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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Monday 27 November 2023

2.30 pm

Prayers—read by the Lord Bishop of London.

Jobs Market: Graduates

Question

2.36 pm

Asked by ***Lord Londesborough***

To ask His Majesty's Government what assessment they have made of the jobs market for graduates, and whether this assessment points to a mismatch between skills and vacancies.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, one-third of vacancies in the UK are due to skills shortages. The Government want to develop a world-leading, employer-focused, high-quality skills system that is fit for the future. Our higher education sector delivers some of the most in-demand occupational skills with the largest workforce needs, including training of nurses and teachers. The DfE published graduate labour market statistics showing that, in 2022, workers with graduate-level qualifications had an 87.3% employment rate and earned an average of £38,500. Both are higher than for non-graduates.

Lord Londesborough (CB): I thank the Minister for her detailed response, but the fact remains that we have swathes of overqualified graduates in jobs not requiring a degree. Outside London, that number has now risen to 42%, and in many regions it is more than half. Graduate vacancies are falling steeply, as is their wage premium, and students have now racked up more than £200 billion of debt, much of which will never be repaid. How do the Government plan to respond to the damaging mismatch between skills and vacancies?

Baroness Barran (Con): I thank the noble Lord for his supplementary question. I recognise some of the points that he makes about the regional differences in graduate opportunities. However, on our wider skills strategy, the Government have introduced the lifelong learning Act, which will offer students the ability to reskill and upskill over their lifetimes. We are investing in skills at all levels and also focusing on making sure that the quality of all degrees is as high as can be.

Baroness McIntosh of Hudnall (Lab): My Lords, I was so surprised by the absence of other noble Lords asking questions that I almost did not get up. Could the Minister think particularly about the creative industries, where, at the moment, there is a significant lack of people to fill vacancies? It is true, as I think she would agree, that, historically, it is not the highest paid sector, but it is one of the most highly skilled, and yet—and here she might not agree—the education system really does not emphasise enough the value of the skills needed for the creative industries. Could she let the House know how those skills are being better valued in the education system, so that those vacancies can be filled?

Baroness Barran (Con): The noble Baroness has anticipated well that I do not agree that those skills are not valued in our education system. Obviously, those skills are evolving and developing more into digital skills; that is an area in which we are focused both in schools and in skills bootcamps, T-levels and beyond.

Lord Storey (LD): My Lords, the Minister will be aware that we have a shortage of teachers—some might call it a crisis of teacher vacancies—in our schools. We also have a crisis of shortages in specialist subjects, such as physics and the creative subjects, as we have heard. Fewer and fewer young people are going into teaching or studying education at university. To try to avert this crisis, is there a case for saying that we will refund your tuition fees if you become a teacher?

Baroness Barran (Con): The Government are not considering that at the moment, and I remind the House that teacher numbers are at an all-time high, at over 468,000.

The Lord Bishop of London: My Lords, I welcome both the Government's efforts to make apprenticeships more accessible to ensure that people can be supported into key occupations and the expansion of this into the health service, especially with the recent *NHS Long Term Workforce Plan*. In healthcare professions, cover is required for apprentices' roles when they are studying. Those apprentices are often on full-time salaries, so backfilled funding will have to be found to ensure that those workplaces can cope. As this cannot be covered by the apprenticeship levy, what support are the Government offering to ensure that those apprenticeship routes can be successful?

Baroness Barran (Con): The Government are committed to the development of apprenticeships at all levels, including, for example, degree apprenticeships for nurses in the NHS. In relation to the earlier question, we are also exploring teacher apprenticeships. I will have to write to the right reverend Prelate on the specifics of the funding of backfilling.

Baroness Wilcox of Newport (Lab): Can the noble Baroness tell us why the Secretary of State has cut the higher technical education skills injection fund by one-third, down from £32 million to £21 million, at a time when the country is facing major skills shortages? It is just another example of short-termism, selling the country—and graduates—short.

Baroness Barran (Con): The noble Baroness talks about £32 million; our skills reforms are backed by an investment of £3.8 billion over the course of this Parliament to strengthen higher and further education. In particular, we announced £200 million of funding for local skills innovation funds, supporting the local skills partnerships led by employers.

Lord Hunt of Kings Heath (Lab): My Lords, I come back to teachers and extend the issue to healthcare workers such as doctors and nurses. I declare my interest as a member of the GMC council. If you look at the stats for trainee doctors and nurses after they have graduated, and then look at how many stay in the health service for, say, two to three years after graduation,

[Lord Hunt of Kings Heath]
you find that the attrition rate is alarmingly high. Is there not a case for tying some financial incentive to sticking with the health service for five years or more and at least mitigating the cost of some of your student loan?

Baroness Barran (Con): I am less familiar with the details of the health service but, in relation to teaching and children's social care, that is why there is so much focus in our work on retention, support for early career teachers and improving the quality of initial teacher training.

Lord Lansley (Con): Would my noble friend agree that there are many reasons why youngsters should choose a particular course at university, of which employment or potential for future employment is an important one? I declare an interest, as I have a daughter presently at university. Could my noble friend say what the Government, and indeed universities themselves, are doing to inform youngsters making choices on which degrees to pursue at university, so that they have more information about their employability thereafter?

Baroness Barran (Con): I absolutely agree with my noble friend that young people should be well-equipped to understand not just the options for their subject but that subject at that particular institution, because we know that future earnings power, and in addition future job satisfaction, vary very much between institutions. There are improvements being made, and I am happy to send details to my noble friend on ways that students can access that information.

The Earl of Clancarty (CB): My Lords, further to the question of the noble Baroness, Lady McIntosh, and the question of the noble Lord, Lord Hunt, this is not just for the arts, and it is about not just training up or career awareness but affordability. The plain fact is that many employers in the arts today cannot afford the skilled workers they need. It is at this point that the Government should intervene.

Baroness Barran (Con): I am always slightly baffled by this line of questioning, because when I look at the performance of our creative industries and the performing arts, I see that they are resoundingly successful, both domestically and globally. I appreciate that there are skills pressures in those areas, but they are ones that many organisations are overcoming.

Lord Lexden (Con): My Lords, following the question of the noble Lord, Lord Storey, should not those with science degrees who have not got jobs be strongly encouraged to train to help fill the many physics vacancies which are causing so much worry in the education system?

Baroness Barran (Con): I am not aware of the detail as to whether there is a mismatch between those with science degrees, in particular physics degrees, and vacancies. My understanding is that the opportunities for those with STEM degrees are significantly higher at higher professional levels than for those without.

Sudan and South Sudan

Question

2.47 pm

Asked by ***Baroness Anelay of St Johns***

To ask His Majesty's Government what steps they are taking to support peace and democracy in Sudan and South Sudan.

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, the UK is committed to supporting Sudan and South Sudan to achieve an enduring peace. In Sudan, we are pursuing all diplomatic avenues to press the warring parties into a sustained and meaningful peace process that paves the way to a return to a civilian-led government. In South Sudan, we continue to urge the Government to implement the peace agreement and secure a peaceful transition to democracy through free and fair elections.

Baroness Anelay of St Johns (Con): My Lords, conflict between the two armed forces within Sudan has intensified over the last few months. Just a few days ago, the Sudan Government then informed or notified the United Nations that it wanted to pull out of the United Nations Assistance Mission ASAP or by 3 December, which is the last date on which this current rollover mandate of peace remains. As the UK is penholder on Sudan at the UN, can my noble friend tell me what negotiations there have been with the Sudanese Government to ensure that this mandate is rolled over, in a way that maintains the present level of impact upon Sudan? Otherwise, the millions of people who have been displaced, including 3 million children who are now on the verge of famine, will not be fed.

Lord Benyon (Con): My noble friend is absolutely right. The UK led the renewal of the mandate for the UN Integrated Transitional Assistance Mission in Sudan on 2 June to ensure that the UNITAMS process would have the most effective mandate possible to address the crisis in Sudan. She is absolutely right: there are 6.2 million people displaced, 1.2 million of them in neighbouring countries. As penholder on Sudan at the Security Council, we work in close partnership with the UN, including on how the UN can best support the Sudanese people going forwards. We will continue to work with Sudan and other interested parties on this ahead of the expiry of the UNITAMs mandate on 3 December. It is absolutely vital that all countries are doing their bit to try to assist the people who are suffering most in this terrible conflict.

Lord Anderson of Swansea (Lab): My Lords, the conflict in Sudan is tragically forgotten by the world. The UN is paralysed, while the African Union stands on the other side and watches what happens. There is no real prospect yet of a ceasefire or any positive movement, so what can the Government do? As a penholder, can we persuade other Governments to increase support for the aid agencies as the tragedy unfolds?

Lord Benyon (Con): The noble Lord rightly portrays a very stark situation, but the conflict is not ignored by this Government. We strongly believe that neither of the warring parties should have any role in power in a future Sudan, and we support an African-led approach to resolving the crisis. We are working with a range of partners, including the Quad—Saudi Arabia, the UAE, the United States and ourselves—as well as African countries, the Intergovernmental Authority on Development, the African Union and the UN to achieve a permanent ceasefire and allow unfettered humanitarian access. One of the great problems is getting humanitarian access to particular parts of Sudan; just getting visas for humanitarian aid workers is impossible. We are also helping a broad group of Sudanese civilian actors and stakeholders—that most recently took place in Addis Ababa at the end of October. My ministerial colleagues and I will continue to have meetings with parties to try to affect a changing situation, but I entirely agree that it looks bleak at the moment.

Lord Singh of Wimbledon (CB): My Lords, if we get a leakage of water causing damage at home, the first thing we do is turn off the supply system. I know that I will be told that we have the most rigid control of arms in the world, but arms manufactured in this country are being sold to Saudi Arabia and the UAE, which then sell them on to the warring parties in Sudan. Is that acceptable?

Lord Benyon (Con): There is a long-standing UK arms embargo in place for the whole of Sudan, as well as a UN arms embargo on Darfur. If the noble Lord wants to give me more evidence of what he said, I will certainly take it up.

Lord Collins of Highbury (Lab): My Lords, the Minister referred to the displacement of people raised by the noble Baroness, who is absolutely right about UN involvement and our responsibility as a penholder. What was our response to the World Food Programme, which has announced that it requires £150 million just to support those who have moved to Chad? Can we take this issue seriously? As the noble Baroness said, women, girls and children are in an absolutely desperate situation and we need to respond.

Lord Benyon (Con): The noble Lord is right about the situation. Some 24.7 million people need assistance and, as I said earlier, 6.2 million people have been displaced since 15 April, a large proportion of whom are in Darfur. Our top humanitarian priority is to secure humanitarian access and operational security guarantees for humanitarian agencies, as there can be no aid without safe and reliable access. In May, the Minister for Development and Africa announced £21.7 million in UK humanitarian aid for Sudan, as well as £5 million to help meet the urgent needs of refugees and returnees fleeing violence in Sudan into South Sudan and Chad. UK support is providing nutrition, drinking water and medical aid, as well as supporting our protection services, including for those affected by gender-based violence, of which there is a horrendous amount.

Lord Purvis of Tweed (LD): My Lords, I welcome the Minister to his place. He mentioned the democratic civilian forces meeting in Addis Ababa at the end of October. I declare an interest, in that I was there with them and I have been supporting them since the outbreak of the conflict in April. That meeting was a major move forward, and they are now working on a programme called Takadum, which means "progress". Does the Minister agree with me that, if there is to be space for those civilians to take part in any meaningful peace negotiations to end this terrible conflict, the conflict cannot be prolonged? Armaments for the RSF and the SAF forces are being replenished, so will the Government consider having sanctions ready for any neighbouring countries—the whole sweep of Libya and Egypt, as well as the UAE, Turkey and Iran—participating in that replenishment during this dreadful conflict?

Lord Benyon (Con): I thank the noble Lord for his involvement in this process. On 12 July, the Minster for Africa and Development announced a package of six UK sanctions, putting in place an asset freeze on the three commercial entities linked to each party involved in the conflict—the Sudanese Armed Forces and the Rapid Support Forces. We do not speculate on future sanctions, but we will certainly look at anything that would limit the illegal activities that bring arms and cause this massive problem to continue, and we will certainly work with the noble Lord and others to ensure we are achieving that.

Lord Boateng (Lab): My Lords, peacebuilding requires specific, focused actions on the ground. There are few organisations on the ground in Sudan that have any credibility. Faith-based organisations, however, both Christian and Islamic, do. What specific steps have His Majesty's Government taken to support faith-based organisations in their work in that country?

