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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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

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House of Lords

Tuesday 27 June 2023

2.30 pm

Prayers—read by the Lord Bishop of Bristol.

E-scooters and E-bikes: Battery Fires

Question

2.37 pm

Asked by ***Lord Foster of Bath***

To ask His Majesty's Government what plans they have, if any, to address the number of fires caused by lithium-ion batteries in e-scooters and e-bikes.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): My Lords, the Government are committed to ensuring that consumers are protected from unsafe goods through our product safety framework. We are undertaking a programme of activities on the fire risks associated with lithium-ion batteries for e-scooters and e-bikes. These include establishing a safety study to understand evidence for enforcement and public safety information; carrying out research to inform future regulatory activity and guidance on safety and standards; and working with fire and rescue services, among others, on safety messaging.

Lord Foster of Bath (LD): I thank the Minister for his reply, but I believe more urgent action is needed. After all, fires caused by lithium-ion batteries in e-scooters and e-bikes have quadrupled in number since 2020, costing millions of pounds and resulting in eight deaths and 190 injuries. Landfill sites are also experiencing a huge surge in lithium-ion battery fires, yet unsafe batteries and chargers are still being sold and there is no effective campaign to ensure safe recharging or disposal. So, with headlines such as, "Why do e-scooters and e-bikes keep exploding?", fire services, councils, insurance companies and safety campaigners, including Electrical Safety First, are calling for more urgent action. Will the Minister agree to a meeting to discuss industry-developed solutions so that action can now be taken quickly?

Lord Offord of Garvel (Con): I thank the noble Lord for that follow-up question. I assure all noble Lords that officials in three government departments are collaborating to address the issue of fires associated with e-scooters and e-bikes—specifically, the Office for Product Safety and Standards inside my own department, the Department for Business and Trade; the Home Office, which is interacting with fire services; and the Department for Transport, through the Office for Zero Emission Vehicles. Officials are proactively seeking the input and expertise of stakeholders from fire and rescue services, the National Fire Chiefs Council and London Fire Brigade, including their scientific advisers. Indeed, on 13 June, the Home Office hosted a meeting of senior officials from the relevant departments, London Fire Brigade and the National Fire Chiefs Council to further discuss the issues and the work which is under way.

Lord Cormack (Con): My Lords, is there not a very simple answer to these wretched e-bikes and e-scooters: to ban them? That would solve at least part of my noble friend's problem.

Lord Offord of Garvel (Con): I thank my noble friend for that welcome intervention. You might argue that this is the response of the consumer to messages about climate change—that the consumer is embracing the concept. Not only are they a cheaper mode of transport but they are much better for the planet. It is actually illegal to use an e-scooter on a public road and in spaces set aside for pedestrians, cyclists and horse riders—including pavements and cycle lanes—unless it is under licence. There are licences at the moment to allow trials to take place in 32 local authorities, in order to collect information to allow the DfT to work out how to proceed with this mode of transport.

Lord Rogan (UUP): My Lords, unlike in England and Wales, e-scooters are illegal on the roads in Northern Ireland, but that has not stopped their use, with an e-scooter rider left in a critical condition last month after colliding with a car in east Belfast. Furthermore, just last weekend, the Northern Ireland Fire and Rescue Service issued a warning after attending a spate of e-scooter fires caused by lithium-ion batteries. In the continuing absence of an Executive at Stormont, can I ask the Minister for an assurance that any future legislation brought forward by His Majesty's Government relating to Northern Ireland does not include the legalisation of e-scooters?

Lord Offord of Garvel (Con): I thank the noble Lord for his question on that specific matter in relation to one part of the United Kingdom, but this is not a UK-central issue: it is an international issue. New York is considering the whole gamut of proposals; its fire department has implemented a range of activities, which our Office for Product Safety is looking at. The U.S. Consumer Product Safety Commission has announced that it will hold a forum on 27 July to look at lithium-ion batteries and e-bikes after an increasing number of fires and fatalities. The Australian Competition and Consumer Commission has outlined lithium-ion batteries as one of its product safety priorities, while Barcelona has imposed a six-month ban on e-scooters on public transport and Paris has banned rental e-scooters. We are not alone in considering how to deal with this modern technology.

Baroness McIntosh of Pickering (Con): My Lords, can my noble friend the Minister tell us how many e-scooters are in legal circulation? Private e-scooters are to be driven only on private land, including car parks and private property; rented scooters are the ones that he referred to under pilot schemes. How many will go on to become permanently rented, lawfully and with a licence? Will licences soon be issued for privately owned e-scooters as well?

Lord Offord of Garvel (Con): I thank my noble friend. I do not have the precise number so I will write to her. She is absolutely right: it is currently illegal to use an e-scooter on a public road. It is legal to use an e-scooter on private land with the permission of the landowner. Any person using an e-scooter on a public road is breaching the law and committing a criminal offence so can be prosecuted. The Government are providing e-scooter trials in 32 local authorities, as I said. These trials are taking place and will continue until the end of May 2024. Transport for London has banned the carriage of e-scooters and e-unicycles on its premises and services, so this is being regulated heavily. In the meantime, the trials continue.

Lord Winston (Lab): My Lords, can the Minister kindly tell the House what methods other than lithium are being researched and how much the Government are spending on researching alternatives to lithium in batteries?

Lord Offord of Garvel (Con): That goes back to my department, the Department for Business and Trade, where the Office for Product Safety and Standards has established a safety study precisely to understand the data on and evidence of risks in the sector, as well as the alternatives; this will inform enforcement action. Specifically, the noble Lord will be pleased to know that a project is going on at the Warwick Manufacturing Group, which is part of the University of Warwick, in which intense conditions are being created to examine further the science and technology around this issue and the safety of lithium-ion batteries in personal light electric vehicles. Where the Office for Product Safety and Standards receives a notification that these products present a serious risk or need to be recalled, such notifications will be promoted on the product recalls and alerts websites, on social media and via stakeholders. I do not have a precise number on the amount for research, but I will write to the noble Lord with that figure.

Baroness Bull (CB): My Lords, in reviewing the success of the trial periods, will the Government consider parking, particularly of these dockless vehicles, and the impact on people with impaired vision and disabilities when such vehicles are left on pavements?

Lord Offord of Garvel (Con): Yes. I am sure that that will be included in the review.

Baroness Blake of Leeds (Lab): My Lords, the fire risks associated with lithium-ion batteries go beyond their use in e-bikes and e-scooters, adding to their wide-ranging risk in residential environments. Fire incidents caused by such batteries can also have severe environmental consequences due to the hazardous materials involved. Do the Government have any plans to work with manufacturers and recycling organisations to develop effective recycling and disposal methods for these batteries, ensuring that they are handled responsibly and minimising their impact on the environment?

Lord Offord of Garvel (Con): I thank the noble Baroness and say absolutely yes on all counts. This is all part of the ongoing review. The work being done with the fire service is collecting information to find out how much of the risk is caused by the batteries versus the way they are used by the consumer in the household and whether they are being charged in the right way and in the right place. The consultation is ongoing and the results are imminent. We are fully cognisant of those risks.

Baroness Randerson (LD): My Lords, fires are one problem, but poor design of e-scooters means a low centre of gravity, ensuring that a lot of people who have accidents have head injuries. The Minister talks about studies and plans. The trials have been going on for years. Can he give us a date when the Government will actually do something about this problem?

Lord Offord of Garvel (Con): The consultation has started and will be published imminently. The findings will be made available. Generally, it is not the Government's position to ban all dangerous items. Some modes of transport are more dangerous than others, but you choose your own mode of transport. Certainly, when it comes to affecting the public and increasing danger, that is exactly why the law prohibits these vehicles other than in a legal trial. With three departments working on this, I can safely say that the Government are alive to these issues.

Lord Harris of Haringey (Lab): My Lords, the Minister will recognise that lithium-ion batteries are used in a variety of products and not just e-scooters. What steps are the UK Government taking to ensure that we have sufficient supplies of lithium-ion, and are those supply chains from sources that do not involve modern slavery?

Lord Offord of Garvel (Con): That is a very far-reaching question. I will be delighted to write to the noble Lord on it.

Asylum: Channel Crossings

Question

2.47 pm

Asked by ***Lord Dubs***

To ask His Majesty's Government how many people since January have (1) crossed the Channel irregularly by boat, and (2) claimed asylum having done so; and how many of these asylum claims are awaiting a decision.

The Parliamentary Under-Secretary of State for Migration and Borders (Lord Murray of Blidworth) (Con): An overall total of 11,279 people have arrived in the United Kingdom by small boat since January of this year to today's date. From 1 March to 31 March, 3,362 asylum claims were raised from small boat arrivals, of which 3,306 are awaiting initial decision. The number of asylum claims made from arrivals from 1 April 2023 will be detailed in the next quarterly publication of statistics.

Lord Dubs (Lab): Can the Minister tell us how many of these people in the various categories were unaccompanied children? Is there any reason why unaccompanied children are barely mentioned in the impact assessment?

Lord Murray of Blidworth (Con): I will need to write to the noble Lord regarding the precise number of unaccompanied children in those statistics. We will be discussing the impact assessment in due course—to coin a phrase.

Lord Newby (LD): My Lords, some time ago, the Government pledged to eliminate the backlog of asylum claims by the end of this year. How is that going, and how confident is the Minister of that target being met?

Lord Murray of Blidworth (Con): On 31 December, the Prime Minister pledged to clear the backlog of 92,601 initial asylum claims; that relates to asylum claims made before 28 June 2022. One way this will be achieved is via the streamlined asylum process, which is centred around accelerating the processing of manifestly well-founded asylum claims. From 23 February, legacy claims from nationals of Afghanistan, Eritrea, Libya, Syria and Yemen will normally be considered through the streamlined asylum process. That means that a positive decision can be taken on the information available, and the claimant will not be substantively interviewed. I reassure the noble Lord that this work has progressed in terms of the recruitment of further caseworkers, and we hope to have 2,500 further caseworkers in place by September.

Baroness Gohir (CB): My Lords, of the numbers crossing the channel, how many are women and how many are pregnant women? I asked this question in writing during the debates on the Illegal Migration Bill; I got a response, but no clarity on numbers. Could they be shared today?

Lord Murray of Blidworth (Con): Clearly, I can provide a breakdown of those numbers, probably during tomorrow's debate. As far as I am aware, there were no pregnant women.

Lord Hamilton of Epsom (Con): My Lords, further to the question about children from the noble Lord, Lord Dubs, does my noble friend have any evidence that human rights lawyers are telling people who come here illegally on boats across the channel to say that they are children, when they are clearly not?

Lord Murray of Blidworth (Con): My noble friend is right that intelligence exists suggesting that people smugglers give information to those they smuggle. I am aware that allegations have been made against lawyers, but I would not like to say any more at this stage.

Lord Ponsonby of Shulbrede (Lab): My Lords, I first thank the noble Lord for facilitating my visit to RAF Manston and to Western Jet Foil a few weeks ago. During that trip, I was made aware of a cohort of youths who initially identify as adults because they want to work. Indeed, they may have been working in their home country since they were 13 or 14. Does the Home Office keep any record of whether this group is more likely to go missing or abscond, so that they can perhaps be identified earlier in the process, before they go missing?

Lord Murray of Blidworth (Con): I thank the noble Lord for that question, which is clearly important and I will find out the answer. I know that the noble Baroness, Lady Chakrabarti, has a Question about missing asylum-seeking children in the next fortnight, so I will report back to the House then and will of course write to the noble Lord.

Lord Singh of Wimbledon (CB): My Lords, refugees escaping the horrors of war and arriving in the UK in small boats last year constituted less than 5% of the annual number of immigrants. Can the Minister explain why, despite Christian teachings—with which we begin proceedings in this House—requiring that they be treated with care and compassion, the Government are making their harassment and deportation, at £170,000 a head, a national priority?

Lord Murray of Blidworth (Con): The noble Lord will not be surprised to learn that I disagree with him. The purpose of the Illegal Migration Bill is to deter dangerous crossings of the channel and other methods of illegal entry. This is an entirely responsible and appropriate policy step.

Baroness Lister of Burtersett (Lab): My Lords, following the question from my noble friend Lord Dubs, can the Minister explain why we still do not have a child rights impact assessment, so that we can assess the Government's argument that the Bill is in the best interests of children? All organisations, including children's commissioner, believe that it is not.

Lord Murray of Blidworth (Con): I am afraid that I cannot provide the noble Baroness with an update on the child rights impact assessment, but I am sure that it will be provided.

Baroness Jones of Moulsecoomb (GP): My Lords, I cannot understand why the Government are dead set on spending huge amounts of money on sending asylum seekers to Rwanda. In fact, we would be much better off if we let them work here, as most of them want to do. Have the Government thought about that at all—about making them taxpayers?

Lord Murray of Blidworth (Con): As I have said many times in this House while the noble Baroness has been present, the reason why asylum seekers are not initially allowed to work is in order to prevent a very large pull factor encouraging illegal migration.

Lord Reid of Cardowan (Lab): Can the Minister please give us the total figure of the number of asylum claims that have not been concluded? He gave a figure

[Lord Reid of Cardowan]
of 92,500, which, presumably, is the number of cases that have not been started. However, there may be many that have been started—a file has been opened—and which are excluded from that 92,500. Can the Minister give us the total number of asylum claims that have not been finished or started?

Lord Murray of Blidworth (Con): Of course, I do not have those statistics to hand but they are available on the GOV.UK website. The latest statistics release, covering 1 January 2023 to 31 March 2023, shows that during that period 3,793 people arrived in the UK having crossed the channel by small boat. The next quarter of statistics is due to be published on 24 August 2023. As the noble Lord is aware, the Home Office needs to ensure that information intended for publication meets the standards and requirements set for departmental publications.

Lord Empey (UUP): Can the Minister explain how this wretched illegal trade is allowed to be conducted in broad daylight from the shores of northern France? What would the situation be if the boats were going in the opposite direction? Would we allow the south coast to be used as a trading post for this illegal trade?

Lord Murray of Blidworth (Con): I thank the noble Lord. The answer is clearly that we would not, and I agree with the sentiment of his question.

Lord Hannay of Chiswick (CB): I thank the Minister for the letter he has put in the Library of the House recording that the UN Committee on the Rights of the Child has adopted a formal report saying that the Bill before the House, which we will discuss tomorrow, requires amendment if we are not to breach our international obligations. Will he bring us the good tidings that we are going to do something about that?

Lord Murray of Blidworth (Con): Tempting though it is to take up the noble Lord's invitation to predict what might happen tomorrow, I will not go down that avenue. If I may, I will answer the earlier question of the noble Lord, Lord Dubs. Some 12% of arrivals claim to be unaccompanied asylum-seeking children—of course, those are claims and are not confirmed—and 13% of arrivals are female, whereas 87% are male.

Baroness Symons of Vernham Dean (Lab): My Lords, the Minister has been unable to answer several questions raised today in this exchange. We have a debate tomorrow. Can he guarantee that he will look this evening at the questions he has been unable to answer and give perhaps a better account of what is going on? He has his officials in the box—many of us have been in that box before—and I hope he will look at what he has been unable to answer and be able to give a full account in the debate tomorrow.

Lord Murray of Blidworth (Con): The noble Baroness will have noticed that I actually provided answers in response to those questions a moment ago. I am afraid I resent the tone of her question. I will of course have at my fingertips relevant information for tomorrow's debate.

Deafblindness: Emerging Technologies

Question

2.58 pm

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

To ask His Majesty's Government what assessment they have made of the possibilities of emerging technologies to create new opportunities for people who are deafblind.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Viscount Camrose) (Con): The Government are continually reviewing and assessing the possibilities afforded by new and emerging technologies, particularly to support disabled people or anyone with specific access requirements. We believe we can achieve this by promoting bold discoveries, growing the economy, and being at the cutting edge of assistive and accessible technology—ATech. Our ambition is to make the UK the most accessible place in the world to live and work with technology.

Baroness Kennedy of Cradley (Non-Afl): My Lords, today is Helen Keller's birthday. Born in 1880, she was both deaf and blind, and was one of the most well-known deafblind people in history, as she campaigned tirelessly. That is why this week, the week of her birthday, is when Deafblind Awareness Week takes place.

I thank the Minister for his reply. There are more than 450,000 deafblind people in the UK, and Sense predicts that, by 2030, that number will increase to more than 600,000. Will the Government commit to increasing their work with major technology companies such as Google, which is actively co-creating assistive technology with and for people with complex disabilities? In particular, will the Government support those people with complex disabilities who are looking for work with the equipment that they need by the introduction of a fund to ensure that adequate assistive technology is available in all jobcentres?

Viscount Camrose (Con): I thank the noble Baroness for raising her Question this week, which is, of course, Deafblind Awareness Week. I take this opportunity to pass my very best wishes to those who suffer from the affliction and those who work with them.

The Government are working with providers of technology of all different sizes in this space. The noble Baroness referred to Google's new centre for technology for disabled people, which highlights its recognition that the UK is the right place for it to operate in this market. I could point to a number of fascinating new innovations by smaller organisations, but I will restrict myself to just one: BrightSign has created a life-changing AI-based smart glove, giving voice to the voiceless by enabling sign language users to communicate without an interpreter.

Lord Clement-Jones (LD): My Lords, the Minister rightly identified that there are many excellent technologies using smartphones and tablets that are designed to help those who are deafblind achieve greater independence. I too congratulate the noble Baroness, Lady Kennedy,

on raising this Question during Deafblind Awareness Week. What co-ordination role does the new department, DSIT, have in this respect—there are many departments, and a couple have been mentioned already—and what resources does it have to help with training and information on these vital technologies?

Viscount Camrose (Con): As the noble Lord rightly points out, identifying the appropriate technologies by scanning the horizon for those that will be of most impact and use is, and must be, a cross-governmental matter. I take every opportunity to urge my fellow Ministers to fight the good fight in this respect. DSIT's role is as the provider and exemplar of technology use to all of government and the public sector, and indeed all of the UK, but all government departments recognise their responsibility to continuously identify ways to use technology and to make technology in the United Kingdom as accessible as it can possibly be.

Lord Wigley (PC): My Lords, I support the points that the noble Baroness made and note the staggering figure of 450,000. Would it be possible for the Minister to extend the review to include work undertaken at universities? There may well be scope for co-ordinating that work to help not only them and deafblind people but those in the commercial sector who are looking for new ideas.

Viscount Camrose (Con): DSIT works extensively across universities on this and other programmes. In addition, the Government commission a range of research, particularly in the area of deafblindness, not least, for instance, into the procurement of hearing aids by the NHS.

Lord Bassam of Brighton (Lab): My Lords, we on our Benches very much welcome the research and development that is taking place, and the pretty unprecedented pace at which new technologies become available. However, this poses a challenge, not just for government departments, charities and individuals but for wider society. To pursue the points raised by the noble Lord, Lord Clement-Jones, I would like to pin the Minister down a bit more on what he sees as his department's role, and that of the Department of Health and Social Care, in accrediting and procuring these emerging technologies. He seems to suggest that departments should just get on and do it themselves, without any plan or strategy. That cannot be right.

Viscount Camrose (Con): I thank the noble Lord for that question. I certainly hope my remarks did not come across as me asking other ministries to merely improvise in this space. DSIT can contribute in three very important ways under the structure of the science and technology framework, the ambition of which is to make us a science and tech superpower by 2030. We can make three distinction contributions: first, by growing the economy overall through the use of science and technology; secondly, by driving innovation in all areas; and, thirdly, and most pertinently to this Question, by ensuring that the technology developed in this space is always as inclusive and accessible as it can possibly be.

Lord Borwick (Con): My Lords, I declare my interest as a trustee of the Ewing Foundation for deaf children. Does my noble friend the Minister agree that the progress of most children with sensory disabilities has been excellent, mainly due to dedicated teachers and modern electronics, such as cochlear implants, hearing aids and sound fields? However, these have to be maintained. Would it be a good idea for schools regularly to test their electronic equipment provided for the pupils to make sure it is working?

Viscount Camrose (Con): I thank my noble friend for the question and pay tribute to his ongoing work in this space. Supporting deaf children through the use of audiological equipment involves a range of government agencies, including the NHS, schools and local authorities' social care teams. If a child is deaf, NHS audiology services work with multidisciplinary teams, which include teachers for the deaf, paediatricians, speech and language therapists, and cochlear implant teams, as well as the parents and guardians, and between them they agree individual management plans. Children who use audiological equipment based on this plan should of course be offered regular appointments with their audiology team to check their hearing and ears and to ensure that their audiological equipment is working and adjusted as necessary.

Lord Patel (CB): My Lords, the Minister is right in recognising that smaller companies are developing technologies for the deafblind, without using the internet, combining spectacles and hearing aids. The important point is that, when these technologies reach maturity, they are available to people who are deafblind. Digital technologies for the deaf, for instance, are currently not available on the NHS and are quite expensive on the private market. We must make sure they are available on the NHS when these technologies mature.

Viscount Camrose (Con): I suppose the structural problem overall is that those who find themselves disabled, with whatever disability, are in a very small group, and the smaller the group, the more difficult it is for manufacturers of equipment to provide for them in a commercially viable way. The Government have a number of levers they can pull in this space: first, by commissioning research directly; secondly, by the public sector procurement programme—we spend on average £1.5 billion every year on procuring ATech; and, finally, by working with partner organisations, such as UKRI and Innovate UK, to seed and fund emerging technology in the ATech space.

Lord Foulkes of Cumnock (Lab Co-op): Is the Minister aware that the excellent "Strictly Come Dancing" winner, Rose Ayling-Ellis, who is herself deaf, has proposed that BSL lessons be given to everyone freely? What is the Government's response?

Viscount Camrose (Con): I very much enjoyed the interview on the radio today to which the noble Lord refers. The British Sign Language Advisory Board has been established to help advise the Government on the implementation of the British Sign Language Act 2022, which legally recognises BSL as a language of England,

[Viscount Camrose]
Wales and Scotland. It is important to note here that the BSL board has a reserved place for a deafblind person, and an additional member of the board is deafblind. We look forward to receiving and acting on its advice in this space.

Animal Torture: Online Videos
Question

3.09 pm

Asked by ***Baroness Hayman of Ullock***

To ask His Majesty's Government what assessment they have made of (1) the availability of animal torture videos on the internet, and (2) whether existing legislation is sufficient to punish people in the United Kingdom who are involved in the creation or promotion of such content.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Viscount Camrose) (Con): We are aware of the prevalence of appalling animal cruelty videos online and take this issue very seriously. The Animal Welfare Act 2006 is commonly used to tackle domestic animal cruelty and it is an offence under the Communications Act 2003, which can be used to address offensive material being circulated online, be it from the UK or not.

Baroness Hayman of Ullock (Lab): My Lords, the recent reports about the global network to encourage and film the torture of baby monkeys for profit were harrowing. Internet users wanted to see animals hurt with pliers and hammers and set on fire, and then they were paying to watch the results. My noble friend Lord Stevenson's amendment to the Online Safety Bill sought to add such severe animal cruelty to the list of priority offences, but it was rejected by the Government. I have read the *Hansard*, and it seems to me it was rejected because it was too difficult. Does the Minister agree that if an offence is illegal offline, it should be illegal online? If the Government are not prepared to include this in that Bill, will he commit to work with Defra to bring in the necessary animal welfare legislation?

Viscount Camrose (Con): The debate on this matter in Committee on the Online Safety Bill was well attended and certainly well received. The purpose of the Online Safety Bill is to intervene between the platforms on which the distressing images are published and the users who see those platforms. It is, first, for human beings and, secondly, for their experiences online. The appalling instances that the noble Baroness referenced, particularly in the BBC documentary, would themselves be covered by either the Animal Welfare Act or the Communications Act, both of which make those criminal offences without the need for recourse to the Online Safety Bill.

Lord Clement-Jones (LD): My Lords, these offences are bad enough by themselves, but does the Minister accept that there is a direct connection between animal cruelty and violence towards humans? If so, is this not yet another reason why the Government should use the Online Safety Bill to combat animal cruelty offences and make this a priority offence under the Bill?

Viscount Camrose (Con): I join the whole House in absolutely deploring these behaviours. The concern about adding animal cruelty offences to the Online Safety Bill is that it is a Bill built around the experiences online of human beings. To rearchitect the Bill around actions perpetrated or commissioned on animals runs the risk of diminishing the effectiveness of the Bill.

Lord Trees (CB): My Lords, needless to say, the behaviour referred to in this Question shows indescribable cruelty to animals. It is extremely concerning that anybody should do these things or, indeed, want to view them. It urgently emphasises the need for better regulation of the internet to reduce the danger of copying behaviour. Is the Minister aware—I fear that the noble Lord has just made him aware—of the increasing evidence that malicious cruelty to animals is a precursor, and can lead, to violent and abusive behaviour towards humans? Is this not another indication, were it needed, of why we need to better regulate the internet with regard to cruelty to animals?

Viscount Camrose (Con): I recognise the argument that increased cruelty to animals promotes further bad behaviour, including violence between humans, but I stress the point that the purpose of the Online Safety Bill is to bring into law a range of limitations on what can be published and what can be seen online by human beings. There are laws that effectively criminalise cruel behaviour to animals and the action of publishing evidence of cruelty to animals online; those laws just happen not to be the Online Safety Bill.

Lord Watts (Lab): My Lords, the Minister says that the Government are against cruelty to animals, yet we have just heard that the present legislation does not stop it. Is it not the case that we need regulation that will prosecute and convict people involved in these practices? Can he tell us how many people have been prosecuted so far this year for animal cruelty?

Viscount Camrose (Con): I have the numbers prosecuted for animal cruelty in my notes somewhere; I will happily write to the noble Lord.

Lord Vaux of Harrowden (CB): My Lords, at the moment the law we have been talking about has been preventing those who are perpetrating the harm and publishing it, but is there any merit in going after the people who are watching it and paying for it and have it on their computers—the consumers who ultimately are generating the harm at the end?

Viscount Camrose (Con): Indeed. I stress that laws preventing these behaviours are already in existence, and the Online Safety Bill supports those laws in some sense. If content is illegal, platforms are obliged to take it down. If content creates a risk of harm to

children, again, platforms are obliged to take it down. In the case of the largest platforms, the so-called category 1 platforms, if content violates their terms of service, they are obliged to take it down.

Lord Grocott (Lab): My Lords, if the Minister's central argument is that we do not need any amendments to the current Bill because these offences already exist, surely the response is that they are clearly not working because, from all the evidence we have heard, this cruelty is continuing. If the existing legislation simply is not working, surely the option of providing new legislation is precisely what is required.

Viscount Camrose (Con): I do not accept either that the existing legislation is not working or that, if it is not, the way to fix it is to make an amendment that redirects the Online Safety Bill in such a dramatic and fundamental way.

Lord Inglewood (Non-Afl): Does the Minister not agree that, on the basis of what has been said in the House today, there is clearly a problem? There appears to be some disagreement over exactly how that problem is to be solved, but does he agree that if there is a problem, it needs to be solved sooner rather than later?

Viscount Camrose (Con): I certainly agree that there is a problem. I am afraid that over the course of a year, the Social Media Animal Cruelty Coalition documented about 5,500 individual links to videos containing animal cruelty on the major platforms—YouTube, Facebook and TikTok—but globally the number of views of those incidents exceeded 5 billion. So I agree that there is a problem but I do not accept that the solution to it is a radical change to the Online Safety Bill, as was debated in Committee. I am open to working with my colleagues in Defra on what a more effective solution might be.

Lord Foulkes of Cumnock (Lab Co-op): Is the Minister aware that he is very lucky that my almost namesake, the noble Baroness, Lady Fookes, is not in the House today, otherwise he would be in dead trouble?

Viscount Camrose (Con): I am grateful for it.

Baroness Browning (Con): Would it be of help to my noble friend to consider that what we have heard today clearly sets out a difference between a crime of being cruel to an animal and what he proposes to bring forward in the Online Safety Bill? If in the Bill he simply added at the appropriate point—I am not familiar enough with it to know at exactly what point, but he will know—the words "and all sentient beings", would that not include some of the animals we are talking about? It would not cover them all since there are other living creatures that would not be regarded as sentient, but certainly primates would be, and they have been mentioned today. Would that help my noble friend? Clearly there is a difference. I say this as someone who had ministerial responsibility many years ago for the welfare of farm animals. Would that not solve the problem? Could he at least explore it?

Viscount Camrose (Con): I am happy to explore all creative and inventive solutions to the very real problem of reducing not only cruelty to animals but people's deplorable enjoyment of that cruelty.

Business of the House

Motion on Standing Orders

3.19 pm

Moved by ***Lord True***

That Standing Order 44 (*No two stages of a Bill to be taken on one day*) be dispensed with on Tuesday 4 July to allow the Finance (No. 2) Bill to be taken through its remaining stages that day.

Motion agreed.

Illegal Migration Bill

Order of Consideration Motion

3.20 pm

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

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 5, Schedule 1, Clauses 6 to 14, Schedule 2, Clauses 15 to 68, Title.

Motion agreed.

Illegal Migration Bill: Economic Impact Assessment

Commons Urgent Question

3.20 pm

The Parliamentary Under-Secretary of State for Migration and Borders (Lord Murray of Blidworth) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given by my right honourable friend the Minister for Immigration to an Urgent Question in another place on the publication of the economic impact assessment on the Illegal Migration Bill. The Statement is as follows:

"The Illegal Migration Bill is critical to stopping the boats. Its intent is clear: if you come to the United Kingdom illegally, you should be detained and swiftly returned to your home country if safe or relocated to a third country such as Rwanda. This will help break the business model of the people smugglers, save lives and deter small boat crossings.

The impact assessment published yesterday makes it clear that inaction is simply not an option. The volumes and costs associated with illegal migration have risen exponentially, driven by small boat arrivals. Unless we act decisively to stop the boats, the cost to the taxpayer and the damage to society will continue to grow.

The asylum system currently costs £3.6 billion a year and £6 million a day in hotel accommodation. The impact assessment estimates that, at current spending

[Lord Murray of Blidworth]
levels, the Bill would need to deter 37% of arrivals to enable financial savings for the taxpayer. However, the cost of accommodating illegal migrants has increased dramatically since 2020. If these trends continue, the Home Office will be spending over £11 billion a year, or over £32 million a day, on asylum support by the end of 2026. In such a scenario, the Bill would need to deter only 2% of arrivals to enable cost savings.

The impact assessment suggests that passing this Bill could save the UK taxpayer over £100,000 for every illegal migrant deterred from making a small boat crossing. It also found that the Bill could lead to wider benefits, including reducing pressures on local authorities, public services and the housing market.

There is clear evidence that policies such as this have a significant deterrent effect. We considered evidence from Australia. Its Operation Sovereign Borders reduced the number of illegal maritime arrivals to Australia from around 18,000 in 2013 to virtually zero in subsequent years.

The British public are clear that they want to stop the boats. That is why we must keep using every tool at our disposal to stop the boats, and why this Bill must become law."

3.23 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, yesterday the Government released an impact assessment on the Illegal Migration Bill, two days before the first day of Report on the Bill, contrary to the principles of HM Treasury's Green Book and the Better Regulation Framework guidance to departments. The impact assessment does not contain an explanation of the costs and benefits, does not outline alternative policy options and was not published on the same day that the Bill was introduced.

The impact assessment quite literally states that it has

"not attempted to estimate the total costs or benefits of the proposal".

It also does not consider anything other than either implementing the Bill as a whole or not implementing the Bill at all. Do the Government believe there are any other options?

The timing of the impact assessment's arrival has prevented the other place from improving it with its scrutiny. A significant proportion of the time set aside in this House has been taken up discussing the arrival of the impact assessment. Does the Minister think this is good policy-making procedure?

If this House is to perform its critical function of scrutinising legislation, it is necessary for us to have complete, comprehensive and timely information about the basis on which policy choices are made and the reasons alternative options have been rejected. Can the Government now explain why an impact assessment for such a significant Bill does not conform to government guidance on policy communication with Parliament?

Lord Murray of Blidworth (Con): I thank the noble Lord. The answer is that there are no other options. The option before the House tomorrow and on succeeding days is the Bill; the alternative is the present scenario, which is not tolerable, in the Government's view. On the questions about the timing and context of the impact assessment, it was drafted, obviously, in the context of the need urgently to address the dangerous and illegal crossings of the channel. Accordingly, the legislation and the IA were prepared in order to address that problem at speed. It is also the case that the Rwanda scheme was the subject of a legal challenge in the courts, and clearly it was appropriate to take that into account in preparing the impact assessment.

