HGVs is the potential impact on our crumbling road infrastructure, which is already bad enough. We have a backlog of 1.5 million potholes in the UK, and there is an estimated cost of £10 billion. While some very welcome funding has been provided to local authorities to tackle this, it is nowhere near enough to fill the gaps in funding—or the gaps in our roads—from successive rounds of cuts to local government funding. Our road infrastructure should reflect the needs of an economy that is aspiring to be the strongest in the G7—that is really important.

There are warnings from the industry about the impact on our roads, bridges and car parks of heavier vehicles. What assessment have the Government carried out to determine where there are vulnerabilities in the highways network which may be exacerbated by the introduction of these heavier vehicles? What steps are the Government taking to ensure that our roads, bridges and car parks remain safe, as well as around the potentially more serious issues such as accidental damage that may occur from heavier vehicles? Has any assessment been carried out where these new weight limits have been introduced, in other countries, in terms of their impact on the highways infrastructure? The Minister referred to this operating in Europe. Has there been an impact on roads, where it is already operating?

Local authorities are coming under increasing pressure regarding the provision of more charging points. Presently, there is insufficient funding available to provide these. For domestic and commercial vehicles, the successful transformation to more sustainable transport is dependent on the distribution of alternative fuel sources that they depend on, whether that be charging points or other alternative fuel sources. It seems that far too little attention is being given to this. Can the Minister comment on whether her colleagues in the DfT are consulting with the Department for Levelling Up, Housing and Communities about how this deficit in charging facilities and alternative fuel sources can be met?

Lastly, when these regulations were discussed in the other place, the Parliamentary Under-Secretary of State for Transport referred to the development of lighter technology which would not impose the additional weight burdens on our roads. He did not give any timescales for these improvements. I appreciate that with any technology, it is difficult to estimate how quickly it will develop significantly, but can the Minister give us any further information about discussions between the DfT and the industry in relation to developments in this respect?

Baroness Vere of Norbiton (Con): I am grateful to both noble Baronesses for their contributions to the debate this evening. I will answer as many of their questions as I possibly can although I am already aware that there is one or two I cannot. Therefore, as ever, a letter will be forthcoming.

I do not have any information on the first issue that the noble Baroness, Lady Randerson, raised about the double decker bus that she went on. They are not covered by these regulations. It is quite interesting that, in my many years as buses Minister, it was not something that came up in my discussions. I am assuming that the issue has been fixed and that the batteries are sufficiently light such that they fall under the standard regulations. If that is not the case, I will write to the noble Baroness.

One of the other things worth mentioning—this is where the noble Baroness, Lady Taylor, finished—is the question of where we are and where we are going to be. It is still very early doors on this. There are not significant numbers of these vehicles circulating. We are trying to make a small change to encourage more people to take them up. I am sure that the noble Baroness has seen things such as the zero-emission road freight demonstrators, into which we are investing £200 million. Those sorts of things are the trials to encourage these sorts of vehicles to take to the road. It is very early in their development but we think that we are getting slightly ahead of the game by ensuring that this is in place. There are some logistics companies operating their own trials with these kinds of vehicles because they can charge them within their depots. I suspect that, in five years' time, when we do the post-implementation review, we will be able to establish with greater certainty what the demand and pick-up rate look like.

It is also the case that this does not apply to vehicles that normally operate at 44 tonnes because, as the noble Baroness will know, that is the standard in the industry. It does have slight limitations but that limitation is not really fundamental in that we are not going to go over 44 tonnes. This means that the issues raised about increased road wear, the impact on bridges and training generally fall away, to my mind: the roads and bridges that we have already deal with 44 tonnes and these are all going to be less than 44 tonnes. The increase in road wear correlates to a one-fourth power of the weight on the axles: whatever the weight of the axle, you get a times four increase, or a power of four increase, in terms of the road wear. Again, though, we are not changing the weight there.

The point is that we are not going over the current limitations and, as I said at the outset, the numbers of these are still very small in the context of the tens of

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thousands of trucks that are out there. I do not see that there is a significant case for the wear and tear of roads; nor do I see that there would be significant issues for bridges at all because there will be plenty of other trucks going over that are heavier.

In terms of training, any trucker who is driving one of these new trucks will have been trained up to 44 tonnes anyway. They will probably need new training to operate the vehicle but we do not anticipate that there will be a significant change for driving. They will be used to driving heavier trucks and will probably have been doing it for a long time.

In terms of the infrastructure rollout, it is the case that goods vehicles are slightly behind the private car sector. As one can imagine, they are much more difficult to decarbonise. However, we are pushing forward and working with the industry in various forums that we have set up, such as the Freight Energy Forum, to think about what sort of infrastructure the industry needs and where it is going to need it. We will publish a zero-emission HGV infrastructure strategy in due course; that is being worked on at this moment in time. That will set out how we will charge the vehicles when we get them on the road.

I do not agree that there was a delay in bringing forward this SI. While the consultation was at the end of summer in 2021, there would have been analysis of the consultation and ministerial decision-making, then you get into the world of pain that is getting lawyers drafting and figuring out which law they will be drafting against. Statutory instruments take a surprisingly long time from the moment of intention—saying, "Yes, let's do this—to actually bringing it before the House. We have to make sure that they are right. I am always slightly surprised but, actually, this is a "business as usual" instrument. I do not think that there is a pressing need for it because it is not as if we have thousands of these vehicles desperate to go on the road. However, doing this is worth while. I am grateful for the support of both noble Baronesses for this instrument.

Motion agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, that concludes the business of the Grand Committee this afternoon. The Committee stands adjourned. If I may say so, it is immaculate timing because I think that we will be needed in the Chamber very shortly.

Committee adjourned at 6.55 pm.