Lord Benyon (Con): Next door, in South Sudan, there was an extremely important visit by the Holy Father, the most reverend Primate the Archbishop of Canterbury and the Moderator of the Church of Scotland. That certainly coalesced faith-based organisations in that area. However, in Sudan it is, if anything, more difficult because of this raging civil war. The noble Lord is right that civil society and faith-based organisations are very often the best people at delivering aid and support and trying to get humanitarian aid to those areas as quickly as possible.

Baroness Helic (Con): My Lords, on 14 July, members of the PSVI international alliance issued a joint statement condemning reports of increased sexual violence and calling on all parties to stop the violence. Four months later, on almost a daily basis we hear about rape being used as a weapon of war, particularly in Darfur. We are seeing a repeat of the actions that led to genocide 20 years ago. What is my noble friend's proposal? How do we address this? How do we best interfere and intervene in order not to see a repeat of the crimes that were committed then?

Lord Benyon (Con): My noble friend raises a really important point. We have attacked in the strongest terms the atrocities we are hearing reports of from

[Lord Benyon]
across Sudan. We initiated the Sudan Core Group members' resolution to establish an independent fact-finding mission for Sudan, which was adopted by the UN Human Rights Council in October, and we will support future accountability efforts in Sudan. We condemn the ongoing attacks in west Darfur on innocent civilians by militias, particularly the RSF, which have all the hallmarks of ethnic cleansing. My noble friend is absolutely right: the use of rape and torture as weapons of war is utterly appalling, and we want to ensure not only that it stops but that those who have partaken of this are held accountable.

Rail Fares

Question

2.58 pm

Asked by ***Baroness Randerson***

To ask His Majesty's Government what are their plans to simplify rail fares; and what steps they are taking to increase confidence among passengers that, when they purchase tickets, they will always receive the best value for their requirements.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, the plan for rail proposes the biggest shake-up of rail in a generation. We have already made progress on fares reform, for example, introducing flexible season tickets and delivering on our commitment to extend single-leg pricing to most of LNER's network. We announced earlier this year that we would deliver pay-as-you-go to 53 more stations in the south-east and, through trailblazer devolution deals, pay-as-you-go pilots in Greater Manchester and the West Midlands.

Baroness Randerson (LD): My Lords, following the fiasco of the Government's proposed closure of all ticket offices, which was of course resoundingly rejected by the travelling public, we urgently need decisive action to improve rail services. Great British Railways has, it seems, been kicked into the long grass but one aspect, ticketing reforms, to which the Minister's Answer refers, could be done now throughout the whole network without legislation. The one isolated trial and the Government's plans simply are not good enough to create the reform that is needed, to restore passengers' trust and to improve value for money. When do the Government plan to introduce single-leg pricing and the overall reform throughout the whole network?

Lord Davies of Gower (Con): At the Bradshaw address, we committed to expand single-leg pricing to most of LNER's network, and this went live on 11 June 2023. This delivers simpler, more flexible tickets that are better value. Passengers can now get the best value ticket for their journey, safe in the knowledge that a single ticket will be half the price of a return. Previously, some single tickets on LNER trains, for example, cost almost as much as a return. Single-leg pricing is much simpler, putting the price of a single ticket at around half the cost of the old return ticket.

Lord Dubs (Lab): My Lords, I am interested in the Minister's comment. Would he care to comment on the following experience? Recently, I booked a standard return ticket on the west coast main line and was told I could not have reserved seats without trading in the tickets and buying two single ones at a cost of £25 more.

Lord Davies of Gower: I cannot particularly comment on that one issue, but I am sorry to hear of the noble Lord's experience and it is certainly something I will take back.

Lord Ranger of Northwood (Con): My Lords, as someone who is infrequent on the rail service, as a Londoner, when I do travel I enjoy the experience. What I have seen over the last few years is increased digitisation and more tickets being purchased online. I think we should welcome that, the ease of fares that are being seen online and the work being done by the train operating companies. Another thing I have noticed is that, as personal experience shows, if there are delays and challenges on the rail network then refunds are being offered quite easily—or advertised, at least, to be offered quite easily. The process itself, though, feels a bit more complex, because I have not yet been able to attain one of those refunds. Will the Government and my noble friend look at how we could automate refunds, to make that better for the user experience?

Lord Davies of Gower: My noble friend makes a very good point and, as somebody who has made several applications for refunds online, it is not the simplest of processes. Indeed, for those less acquainted with computers and software, it is even more difficult. I take his point and it is something that, again, I will take back.

Lord Wigley (PC): My Lords, I draw the attention of the Minister to the experience of evening travellers from Euston to north Wales—the Bangor and Holyhead line operated by Avanti services—who, incredibly, might find that there are no through tickets from Euston to Bangor using tickets booked in advance. If, on the same train, a ticket is purchased from Euston to Chester and another from Chester to Bangor, there is availability. Would I be unduly cynical in thinking there is some manipulation going on to try and rationalise the services?

Lord Davies of Gower (Con): I hear what the noble Lord says, and I think that I will take that one back as well.

Lord Liddle (Lab): Does the Minister recognise that as long ago as 2019 the Government accepted that there was chaos in the present rail fare structures about which something had to be done? The answer was to set up Great British Railways, which would have new powers to deal with this question. Given the urgency of getting more passengers back on the railway, given the rise in public subsidy to the railways from £4 billion to £13 billion in four years, why have the Government ducked doing this?

Lord Davies of Gower (Con): Well, again, I will—

Baroness Smith of Basildon (Lab): Take it back?

Lord Davies of Gower (Con): Not on this occasion. My Lords, we are focusing on delivering for passengers and customers by integrating new opportunities, such as, as I said earlier, the recently announced £36 billion of funding for Network North, fares and ticketing reform and improving accessibility, as well as delivering the £44 billion settlement for Network Rail to support the safe and efficient running of the network for customers between 2024 and 2029. Securing a slot for pre-legislative scrutiny of the draft rail reform Bill demonstrates the Government's real commitment to our railways.

Lord McLoughlin (Con): My Lords, I welcome my noble friend to his post. I have some sympathy with him as far as rail ticketing is concerned, because everybody thinks it should be reformed if it means they get cheaper tickets. The simple fact is that as long as the Treasury has the control that it does over the rail companies, which is greater now than it has ever been, through the department, then we will not make much progress on this matter. When does he expect to see the results of LNER's experiment? Does he think this can be rolled out more quickly than presently planned?

Lord Davies of Gower (Con): I hope that this can be rolled out as quickly as it possibly can be, but again, I am afraid I cannot give a definitive answer at this point.

Baroness O'Grady of Upper Holloway (Lab): My Lords, would the Minister join me in congratulating the RMT trade union on exposing the scale of underclaiming of compensation for delayed and cancelled trains, and the scale of profiteering by apps such as Trainline? Does he agree with the great majority of public opinion that believes it is high time that the public good was put ahead of private profit in respect of ownership of our railways?

Lord Davies of Gower (Con): I thank the noble Baroness for her question. The rail industry is in a difficult financial position. The department has spent in the region of £31 billion of taxpayers' money. That amounts to about £1,000 per household in 2020-21 and 2021-22, since the pandemic. Reforming the rail network is critical to improve the passenger experience and to ensure the financial and operational sustainability of the railway. The industry has put forward fair and reasonable deals, offering job security and a fair pay rise. Government funding has been secured to facilitate important reforms of the railway. However, agreeing pay increases has to be linked to taking forward these important reforms.

Lord Geddes (Con): Will my noble friend bring his undoubted acumen to bear, in addition to the rail fares, to simplifying buying tickets to park at railway stations, where you virtually need a degree in science to work it out?

Lord Davies of Gower (Con): I must confess, I park my car every week at a station car park to come here and I have not found any difficulty: I walk into the station, buy a ticket and put it on my windscreen. So, I am sorry to hear the noble Lord's difficulty but, again, I will take that back.

Lord Purvis of Tweed (LD): My Lords, the Minister promises a strategy, but my noble friend's question was about when the benefits of the LNER trial will be rolled out across the whole network. I do not think customers on the whole of the network would like the Minister simply to hope it will happen. What is the strategic objective of when it will happen?

Lord Davies of Gower (Con): I am not in a position to give that answer at the moment, I am afraid, but when I am, I will certainly let the House know.

Lord Anderson of Swansea (Lab): My Lords, as is well known to the noble Baroness, Lady Randerson, and to the Minister, the trains from Swansea were again late this morning. The first thing I do when I arrive, either in London or in Swansea, is fill in a claim form. Can he take this up, from his new, elevated position, with GWR?

Lord Davies of Gower (Con): My Lords, this is something I can speak of with great experience, as a regular traveller from Swansea to Paddington. The noble Lord is absolutely right. Recent trains have been very late and compensation has been due. I am very aware of that.

Metropolitan Police Reform

Question

3.08 pm

Asked by ***Lord Lexden***

To ask His Majesty's Government what assessment they have made of the progress of reform within the Metropolitan Police.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, reform of the Metropolitan Police Service is vital and the Government fully support the commissioner's plan, *A New Met for London*. It is the responsibility of His Majesty's Inspectorate of Constabulary and Fire & Rescue Services to assess force performance improvement and for the Mayor of London to hold the commissioner to account for the progress being made.

Lord Lexden (Con): My Lords, I called on the Government exactly a year ago to give Sir Mark Rowley the stronger disciplinary powers for which he was asking in order to root out crime and serious abuse in the Met, which so shocks our country. Instead of taking action, the Government instituted a review. When will Sir Mark finally get the powers he seeks? Must not a thorough clean-up of the Met include calling to account the police officers who failed so grievously during Operation Midland, that infamous investigation that unforgivably hounded two great public servants, Lord Bramall and Lord Brittan? Finally, is it not astonishing that, after several years, the Independent Office for Police Conduct has only now got round to just one serious investigation arising from Operation Midland? That is into the conduct of Mr Steve Rodhouse, the man in charge of the disgraceful operation. On past form, this could drag on for years while Mr Rodhouse enjoys a full salary. Do not those who have suffered deserve better than this?

Lord Sharpe of Epsom (Con): My Lords, my noble friend is right to point out that we launched a review. That review was concluded and the results were published in September. Noble Lords will be aware of the contents of the review. As regards introducing the powers that Sir Mark clearly needs and has asked for, some of that will require primary legislation; it will form part of the Criminal Justice Bill, which is due to reach Committee stage in the Commons and be debated in January. Some of it will require secondary legislation. We expect that the first tranche of changes will see amendments to the Police (Conduct) Regulations 2020, which should be implemented around April; the second tranche, which covers wider misconduct, vetting and performance measures, is expected to be introduced around June.

Lord Browne of Ladyton (Lab): My Lords, resignations are now overtaking retirement as the biggest reason for officers leaving the Met. This year, every month but May has seen more resignations, and the equivalent of 100 full-time officers leaving. Given the importance of institutional memory to policing, what assessment have the Government made of the reasons for this ongoing exodus? Consequent on that assessment, what discussions has the new Home Secretary had with the Mayor of London and the Met's commissioner about the challenges inherent in retaining Met personnel?

Lord Sharpe of Epsom (Con): My Lords, the first thing to say is that officer strength at the moment is 34,899—at least it was in March 2023—which is up from 33,367 in March 2010; that is the highest number of officers the Metropolitan Police Service has had to date. As regards the conversations of the Home Secretary, the Home Secretary and the Policing Minister have met with the commissioner in the past two weeks. We fully support HMICFRS in identifying areas of poor performance and have seen the commissioner act swiftly to set out his planned improvements, which are necessary, through the plan that I just mentioned, *A New Met for London*. The Home Office is also a member of the HMICFRS police performance oversight group. We monitor progress and ensure that the Metropolitan Police gets the support it needs from across the policing sector to improve as quickly as possible.

Baroness Butler-Sloss (CB): My Lords, having heard the Minister's dates for secondary and not primary legislation, why on earth is it taking so long?

Lord Sharpe of Epsom (Con): The noble and learned Baroness asks me a very good question; I am afraid that I do not understand the inner workings of the secondary legislation and SI process, but I will find out.

Baroness Doocey (LD): My Lords, last month, the police watchdog published an urgent report warning of the serious risks posed to London's most vulnerable children by the Met's ongoing failures in child protection. This issue was first highlighted in a damning report by HMICFRS six years ago. It cannot be allowed to continue. Have the Government met the commissioner and the Mayor of London to demand action now—that is, not in a month's time or a year's time? This is serious and it must be sorted out now.