On the question about whether the impact assessment complies with government guidance, I suggest that, in the context of the Bill, it does. It sets out, so far as can be ascertained, the likely impact. But this Bill, like others, is predicated on a strong theory of deterrence, and it is therefore important to note that it is hard empirically to provide detailed statistics, because the purpose of the Bill is to deter the illegal crossings, as the noble Lord acknowledges.

Lord German (LD): My Lords, it is no wonder that we have had to wait so long for this impact assessment, because it makes very uncomfortable reading for the Government. It tries to justify the unjustifiable by leaving out the costs of so many pieces of the project. It is certainly not rigorous: uncertainty is mentioned 24 times and the Government have looked at only one option. As the House heard in Committee, the Government could have made other choices. This IA cements in uncertainty because it fails to provide a sensible view of the cost consequences, given the outcome of a policy that does not distinguish between those fleeing for their lives and safety, and others.

The impact assessment does not measure the impact on local authorities. It does not measure the impact on the budget of not having the third countries to remove people to, with people having to remain in limbo. It also does not measure the impact on children and the victims of modern slavery, who are not able to obtain protection and support. In essence, this impact assessment has more holes than a Gruyère cheese.

Are the Government diverting resources from reducing the backlog in order to resource the implementation of the illegal migration legislation? That comment has been made in the media throughout the last week: people are being diverted from reducing the backlog in order to make sure that the Bill is resourced.

The impact assessment is clear that, if the deterrent does not work and the numbers arriving do not change, costs will be higher, so why has the range of costs left out the development costs to implement the project? Where is the cost in this assessment of containing more—

Noble Lords: Too long!

Baroness Williams of Trafford (Con): My Lords, I remind noble Lords that there are 10 minutes for a UQ. Therefore, if noble Lords kept their comments to a minimum, we could get through more questions.

Lord German (LD): The Government say that this is an "illustrative analysis"—it certainly provides more illustrations than proper analysis of the costs.

Lord Murray of Blidworth (Con): I do not accept the premise of the noble Lord's question, if that is what it was. The impact assessment published yesterday supports the need for change, sets out the broad costs of implementing the Bill, outlines potential savings, and highlights examples of where policy and operations have delivered an impact on illegal migration in other countries. For example, it shows that, for every illegal migrant deterred from making these crossings, the Bill will save the taxpayer £106,000, rising to £165,000 if current trends in accommodation costs continue.

Lord Carlile of Berriew (CB): My Lords, can the Minister advise the House as to what weight should be given to this financial and legal impact assessment alongside the damage caused to the consistency of our domestic law and the terrible damage being done to our reputation as a keeper of international treaties?

Lord Murray of Blidworth (Con): As I made clear during its earlier stages, the Bill introduces a new legal regime, and it is the Government's view that it is consistent with our international obligations, which we always strive to meet. It is right that the facts in this impact assessment, and in the overall assessment of the situation made by the Government, are in favour of this legislation.

Baroness Lister of Burtersett (Lab): My Lords, the Statement said that the Bill will have a deterrent effect and that there was strong evidence of that effect. Could the Minister therefore explain why the impact assessment says that

"it is not possible to estimate with precision the level of deterrence that the Bill might achieve"?

It refers also to:

"The academic consensus … that there is little to no evidence suggesting"

such a deterrent effect.

Lord Murray of Blidworth (Con): I refer the noble Baroness to the answer I gave in relation to the evidence from Australia, and, in particular, to paragraph 38 of the impact assessment.

Lord Watts (Lab): My Lords, the Minister used Australia as an example, but has he not noticed that the channel is 20 miles across? With Australia we are talking about thousands of miles, so there is no comparison to be made. How much will the £170,000 to Rwanda cost? What is the budget for that element, and is it built into the assessment?

Lord Murray of Blidworth (Con): Yes, I had noted the geographical distinction, but I suggest to the noble Lord that, in theory, the principle is the same: if you arrive here illegally, you will be detained and removed. That has worked in the context of Australia. As for the second part of his question, yes, the impact assessment does assist in the financial planning of the budget and strongly favours progression with the Bill.

Lord Hunt of Kings Heath (Lab): My Lords, in the other place, Theresa May said:

"The Home Office knows that the Bill means that genuine victims of modern slavery will be denied support".—[*Official Report*, Commons, 13/3/23; col. 593.]

In this House, we were very proud of the Modern Slavery Act, so why are the Government dismantling its provisions?

Lord Murray of Blidworth (Con): As the noble Lord is aware, it is the intention of the Bill to create as a tight a framework as possible, and there is a risk that a loophole would be created if the modern slavery provisions were left unamended. That is the purpose of the provisions on modern slavery in the Bill.

Lord Cormack (Con): My Lords, that is no answer to the noble Lord. The Modern Slavery Act was introduced by the Government, supported by us on this side, and received with pride in all parts of the House. It is being unravelled and there is no proper excuse for that.

Lord Murray of Blidworth (Con): The noble Lord will not be surprised to learn that I do not agree with him.

Social Housing (Regulation) Bill [HL]

Commons Amendments

3.33 pm

Motion on Amendments 1 to 12

Moved by ***Baroness Scott of Bybrook***

That this House do agree with the Commons in their Amendments 1 to 12.

1: Clause 4, page 3, line 40, leave out "follows" and insert "set out in subsections (2) to (6)"

2: Clause 4, page 4, line 16, at end insert—

"(7) In section 202 of the Housing and Regeneration Act 2008 (inspections: supplemental) omit subsections (4) to (7)."

3: Clause 12, page 11, line 30, leave out "with the day after the day on which" and insert "when"

4: Clause 12, page 12, leave out lines 5 and 6 and insert—

"(d) a notice of the appointment of an administrator of the provider under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 is filed with the court under paragraph 18 or 29 of that Schedule;"

5: Clause 12, page 12, line 41, at end insert—

"(ea) in subsection (3), for the words from "period," to the end substitute "period if—

(a) the regulator has made reasonable enquiries with a view to locating secured creditors of the registered provider, and

(b) where the regulator located one or more such creditors, each of them has consented to the extension.";"

6: Clause 12, page 12, line 41, at end insert—

"(eb) in subsection (5), omit the words from "if" to the end;"

7: Clause 12, page 12, line 43, at end insert—

"(4) In section 147 (further moratorium), in subsection (3), for the words from "period," to the end substitute "period if—

(a) the regulator has made reasonable enquiries with a view to locating secured creditors of the registered provider, and

(b) where the regulator located one or more such creditors, each of them has consented to the further moratorium.""

8: Clause 12, page 12, line 43, at end insert—

"(5) In section 151 (appointment of interim manager during moratorium), in subsection (4), for paragraph (b) (but not the "or" following it) substitute—

"(b) when the regulator notifies the interim manager that there are proposals under section 152 which are agreed proposals,".

(6) In section 153 (procedure for proposals made during moratorium)—

(a) in subsection (1), after paragraph (b) insert—

"(ba) if the regulator is able to locate any secured creditors of the registered provider after making reasonable enquiries, those creditors,";

(b) after subsection (1) insert—

"(1A) If no secured creditors are located for the purposes of subsection (1), the proposals made by the regulator following the consultation required by that subsection are agreed proposals for the purposes of this group of sections.";

(c) in subsection (2)—

(i) for the words before paragraph (a) substitute "Where the regulator locates one or more secured creditors of the registered provider for the purposes of subsection (1), the regulator must, before making proposals, send a copy of draft proposals to—";

(ii) for paragraph (b) (but not the "and" following it) substitute—

"(b) the secured creditors located for the purposes of subsection (1),";

(d) in subsection (3), in the words before paragraph (a) for the words from "The regulator" to "bringing" substitute "If the regulator sends draft proposals under subsection (2), the regulator must also make arrangements for bringing those";

(e) for subsection (4) substitute—

"(4) If each secured creditor to whom draft proposals were required to be sent agrees to them by notice to the regulator, the draft proposals become agreed proposals for the purposes of this group of sections.";

(f) in subsection (5)—

(i) in the words before paragraph (a) for "Proposals" substitute "Draft proposals";

(ii) in paragraph (a), for "proposals were sent" substitute "draft proposals were required to be sent";

(g) in subsection (6)(b)—

(i) for "its" substitute "any";

(ii) for "the original" substitute "draft";

(h) for subsection (8) substitute—

"(8) The regulator may make proposals amending agreed proposals; and this section and section 152 apply to such proposals.""

9: Clause 12, page 12, line 43, at end insert—

"(7) In section 158 (assistance by regulator in connection with proposals), in subsection (1), for "the agreement of proposals" substitute "the regulator deciding whether to exercise the power under section 152 to make proposals and (if proposals are made) the proposals becoming agreed proposals"."

10: Clause 21, page 17, line 22, at end insert "("relevant individuals")"

11: Clause 21, page 17, line 26, leave out from beginning to ", and" in line 27 and insert "relevant individuals,"

12: Clause 21, page 17, line 28, leave out "such" and insert "relevant"

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, with the leave of the House, as well as moving that this House do agree with the Commons in their Amendments 1 to 12, I will also speak to all the other Commons amendments.

I am pleased to bring the Bill back to the House and to see the progress that it has made since it left. This legislation seeks to drive the change that we know is so desperately needed in the social rented sector. It is vital that everyone learns from the mistakes that led to the Grenfell Tower tragedy, and the Bill will ensure that social housing tenants receive the protection and respect that they deserve. The Grenfell community's tireless campaigning will leave a legacy of real change to social housing in this country.

The need to drive up the quality of social housing and rebalance the relationship between tenants and landlords was also thrown into sharp relief by the tragic death of Awaab Ishak. I know that Awaab's father is watching today, and I know that I speak for all of us when I say that my thoughts remain with the Ishak family. I thank the family, along with Shelter and the *Manchester Evening News*, for their steadfast campaigning on Awaab's law. This law will make a real difference to people's lives, and I hope that it brings some degree of comfort to all those who knew and loved Awaab.

As I shall set out, the Government have listened carefully to the points raised, both in this House and in the other place, and tabled amendments in the other place to strengthen the legislation to its fullest extent. Commons Amendments 10, 11, 12, and 13 amend the clauses added by this House on competency and conduct standards and make provision for them to require that senior housing managers and senior housing executives have, or are working towards, appropriate level housing management qualifications.

We have also tabled a further amendment to the Bill to ensure that relevant managers employed by organisations which deliver housing management services on behalf of a registered provider are captured by the legislation, as was our original intention. I thank the noble Baroness, Lady Hayman of Ullock, for bringing the need for this amendment to my attention. This amendment will require registered providers to take steps to secure that relevant managers of these delegated services providers are qualified.

Our amendment also introduces implied terms into the contractual agreements between registered providers and delegated services providers and relevant sub-agreements, stipulating that their relevant managers should have, or be working towards, a specified qualification in housing management. This enables registered providers to take action against delegated services providers who are not compliant. These amendments, which have been welcomed by Grenfell United and Shelter, will drive up professional standards and the quality of housing services across the sector.

I turn to the amendments that we tabled in the other place on Awaab's law. I am sure that I am not alone in saying that I was deeply shocked and saddened by the tragic death of Awaab Ishak. Commons Amendment 28 takes a power for the Secretary of

State to set out requirements for landlords in secondary legislation to investigate and rectify hazards within a certain time. The amendment also inserts an implied covenant into tenancy agreements that landlords will comply with the requirements prescribed in regulations; this will impel landlords to deal with hazards such as damp and mould in a timely fashion, knowing that, if they fail to do so, they can face legal challenge from residents.

We have also introduced Amendments 14, 15, 17 and 29, which will ensure that the regulator sets standards for landlords to provide tenants with information about how to make complaints, and about their rights as tenants.

Commons Amendment 27 will give the ombudsman explicit statutory power to publish guidance on good practice, alongside the power to order landlords to complete a self-assessment if the ombudsman has received a relevant complaint about a landlord.

Amendments 1 and 2 repeal the provisions in the Housing and Regeneration Act 2008 which provide a specific power to enable the regulator to charge fees for inspections. Those fees will be recoverable under the regulator's fee-charging powers under Section 117 of the Housing and Regeneration Act 2008, so the specific inspections power is now unnecessary.

Amendments 3 to 9 are technical amendments concerning moratorium procedures when the regulator is unable to locate any secured creditors.

Amendment 16 removes Clause 24 relating to energy demand, which was inserted into the Bill by this House. Although we are sympathetic to the aims of the clause, and we agree with the need to continue progress on making social homes warmer and more energy efficient, we do not believe it is appropriate to set consultation parameters without ministerial oversight. We recognise that the sector would benefit from clear standards to support energy efficiency improvements: that is why we announced that we will consult on standards for improving energy efficiency in the sector within six months of the Bill receiving Royal Assent. We remain committed to this, and officials have already begun work on this consultation. I am able to give noble Lords here today an indication of some of the areas for consultation. We will ask what the appropriate compliance date is for meeting an energy efficiency standard, what energy performance metric this should be measured against and what, if any, exemptions are appropriate.

Amendments 18 to 21 and 23 to 26 deliver technical changes that will ensure that, during a survey or emergency remedial action, any decision to leave equipment or materials on the premises takes into account the impact of that on tenants.

Amendment 22 amends requirements relating to the production and publication of an inspector's report following the completion of an inspection. These amendments provide that the inspector must produce a summary of findings, as well as a report on any matters specified by the regulator. Amendment 31 was tabled to remove the Lords privilege amendment in Committee in the other place.

Amendments 32 to 51 deal with notices under Sections 104 to 108 of the Housing and Planning Act 2016. These amendments ensure that technical requirements relating to notices do not prevent the legislation working effectively, and help make provisions relating to insolvency easier for the regulator to operate.

Finally, Amendment 53 introduces a provision to clarify the relationship between the data protection legislation and Part 2 of the Housing and Regeneration Act 2008. I beg to move.

Lord Best (CB): My Lords, I welcome the Commons additions to this important Bill. As a prelude, I thank the Minister for the earlier amendment she promised and delivered before the Bill left your Lordships' House. This created the duty for the social housing regulator to carry out regular, routine inspections rather than just looking at the social landlord's accounts and paperwork. This amendment had been earnestly requested by the Grenfell United group, which has campaigned tirelessly to improve key aspects of social housing regulation. If only the regulator's team had made an inspection visit to the social landlord of Grenfell Tower and talked to residents, it would have been obvious that all was not well. The Minister has taken a close personal interest in the aftermath of the Grenfell tragedy, and I congratulate her on the amendment she brought forward which will now ensure routine inspections are a key part of the regulator's future role.

I now welcome Commons Amendment 17, Awaab's law, which will strengthen the role of the regulator in requiring social housing landlords to deal swiftly with problems of disrepair. Sadly, some housing associations and some councils have not been on top of these issues, with tragic consequences. There is a need now for some serious investment in the upgrading of outdated public housing, mostly from the 1960s and 1970s. As well as encouraging social landlords to listen more attentively to the matters raised by their residents, I hope we are moving to an extension of the ombudsman role, which will cut down the need for some of the sharp practices of the no-win, no-fee lawyers, who can exploit tenants' predicaments. There is more to do here.

In particular, I greatly welcome the new Amendment 13B, which covers standards relating to competence and conduct. This amendment is of particular concern to the Grenfell United group and is intended to achieve greater professionalism of the social housing sector, requiring senior housing managers and executives to have or to work towards relevant qualifications. The noble Baroness, Lady Sanderson, raised these issues on behalf of Grenfell United when the Bill was in this House. We have had to wait until conclusions were reached in the other place to amend the Bill accordingly, but the wait has been worth while and I pay tribute to the noble Baroness.

These Commons amendments to Clause 21 will, over time, see the social housing sector properly "professionalised". This approach was advocated for personnel managing privately rented and leasehold properties by the Government's working group on the regulation of property agents, which I was pleased to chair. That badly needed change has yet to come about for the private rented sector, although the matter may be raised in the forthcoming Renters (Reform) Bill or the leasehold reform Bill. In the meantime, measures akin to those proposed for managers of privately rented homes will now be applied by this Bill

[Lord Best]
to the management of the social housing sector. This enhancement of the skills of social housing personnel will greatly increase the role and responsibilities of the Chartered Institute of Housing, which is well able to play a vital role here.

3.45 pm

There will be a cost and some disruption during the transitional period in implementing this new requirement for social landlords. These bodies currently face a whole range of other challenges: upgrading their "non-decent" properties, as I have mentioned, fixing building safety issues, grappling with costs rising higher than their rents and contending with higher interest rates and skills shortages. Social landlords might have been expected to resist the extra burden that will come from enhancing the professionalism of their workforce, but I am delighted that the National Housing Federation and senior figures in the sector have welcomed the new obligations and will engage very positively in shaping the new regime in due course. This will undoubtedly make for a more skilled and better-performing social housing sector. I hope the Grenfell team will be pleased that its input has proved so influential. I commend these amendments.

Baroness Hayman (CB): My Lords, I declare my interests as co-chair of Peers for the Planet and in that I have a family member currently working in the field of energy efficiency. I will respond to the Government's Motion to agree with the Commons in its Amendment 16. It removes Clause 24, on energy efficiency, which was inserted with cross-party support on Report. Our amendment sought to ensure a comprehensive approach to energy efficiency for tenants in social housing, to reduce their costs and to improve living conditions. It would also have cut the costs to government—and the taxpayer—of subsidising energy bills and helped with energy security and achieving the Government's target of reducing energy demand by 15% by 2030.

The importance of energy efficiency has been highlighted by numerous committees and reports from this and the other place, including one recently from the Public Accounts Committee which highlighted the problems so far with energy efficiency schemes, including the lack of coherence. It said they had been "fragmented" and that

"stop-go activity has hindered stable long-term progress towards government's energy efficiency ambitions."

It is important that real progress has been made during the passage of this Bill. We should remember that, at an earlier stage, energy efficiency was added to the objectives of the Regulator of Social Housing, with the support of the Government. I pay tribute to the work of the noble Baroness, Lady Pinnock, in achieving that end.

The Minister and her officials have been generous with their time in discussions prior to today's proceedings —I am very grateful for that—in which she stressed the centrality of consultation with the sector before imposing standards. We have made progress, as she said, with a commitment to publish a consultation within six months of Royal Assent. As the Minister has heard me say before, in the past, the Government have been rather better on publishing consultations than responding to them, and much better than on actioning the policy that was their original subject. Can she give any further reassurances about timelines for a government response to the consultation and the provision of a final plan to improve the energy efficiency of social housing within 12 months of Royal Assent?

While we have not made as much progress as I would have wished on this issue, we all understand that the priority of the Bill has been the urgent need for effective regulation of social housing, and I completely recognise any concerns about diverting from that central objective. I also recognise that energy efficiency is an issue not just for the social housing sector but across the whole of our housing stock. It arises mainly from the quality, or lack thereof, of that housing stock. As the Minister knows, I have tabled amendments to both the levelling-up Bill and the Energy Bill to try to address what we are talking about in this Bill: the need for a long-term strategic plan of action which would include but not be exclusive to the social housing sector.

This is an issue to which we will return, but I hope the Minister can give me some reassurance on the issues I have raised when she sums up.

Baroness Pinnock (LD): My Lords, amazingly, it has been eight months since this House last discussed the Bill. At that time, I welcomed it and many of the details it provided to improve the regulation of social housing. However, across the House, noble Lords challenged the Government to think again on some of the detail of the Bill. The noble Lord, Lord Best, and the noble Baroness, Lady Hayman, have outlined some of the ways in which the Bill was challenged and subsequently improved.

I am pleased to say that some of the government amendments in the Commons have indeed built on the amendments made on Report in this House. I particularly support Commons Amendment 13, which sets new professional standards for senior social housing managers, as I do the power for the ombudsman to provide best practice guidance. Those are two great improvements made to the Bill since it first started in this House.

The Commons also introduced into the Bill "Awaab's law" in memory of the tragic death of two-year-old Awaab Ishak, which was caused by appallingly damp and mouldy conditions in the flat where he and his family lived. The response of the social housing landlord was shockingly neglectful—and, as it turned out, fatally neglectful for poor young Awaab. I congratulate the Government on introducing that new clause to address those responsibilities and to ensure that social landlords properly address what is described in the amendment as "prescribed hazards". Let us hope that this is sufficient to ensure that no family lives in such dreadful conditions again—albeit it applies currently to social housing only.

Finally, although I am pleased that on Report the Government accepted my amendment to include energy efficiency as a core responsibility of the regulator, I am disappointed that they have not been able to be as positive about the amendment in the name of the noble Baroness, Lady Hayman, agreed by this House, which contained a comprehensive approach to energy efficiency that my simple amendment failed to do. We have a challenge as a country, and the Government

have a responsibility to make changes so that homes are warmer and less expensive to heat. There was an opportunity to do so; unfortunately, the Government failed to accept it.

However, I am pleased that the Government and the Minister have agreed to consult—although, as always, the caveat is the question of what that will lead to, as the noble Baroness, Lady Hayman, alluded to. I am sure that the noble Baroness and many of us in this House will scrutinise closely the outcome of such a consultation. This is an important matter. We need to get it right. People should not be living in cold homes because they cannot afford to heat them. If the Government have the power to make a change, we will press them to do so.

I want to end on a positive note. We on these Benches support the Bill and trust that social housing tenants will see the benefits that it should bring.

Baroness Hayman of Ullock (Lab): My Lords, this is a really important Bill. I am pleased to see it reach this stage; we have supported it all the way through. It has been a pleasure to work on a Bill that I think is the kind of Bill we ought to be doing. It is short, it is focused and it has a Minister who listens. That has been extremely good to work with. I am really pleased to see the government amendments that have been put forward, in particular those around professionalisation. I also pay tribute to the noble Baroness, Lady Sanderson; her work during the passage of the Bill was exceptional and is, I am sure, one of the main reasons why we have these amendments before us today. On Awaab's law, I join the Minister and other noble Lords in paying tribute to his family.

I am pleased that the Government have listened to the concerns raised by the arm's-length management organisations and tenant management organisations, as well as the National Housing Federation, in bringing forward the amendments that dealt with the concerns there.

The noble Lord, Lord Best, welcomed the promised amendment on inspections that was so important to Grenfell United. We are absolutely delighted that the Minister has brought forward those amendments today. I want to thank Grenfell United, Shelter and the Ishak family for their work and support during the passage of this Bill; it has helped us to keep the important issues at the centre and as the focus of what we need to achieve.

I thank the noble Baroness, Lady Hayman, for pushing the energy efficiency amendments, which are really important. It is good that we did not lose sight of them during the Bill's passage and that we have made some progress. I also thank the noble Baroness, Lady Pinnock, for bringing forward her amendment on that.

I thank the Minister and her officials for their time and their constructive approach to working with us, the Opposition, and other noble Lords during the Bill's progress through the House. It has enabled us to make what was a good Bill a much better Bill—one that is more fit for purpose.

Finally, I thank my noble friend Lady Wilcox for her invaluable help and support. I am sure that we are now both looking to see the Bill go on to the statute book, so that we can raise our eyes up and look forward to the Renters (Reform) Bill.

Baroness Scott of Bybrook (Con): My Lords, I am grateful to all noble Lords who have contributed and for the wide-reaching support for this important Bill. In particular, I thank my honourable friend the Member for Bishop Auckland for steering the Bill so ably through the other place. I also thank the department's Bill team, all the policy and legal officials, and my private office team, who have worked hard over the past year to deliver this legislation through both Houses. I especially thank the House authorities, parliamentary staff, clerks and doorkeepers, and all noble Lords who have contributed to the evolution of this Bill.

4 pm

On 28 March, the Senedd passed a legislative consent Motion on the Bill. I thank Welsh government officials for their collaboration on this Bill in the best interests of both our Governments.

We have just passed the sixth anniversary of the Grenfell Tower tragedy. I again pay tribute to all members of the community who have worked with government over several years to shape this Bill. The Grenfell tragedy must never be allowed to happen again. The Bill will ensure that social housing tenants benefit from better quality housing, with a wide range of measures designed to improve the complaints system for residents and drive up the competence and conduct of housing staff.

The tragic death of Awaab Ishak highlighted how vital it is that decisive action is taken to improve the standard of social housing across the country. Tenants should expect safe, decent homes from their landlords. The Bill now contains a clause on Awaab's law, the intent of which is to safeguard against a repeat of such a terrible but preventable loss.

We have taken the power for the Secretary of State to impose requirements on social housing landlords in secondary legislation to rectify hazards or rehouse residents within a certain time, which will provide protections to tenants and empower tenants to challenge their landlords for inaction. The Bill will also strengthen the powers of the regulator, so that it can issue unlimited fines to failing landlords, enter properties to survey them with only 48 hours' notice and make emergency repairs where there is a serious risk to the tenants.

At this point, I would like to personally say thank you to a few people. First, I thank the noble Lord, Lord Best, for his support; his experience in this sector has been hugely useful to me, and I thank him for the very positive challenge that he has given me.

I understand how important the energy efficiency amendment was to the noble Baronesses, Lady Hayman and Lady Pinnock. We are committed to publishing a response as soon as possible. The Government see energy efficiency as a core part of creating warm, decent homes, and our plan is to do this in tandem with our consultation on the new decent homes standard. I assure the noble Baronesses, and the noble Baroness, Lady Hayman of Ullock, who also has an interest, that I will be keeping in touch with them as we move into the consultation and what will be included in it.

[Baroness Scott of Bybrook]

Finally, I thank my noble friend Lady Sanderson for all her work, not just on this Bill but with the Grenfell community. She is much regarded by them and has done so much to ensure the smooth passage of this Bill through both Houses.

I am grateful to noble Lords and to Members in the other place for their efforts to improve the legislation. The Social Housing (Regulation) Bill will bring about the most significant reforms to social housing regulation in over a decade and this Bill is now ready to proceed to the statute book. I commend it to the House.

Motion on Amendments 1 to 12 agreed.

Motion on Amendment 13

Moved by ***Baroness Scott of Bybrook***

That this House do disagree with the Commons in their Amendment 13 but do propose Amendment 13B in lieu—

13: Clause 21, page 17, line 29, at end insert—

"(3) Standards under subsection (1) may require registered providers to secure that their relevant managers—

(a) have a specified qualification in housing management or type of qualification in housing management, or

(b) are working towards such a qualification or type of qualification.

(4) A "relevant manager" means—

(a) a senior housing executive, or (b) a senior housing manager.

(5) A qualification or type of qualification specified for a senior housing executive may only be— (a) a foundation degree, or

(b) a qualification or type of qualification regulated by the Office of Qualifications and Examinations Regulation which is of a level not exceeding level 5.

(6) A qualification or type of qualification specified for a senior housing manager may only be a qualification or type of qualification regulated by the Office of Qualifications and Examinations Regulation which is of a level not exceeding level 4.

(7) Except as provided by subsections (3) to (6), standards under subsection (1) may not require registered providers to comply with rules about the qualifications to be required of relevant individuals.

(8) In this section, "senior housing executive" means a relevant individual who—

(a) is an employee or officer of the registered provider,

(b) has responsibility (solely or jointly) for the day to day management of the provision of services in connection with the management of social housing provided by the provider, and (c) is part of the provider's senior management.

(9) For the purposes of this section, an individual is part of a registered provider's senior management if the individual plays a significant role in—

(a) the making of decisions about how the whole or a substantial part of the activities of the provider which relate to social housing are to be managed or organised, or

(b) the management or organisation of the whole or a substantial part of such activities.

(10) In this section, "senior housing manager" means a relevant individual who— (a) is an employee of the registered provider, and

(b) is a senior housing and property manager for the registered provider.

(11) For the purposes of subsection (10)(b), whether an individual is a senior housing and property manager is to be determined by reference to the description of the occupation of senior housing and property management published by the Institute for Apprenticeships and Technical Education under section ZA10(5) of the Apprenticeships, Skills, Children and Learning Act 2009.

(12) The references in subsections (5) and (6) to the level of a qualification are to the level assigned to a qualification by virtue of general conditions set and published by the Office of Qualifications and Examinations Regulation under section 134 of the Apprenticeships, Skills, Children and Learning Act 2009.

(13) For the purposes of this section, "employee" includes a person employed under a contract of apprenticeship."

13B: Clause 21, page 17, line 29, at end insert—

"(3) Standards under subsection (1) may require registered providers to secure that their senior housing executives and senior housing managers—

(a) have a specified qualification in housing management or type of qualification in housing management, or

(b) are working towards such a qualification or type of qualification.

(4) Standards under subsection (1) may require registered providers to take steps to secure that relevant managers of their services providers—

(a) have a specified qualification in housing management or type of qualification in housing management, or

(b) are working towards such a qualification or type of qualification.

(5) Each of the following is a "relevant manager" of a services provider—

(a) if the services provider is a relevant individual, that individual;

(b) a senior housing executive of the services provider;

(c) a senior housing manager of the services provider.

(6) A qualification or type of qualification specified for a senior housing executive may only be—

(a) a foundation degree, or

(b) a qualification or type of qualification regulated by the Office of Qualifications and Examinations Regulation which is of a level not exceeding level 5.

(7) A qualification or type of qualification specified for a senior housing manager or for an individual described in subsection (5)(a) may only be a qualification or type of qualification regulated by the Office of Qualifications and Examinations Regulation which is of a level not exceeding level 4.

(8) The references in subsections (6) and (7) to the level of a qualification are to the level assigned to a qualification by virtue of general conditions set and published by the Office of Qualifications and Examinations Regulation under section 134 of the Apprenticeships, Skills, Children and Learning Act 2009.

(9) Except as provided by subsections (3) to (8), standards under subsection (1) may not require registered providers to comply with rules about the qualifications to be required of relevant individuals.

(10) See also section 217A (which makes provision implying terms relating to qualifications into management services agreements).

194AA Meaning of "services provider", "senior housing executive" and "senior housing manager"

(1) This section makes provision about the meaning of terms for the purposes of section 194A.

(2) "Services provider", in relation to a registered provider, means a person who, in accordance with an agreement with the registered provider or another person, provides services in connection with the management of social housing provided by the registered provider or arranges for the provision of such services.

(3) For the purposes of subsection (2), an agreement does not include a contract of employment or a contract of apprenticeship.

(4) "Senior housing executive" of a registered provider means a relevant individual who—

(a) is an employee or officer of the registered provider,

(b) has responsibility (solely or jointly) for the day to day management of the provision of services in connection with the management of social housing provided by the registered provider, and (c) is part of the registered provider's senior management.

(5) "Senior housing executive" of a services provider in relation to a registered provider means a relevant individual who—

(a) is—

(i) an employee of the services provider,

(ii) an officer of the services provider, or

(iii) if the services provider is a partnership, a partner in the partnership,

(c) has responsibility (solely or jointly) for the day to day management of the provision of services in connection with the management of social housing provided by the registered provider, and (c) is part of the services provider's senior management.

(6) For the purposes of subsections (4) and (5), an individual is part of a registered provider's or services provider's senior management if the individual plays a significant role in—

(a) the making of decisions about how the whole or a substantial part of the activities of the provider which relate to social housing are to be managed or organised, or

(b) the management or organisation of the whole or a substantial part of such activities.

(7) "Senior housing manager" of a registered provider means a relevant individual who—

(a) is an employee of the registered provider, and

(b) is a senior housing and property manager for the registered provider.

(8) "Senior housing manager" of a services provider in relation to a registered provider means a relevant individual who— (a) is an employee of the services provider,

(b) is a senior housing and property manager for the services provider, and

(c) is involved in the provision of services in connection with the management of social housing provided by the registered provider.

(9) For the purposes of subsections (7) and (8), whether an individual is a senior housing and property manager is to be determined by reference to the description of the occupation of senior housing and property management published by the Institute for Apprenticeships and Technical Education under section ZA10(5) of the Apprenticeships, Skills, Children and Learning Act 2009.

(10) In this section—

"employee" includes a person employed under a contract of apprenticeship;

"relevant individual" has the same meaning as in section 194A.

(11) The following Table gives the meaning of "officer" in relation to services providers for the purposes of this section—

Services provider	Meaning of "officer"
Registered charity which is Trustee, secretary or treasurer not a registered company	
Registered society	"Officer" within the meaning given by section 149 of the Co-operative and Community Benefit Societies Act 2014 (including a person co-opted to serve on the society's committee)
Registered company	"Officer" within the meaning given by section 1173 of the Companies Act 2006
Limited liability partnership	A member of a limited liability partnership."