Lord Sharpe of Epsom (Con): The noble Baroness is quite right that this problem dates back. As she pointed out, in October, HMICFRS issued two accelerated causes of concern due to significant failures in how the Metropolitan Police responds to children reported missing and also to those at risk of child and sexual criminal exploitation. As I mentioned in a previous answer, the Home Secretary and the commissioner have met a couple of times over the past week, as has the Policing Minister. HMICFRS publishes quarterly reports on the progress that the Met is making with regard to child protection. In regard to the two recommendations that have recently been mentioned, HMICFRS has provided two recommendations encouraging swift and tangible progress on those issues to the Metropolitan Police with timelines for delivery by the end of this year.

Lord Woodley (Lab): My Lords, the recent increase in the number of massive demonstrations in central London is a positive sign of a politically engaged population. However, they place huge extra pressure on our police, with many officers—perhaps hundreds if not thousands—being drafted in from right across the country to help. What assessment has the Minister made of the impact on police capacity, effectiveness and morale?

Lord Sharpe of Epsom (Con): The noble Lord makes a good point. I thank all the officers from around the country who have been drafted in to assist with the policing of these protests. I was very pleased to see that, at the weekend, the protest passed largely without too much trouble. As regards morale, that would be for the commissioner to share with us but, as I said, conversations are current, topical and ongoing.

Lord Cormack (Con): My Lords, I revert to a point made by my noble friend Lord Lexdon in his admirable Question. Two Members of your Lordships' House who are now sadly no longer with us, Lord Brittan and Lord Bramall, were traduced in an almost unimaginable way as a result of Operation Midland. I know that noble Lords throughout the House feel very strongly on this. Why can there not be, even at this stage, a proper investigation into Operation Midland, including precisely what went wrong and why?

Lord Sharpe of Epsom (Con): My noble friend raises an interesting subject. It has been raised with me at this Dispatch Box 14 times over the past two years. I am afraid that my answer is not going to change. It will remain consistent across those 14, now 15, answers: the Government have no plans to interfere in this.

Lord Coaker (Lab): My Lords, the noble Lord, Lord Lexden, made an important point about serious misconduct, as did the noble and learned Baroness, Lady Butler-Sloss. The Minister said that he was going to take it back. This is of extreme urgency. If the Metropolitan Police is to command confidence and trust, it will take two years to deal with the approximately 1,000 police officers who are suspended or on restricted duties. The public have to know that those 1,000 officers and however many are uncovered by the commissioner will be dealt with quickly and speedily according to

new misconduct regulations because the current ones seriously do not work. Can the Minister tackle this as a matter of urgency?

Lord Sharpe of Epsom (Con): I agree with the noble Lord that it is a matter of urgency—of course it is—but it is also urgent that we get it right and make sure that all the possible unintended consequences are dealt with well in advance of implementing what are in some cases new, pretty draconian regulations, particularly with regard to how police officers might lose their careers. It deserves careful thought rather than coming back to the Dispatch Box and unpicking mistakes that might be made because we acted in haste.

Lord Rooker (Lab): Can I ask Minister about his answer to the noble and learned Baroness, Lady Butler-Sloss? My understanding is that primary legislation is drafted by parliamentary counsel and that statutory instruments are drafted by the department's lawyers. So what is the problem inside the Home Office? It is in charge of the lawyers there; it is not parliamentary counsel. It ought to be quicker than it is at the moment.

Lord Sharpe of Epsom (Con): That is perhaps the case but, of course, we still have to find parliamentary time for these things.

Lord Bach (Lab): My Lords, why do we have to wait for the Criminal Justice Bill before the statutory instruments can be produced in this particular case? Could we not move to a statutory instrument straightaway so that this long delay, which seems to be all-pervasive here, can at least be shortened to an extent?

Lord Sharpe of Epsom (Con): I would very much like to see it shortened. I do not know the answer to that but I will come back.

Foetal Sentience Committee Bill [HL]

First Reading

3.19 pm

A Bill to make provision for a Foetal Sentience Committee to review current understanding of the sentience of the human foetus and to inform policy-making; and for connected purposes.

The Bill was introduced by Lord Moylan, read a first time and ordered to be printed.

Schools (Mental Health Professionals) Bill [HL]

First Reading

3.20 pm

A Bill to make provision to require every school to have access to a qualified mental health professional; and for connected purposes.

The Bill was introduced by Baroness Tyler of Enfield, read a first time and ordered to be printed.

Digital Government (Disclosure of Information) (Identity Verification Services) Regulations 2023

Motion to Approve

3.20 pm

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

That the draft Regulations laid before the House on 19 September be approved.

Relevant document: 55th Report from the Secondary Legislation Scrutiny Committee, Session 2022–23. Considered in Grand Committee on 20 November.

Lord Evans of Rainow (Con): My Lords, on behalf of my noble friend Lady Neville-Rolfe, I beg to move the Motion standing in her name on the Order Paper.

Motion agreed.

Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment and Transitional Provision) Regulations 2023

Motion to Approve

3.21 pm

Moved by ***Lord Markham***

That the draft Regulations laid before the House on 19 September be approved.

Relevant document: 1st Report from Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): My Lords, I draw the House's attention to my declaration of interest in the company that I founded, which was accredited under these rules. The fact that it is accredited means I have some experience, which always helps in an area. It is not affected by these regulations, but I was keen to state that for the record.

The 2023 regulations update the legislation introduced in 2020 to impose requirements on private providers of Covid-19 diagnostic testing. Once they are implemented, private providers will need to be accredited by a signatory of the International Laboratory Accreditation Cooperation mutual recognition arrangement before they can supply testing. These measures replace the current three-stage UK Accreditation Service process with a simplified and streamlined one. They also remove requirements that are no longer necessary due to legislative developments that have taken place since 2020. The changes will empower consumers to choose a private testing service with confidence, continuing to improve safety and quality. During the Covid-19 pandemic, the Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020 focused on enabling providers who met appropriate quality standards to be able to rapidly enter the private testing market. This struck the appropriate balance at the time between protecting public health and growing the market quickly.

[Lord Markham]

I am pleased that the worst of the pandemic is behind us, so the urgent need to grow the Covid-19 testing market quickly no longer applies. The department has therefore reviewed the 2020 regulations and proposes that all private providers must be fully accredited before providing testing services. This amendment will bring in requirements and standards that help to strengthen consistency, safety and high-quality Covid testing services.

I am pleased to be debating the statutory instrument that is necessary to implement our proposed updates to the existing legislation. The 2020 regulations introduced a three-stage accreditation process for organisations providing Covid testing commercially. The three-stage accreditation process requires providers to satisfy the UK Accreditation Service that they meet the relevant ISO standards within a set timeframe. Stage 1 requires the private provider to make an application to UKAS for accreditation and make a declaration to DHSC that they meet and will continue to meet certain minimum standards. Stage 2 requires the applicant to demonstrate, within four weeks of applying for accreditation, that they meet requirements published by UKAS. From January until June 2021, stage 3 required providers to complete their application within four months.

We wanted to ensure that a greater number of high-quality applicants were given sufficient opportunity to complete the process and reduce resourcing constraints on UKAS while maintaining quality control. In June 2021, we passed legislation to update stage 3. Applicants were now required to achieve a "positive recommendation" from UKAS within four months of completing stage 2. Provided they received this, they then had a further two months to achieve accreditation. Providers who fail to meet any of these deadlines, or fail to satisfy UKAS that they meet the relevant standards within this timetable, have to stop supplying testing. The purpose of this approach was to ensure that enough providers were able to enter the market soon enough to meet the public demand for testing. It ensured that we were not as a country left with insufficient testing capacity while still putting providers through an appropriate process.

Now I move to the substance of the regulations. The 2023 regulations implement several policies coming into force from 1 January 2024. First, private providers—diagnostic laboratories, sample collection and point-of-care testing—must be accredited against the appropriate ISO standard by a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement before they can start supplying their service. This replaces the three-stage accreditation process. Since setting up this process, the Medical Devices Regulations 2002 were updated to prescribe a specific process for the validation of Covid-19 test devices. We therefore no longer need test validation measures in these regulations as well, so we are removing those. Secondly, the amendments reflect the publication of the updated ISO Standards 15189:2022. The amendments are forward-looking and do not affect private providers who applied under the previous ISO standards—ISO/IEC 17025:2017—before this instrument came into force. Lastly, this instrument removes the requirements to make a declaration to DHSC at the start of the application process and shifts the legal responsibilities for the clinical service to the private providers providing the clinical service, rather than the customer-facing part of the testing service.

The amendments will hold providers to high standards, by requiring them to be accredited before they can join the market. This will give confidence to individuals choosing Covid-19 testing services. The amendments also remove the additional requirements and administrative steps that were necessary in the early stages of the pandemic. Those who have already achieved accreditation will be unaffected by the change; that is, they will not need to reapply for accreditation under the new regulations. All private providers will be required, as normal, to transition to the new ISO standard by 6 December 2025 at the latest.

The amendments allow private providers who are accredited by a signatory of the International Laboratory Accreditation Cooperation mutual recognition arrangement to enter the market. The UK Accreditation Service is one of 90 accreditation bodies that have signed the arrangement. It enhances the acceptance of products and services across national borders. By accepting accreditation from these signatories, we help to remove barriers to trade such as the retesting or inspection of products.

Private providers must be accredited to the relevant ISO standards for clinical testing services. These standards were reviewed and updated in 2022 and transition proceedings have begun: the old standards will be revoked in 2025. The existing 2020 regulations do not reflect the updated ISO standard. So, if we did not make these amendments, providers who transition to the new ISO standards—as they are required to do—would not under our own rules be able to provide testing services. This is a clear lacuna that we need to address.

I am happy to be bringing forward this legislation today. These regulations will reduce bureaucracy whilst still delivering rigorous accreditation requirements, important for public health. I commend these regulations to the House.

Lord Allan of Hallam (LD): My Lords, it is good to be able to debate a piece of legislation that is quite technical but still quite important. The regulations themselves are entirely sensible as tidying-up legislation after the coronavirus pandemic, but they trigger a few points that are worth putting on the record and seeking a response from the Minister on.

The first is just to note that it is good that we are following the international standards on this. I am sure all noble Lords experienced that period during the pandemic when there was confusion around which countries accepted whose tests and it became blindingly obvious that we needed international recognition. It is pleasing that we are following a standard that, as the Minister said, 90 bodies are now signed up to. It is good to have the confidence that when we pay for tests here in the United Kingdom, there is a good chance that they will have that international recognition. Does the Minister have a sense of whether other countries are following a similar path, where they implemented a special regime during the pandemic that they are

now transitioning into a normal regime, just as we are doing today? Is the United Kingdom in step with other countries or are we ahead of or behind them? It would be interesting to know that; I assume the department has done some work around it.

3.30 pm

The second is on whether there has been any post hoc assessment of the special regime that we had in place for getting testing up and running—as the Minister said, we were trying to do that urgently. Were there any material differences in outcomes between that special regime and the business-as-usual regime? In other words, did we introduce any additional risk by having this faster-to-market process, and is any research going into understanding whether there was a material difference in the special regime?

The third is on whether there is now a plan in place for emergency testing regimes in future. Sadly, we have to anticipate that there will be other pandemics. I note that in the news today there is discussion of influenza transmitting; I think it is a swine-based influenza that seems to have been transmitted to humans. We are monitoring novel pathogens all the time and, unfortunately, in future they may replicate to some extent what occurred during the pandemic. It would be nice to know that there is a plan in place for what we might call a routine emergency. If we can predict the emergency, surely we can predict whether we will need another special authorisation testing regime. Perhaps we can get there quicker next time rather than having to make it up on the fly, as we had to this time because it was our first experience of it.

The fourth is on whether there are any implications in these regulations for other forms of private testing. For example, I know that the private sector may want to test employees for influenza and that there are private testing regimes available for other diseases, such as ordinary influenza. Does the regime that we are now implementing for Covid testing have any broader implications, or is it limited specifically to Covid testing and will other forms of disease testing be entirely unaffected by it?

The final point is to understand whether there has been any reaction from testing providers. How do they feel about this transition, in both senses—to the special regime and now out of it into a business-as-usual regime? It is interesting that we are told there is no need for an impact assessment of the regulations because it is too small now. The impact assessment process is useful and, if we do not do that process going into the special regime, because it is too urgent and there is no time to do it, and then do not do one coming out, because by that stage it is too small a market and we no longer think it valid, that raises an important question for our proceedings. At what point do we look at the financial impact of bringing in a regime like this and then moving out of it if, as I say, we are not testing on the way in or the way out?

We have no opposition to the regulations themselves. These questions were simply an opportunity to flesh out the learnings from what we all went through in the pandemic.

Baroness Merron (Lab): My Lords, I thank the Minister for introducing these regulations, to which we too are pleased to give our support. We have clearly moved on from where we were in 2020, when the original Covid regulations for testing service providers were agreed and "lateral flow device" was not a household term. Looking back to 2020, these Benches supported the regulations then because we recognised the urgent need to enable new service providers to meet the demand for testing services. We also noted that that had to be balanced with the importance of public health protections and regulations to build safeguards into the system and, so importantly, to give people the confidence that services could be trusted to keep them safe.

As the Minister outlined, the regulations apply to clinical Covid-19 testing services such as diagnostic laboratories or those that carry out point-of-care testing. The regulations will mean that these services are no longer subject to the additional requirements introduced early in the pandemic and, as such, reflect an update to meet us where we are now. They also reflect the update to the international standards since last year.

It is important to acknowledge what the regulations will not change. As the Minister said, providers will still be required to seek accreditation against the appropriate ISO standard. Test devices will still need to meet the requirements set out in the Medical Devices Regulations 2002, just as they did before the pandemic. In my view, this strikes the right balance. As the UK Health Security Agency has noted, accreditation was not mandatory prior to the pandemic but NHS England and Public Health England endorsed all medical laboratories being accredited with the United Kingdom Accreditation Service. The process for laboratories to achieve accredited status took anywhere between six and 12 months. Given the changes we are discussing, how long does the Minister expect the accreditation process to take now?

As it is so important that we learn lessons from the past and apply them to the future, I have a few questions on this generality to the Minister. What confidence does he have that new providers will be able to meet the various deadlines to meet the new ISO requirements? How will the regulations we are discussing be enforced? Does the United Kingdom Accreditation Service have the resources it needs for enforcement? How many fines have been issued to non-compliant providers since the 2020 regulations came into force?

I am sure that the Minister will agree that it pays to think about the state of the market now. How many UKHSA-accredited providers were there at the pandemic's peak, and how many are there now? As some companies wind down their Covid-19 testing capacities because of reduced demand, what assessment has the department made of how the market is changing and how such diagnostic capabilities could be deployed to meet other ends?

In concluding, I take the opportunity to ask the Minister about one of the biggest scandals among private providers during the pandemic: that relating to the company Immensa. Local public health experts were baffled as to why an NHS Test and Trace contract had been given to the company while high-quality

[Baroness Merron]
diagnostic services, such as those at the University of Birmingham, were being wound down. Immensa was awarded more than £100 million in a contract to carry out Covid testing in September 2021, without going through the normal tendering process. It was subsequently found to have been one of 50 firms that had been put into the priority lane for test and trace contracts worth billions. It was also found that PCR test results from Immensa's Wolverhampton lab had misreported around 40,000 positive results as negative between September and October 2021, leading to significant additional infections at a critical time and an estimated 20 extra deaths.

I have specific questions on this issue and I would be grateful if the Minister could respond to me, if not now then in writing. Neither Immensa Health Clinic Ltd nor its related company Dante Labs Ltd was accredited by UKAS at the time of the scandal, despite the regulations that we are amending today. Immensa was a new entrant to the market and was supposed to go through the three-stage process, yet it was awarded vast sums of public money to rapidly expand the capacity of NHS Test and Trace in the autumn of 2021. One would expect high standards from a private provider in exchange, but that did not appear to be the case. An investigation by UKHSA found that, despite requirements for accreditation being written into the contract, the department and NHS Test and Trace decided that they would not apply. As such, Immensa was not accredited at the time of the false negatives scandal, even though the department claimed otherwise. Is the Minister able to confirm what actually happened in this case?

The findings of the UKHSA report risk undermining the rest of the system, if providers could not be encouraged to circumvent the correct process and there were no consequences as a result. Why were the department and NHS Test and Trace so determined that special measures should be put in place for this provider? I am not aware of any consequences for any officials or Ministers responsible for the shocking findings of the UKHSA investigation. Perhaps the Minister can confirm whether this was the case and, if so, why? Given the tens of millions of pounds of public money involved in the scandal and the dire consequences of the mistakes, can the Minister advise your Lordships' House what efforts the Government have made to get the money back?

In conclusion, these Benches support the statutory instrument. We very much agree that now is absolutely the appropriate time to review the exceptional measures that were taken early in the pandemic while ensuring that appropriate regulation and confidence remains in place.

Lord Markham (Con): I thank noble Lords for their responses and generally for the support they offer for what we are trying to do here. As I say, for a lot of my answers I will draw from personal experience. The whole of that time was extraordinary, as we know. To my knowledge, it was the first time where you had a situation in which masses of people could be tested for something. However, it needed laboratory-based testing, and suddenly the amount of volume needed for the general public was completely out of anyone's imagination as regards the volume of the market. I remember trying to understand the rules at the time, as somebody who might set up such a company to do this, and I quickly found out that there were no rules, in that nobody had ever quite envisaged such a situation and the only rule that existed was around getting an ISO process, which typically took 12 to 18 months.

What the Government did there—again, I am speaking from the other side of the fence—was to create a good process of trying to funnel people, starting off with quite easy ways to get you through the funnel because they wanted to expand it as much as possible, but then effectively making it progressively harder while still trying to keep the good suppliers in the mix. By and large they did a decent job on that. I saw some providers completely gaming the system, in that they kept ticking the boxes as long as they were allowed to tick them and then as soon as it came to a hard task, for want of a better word, they folded up shop. There was definitely some of that, and the funnel sorted out some of the wheat from the chaff along the way, but at the same time I will not pretend it was a perfect process.

I say all this from sitting on the other side of the fence and having to jump through necessary hoops, but I actually think it was a decent process at the end of the day. As ever, I will come back in writing on all this, but my understanding was that it was a fairly similar process to that followed by other countries, and they are now going through a fairly similar process to regularise this.

As I said, I absolutely looked at the difference in outcomes versus existing regimes, and I am under no doubt that, if we kept the rules of the existing regimes, the supply would not have expanded in the way required at the time. On what the Government were trying to achieve, the evidence shows that they achieved a decent outcome, where, by and large, the quality outcomes were pretty good, although not perfect—the noble Baroness brought up a good example of where it definitely was not perfect. By and large, they did a decent job on that.

3.45 pm

That brings me to future emergency testing. Here we are no doubt reverting to the old rules, which are probably sensible where we are. Of course, the capacity in the marketplace is much greater now—I do not have the exact numbers, but I can send them—because a lot of these companies exist and there are a lot of PCR machines and other types of equipment. If there were similar circumstances again, those resources are there to be stood up pretty quickly. If it were outside those parameters—for want of a better word—we would probably need to bring in a similar type of regime again, albeit learning from the experiences, having done it once. They probably got a seven out of 10 the first time around and I hope could get an eight or nine out of 10 this time around.

I come to the regulations for the other forms of private testing—this covers a multitude of things. One of the big values from the pandemic is lateral flow, the accuracy of which has massively increased. If it were to happen again, most of the testing would be done

through lateral flow. That is not affected by the instrument because it is not laboratory based. For most forms of private testing done by companies, it is the lateral flow-type situation, which will not be regulated by this. However, where it is lab based, my understanding is that there will be a similar set of circumstances. Again, I will follow up in writing on all this. Generally, the reaction from the testing providers is that this is quite sensible—it is trying to regularise that situation.

In response to the question of the noble Baroness, Lady Merron, I mentioned that the ISO process is quite lengthy—typically 12 to 18 months. However, typically, labs that are already established in this field add on more ISOs and qualifications to expand what they currently have, so, on that 12 to 18 months, they are not starting from zero: they have already gone a long way to begin with. The 12 to 18 months is for new providers starting from scratch. As per the answer to the previous question, if there were another pandemic in the future, we would probably have to introduce something similar again if we needed to expand the supply in new ways. Because of that and the confidence of the new providers, I think that is generally seen as sensible.

I do not have answers on the fines issued under this, so I will need to come back on that. On the numbers at the peak and now, I can say from personal knowledge that the market generally has shrunk back a lot to the bigger, established players that were there in the first place.

On Immensa, I remember this from being on the other side of the fence at the time and being angry, to say the least, on a personal basis, that there was such a set-up. It did the whole industry damage and, much more importantly, it put lots of people at personal risk. That was a very sorry episode. To do it justice, I probably need to give a detailed written follow-up, which I shall do for all these questions.

I think, and I hope, that I have covered as much as possible, and I shall follow up more on this in writing. I welcome the support of noble Lords generally for these regulations and commend them to the House.

Motion agreed.

Health Care Services (Provider Selection Regime) Regulations 2023

Motion to Approve

3.50 pm

Moved by ***Lord Markham***

That the draft Regulations laid before the House on 19 October be approved.

Relevant documents: 1st Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): My Lords, the Government are committed to giving patients better, more joined-up healthcare services. To do so, we need to ensure that we have the right procurement regime so that the NHS can best allocate resources which meet the needs of patients. These regulations do that. They would establish the provider selection regime on 1 January 2024.

This House knows that the challenges we face as a country are changing, and the NHS is changing to address them—an ageing population, an increase in people with multiple health conditions, and persistent inequalities in health outcomes. We must respond to these challenges. To meet them, we need to provide an enabling and empowering framework that allows the NHS to combine the value of competition with the benefits of collaboration in the interests of patients.

In March last year, the Health and Care Act 2022 was passed. It sought to bring together NHS organisations and partners to tackle issues in our health and care system. This instrument builds on that progress. In 2019, engagement across the NHS identified that the use of the current rules on procurement presented a bureaucratic barrier to bringing NHS organisations and partners together. NHS colleagues wanted a framework that allowed them to use the right approach for different scenarios; a framework that included competition without defaulting to it and which supported the increased need for the alignment of services, including those provided by non-statutory organisations in the voluntary sector, to join up care for patients. The Government developed the legislative framework in the light of these requests. Furthermore, in June 2019, the Health and Social Care Committee also agreed that this was the right approach to

"ease the burden procurement rules have placed on the NHS, ensuring commissioners have discretion over when to conduct a procurement process".

As our colleagues in the NHS and across the health system have emphasised, we must seek to balance a system-driven approach to planning services while recognising the importance of provider diversity for service innovation and value. That is also why my officials have worked closely with a broad range of colleagues and organisations across the system, including both commissioners and providers of healthcare services, to prepare the instrument before you today. This work has included extensive consultation. In 2021, NHS England published a consultation on the detail of the policy behind this instrument. Of 420 responses received from NHS representative bodies and individuals, 70% of respondents agreed or strongly agreed with the detailed proposals set out in that consultation. In 2022, the department published a further consultation to help inform the detail of our regulations.

Finally, we have not neglected to do the analysis of impacts associated with this regime change. Our voluntary impact assessment shows that, in the most likely scenarios, introducing this instrument will deliver savings to the NHS by reducing bureaucracy. Although it is difficult to provide a precise figure ahead of monitoring this regime, those noble Lords who have read the assessment will be aware that our central estimate suggests that savings of up to £230 million are possible. While I am on this subject, I was very glad to see that the Secondary Legislation Scrutiny Committee welcomed our consultation and voluntary impact assessment in its report on this instrument.

[Lord Markham]

To summarise, the instrument reflects engagement and careful balancing to present commissioners with the right options for procurement so that they can find the most collaborative, value-add solutions that will work for patients. Engagement with providers has told us that both more collaborative approaches to healthcare—where those with services to offer can get around the table, help break down barriers and promote provider diversity—and putting a contract out to tender are valuable and need to be in the commissioner's toolkit. That is why this instrument reaffirms the role of competition in arranging services by providing explicitly for those processes, while also providing some flexibility to commissioners to adopt a more direct approach.

As many noble Lords will know, getting the balance of a framework right to promote the best culture and behaviour on the ground is tricky. I am glad, therefore, that we have worked so closely with providers and commissioners to find and test that balance. One result of that engagement was to agree to establish an independently chaired panel which will act as a non-statutory advisory body for contested decisions made under this regime. We intend that this will help commissioners think carefully about the approach that they take to procurement, and its justifications.

Furthermore, we must ensure that the system understands these rules so that it can have the best chance of promoting the right behaviour on the ground. That is why NHS England is leading an extensive programme of familiarisation with those draft regulations and the draft statutory guidance, which is available online. Of course, legislation and guidance are only part of the story of how the new legislation will influence outcomes. That is why the department is committed to monitoring and evaluating this new regime from its implementation.

For these reasons, I am content to move these draft regulations, which, subject to the approval of the House, would bring the provider selection regime into force. I beg to move.

Lord Stevens of Birmingham (CB): My Lords, I welcome these regulations. They get the NHS off the hook from inappropriate compulsory competitive tendering of clinical services but also avoid throwing the baby out with the bathwater. Open procurement will remain an option where it is in patients' and taxpayers' interests.