(2) In section 196 of that Act (consultation), after subsection (2) insert—

"(3) Before setting a standard under section 194A which imposes a requirement described in subsection (4) of that section, the regulator must consult, or ensure that there has been consultation with, each body (if any) which is nominated by the Secretary of State for the purposes of this subsection.

(4) The Secretary of State may nominate a body for the purposes of subsection (3) only if the body appears to the Secretary of State to represent the interests of services providers in relation to registered providers (as defined in section 194AA(2)).

(5) The Secretary of State must notify the regulator of any nomination (or withdrawal of any nomination) made for the purposes of subsection (3)."

(3) In section 197 of that Act (direction by Secretary of State), after subsection (5) insert—

"(5A) Before giving a direction to set a standard under section 194A which imposes a requirement described in subsection (4) of that section, the Secretary of State must consult one or more bodies appearing to the Secretary of State to represent the interests of services providers in relation to registered providers (as defined in section 194AA(2))."

(4) After section 217 of that Act insert—

"217A Implied terms of management services agreements relating to qualifications

(1) Each management services agreement in relation to social housing of a registered provider, whenever entered into, is to be treated as including the terms set out in subsection (4).

(2) In this section, a "management services agreement", in relation to social housing of a registered provider, means an agreement under which one person (a "services provider") agrees with another person (the "services recipient") to provide services in connection with the management of social housing provided by the registered provider or to arrange for the provision of such services.

(3) For the purposes of subsection (2)—

(a) an agreement does not include a contract of employment or a contract of apprenticeship, and

(b) the services recipient may be the registered provider or another person.

(4) The terms are that—

(a) the services provider must secure that its relevant managers who are involved in the provision of services in connection with the management of social housing to which the agreement relates meet the qualification standard at all times;

(b) in the event that the services provider does not comply with the term set out in paragraph (a), the services provider will take such action to rectify the non-compliance as is reasonably required by the services recipient;

(c) the services provider must comply with any reasonable request for information demonstrating whether or not the services provider is complying with the term in paragraph (a) that is made by the registered provider who provides the social housing to which the agreement relates or (if different) the services recipient.

(5) A relevant manager of a services provider under a management services agreement "meets the qualification standard" if—

(a) a standard is in force under section 194A which requires the registered provider who provides the social housing to which the agreement relates to take steps to secure that the manager has, or is working towards, a qualification or type of qualification in housing management, and

(b) the manager has or (as the case may be) is working towards such a qualification, or if there is no standard in force under section 194A which imposes a requirement described in paragraph (a).

(6) A term of a management services agreement is not binding on the services recipient to the extent it would—

(a) exclude or restrict the liability of the services provider for breach of a term implied by this section, or

(b) prevent an obligation under a term implied by this section arising or limiting its extent.

(7) In this section "relevant manager", in relation to a services provider, has the same meaning as it has for the purposes of section 194A (see section 194A(5))."

(5) In consequence of the amendment made by subsection (4), in section 192 of that Act—

(a) in paragraph (d), omit the final "and";

(b) at the end of paragraph (e) insert ", and

(f) makes provision about terms to be implied into management services agreements (section 217A)."""

Motion on Amendment 13 agreed.

Motion on Amendments 14 to 55

Moved by ***Baroness Scott of Bybrook***

That this House do agree with the Commons in their Amendments 14 to 55.

14: Clause 22, page 17, line 36, at end insert ", including standards requiring information to be published"

15: Clause 22, page 18, line 3, at end insert "including information concerning—

(i) their tenants' rights in connection with those things, and

(ii) how to make complaints against registered providers,"

16: Clause 22, page 18, line 29, leave out Clause 24

17: Insert following new Clause—

"**Secretary of State's duty to give direction about providing information to tenants**

(1) The Secretary of State must give a direction to the Regulator of Social Housing under section 197(2A) of the Housing and Regeneration Act 2008 about setting a standard under section 194B of that Act (standards relating to information and transparency) for the purpose of securing that registered providers of social housing are required to provide their tenants of low cost rental accommodation with information about—

(a) their tenants' rights in connection with the low cost rental accommodation and with facilities or services provided in connection with that accommodation, and

(b) how their tenants can make a complaint against them.

(2) The Secretary of State must give the direction before the end of the period of six months beginning with the day on which this Act is passed.

(3) In this section—

"low cost rental accommodation" means accommodation which—

(a) is low cost rental accommodation (as defined in section 69 of the Housing and Regeneration Act 2008) provided by a registered provider of social housing, and

(b) is not low cost home ownership accommodation (as defined in section 70 of that Act);

"tenant", in relation to low cost rental accommodation, includes other occupiers."

18: Clause 28, page 22, leave out lines 3 to 8 and insert—

"(8) Equipment or materials taken onto premises by virtue of subsection (7) may be left in a place on the premises until the survey has been carried out provided that—

(a) leaving the equipment or the materials in that place does not significantly impair the ability of an occupier to use the premises, or

(b) leaving the equipment or the materials on the premises is necessary for the purposes of carrying out the survey and it is not possible to leave it or them in a place that does not significantly impair the ability of an occupier to use the premises."

19: Clause 28, page 22, line 8, at end insert—

"(9) Where the premises include common parts of a building, references in subsection (8) to the ability of an occupier to use the premises include the ability of an occupier of a dwelling that has use of the common parts to use those parts or the dwelling.

(10) In this section, "common parts", in relation to a building, includes the structure and exterior of that building and any common facilities provided (whether or not in the building) for persons who occupy the building."

20: Clause 28, page 22, leave out lines 31 to 36 and insert—

"(5) Equipment or materials taken onto premises by virtue of subsection (4) may be left in a place on the premises until the survey has been carried out provided that—

(a) leaving the equipment or the materials in that place does not significantly impair the ability of an occupier to use the premises, or

(b) leaving the equipment or the materials on the premises is necessary for the purposes of carrying out the survey and it is not possible to leave it or them in a place that does not significantly impair the ability of an occupier to use the premises."

21: Clause 28, page 22, line 36, at end insert—

"(5A) Where the premises include common parts of a building (as defined in section 199A), references in subsection (5) to the ability of an occupier to use the premises include the ability of an occupier of a dwelling that has use of the common parts to use those parts or the dwelling."

22: Insert following new Clause—

"Action after inspection

(1) The Housing and Regeneration Act 2008 is amended as follows.

(2) In section 202 (inspections: supplemental), omit subsections (1) to (3).

(3) In section 203(12) (definition of "inspector"), after "this section" insert "and section 203A".

(4) After section 203 insert—

"203A Action after inspection

(1) After an inspection of a registered provider is carried out by an inspector under section 201, the inspector must produce—

(a) a written summary of the inspector's findings, and

(b) a written report about any matters specified by the regulator.

(2) The summary and any report must be in the form specified by the regulator.

(3) The regulator may specify matters, or the form of a summary or report, for the purposes of inspections generally or for the purposes of a particular inspection or description of inspection.

(4) The regulator must give the registered provider a copy of the summary of the inspector's findings.

(5) The regulator must also give the registered provider—

(a) a copy of the inspector's report, or

(b) a notice confirming that no matters were specified for the purposes of subsection (1)(b).

(6) The regulator may publish—

(a) all or part of the summary of the inspector's findings,

(b) (where relevant) all or part of the inspector's report, and

(c) related information.""

23: Clause 31, page 29, line 41, leave out from beginning to end of line 6 on page 30 and insert—

"(5) Equipment or materials taken onto premises by virtue of subsection (4)(b) may be left in a place on the premises until the emergency remedial action has been taken provided that—

(a) leaving the equipment or the materials in that place does not significantly impair the ability of an occupier to use the premises, or

(b) leaving the equipment or the materials on the premises is necessary for the purposes of taking the emergency remedial action and it is not possible to leave it or them in a place that does not significantly impair the ability of an occupier to use the premises."

24: Clause 31, page 30, line 6, at end insert—

"(6) Where the premises include common parts of a building (as defined in section 225C), references in subsection (5) to the ability of an occupier to use the premises include the ability of an occupier of a dwelling that has use of the common parts to use those parts or the dwelling."

25: Clause 31, page 30, leave out lines 29 to 36 and insert—

"(5) Equipment or materials taken onto premises by virtue of subsection (4) may be left in a place on the premises until the emergency remedial action has been taken provided that—

(a) leaving the equipment or the materials in that place does not significantly impair the ability of an occupier to use the premises, or

(b) leaving the equipment or the materials on the premises is necessary for the purposes of taking the emergency remedial action and it is not possible to leave it or them in a place that does not significantly impair the ability of an occupier to use the premises."

26: Clause 31, page 30, line 36, at end insert—

"(5A) Where the premises include common parts of a building (as defined in section 225C), references in subsection (5) to the ability of an occupier to use the premises include the ability of an occupier of a dwelling that has use of the common parts to use those parts or the dwelling."

27: Insert following new Clause—

"Power of housing ombudsman to issue guidance to scheme members

(1) The Housing Act 1996 is amended as follows.

(2) In the italic heading before section 51, for "complaints" substitute "ombudsman".

(3) After section 51 insert—

"51ZA Power of housing ombudsman to issue guidance to scheme members

(1) This section applies where a scheme is approved by the Secretary of State under Schedule 2.

(2) The housing ombudsman may issue to the members of the scheme guidance as to good practice in the carrying on of housing activities covered by the scheme.

(3) Before issuing, revising or replacing guidance under this section, the housing ombudsman must consult—

(a) the Regulator of Social Housing,

(b) members of the scheme, and

(c) individuals who may make complaints under the scheme.

(4) If the housing ombudsman issues, revises or replaces guidance under this section, the housing ombudsman must publish the guidance, the revised guidance or (as the case may be) the replacement guidance.

(5) Subsection (7) applies if—

(a) an individual makes a complaint against a member of the scheme,

(b) the complaint is made under the scheme or the conditions in subsection (6) are met in relation to the complaint, and

(c) it appears to the housing ombudsman that the complaint relates to a matter to which guidance issued by the ombudsman under this section relates.

(6) The conditions referred to in subsection (5)(b) are that—
(a) the complaint is made to the member of the scheme,

(b) the complaint is one that the individual could subsequently make under the scheme, and

(c) the individual has notified the ombudsman about the complaint.

(7) The housing ombudsman may order the member of the scheme to—

(a) assess whether the member's policies and practices in relation to the matter mentioned in subsection (5)(c) are consistent with the guidance issued by the ombudsman under this section in relation to that matter, and

(b) within a period specified in the order, submit to the ombudsman a written statement of the results of the assessment.

(8) If a member of the scheme fails to comply with an order under subsection (7) within the period specified in the order, the housing ombudsman may order the member to publish in such manner as the ombudsman sees fit a statement that the member has failed to comply with the order.

(9) If a member of the scheme fails to comply with an order under subsection (8), the housing ombudsman may—

(a) take such steps as the ombudsman considers appropriate to publish what the member ought to have published, and (b) recover from the member the costs of doing so.

(10) In this section, "the housing ombudsman" means the housing ombudsman appointed in accordance with the scheme.""

28: Insert following new Clause—

"Social housing leases: remedying hazards

After section 10 of the Landlord and Tenant Act 1985 insert—

"Implied term as to remedying of hazards

10A Remedying of hazards occurring in dwellings let on relevant social housing leases

(1) This section applies to a lease of a dwelling if—

(a) the dwelling is in England,

(b) the lease is a relevant social housing lease, and

(c) section 9A—

(i) applies to the lease (see section 9B), or

(ii) would apply to the lease if the provision in section 9B(3) did not exist.

(2) There is implied in the lease a covenant by the lessor that the lessor will comply with all prescribed requirements that are applicable to that lease.

(3) The Secretary of State must make regulations which require the lessor under a lease to which this section applies to take action, in relation to prescribed hazards which affect or may affect the leased dwelling, within the period or periods specified in the regulations.

(4) Regulations under subsection (3) are enforceable against lessors only through actions for breach of the covenant that is implied by subsection (2).

(5) In any proceedings for a breach of the covenant that is implied by subsection (2), it is a defence for the lessor to prove that the lessor used all reasonable endeavours to avoid that breach.

(6) For the purposes of this section a lease is a "relevant social housing lease" at any time when—

(a) the lessor under the lease is a registered provider of social housing, and

(b) the dwelling leased under the lease—

(i) is social housing, but

(ii) is not low cost home ownership accommodation.

(7) In this section and section 10B—

"lease", "lessor" and "lessee" have the same meanings as in section 9A (see section 9A(9));

"low cost home ownership accommodation" has the meaning given in section 70 of the Housing and Regeneration Act 2008;

"prescribed hazard" has the same meaning as in section 10 (see section 10(2) and (3));

"prescribed requirement" means a requirement prescribed in regulations under subsection (3);

"social housing" has the same meaning as in Part 2 of the Housing and Regeneration Act 2008 (see sections 68 and 72 of that Act).

10B Regulations under section 10A: supplementary provision

(1) Regulations under section 10A(3) may apply to—

(a) leases granted before the day when section (Social housing leases: remedying hazards) of the Social Housing (Regulation) Act 2023 came into force;

(b) prescribed hazards which began before that day; (c) only some descriptions of prescribed hazards.

(2) Regulations under section 10A(3) may—

(a) specify a period that is not of a specific duration (for example a reasonable or appropriate period, including a period decided by the lessor or another person);

(b) specify two (or more) periods in relation to particular action.

(3) Regulations under section 10A(3) may (in particular)—

(a) require the lessor to take particular action, or action that is intended to produce a particular outcome, in relation to a prescribed hazard;

(b) require the lessor to take action in relation to a prescribed hazard that is not of itself intended to remedy the hazard, for example by requiring the lessor—

(i) to investigate whether or how a prescribed hazard is affecting the leased dwelling, or

(ii) to secure that the lessee and any other members of the lessee's household are provided with alternative accommodation at no cost to them;

(c) require the lessor to take action in relation to a prescribed hazard only—

(i) in particular circumstances, or

(ii) if particular conditions are met;

(d) provide that the lessor is not required to take action in relation to a prescribed hazard— (i) in particular circumstances, or

(ii) if particular conditions are met.

(4) The Secretary of State may by regulations—

(a) provide for section 10A not to apply to particular descriptions of leases;

(b) make provision, in relation to the covenant that is implied by section 10A(2), which corresponds to any provision made by section 9A(4) to (8).

(5) A power to make regulations under section 10A or this section includes power to make—

(a) incidental, transitional or saving provision; (b) different provision for different purposes.

(6) The power to make transitional or saving provision may (in particular) be used to make provision about situations where the covenant in section 10A(2)—

(a) begins to be implied in a lease after its grant because it

becomes a relevant social housing lease;

(b) ceases to be implied in a lease because it ceases to be a relevant social housing lease (including provision to save the lessor's liability for any breach of the covenant occurring before it ceases to be implied).

(7) Regulations under section 10A or this section are to be made by statutory instrument.

(8) A statutory instrument containing regulations under section 10A or this section may not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.""

29: Clause 43, page 36, line 34, after "Section" insert *"(Secretary of State's duty to give direction about providing information to tenants)* and"

30: Clause 43, page 36, line 34, after "Section 39" insert "and (*Power of housing ombudsman to issue guidance to scheme members*)"

31: Clause 44, page 37, line 10, leave out subsection (2)

32: Schedule 2, page 41, line 11, leave out "and signed, by the petitioner," and insert—

"(aa) be signed by, or on behalf of, the petitioner,"

33: Schedule 2, page 41, leave out line 14

34: Schedule 2, page 41, line 17, leave out "(b)," and insert "(aa), (b) or"

35: Schedule 2, page 41, line 17, leave out "or (d)"

36: Schedule 2, page 41, line 25, leave out "and signed, by the registered provider,"

and insert—

"(aa) be signed by, or on behalf of, the registered provider,"

37: Schedule 2, page 41, leave out line 28

38: Schedule 2, page 41, line 31, leave out "(b)," and insert "(aa), (b) or"

39: Schedule 2, page 41, line 31, leave out "or (d)"

40: Schedule 2, page 42, line 3, leave out from "writing," to end of line 4 and insert—

"(aa) be signed by, or on behalf of, the person who made the ordinary administration application,"

41: Schedule 2, page 42, leave out line 7

42: Schedule 2, page 42, line 10, leave out "(b)," and insert "(aa), (b) or"

43: Schedule 2, page 42, line 10, leave out "or (d)"

44: Schedule 2, page 42, line 23, leave out "and signed, by the person making the appointment," and insert—

"(aa) be signed by, or on behalf of, the person making the appointment,"

45: Schedule 2, page 42, leave out line 30

46: Schedule 2, page 42, line 33, leave out "(b)," and insert "(aa), (b) or"

47: Schedule 2, page 42, line 33, leave out "or (d)"

48: Schedule 2, page 43, line 4, leave out from "and" to end of line 5 and insert—

"(aa) be signed by, or on behalf of, the person intending to enforce the security."

49: Schedule 2, page 43, leave out lines 6 and 7

50: Schedule 2, page 43, line 10, after "paragraph" insert "(aa)"

51: Schedule 2, page 43, line 10, leave out "(b)"

52: Schedule 5, page 52, line 25, at end insert—

"(aa) in subsection (2)(f), for "and informing tenants" substitute "tenants and providing them with information in connection with such consultation";"

53: Schedule 5, page 54, line 34, at end insert—

"43A After section 276A (inserted by section 34) insert—

"276B Data protection

(1) This section applies to a duty or power to process information where the duty or power is imposed or conferred by or by virtue of any provision of this Part.

(2) A duty or power to which this section applies does not operate to require or authorise the processing of information which would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the processing would contravene that legislation).

(3) In this section "the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).""

54: Title, line 2, after "complaints;" insert "about the powers and duties of a housing ombudsman appointed under an approved scheme;"

55: Title, line 2, after "complaints;" insert "about hazards affecting social housing;"

Motion on Amendments 14 to 55 agreed.

Financial Services and Markets Bill

Commons Reason and Amendments

4.04 pm

Motion A

Moved by ***Baroness Penn***

That this House do not insist on its Amendment 7 and do agree with the Commons in their Amendments 7A, 7B and 7C in lieu.

7A: Page 39, leave out lines 11 to 13 and insert—

"(c) the need to contribute towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where each regulator considers the exercise of its functions to be relevant to the making of such a contribution;"

7B: Page 63, leave out from "compliance" in line 47 to end of line 48 and insert "by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where the Bank considers the exercise of its FMI functions to be relevant to the making of such a contribution;"

7C: Page 148, leave out from "compliance" in line 14 to end of line 15 and insert "by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where the Payment Systems Regulator considers the exercise of its functions to be relevant to the making of such a contribution;".

The Parliamentary Secretary, HM Treasury (Baroness Penn) (Con): My Lords, I beg to move Motion A and, with the leave of the House, will also speak to Motions B and C. I am grateful to all noble Lords for their considered scrutiny of the remaining issues in front of us today and throughout the Bill's passage.

I will speak first to Lords Amendments 7 and 36, and I thank the noble Baronesses, Lady Hayman and Lady Boycott, in particular, for their leadership on these issues during the passage of the Bill.

The UK is a global leader in sustainable finance. The Government's ambition to support the growth of this important area is demonstrated by the amendment relating to sustainability disclosure requirements made on Report, and the amendments in lieu of Amendments 7 and 36 introduced during Commons consideration.

I turn first to Lords Amendment 7. The regulators have an important part to play in supporting the Government's ambitions, which was demonstrated by the inclusion of the net-zero regulatory principle at introduction. The Government have reflected carefully on the calls to ensure that the regulatory framework also reflects the Government's nature targets.

While I welcome the intention behind Amendment 7, the Government cannot accept this amendment because it is too broad and therefore too open to interpretation. We have therefore brought forward Amendments 7A, 7B and 7C in lieu of Amendment 7, which add the relevant and well-defined targets made under the Environment Act 2021 to the new regulatory principle. It is important to recognise that addressing climate change and nature issues is not the regulators' primary function, which is, broadly, to advance their objectives, including to protect the integrity of the financial markets and the safety and soundness of firms within the financial system and to deliver appropriate protection for consumers. Most of the levers for reaching our net-zero and environmental targets sit outside the regulators' remit and control.

The amendments in lieu will ensure that, when acting to advance their objectives, the regulators will be required to consider the Government's commitments to achieve the net-zero emissions target and the environment targets. I assure noble Lords that the amendments do not weaken the requirement for the regulators to consider the Government's net-zero target. FSMA requires the regulators to act in a way that advances their statutory objectives when carrying out their general functions. When advancing their objectives, the regulators must also have regard to the regulatory principles, which aim to promote good regulatory practice.

It is for the independent regulators to decide how best to meet the requirements placed on them in legislation when discharging their general functions. The drafting of the amendments in lieu makes this clear: the regulators are required to have regard to the regulatory principle only in so far as it is relevant to advancing their objectives. This does not change the effect of the net-zero requirement, but the Government considered that this additional language was needed, alongside expanding the principle, to make this point clear and to ensure consistency. I am confident that the Government's approach meets the intended effect of Amendment 7, and I hope noble Lords will acknowledge it as a significant step to further support the growth of sustainable finance in the UK.

I turn to Lords Amendment 36 on deforestation-linked financing. As I set out on Report, the Government again support the intention behind this amendment. The policy considerations for tackling the financing of deforestation risk commodities are complex. We are grateful for the work of the Global Resource Initiative and in particular its report on this issue from May 2022. This emphasised the need to take a staged approach and that further exploratory work would be needed to investigate the implementation of a prohibition on the financing of the use of prohibited forest risk commodities.

The Government have therefore brought forward Amendment 36A in lieu of Amendment 36, which commits the Treasury to undertake a review to assess whether the financial regulatory framework is adequate for the purpose of eliminating the financing of illegal deforestation and to consider what changes to the regulatory framework may be appropriate. This will ensure that any intervention is scoped appropriately and that the UK moves in lockstep with our international partners to ensure the effectiveness of any regime in tackling the financing of illegal deforestation.

The Treasury will be required to undertake this review within nine months of the first relevant regulations under Schedule 17 to the Environment Act being made. This will enable the Government to reflect those regulations in the review, which is essential if we are to have a joined-up and effective approach.

As the Government set out in the updated green finance strategy, we will convene a series of round tables this year. These will form the basis of a taskforce to drive forward the work of this important review

[Baroness Penn]
and support the development of clear conclusions. This will complement the Government's existing commitment to explore how best the final Taskforce on Nature-related Financial Disclosures—or TNFD—framework should be incorporated into the UK policy and legislative architecture. As the GRI report acknowledged, the developing work of the TNFD is increasingly important, especially as it has now included recommendations relating to deforestation in its draft standards.

Following the review, the Government will consider what further action is appropriate to progress the goal of eliminating the financing of illegal deforestation. The Bill and the existing provisions in FSMA provide the Treasury with extensive powers, including through the regulated activities order or the designated activities regime, to bring new activities into the scope of regulation if needed.

Finally, I turn to Lords Amendment 10. As the Economic Secretary set out yesterday, and as I set out on Report, the Government cannot accept this amendment. While I acknowledge the intention behind it, I reiterate the point that financial inclusion is a complex societal issue that cannot be solved through financial regulation alone. The Government are committed to the aim of ensuring that people, regardless of their background or income, have access to useful and affordable financial products and services. The Government's view is that the FCA's current and ongoing initiatives around financial inclusion demonstrate that it can already effectively support the Government's leadership on this agenda through its existing operational objectives and regulatory principles.

Parliamentary scrutiny of the introduction of the new secondary growth and competitiveness objectives for the regulators comes after two consultations on the Future Regulatory Framework Review and extensive engagement with industry and other stakeholders. It is not appropriate to amend the regulators' objectives, which are crucial to the effective regulation of financial services in the UK, at this late stage of the Bill's passage without due consultation. Furthermore, the FCA's new consumer duty, which comes into force on 31 July, seeks to set a higher and clearer standard of care that firms owe to their customers, and includes a new principle requiring firms to act to deliver good outcomes for consumers. It is important that the sector is given the opportunity to embed these important new requirements before considering further action of a similar nature.

I ask noble Lords not to insist on Amendments 7, 10 and 36 and to agree with the Commons in their Amendments 7A, 7B, 7C, and 36A in lieu. I beg to move.

Baroness Hayman (CB): My Lords, I declare my interests as set out in the register, and will speak to Amendment 7A. I thank the Minister and her team for the considerable efforts that have been put in, since the Bill left this House, to find a way to respond positively to the issues raised in my original amendment, which was supported from all sides of the House. As the Minister knows, the central issue was that of providing a clear legislative basis for financial regulators to act, not only on our climate change duties, which the Government themselves recognised and included in the original Bill, but in relation to our duties relating to the natural environment.

This issue is seen as important in Parliament but also outside it. The inclusion of nature was supported both by Professor Sir Partha Dasgupta and, in a statement last week, by a group of eight leading financial firms. I am extremely pleased that the Government decided not to try to completely overturn the amendment but to introduce the amendment we have before us now, the basis of which the Minister has just explained. It recognises that the importance of climate should go alongside the importance of nature, which was not there originally.

4.15 pm

As the Minister is only too well aware, and as she made clear, there are some differences between what the Government propose and the amendment passed in this House—and, indeed, some differences from the provision as it was introduced in the Bill. I am grateful for some of the clarification and reassurance that she provided in her introduction, but I will go through a couple of those points.

In the first instance, I would be very grateful for the Minister's confirmation that the addition of the words

"where each regulator considers the exercise of its functions to be relevant"

is not intended to and will not dilute the strength of the original responsibilities. I understand her explanation that the clarification reflects the ongoing work to understand the interaction between the nature targets and the financial services regulators, but I note that, although the work on nature may be behind that on climate, the inclusion of nature in financial firms' decision-making parallels that for climate, and the arguments about the materiality of nature-related risks and impacts are not markedly different from those for climate. I am grateful for the Minister's reassurance that the legal effect and the strength of the original drafting remain unchanged.

Similarly, it is helpful to have reassurance that this is also the case in relation to the removal by this Bill of existing provisions conferred by the Financial Services Act 2021. I would be pleased to hear the Minister reconfirm that the legal effect of the new principles would be at least as strong as these provisions.

Finally, on the territorial scope of the Environment Act, I would appreciate clarification that, although the Environment Act targets referenced are applicable only in England and Wales, any actions that the regulators take as a result of this principle will apply to firms across the UK and have benefits across the UK.

The reason why I and many others have been so determined that nature should be included is, of course, related to our concerns about the urgent crisis of biodiversity loss, but is also because, if the Government intend to use the expertise of our world-leading financial sector to

"accelerate the shift to a green global financial system and catalyse green financing globally",

that requires us to start with the whole natural system and the interrelationship between climate and nature. The inclusion of both in the financial regulators'

principles is not a matter of mission creep. As Frank Elderson, executive board member of the European Central Bank, recently told the *Financial Times*, it is actually "core economics" when 72% of eurozone companies and three-quarters of bank loans in the region are exposed to biodiversity loss.

The Government's inclusion of the natural environment in the Bill is important in its own right. I am grateful for the work that has been done. It is completely in step with the Government's policy for the UK's world-leading financial services sector to

"drive every step of the global transition"

to

"a resilient, nature-positive, net zero economy".

Baroness Boycott (CB): My Lords, I will speak to Amendment 36, which was in my name and those of the noble Baronesses, Lady Sheehan and Lady Chapman, and the noble Lord, Lord Randall. I echo the words of the noble Baroness, Lady Hayman, by thanking the Minister very much for the time she spent working with us on this amendment and trying to lay out exactly why it has not quite passed. I am super grateful for the efforts that were made. I support everything that the noble Baroness, Lady Hayman, just said. We have to make sure that nature runs through everything we do like a stick of Brighton rock. It is extremely important. We cannot survive without it.

Amendment 36 would have introduced mandatory checks to protect the UK financial sector from lending to or investing in companies that engage in illegal deforestation and land grabs against indigenous peoples. It passed a vote in our House, which was wonderful, but sadly it was defeated in the other place, so instead of a new law to stop finance flowing to companies that plunder the environment, I am afraid we have ended up with another review.

I say that with sadness, because we have only just finished the last review into how to stop deforestation finance. That was the three-year inquiry by the Government's expert body, the Global Resource Initiative —GRI—task force. I suppose many people have said this, but I will say it again: just to commission another review until one of them churns out an acceptable policy is not great governing. The GRI task force was composed of finance and business leaders, as well as civil society. It was excellently put together. It was tasked to provide a cross-sector blueprint to reduce the UK's contribution to deforestation. In May last year—just over a year ago—it recommended that UK financial services firms should be obliged to check for the risk of any deforestation, legal and illegal, as well as any human rights abuses. The GRI recommended a due diligence regime much more far reaching than the one we proposed under Amendment 36, which, I hasten to emphasise, was limited to illegal deforestation only. Even the financial sector itself does not want this approach, as evidenced by the fact that investors representing £2.7 trillion publicly supported our amendment.

I will not push this Motion to another vote but, given the strength of support we have seen and the consensus behind the introduction of mandatory due diligence, I will ask the Minister for three clarifications. First, can she confirm that the Treasury's review will put forward a specific proposal for a comprehensive due diligence system to prevent the financing of deforestation rather than another re-evaluation of what type of intervention is needed? It is vital that we do not waste any more time or money repeating the work of Sir Ian Cheshire and his GRI task force. This is not an excuse to wriggle out of due diligence and derogate to more reporting under frameworks such as the TNFD, which we discussed extensively at our meeting last week. I really hope to see a much more ambitious plan.

Secondly, can the Minister confirm that all forest risk commodities will be regulated under Schedule 17 to the Environment Act? Thirdly and finally, can she confirm here today a final date for when the now extremely delayed secondary regulations under Schedule 17 to the Environment Act will be made? The Treasury's review will be limited at the moment to an investigation of how the UK finances prohibited commodities. This is fraught with problems, not least the fact that these regulations are nearly two years delayed. It also means that if the Government choose not to cover all forest risk commodities in that regime, the review will not be worth anything. For example, Defra's June 2022 consultation proposed covering only two commodities. There were 14,000 respondents, and 99% of responses said that the law should cover all forest risk commodities, including cattle, palm oil, soy, rubber, cocoa, coffee and maize. This is the approach that the EU has taken. We risk becoming a laughing stock if our apparently world-leading secondary regulations cover only cocoa and soy, for instance.

To sum up, I am thankful that the Minister and the Economic Secretary have adopted a sensible proposal to allow the country's financial regulators to address the threat of biodiversity loss. Our regulators should pay attention to nature because it is the bedrock of all our systems, but there is an irony to accept that an amendment merely commissioning a review into deforestation is all we are going to do. I spoke last week to the head of science at Kew, Alex Antonelli, and asked him to give me the up-to-date data from Kew about the state of deforestation across the world. He told me that illegal logging is the most important resource crime in the world and is valued at between $52 billion and $157 billion a year. Illegally obtained timber accounts for between 10% and 30% of all global timber that we all use, but in south-east Asia, central Africa and South America, between 50% and 90% is illegally obtained, so I think that the Government's efforts need to be speeded up. But I will not oppose Motion C, and I thank the Minister for her considerations.

Lord Randall of Uxbridge (Con): My Lords, it is a great privilege to follow the noble Baronesses, Lady Boycott and Lady Hayman. I congratulate my noble friend the Minister on her diligence in trying to come to some solution to our demands. As we have just heard, it is not quite what we wanted but it is getting there, pretty much. Personally, I am sure that the Minister shares our concerns, but sometimes the Treasury is a bit like one's parents in saying, "You can't have it all at once; you have to wait and be ready for it".

I reiterate the questions asked by the noble Baroness, Lady Boycott, regarding regulating all forest risk commodities under the secondary regulations, and ask also for a firm date. I am delighted that we have got as

[Lord Randall of Uxbridge]
far as we have but I would say, not just to my noble friend the Minister but to all other noble friends and Ministers, that we will not rest here. As we have heard, deforestation is one of the biggest crimes going on in the world and a threat to us all. We shall continue with this.

Baroness Bowles of Berkhamsted (LD): My Lords, I first pass on the apologies of my colleague and noble friend Lady Kramer, who is unable to be in her place; hence, you have me instead. I identify with the comments made by the noble Baronesses, Lady Hayman and Lady Boycott, and will not repeat them. Although the Government have given some territory, I do not feel that it is substantial enough.