In my previous experience, there have been several problems with the way in which the accretion of UK procurement rules and the EU procurement regime have tied the hands of the NHS. We have often had to go through the motions of competitive clinical procurements for services that would quite obviously be provided only in one place and by one part of the NHS—for example, billions of pounds-worth of specialised cardiac and cancer services for which it was blindingly obvious that the Germans and Italians would not turn up and try to replace Leeds General Infirmary or St Thomas' Hospital. These regulations make these processes honest, in that when we embark on procurements, it will be for a good reason.

A related problem is that the legacy procurement rules have tended to lead to too much service fragmentation. We have seen examples where community nursing services have had to be tendered out but core general practice services have not, so getting the community nurses and GP practices working together has been much harder. One of the fragmenting consequences of the 2012 Act was that a lot of what had previously been NHS services became local authority-procured, and so sexual health services and health visitors were operating on a different procurement process through local authorities rather than through the local NHS. The Health and Care Act 2022 and these regulations overcome that problem. The NHS will still be subject to transparent and fair procurement, but it will now be much more flexible and proportionate.

The regulations are quite complex. Those noble Lords who have read through the materials may agree that it is fair to say that they will not command the attention of the pubs and clubs of Barnsley or Barnstaple, but they will make a huge difference to the way in which care is delivered right across the country.

4 pm

The five routes the Minister spoke about—the direct award processes A, B and C, the most suitable provider process and the competitor process—are conceptually all very clear, but the real-world impact will depend almost entirely on how they are applied. It is welcome to see some of the safeguards laid out in these regulations—the prior notification, standstill periods and independent review panel—but it will also be crucially important to monitor in practice when the so-called most suitable provider process is being used rather than the competitor process, how the specifications are set and how the criteria for contract awards are in practice weighted.

That is all for the implementation. The Government cannot be accused of having acted over-expeditiously on this one. The consultation first began in 2019, was repeated in 2021 and again in 2022, and we really are ready to roll. As I say, my experience in the health service was that I always tried to have in my mind the mantra, "Think like a patient, act like a taxpayer". In my judgment, these new regulations give the NHS some better tools to do exactly that.

Lord Hunt of Kings Heath (Lab): My Lords, like the noble Lord, Lord Stevens, I very much welcome these regulations. As he put it—in a very kind way—in essence they withdraw the wretched health Act 2012, which enforced competitive tendering on clinical services and, as the noble Lord said, was not only bureaucratic and costly but got in the way of integration and collaboration. Of course, the Explanatory Notes that go with this SI are very explicit in saying so. I noticed, though, that the Minister failed to mention the 2012 Act. In fact, the Explanatory Memorandum was just the thing my noble friend Lady Thornton used at the Dispatch Box as we sought to scrutinise the wretched 2012 Bill, which cost so much money and staff time and achieved so little.

I want to pick up one or two points that the noble Lord, Lord Stevens, raised. The first is to acknowledge that there is a huge challenge for the procurement

profession. I remind the House that I am patron of the Health Care Supply Association. I understand that the provider selection regime regulations come into effect in January, but these are ahead of the procurement regulations which come into effect in October next year. It is important that the Minister mentioned the guidance and I am very glad he mentioned the work that will be done by NHS England in supporting the service implement these regulations. However, I say to him that if you are trying to work out the relationship between the 2022 health Act, the 2023 Procurement Act, these regulations and the forthcoming procurement regulations, to a procurement manager sitting in an NHS trust this can be rather complex. The more help and guidance that can be given to those professionals, the better.

The Minister may well be aware that at the same time as procurement teams have been asked to implement this big change, they are having to generate short-term savings to meet the financial pressures in-year at the moment and actually cut their department operating costs. It is a short-term saving that may have long-term consequences, particularly as investing in procurement for the long-term value we wish to see enhanced in the health service makes economic sense. I point out to the Minister the recent announcement by NHS England that it is investing £600,000 in new commercial roles to unlock £1.5 billion of savings. That is very welcome, but we should be investing similarly in local and regional procurement teams as well. It is also important that the analysis behind the £1.5 billion savings is made available in order to guide the procurement function in the areas they need to be focusing on.

What is being done to support the skills, training and development of the NHS procurement and supply chain people? Will we invest in learning and development through organisations such as the HCSA and the NHS Skills Development Network to support upskilling and developing their functions? I commend the strategic framework for NHS Commercial, published only in September, and support the establishment of academies of commercial excellence—these are good initiatives—but you also need to support the people on the ground to do the job most effectively.

The noble Lord, Lord Stevens, said that there is a good balance in the regulations, because, while we want to get rid of the bureaucracy of automatic competitive tendering, as there is clearly no point doing it, we do not want to lose the opportunity of inviting innovative companies to play a part in the health service in the future. There is an issue around conflict of interest in the new structures. He will be aware that, around the table at integrated care boards, the chief executives of the local trust will often be in membership. In these regulations, and more generally, there are rules about how you mitigate that in a competitive process, but the decisions that ICBs make will sometimes be not to go down a competitive process at all—decisions, as I understand it, that those trust CEOs can be part of. I have had a briefing from Specsavers, which says that there surely needs to be some kind of requirement for ICBs, particularly for community services, to consider proposals from non-commercial providers who can demonstrate that they can improve value, quality of care and clinical outcomes. It is there that the conflict of interest issue arises.

How will value-based procurement be driven forward? In the draft PSR statutory guidance, "value" and "social value" are two of the national criteria for procuring health services. As I understand it, value-based procurement is about looking at which product is not only cheapest per item but best for patient outcomes, quality of life and avoiding relapses or unintended side-effects. I have been championing value-based procurement because in the long term it provides better value for money and better quality of what is being procured. The Minister has kindly agreed to meet me—I am grateful for that—but a statement from the Government on the importance of value-based procurement would be helpful.

Finally, I will ask the Minister about health technology. How far does he think these regulations support our vital health technology sector? I have been in discussions with ABHI about the potential that health tech offers the UK—it is fast—but there are worries that, in the new world, there are issues limiting the ability of many of these companies to be competitive, some of which are clearly to do with regulatory uncertainty. He will know of the issues with the MHRA's performance. I pay tribute to the MHRA, but there is no doubt that it has resource issues—both money and staff—when getting things approved where they need to be approved. Coming back to Brexit, surely one of the advantages of having an independent regulator is that we can be seen as a place that, for medicines or medical devices technology, has a first-rate regulator that takes these processes through as quickly as possible. The problem, as he will know, is that there has been a blockage inhibiting innovative companies, so we really need to do something about it.

Overall, I warmly welcome the regulations. I thought that the Minister could have acknowledged a little more the failings of the 2012 Act, but we will pass on that. I certainly very much support the general thrust, but the procurement function in the health service needs every support it can get in understanding the new architecture and implementing it fully.

Lord Allan of Hallam (LD): My Lords, this is an altogether weightier statutory instrument than the previous one we discussed, running to many pages and with lots of interesting new acronyms. The noble Lords, Lord Stevens and Lord Hunt, have set out effectively the case for why the changes are necessary, in a kind of Birmingham pincer movement as I stand here in the middle. I also have ringing in my ears the comments of the noble Baroness, Lady Merron, on the previous statutory instrument, when she talked about a particular instance where procurement went wrong. We need to have that in mind.

It is worth putting a marker down now on the potential impact. We are talking about many billions of pounds of expenditure; how many billions is an interesting question that we will come to in a minute. The potential benefits are hundreds of millions of pounds of savings, as the noble Lord, Lord Stevens, pointed out, but we must acknowledge that there is a potential downside risk, which could be millions in

[Lord Allan of Hallam]
fraud and legal fees. It is worth spending a moment as we debate the instrument to make sure that everything is being done to ensure that we get the upside but minimise the downside.

My first question is around the integrated care board members and conflicts of interest—something that was raised by the noble Lord, Lord Hunt—particularly where they are not in a competitive tender situation, where we are talking about direct awards and most suitable providers. Once that decision has been made, there are some valid questions around what that means. Candidly, we do not want to create 42 ICB VIP fast lanes where people can talk to the ICB and somehow get themselves out of the normal procurement process when they should not be out of it. Therefore, there are risks at that level; we must be conscious of that. Given the roles that ICB board members have, and since these are local entities, it is likely that an ICB board member will have relationships with people in the local community who deliver services that will be subject to the tender.

My next question is about the variability and the number. It is flagged in paragraph 4 of the impact assessment that the expenditure over a period was

"estimated to be between £75bn-£380bn".

I am not great at maths but that is quite a significant variability. It talks about how the £75 billion concerned procurement processes that went through the EU process and were notified, while the long tail of the other £300-odd billion concerned other procurements that were not notified. However, we should be able to get better information than that. One of my requests for the Minister comes with a suggestion: there should be a machine-readable database somewhere where all health and care procurement can be analysed and studied. I know that the department intends to do that but, actually, the best way for us to understand that we are getting good value for money is this: if anyone, whether a researcher at one of our excellent universities such as the University of Birmingham or another interested party, wants to be able to look at NHS purchasing data and can analyse it, they should be able to do so.

This seems to me to be a reasonable request to make of government: that information about procurement—including the status and how the contract was awarded, whether it was competitive or elsewhere—is publicly available and analysed by any third party who chooses to do so. The Government would benefit from that, as would individual NHS procurers, as people will analyse those patterns of purchasing and perhaps suggest something that they had not thought of themselves where they may be able to make more savings.

The final area that I want to cover is one that the noble Lord, Lord Hunt, touched on: skills in procurement. I suspect that all of us who follow healthcare have seen the *Health Service Journal* article in October that talked about integrated care boards in the south-west of England paying £1.7 million in compensation for a procurement failure. Obviously, that is happening under the existing regime, but it is a strong warning sign that we need to heed what happens when we get this wrong. Again, the impact assessment helpfully talks about the litigation process and the different costs that may be assigned to each area. I think that we tend to underestimate these things. If anything, once you get into a litigation process, the pressure to settle and resolve it means that money is often thrown at the problem. This could mean a significant cost to the NHS if we get it wrong. The fact that we have a new process means that new risk is being introduced. What is being done around training? That comes in two aspects. The first is general awareness raising, which applies to everyone. Certainly, I have had experience in business of working for an American company where you are subject to the Foreign Corrupt Practices Act, meaning that you go to prison if you try to bribe a member of a foreign legislature.

4.15 pm

We did not direct the training for that simply to the people who worked in public policy; every single person who worked for the company did a short training module that helped them understand the legal risks, not only to the company but to themselves, of breaking the rules. Sometimes you can break the rules with perfectly good intentions without doing anything deliberate. The same applies here: there should be some kind of generalised training available to people who are working in the health and care system so that, even if they are not involved in procurement, they understand—again, looking at the case in the *Health Service Journal*—that the casual conversation they have with their friend who happens to be a supplier could later turn out to be something that is material in a litigation process. That generalised awareness is important.

The second piece that the noble Lord, Lord Hunt, referred to is procurement professionals, including how we make sure that those whose job it is to spend large amounts of money every day are up to speed with the new systems. I do not think that we can overinvest there; the tendency is always to underinvest. Again, a generalised complaint I have heard is that managers in health and care feel that they are so pressurised in just getting on with the day job that training is a luxury they will do tomorrow, tomorrow, tomorrow. In this case, if we are introducing a new system from 1 January, the training needs to be happening now and not put off until tomorrow. I hope that the Minister has something to say on that.

I do think that this change should go ahead. I recognise that there are savings to be made—again, the noble Lord, Lord Stevens, has far more experience than I of why that should be the case; I am really pleased that he has brought it to this debate—but there does need to be transparency. The report shows us why the current state of play, where we cannot get our hands around NHS and care procurement today, may itself be inadequate. That should not be the case; the data should be collected and made available in a machine-readable way such that there is full transparency. It is absolutely critical that we get ahead of this question of training and ensure that these procurement processes are not just fair but are seen to be fair and are robust if they are challenged, which they will be. The suggestion from the noble Lord, Lord Hunt, of a list of measures that we might take would be a very good start for that.

Baroness Merron (Lab): My Lords, I bring more cheer to the Minister by adding our support for these regulations—I thank him for bringing them before your Lordships' House today—because the provision of this statutory instrument is to define and give relevant authorities greater flexibility to procure healthcare services. This will, I hope—I know that other noble Lords also hope this—benefit patients and service efficiency by better integrating services. Like the Minister, I am pleased to note that the policy behind these regulations has been informed by both a voluntary impact assessment and an extensive consultation that received 70% support from 420 respondents; this is welcome news.

It is the view of the Opposition that the NHS should be the preferred provider of commissioned healthcare services, not least because it embodies not just a public service ethos but efficiency, resilience and democratic accountability. It is also the case, particularly in the short term, that, in order to treat NHS patients and bring waiting lists down, the independent sector has an important role to play where a service cannot be provided by a public body because the capability or capacity just is not there.

Your Lordships' House may recall that, when the Health and Social Care Act2012, which my noble friend Lord Hunt described as "wretched" on several occasions, went through its various stages in Parliament, these Benches argued that relevant authorities should have the appropriate flexibility to award contracts, which was something for which the Act did not provide. As my noble friend identified, the competitive tendering requirements of that Act did not serve the NHS, patients or the public at all well. Therefore, where we are today with the provider selection regime, which does allow for this, is as long overdue as it is welcome, as is seeing that good sense, flexibility and efficiency will now apply.

During the passage of the Health and Care Act 2022, these Benches also argued for the legislative provision to be made as outlined in these regulations. Although the Government did not take that on at that time, I am glad that the benefit of hindsight has prevailed and that the Opposition's view, which was set out during the course of that debate, has now been set out in these regulations.

As the noble Lord, Lord Stevens, illustrated so well, these regulations recognise that it would not be an efficient use of resources in certain circumstances for relevant authorities to use competitive tendering, but that there continues and needs to be a procurement process that relevant authorities can and should use. As the Minister will be aware, concerns have continually been raised about the impact of the current procurement framework, which often places additional burdens on community and mental health providers in particular, where services have been much more likely to be subject to expensive and disruptive competitive tendering processes. I therefore welcome the alignment of the PSR's aim with the spirit of collaboration within health and care systems, as well as the offer to commissioners and providers of a clear and transparent process by which procurement decisions can be made.

The PSR will offer a consistent model for both NHS and local government bodies to follow with regard to health services, and I hope that this will support local relationships and decision-making, as well as integrated care. However, it is important that national bodies engage with all organisations that will be subject to the new regime in an effort to smooth the transition to a new procurement framework.

I ask the Minister for more detail on how NHS England and the department will review the application of the PSR over the course of the next year to ensure that real-time feedback on the operation of the regime can be collected, as well as evaluated and, importantly, acted on as swiftly as possible. I make this point as it will be crucial to capture feedback on whether any difficulties arise for commissioning bodies in selecting which procurement process is the most appropriate across various different scenarios and circumstances, and whether any challenges arise for providers in the application of their approach.

My noble friend Lord Hunt emphasised the need for support, training and guidance—something that other noble Lords also emphasised. This is a point that the Minister would be well advised, as I am sure he is, to pay absolute attention to, so that we support those who work in NHS procurement and the NHS supply chain, not least because the combination of these regulations, other regulations and other Acts is something of a complex field. We should support and guide those who make the interpretation and the application, and, if necessary, adjust in real time any of that training, support and guidance. More information from the Minister about how this will be done will be extremely welcome.

I am aware that NHS Providers has worked with membership bodies for providers in the independent and voluntary sectors, the department and NHS England to make the case for the new regime to include a challenge function for decisions made by commissioning bodies to be reviewed and scrutinised if appropriate. Although the PSR panel does not have legally binding powers, does the Minister consider it appropriate to give providers some opportunity to challenge the application of the regime and raise legitimate concerns where appropriate?

As I said at the outset, I am glad to provide our support to these regulations. I hope that we can look forward to great improvements because of them in the years ahead.

Lord Markham (Con): I thank noble Lords and welcome the support offered. I appreciate their understanding on my lack of comments on 2012 and all that. I also appreciate having the vast experience of the noble Lord, Lord Stevens, and wonder whether he could be here so that I can phone a friend on some of the questions we have, because I fear he may be far better qualified to answer a lot of them. I will take home the "Think like a patient, act like a taxpayer" mantra.

I think we all agree that, although this is welcome, it is complex. We are trying to set out an approach, knowing that really we want sensible people to act sensibly around the table and to co-operate with each

[LORD MARKHAM]
other. We all know that it is very hard to put a rules-based system around that. As all noble Lords have mentioned, the training of staff in that is vital. I have some personal experience, as I know the noble Lord, Lord Hunt, does, of many of the people in this space, and I have to say that they are very good people. My experience is obviously much more on the national level, but clearly it needs to be taken down to the local level as well.

I believe we are publishing the strategic framework for NHS commercial tomorrow. That tries to set out the importance of commercial capability, and the investment and critical skills required. It will be accompanied by a programme that sets out what upskilling needs to be done and a programme, with support from the Crown Commercial Service, that I hope we can effectively use to upskill in the way that we all believe is necessary.

To answer the point by the noble Baroness, Lady Merron, whenever you are trying to put in place a value-based system, for want of a better word, in terms of culture, you have to have those guard-rails around making sure that there are appeals processes and lessons learned. My understanding of this independent panel is that companies or providers that feel they have been wrongly excluded will have the opportunity to appeal directly. I have challenged them quite strongly on that, given my experience in this space, and asked how much a company will really want to be awkward. Often you know that if you are being awkward and challenging, that might make life more difficult for you in future, so there are some difficulties involved there. A lot of companies often ask whether that challenge is really worth it. Getting that right, with the panel, is vital, so that it is welcoming and open and that, as the noble Baroness, Lady Merron, says, there is that "lessons learned" kind of constant review. At probably the year stage, we will look to understand how it has gone so far and what we can learn from it.

Having been involved in quite a few start-ups, I am also very aware of the point the noble Lord, Lord Hunt, made. Time really is money in these things; a regulatory process that is opaque or cumbersome is not very helpful. I acknowledge some of the issues the MHRA has had. That is what the £10 million investment behind it is trying to address. I know it is very much looking to act on this.

A very good example of that is what the MHRA is doing in the point-of-care space. One Brexit advantage that I have seen is the ability very quickly to set rules around point-of-care medicines, particularly around when you take a biopsy and then provide an individual patient with treatment according to that for a certain cancer. Clearly, if you follow the strict rules, you would have to be regulating that every single time, and that just would not work. The MHRA has introduced a sensible framework that tries to adopt an umbrella-type approach. I know that the MHRA understands the possibilities in this space and really wants to use this as an opportunity to show that we can be fleet of foot and leaders in that space from it all.

On the point raised about trusts sometimes having a conflict and the example provided by Specsavers, that is what the panels are supposed to be there for. It is important—I will check this out—that, in the rules, we are guiding the 42 ICBs on how they should manage some of those conflict situations and when they should put people aside. We have all managed it in our corporate and public lives, and there are rules about it. Just as we put the emphasis on noble Lords to declare interests and so on, clearly we must make sure that there are similar rules for the trust CEOs, but it is a point well made that we need to pick up. I look forward to going into some of these issues much more when we have the value-based procurement meeting shortly.

On how we can make the analysis available, I have seen a tool that the NHS has recently introduced which is very good in terms of being able to drill down straightaway and provide that analysis. That is a good base point. I will find out some more about how that needs to be tweaked, but there is a basic premise about making that information available—that is a sensible move. On the point made by the noble Baroness, Lady Merron, it should be used to arm providers with the ability to challenge the panels.

I welcome the input. Such is the knowledge base around this, I am happy to suggest that, in nine months or one year's time, we have that round table where I will appreciate some of the skills here. We can ask how it has gone down so far. We can do that through a debate, but it is probably better done through a round table, so I would like to propose that so we can learn the lessons.

In summary, I welcome the points made and that noble Lords believe that this is the right direction, although it needs work along the way to make sure it stays going in the right direction and does what we hope it does. With that, I commend the draft regulations to the House.

Motion agreed.

Wine (Revocation and Consequential Provision) Regulations 2023

Motion to Approve

4.33 pm

Moved by ***Lord Benyon***

That the draft Regulations laid before the House on 25 October be approved.

Relevant document: 2nd Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, leaving the EU gives us a unique opportunity to review our retained EU wine law to ensure that it better suits our domestic needs. The UK wine market was worth more than £10 billion in 2022 in off-trade and on-trade sales and the UK's developing domestic production sector has attracted significant global investment. It is therefore vital to reform retained EU laws to give us the opportunity to boost growth and

development in our domestic industry and to give it the capacity to tackle future environmental and economic challenges. To do this, the reforms that I am setting out to the House today will address a number of issues faced by our wine businesses. They will remove barriers, support innovation and simplify regulations to help to support growth in our wine trade and production industry, giving them the freedom to meet new and evolving demands while maintaining the high standards that consumers have come to expect.

First, the regulations will amend current importer labelling requirements. The instrument will remove a stipulation that imported wine must show the prefix "Importer" or "Imported by" before the address of the business responsible for importing that wine to England. It will mean that the general food law provisions relating to the identification of the responsible food business operator will apply to wine in the same way as they apply to other food products, without any additional importer labelling requirements in wine law on top of that. Changing importer labelling provisions means that businesses do not have to face unnecessary costs and bureaucratic administrative burdens. With approximately 1.3 billion litres of wine being imported into the UK in the 12 months leading up to December 2022, these burdens from inherited EU labelling rules must be removed. This Government will always stand with businesses to create growth opportunities.

Secondly, we will allow wines with a protected designation of origin to be produced from any permitted grape variety or hybrid variety rather than just the species Vitis vinifera. Permitting the use of non-Vitis vinifera species and hybrid varieties in PDO wines can bring significant benefits to both the industry and to the environment. Hybrid varieties often exhibit higher disease resistance compared to traditional Vitis vinifera varieties. The use of hybrid grape varieties can contribute to greater crop consistency and thus supply chain resilience. These hybrid grapes are often bred to withstand various climatic conditions and soil types, leading to more predictable yields. That predictability can mitigate the impacts of climate-related fluctuations and contribute to a stable supply of grapes, supporting both producers and consumers.

Thirdly, the instrument will remove the ban on the production of piquette, a wine-based beverage produced by adding water to grape pomace. Ending this ban will allow wine producers to create a new product offering using a by-product of the wine production process. This is an exciting and interesting opportunity that the Government want to provide to our wine producers.

The Government will also continue to support the thriving wine industry by enabling the blending of imported wine in England. This reform is permissive in nature, so take-up from the sector is voluntary. Our aim of allowing the blending of any wine in England will enable the wine industry to blend different varieties of wine from the same or various origins to achieve greater consistency in their products and to create entirely new products that suit consumer tastes. The Government are delighted that this measure also offers the opportunity for more British jobs in English wineries and bottling plants.

The Government are also keen to make the recycling of wine bottles easier in line with collection and packaging reforms. The instrument therefore intends to remove the mandatory requirements for foil caps and mushroom-shaped stoppers to be used in the marketing of sparkling wine. In addition to reducing waste, our aim is to make the production of sparkling wine more competitive.

The instrument will remove the wine certification scheme. The Government have listened to our wine industry and acted to remove unnecessary bureaucracy. The Government opposed the wine certification scheme policy as an EU member; now that we have left, we can seize the opportunity to determine our own laws. The instrument therefore intends to remove the wine certification arrangements. The current cost of the application process is £15 plus VAT per varietal wine. By removing the scheme, the relevant wine producers are avoiding that unnecessary cost.

I recognise that a majority of these first-phase reforms will apply only in England. However, the Welsh Government and Defra have agreed to pursue future reforms together, allowing these benefits to flow to the wine industry across both nations. As we have done from the outset, we continue to encourage Scotland to make similar reforms.

Together, the changes I have set out will liberalise the growing domestic wine industry and address several issues that our wine businesses face. They will remove barriers, support innovation and simplify regulations to help support growth in our wine trade and production industries. These proposed reforms give them the freedom to meet new and evolving demands while also maintaining the high standards that consumers have come to expect.

Our wine industry and producers support the changes set out in this instrument and welcome the flexibility it provides. The Government intend to bring further changes to allow the wine industry the benefits of leaving the European Union. This instrument is part of a broader package of reforms giving our thriving wine and alcoholic drinks sector greater flexibilities that will support it in the future. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend the Minister for presenting the regulations before us this afternoon; overall, they are a very positive contribution to the wines and spirits industry. I declare my interest: I chair the Proof of Age Standards Scheme board, of which the wines and spirits trust is a member. I was very grateful for its briefing as part of my preparations for this afternoon.

I have just a couple of questions for my noble friend. While it is welcome that the regulations will benefit both consumers and indeed the wine industry, my noble friend mentioned that there are one, if not two, further statutory instruments to come before the House in the next six months. Would it not have been better to do all three statutory instruments together? I understand that the Secondary Legislation Scrutiny Committee, which prepared a report in advance of the regulations being laid before us this this afternoon, expressed concern about the lack of a uniform approach and level playing field across Great Britain, and the way the department has introduced and promoted the instrument.