Two points in particular worry me. The first is with regard to the climate change targets and the wording that

"each regulator considers the exercise of its functions to be relevant to the making of such a contribution".

The Minister emphasised in her introduction that the regulators have to consider that it fits in squarely with their major objectives. That is quite a discouragement to them to pursue these matters. The regulators do not have to follow every objective and principle anyway; so they do not have an objective or principle and this has now been further diluted by that wording. So, while it is good that there is something on the face of the Bill, a lot of following up will be needed to make sure that something happens.

When it comes to the forestry issues, yes, there will be another consultation—another delay—but why do we have to be in lockstep with our partners? I thought we wanted to be leaders. That means you have to be prepared to go out there and, if you are a leading financial centre, show that it can be done. To always tie ourselves down, to be in lockstep, means that there is a fear to move, there is trepidation, and that does not mark us out or distinguish us as a financial centre. I therefore hope for better, and I hope that comes out of the Treasury's review.

Overall, the Bill has seen issues raised on all sides of the House and a lot of common thinking. Yes, there has been some yielding by the Government as a consequence—though in general I would say not enough—but this shows that the mood and understanding of this House and of the industry are that the size and momentum of what we are doing in delegating everything to regulators need to have a little more beefing up when it comes to accountability and how matters can be pursued if the regulators do not do things, if they do not do them quickly enough, and so on. In quite a lot of our amendments we have tried to pursue those issues but we have got nowhere. I think that means we will be coming back.

4.30 pm

Parliament has been left with scrutiny, and scrutiny has to have consequences. That goes for all the environmental matters and for the substantial financial matters that will come before the joint committee that—I hope—will be set up. I very much expect that if the regulators do not act on the scrutiny of this House, the Government will step in and act upon it. We cannot delegate everything, with no consequence, to the regulators.

Lord Leigh of Hurley (Con): My Lords, I want to comment on Motion B, which no one has addressed. I congratulate the Minister, her colleagues, the Bill team and all the Peers who have contributed to this 337-page whopper of a Bill, which has been broadly welcomed by all. I remind your Lordships of my declaration of interests, which includes the fact that I am an employee of an FCA-regulated business that is currently seeking to merge with another FCA-regulated business.

That takes me to Amendment 10. Within the Bill are the important amendments to Sections 1B and 1E of FSMA 2000. Amendment 10 seeks to add subsection (2)(ca) to the already strong provisions for consumer protection in Section 1C(2)(a) to (h). I agree with my noble friend the Minister that we should not push through Amendment 10.

I can tell my noble friend the Minister and fellow Peers that in the market the Bill is desperately sought. There is still huge frustration at the FCA about the time taken to progress and execute transactions. That has been a significant block on economic growth, which is one of the objectives that the FCA will now have. I ask the Minister to ensure that the FCA is aware of its new objectives and requirements and that this actually takes place in practice.

Baroness Chapman of Darlington (Lab): My Lords, we on these Benches supported all three of the amendments that we are discussing today when we looked at them last time, including Amendment 7, which would expand the regulatory principle on net-zero emissions to include conservation and nature. We also voted for Amendment 36, imposing a duty on those conducting regulated activity to conduct due diligence with the aim of preventing illegal deforestation.

We have listened carefully to what the Minister has said and will be listening to what she says in response to this debate, particularly to the questions asked by the noble Baroness, Lady Boycott. However, I thank the Minister for her openness in engaging with these issues and for the amendments in lieu, which demonstrate an agreement with your Lordships that these are issues that the Government need to address urgently. They may not be doing so in a way that we would have preferred today, but it is right that we acknowledge the moves that the Government have made.

Amendment 10 in my name would require the FCA to take financial inclusion into account when advancing its consumer protection objective of securing an appropriate degree of protection for consumers. The Government disagree with that amendment, saying they consider that the FCA is already able to tackle issues of financial inclusion within its remit. We argue that the problem is that the Government have failed to address our key concern in tabling the amendment, which is about the poverty premium—that is, the extra costs that poorer people pay for essential services such as insurance, loans or credit cards.

We see this Bill as something of a missed opportunity to build a strong future for our financial services and rethink financial resilience, including how some of the wider well-being issues are tackled by the regulator in the future. Everybody should be able to access the financial services they need, regardless of their income

or circumstances. Although we do not intend to push this to another vote today, I can assure noble Lords that we will be returning to this subject at every opportunity—especially if that opportunity arrives in the form of a Labour Government.

For now, I place on the record our sincere thanks, particularly to the noble Baronesses, Lady Hayman and Lady Boycott, who have been highly effective in raising nature and deforestation issues. I also thank my noble friends Lord Livermore and Lord Tunnicliffe for their work on this Bill. We are probably at the end of it now. I note what the noble Lord, Lord Leigh, said about the need to get this Bill through and on to the statute books for the benefit of this important sector.

Baroness Penn (Con): My Lords, I am grateful to noble Lords for the debate today, and I would like to address some of the points raised.

On the addition of the obligations under the Environment Act to the principle on climate change, I intended in my opening speech to clarify some of the language in that amendment. I am very happy to emphasise again the Government's intention that the legal effect of the new provisions will be the same as the original climate principle, with the addition of the targets under the Environment Act. The intention is that it will be at least as strong as the provisions in the Financial Services Act 2021. I explained in opening the reasons for amending the language. It is not about diluting the principles or commitments, but further clarifying them, given that these are new areas.

I accept the noble Baroness's point that often, these issues can be two sides of the same coin. We had the debate on whether the issues were sufficiently covered by just mentioning climate. Adding the explicit reference to the Environment Act targets led to a desire to be even clearer about the effect of that principle, but it has not changed in the wording of our amendment.

On Lords Amendment 36, there were questions on the timing of the provisions under Schedule 17 to the Environment Act. I am afraid that, as hard as I have tried, I cannot provide a definitive date, but I reassure noble Lords that I have met the Minister leading on this at Defra. Work is under way to bring forward those regulations, and we are seeking to do it at the earliest opportunity.

The noble Baroness, Lady Boycott, and my noble friend Lord Randall of Uxbridge asked what commodities those provisions will cover, and the noble Baroness mentioned a consultation on two forest risk commodities. My understanding is that the consultation and impact assessment covered a variety of policy options across three different turnover thresholds and seven different commodities. While I cannot pre-judge the outcome of the regulations under Schedule 17, our approach to this review will mirror the approach taken forward under Schedule 17.

On the point about the outcomes of this review, I am sure that the noble Baroness will understand that I cannot prejudge that, but I can say that it is not intended to duplicate work already being done; it should build on it. I am happy to make sure that noble Lords and other parliamentarians are involved in the progress of that review as we take it forward, so that they can see that it is heading in the right direction.

I thank the noble Baroness, Lady Chapman of Darlington, for the constructive way she has approach the Bill in its latter stages. She raised the issue of the poverty premium that can be placed in financial services. We are progressing work in areas where the poverty premium can occur. For example, we are working with Fair4All Finance, the organisation set up to use funding from dormant assets for financial inclusion, to improve access to affordable and appropriate financial products, including a package of tailored support to scale affordable credit in order to help the sector develop a sustainable model for serving people in vulnerable circumstances. We also looked at issues in the insurance industry in a number of areas, in terms of outcomes and access. We will continue to look at the areas where the poverty premium occurs, the factors that are driving it and the right levers we should think about to address it. It is different for different sectors, services and products, but that work will continue, despite our not being able to accept the noble Baroness's amendment.

I therefore ask noble Lords not to insist on Amendments 7, 10 and 36 and to agree with the Commons in their Amendments 7A, 7B, 7C and 36A in lieu.

Motion A agreed.

Motion B

Moved by ***Baroness Penn***

That this House do not insist on its Amendment 10, to which the Commons have disagreed for their Reason 10A.

10A: Because financial inclusion is a broader social policy issue, the Financial Conduct Authority is already able to take action on issues related to financial inclusion within its remit and it would not be appropriate to amend the regulators' objectives without due consultation as it would create uncertainty for FCA-regulated entities.

Motion B agreed.

Motion C

Moved by ***Baroness Penn***

That this House do not insist on its Amendment 36 and do agree with the Commons in their Amendment 36A in lieu.

36A: Page 87, line 34, at end insert the following new Clause—

"Forest risk commodities: review

(1) The Treasury must carry out a review to assess the extent to which regulation of the UK financial system is adequate for the purpose of eliminating the financing of the use of prohibited forest risk commodities.

(2) In subsection (1) the reference to "prohibited" forest risk commodities is a reference to forest risk commodities, or products derived from forest risk commodities, the use of which is prohibited by paragraph 2 of Schedule 17 to the Environment Act 2021.

(3) Having carried out a review the Treasury must lay before Parliament, and publish, a report stating—

(a) the conclusions of the review, and

(b) the steps the Treasury considers it appropriate to take to improve the effectiveness of the regulation of the UK financial system for the purpose stated in subsection (1).

(4) Subsection (3) must be complied with before the end of 9 months beginning with the day on which the first regulations under paragraph 1 of Schedule 17 to the Environment Act 2021 are made.

(5) In this section—

"forest risk commodities" has the same meaning as in Schedule 17 to the Environment Act 2021;

"UK financial system" has the same meaning as in FSMA 2000 (see section 1I of that Act)."

Motion C agreed.

Economic Crime and Corporate Transparency Bill

Report (2nd Day)

Relevant documents: 27th and 36th Reports from the Delegated Powers Committee

4.43 pm

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

That the Bill be further considered on Report.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I put on record my thanks to my noble friend Lord Johnson of Lainston, who took the Bill through its first day of Report last week, and my noble and learned friend Lord Bellamy for his work in the run-up to today's debate. I extend my thanks to noble Lords for the constructive debate we have had so far on the Bill, both in Committee and in separate meetings. This collaboration has resulted in comprehensive and much-needed legislation—

The Deputy Speaker (Baroness Bull) (CB): Would the Minister like to move that we move on to this item of business before he moves his first amendment?

Lord Sharpe of Epsom (Con): I beg to move.

Motion agreed.

Schedule 8: Cryptoassets: civil recovery

Amendment 90

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

90: Schedule 8, page 263, leave out lines 24 to 26 and insert—

"(10) The Secretary of State may not make regulations under subsection (7) unless the Secretary of State has—

(a) consulted the Scottish Ministers and the Department of Justice, and

(b) given a notice containing the relevant information to the Scottish Ministers and the Department of Justice.

(11) Consultation under subsection (10)(a) must include consultation about any effects that the Secretary of State considers the regulations may have on—

(a) a person in Scotland or Northern Ireland (as the case may be) applying for the forfeiture of cryptoassets held in a crypto wallet that is subject to a crypto wallet freezing order, and

(b) a sheriff or court in Scotland or a court in Northern Ireland (as the case may be) considering such an application or making an order for such forfeiture.

(12) In subsection (10)(b) "relevant information" means—

(a) a description of—

(i) the process undertaken in order to comply with subsection (10)(a) in relation to the Scottish Ministers or the Department of Justice (as the case may be), and

(ii) any agreement, objection or other views expressed as part of that process by the Scottish Ministers or the Department of Justice (as the case may be), and

(b) an explanation of whether and how such views have been taken into account in the regulations (including, in a case where the Secretary of State proposes to make the regulations despite an objection, an explanation of the reasons for doing so)."

Member's explanatory statement

This amendment provides for certain consultation requirements to apply before regulations may be made under inserted section 303Z42(7) of the Proceeds of Crime Act 2002 (forfeiture orders).

Lord Sharpe of Epsom (Con): As I was saying, I put on record my thanks to my noble friend Lord Johnson of Lainston and my noble and learned friend Lord Bellamy, but I also extend my thanks to all noble Lords for the constructive debate we have had so far on the Bill, both in Committee and in separate meetings. It is nice to be able to say that more than once. This collaboration has resulted in comprehensive and much-needed legislation. As my noble friend Lord Johnson set out, the Government listened to the views of the House during the passage of the Bill and have moved to address many of its concerns in the amendments tabled for Report.

4.45 pm

My noble and learned friend Lord Bellamy and I particularly look forward to speaking to the government amendments today on identification doctrine and SLAPPs, both of which represent major progress. I welcome the views expressed from all Benches during last week's debate which acknowledged how significant a package the Government have brought forward, and I hope that noble Lords will keep that in mind as we debate today's topics.

I now turn to the government amendments in this group. Government Amendment 90 makes provision for certain consultation procedures to apply prior to the Secretary of State making regulations under new Section 303Z42(7) of the Proceeds of Crime Act 2002, relating to crypto asset confiscation orders. It sets out a statutory process detailing the consultation process required with the Scottish Government and the Northern Ireland Executive before the Secretary of State makes regulations under that section.

Government Amendments 96, 98 and 101 are minor and technical amendments to update the definition of "economic crime" in Part 5 of the Bill to refer to the offences of encouraging or assisting found in Part 2 of the Serious Crime Act 2007. These minor amendments ensure that an earlier omission is corrected.

Amendments 91A and 92A concern the designation of high-risk countries and amend the existing Clause 181. Under the money laundering regulations—the MLRs—firms are required to carry out enhanced due diligence in respect of business relationships and certain transactions involving high-risk third countries. Those high-risk

countries are defined in Schedule 3ZA to the MLRs. The schedule, in line with government policy, is updated each time the Financial Action Task Force—the FATF—updates its list of countries identified as having significant shortcomings in their anti-money laundering regimes. As currently drafted, Clause 181 introduces a measure to streamline the process for updating our domestic high-risk country list by removing the requirement to lay a "made affirmative" statutory instrument each time the FATF changes its list, replacing this with an administrative procedure. This was developed in response to feedback from Parliament on the current process.

The Government have recognised concerns raised by the Delegated Powers and Regulatory Reform Committee and Members in the other place relating to Parliament's ability to scrutinise updates to the list. Amendment 91A will enable regulations to reflect automatically the countries identified by the FATF as having significant shortcomings in their anti-money laundering and counterterrorism financing regimes. In an event where the obligations under the regulations were to include or exclude any countries—that is to say, should the proposed UK list deviate from the FATF lists—Amendment 92A means that the Government will be required to bring such updates forward through a draft affirmative statutory instrument following a six-month transition period. The amendment will therefore ensure that parliamentary scrutiny of which countries are deemed high-risk is retained, while streamlining the process to ensure that routine updates to businesses are swift and timely to protect themselves and their customers more effectively from exposure to money laundering and terrorism financing.

I ask noble Lords to support the amendments; I beg to move.

Baroness Altmann (Con): My Lords, briefly, I congratulate the Government on bringing forward the amendments; they will enhance the operation of the Bill. However, while we debate what could cover so-called crypto assets, I want to put on record my concern that by calling them "assets" and by not banning them from conventional financial markets we are potentially encouraging economic actors and criminals who demand payment in these untraceable types of so-called money. There is a danger to both our financial system and society if we continue to try to suggest that they are, in any way, conventional media of exchange.

Lord Fox (LD): My Lords, I reflect back the point made at the beginning by the Minister—in fact, made in triplicate—that this has been a co-operative approach. In fact, I was one of the people who raised the issue of crypto assets at the beginning. There was good consultation with the team involved, and the Government brought forward a number of amendments in Committee and on Report.

As the Minister acknowledged, the issue is going to have to be flexibility going forward, and the ability to make changes and to understand how criminals are using crypto assets and other assets to commit fraud will be very important. Having the ability to come back to Parliament and make those changes will be key to the success of this Bill. In that respect, anything that improves flexibility, as I think these amendments do, will be very helpful.

Lord Ponsonby of Shulbrede (Lab): My Lords, I reiterate what the noble Baroness, Lady Altmann, and the noble Lord, Lord Fox, have said: there has been a co-operative approach to this Bill, which I think will make it a better Bill. I was going to make exactly the points that the noble Lord, Lord Fox, has just made about the need to build in a way of feeding back to Parliament, particularly given that crypto assets are a very turbulent technology; it is a very turbulent industry. We know about the criminality endemic within these types of so-called assets. The point has been made by the noble Lord, Lord Fox, that Parliament needs to find a way, through flexibility and feedback, to make sure that the appropriate regulations are kept in place.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords for their brief points in this debate. Broadly speaking, I agree with all the points that have been made. It is important to maintain a high level of flexibility, because this is a very fast-moving space technologically as well as with regard to the use of these assets in the broader economy and for other purposes. I agree with everything that has been said. Obviously, these amendments allow us to maintain a high degree of flexibility, so I ask noble Lords to support them. There is not much point in saying anything else at this point.

Amendment 90 agreed.

Amendment 91 had been withdrawn from the Marshalled List.

Clause 181: Enhanced due diligence: designation of high-risk countries

Amendment 91A

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

91A: Clause 181, page 171, line 27, leave out from "to" to end of line 28 and insert "prescribed high-risk countries.

(3) Provision made by virtue of sub-paragraph (2) may in particular refer to a list of countries published by the Financial Action Task Force as it has effect from time to time."

Member's explanatory statement

This removes the power to make regulations about enhanced customer due diligence by reference to a list of high-risk countries published by the Treasury. Instead it allows regulations to refer to a list of countries published by the Financial Action Task Force (the regulations could also refer to that list subject to specified exceptions).

Amendment 91A agreed.

Amendment 92 had been withdrawn from the Marshalled List.

Amendment 92A

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

92A: Clause 181, page 171, line 34, leave out ", omit subsections (2) and (9)" and insert "—

(a) in subsection (2), for the first "which" substitute "made during the period of 6 months beginning with the day on which the Economic Crime and Corporate Transparency Act 2023 is passed if the instrument";

(b) in subsection (9), for the words from "if" to the end substitute "if they only make provision prescribing high-risk countries by virtue of paragraph 4(2) of Schedule 2".

Member's explanatory statement

This amendment means that regulations made within 6 months of royal assent are subject to the made affirmative procedure if all they do is make provision about countries in relation to which enhanced customer due diligence measures are required to be taken; regulations made after that period are subject to the draft affirmative procedure.

Amendment 92A agreed.

Amendment 93 not moved.

Amendment 94

Moved by ***Lord Faulks***

94: After Clause 183, insert the following new Clause—

"Strategic lawsuits against public participation

(1) It is an offence for a person or entity without reasonable excuse to threaten civil litigation against another person or entity with intent to suppress the publication of any information likely to be relevant to the investigation of an economic crime.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;

(c) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both)."

Member's explanatory statement

This amendment introduces a new criminal offence to deal with groundless threats in pursuance of SLAPPS in order to suppress investigations into economic crimes.

Lord Faulks (Non-Afl): My Lords, we now come a group of amendments about strategic lawsuits against public participation, or SLAPPs. These were much debated at Second Reading and in Grand Committee. As noble Lords will be aware, SLAPPs is the rather ungainly acronym to describe the abusive threats of litigation and actual litigation by deep-pocketed individuals with the intention of preventing journalists or others from revealing the truth, very often about economic crime or, at the very least, economic activity which the claimant would much rather was not revealed at all, or certainly not to the general public. This is a worldwide problem which has received a variable response.

In a sense, there is nothing new about SLAPPs. Powerful men have often used litigation to try to silence their critics, but there have recently been some egregious examples. The difficulty always exists in separating out genuine complaints by powerful men or organisations and those which have been commenced for a collateral purpose. When SLAPPs were debated at Second Reading, it was thought that amendments to prevent or limit such lawsuits would be outside the scope of the Bill. I am glad to say that that has now proved not to be the case, although it is clear that the relevant amendments, either mine or the Government's, are focused on economic crime as opposed to wider areas of criminal activity which might provoke a strategic lawsuit. The Government's position at Second Reading appeared to be that they were sympathetic to the notion of legislation in this area. However, they thought that the whole issue needed separate and mature consideration and should not be part of any amendment to this Bill.

I am delighted that the Government have changed their mind and brought forward amendments in this group which we will debate. I understand that the new Lord Chancellor has had much to do with this, and I thank him and the Minister for tabling the amendments.

A number of noble Lords have spoken about SLAPPs, including the noble Lords, Lord Agnew and Lord Cromwell, who gave a graphic description of the mischief at which any change in the law should be directed. My difficulty with any potential amendment was always that the courts have powers already to strike out abusive proceedings, but they tend to be extremely cautious about doing so, on the basis that striking out is a somewhat draconian remedy. Courts tend to be persuaded that it is better to see how the evidence emerges before putting a case out of its misery, but that can be too late. Huge expenditure will have been incurred, often by relatively impecunious defendants. Sometimes they have no realistic alternative but to capitulate—delay is plainly the friend of those who use SLAPPs. The best chance, in my experience, of striking out a claim is when there is a clear point of law, but even then there can be appeals and further expense, which work in favour of an abusive claimant.

The government amendments are clearly aimed in the right direction, but I can already foresee a few difficulties. There will be significant arguments as to what does or does not constitute a SLAPP, for example. That issue of itself has a lot of litigation potential. I am also concerned about the process of making the relevant Civil Procedure Rules. This can be a lengthy process, and is always a carefully considered process. I have studied the recent minutes of the Civil Procedure Rule Committee, so as to inform myself as to how the committee approaches rule changes. I would be grateful if the Minister could explain to the House how this amendment will make its way into the rules and the likely timescale.

Those reservations apart, my view is that we should go further. As pointed out at Second Reading by the noble Lord, Lord Thomas of Gresford, who has put his name to this amendment, there is no obvious reason why there should not be a criminal offence in this area.

I invite the House to consider a client consulting his expensive lawyers. He wants to take every step he can through litigation to suppress and exhaust the funds of those who would expose him. He utters those words which lawyers tend to love: "I don't mind how much it costs". The advice that he will or should receive after the government amendments become law is that there is a risk that the courts might decide to stop the litigation if it is regarded as abusive. "But", the litigant says, correctly, "It will surely still be a lengthy and expensive process before a court even gets to consider that option". However, if the Government were to accept my amendment, then the advice he should receive is that he risks criminal prosecution if he, without reasonable excuse, threatens litigation with

the intent to suppress the publication of any information likely to be relevant to the investigation of an economic crime. This potential offence gives room for a defence, of course, but its very existence should act as a considerable deterrent against the sort of behaviour we want to stop. If this amendment becomes law then the hypothetical client might think much more carefully before threatening or embarking upon abusive litigation.

This amendment is particularly relevant to journalists, who have a huge role in tackling economic crime. I declare my interest as chair of the Independent Press Standards Organisation. It is also of importance to anyone who wants to reveal economic crime. It is entirely consistent with the aims of the Bill. Let us bear in mind that the opportunity to legislate in this space is unlikely to present itself again, or at least not for some time. I beg to move.

Lord Thomas of Gresford (LD): My Lords, I remind your Lordships that, at Second Reading of this Bill, on 8 February, I referred to a legal action brought by Yevgeny Prigozhin, founder of the Wagner Group, who has been somewhat in the news over the last weekend, against the journalist Eliot Higgins, who had investigated his activities. When his case was justly struck out last May, Prigozhin said that he brought court cases against journalists because

"in any issue there should be room for sport".

The cost to Mr Higgins was in the region of £70,000, although he won his case. That is the sort of abuse of the English legal system that the current crop of so-called reputational lawyers have brought on behalf of Russian oligarchs and many other large co-operations that resent too close a look into their operations.

5 pm

For that reason, I am most grateful to the Government —in particular to the noble and learned Lord, Lord Bellamy, and the Lord Chancellor, Mr Chalk—for intervening finally to diminish their activities. I thank him for meeting us to discuss these proposals, as the Ministry of Justice team did with me in connection with my Private Member's Bill last year. However, there is still more work to be done. The curbs imposed by the government amendments cover economic crime only, but SLAPPs actions can be brought to prevent the investigation of discreditable conduct which does not amount to an economic crime.

Importantly, these government amendments do nothing to curb pre-litigation threats of action. It is frightening to receive a letter from a prestigious legal firm threatening highly expensive litigation unless a particular journalistic investigation is abandoned. The recipient will know that, whatever happens, unless the court awards solicitor and own client costs—and sometimes not even then—the litigation will be very expensive for him. There are all sorts of tricks of the trade in the bear garden—the name given to the chambers of masters in the law courts who deal with interim applications—that pile up costs. Threatening letters chill the potential for legitimate investigations. That is not in the public interest. While the statistics of actual libel cases lodged are known, we cannot know how many legitimate investigations have been choked by solicitors' letters.

That is why I put down an amendment to criminalise unjustified, threatening pre-action correspondence in the terms of today's Amendment 94. I put it down in Committee and this time have added my name to that of the noble Lord, Lord Faulks; I am very grateful to him for taking up the cudgels. The introduction of a clear and simple criminal offence will end this practice and intemperate threats. Pre-action letters will speak for themselves.

However, the amendment proposes that the defendant in a criminal trial will be permitted to advance a reasonable excuse, if he has one, for the tone of his pre-action correspondence. If he does so, the overall burden of proof of guilt will still be on the prosecution to satisfy the jury that the preferred excuse is not reasonable before a conviction is found. In my view, that deals with the problem. Reputational lawyers will have to be concerned about the language they use, although their client is in no way prevented from bringing an action—if he wants to—in an appropriate case.

At Second Reading and in Committee, the Government argued that there is no need to criminalise this conduct—perish the thought—and yet this Bill is entirely about creating new criminal offences to tighten up on economic crime. This amendment is in no way out of kilter with the purpose of the Bill, as the noble Lord, Lord Faulks, said a moment ago.

We have in this country never codified our criminal law; we have believed it better to be flexible and to deal with societal issues as they arise and change. Attitudes do change, and so does the law. Criminal charges come and go. When I started at the Bar, consensual sex between adults of the same gender could result in significant prison sentences. What was criminal is no longer so; unfounded threats of libel actions to conceal discreditable conduct, and, in particular, evidence of economic crime, seems to me to justify in the modern world the category of a crime, just as many other provisions in the Bill attempt to quash new mechanisms and practices invented to defraud the public.

I once again commend the Government for their amendments, but, to use a classic Liberal Democrat formula, they do not go far enough. I am sure we will revisit this area at some time in future.

Lord Cromwell (CB): My Lords, I start by sincerely thanking the noble and learned Lord, Lord Bellamy, and his team for meeting me and others to discuss SLAPPs and for the subsequent correspondence with me on areas of concern that remain, to some of which I will return briefly in a few moments.

As noble Lords will know, I have been rather tenacious in arguing for the inclusion of provisions against SLAPPs in the Bill, so I welcome government Amendments 102 and 103 before us today. They reflect positive listening by the Government, in particular the new Lord Chancellor, to a long campaign by Members of both Houses, as well as a coalition of non-governmental organisations. The amendments do not deliver everywhere —Scotland is excluded, I believe—nor do they cover everything that I and others have been seeking. I shall put these, as succinctly as I can, on the record.

My main concern, because it goes to the heart of SLAPP tactics, is the lack of sufficient provision in Amendment 102 for the courts to bring matters to a

[Lord Cromwell]

halt pending a decision on striking out under subsection (1) of the new clause inserted by the amendment. In his letter to me on this point, the Minister characterised such an approach as unfair and restrictive on the court, but as others have said, those using SLAPPs will do all they can to run up the costs of their opponent, not as a route to justice but as a tool of harassment. For example, in relation to new subsection (1)(b) in the amendment, deliberate pursuance of disclosure pending resolution of an anti-SLAPP motion can easily ratchet up costs.

To be effective in assessing cases and in preventing SLAPPs, to which Amendment 102 is directed, the court should be inclined to call a halt to the litigation process until it is decided whether the case should be struck out. I therefore ask the Minister whether he agrees that the courts, guided by the Civil Procedure Rules, should as a default position take the approach of putting a stop on proceedings pending a decision on striking out and allowing processes to proceed only where a very compelling reason exists for them to do so.

On Amendment 103, subsection (1)(d) of the new clause inserted by the amendment refers to harassment, expense and other harms which are

"beyond that ordinarily encountered in the course of properly conducted litigation".

It is exactly the use of so-called "properly conducted litigation" that SLAPPers weaponise in order to intimidate their victims. While some amount of emotional and financial cost is inevitable in court proceedings, I do not accept that harassment should ever be part of properly conducted litigation. The phrasing of the amendment appears to suggest that it is acceptable. This creates a significant opportunity for the SLAPPer's legal team to claim its harassment tactics are just part of the machismo and cut and thrust of legal process and, perhaps, as if a bit of harassment never really hurt anyone. That is the bully's excuse.

It also leaves the courts struggling to make a subjective judgment about what is in the minds of the claimant and the defendant. In his helpful letter to me, the Minister stated that the courts are well versed in deciding such matters. However, I remind the House, as I elaborated at some length in Committee, that courts have always been very shy of inferring intention, and I am not aware of any instance where a court has struck out a case for improper purpose.

Even the recent case involving Charlotte Leslie and Mr Amersi was thrown out pursuant to CPR part 3.4 —namely, that the statement of case disclosed no reasonable grounds for bringing the claim. The court judgment was explicit that the court was not making a decision on whether the case constituted an abuse of process. The most the court judgment was willing to say was that there were several aspects of Amersi's behaviour which gave "real cause for concern" that it was brought with an improper purpose. That illustrates how high a hurdle the test for improper purpose currently is.

The courts' hands need to be strengthened here. Unless we enable the courts more effectively to label an action as an abuse of process, the current shyness about ever striking out a case on those grounds seems set to continue. I therefore ask the Government to reconsider my suggestion, which I have written to the Minister about, that the phrase about "properly conducted litigation" is removed and that the court, in considering the claimant's behaviour, should decide if it could be reasonably understood as

"intended to cause the defendant … harassment",

et cetera.

I have two other brief points. I understand that the intention of subsection (3) of the new clause inserted by Amendment 103 is to draw a wide definition of economic crime. However, in practice, it puts a potentially costly burden on the defendant to show that it is a SLAPP, and to require a subjective, and perhaps lengthy, assessment of intent by the court. Above all, it seems redundant, because subsection (1)(d) already establishes whether a case is a SLAPP. I therefore hope that the Minister will consider a revised drafting in order to encompass the purpose of having a wide definition of economic crime while not creating a new area of difficulty for the defendant.

Finally, subsection (4) of the new clause inserted by Amendment 103 covers factors for the court to take into account. It misses a typical SLAPP intimidatory tactic of bringing an action against individuals as well as their publishers. An example of the latter is the case brought in the UK against Swedish investigative journalists by a Swedish business. By bringing the claim in the UK, the claimant was able to sue not only the publication and its editor but the journalists as individuals. This would not have been possible in Sweden where, tellingly, the claimant decided not to sue. Individuals do not typically have legal insurance, and bringing individual action in this way is a classic intimidatory tactic. I therefore urge the Minister to include this as a factor for the court to take into account under subsection (4).

In conclusion, like the song by Messrs Jagger and Richards says,

"You can't always get what you want
But if you try sometime …
You get what you need",

these amendments give us a good chunk of what we need. By highlighting SLAPPs as unacceptable, they will make lawyers think harder about engaging in SLAPP tactics, as the noble Lord, Lord Faulks, highlighted. It is a great start, but there is more to do, as I and others have tried to outline today. I hope that these points will yet be reconsidered, either in the other place or in the wider legislation on this subject that the Government have promised. I look forward to the Minister's response.

Lord Garnier (Con): My Lords, I too declare an interest as a member of the Bar who has, over the past several decades, specialised in defamation.

I agree with quite a lot of what the noble Lord, Lord Cromwell, has just said in that, first, this is in essence economically driven; and that, secondly, the decision in Amersi v Leslie and others did not designate that particular claim as a SLAPP. None the less, there was plenty in the judgment of Mr Justice Nicklin to demonstrate that the judge was quite acute about the motivation behind the claim. Essentially, it was a claim that he considered to be bullying and designed to cause the defendants the most financial embarrassment possible; he saw through that.

5.15 pm

As I explained in Grand Committee, 40 years ago—perhaps longer, I am afraid—I was often instructed to go into the bear garden, the Masters' corridor, to act for newspapers and the sainted BBC in running perfectly legitimate but none the less expensive for the other side interlocutory points, with a view to, in essence through attrition, scaring plaintiffs, as they were called then, away from their claims. I do not think we need to be too prissy about this. Litigation where there is no government funding is expensive. It does not matter whether it is a claim for personal injury or for defamation; it will cost somebody money.