[Baroness McIntosh of Pickering]

I welcome my noble friend's having reached an agreement between the department and the Welsh Government. Can he tell us the status of the agreement between his department and the Scottish Government in that regard? Also, it is particularly welcome that, as my noble friend said, only one label will be required, so we are in fact restoring the situation that existed before Brexit. It looked at one time as though two labels would be required on one bottle, one for consumption in the EU and one for consumption in the UK, and it is very good news indeed that these labelling changes have gone ahead in such a sensible way.

With those few remarks, can my noble friend explain the thinking behind having one statutory instrument before the House now, with two to follow in short order? Also, can he explain the precise situation with the Scottish Government regarding the instrument before us this afternoon? However, I welcome these regulations.

Baroness Hayman of Ullock (Lab): My Lords, we have spoken previously about similar reforms. There was an SI in 2021, for example, and during that debate we on these Benches said that it was important that the Government work with, rather than against, the industry as they continued to make the reforms. So, these regulations are welcome, and it is good that the Minister in his opening remarks confirmed that the department has been working constructively with the industry. We note that the industry has been very supportive of the regulations before us today. Clearly, that support is good and welcome, and there are many positives in what the regulations lay out.

However, the Secondary Legislation Scrutiny Committee laid out pretty lengthy concerns, which need addressing. They were largely about the operation of the internal market and, as the noble Baroness, Lady McIntosh of Pickering, mentioned, in particular the Welsh and Scottish Governments, who signalled opposition to the changes. I note that the Minister talked about moving forward with the Welsh Government, but the noble Baroness made important points about the situation regarding Scotland, so I would be interested to hear his response to those concerns.

4.45 pm

The committee's report also referred to the potential negative impact on consumer confidence, and in particular labelling. The report says that

"it will be important that all products are labelled clearly so that consumers can make an informed choice of what they are buying".

Can the Minister clarify exactly what the labelling requirements will be, to ensure consumer confidence? The report also expressed concerns about the timing of the reforms, given that the Government are undertaking a broader review of wine regulations with a view to consolidating them in early 2025. Again, the noble Baroness mentioned further SIs coming forward, so it would be helpful to have a better understanding of the timing.

I also draw attention to the consultation section of the Explanatory Memorandum. Interestingly, it does not cite specific details but is quite broad and vague. For example, it says that of the 96 responses to the consultation,

"many … were supportive of the changes".

It also contains a number of very vague statements, including:

"Changes to importer-labelling requirements received strong support",

when 36 respondents said it would have a positive impact, but 24 said it would have a negative one.

Paragraph 10.3 is on allowing wines

"to be registered as Protected Designation of Origin … where those wines are produced from hybrid-grape varieties".

That apparently "received solid support", but the consultation document notes that some responses indicated there would be a risk of lower-quality wine damaging the reputation of domestic wines. That is also in the report from the Secondary Legislation Scrutiny Committee.

Paragraph 10.4 states:

"The production and sale of piquette received positive responses from respondents representing single businesses in the industry who intend to make use of the change. Other respondents noted that it would have no impact or that they would not intend to make use of the change".

In fact, of the 85 organisations that responded, 32 anticipated a negative impact and only 18 a positive one.

Paragraph 10.5 states:

"The proposal to allow for the blending of imported wine received a broad range of responses. Many respondents indicated that they felt positively about the change and intend to make use of it".

However, it is all a bit vague and can be a little misleading.

I wonder what the Government are doing to address the concerns that emerged from the consultation. Although it was positive overall, there were sufficient negative responses and issues raised for the Government to need to give a more detailed response. I will be interested to hear what the Minister has to say about that.

Lord Benyon (Con): I am grateful to my noble friend and the noble Baroness for their views on this instrument. I believe we all recognise the importance of the wine industry. These changes support this aim and will ensure greater flexibility. I recognise that a majority of these first-phase reforms will apply only in England. As I said earlier, the Welsh Government and Defra have agreed to pursue reforms together, allowing these benefits to flow to the wine industry in both nations.

We are working with Scotland. Of the wine we drink in this country, I think only 1% is produced here. Most of that is produced in the south-east of England but a wine industry is now emerging across the United Kingdom. We want to encourage this. It shows farmers and land managers adapting to a changing climate and opportunities for a home-grown industry that we want to see flourish. The changes to importer labelling are required to ensure that the industry avoids unnecessary costs. Revoking importer labelling provisions in wine law will result in the application of the general food law provisions relating to food business operator labelling. This is a change I assure noble Lords that both this Government and the wine industry wish to see.

I hope that it will get the support of the House. Our desire is to improve the sustainability and innovation of the wine sector through enabling PDOs to be applied for in relation to wines made from hybrid grape varieties. This brings long-term benefits to both industry and the environment as well as increasing consumer choice. Blending wine also offers this opportunity, in addition to improving consistency and reducing waste. A serious point made by the Wine and Spirits Trade Association is that the blending of wine is something that the industry wants to do. It is in the consumers' interest, it reduces waste and it improves quality. It allows for the same flexibility that vineyards have to supply wine that the consumer wants.

The Government also wish to free our wine industry from inherited EU bureaucracy by removing the certification arrangements for non-GI wine marketed with a variety and/or vintage indication. Again, these reforms aim to remove additional costs and administrative burdens on producers. The improvements this Government have made on wine will provide consumer confidence and sustainable growth, encourage frictionless trade, improve our environmental impact and, most importantly, remove unnecessary burdens.

My noble friend Lady McIntosh asked why we are doing this now and then tabling a further two statutory instruments later. The answer is that it is important to get this one agreed before the end of the year, when otherwise the transitional labelling rules will end. We want all food business-operated rules to be in place by 1 January. The other two statutory instruments are slightly more technical in nature and require a bit more work. We are working at pace to bring those forward in the new year.

The noble Baroness, Lady Hayman, also referred to labelling. We want to make sure that labelling is simple and straightforward. We have sought to reduce the burden on producers but still offer the correct labelling. This requirement will allow, for example, the words "a blend of wines from Australia" or "a blend of wines from Chile and Argentina" to be on the bottle. That gives enough information to the consumer, but also secures what we believe is a proportionate requirement on the industry.

I think I have addressed all the points raised. I hope the House will approve this instrument.

Motion agreed.

Countryside and Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations 2023

Motion to Regret

4.53 pm

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

That the Countryside and Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations 2023 were laid before Parliament during the prorogation period and are due to come into force before the House has sufficient time to scrutinise them following debate on His Majesty's Most Gracious Speech; notes the lack of public consultation on the policy implemented by the regulations; and calls on His Majesty's Government to outline whether and how they expect the existing backlog of applications relating to unregistered rights of way to be cleared before the deadline contained in the regulations.

Relevant document: 1st Report from the Secondary Legislation Committee

Baroness Hayman of Ullock (Lab): My Lords, I have laid my Motion to Regret because I believe that proper records of our public rights of way are so important. We know that public rights of way encourage recreation and tourism. In my county of Cumbria, they generate much-needed income in a very rural area. They are also an integral part of our heritage. We also learned, particularly from Covid, of the important role that being in the countryside has in the prevention of ill health, improving well-being and reducing loneliness.

The National Parks and Access to the Countryside Act 1949 first required local surveying authorities, which are now the county councils and the unitary authorities, to prepare official records of public rights of way. However, the problem has been that those records are incomplete. The Ramblers has provided research—I thank it for its briefing—which suggests that there may be as much as 41,000 miles of unrecorded historical public rights of way in England.

The Countryside and Rights of Way Act 2000 included provisions for a cut-off date of 1 January 2026 for registering those rights of way. That was subject to some exemptions, after which any remaining unrecorded paths would be lost. The purpose of the regulations we are debating today is to move that cut-off date from 1 January 2026 to 1 January 2031. My Motion regrets that the regulations were laid before Parliament during the Prorogation period, which we consider to be pretty poor form. They are also due to come into force before, we think, the House has had sufficient time to scrutinise them, which is why I wanted the debate today, as much of our time since Prorogation has been taken up with the debates on His Majesty's gracious Speech. Can the noble Lord, Lord Benyon, say why the decision was made to lay the regulations during this time?

My Motion also expresses concerns about the lack of public consultation on the policy that will be implemented by the regulations. Can the noble Lord explain the lack of public consultation on a matter that is clearly of great interest to many people? Finally, my Motion calls on the Government to outline whether and how they expect the existing backlog of applications relating to unregistered rights of way to be cleared before the deadline contained in the revised regulations.

I also express our support for the Motion in the name of the noble Lord, Lord Hodgson of Astley Abbotts, which welcomes the extension of the period for officially recording footpaths but regrets that no permanent solution has been found. I look forward to his comments on his Motion.

Clearly, an additional five years to apply for historical rights of way to be added to the definitive map is welcome, as the process requires extensive and time-consuming research, which we understand has largely been undertaken by volunteers. I would therefore like

[Baroness Hayman of Ullock]
to speak a little more in detail about our concerns about the current backlog of applications. Estimates suggest that in England there could already be over 10,000 applications currently waiting to be processed by authorities, with some waiting 20 years to be determined. We believe that it is inevitable that the number of applications will increase significantly in the run-up to 1 January 2031.

It is significant that the Secondary Legislation Scrutiny Committee made it clear in its report that Defra should have included information about the local authority backlog in the Explanatory Memorandum and criticised the lack of information about the impact. I draw the attention of your Lordships' House to one or two of the comments made in that report. First:

"The Explanatory Memorandum … states that there will be no impact on business, charities, voluntary organisations or the public sector".

However, as local authorities are responsible for assessing and determining the applications, I cannot understand how there can be no impact.

In addition, the report noted that the backlog of applications was likely to increase in the run-up to 2031, as I said. It talked about a submission that had been received from the Open Spaces Society,

"which, while not opposing the Regulations, questioned Defra's assumption that there will be no significant impact".

Can the noble Lord explain why it was decided that there would be no significant impact—how was that conclusion reached? The Open Spaces Society suggests that setting back the cut-off date

"will have a very substantial impact on charities and voluntary bodies".

Regarding local authorities, although the cut-off date cannot be postponed beyond 2031 in general, the provision enables a further postponement, without limit, in relation to the former county boroughs, which were excluded from the operation of Part IV of the National Parks and Access to the Countryside Act 1949. That duty was given to them only by the Wildlife and Countryside Act 1981. The Countryside and Rights of Way Act 2000 clearly envisaged that it might be necessary for those places to be granted a longer period to prepare their maps, but this opportunity has not been taken.

I mentioned my county of Cumbria, where I was a county councillor. We have an enormous number of footpaths that need to be managed and recorded. Why has no provision been made for a later cut-off date in relation to the county boroughs? How do the Government intend to support the work of local surveying authorities and the voluntary sector to make progress in researching, submitting and determining applications? This is a huge amount of work.

5 pm

I can appreciate why the Government want to set a deadline: it focuses minds and should help to bring down the backlog, while at the same time hopefully providing more certainty for farmers and other landowners. So can the noble Lord, Lord Benyon, reassure this House that the exemptions to the cut-off date are fit for purpose and will cover all necessary considerations, and that, following a review, an extension for the former county boroughs could be brought in if necessary? It is critical that we do not lose public rights of way and access because of these regulations. Can the Minister guarantee that this will not be the case?

Lord Hodgson of Astley Abbotts (Con): My Lords, I have tabled a parallel regret Motion but, before I get to that, I will say what a pleasure it is for those of us who have followed this through the long night—many years—to see the noble Lord, Lord Rosser, back in his place. He has been with us for many of these debates, and he and I have debated many times in the past. I know he has not been in the best of health, and I am sure I speak for the whole House when I say that we wish him back here in full health ASAP.

When I joined your Lordships' House in 2000, one of the first Bills I was involved with was the Countryside and Rights of Way Bill, as it then was. I remember a short debate on footpaths—it was before I made my maiden speech, so I did not participate—during which the Labour Government Minister pointed out that there was a 25-year timetable during which we could finish this task. The universal reaction to this was, "Well, that's job done, isn't it?". This just shows how wrong we all were then. During the intervening 20 or so years, I have had the chance to raise, and support other Members of your Lordships' House raising, this important policy issue. So I find myself echoing the famous words attributed to a football manager: "It's déjà vu all over again".

We heard a magisterial speech from the noble Baroness, and I will not repeat what she said. One issue that could usefully be picked up is the work of the stakeholder working group, which was an attempt to draw together all the people who have an interest in footpaths. It was set up in 2008 and reported unanimously in 2013. On 20 January 2022, nearly two years ago, I put down a Question for my noble friend on whether the Government would set a date for the commencement of the provisions of that working group. I received the famous words that

"the Government intends to lay legislation as soon as reasonably practicable".

That was two years ago, and it will shortly be seven or eight years since this group reported unanimously. The Government really must decide that we can use this information to try to pull together the many people who have an interest in this area.