I suspect that the reason why the expression "economic crime" comes into Amendment 94, moved by my noble friend Lord Faulks, and the Government's other amendment is that, without those words, it could not have got into this Bill and we would have had to wait for a new defamation Bill. For goodness' sake, we have waited long enough for this economic crime Bill; I do not suggest that we carry on waiting for the next defamation Bill. I do not look like a Rolling Stone but I do think that we ought to take what we can while we have got it.

I say that as someone who spoke against the SLAPP arguments in Grand Committee, but I am persuaded by the Government's amendment as a compromise and a way of doing justice in this vexed, complex field. The Government's amendments are the ones to go for, I think. We have got rid of criminal libel; it would therefore seem strange to criminalise the bringing of civil claims for libel, even though they may lack merit. I therefore urge my noble friend Lord Faulks and the noble Lords, Lord Thomas and Lord Cromwell, to be satisfied with what the Government have come forward with, as I think the noble Lord indicated a moment ago.

I have been persuaded by the Government's amendment, contrary to the arguments that I made in Grand Committee, and I hope that, collectively, we can let this thing move forward. What will be important is the detail of the rules under which the court will operate. I hope that the Government will be able to tell us today that those rules will come forward with all due speed.

Baroness Stowell of Beeston (Con): My Lords, I am pleased to hear my noble and learned friend say that he has changed his position since we met in Grand Committee because I recall that, during those debates, he was strong in his view and mildly critical of those of us who had brought forward amendments.

I have two amendments in this group, Amendments 125H and 125J. I will speak to them but, before I do, I join my noble and learned friend Lord Garnier in welcoming the amendments tabled by my noble and learned friend the Minister. I am very pleased to see them; they go a long way to addressing the concerns that my committee—I declare my interest as chairman of the Communications and Digital Select Committee—has raised in our hearings on this topic over the past 12 months. As has been acknowledged, those amendments are confined to economic crime but that is because this is a Bill about economic crime, so I am happy to accept them as far as they go.

None the less, I want to highlight something that my amendments, the same amendments that I tabled in Committee, refer to—the power of deterrence with regard to the solicitors who represent those who bring forward these forms of legal action. I listened very carefully to my noble friend Lord Faulks introducing his amendment. Unlike my noble and learned friend Lord Garnier, I find his arguments quite compelling, but at this point I am pleased with what we have here. The importance of deterrence and the link between the Solicitors Regulation Authority's new fining powers, the tactics employed by those who bring SLAPPs and the new dismissal mechanism are where I want to focus my comments.

As we have heard, the Government's amendments bring much-needed legal clarity about the definition of a SLAPP case. The new strike-out clause includes a likelihood test but not a requirement for the case to be shown to have merit. That is a bit of a gap. It suggests that well-to-do law firms could still threaten journalists with a defamation case that has no merit and force the journalist to deal with huge legal costs. As we have already heard, as long as the lawyers toe the line and are not too aggressive in their tactics, they are unlikely to be thrown out under the early dismissal mechanism, but just because a case is not thrown out at the start, that does not mean everything is fine.

Most SLAPP cases never make it to a court, as we have heard. They succeed by intimidating critics into dropping their investigation at a very early stage. In these circumstances, the early dismissal test will not even come into play. One of the best defences probably lies with the solicitors' regulator. The SRA needs to have confidence that these amendments tabled by my noble and learned friend the Minister will give it a sufficiently robust basis to penalise solicitors and law firms that pursue SLAPPs.

I understand that the SRA has powers to take action against individuals and law firms for misconduct or failing to comply with the rules. I would be grateful for clarification from my noble and learned friend the Minister that the SRA's new unlimited fining powers, which are already in the Bill, could definitely be used to deter and punish law firms facilitating SLAPP cases, even if the case is not thrown out by the early dismissal test or does not make it to court. Let us not forget that the lawyers are making huge amounts of money from this. They know exactly what they are doing and can be very clever about getting away with it. We need confidence and assurances that the regulator will be able to take robust enforcement action, as we in Parliament need to be able to set a clear expectation of the regulators that they will be proactive in asking people to come forward with concerns, process complaints speedily and investigate high-risk firms to put them on notice.

Above all, the SRA needs to enforce the spirit of the law, not just the letter, by demonstrating zero tolerance for those profiting from flagrant abuses of our legal system. From my noble and learned friend the Minister, I am looking for clarity at the Dispatch Box that the fining powers that the SRA now has in the Bill and this new definition of SLAPPs empower it to act against law firms if it considers it appropriate to do so because they have breached its codes and so on.

[Baroness Stowell of Beeston]
We are not looking for a situation in which it is possible for the SRA not to do what is properly expected of it just because it has not been spelled out in words of one syllable in the Bill.

In my view, it is really important for any regulator or regulated sector to understand that the members of it and those who are regulating it have a responsibility to uphold the reputation of that sector. That is done by the way in which they conduct their business. It is important that that is made very clear if the Government bring forward this definition of SLAPPs, as they have, to try to prevent further use of this aggressive and abusive form of legal action, which is doing so much to undermine the Government's overall intention to reduce economic crime.

Lord Thomas of Cwmgiedd (CB): My Lords, I am grateful to the Minister and I welcome the amendment he has put forward. I want to make three quick points.

First, it is clear that the will of the House is that something should be done quickly. The remedy should be speedy, inexpensive and flexible. This leads to my second point. The right course is to allow the rule committee to develop this, but the rules must be flexible and must allow for the development to be made judicially, rather than prescribed in rules. That, in my experience, has generally been the way forward; we have tried this in relation to other matters and know that it is impossible to lay down too many detailed things in rules. Thirdly, I hope that the Government will make available the necessary resources to the judiciary, so that this can be dealt with by a High Court or other senior judge. Speed, effectiveness and determination will show whether this is a means that will work or whether we will have to resort to that which was suggested by the first amendment that was debated.

Baroness Blake of Leeds (Lab): My Lords, I add the thanks of our side to Ministers and their teams for the access that they have given us.

I will not say much more; we have had a full discussion and response to the concerns that were raised at Second Reading and in Committee. I believe that we are in a much better place than we were, as has been outlined by many of these contributions.

I have a few points to highlight. I honestly believe that providing the courts with powers to strike out SLAPPs would be a huge, ground-breaking step forward. We have to regard what is before us as a positive start. It is also positive that a robust threshold test has been introduced and that the profile of the defendant is not prescribed, which enables it to be used by anyone—journalists, whistleblowers, activists and academics—as we have heard.

We have to acknowledge the problems that other noble Lords have highlighted around the definition of what constitutes a SLAPP and where we will achieve that clarity. The proof will come as we move ahead, but I agree that we need to make sure of this in the rules and know when they will be available for us to consider. Perhaps the Minister can respond to this.

I want to press the Minister on an answer to when the Government expect to extend the use of protections against SLAPPs beyond the definition of economic crime as outlined. That would be very helpful for us all.

In conclusion, while limited, this is a promising framework. As I have said, the Government have committed to expanding the scope, and we all ask for this to be done speedily. I do not want to get into competing quotations from famous rock stars, but there are several we could follow. I hope that

"watch out, you might get what you're after",

from Talking Heads, is not one of them.

5.30 pm

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, I am very grateful to the House and to all noble Lords who have spoken in today's debate and in earlier debates. If I may say so, I think we have collectively changed our minds, or developed our thoughts, in various respects as a result of a collective effort, for which the Government are grateful. I am particularly grateful to those noble Lords who have engaged outside the Chamber: the noble Lords, Lord Faulks, Lord Ponsonby and Lord Cromwell, the noble and learned Lord, Lord Thomas, the noble Baroness, Lady Stowell, and others, have all contributed most constructively to the debate. There is clearly a great deal of strength of feeling on the issue of SLAPPs. It is therefore with some optimism that I hope the amendments I am about to move formally will be accepted: Amendments 102, 103, 137, 141, 142 and 143.

I will first make a general remark. In civil litigation generally, parties are not necessarily evenly matched. One may have more private resources than the other; one may be legally aided while the other is not. That is a fact of life, but one relies on the rules of procedure and the good sense of the judge to see fair play, bearing also in mind the inherent power of the court to strike out a claim for abuse of process. But when we come to SLAPPS—short for strategic litigation against public participation, a rather unwieldy phrase—two additional factors come into play. This is probably common ground in this House. In addition to the possible imbalance of power between the parties, the two additional factors are, first, the right to free speech, which is essentially what this legislation protects, and secondly the public interest in full and frank disclosure of wrongdoing.

Effectively, to use the courts or the threat of litigation as a means of preventing free speech and possibly covering up wrongdoing is a particular kind of abuse of process. It may well be that the power to control such behaviour already exists under the inherent direct jurisdiction of the courts—as I think my noble and learned friend Lord Garnier may have observed earlier—but the Government wish to put that issue beyond doubt and to put a stop to SLAPP-type tactics. We cannot allow the misuse of our legal system to suppress public interest investigations and reports. On the other hand, we have to safeguard access to justice in the measures that we take, so there is a balance to be struck here. The Government respectfully suggest that this Bill finds that balance.

I will first take the definition of SLAPPs. What is a SLAPP claim? It has a number of components. First, it will be one where the complainant has acted, or intended to act, to restrain the defendant's exercise of their right to freedom of speech. The defendant will

typically be a journalist. Secondly, the exercise of that right is a matter relating to economic crime—this is necessarily limited at the moment to economic crime because of the scope of the Bill—and for a purpose related to the pursuit of the public interest in combating such economic crime. Lastly, the claimant will have misused the litigation to cause harm to the defendant, in the circumstances defined in the clause.

For such SLAPP claims there will be several protections. First, there is the early dismissal test. The claimant will have to establish that they are more likely than not to succeed at trial. Normally, if you try to strike something out, it is you who has to establish that, but if it is a SLAPP claim, the burden is reversed and the claimant must establish that they are more likely than not to succeed at trial. That is an important change in the onus.

Secondly, there is the costs protection of the defendant, who will not have to pay the costs, even if there is eventually an adverse outcome at trial. On pre-litigation tactics, raised on a number of occasions by the noble and learned Lord, Lord Thomas, and others—it is a very fair point—in the Government's view the costs protection and the reversal of the burden of proof very largely draw the sting of those threats. The journalist can sit back and say, "Well, do your worst. I'm protected on costs and by the change of the onus", so the teeth are drawn from the attempt to suppress the publication of wrongdoing.

In addition—I will come to this in a moment—there are the powers of the Solicitors Regulation Authority to pursue the solicitors through its disciplinary procedures. With those protections, there is a very substantial assault by this legislation on SLAPPs. The Government's view is that the courts will have the necessary tools and guidance from Parliament to deal with SLAPP lawsuits aimed at stifling freedom of speech and preventing journalists exposing economic crime.

As to the points rightly raised by the noble Lord, Lord Cromwell, that we should have gone further and so forth, the Government's view is that we can always improve the shining hour—of course we can—but here we have, to use the words of the noble Lord, a good chunk of what is necessary. The Government's view is that, at the moment, these provisions go far enough. As far as Scotland is concerned, discussions are continuing with our Scottish counterparts—it is a separate legal jurisdiction—and the same is true in Northern Ireland, so those matters will be pursued in due course. But the Government ask the House to accept that the provisions of this Bill as framed cut the mustard, if I may use the expression.

Of course, SLAPPs are broader than just economic crime. In answer to the question of the noble Baroness, Lady Blake, and others, the Government will come forward with completing the jigsaw as soon as a suitable legislative vehicle appears. At the moment, we are engaged in what, in another context, is called horizon scanning, to see when we can find a legislative vehicle that will do the job. This is not something the Government are going to forget about, and nor would this House allow us to do so. As soon as we can do it, we will get on to it.

It is entirely true that we now need the Civil Procedure Rules to back this up. The Civil Procedure Rule Committee will no doubt proceed as fast as it can; it is well-versed in ensuring that there are appropriate rules to make sure that legislation can have its proper effect in the courts. I have no control over the timetable of the Civil Procedure Rule Committee, but the message from this House is to get on with this as fast as we can. Indeed, if I may quickly refer to the comments of the noble and learned Lord, Lord Thomas, of course we need, as he suggests, quick, cheap and flexible procedures. One would hope that those will be developed judicially by senior judges, and that this legislation will have the desired effect. The Government have every confidence in the ability of the courts to put into effect what is the clear will of Parliament.

I turn to Amendment 94, in the name of the noble Lord, Lord Faulks. With regret, the Government, although sympathetic to the amendment's objectives, do not feel that it would be right to criminalise access to justice in the way proposed. As the noble and learned Lord, Lord Garnier, pointed out, we have got rid of criminal libel. We have a balance to strike here. It would be very strong to say that it is, or is potentially, a criminal offence to commence proceedings in the courts. The courts have to be open. In the Government's view, the balance to be struck here is civil, not criminal. Creating a criminal offence with such a broad application to tackle what is, in essence, a civil matter would be inappropriate. We do not have the evidence to support such a development. It would be entirely inappropriate to create a criminal offence that would not be very clearly defined and would potentially prevent access to justice—apart from, of course, establishing the criminal instead of the civil standard, which we are essentially dealing with here.

The creation of a criminal offence would go far beyond the Government's measures and, I think, would mark a departure from other jurisdictions, to which some reference has been made. I might be wrong, but I do not know of one that has made this kind of activity a criminal offence. In the light of those comments, I invite the noble Lord to withdraw the amendment.

Amendments 125H and 125J were tabled by my noble friend Lady Stowell. I thank her again for her constructive engagement on the Bill. These amendments seek to allow the Solicitors Regulation Authority to set its own fining limit for cases of professional misconduct relating to abusive litigation brought forward to suppress reporting on economic crime.

Clause 195 removes the statutory limit on the level of financial penalty that the Law Society, which delegates the matter to the SRA, may impose, and a similar provision applies to the Scottish Solicitors' Discipline Tribunal. The intention that my noble friend expresses is shared by the Bill, but the Government's view is that the current drafting of these clauses, which already captures disciplinary matters relating to economic crime, covers the matters to which my noble friend referred. If the SRA can demonstrate that an abusive litigation case breached a rule specifically for economic crime or

"purposes relating to the prevention or detection of economic crime",

that should permit it to use its new fining powers, so my noble friend's amendments are, in the Government's view, unnecessary.

[Lord Bellamy]

I assure my noble friend that the Government's intention is that this measure allows the SRA to impose fines above £25,000 against solicitors and law firms that fail to comply with the rule by taking part in or facilitating abusive litigation, whether or not such cases reach court or are struck out, provided that the SRA can establish a link between this type of misconduct and the prevention or detection of economic crime. This legislation is directed not just to cases that come to court but to pre-action threats and actions to deal with attempts to intimidate.

5.45 pm

The Government are confident that the SRA is suitably equipped, with its new fining powers, to tackle law firms that improperly support clients in ways that inhibit prevention or detection of economic crime, whether through SLAPP-type activity or otherwise, whether or not cases come to court, and whether or not there is early dismissal. That is the Government's view of the scope of these amendments and we trust that the SRA will be able, on that basis, to take the necessary actions it seeks to take.

I think and hope that I have answered the various points that have rightly been raised. I therefore urge my noble friend Lady Stowell not to press her amendments and I will move the government amendments in due course.

Lord Faulks (Non-Afl): My Lords, the Minister quite rightly emphasised that these amendments are concerned with two fundamental points: free speech and the public interest that exists to expose wrongdoing. He also said that the power, to be further elaborated by the rules, already exists. He is absolutely right to do so. In a way, the government amendments, which I welcome, tell the courts to do what they already can do. The question is whether they go far enough.

I have already indicated that I see a great deal of litigation potential in the definition of what SLAPPs may or may not be, notwithstanding the drafting. The Minister said that, with the comfort of these new rules, editors will be able to say to their journalists, "Well, we can go ahead. Sit back and do your worst". I wonder how realistic that is, given that a journalist seeking after truth and attempting to expose wrongdoing will nevertheless expose him, her or their journal to a considerable hurdle before there is any chance of a striking out taking place. We hope the rules will come into effect in due course to encourage courts to take that view, but my experience, sadly, is that courts are reluctant to strike out claims on the basis that it is very difficult, without evidence, to come to a conclusion that something is an abusive process.

However, I accept that, for the moment, the view is taken that this amendment to create a criminal offence goes too far. I am afraid I do not accept the characterisation that it would "criminalise access to justice"; that was a most unfortunate phrase. In fact, it would create an offence that would help prevent the suppression of the publication of any information likely to be relevant to the investigation of economic crime. That is not criminalising access to justice; that was a most unfortunate characterisation.

However, I accept that the Government are with the spirit of the debate entered into in various stages on the Bill, and that they want to encourage the courts to intervene where necessary. I accept that, although it has expressed real concern, the House does not, for the moment, want to go as far as my amendment suggests. With some reluctance, but accepting the will of the Front Benches and of the Minister, I beg leave to withdraw my amendment.

Amendment 94 withdrawn.

Clause 187: Other defined terms in sections 182 to 185

Amendment 95

Moved by ***Lord Etherton***

95: Clause 187, page 176, line 33, leave out paragraph (a) and insert—

"(a) constitutes the offences of fraud, false accounting, money laundering or offences under any binding sanctions regime, whether at common law or in primary or secondary legislation,"

Member's explanatory statement

This amendment provides for a shorter and more focused definition of "economic crime" than is presently to be found in Clause 187(1) and Schedule 10.

Lord Etherton (CB): I tabled all the amendments in this group. I am very grateful to those who have added their names to them: the noble Lords, Lord Verdirame, Lord Pannick and Lord Anderson of Ipswich. I am also very grateful to the Minister, the noble and learned Lord, Lord Bellamy, for meeting me and senior representatives of the Law Society and of the Bar Council to discuss what is now Clause 197.

All these amendments relate to the new regulatory objective in Clause 197 that amends the Legal Services Act 2007 by inserting for the Legal Services Board a new objective:

"promoting the prevention and detection of economic crime".

As I said in Committee, this proposed new regulatory objective is extraordinarily wide and imprecise. The meaning of the word "promoting" lacks any clarity or certainty. It raises legitimate concerns about a potential lack of proportionality and overregulation by regulators, and about a lack of evidential risk as to those sectors most likely to come into contact with economic crime—for example, advisers rather than advocates. And even in the area of advisers, it is hardly likely to involve experts in the environment or town planning.

As the MoJ's impact assessment of the new regulatory objective makes clear, the front-line regulators of the legal profession are already implicitly under a duty to ensure that lawyers are not breaching economic crime rules. The provisions in Clause 197 are merely to make explicit what is already implicit, and it is important that the Legal Services Board and the front-line regulators understand that this is the case.

The definition of economic crime for the purposes of Clause 197 is provided in Clause 187(1) by mean of cross-reference to Schedule 10, which contains a long list of statutes. This provides no focus on what is really at issue and should be the concern of regulators. That is spelled out clearly in my Amendment 95—namely,

"the offences of fraud, false accounting, money laundering or offences under any binding sanctions regime, whether at common law or in primary or secondary legislation".

This lack of focus could well promote overregulation and a lack of proportionality.

What is needed is a clear statement from the Minister, which I would very much welcome today, on the following. First, regulators must understand that this is not a new regulatory duty but one that states explicitly what is already implicit. Secondly, there should be a focus on the particular criminal activity which is relevant: fraud, false accounting, money laundering and offences under any binding sanctions regime. Thirdly, there is a need for evidence-based regulation according to evidence of risk in particular areas of work and practice, as I described, such as transactional work rather than contentious and court-based work, and areas of advisory work which might be relevant in which economic crime might well occur. Fourthly, there will also be a need for proportionality by regulators. Fifthly, the regulators must understand, as the Minister said before, that there is to be no interference with the principle of legal professional privilege. Finally, there is a need for consultation with the profession to ensure that the new objective successfully tackles economic crime in the proportionate and evidence-based way I have described.

I hope the Minister will be able to make those points clear to the profession to enable a proper regulatory framework to work. I beg to move.

Lord Bellamy (Con): I thank the noble and learned Lord, Lord Etherton, for his engagement on this topic throughout the Bill and for his remarks today. I briefly reiterate that the definition of economic crime is deliberately widely drawn. It applies not only to the regulatory objective but to several other clauses of the Bill, including the information-sharing measures between various financial institutions at Clauses 182 and 183. The Government do not believe that restricting that definition would be right.

It is true that there is a long list of offences in Schedule 10, including the reference to theft. Sometimes it is difficult to distinguish between fraud and theft, but I am happy to acknowledge that typical forms of theft, including low-level theft such as shoplifting or street crime or similar activities, are most unlikely to be relevant to anything in the Bill. Therefore, the Government do not feel able to change the definition of economic crime specifically for the legal sector, and the regulators must be able to respond to circumstances as they develop.

I shall address in a little more detail some of the points raised by the noble and learned Lord, Lord Etherton, this afternoon. I hope to cover all those points one way or another. First, in relation to legal professional privilege, the regulatory objective already requires adherence to professional principles under the Legal Services Act. In the Government's view, there is no need for a specific reference to legal professional privilege, but I can make it absolutely clear that the Government do not consider that the Bill makes any difference to the principle of legal professional privilege. It is in no way an assault or attack on that fundamental principle of English law. The protection of legal professional privilege, as developed in the courts, will continue to apply in this area, as in many other areas. That is the Government's position, and I hope that it is clear

As to how the regulatory objective and the provisions of the Bill will operate in practice, and in response to the noble and learned Lord, Lord Etherton, who made various entirely fair points, the intention and purpose of the regulatory objective is to put the onus on legal services regulators to be active in promoting and upholding adherence to the economic crime regime. The new objective will put beyond doubt and clarify that securing compliance is explicitly part of the regulatory role. We expect regulators to use all the tools available to them, but their activity should be appropriately targeted and not in any sense just a box-ticking exercise. The objective does not directly place new duties on lawyers. It is directed to the legal services regulators, and existing safeguards remain.

All those regulators will still be bound by public law principles, which will ensure that any regulation of legal services is proportionate and fair. Proportionality is particularly important. Section 3 of the Legal Services Act already requires the Legal Services Board to have regard to the principle that regulatory activity should be transparent, accountable, proportionate, consistent and targeted only for cases where action is required. The new regulatory objective on economic crime fits within this framework and existing objectives, such as supporting the rule of law, promoting the public interest and improving access to justice.

It is understood and expected that the Legal Services Board will work closely with the professions in developing guidance to support the new objective. This will include a public consultation on any necessary policy statement or guidance to ensure that the regulatory objective is implemented in a targeted and proportionate way. This will allow the LSB to capture and analyse any concerns that professional bodies or others may have, or continue to have, in relation to the new objective.

6 pm

The objective is intended to be focused on the areas where the evidence of risk or greatest concern is in relation to the relevant professions. Legal services regulators will normally be expected to adopt a risk-based approach having regard to the available evidence to identify areas of economic crime that they should be focusing on when complying with and promoting the new objective. This will also help to ensure that the implementation of this objective is proportionate and successfully tackles crime in the legal sector having engaged positively with the profession.

I hope that I clarified those aspects and, with these reassurances, I hope that the noble and learned Lord may be persuaded to withdraw his amendments.

Lord Etherton (CB): I am extremely grateful to the Minister for all those assurances. They are extremely helpful, and I do think that they will assist in settling the concerns of many of those in the legal profession. On the basis of the assurances that he has given, I am very happy to indicate that I will withdraw my amendment.

Amendment 95 withdrawn.

Amendment 96

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

96: Clause 187, page 176, line 34, leave out ", conspiracy or incitement" and insert "or conspiracy"

Member's explanatory statement

This amendment and my other amendments to clause 187 correct the definition of "economic crime" to include encouraging or assisting an offence under Part 2 of the Serious Crime Act, which replaced the common law offence of incitement in England and Wales and Northern Ireland.

Lord Sharpe of Epsom (Con): My Lords, corporate criminal liability is a topic that many across the House care deeply about—

A noble Lord: Not yet.

Lord Sharpe of Epsom (Con): Sorry. I beg to move Amendment 96 formally.

Amendment 96 agreed.

Amendment 97 not moved.

Amendment 98

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

98: Clause 187, page 176, line 35, at end insert—

"(ba) constitutes an offence—

(i) under Part 2 of the Serious Crime Act 2007 (England and Wales and Northern Ireland: encouraging or assisting crime) in relation to a listed offence, or

(ii) under the law of Scotland of inciting the commission of a listed offence,"

Member's explanatory statement

See the explanatory statement to my first amendment to clause 187.

Amendment 98 agreed.

Amendments 99 and 100 not moved.

Amendment 101

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

101: Clause 187, page 176, line 39, after "(b)" insert ", (ba)"

Member's explanatory statement

This amendment is consequential on my other amendments to clause 187.

Amendment 101 agreed.

Amendments 102 and 103

Moved by ***Lord Bellamy***

102: After Clause 187, insert the following new Clause—

"Power to strike out certain claims

Strategic litigation against public participation: requirement to make rules of court

(1) The power to make Civil Procedure Rules must be exercised so as to secure that Civil Procedure Rules include provision for ensuring that a claim may be struck out before trial where the court determines—

(a) that the claim is a SLAPP claim (see section (Meaning of "SLAPP claim"), and

(b) that the claimant has failed to show that it is more likely than not that the claim would succeed at trial.

(2) Rules made in compliance with subsection (1) may include rules about how a determination under that subsection is to be made, including (in particular)—

(a) rules for determining the nature and extent of the evidence that may or must be considered;

(b) rules about the extent to which evidence may or must be tested;

(c) rules permitting or requiring the court to determine matters of fact by way of presumptions.

(3) Rules made in compliance with subsection (1) must include rules under which the court may make a determination under that subsection of its own motion.

(4) The power to make Civil Procedure Rules must be exercised so as to secure that Civil Procedure Rules include provision for securing that, in respect of a SLAPP claim, a court may not order a defendant to pay the claimant's costs except where, in the court's view, misconduct of the defendant in relation to the claim justifies such an order.

(5) The Lord Chancellor may by regulations provide for subsections (1) to (4) to apply in relation to any rules of court that may be specified in the regulations as those subsections apply in relation to Civil Procedure Rules.

(6) In this section—

"court" includes a tribunal;

"rules of court" means rules relating to the practice and procedure of a court or tribunal."

Member's explanatory statement

This new clause, new clause (Meaning of "SLAPP claim") and my amendments at page 191, line 37, page 192 at line 33 and 192, line 38 provide for the making of rules of court with a view to preventing claimants from improperly using civil proceedings to restrain certain disclosures of information relating to economic crime.

103: After Clause 187, insert the following new Clause—

Meaning of "SLAPP" claim

(1) For the purposes of section (Strategic litigation against public participation: requirement to make rules of court) a claim is a "SLAPP claim" if—

(a) the claimant's behaviour in relation to the matters complained of in the claim has, or is intended to have, the effect of restraining the defendant's exercise of the right to freedom of speech,

(b) any of the information that is or would be disclosed by the exercise of that right has to do with economic crime,

(c) any part of that disclosure is or would be made for a purpose related to the public interest in combating economic crime, and

(d) any of the behaviour of the claimant in relation to the matters complained of in the claim is intended to cause the defendant—

(i) harassment, alarm or distress,

(ii) expense, or

(iii) any other harm or inconvenience,

beyond that ordinarily encountered in the course of properly conducted litigation.

(2) For the purposes of determining whether a claim meets the condition in subsection (1)(a) or (c), any limitation prescribed by law on the exercise of the right to freedom of speech (for example in relation to the making of defamatory statements) is to be ignored.

(3) For the purposes of this section, information mentioned in subsection (1)(b) "has to do with economic crime" if—

(a) it relates to behaviour or circumstances which the defendant reasonably believes (or, as the case requires, believed) to be evidence of the commission of an economic crime, or

(b) the defendant has (or, as the case requires, had) reason to suspect that an economic crime may have occurred and believes (or, as the case requires, believed) that the disclosure of the information would facilitate an investigation into whether such a crime has (or had) occurred.

(4) In determining whether any behaviour of the claimant falls within subsection (1)(d), the court may, in particular, take into account—

(a) whether the behaviour is a disproportionate reaction to the matters complained of in the claim, including whether the costs incurred by the claimant are out of proportion to the remedy sought;

(b) whether the defendant has access to fewer resources with which to defend the claim than another person against whom the claimant could have brought (but did not bring) proceedings in relation to the matters complained of in the claim;

(c) any relevant failure, or anticipated failure, by the claimant to comply with a pre-action protocol, rule of court or practice direction, or to comply with or follow a rule or recommendation of a professional regulatory body.

(5) For the purposes of subsection (4)(c) a failure, or anticipated failure, is "relevant" so far as it relates to—

(a) the choice of jurisdiction,

(b) the use of dilatory strategies,

(c) the nature or amount of material sought on disclosure,

(d) the way to respond to requests for comment or clarification,

(e) the use of correspondence,

(f) making or responding to offers to settle, or

(g) the use of alternative dispute resolution procedures.

(6) In this section—

"court" has the same meaning as in section (Strategic litigation against public participation: requirement to make rules of court);

"economic crime" has the meaning given by section 187(1);

"the right to freedom of speech" means the right set out in Article 10 of the European Convention on Human Rights (freedom of expression) so far as it consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form).

(7) In the definition of "the right to freedom of speech" in subsection (6) "the European Convention on Human Rights" means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom."

Member's explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

Amendments 102 and 103 agreed.

Amendment 104

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

104: After Clause 187, insert the following new Clause—

"Attributing criminal liability for economic crimes to certain bodies

Attributing criminal liability for economic crimes to certain bodies

(1) If a senior manager of a body corporate or partnership ("the organisation") acting within the actual or apparent scope of their authority commits a relevant offence after this section comes into force, the organisation is also guilty of the offence.

This is subject to subsection (3).

(2) "Relevant offence" means an act which constitutes—

(a) an offence listed in Schedule (Criminal liability of bodies: economic crimes) ("a listed offence"),

(b) an attempt or conspiracy to commit a listed offence,

(c) an offence—

(i) under Part 2 of the Serious Crime Act 2007 (England and Wales and Northern Ireland: encouraging or assisting crime) in relation to a listed offence, or

(ii) under the law of Scotland of inciting the commission of a listed offence, or

(d) aiding, abetting, counselling or procuring the commission of a listed offence.

(3) Where no act or omission forming part of the relevant offence took place in the United Kingdom, the organisation is not guilty of an offence under subsection (1) unless it would be guilty of the relevant offence had it carried out the acts that constituted that offence (in the location where the acts took place).

(4) In this section—

"body corporate" includes a body incorporated outside the United Kingdom, but does not include—

(a) a corporation sole, or

(b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

"partnership" means—

(a) a partnership within the meaning of the Partnership Act 1890;

(b) a limited partnership registered under the Limited Partnerships Act 1907;

(c) a firm or other entity of a similar character to one within paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom;

"senior manager", in relation to a body corporate or partnership, means an individual who plays a significant role in—

(a) the making of decisions about how the whole or a substantial part of the activities of the body corporate or (as the case may be) partnership are to be managed or organised, or

(b) the actual managing or organising of the whole or a substantial part of those activities."

Member's explanatory statement

This amendment sets out circumstances in which liability for an offence committed by a senior manager may be attributed to a body corporate or partnership.

Lord Sharpe of Epsom (Con): My Lords, my apologies again for my early start on this; my enthusiasm keeps getting the better of me today.

As I was saying, corporate criminal liability is a topic that many across the House care deeply about, and one where the Government are committed to making significant reforms. I thank noble Lords for the robust and constructive debate we had in Committee on this topic and for the ongoing engagement which many noble Lords have afforded me in the weeks leading up to this debate.

I reiterate the Government's commitment to reforming corporate criminal liability and tackling fraud. Since this Bill was introduced, significant steps forward have

been taken. I hope, with the further government amendments to which I will speak shortly, noble Lords will recognise that we have gone to great lengths to strengthen the Bill in this area. In addition, government action continues outside of this Bill. The recently published *Fraud Strategy* further demonstrates the ongoing work across government and with partners to take action to tackle fraud.

I will speak first to government Amendments 104, 105, 106, 109, 138, 139, 140, 144 and 145, which introduce new clauses to this Bill to reform the identification doctrine. As noble Lords will be aware, the identification doctrine is outdated and ineffective in the way in which it holds corporates to account, given the breadth of business we see in the 21st century. Companies have grown tenfold since the "directing mind and will" test was devised in the 1970s. As companies have grown, their operations and governance have become spread across different areas, making it incredibly difficult to pinpoint the directing mind of a company, particularly in a large organisation. Individuals with significant authority can escape corporate liability by asserting that the directing mind and will is elsewhere.

Meanwhile, there is an unfairness here. Smaller companies, perhaps with one or two directors, have much more easily identifiable directing minds, meaning that corporate liability is more easily attributable and a prosecution is more likely to be successful. It is this inequality in the law that we need to address. The government amendments place the identification doctrine on a statutory footing for economic crimes for the first time, providing legislative certainty that senior managers are within the scope of the rule.

Under these new measures a corporate will be held liable if a senior manager has committed an offence under the new schedule, or if they have encouraged or assisted an offence by another, or have attempted or conspired to commit an offence under the schedule. The corporate will be criminally prosecuted and, if convicted, will receive a fine, in addition to any sentences imposed for individuals who are separately prosecuted and found guilty of the same offence. The reform will apply to all corporate bodies and partnerships established in England and Wales, Scotland and Northern Ireland.

These amendments build on the extensive work and consultation conducted by the Law Commission in this area. Building on feedback from prosecuting bodies, business representatives and Members of both Houses, some tweaks have been made to the Law Commission's proposal to ensure the reform is applicable to the widest set of cases. Under the Government's reform, economic crime is defined according to a new schedule in the Bill—introduced via Amendment 109—which reflects existing Schedule 10 but without those offences that principally apply to a corporate body, such as failure to prevent bribery.

For the purpose of these amendments, "senior management" will be defined in accordance with the well-established definition provided for in the Corporate Manslaughter and Corporate Homicide Act 2007. This model considered the senior managers' roles and responsibilities within the relevant organisation and the level of managerial influence they might exert, rather than their job title.

The clauses tabled by the Government also seek to capture instances where a senior manager commissions or encourages a lower-ranking employee to do their "dirty work" by making it clear that the corporate can also be held liable where the senior manager encourages or assists a listed offence in the schedule.

To be clear to the House, subsection (3) of the new clause introduced by Amendment 104 ensures that criminal liability will not attach to an organisation based and operating overseas for conduct carried out wholly overseas simply because the senior manager concerned was subject to the UK's extraterritorial jurisdiction; for instance, because that manager is a British citizen. Domestic law does not generally apply to conduct carried out wholly overseas unless the offence has some connection with the UK. This is an important matter of international legal comity.

However, some offences, wherever they are committed, can be prosecuted against individuals or organisations who have certain close connections to the UK. Subsection (3) makes sure that any such test will still apply to organisations when the new identification doctrine applies. Extending the identification doctrine test to senior management better reflects how decision-making is often dispersed across multiple controlling minds, mitigating the ability to artificially transfer, remove or create titles to escape liability. This is a positive step to increasing lines of clear governance and accountability in corporations.

Looking forward, although these government amendments are a strong step to improving corporate criminal liability laws, they are not the final step. The Government have committed in the *Economic Crime Plan 2* and the *Fraud Strategy* to introduce reform of the identification doctrine to apply to all criminal offences. This will take place when a suitable legislative vehicle arises.

I move on now to the government amendments on failure to prevent fraud. In Committee, the Government tabled amendments which introduced a new corporate offence of failure to prevent fraud. Under the new failure to prevent offence, a large organisation will be liable to prosecution where fraud was committed by an employee for the organisation's benefit and the organisation did not have reasonable fraud prevention procedures in place. The new offence will help to protect victims and cut crime by driving a culture change towards improved fraud prevention procedures in organisations and by holding organisations to account through prosecutions if they profit from the fraudulent actions of their employees.

Following this, noble Lords have raised further points with me on where the Government clauses could be strengthened. I have listened to the points raised, and the Government have tabled further amendments on the definition of large organisations and the treatment of subsidiaries. I thank the noble Lord, Lord Vaux of Harrowden, for bringing this point to my attention.

As I have set out on many occasions, the failure to prevent fraud offence is designed to balance the fraud prevention benefits with minimising burdens on small business. Amendments 111, 112, 113, 114, 115, 116, 118, 119, 122, 123 and 124 will help prevent companies from avoiding responsibility by moving high-risk

operations into subsidiaries that fall below the size threshold for the offence. They will also ensure that groups of companies with significant resources are incentivised to take steps to prevent fraud.

First, we have made a clarification to ensure that an assessment of whether an organisation meets the size criteria, and is therefore in scope of the offence, is made cumulatively across the parent company and its subsidiaries—that is, the group—rather than being based on each individual entity. We then have to consider where liability would attach within that group. The group itself is not a legal entity so cannot be liable. It may be more appropriate for the subsidiary or the parent to be accountable directly, depending on the circumstances. We have therefore clarified that whichever of the individual entities within a group was responsible for the fraud can be directly liable for a failure to prevent fraud, in the same way as any other entity in scope of the offence.

Additionally, we have clarified that an employee of a subsidiary can be an associated person of its parent or owning company. That makes it more feasible to attach liability to the parent company should the approach of targeting the specific subsidiary be inappropriate. A test would still have to be met that the fraud by the subsidiary employee intended to benefit the parent, and the parent would have the defence that it was reasonable to take no steps to prevent the fraud—for example, if the structure was such that the parent had no say over the activities of the subsidiary.

Finally, Amendment 120 ensures that the views of the Scottish and Northern Ireland Governments are taken into account before any future changes to the offence threshold based on organisation size.

I hope noble Lords will recognise that this is a hugely meaningful package of amendments. I recognise that a number of noble Lords will have hoped the Government would go further, particularly around the threshold in the failure to prevent fraud offence. However, I stress that we have already taken tremendous strides forward. The Government firmly believe that our reforms to the identification doctrine; the introduction of a failure to prevent fraud offence covering around 50% of economic activity; measures to prevent avoidance via subsidiaries; and our existing ability to identify and prosecute fraud more easily in smaller organisations will cumulatively have the desired effect of tackling and deterring economic crime, without unnecessarily imposing billions of pounds of burdens and bureaucracy on actual or potential small businesses. I hope noble Lords can recognise the great progress we have made, and I beg to move.

Lord Garnier (Con): My Lords, I thank my noble friend the Minister for his opening remarks and for the advance that the Government have made on two fronts. The first is by clarifying the senior management officers within a company; in doing so, they have clarified the way in which the identification doctrine can be applied in modern Britain.

As I have said on previous occasions, I have an interest to declare. I will not specifically recite it again because I did so in Committee, at Second Reading and, I think, on the three or four previous pieces of legislation into which a failure to prevent amendment could have been inserted—but of course it was not the right Bill, the right vehicle or the right time, and in fact it was just not right. So here I am again.

I shall speak to my Amendments 110 and 125A, which at the appropriate time I will move to a Division unless the Government persuade me otherwise. I am not engaging here in party politics or even in a rebellion. I am doing nothing by surprise; anyone who has followed discussions on economic crime over the last 13 years will know precisely what I am going to say. Indeed, my noble friend the Minister is adept at moving from one corridor to the next to avoid having a yet further conversation with me about my favourite subject. He has also heard all my jokes before, but not every Member of our House has had that advantage so it may be that, unless the Government accept my amendment, my little Aunt Sally will have another canter around the course. However, I will take things in stages.

First, I thank the Government, as I hope I have done—and I mean it sincerely—for their Amendments 104 to 106 and 109—essentially, the modernisation of the identification principle, so far as it goes. We are now slowly catching up with the Americans; they did something similar to this in 1912, but this is the United Kingdom and we must not rush.

6.15 pm

That said, I think this is an advance but, in welcoming the advance from the Government through my noble friend the Minister, we must recognise the distinction between the identification principle and the amendment that the Government are bringing forward, which enables people lower down the corporate hierarchy to bring liability for criminal activities to the company. That is to be distinguished from the failure to prevent regime, which is where the company is made liable for failing to prevent offences committed by its associates or other employees, sometimes overseas. The government amendments on the identification principle do not have any bearing on extraterritorial crimes. Fraud committed overseas would not be bitten by the identification amendments; welcome as they are, they are limited to offences committed within this jurisdiction. I repeat: I am delighted that they have moved that far.

I will not take too much time because everyone has heard all this before, or at least those who are interested have. I thank the Minister for what he has said in relation to the identification principle and all those Members of this House who have, both in Committee and at Second Reading, indicated an interest in, and spoken with great knowledge and experience about, the need to expand the failure to prevent regime.

The two amendments that concern me particularly are Amendments 110 and 125A. I will take them in reverse order. Amendment 125A—which I see that the noble Baroness, Lady Bennett, has kindly co-signed, although she is not the only noble Lord who supports the principle of what I am advocating—would see a modest increase in the ambit of the failure to prevent regime. I have some much more exciting amendments, which I shall not be moving, which would increase the ambit of that regime from beyond the Section 7 offence under the Bribery Act 2010, beyond the facilitation of tax offences in the Criminal Finances Act 2017 and

[Lord Garnier]
well beyond what is under discussion now. I have amendments that, for example, would cut and paste the offences listed in the schedule to the Crime and Courts Act so that a whole host of financial offences would be added.

To borrow part of the Rolling Stones speech by the noble Lord, Lord Cromwell, and to bowdlerise it and mess it up, I am going to do what I can and grab what I can rather than going to the very limits of what I think is possible and indeed right. I will limit my desire to extend the regime to cover the fraud offences that the Government suggest and to add money laundering.

The Government say there is no point adding money laundering because it is all covered by regulations. I have two points about that. First, if we are to extend the criminal law, we should do so by primary legislation. Secondly, the regulations do not cover the situations that I am seeking to encourage our jurisdiction to prevent. The 2017 anti-money laundering regulations are fine so far as they go. They set out a list of obligations that financial services advisers and so on need to comply with. That is to be distinguished from the offences under the Proceeds of Crime Act 2002, where the criminal offences of money laundering are set out.

If the Government seek to persuade your Lordships that the regulations do the trick, they do not; they miss the point entirely. They deal with something completely other than what I am talking about, which is failure to prevent those POCA offences being committed by associates of those companies. It is a much more serious set of circumstances, which are not dealt with or catered for by the regulations from 2017. That is the argument for Amendment 125A.

Amendment 110 is supported by a number of my noble friends and other noble Lords, for which I am most grateful. It is to the part of the Bill which deals with large organisations: Clause 188. The Bill as drafted states:

> "A relevant body which is a large organisation is guilty of an offence if, in a financial year of the body … a person who is associated with the body … commits a fraud offence intending to benefit …the relevant body",

and so on. Only a moment's examination of the Government's definition of a large organisation would demonstrate to this House that that is absurd. Essentially, the Government are saying that the whole of the corporate economy and partnership economy in this jurisdiction, but for 0.5% of it, constitutes an SME.

The failure to prevent fraud offence—and, I would say, the failure to prevent fraud and money laundering offences—will not, if the Government have their way, bite on 99.5% of the corporate and partnership economy. Here, my noble friend the Minister will block his ears. That is the equivalent of us saying that every burglar over six feet, six inches is liable to be prosecuted, if the evidence and public interest dictate, but every burglar under that height gets off scot free. If that is what the criminal law should be—and this House is free to say so—that is a strange thing. I would even say it is a ridiculous thing. I would say it is a laughable thing. If we want to be taken seriously as a jurisdiction which is bearing down on dishonest business, we should not accede to the Government's blandishments.

One of the reasons why they say it would be unfair on the corporate world to do away with the "SME" exemption—I put SME in inverted commas here, because it is not the right description for 99.5% of the corporate and partnership economy—is that it would place a vast financial burden on business. My noble friend said as much just a moment ago. Is it not interesting that the SME exemption does not appear in the Bribery Act or the Criminal Finances Act? I have not heard a good answer to the question why it did not, nor to the question why the SME exemption is so marvellous for this Bill. There may be one, but we have not heard it.

Let us take advice not from me, but from experienced accountants and academics. I am thinking particularly of a member of RUSI, Kathryn Westmore, who has written about and studied corporate criminal liability quite considerably. The assertions, made without evidence, by the Government that this is going to cost corporate Britain billions of pounds are not made out. Much of the corporate world already, for good business reasons, makes sure that they are not putting themselves at risk of committing economic crimes. They have auditing requirements and reasons of self-interest, to protect their reputations and so on.

The argument that this is going to cost a lot of money, if it was going to run, would have run in 2010 and 2017. It did not run then; nobody made that argument and if they did, it did not last. The Government certainly did not make it, and that argument is not going to run today. I urge the House not to be persuaded by the SME exemption—that 99.5% of the economy relevant to this Bill should be freed from the liability to behave properly.

I have said all of this so many times before that I no longer need to say it again; but I have. I have now finished. I may well be saying the same thing next year, but I hope not. If I do, please bear in mind that you will not be hearing it for the first time.

Lord Vaux of Harrowden (CB): My Lords, I will briefly add my support to the amendments proposed by the noble and learned Lord, Lord Garnier, which try to strengthen the failure to prevent clauses the Government have proposed. I welcome those clauses and the changes the Government have added at this stage. In particular, I strongly support Amendment 110, to which I have added my name, which removes the restriction of this offence to large companies.

Let us be clear what this failure to prevent offence deals with. It does not cover, for example, the use of a company's services by fraudsters, something I greatly regret. I am sure that—along with, I hope, the noble Baroness, Lady Morgan—we will come back to this in another Bill. It actually applies only to situations where somebody associated with the company, such as an employee, commits a fraud that is intended to benefit the company. Let me emphasise that: it applies only to frauds carried out by associates such as employees or agents, and only where those frauds are effectively committed on behalf of the company. It is pretty restricted.

When I was in business, frankly, it never occurred to me that such situations were not already caught by the law. Surely, it must be a fundamental principle that a company should take reasonable steps to prevent its

employees committing fraud on its behalf. But the Government seem to take a different view. Having been dragged somewhat reluctantly into putting forward their own amendments to create this offence of failure to prevent, they have decided it should apply only to larger companies. As we have heard, they have set the threshold so that less than 1% will be covered.

The argument, as we have heard, is that the cost would be disproportionate. The Government have come up with some costings to support this. I am afraid I do not think I am the only person who simply does not find those costings credible. Any reputable company should, and I believe generally will, be doing this already. There are some things we should ensure that companies do anyway. A good example is that companies must ensure that health and safety rules are followed. It is not an excuse to say, "It wasn't me; an employee caused the accident". Nor is it an excuse to say, "My company is too small to follow health and safety rules". We do not give small companies an exemption from health and safety, tax evasion or bribery legislation. Why would we do so, uniquely, for fraud—committed on the company's behalf?

If the Government are genuinely worried about the cost, they can deal with that easily enough by issuing timely guidance that sets out what steps would be reasonable and the circumstances in which no additional procedures would be required, which is likely to be the case for most small enterprises. Amendment 125D makes some sensible suggestions in that regard.

6.30 pm

I thank the Minister for dealing with the issue that I raised in Grand Committee: that the thresholds were set on an individual company basis, rather than on a group consolidated basis. The Government have put forward amendments that deal with that problem, but it is academic if we take the much simpler and, I believe, correct step of just removing the threshold altogether.

I also support Amendment 125A, as I can see no reason why the same principles should not apply to all forms of economic crime, particularly money laundering.

This is very simple. All businesses should take reasonable steps to stop economic crimes such as fraud and money laundering being committed on their behalf by their employees. I hope that the noble and learned Lord will insist on these amendments, and I will support him if he does.

Lord Leigh of Hurley (Con): My Lords, my noble and learned friend Lord Garnier wonders why the noble Baroness, Lady Bennett of Manor Castle, supports his amendment. I have heard wags tell me that he is referred to as a Green Peer, on account of the number of times he recycles his gags. That might be a little unfair—I hear disapproval, but never mind.

I will speak to these amendments, having followed the Bill extremely closely. The noble Lord, Lord Vaux of Harrowden, is of course right to pinpoint what we are debating: fraud perpetrated to benefit a relevant body. However, the noble Lord actually said "on the company's behalf", and that is not right. I do not think it is necessarily to capture exclusively where a company seeks to benefit itself; it could also, quite rightly, seek to capture an employee who commits fraud to benefit himself or herself because of a bonus arrangement or other matters. So it is not just on a company's behalf.

In Grand Committee and elsewhere, I have argued that there should be exemptions for small and medium-sized companies, in opposition to Amendment 110. I totally agree with my noble and learned friend Lord Garnier that the numbers proposed by the Government—any two of the following: a turnover of £36 million; a balance sheet of £18 million, which is undefined; and 250 employees, which is easy to define—are not appropriate. As he said, they capture only 0.5% of companies, but of course they capture the most important companies, which is where this legislation is perhaps intended to attack—it covers pretty much every FTSE and AIM company, which would perhaps have someone to put their mind to undertaking a fraud.

Although I have reservations about Amendment 110, curiously enough I support my noble and learned friend Lord Garnier's Amendment 117, which is eminently sensible and deals with the issue. He has specified a turnover of more than £10 million, a balance sheet of more than £3 million, and more than 25 employees, which is sensible and fair. However, that applies only to fraud. His Amendment 125D does not have any SME exemption but simply says that the Secretary of State must issue guidance specifically for SMEs and particular micro-enterprises. He recognises that there is a difference for SMEs and micro-enterprises, and I think we should do so. I am nervous about this legislation: we just do not know what that regulation might be and do not understand what the guidance might be, how it might work and what effect it will have on SMEs and micro-enterprises.

I had a micro-enterprise at one point; I started a business. I refer your Lordships to the register of interests, which discloses that the business grew quite substantially, but it was originally micro by any definition. I do not know how many of your Lordships have started and run a micro-business, where everything revolves around survival and one's entire life revolves around next week's and next month's wages, paying suppliers and creditors, and dealing with HMRC. There are so many pressures on micro-businesses, growing through to SME businesses, and we should think very carefully about putting another hurdle in place, however small, that makes an entrepreneur say, "You know what? Maybe I won't bother. The Government are saying that I've got to take care about failure to prevent fraud. Really? Is that something I should worry about at this micro level? Have I not got enough to do to try to survive?"

I urge caution in adopting Amendment 110. If it is passed, I urge the House to adopt Amendment 117. I would be very careful about adopting Amendment 125 without clarification of exactly what will be in Amendment 125B.

Baroness Morgan of Cotes (Con): My Lords, I will speak briefly to this group. I thank my noble friend the Minister for the steps that the Government have taken in relation to the failure to prevent fraud offence and the identification doctrine. These are significant steps, and he is right to say that they will obviously be followed up in future Bills.

[Baroness Morgan of Cotes]

It is worth remembering the scale of fraud in England and Wales in particular. Some 40% of crime is fraud against individuals, and clearly the scale of the cases against small, medium-sized and large businesses is also devastating. On Friday, we will debate the wider issues relating to fraud looked at by the committee on digital fraud, which I was privileged to chair. I am grateful that, from that committee and the work with my noble friend, the *Fraud Strategy* was published in early May.

I support my noble and learned friend Lord Garnier's Amendment 110 and the associated Amendment 121, and have added my name to them. He and the noble Lord, Lord Vaux, set out clearly why these amendments are necessary. There is no SME exemption in the Bribery Act or in relation to tax evasion.

I want to take on one of the points raised by my noble friend Lord Leigh. He talked about the survival of SMEs, and he is of course right to do so. I have not set up a small business but I have set up a small charity, and many of the issues are similar. If that small business or small charity were the victim of fraud, it would be absolutely devastating. One of the arguments here is the burden on small businesses of having to set up fraud-prevention measures, but they have to do it anyway these days because they have to be very cautious about anyone attempting invoice fraud or utility fraud. If they have an employee, they have to make sure that they are making best use and correct use of the corporate credit card, for example.

Noble Lords rightly referred to Clause 192 and the guidance that the Government will publish. We already have an example of it, as the Government have published the outline of how it would look. If this amendment is passed, it would be perfectly within the rights of the Government to set out clearly how that guidance should be interpreted by small and medium-sized enterprises, which are quite used to reading extensive amounts of guidance. If we want to have a broader debate about red tape and regulation, that is perhaps for another day, but they are used to dealing with much guidance. If they are likely to be victims of fraud, they will take that guidance very seriously.

I support these amendments and I support my noble and learned friend's Amendment 125A on expanding the failure to prevent offence to money laundering. If we are going to introduce the failure to prevent offence, which I thoroughly welcome, we might as well do it properly and expand it to money laundering, which is also a huge a problem and one that the Bill seeks to tackle as well.

Baroness Bowles of Berkhamsted (LD): My Lords, my name is on several amendments relating to failure to prevent fraud, and I support what has been said already and what was said extensively in Grand Committee on both failure to prevent fraud and the identification doctrine. If the noble and learned Lord, Lord Garnier, moves his Amendments 110 and 125A, we on these Benches will support them.

I retabled my amendment on regulatory failure to prevent, which was well supported in Committee. I do not intend to move it but I have tabled it as a reminder that we have not yet covered the enablers, as the noble Lord, Lord Vaux, spoke about. This is probably the best route to do so, with regulators being perhaps best able to understand where actions could or could not have been taken. This recommendation was encompassed within the Fraud Act report.

We have, I suppose, gone a long way, and the Government have gone a long way within the remit covered by the Law Commission, which unfortunately included the harm aspect. As a lot of the crime that has come about through this enabling channel has been since that report was commissioned, this is unfinished business; we will necessarily have to come to this again. For now, we should strengthen the government proposals through Amendments 110 and 125A.

Baroness Blake of Leeds (Lab): My Lords, I start by acknowledging the great progress that has been made on the failure to prevent process through the debates in the House of Commons. There was significant movement there, which we of course welcome.

I say at the outset that if the noble and learned Lord, Lord Garnier, is minded to divide the House on Amendments 110 and 125A, he will have the support of these Benches. There are very good reasons for that, as have been outlined in the debate today. The statistics, particularly the 0.5% figure, are startling. Surely, we all need to take this incredibly seriously if, as the noble Baroness, Lady Morgan, said, we are serious about tackling the wider fraud issues, which seem to be growing daily. The numbers of people we all know personally who are affected by this shows the sheer extent of the problem.

I will make the very strong point that the issue of costs and burdens on SMEs has been overemphasised. If these processes are tightened in the way proposed, those very businesses will themselves be protected by the action taken on other companies. In particular, I completely support the extension to the money laundering provision in Amendment 125A.

We have had a really good debate throughout our proceedings on these measures. It would be so disappointing if, at this final stage, we did not go the full distance we can at this point, recognising, as we know, that more will need to be done in the future. We have the opportunity now and we should seize it.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords for their contributions to today's debate on corporate criminal liability and for their continued engagement on this subject. These conversations have been robust and constructive and have helped the Government immensely in the development of the clauses —developed, I say to the noble Lord, Lord Vaux, without any reluctance at all.

I turn to Amendments 135 and 125G on senior manager liability, tabled by my noble and learned friend Lord Garnier. As he has noted, senior managers hold a higher level of responsibility than ordinary employees in conducting business because they take important decisions on the corporate policy, strategy and operation of the company. The extension of the identification doctrine to senior management in Amendment 104, which I spoke to previously, recognises this. To reflect the heightened responsibility of a senior

manager in the actions of a corporation, powers are available already to prosecutors to hold a senior manager liable where a company conducts an economic crime offence.

Under the fraud, theft and bribery Acts and the money laundering regulations 2017, senior officers, including managers, are liable if they consent to or connive in fraud, theft, bribery or money laundering regulatory breaches. This extends as far as the senior manager knowingly turning a blind eye to offending, extending beyond the usual law on accessory liability for other crimes. If a senior manager is guilty of the offence and liable, they can be proceeded against and punished accordingly, including by imprisonment.

Additionally, in the regulatory space, the senior managers and certification regime is in place to improve good corporate behaviour and compliance in the sectors regulated by the Financial Conduct Authority and Prudential Regulation Authority, placing specific requirements on senior managers to encourage positive corporate behaviour.

6.45 pm

Amendments 135 and 125G propose to make senior managers liable to a fine or imprisonment where they fail to prevent an offence, despite being aware of the offence happening. The Law Commission, which consulted extensively in this area, concluded that doing this would involve stretching the chain of causation too far. Introducing further offences of senior managers' liability would be replicative of the existing offences. This would create a duplicate burden on senior managers under different regimes where the powers are already available to prosecutors and regulators, impacting both current and prospective company directors.

Amendments 110, 117 and 121, tabled by my noble and learned friend Lord Garnier, would remove the current exemption in the failure to prevent fraud offence for small and medium enterprises. I have noted the strength of feeling across the House on this issue. The Government have tabled the amendments I set out earlier to help prevent companies circumventing the offence by moving high-risk operations into subsidiaries, again, without any reluctance. But I am afraid—this will come as little surprise—that the Government's position on the threshold remains unchanged. We all agree that it is important that small organisations be encouraged to take steps to prevent fraud, but we must seek to ensure that we keep the burden on businesses in check. I am afraid that the Government do not agree that the burden would be small. The Government's proposed offence strikes an appropriate balance between the crime prevention benefits of the offence and the burden placed on business. We need to consider the cumulative compliance cost for SMEs across multiple government regulations, rather than seeing these fraud measures in isolation.

Removing the threshold for large organisations would increase the burden on UK businesses to £4 billion, from £487.5 million. One of my noble and learned friend's amendments proposes a threshold based around 25 employees, but that would still bring many small and all medium-sized companies in scope. Small and medium businesses would be disproportionately affected by the costs of complying with this legislation. It might also cause confusion and duplicate compliance costs if businesses used a threshold outside the UK's standard company size definitions.

My noble and learned friend has proposed that SMEs could reasonably take no or limited steps to prevent fraud and therefore minimise the costs for low-risk businesses. However, there is still a cost for businesses in assessing the legal framework and risks to reach this conclusion, including paying for professional legal or other advice. Small business owners will be concerned about the uncertainty of how the courts might respond to their particular circumstances. This does not mean that SMEs can get away with fraud. Where you cannot prosecute an SME for failing to prevent fraud, the SME can still be liable for the substantive fraud offence where it is committed by their senior management, or if they aid or abet it. The new, strengthened process we are introducing for substantive offences under the identification doctrine reforms will apply without imposing extra costs on SMEs in complying with published guidance, and it will avoid pushing all SMEs to undertake anti-fraud measures that could be costly to a business with low revenue or few personnel.

Currently, it is particularly difficult to hold large, complex organisations to account. The failure to prevent fraud offence will help address that gap, rather than focusing on SMEs for which other powers are more effective. The government amendments will help to prevent companies circumventing the offence by moving high-risk operations into subsidiaries. To adapt my noble and learned friend's joke somewhat, if Snow White were to benefit from the criminal activity of one of her vertically challenged followers, she would now be in scope as a result.

There has been discussion about the proportion of businesses out of scope of the Government's offence. However, the more relevant assessment is not the number of businesses, but their output. Large organisations are responsible for around 50% of the UK's corporate activity, and therefore a significant proportion of the fraud risk. We will keep the threshold under review and can amend it through secondary legislation if required. I hope noble Lords agree that it is better to understand the impact on large companies once the measures are implemented, as well as any trickle-down effect on smaller companies, before applying them more widely.

In summary, I appreciate my noble and learned friend's strong feelings on the threshold, but, as I have set out, the Government believe that we will be able to address the perceived gap through means other than imposing unnecessary, untargeted burdens on SMEs, at a time when it is more important than ever that we encourage the growth and creation of SMEs, for all our benefit. I therefore hope that my noble and learned friend will not choose to press any of his amendments.

Amendments 116A, 125A, 125B, 125C, 125E, 125F, 130, 131, 132 and 133, also tabled by my noble and learned friend Lord Garnier, seek to create a failure to prevent economic crime offence or otherwise to broaden the scope of the failure to prevent offence to cover other types of economic crime. The new failure to prevent offence covers fraud and false accounting, while keeping money laundering responsibilities contained under the existing AML regulatory regime. This ensures

[Lord Sharpe of Epsom]
that the offence is targeted, that it is focused on offences most relevant to corporations and where prevention can have the most impact, and that it is not duplicative of existing regimes. I note the wider offence lists put forward in these amendments. However, the Government have consulted with law enforcement and prosecutors, and we are satisfied that all the priority offences have been included.

I turn to the proposal for a failure to prevent money laundering offence. The UK already has a strong anti-money laundering regime, which requires regulated sectors to implement a comprehensive set of measures to prevent money laundering. Corporations and individuals can face serious penalties, ranging from fines to cancellations of registration and criminal prosecution if they fail to do so. Last year, anti-money laundering supervisors issued over 600 fines to regulated businesses and individuals, with a total value of over £500 million.

My noble and learned friend rightly predicted that I would argue that a failure to prevent money laundering offence would duplicate the systems, controls and penalties of the existing regime. Furthermore, it would extend anti-money laundering obligations to organisations with very low risk, which would be disproportionate. This was also recognised by the Law Commission in its options paper, which indicated that any general failure to prevent money laundering offence would be poorly targeted and duplicative of the money laundering regulations.

I acknowledge that the proposed failure to prevent money laundering offence would apply to all sectors, whereas the MLRs apply only to businesses within the regulated sector. However, all the sectors that pose a significant money laundering risk already form part of the regulated sector. The sectors that are included in the regulated sector are informed by the national risk assessment, which is updated regularly. Very few sectors that handle funds are out of scope of the MLRs.

Any necessary further anti-money laundering measures can be implemented through the existing regime, and the Government have already committed to undertake further work to strengthen the existing regime. The MLRs already place requirements on regulated businesses to take a risk-based approach to preventing money laundering, mandating that regulated firms take appropriate and proportionate measures that are commensurate with the risks presented.

The Government's review of the anti-money laundering regime published in June 2022 also committed the Government to further analysis and public consultation to identify the best path for reform of the AML supervisory regime. Further improvements to the UK's money laundering framework are therefore best targeted by strengthening and improving the existing regime, rather than by the creation of a new parallel regime. The Government have committed in the second economic crime plan to publishing a consultation on supervision reform by Q2 2023 and to begin consultation on amendments to the money laundering regulations by Q4 2023.

Additionally, the Government's review included a commitment to use the next national risk assessment of money laundering and terrorist financing to consider whether non-regulated sectors represent a sufficient risk to be brought into scope of the money laundering regulations. I hope that my noble and learned friend is satisfied that the relevant regimes already exist, and that government is already undertaking work to strengthen these. I hope that noble Lords will note the burden on businesses and confusion that would be created by operating two overlapping regulatory schemes. The additional offences proposed are therefore not necessary.

Amendment 125D, also tabled by my noble and learned friend Lord Garnier, proposed that guidance must be issued within six months of Royal Assent. We are committed to issuing guidance and bringing this offence into force as soon as possible. We will build on engagement to date by seeking views from a wide range of stakeholders in the public and private sector. We do of course have precedents in the existing offences which will help in this, but getting the guidance right is essential if we want to see meaningful and easily understandable fraud-prevention measures that can be adopted by companies. The precise timeframes for the guidance and implementation will depend on the complexity of issues raised and the level of engagement, and cannot be fixed at the outset.

Amendment 127, tabled by the noble Baroness, Lady Bowles of Berkhamsted, would create an offence for regulatory bodies for failure to prevent economic crime and the facilitation of economic crime. The Government recognise the need to tackle the threat of fraud and, since we last debated these issues, have published the new *Fraud Strategy*, referenced during the debate, which sets out how we will pursue fraudsters, block fraud at source, and empower the public to protect themselves from scams. The current proposed failure to prevent offence strikes a balance between holding large companies to account and ensuring that businesses do not turn a blind eye to fraud, while ensuring that we are keeping business burdens in check and protecting SMEs from additional business burdens and costs.

In addition to the failure to prevent fraud offence, there are already comprehensive regulatory regimes around money laundering, sanctions, telecoms companies, and other key sectors for economic crime, including shortly, through the Online Safety Bill, the tech sector. The Government have not identified any gaps where there is no ability to hold high-risk sectors to account for economic crime and want to dedicate effort to improving existing regimes, rather than creating new and duplicative approaches.

In relation to organisations that commit fraud, we do not believe that it is necessary to transfer this regime into a regulatory one. We can achieve a similar effect, one which incentivises organisations to put fraud controls in place, through the Government's approach—an offence enforced by law enforcement. The Government are committed to tackling economic crime and have worked to address the threat through the recent *Fraud Strategy* and *Economic Crime Plan 2*, as well as this Bill and existing regulation. I am afraid that the Government therefore view these amendments as duplicative of measures already being taken forward and that they will not achieve their intentions.

I conclude by reiterating the Government's shared commitment to reforming the corporate criminal liability landscape. The amendments tabled by the Government

to introduce a failure to prevent fraud offence and reform the identification doctrine are significant milestones and represent huge progress. We should not underestimate the impact they will have. It is also right that we continue to consider the impact that these reforms will have on the vast majority of law-abiding businesses and the individuals already running or seeking to set up new legitimate ones. We do not want to stifle this—we want to encourage good and honest business in the UK. It remains the Government's view that the new measures that we have debated today, taken with access to existing offences, provide the coverage needed to target our response to corporate fraud without adding an unnecessary burden to SMEs.

I thank my noble and learned friend Lord Garnier and the noble Baroness, Lady Bowles, for their amendments, but I hope that they can recognise the need to strike the right balance and do not seek to press them.

Lord Garnier (Con): My Lords, I thank my noble friend the Minister for his patience and tolerance in listening to my arguments over and over again—

Lord Fox (LD): I am sorry, but it was the amendment of the noble Lord, Lord Sharpe, that was being moved.

Lord Garnier (Con): We both seem to be making as many mistakes as each other.

Amendment 104 agreed.

Amendments 105 and 106

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

105: After Clause 187, insert the following new Clause—

"Power to amend list of economic crimes

(1) The Secretary of State may by regulations amend Schedule (Criminal liability of bodies: economic crimes) by—

(a) removing an offence from the list in the Schedule, or

(b) adding an offence to that list.

(2) The power in subsection (1) is exercisable by the Scottish Ministers (and not by the Secretary of State) so far as it may be used to make provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.

(3) The power in subsection (1) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State) so far as it may be used to make provision that—

(a) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly, and

(b) would not, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State.

(4) The Secretary of State may from time to time by regulations restate Schedule (Criminal liability of bodies: economic crimes) as amended by virtue of subsection (1) to (3) (without changing the effect of the Schedule)."

Member's explanatory statement

See the explanatory statement for new Clause (Attributing criminal liability for economic crimes to certain bodies).

106: After Clause 187, insert the following new Clause—

"Offences under section (Attributing criminal liability for economic crimes to certain bodies) committed by partnerships

(1) Proceedings for an offence alleged to have been committed by a partnership by virtue of section (Attributing criminal liability for economic crimes to certain bodies) must be brought in the name of the partnership (and not in that of any of the partners).

(2) For the purposes of such proceedings—

(a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and

(b) the following provisions apply as they apply in relation to a body corporate—

(i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980;

(ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26));

(iii) sections 34(2), 66(6AA) and 72D(2) of the Criminal Procedure (Scotland) Act 1995.

(3) A fine imposed on the partnership on its conviction for an offence committed by virtue of section (Attributing criminal liability for economic crimes to certain bodies) is to be paid out of the partnership assets.

(4) In this section "partnership" has the same meaning as in section (Attributing criminal liability for economic crimes to certain bodies)."

Member's explanatory statement

This amendment makes provision in relation to offences committed by partnerships by virtue of section (Attributing criminal liability for economic crimes of certain bodies).

Amendments 105 and 106 agreed.

Amendment 107

Moved by ***Lord Alton of Liverpool***

107: After Clause 187, insert the following new Clause—

"Duty to disclose funds and economic resources

After section 16 of the Sanctions and Anti-Money Laundering Act 2018, insert—

"16A Duty to disclose funds and economic resources

(1) Any regulations made under section 1 (power to make sanctions regulations) must, for the purposes of preventing an offence under those regulations, make provision requiring designated persons—

(a) to report to the Treasury or another competent authority, within three months after such regulations are made or within three months from the date of designation, whichever is the latest, the funds or economic resources that—

(i) are currently held, owned or controlled by them within the United Kingdom, and

(ii) were held, owned or controlled by them within the United Kingdom six months prior to the date of designation, and

(b) to cooperate with the Treasury or other competent authority in any verification of such information.

(2) A failure to comply with a requirement in subsection (1) may be considered as participation in activities the object or effect of which is (whether directly or indirectly) to circumvent such requirement.

(3) Where a designated person has been convicted of an offence by virtue of subsection (2), a court proceeding under section 6, 92 or 156 of the Proceeds of Crime Act 2002 (confiscation orders) must consider such person as benefitting by the value of any assets concealed through such criminal conduct.

(4) Assets concealed as a result of a failure to comply with a requirement in subsection (1) constitute recoverable property for the purposes of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of the proceeds etc. of unlawful conduct).

(5) A court may only make an order for the confiscation or forfeiture of concealed assets if, or to the extent that, it would not be just and equitable to require the designated person to pay the amount recoverable under subsection (3) or to forfeit the property recoverable under subsection (4).

(6) Regulations under subsection (1) may also be made in relation to a person who is subject to an International Criminal Court warrant for an offence that would constitute an economic crime in the United Kingdom.""

Member's explanatory statement

This amendment says that sanctions regulations must, for the purposes of preventing an offence under those regulations, require designated persons to disclose all assets they own or control in the UK. Failure to disclose such assets is defined as a form of sanctions evasion, which is already criminalized under UK law, and which could result in asset recovery under the Proceeds of Crime Act.

Lord Alton of Liverpool (CB): Amendment 107 enjoys all-party support, and its purpose is to insert a new clause imposing a duty to disclose funds and economic resources. In a nutshell, the amendment would require that sanctions regulations must, for the purposes of preventing an offence under those regulations, require designated persons to disclose all assets that they own or control in the United Kingdom. Failure to disclose such assets is defined as a form of sanctions evasion, which is already criminalised under UK law and which could result in asset recovery under the Proceeds of Crime Act.

The amendment is in line with the one debated in Grand Committee. One change has been made to reflect the Minister's helpful view about proportionality—I am particularly grateful to the noble and learned Lord, Lord Garnier, and the noble Lord, Lord Faulks, for their helpful suggestion that the best way in which to ensure proportionality would be to incorporate the words "just and equitable", as we have done in the revised amendment. In thanking the noble Lord and the noble and learned Lord, I thank also the co-sponsors, the noble Lords, Lord Leigh of Hurley, Lord Coaker and Lord Fox. Their input and wisdom have been invaluable. The Minister and his really excellent Bill team have engaged through meetings and in a flurry of emails and exchanges, which have been admirable, and I am grateful to them too. I hope that we can come to an amicable conclusion this evening.

The topicality and urgency of this amendment was underlined by the Statement made in another place yesterday, and repeated here last night, on the Ukraine Recovery Conference. We have all been shocked by the sheer scale of the destruction unleashed by Putin's illegal war—the massive loss of life and the ruination of cities, towns and villages, and the destruction of the country's agricultural base. In this lamentable context, we are right to plan for the future. The European Union has set aside a €50 billion recovery fund, and the United Kingdom has said that we will provide loans worth $3 billion over the next three years. Globally, some 500 businesses from 42 countries have pledged more than $5.2 trillion to back Ukraine's recovery. However, as the Prime Minister made clear to that conference, Russia must pay for the destruction that it has inflicted. In that respect, the Foreign Secretary has said that the United Kingdom is working with allies to explore lawful routes to use frozen and immobilised Russian assets to fund Ukrainian reconstruction. It was to enable that to happen that the movers of this amendment raised this question in Grand Committee.

7 pm

To date, the Government have imposed sanctions on nearly 1,500 individuals, including 120 oligarchs, with a collective net worth exceeding £140 billion. However, to put that in perspective, the Office of Financial Sanctions Implementation reports that, in total, just £18 billion-worth of assets associated with Russia's regime have been frozen since the beginning of the war. Compare that with the net worth of £140 billion. The reason behind such discrepancy is simple: it is concealment. Oligarchs have found increasingly sophisticated ways to hide their assets and weaken our sanctions response: moving assets just before sanctions hit, exploiting loopholes to put assets out of reach and concealing assets to hinder the enforcement of sanctions. I will not weary the House by repeating the examples I gave in Committee of Abramovich and Nigina Zairova, and the findings of Transparency International, but I commend that *Hansard* to the House.

Our all-party amendment offers a two-pronged solution: first, preventing Russian oligarchs hiding their illicit wealth and evading sanctions; and secondly, enabling us to seize their assets when they attempt to evade sanctions, using the Proceeds of Crime Act. Many of our allies have already taken steps to move from freeze to seize. In May of this year, the US seized assets from a Russian oligarch and was able to send the proceeds to Ukraine. Similarly, in line with this amendment, it managed to seize Konstantin Malofeyev's assets following findings that he had breached sanctions. Last year, the European Union introduced a similar duty to disclose sanctioned assets, and sanctions evasion has been standardised as a criminal offence right across all member states. The EU Commission has committed to working with international partners to seize more than €19 billion of Russian oligarchs' funds for the reconstruction of Ukraine.

Let me also cite the use of Magnitsky sanctions and recognise the vital work of Bill Browder in promoting them. It has been one of the most significant avenues for justice and accountability introduced in recent years and I make the plea that I made in Committee to create a parliamentary mechanism for these sanctions to be examined, in camera if necessary. In welcoming this amendment before your Lordships this evening, Bill Browder said:

"Over the years, we have seen how some manage to evade such sanctions—including by moving their assets shortly before sanctions … The UK must do more to ensure that such sanction evasion is addressed as a matter of urgency."

In urging your Lordships to support this amendment, he said:

"If we are serious about justice and accountability, we need to ensure that the very system that was designed to punish human rights violators is not made a mockery of by criminals."

I remind the House that during our Committee proceedings, we were joined in the Public Gallery by Sebastien Lai, the son the imprisoned Hong Kong

founder of Apple Daily and leading pro-democracy advocate, Jimmy Lai, a British citizen who, as things stand, could well die in jail. I declare my interest as a patron of Hong Kong Watch. This amendment has particular relevance for those Hong Kong officials, judges, prosecutors and police officers who are currently complicit in ongoing human rights violations in the city. Many of these individuals and their families have assets in the UK and in some cases even hold UK passports. Hong Kong officials, like Russians officials before them, hide their assets through family members and obscure family trusts. Our amendment would ensure that when Ministers finally impose sanctions on those responsible for the deepening crackdown in Hong Kong, we will be able readily to identify and seize their assets across the UK by forcing them to disclose them.

If the Government cannot accept this amendment tonight but can at least commit to introducing early secondary legislation to achieve its purpose, I and the other supporters of it will be more than happy to engage with them to make the regime as effective as humanly possible. I will listen this evening with great care to the Minister before deciding whether to press this amendment to a Division.

Let me end where I began, with Ukraine, reminding the House how important it is that we support Ukraine in every possible way. Latest figures show that more than 9,000 civilians have died and more than 8.2 million people have fled the country. The cost of reconstruction efforts is estimated to be more than $400 billion, and the figure rises exponentially. Amendment 107 was tabled to assert the principle that those responsible for, or who have collaborated in, these depredations will be made to contribute to the gargantuan task of reconstruction. We in this House are making it clear, by speeches, by amendments of this kind and by our actions, that we will go on supporting the courageous people of Ukraine by every possible means. I beg to move.

Lord Fox (LD): My Lords, I am pleased to support the amendment in the name of my noble friend. If I do not speak at length, it is not because I do not think it a very important amendment but because I am trying to infect the rest of the House with some brevity—unsuccessfully, I suspect. This is an important amendment and we have seen movement in other regimes. We have seen movement in the United States; we are seeing movement in the European Union; and I think we have seen movement in the House of Commons on the Procurement Bill, to which we have started to see changes in attitude. I hope we will hear from the Minister shortly that the Government are prepared to move, in order that we can bank a step in the right direction along this path. I look forward to hearing what the Minister has to say, and I hope this amendment will not have to be pressed if we hear what we want to hear.

Lord Sharpe of Epsom (Con): My Lords, I thank the noble Lord, Lord Alton of Liverpool, for this amendment, for his constructive engagement throughout the passage of the Bill through this House and, of course, for his typically thoughtful and powerful introduction. I also pay tribute to noble Lords from all sides of the House, and Members in the other place, for continuing to pursue this important issue and engage with the Government on a cross-party basis, not least the APPG on Anti-Corruption and Responsible Tax. I can reassure the noble Lord that the Government are supportive of mechanisms to deprive sanctioned individuals, where appropriate, of their assets, with a view to funding the recovery and reconstruction of Ukraine. More broadly, the Government want to drive further transparency on assets held by sanctioned persons in the UK.

On 19 June, the Government announced four new commitments which reaffirm that Russia must pay for the long-term reconstruction of Ukraine. This includes new legislation, laid the same day by the Foreign Secretary, to enable sanctions to remain in place until Russia pays compensation for damage caused. In this announcement the Government also confirmed that we will lay new legislation requiring persons and entities in the UK, or UK persons and entities overseas, who are designated under the Russia financial sanctions regime to disclose any assets they hold in the UK. The Government are firmly committed to bringing forward this secondary legislation, subject to the made affirmative procedure, and to introducing this measure before the end of 2023, subject to the usual parliamentary scheduling. This will strengthen transparency of assets and make it clear that the UK will not allow assets to be hidden in this country.

Sanctioned individuals who fail to disclose their assets could receive a financial penalty or have their assets confiscated. This demonstrates our continued commitment to penalising those who make deliberate attempts to conceal funds or economic resources. The new power builds on and strengthens the UK's existing powers around transparency of designated persons' assets. HMG already use the annual review of the Office of Financial Sanctions Implementation, known as OFSI, to collect and detail assets frozen under UK financial sanctions. Additionally, relevant firms such as banks, other financial institutions, law firms and estate agents have an ongoing obligation to report to OFSI if they know or reasonably suspect that a person is a designated person or has committed offences under financial sanctions regulations, where that information is received in the course of carrying on their business. Those firms must provide information about the nature and amount of any funds or economic resources held by them for the customer.

The designated person reporting measure will act as a dual verification tool by enabling the comparison of disclosures against existing reporting requirements that bite on relevant firms. This will tighten the net around those who are not reporting and are evading their reporting requirements.

On asset seizure, prosecutors and/or law enforcement agencies can currently apply to confiscate or permanently seize assets where someone has benefited from their offending, or the assets have links to criminality, by making use of powers under the Proceeds of Crime Act 2002. Importantly, the new measures will also give His Majesty's Government the ability to impose fines. Overall, this designated person reporting measure will be focused on strengthening the UK's compliance toolkit while giving options for penalising those who seek to hide their assets.

[Lord Sharpe of Epsom]

The noble Lord's amendment includes a specific provision which would require the designated person also to report assets which were held six months prior to the designation. The Government are still fully developing the non-disclosure measure and I can assure the noble Lord that we are carefully considering this suggestion. Although not retrospective in terms of regulating or criminalising conduct that occurred before the measure came into force, requiring designated persons to provide a snapshot of their assets at a historical point in time is necessarily more onerous than a forward look requirement. The Government will need carefully to consider the design of the measure and the proportionality and additional value of so-called retrospective reporting to ensure that it is operationally deliverable and legally robust. This will include working with relevant law enforcement agencies to determine how such information would be used.

Before laying these regulations, the Government will complete their ongoing evaluation of possible operational or implementation challenges to help ensure the successful delivery of this measure. For example, investigating non-compliance will require significant resources from the enforcing agency. We want to ensure that it has all the capability, skills and resources to succeed.

I note the interest in and strength of feeling on this issue. The Government will continue to work collaboratively and constructively with interested parties in the lead-up to bringing forward the legislation, including on reporting assets which were held prior to a designation. We will continue to engage with the civil society organisations that have campaigned for this measure, and I would be happy to work with the noble Lord, Lord Alton, and other parliamentarians to keep them informed of progress ahead of it being formally introduced.

Again, I am grateful to the noble Lord for bringing this issue forward for debate and for the continued interest and engagement of many stakeholders. I hope that, given the reasons I have outlined and the action the Government are already taking, he will consider withdrawing his amendment.

Lord Alton of Liverpool (CB): My Lords, I am extremely grateful to the noble Lord, Lord Sharpe, for the manner in which he has addressed this issue and the House this evening. He was right to pay tribute to the All-Party Parliamentary Group on Anti-Corruption and Responsible Tax; I would link with that the specific work of Dame Margaret Hodge MP, the Royal United Services Institute and many of those in civil society to which the Minister has referred. I was especially pleased to hear what he said about working collaboratively with those organisations that have been involved in taking this amendment forward.

I do not underestimate the importance of what the Minister has said to the House. He said that he will look at the outstanding issue of the six-month retrospective period; although he gave no guarantees or assurances on that front, at least we will be able to discuss and examine it further. However, he has agreed to introduce secondary legislation before the end of the year—not "at a time to be agreed" or some possibility of legislation coming in the next nine or 10 months, but by the end of this year. I welcome that very much. He also told the House that it would be done under the affirmative procedure, which will give us the chance to come back again. Significant progress has been made on this and I am very grateful to the Minister. I am very happy to withdraw the amendment.

Amendment 107 withdrawn.

Schedule 10: Economic crime offences

Amendment 108 not moved.

Amendment 109

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

109: After Schedule 10, insert the following new Schedule—

"SCHEDULE

CRIMINAL LIABILITY OF BODIES: ECONOMIC CRIMES

Common law offences

1_ Cheating the public revenue.

2_ Conspiracy to defraud.

3_ In Scotland, the following offences at common law—

(a) fraud;

(b) uttering;

(c) embezzlement;

(d) theft.

Statutory offences

4_ An offence under any of the following provisions of the Theft Act 1968—

(a) section 1 (theft);

(b) section 17 (false accounting);

(c) section 19 (false statements by company directors etc);

(d) section 20 (suppression etc of documents);

(e) section 24A (dishonestly retaining a wrongful credit).

5_ An offence under any of the following provisions of the Theft Act (Northern Ireland) 1969—

(a) section 1 (theft);

(b) section 17 (false accounting);

(c) section 18 (false statements by company directors etc);

(d) section 19 (suppression etc of documents);

(e) section 23A (dishonestly retaining a wrongful credit).

6_ An offence under any of the following provisions of the Customs and Excise Management Act 1979—

(a) section 68 (offences in relation to exportation of prohibited or restricted goods);

(b) section 167 (untrue declarations etc);

(c) section 170 (fraudulent evasion of duty).

7_ An offence under the Forgery and Counterfeiting Act 1981 (forgery, counterfeiting and kindred offences).

8_ An offence under section 72 of the Value Added Tax Act 1994 (fraudulent evasion of VAT).

9_ An offence under section 46A of the Criminal Law (Consolidation) (Scotland) Act 1995 (false monetary instruments).

10_ An offence under any of the following sections of the Financial Services and Markets Act 2000—

(a) section 23 (contravention of prohibition on carrying on regulated activity unless authorised or exempt);

(b) section 25 (contravention of restrictions on financial promotion);

(c) section 85 (prohibition on dealing etc in transferable securities without approved prospectus);

(d) section 398 (misleading the FCA or PRA).

11_ An offence under any of the following sections of the Terrorism Act 2000—

(a) section 15 (fund-raising);

(b) section 16 (use and possession);

(c) section 17 (funding arrangements);

(d) section 18 (money laundering);

(e) section 63 (terrorist finance: jurisdiction).

12_ An offence under any of the following sections of the Proceeds of Crime Act 2002—

(a) section 327 (concealing etc criminal property);

(b) section 328 (arrangements facilitating acquisition etc of criminal property);

(c) section 329 (acquisition, use and possession of criminal property);

(d) section 330 (failing to disclose knowledge or suspicion of money laundering);

(e) section 333A (tipping off: regulated sector).

13_ An offence under section 993 of the Companies Act 2006 (fraudulent trading).

14_ An offence under any of the following sections of the Fraud Act 2006—

(a) section 1 (fraud);

(b) section 6 (possession etc of articles for use in frauds);

(c) section 7 (making or supplying articles for use in frauds);

(d) section 9 (participating in fraudulent business carried on by sole trader);

(e) section 11 (obtaining services dishonestly).

15_ An offence under any of the following sections of the Bribery Act 2010—

(a) section 1 (bribing another person);

(b) section 2 (being bribed);

(c) section 6 (bribery of foreign public officials).

16_ An offence under section 49 of the Criminal Justice and Licensing (Scotland) Act 2010 (possession, making or supplying articles for use in frauds).

17_ An offence under any of the following sections of the Financial Services Act 2012—

(a) section 89 (misleading statements);

(b) section 90 (misleading impressions);

(c) section 91 (misleading statements etc in relation to benchmarks).

18_ An offence under regulation 86 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

19_ An offence under regulations made under section 49 of the Sanctions and Anti-Money Laundering Act 2018 (money laundering and terrorist financing etc).

20_ (1) An offence under an instrument made under section 2(2) of the European Communities Act 1972 for the purpose of implementing, or otherwise in relation to, EU obligations created or arising by or under an EU financial sanctions Regulation.

(2) An offence under an Act or under subordinate legislation where the offence was created for the purpose of implementing a UN financial sanctions Resolution.

(3) An offence under paragraph 7 of Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (freezing orders).

(4) An offence under paragraph 30 or 30A of Schedule 7 to the Counter-Terrorism Act 2008 where the offence relates to a requirement of the kind mentioned in paragraph 13 of that Schedule.

(5) An offence under paragraph 31 of Schedule 7 to the Counter-Terrorism Act 2008.

(6) An offence under regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018 (sanctions regulations).

(7) In this paragraph—

"EU financial sanctions Regulation" and "UN financial sanctions Resolution" have the same meanings as in Part 8 of the Policing and Crime Act 2017 (see section 143 of that Act);

"subordinate legislation" has the same meaning as in the Interpretation Act 1978."

Member's explanatory statement

This amendment sets out the list of offences in relation to which liability may be attributed to the body in accordance with Clause (Attributing criminal liability for economic crimes to certain bodies)(1).

Amendment 109 agreed.

Clause 188: Failure to prevent fraud

Amendment 110

Moved by ***Lord Garnier***

110: Clause 188, page 177, line 23, leave out "which is a large organisation"

Member's explanatory statement

This amendment, together with the amendment to leave out Clause 190, would remove the exemption for organisations that are not "large organisations" from the failure to prevent regime so that there are no exemptions, although the statutory defence will apply to all organisations.

Lord Garnier (Con): My Lords, clearly, I have not persuaded the Government, but I hope that I have not treated their arguments with disrespect. We have had not a row but an honest disagreement. As with all sorts of disagreements, I invite the House to arbitrate and will press this amendment to a Division.

The Deputy Speaker (Baroness Barker) (LD): I advise the House that, if Amendment 110 is agreed to, I cannot call Amendment 111 because of pre-emption.

7.15 pm

Division on Amendment 110

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Amendment 110 agreed.

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7.26 pm

The Deputy Speaker (Baroness Barker) (LD): My Lords, I cannot call Amendment 111 because of pre-emption.

Amendments 112 to 116

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

112: Clause 188, page 177, line 28, after "subsidiary" insert "undertaking"

Member's explanatory statement

This amendment and my amendment at page 178, line 2 substitute the term "subsidiary undertaking" for "subsidiary", for consistency with my amendment at page 178, line 3.

113: Clause 188, page 177, line 29, at end insert—

"(1A) A relevant body is also guilty of an offence under subsection (1) if—

(a) an employee of the relevant body commits a fraud offence intending to benefit (whether directly or indirectly) the relevant body,

(b) the fraud offence is committed in a financial year of a parent undertaking of which the relevant body is a subsidiary undertaking ("the year of the fraud offence"), and

(c) the parent undertaking is a relevant body which is a large organisation."

Member's explanatory statement

This amendment establishes that an offence of failure to prevent fraud may be committed by a subsidiary of a large organisation where an employee of the subsidiary commits a fraud offence, intending to benefit the subsidiary.

114: Clause 188, page 177, line 39, leave out "as mentioned in subsection (1)"

Member's explanatory statement

This amendment omits unnecessary words.

115: Clause 188, page 178, line 2, after "subsidiary" insert "undertaking"

Member's explanatory statement

See the explanatory note for my amendment at page 177, line 28.

116: Clause 188, page 178, line 3, at end insert—

"(6A) For the purposes of this section a person is also associated with a relevant body if the person is an employee of a subsidiary undertaking of the relevant body; but for the purpose of determining whether an offence is committed by virtue of this subsection, subsection (1) has effect with the omission of paragraph (b) (and the "or" preceding it)."

Member's explanatory statement

This amendment establishes that an offence of failure to prevent fraud may be committed where an employee of a subsidiary of a large organisation commits a fraud offence, intending to benefit the large organisation.

Amendments 112 to 116 agreed.

Schedule 11: Failure to prevent fraud: fraud offences

Amendment 116A not moved.

Clause 190: Section 188: large organisations

Amendment 117 not moved.

Amendments 118 to 120

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

118: Clause 190, page 179, line 35, at end insert—

"(1A) The reference in subsection (1) to a relevant body does not include a relevant body which is a parent undertaking (as to which see section (Large organisations: parent undertakings))."

Member's explanatory statement

See the explanatory statement for new Clause (Large organisations: parent undertakings).

119: Clause 190, page 180, line 16, after "(7))" insert "and section (Large organisations: parent undertakings)"

Member's explanatory statement

This amendment enables new Clause (Large organisations: parent undertakings) to be modified for the purpose of altering the meaning of "large organisation".

120: Clause 190, page 180, line 23, at end insert—

"(6A) Before making regulations under subsection (5) or (6) the Secretary of State must consult—

(a) the Scottish Ministers, and

(b) the Department of Justice in Northern Ireland."

Member's explanatory statement

This amendment requires consultation to take place before the powers in subsections (5) and (6) are exercised.

Amendments 118 to 120 agreed.

Amendment 121 not moved.

Amendment 122

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

122: After Clause 190, insert the following new Clause—

"Large organisations: parent undertakings

(1) For the purposes of section 188(1) and (1A) a relevant body which is a parent undertaking is a "large organisation" only if the group headed by it satisfied two or more of the following conditions in the financial year of the body that precedes the year of the fraud offence—

Aggregate turnover	More than £36 million net (or £43.2 million gross)
Aggregate balance sheet total	More than £18 million net (or £21.6 million gross)
Aggregate number of employees	More than 250.

(2) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 190 for each member of the group.

(3) In relation to the aggregate figures for turnover and balance sheet total, "net" and "gross"—

(a) except where paragraph (b) applies, have the meaning given by subsection (6) of section 466 of the Companies Act 2006;

(b) in the case of accounts that are not of a kind specified in the definition of "net" in that subsection, have a corresponding meaning.

(4) In this section—

"balance sheet total" (in relation to a relevant body and a financial year) has the same meaning as in section 190;

"group" means a parent undertaking and its subsidiary undertakings;

"turnover" (in relation to a UK company or other relevant body) has the same meaning as in section 190;

"year of the fraud offence" is to be interpreted in accordance with section 188(1) or (1A) (as the case requires).

(5) In this section "balance sheet total" and "turnover", in relation to a subsidiary undertaking which is not a relevant body, have a meaning corresponding to the meaning given by subsection (4)."

Member's explanatory statement

This amendment and my amendment at page 179, line 35, enable certain parent undertakings to qualify as a "large organisation" for the purposes of the offence of failure to prevent fraud.

Amendment 122 agreed.

Clause 193: Failure to prevent fraud: minor definitions

Amendments 123 and 124

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

123: Clause 193, page 181, line 23, at end insert—

"(5A) "Parent undertaking" has the same meaning as in the Companies Acts (see section 1162 of the Companies Act 2006)."

Member's explanatory statement

This amendment is supplementary to new Clause (Large organisations: parent undertakings).

124: Clause 193, page 181, line 32, leave out subsection (8) and insert—

"(8) "Subsidiary undertaking" has the same meaning as in the Companies Acts (see section 1162 of the Companies Act 2006)."

Member's explanatory statement

This amendment is supplementary to new Clause (Large organisations: parent undertakings).

Amendments 123 and 124 agreed.

Lord Evans of Rainow (Con): My Lords, I beg to move that we adjourn during pleasure—

Noble Lords: No!

Amendment 125

Moved by ***Baroness Bennett of Manor Castle***

125: After Clause 194, insert the following new Clause—

"Update on the Fraud Strategy

The Government must publish, and lay before Parliament, an update by July 2024, and annually thereafter, on the progress and effectiveness of the implementation of the commitments made under Pillars 1, 2 and 3 of the Fraud Strategy published in May 2023, and the impact of the commitments, as it relates to the reduction of economic crime."

Member's explanatory statement

This amendment requires the Government provide an update on the impact of the Fraud Strategy of May 2023 by July 2024 and then annually thereafter.

Baroness Bennett of Manor Castle (GP): My Lords, I may be able to assist the House by moving Amendment 125—if no one yells at me, I will assume I am doing the right thing—in the name of the noble Lord, Lord Agnew, to which I have attached my name. I shall keep going. Noble Lords will see that this amendment calls for an update on the fraud strategy and for the Government to publish and lay before Parliament

"an update … by July 2024, and annually thereafter".

We have debated at considerable length the fact that the UK is

"the fraud capital of the world"—

and there I am quoting the head of UK Finance. I attached my name to the amendment because, as I do not need to say to the House, the noble Lord, Lord Agnew, is absolutely our stalwart leader on these issues, so I beg to move.

7.30 pm

Lord Agnew of Oulton (Con): My Lords, I do not seek to press this amendment. I merely say that the fraud plan, which my noble friend the Minister worked so hard on, has produced a list of some 74 commitments. I certainly am not going to add to the agony of the House and list them; all I ask my noble friend to do is to ensure that there is a mechanism for his department to track the progress of all these commitments. In aggregate, they would entirely change the landscape, but if they are not pursued, we will not move forward.

Baroness Blake of Leeds (Lab): Amendment 128 in the name of my noble friend Lord Coaker has a straightforward, clear ask: within a year of the Bill passing, the Secretary of State must publish a report on economic crime and investigation. It must include the performance of the framework for investigating crime, et cetera, and an assessment of the roles of the Serious Fraud Office in particular. Important elements mentioned in the amendment include the adequate resourcing of staff and the strategy for fees, which we have discussed elsewhere.

Lord Sharpe of Epsom (Con): My Lords, I thank the noble Baroness, Lady Blake, for speaking to the amendment in the name of the noble Lord, Lord Coaker, and my noble friend Lord Agnew of Oulton for his amendment. These amendments seek to add further parliamentary scrutiny on economic crime matters.

However, I have been clear throughout the previous debates on this topic that it is the Government's view that there is already more than sufficient external scrutiny in the areas outlined by the noble Lords. These amendments are therefore duplicative, and if accepted would lead to agencies and government

departments being caught in resource-intensive reporting requirements that would have no real benefit to parliamentarians, detracting from their core roles of tackling economic crime. I have noted what my noble friend has said, and the Government are of course more than committed to doing the things he suggests.

Amendment 128 in the name of the noble Lord, Lord Coaker, would require the Government to issue a report on the performance of agencies and departments in tackling economic crime. I am aware of the strength of his feeling on the resourcing, performance and co-ordination of operational agencies. I hope that the sessions we have facilitated for him with Companies House and the Serious Fraud Office will have gone some way to reassuring him on this.

I can also reassure him and the House that the Government are ensuring that the response to economic crime has the necessary funding. The combination of 2021's spending review settlement and private sector contributions through the new economic crime levy will provide funding of £400 million over the spending review period. The levy applies to the AML-regulated sector and will fund new or uplifted activity to tackle money laundering, starting from 2023-24.

In addition, a proportion of assets recovered under the Proceeds of Crime Act 2002 are already reinvested in economic crime capability. Under the asset recovery incentivisation scheme—ARIS—receipts paid into the Home Office are split 50:50 between central government and operational partners, based on their relative contribution to delivering receipts. In 2021-22 this resulted in £142 million being redistributed to POCA agencies. That should provide the necessary reassurance on resourcing and funding. Given what I hope to have shown is a significant amount of reporting, external scrutiny and indeed funding and resource, I ask the noble Baroness, on behalf of the noble Lord, Lord Coaker, not to press Amendment 128.

Baroness Bennett of Manor Castle (GP): My Lords, I refer to a comment made by another Minister at the Dispatch Box that we will come back to economic crime and fraud again and again. I have no doubt about that. In the meantime, I beg leave to withdraw Amendment 125.

Amendment 125 withdrawn.

Amendment 125A

Moved by ***Lord Garnier***

125A: After Clause 194, insert the following new Clause—

"Failure to prevent fraud and money laundering

(1) A relevant body is guilty of an offence if a person who is associated with the body ("the associate") commits a fraud or money laundering offence intending to benefit (whether directly or indirectly)—

(a) the relevant body, or

(b) any person to whom, or to whose subsidiary, the associate provides services on behalf of the relevant body.

(2) The relevant body is not guilty of an offence under subsection (1)(a) where the conduct underlying the offence was intended to cause harm to the body.

(3) It is a defence for the relevant body to prove that, at the time the relevant offence was committed—

(a) the body had in place such prevention procedures as it was reasonable in all the circumstances to expect the body to have in place, or

(b) it was not reasonable in all the circumstances to expect the body to have any prevention procedures in place.

(4) In subsection (3) "prevention procedures" means procedures designed to prevent persons associated with the body from committing fraud or money laundering offences as mentioned in subsection (1).

(5) A "fraud or money laundering offence" is an act which constitutes—

(a) an offence listed in Schedule 11 (failure to prevent fraud: fraud offences) (a "listed offence"), or

(b) aiding, abetting, counselling or procuring the commission of a listed offence.

(6) For the purposes of this section a person is associated with a relevant body if—

(a) the person is an employee, agent or subsidiary of the relevant body, or

(b) the person otherwise performs services for or on behalf of the body.

(7) Whether or not a particular person performs services for or on behalf of a relevant body is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and the body.

(8) Where a relevant body is liable to be proceeded against for an offence under subsection (1) in a particular part of the United Kingdom, proceedings against the body for the offence may be taken in any place in the United Kingdom.

(9) Where by virtue of subsection (8) proceedings against a relevant body for an offence are to be taken in Scotland—

(a) the body may be prosecuted, tried and punished in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district, and

(b) the offence is, for all purposes incidental to or consequential on the trial or punishment, deemed to have been committed in that district.

(10) A relevant body guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction in England and Wales, to a fine;

(c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

(11) In this section—

"relevant body" means—

(a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),

(b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,

(c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,

and, for the purposes of this section, a trade or profession is a business;

"sheriff court district" is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).

(12) It is immaterial for the purposes of section (1) whether—

(a) any relevant conduct of a relevant body, or

(b) any conduct which constitutes part of a relevant fraud or money laundering offence,

takes place in the United Kingdom or elsewhere."

Lord Garnier (Con): With respect, I wish to test the opinion of the House.

7.35 pm

Division on Amendment 125A

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Amendment 125A agreed.

Division No. 2

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7.45 pm

Amendments 125B to 125G not moved.

Clause 195: Law Society: powers to fine in cases relating to economic crime

Amendments 125H and 125J not moved.

Clause 197: Regulators of legal services: objective relating to economic crime

Amendment 126 not moved.

Amendments 127 and 128 not moved.

Amendment 129

Moved by ***Lord Agnew of Oulton***

129: After Clause 202, insert the following new Clause—

"Civil recovery: costs of proceedings

After section 313 of the Proceeds of Crime Act 2002 insert—

"313A Costs orders

(1) This section applies to proceedings brought by an enforcement authority under Part 5 of the Proceeds of Crime Act 2002 where the property in respect of which the proceedings have been brought has been obtained through economic crime.

(2) The court may not make an order that any costs of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by an enforcement authority to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless—

(a) the authority acted unreasonably in making or opposing the application to which the proceedings relate, or in supporting or opposing the making of the order to which the proceedings relate,

(b) the authority acted dishonestly or improperly in the course of the proceedings, or

(c) it would not be in the interests of justice.""

Member's explanatory statement

This extends the cost cap for civil recovery cases beyond Unexplained Wealth Orders. Part 5 of the Proceeds of Crime Act permits the recovery of criminal assets where no conviction has been possible. For example, because the individuals avoided conviction by remaining remote from the commission of the crimes but were beneficiaries of them, or having fled the country. It retains safeguards on costs for improper action taken by prosecuting authorities.

Lord Agnew of Oulton (Con): My Lords, I shall be very brief. First, I thank my noble and learned friend the Minister for his active engagement on this; he knows how strongly I feel about it.

We have a complete mishmash on the principles of cost capping at the moment. For example, cases taken in the magistrates' courts have cost capping, as do cases taken by the SRA. However, we do not have cost capping for the most important of all: those large cases where the enforcement agencies are trying to take on big-time oligarchs.

The only other thing I would say is that we have heard about Bill Browder tonight. I have spoken to him a lot over the past few months. He said, "The one clause you must get through in this Bill is the one on cost capping". I beseech the Government to listen to us on this and bring forward a clause on cost capping.

Lord Faulks (Non-Afl): My Lords, I rise briefly to support the noble Lord. Two key themes emerged from our lengthy debates on the Bill. The first was that the scale of economic crime is a major threat to the prosperity of the country. The second was that there is a significant inequality of arms between the enforcement authorities and the perpetrators of economic crimes. I could weary the House at length but I will not do so. This is an attempt to redress that inequality and not provide a disincentive for the authorities to pursue the perpetrators of economic crime.

Lord Ponsonby of Shulbrede (Lab): My Lords, if the noble Lord chooses to move to a vote, we will support him. This amendment would build on last year's Bill, which introduced similar changes to unexplained wealth orders. It is a welcome development, and I hope that the noble Lord presses his amendment to a vote.

Lord Bellamy (Con): My Lords, unfortunately, the Government are not able to accept this amendment, although we are sympathetic to the points made by my noble friend Lord Agnew. The amendment is designed to protect public authorities from having costs awarded against them if they fail to recover the proceeds of economic crime under the Proceeds of Crime Act.

First, the Government are not persuaded that public authorities that lose their case should be protected in

[Lord Bellamy]
this way. Secondly, this is a major breach of the general principle applied in civil litigation in the High Court that the loser pays.

Thirdly, it is a major interference with the discretion of the court on the question of costs. Fourthly, if such a change were to be contemplated, it should be a matter for the Civil Procedure Rules and not something inserted without detailed reflection on Report in your Lordships' House. Fifthly, it would produce even more inconsistency than allegedly we have already. I do not accept that there is material inconsistency, but you would have one rule for some POCA cases and another rule for other POCA cases, because not all POCA cases are economic crime cases.

However, the Government are prepared actively to consider a consultation to properly consider this matter and the evidence with a view to ensuring that there is a correct balance of justice and the proper consideration of the pros and cons. That, very briefly, is the Government's position.

I will briefly deal with one or two points. This is not like unexplained wealth orders, which have been mentioned. Those are an investigative procedure and not determinative of civil rights and obligations. In some respects, the UWO procedure is closer to a search warrant than to a recovery of money in civil litigation. It does not provide an analogy to the present case.

It is true that there are various costs regimes in various cases. It is probably not useful to weary your Lordships with particular decisions, but it is not without interest that in the case of Pfizer and Flynn, which involved the Competition and Markets Authority, the authority lost at first instance and was ordered to pay some of the costs. The Court of Appeal overturned that on the basis that it did not want to have the "chilling effect" of public authorities having to pay the costs when they lose litigation. However, the Supreme Court restored the original judgment and said, "This so-called chilling effect is only one factor". In other words, it is not decisive. You must consider in that jurisdiction all the factors. The Government draw from that case that the so-called chilling effect is not necessarily decisive, and that one must have a regime that enables the court to balance all the relevant effects.

With all respect for the motives behind it and the concerns that have been expressed, this amendment is too blunt an instrument to be a proper exercise of primary legislation in an area which very much calls for balanced consideration under the Civil Procedure Rules. As I said at the outset, the Government are perfectly prepared actively to consider reform of the Civil Procedure Rules with that aim in mind.

I hope that I have persuaded your Lordships that this is not an occasion to make an exception to the well-established rule that has stood for hundreds of years, whether it applies to HMRC, the National Crime Agency or the FCA. If they make a complete Horlicks of a case, there is no reason to let them off the costs. That is the Government's position.

Lord Agnew of Oulton (Con): I thank my noble and learned friend the Minister for his answer. He has always been entirely consistent, and I respect that. We have a genuine difference of views. English law has plenty of exceptions to the landscape which my noble and learned friend has set out—for example, when local authorities bring cases following the Booth case, law enforcement bodies when they bring cases in the magistrates' court, the Law Society when it brings disciplinary action, its prosecutions that fail following the Baxendale-Walker case, and the Competition and Markets Authority, where the Competition Appeal Tribunal can rule in its favour when it is unsuccessful in bringing a case.

There are plenty of examples. I am not seeking to make the perfect the enemy of the good. We can bring this in with this Bill. It would send a very powerful signal. I seek to test the opinion of the House.

7.55 pm

Division on Amendment 129

Contents 164; Not-Contents 150.

Amendment 129 agreed.

Division No. 3

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The Division result was initially reported as Contents 161; Not-Contents 148. See col. 683 for correction.

8.05 pm

Amendments 130 to 135 not moved.

Amendment 136

Moved by ***Baroness Kramer***

136: After Clause 202, insert the following new Clause—

"Whistleblowing: economic crime

(1) Whistleblowing is defined for the purposes of this section as any disclosure of information suggesting that, in the reasonable opinion of the whistleblower, an economic crime—

(a) has occurred,

(b) is occurring, or

(c) is likely to occur.

(2) The Secretary of State must by regulations made by statutory instrument, within the period of 12 months beginning with the day on which this Act is passed, set up a body corporate, to be known as the Office for Whistleblowers, to receive reports of whistleblowing as defined in subsection (1).

(3) Regulations under subsection (2) may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by, each House of Parliament.

(4) The Office for Whistleblowers must—

(a) protect whistleblowers from detriment resulting from their whistleblowing,

(b) ensure that disclosures by whistleblowers are investigated, and

(c) escalate information and evidence of wrongdoing outside of its remit to such other appropriate authority as the regulations may provide or otherwise as the Office may determine.

(5) The objectives of the Office for Whistleblowers are—

(a) to encourage and support whistleblowers to make whistleblowing reports,

(b) to provide an independent, confidential and safe environment for making and receiving whistleblowing information,

(c) to provide information and advice on whistleblowing, and

(d) to act on evidence of detriment to the whistleblower according to such guidance as may be set out by the Secretary of State in the regulations.

(6) The Office for Whistleblowers must report annually to Parliament on the exercise of its duties, objectives and functions."

Member's explanatory statement

This amendment would require the Secretary of State to set up an Office for Whistleblowers to receive reports of whistleblowing in relation to economic crime.

Baroness Kramer (LD): My Lords, it has been a long day and I discussed this amendment to create an office for whistleblowers extensively in Committee, so I will not cover the detailed ground again. I had intended to bring this amendment back to give an opportunity to the noble Lord, Lord Browne of Ladyton, but, given the small number in the Chamber at this time, we mutually decided that he should save the information that he has gathered for a larger audience. The noble Lord has, in essence, uncovered information that demonstrates how few whistleblower reports are actually investigated by any of the regulators.

As we have discussed before, whistleblowers have two asks, the first of which is that they are not left to be victims of retaliation. This House has heard how often the careers and lives of whistleblowers are destroyed under the current framework. The only protection the FCA offers is confidentiality for the whistleblower reports it receives; it takes no action if whistleblowers are identified—as they often are, because they have raised concerns internally or because the information itself identifies them. The employment tribunal process, which is limited to employees, costly and often drawn out for years, is no real protection. Correcting this by creating an office for whistleblowers is at the heart of my amendment.

The other ask of any whistleblower is that their tip-off, especially when supported by extensive data, is followed up with an investigation. Many of us assume that this would be the norm, except where the tip is malicious or frivolous. Instead, it is the rare exception, as the noble Lord, Lord Browne, will detail when he next has the opportunity. Following a recent survey of whistleblowers, the FCA told us that it is intending to remedy the lack of follow-up. It admits that it followed up fully on only three cases last year. It also says that it will take time to build the capacity and protocols to make follow-up much more the norm.

This amendment would give the office for whistleblowers the power to get regulators to follow up tips, rather than brush them in the bin, which has been the norm in virtually every area of public and private life. The House will be fairly shocked when it sees the data assembled by the noble Lord, Lord Browne.

Before I close, I again draw the House's attention to the difference in performance between the UK and the US. I am not suggesting that the US has it all solved or that we should import the US system, which in many ways would not fit well. However, last year, the Securities and Exchange Commission alone received 783 tips from UK whistleblowers, typically because the UK regulator had decided on no action. My understanding is that, in the US, tips means that all those cases will be followed up intensely.

Last weekend, I was stopped in the street by a whistleblower who has received no action by the FCA. He told me that he has been invited to fly to the US—I believe he is there now—because the SEC's initial investigation, based on his tip, is opening up one of the most significant cases of bank fraud in a decade. It should be an exception for a UK whistleblower to believe that the only place that they can go to get proper investigation is the United States; unfortunately, it is the rule in financial services. For that reason, among others, I beg to move.

Baroness Altmann (Con): I do not wish to detain the House long. I congratulate the noble Baroness, Lady Kramer, on her amendment and her Private Member's Bill trying to bring this matter to the House's attention. She is absolutely right that it is really important, and I wish that we could put a measure of this nature into the Bill—whether this one exactly or something similar.

It should not be a career-ending decision to try to do the right thing. To try to alert the country to a major issue that may be going on within our corporate sector should not be something that one is frightened of. Sadly, at the moment, that is so.

I also congratulate the APPG on Anti-Corruption and Responsible Tax, which has done brilliant work in helping brief the House on the Bill. Finally, I thank my noble friend the Minister, who I know has tried so hard to make this a better Bill. I thank the noble Baroness, Lady Kramer. I fully support her amendment, but I am sad that it is not going to carry tonight.

Baroness Blake of Leeds (Lab): I add my recognition to the noble Baroness, Lady Kramer, for the extraordinary attention to detail and persistence that she has shown in taking forward this very important issue. I know that the Minister will talk to us about the review that is coming in, but there still remain certain aspects that could be brought in immediately—for example, an expectation that every company at least has a policy on whistleblowing. We do not have to wait for a review to achieve that.

We have heard some extraordinary testimony through the debates on the Bill, and the real heartache and personal cost that have befallen people who have not had a good experience. As the noble Baroness, Lady Altmann, said, too many people wait until their job or career comes to an end before they give any details, if they do at all, on the issues that concern them.

This is an extraordinarily important issue. We need to make sure that the pressure is on. I ask the Minister to give us some reassurance about the review, what will happen when it is concluded, and what the mechanism will be to make sure that its findings are put into practice.

The Minister of State, Department for Business and Trade (Lord Johnson of Lainston) (Con): Before I speak to the amendment in this group, I draw your Lordships' attention to my interests as set out in the register.

I turn to Amendment 136. I personally thank the noble Baroness, Lady Kramer, for raising the very important matter of whistleblowing. I have been extremely grateful for the time that she spent with me ahead of this debate, and look forward to continuing being an important conduit for her into the Government, trying to seek a good resolution around the noblest of intentions. I am also grateful to my noble friend Lady Altmann and the noble Baroness, Lady Blake, as always, for their useful, contributory, collaborative comments.

This Government recognise how valuable it is that whistleblowers are prepared to shine a light on wrongdoing and believe that they should be able to do so without fear of recriminations. This entire process fits within the spirit of the ECCT Bill. I pay tribute to the courage displayed by individuals who blow the whistle on wrongdoing.

I appreciate that there is real strength of feeling on this topic, but the Government's position is still that it is premature to make legislative change ahead of the review of the whistleblowing framework, which has been mentioned in this debate. The Government recognise that there are different proposals for an office for the whistleblower, and the roles and functions that such a body could have.

The office risks duplication and confusion within the established whistleblowing framework. It is not necessarily clear how the office would interact with the existing prescribed persons, many of whom have regulatory powers in specific sectors. It may duplicate their role and responsibilities. It is also not clear how the office would interact with the current approach to detriment protection for whistleblowers and the role of the employment tribunal, and how whistleblowers and employers would be affected.

Secondly, there is an issue around the costs associated with establishing and running a body. It is not clear how the body would be funded, and we should think very carefully before committing taxpayers' money, even though this is clearly a very important cause that deserves significant amounts of attention.

Finally, I would not want the Government to take such a dramatic step before they have fully considered the effectiveness of our existing framework as well. As I am sure noble Lords would agree, it would be premature to make legislative change before the ongoing review of the whistleblowing framework has concluded and the Government have assessed the evidence.

It is worth pointing out that we were one of the first countries to introduce a whistleblowing framework, and our framework is well established. Internationally, we are regarded as a leader in whistleblowing policy and our framework has been used as a model for other jurisdictions, such as Australia and Ireland. The whistleblowing framework recognises that workers are actually the first line of defence for employers to detect and take action where wrongdoing is taking place or has the potential to do so. Workers who believe that they have been dismissed or otherwise detrimentally treated for making a protected disclosure can make a claim to the employment tribunal, which can award unlimited compensation.

8.15 pm

The Government have taken steps to strengthen the whistleblowing framework and improve the environment for whistleblowers, which include extending whistleblowing protections to NHS job applicants, student nurses and midwives; producing guidance for whistleblowers and prescribed persons, as well as guidance and a code of practice for employers; expanding the list of prescribed persons, the individuals and bodies that a worker can blow the whistle to; and introducing a requirement on most prescribed persons to report annually on the whistleblowing disclosures they receive.

Not long after taking office, my ministerial colleague, the Minister for Enterprise, Markets and Small Business, committed during Public Bill Committee in the other place to launch a review of the whistleblowing framework, which we have discussed today. I believe we have made good on this commitment. On 27 March the Government launched this review. The objective is to examine the effectiveness of the whistleblowing framework in meeting its intended objectives. The Government believe that the review is the right way to bring together and examine the evidence relevant to the issues that have been raised about the framework. We have listened carefully to the concerns raised in previous debates and on previous occasions, and continue to listen carefully today. Many have spoken passionately about the impact that blowing the whistle can have on individuals, the enforcement of whistleblowing rights through the employment tribunal, and the role of employers and prescribed persons in responding to whistleblowers and their disclosures.

The review will consider a number of topics central to the whistleblowing framework, including how workers are defined for whistleblowing protections, the availability of information and guidance for whistleblowing purposes, and how employers and prescribed persons respond to whistleblowing disclosures, including best practice. Those three components cover many of the points raised by the noble Baroness, Lady Kramer. When considering the effectiveness of the Great Britain approach, the review may also, where relevant, include learning from other countries.

In conclusion, the Government have welcomed the continued constructive engagement on this topic. It is important that we do not prejudice the outcomes of the ongoing review. When that has concluded, the Government will consider next steps and whether any changes may be needed to the framework. I am grateful to the noble Baroness for tabling the amendment, in the sense that it encourages further debate, but I ask her to withdraw it.

Baroness Kramer (LD): My Lords, I thank both the noble Baroness, Lady Altmann, who is so active in this cause, and the noble Baroness, Lady Blake, for the statements they made. I thank the Minister too for

[Baroness Kramer]
reinforcing the steps that the Government are taking to review the whistleblowing framework. We have real hopes that that will achieve a lot of the goals that we have in mind.

I want to reassure the Minister on one point. A canard that is so often raised, and I have addressed it before, is the cost of an office of the whistleblower. Within the Securities and Exchange Commission, the Office of the Whistleblower is regarded not as a cost centre but as a profit centre. Its capacity to pursue wrongdoing has led to such a level of fines as a consequence that over the past 10 years it has passed back in excess of $7 billion to the US treasury. It is certainly an institution that more than pays for itself, because it brings wrongdoers to justice, leads to financial penalties and not only covers its own costs but contributes to taxpayers' benefit, as it should.

However, I will of course, under these circumstances, at this late hour, and with many thanks, agree to treat this as additional pressure on the Government to further a sense of urgency for the review. I beg leave to withdraw the amendment.

Amendment 136 withdrawn.

The Deputy Speaker (Baroness Barker) (LD): My Lords, I should inform the House that the numbers announced for the Division on Amendment 129 need to be corrected. This does not impact the outcome. The correct numbers were: Contents 164, Not-Contents 150.

Clause 204: Regulations

Amendments 137 to 140

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

137: Clause 204, page 191, line 37, after "State" insert "or the Lord Chancellor"

Member's explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

138: Clause 204, page 192, line 15, at end insert—

"(ea) regulations made by the Secretary of State under section (Power to amend list of economic crimes)(1);"

Member's explanatory statement

This amendment provides for regulations under new Clause (Power to amend list of economic crimes) made by the Secretary of State to be subject to the affirmative procedure.

139: Clause 204, page 192, line 24, after "section" insert "(Power to amend list of economic crimes)(1) or"

Member's explanatory statement

This amendment provides for regulations under new Clause (Power to amend list of economic crimes) made by the Scottish Ministers to be subject to the affirmative procedure.

140: Clause 204, page 192, line 28, after "section" insert "(Power to amend list of economic crimes)(1) or"

Member's explanatory statement

This amendment provides for regulations under new Clause (Power to amend list of economic crimes) made by the Northern Ireland Department to be subject to the affirmative procedure.

Amendments 137 to 140 agreed.

Clause 205: Extent

Amendments 141 and 142

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

141: Clause 205, page 192, line 33, leave out "subsection" and insert "subsections (1A) and"

Member's explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

142: Clause 205, page 192, line 33, at end insert—

"(1A) Sections (Strategic litigation against public participation: requirement to make rules of court) and (Meaning of "SLAPP" claim) extend to England and Wales only."

Member's explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

Amendments 141 and 142 agreed.

Clause 206: Commencement

Amendments 143 to 145

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

143: Clause 206, page 192, line 38, after "State" insert "or the Lord Chancellor"

Member's explanatory statement

See the explanatory statement for new clause (Strategic litigation against public participation: requirement to make rules of court).

144: Clause 206, page 193, line 10, leave out "Section 201 comes" and insert "The following come"

Member's explanatory statement

This amendment and my other amendment to Clause 206 provide for new Clauses (Attributing liability for economic crimes), (Power to amend list of economic crimes) and (Offences under section (Attributing criminal liability for economic crimes to certain bodies) committed by partnerships) and new Schedule (Criminal liability of bodies: economic crimes) to come into force two months after Royal Assent.

145: Clause 206, page 193, line 11, at end insert "—

(a) section (Attributing criminal liability for economic crimes to certain bodies) and Schedule (Criminal liability of bodies: economic crimes);

(b) section (Power to amend list of economic crimes);

(c) section (Offences under section (Attributing criminal liability for economic crimes to certain bodies) committed by partnerships);

(d) section 201."

Member's explanatory statement

See the explanatory statement for my other amendment to Clause 206.

Amendments 143 to 145 agreed.

Diocesan Stipends Funds (Amendment) Measure

Motion to Direct

8.21 pm

Moved by ***The Lord Bishop of Sheffield***

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Diocesan Stipends Funds (Amendment) Measure be presented to His Majesty for the Royal Assent.

The Lord Bishop of Sheffield: My Lords, I am not entirely surprised to discover that this Measure excites noble Members of the House rather less than the previous business.

In the medieval period, clergy were paid mainly from income derived from land owned by each parish, known as glebe land. The amount of land varied from parish to parish, and so accordingly did the income of the clergy. With the Industrial Revolution and the growth of cities, wealthy industrialists were often willing to give significant amounts of money to support the local church, often helping to build and endow the church in question. In my diocese of Sheffield, a number of large churches were built in this period thanks to the generosity of industrialists such as Samuel Fox, the founder of the local Stocksbridge steelworks.

Moving forward to the 20th century, the Endowments and Glebe Measure 1976 transferred glebe land from parishes to diocesan boards of finance in exchange for the payment of a standard stipend to each member of clergy in the diocese. However, that left very unequal distributions of wealth between dioceses. For example, at the end of 2020, the diocese of Oxford had diocesan stipend fund capital assets worth £171 million, while the diocese of Liverpool had only £1.5 million.

Regardless of their wealth, each of the 42 dioceses in the Church of England is required under the Diocesan Stipends Funds Measure 1953 to maintain two accounts. The first is a capital account, which holds the glebe land legacies and other assets. The second is an income account, which holds the proceeds from the capital account, but funds in the income account may be used only for specified statutory purposes, principal of which is the paying of parish clergy stipends. This amending Measure concerns the income account only.

The existing legislative position means that the funds in the income account can be used only within the particular diocese itself. In 2020, the Church of England began to look at ways to enable a richer diocese to support a poorer one by donating funds directly for the payment of clergy stipends. The recommendation of the Church's Mutuality in Finances Group, which I had the privilege of chairing, was to bring a simple Measure for synod's consideration that would remove the geographic restriction on the use of diocesan funds so as to enable one diocese to donate to another.

This brief Measure does this by amending the Diocesan Stipends Funds Measure 1953 by inserting a new single clause. Subsection (1) of the new clause provides that where a diocesan board of finance is satisfied that funds which sit in its stipends income account do not need to be used for another statutory purpose, it may transfer those funds out of the diocese. Subsection (2) provides that where a transfer takes place, it may only be directly to the stipends income account of another Church of England diocese or to the Archbishops' Council or another mediating charity. Subsection (3) requires that where the Archbishops' Council or another mediating charity receives such funds, it may transfer those funds only to the stipends income account of a diocese or dioceses. It is important to emphasise that this new power is entirely permissive and there will be no obligation whatever on a diocese to use it. That said, the Church is confident that those dioceses which are able to be generous will be so. I beg to move.

Baroness Harris of Richmond (LD) [V]: My Lords, I am most grateful to the right reverend Prelate the Bishop of Sheffield for his elegant introduction to this Measure, much of which I regret I will be repeating for the record. I thank the noble and learned Baroness, Lady Butler-Sloss, who is unable to be in her place this evening. She guides us with great wisdom and knowledge as chair of the Ecclesiastical Committee. She has asked me to represent her this evening, which I gladly do.

This is a short Measure but nevertheless an important one. In a nutshell, it is about generosity of spirit, as well as money, from a well-off benefice to one less fortunate. Before I begin, I must declare my interests. I am High Steward of Ripon Cathedral in North Yorkshire and I have a nephew who is a priest on the Isle of Man. Neither of these interests is financial.

Historically, as we have heard, the incumbents of a parish were supported in their ministry by moneys garnered from glebe property—assets of land, property et cetera—which helped pay for the clergy in support of their ministry. During and after the Industrial Revolution, most people who lived in rural areas moved into the new towns and cities, and these of course flourished. Many became very wealthy and so did not need any help from rural areas. Some areas with lots of glebe were well able to support their clergy, but others without such benefits were not so fortunate. Their clergy were not, therefore, well supported. In order to iron out these discrepancies, the Endowments and Glebe Measure 1976 transferred the glebe from the benefices to diocesan boards of finance in exchange for them providing a standard stipend to all members of the clergy who ministered in the parishes of the diocese. The diocesan stipend fund—DSF—holds that glebe land, with any accrued income from it going into the fund. The money is then distributed into its capital account.

The problem then arose that the Church found that some dioceses were having to make financial savings because of their loss of glebe moneys, whereas others were much wealthier because of significant income from historic wealth. As an example of this discrepancy, we were told that Oxford holds the most valuable historic assets at £171 million, and Liverpool the lowest at £1.5 million. So to try to come to a more equitable state, the Mutuality in Finances Group was formed to explore options such as moving money between dioceses from sufficiently wealthy parishes to those in greatest need.

At present, dioceses can use their diocesan stipend fund only for certain specified purposes and only within their own diocese. In 2021, the House of Bishops, the Archbishops' Council and the synod recommended that legislation be brought forward to get rid of these anomalies and give dioceses more freedom to distribute their historic wealth more generously and help their struggling colleagues. As noble Lords would expect, there are a number of provisions in the Measure that stipulate how the money may be transferred from one diocese to another. New Section 5B is permissive rather than mandatory, for moneys to be used in various circumstances. New Section 5B(2) sets out the options a diocesan board of finance has if it decides to transfer money. It can do so to the income account of the diocesan stipend fund of another diocese; or to an account, held for the purposes of new Section 5B, of

[Baroness Harris of Richmond]
the Archbishops' Council; or to another charity. If it goes to another charity, that charity then has to decide to which diocese or dioceses it intends to transfer the funds. Then it transfers the money to the relevant diocesan stipend fund.

8.30 pm

There are two accounts held by the DSF: one for capital and one for income. Only the acquisition of land or various investment schemes and the discharging of expenses, et cetera, can come from the capital account. The income account deals primarily with the payment of stipends. It also covers such things as the upkeep of clergy housing, national insurance, clergy vacancies—which are covered by church wardens who might need expenses paying—and so forth.

I declared my interest in the Isle of Man earlier, but I must tell your Lordships that this Measure does not apply there, nor indeed to the Channel Islands, as they have entirely separate arrangements for paying clergy stipends.

This Measure has received widespread support in all three houses, even though there was some disagreement about the possible confusion between the roles of the diocesan board of finance and the diocesan synod. As the diocesan synod cannot be involved in every financial decision, since it would impact the process of giving, it actually approves the budget of the DBF each year anyway, so it was felt that that would provide the appropriate level of scrutiny.

Other members raised concerns about the appropriateness of donating funds to another diocese if those funds been raised through parish giving. It was recognised that this was a temporary solution regarding stipend funding and that there was a clear need to rebalance church funding generally. In the end, the Measure was passed with 26 bishops in favour and none against, 97 clergy in favour and one voting against, and, for the laity, 115 in favour and 11 against. Three members in the House of Clergy abstained, as did five members in the House of Laity.

At the heart of this Measure is a small gesture of possible generosity from a well-endowed diocese to one that is struggling to pay stipends. The present geographic restrictions mean that a diocese can use its money for stipends only within its own diocesan border. Any transfer of funds out of a diocese will still be able to be used only to pay for stipends. I commend this Measure to the House.

Baroness Sherlock (Lab): My Lords, I declare an interest as a priest of the Church of England, but not one in receipt of a stipend.

I thank the right reverend Prelate the Bishop of Sheffield for his clear introduction to this Measure and for showing us once again that Church of England Measures are sometimes much more interesting than they sound from the title—that is certainly the case today. I also thank the noble Baroness, Lady Harris of Richmond. Indeed, the House is indebted to the whole of the Ecclesiastical Committee once again for its work in scrutinising this Measure and assuring us that it is expedient.

I reassure the right reverend Prelate that I am not getting up to oppose the Measure in any way; I just thought this might be an opportunity to ask him a question. He may know that Members of both Houses have been receiving representations from a group calling itself Save the Parish, which suggests that more money from the Church of England should be directed to the front line of parish ministry. This is obviously a matter for the Church but I wonder if he could simply take this opportunity to tell the House whether this Measure will help in that regard or whether those concerns are misplaced?

Lord Kennedy of Southwark (Lab Co-op): My Lords, I am not a member of the Church of England—I am actually a Catholic—but I have great respect for the Church of England and, of course, for all the right reverend Prelates who take part in the deliberations here. I am fascinated by the funding issue. I think this a really good Measure; I did not know anything about it until we heard from the right reverend Prelate. It is good to see that better-off parishes are funding less well-off parishes; I commend that very much. I would like to know a bit more about funding for the Catholic Church but I suspect that is for another debate. I am very happy to support the Measure and I thank the right reverend Prelate for moving it.

Lord Lexden (Con): My Lords, if I may, I would like to ask just one question. Given that this is such an obviously good idea—that dioceses with money they can spare should be able to transfer it to dioceses where there is need—why has it taken the Church of England so long to get round to implementing it?

The Lord Bishop of Sheffield: I am extremely grateful to noble Lords for their contributions to this brief debate. I am grateful to the noble Baroness, Lady Harris of Richmond, for her clear and helpful summary of the purpose of this Measure.

With the noble Baroness, Lady Sherlock, I am extremely grateful to the Ecclesiastical Committee for its work in deeming this measure expedient. I assure the noble Baroness that the Measure will certainly have the potential to ensure that nationwide the Church of England is able to deploy more stipendiary clergy, not fewer.

This Measure is certainly no threat to the members of the Save the Parish group. Indeed, the chairman of that group spoke memorably and most passionately in the General Synod in support of the Measure as it passed through the synodical process.

I thank the noble Lord, Lord Kennedy, for his contribution. Perhaps there might be some hope that the Roman Catholic Church will follow in the footsteps of the Church of England in this respect. To the noble Lord, Lord Lexden, I can say only that the Church of England tends in almost all things to move at snail's pace. I beg to move.

Motion agreed.

National Security Bill

Returned from the Commons

The Bill was returned from the Commons with an amendment and a reason.

House adjourned at 8.36 pm.