My regret Motion is rather more specifically focused. I thank my noble friend most sincerely for his five-year extension. Of course, I am disappointed that there has been something of a U-turn in government thinking, but half a loaf is better than no bread. My Motion points out that while we have put off the potential car crash for five years, it is still unlikely, given the glacial progress we have made over the last 20-plus years, that we will solve the problem in five years from now.

Before I go any further, I need to put on record, as I have previously, that I am a member of the Ramblers and have been briefed by it, as has the noble Baroness. As a brief background to Members of your Lordships' House who are not familiar with how bureaucratic the system is, I will give a short personal example.

My family investment company owns a trivial amount of agricultural land in Shropshire, a county that features quite high on the list in the Ramblers briefing. Our family policy is that if an adjoining field becomes available, we will make an offer for it. So it was that a couple of years ago we purchased a field with a footpath that went diagonally across it. Every year, in accordance with the regulations, after the crops had been planted we went on a quad bike with a sprayer on the back and sprayed out the two-metre wide strip, through the middle of the crops, that followed the line of the footpath. Obviously, you lose a certain amount of land from that but, equally, you are asking people to walk across a ploughed field and a sown field that is muddy, wet and so on. The corners and sides of the field have headers, two-metre strips of grass that protect the hedgerows and the wildlife in them.

It occurred to us that it might be a good idea, and better for walkers, if they could use the strips rather than the mud, so we discussed it with Shropshire Council. I have only praise for its help in the work it did with us, which was very constructive and helpful—but, my goodness, the process you have to go through. This small change affected one cottage. I spoke to the people at the cottage and together we sent in a letter from them saying that they had no objection. There was silence.

Some months went by, and we were then told by the legal department of the county council, "Sorry; it wasn't in the right form to meet the regulations". So back we went with another set of letters. The trouble is that this goes on and on. We started this in February this year, and we are told we are unlikely to have a determination, a final resolution, before early summer next year. That will be a year and a half just to redirect, not to remove or add to, a footpath in a way the county council thinks is beneficial for walkers.

The time and effort and diversion of precious resources to carry this out seems disproportionate. It seems to me really important that we discuss and tackle the one size fits all that we have built into the regulations. The Defra plan—here I quote from the excellent report from the Secondary Legislation Scrutiny Committee—is that it will

"speed up and streamline existing bureaucratic procedures".

That is a critical decision. It needs to be brought in, and quickly, if it is to have any measurable impact over the next five years.

At the heart of my regret Motion is concern about performance and how we instil a sense of urgency in this issue. How do interested parties monitor the progress—if any? We have this debate today and my noble friend, in winding up, will no doubt give us enthusiastic and encouraging words that we will all be pleased to hear. We will then go on our way, and the danger is that the status quo will prevail.

How might performance—actual and relative—in different local authorities be measured? How, as a result, might a certain amount of pressure be supplied to the laggards? There is a wonderful new body called Oflog—the Office for Local Government—which might have an important role to play. I shall quote a couple of lines of the Written Ministerial Statement from July, when its establishment was announced. It said:

"Oflog is a new performance body focused on local government in England. It will provide authoritative and accessible data and analysis about the performance of local government, and support its improvement … By collating, analysing, and publishing existing data about the relative performance of councils, it will help councillors and the public have the information they need to scrutinise more effectively … it will ensure council leaders can compare themselves against their peers and find examples of good practice to learn from; and it will allow central Government and their partners to identify where there might be challenges and a need to step in to give support, where appropriate".—[*Official Report*, Commons, 4/7/23; cols. 35-6WS.]

It seems to me that Oflog hits all the hot buttons as far as footpaths and their preservation are concerned. If, as I fear, my noble friend the Minister is unable to say in his reply that he is already on the case and Oflog is the answer, could he give the House undertakings that he will examine the possibility of Oflog being used in this case; and that he will write to all Members of your Lordships' House who have participated in the debate as to what progress has been made and what the results of those discussions were?

I conclude by saying, as is common ground among all of us, that the network of footpaths in England and Wales is a unique and irreplaceable resource. We surely have to use the next five years to establish an approach that will preserve it for future generations.

Earl Russell (LD): My Lords, I thank the noble Baroness, Lady Hayman, and the noble Lord, Lord Hodgson, for their regret Motions. My view is that the Government have got themselves in a bit of a mess with this statutory instrument, which was laid during Prorogation and has not had time to be debated in the House.

Obviously, the funding promised in the original Labour Government Act to be given to voluntary bodies has never really materialised. These reforms should have been delivered and monitored long before 2026 to inform enactment but endless delays have prevented this happening. Although most bodies welcome the extension of the proposed cut-off date, most bodies also oppose the implementation of Part II as a whole. Defra's decision to bring into force the relevant provisions in Part II with immediate effect and without any agreed exemptions for now is not a welcome development.

The regulations that have already come into force extend the cut-off date by which time applications have to be made to local authorities to register historic rights of way for footpaths and bridleways from 1 January 2026 to 1 January 2031. This reverses the previously understood position that the cut-off date would be repealed altogether. After the new date, any unregistered historic rights of way in England will be extinguished unless they are subsequently found to be exempt from the cut-off date, but these measures are yet to be announced.

Defra has argued that it does not expect any significant impact on business, charities or local authorities, but there is already a considerable backlog of applications and many more cases are expected to come with the new extended cut-off date. Each case costs many thousands of pounds and, as we have heard, the process for this is extremely complicated. The new cut-off date will have considerable impacts. Among

[Earl Russell]
the 21 local authorities for which data is available, there are 4,000 applications for a definitive map modification, 80% of which are likely to be pre-1949 rights of way. Based on calculations, it has been estimated that these backlogs alone could take 20 years to work through.

The number of applications will continue to increase the closer we get to the final cut-off date. The additional costs on local authorities, voluntary bodies and landowners alike will be considerable—estimated to be as high as £40 million. How will the Government ensure that the additional financial burden for this extension is paid for? How will they ensure that the existing backlog of cases is dealt with and that there is sufficient capacity in the system to meet the projected future applications? What happens to any cases in the system that are not processed before the cut-off date? When will clarity be given on the grounds for the exemptions that Defra says will be put in place? Footpaths are a precious national resource; we must work to ensure that none is lost, never to be replaced.

5.15 pm

Lord Rosser (Lab): My Lords, I thank the noble Lord, Lord Hodgson of Astley Abbotts, for his kind words, which I much appreciated. I would like nothing more than to be able to be back here in the House on a regular basis. I miss the House and everyone here very much indeed.

I want to take this opportunity to add my voice to the disquiet that has already been expressed about these regulations, which are now in force and about which, as has been said, there has been no proper consultation despite the impact that they could have on so many members of the public with the loss of access to potentially thousands of miles of historic rights of way.

In an Answer on 27 May 2022, the Government stated that they had

"decided to take forward a streamlined package of measures to implement rights of way reform including repealing the 2026 cut-off date to record historic rights of way, as well as giving landowners the right to apply to divert or remove rights of ways in specific circumstances".

No reason was given in that Answer for the change in policy, welcome as it was, to repeal the 2026 cut-off date. Likewise, no reason is given in the Explanatory Memorandum to these regulations as to why the Government have gone back on that policy of repealing the cut-off date provisions and are instead introducing a new cut-off date of 1 January 2031. I would be grateful if the Minister could set out the change in circumstances between the Answer on 27 May 2022 repealing the cut-off date and now that has led to the complete change in announced policy on the repeal of that cut-off date.

The Explanatory Memorandum does not even admit that the Government are going back on the policy announced on 27 May 2022 of repealing the 2026 cut-off date. Yet it goes on to say:

"No formal consultation is required or been undertaken … There is no, or no significant, impact on business, charities or voluntary bodies"

or "on the public sector". The Ramblers, of which I think the noble Lord, Lord Hodgson of Astley Abbotts, said he was a member, is a charity. It has 100,000 members and, through volunteering, works hard to keep our rights of way, including footpaths, open. They will be affected by these regulations and the reinstated cut-off date by which to register the estimated 41,000 miles of unregistered historic rights of way or risk losing them, as compared with the impact of the policy announced by the Government on 27 May 2022 to repeal the cut-off date. Likewise, local authorities may be stretched resource-wise to cope with the potential workload that the newly imposed cut-off date, as compared to having no cut-off date, will in all probability generate. Are the Government really saying that these regulations, on which there has been no consultation, will have no significant impact on organisations and bodies such as the Ramblers and their volunteers or on local authorities?

It is a question I hope the Minister will answer, because it also raises the issue of how often the Government meet organisations representing the public on access and rights of way issues, such as the Ramblers, the Open Spaces Society, the Byways and Bridleways Trust and the British Horse Society. How many times have the Government met these and similar organisations, for example, either collectively or individually, over the last two years? I would be grateful for an answer.

The Secondary Legislation Scrutiny Committee has also commented on these regulations, saying:

"We take the view that it would have been helpful to explain the current backlog of applications in the explanatory memorandum. While the planned rights of way reform may streamline the application and determination process, many local authorities are nevertheless likely to receive a significant number of new applications, adding to the existing backlog and to current resource pressures".

On the basis of Defra's own incomplete figures, there are already 4,000 applications for a definitive map modification order waiting to be determined. However, this figure covers only 21 local authorities. Will the Government say how many local authorities are potentially affected? Estimates from the Ramblers suggest that in England, there could already be over 10,000 applications waiting to be processed by authorities, with some, as has already been said, waiting 20 years to be determined.

It is inevitable that the number of applications will increase significantly in the run-up to 1 January 2031, based on the increase in applications researched and submitted for determination between 2018 and 2023 that have already been made in many local authority areas. In Lincolnshire, for example, that increase in applications is from 56 to 378 with 1,934 potential miles of historical rights of way to be researched and applied for by 2031, largely by volunteers, against a background of a pending decision, apparently, by the Government, to apply a higher threshold for applications for adding unrecorded pre-1949 rights of way. It looks as though going back on the commitment to repeal the 1 January 2026 cut-off date is but one part of a government programme to load the dice more heavily against volunteers and short-staffed, underfunded local authorities, seeking on behalf of the public to register an estimated 41,000 miles of historical rights of way. And still, the Government maintain there is no need to consult on these regulations.

A stakeholder working group was, I believe, established by Natural England in 2008 and involving Defra, to advise on what could be done to reform the processes governing the application and determination of historical rights of way. The group comprised a balance of interests: user groups, landowners and local government. The consensus reached by the SWG was put forward to Defra and the reforms enshrined, as I understand it, in the Deregulation Act 2015. However, the reforms required detailed regulations to be enacted, which still have not been, eight years on. It was always agreed by the SWG that the package of reforms should be delivered as a whole: all sides, users and landowners, for example, accepting that they had had to give way on some things to deliver the consensus.

The SWG, I understand, still exists. It is chaired by Defra officials and is still advising on the detail of the regulations. These include, crucially, the paths that will be exempt from the deadline, but also the right for landowners to apply for diversions. I understand, though, that the former Secretary of State, Thérèse Coffey, took some unilateral decisions of late which break the consensus achieved. The exemptions regulations, for example, would no longer include those paths that are unrecorded yet are currently in use by the public. Why do this? It would be helpful if the Minister could clarify the past and present role and position of the stakeholder working group, as well as the recent decisions by the previous Secretary of State in relation to the consensus achieved by the SWG.

I made reference to paths and historical rights of way that will apparently be exempt from the deadline. How many miles of rights of way, in how many local authority areas, is it expected that these exemptions will cover, and what kinds of historical rights of way are we talking about? Not knowing what impact these exemptions will have on the organisations and bodies involved in identifying the estimated 41,000 miles of historical rights of way not yet on local authority definitive maps makes it difficult, if not impossible, to assess any reduction in their potential workload.

Although the cut-off date would not be postponed beyond 2031 in general, a provision, I believe, under the Countryside and Rights of Way Act 2000, enables a further postponement, without limit, in relation to the former county boroughs which were excluded from the 1949 Act and given a duty to prepare definitive maps and statements only under the Wildlife and Countryside Act 1981. My noble friend Lady Hayman of Ullock addressed that issue. The 2000 Act appears to envisage that it might be necessary for those places to be granted a longer period to prepare their definitive maps and statements, but this opportunity has not been taken. Will the Government say why?

The Government's *Environmental Improvement Plan 2023* includes a clear commitment to ensure that everyone lives within a 15-minute walk of green and blue spaces, but 38% of people fall outside that threshold. Completely changing government policy to repeal the cut-off date and risking losing tens of thousands of miles of unregistered rights of way will do nothing to help achieve that 15-minute walk policy objective. Instead, it will deny people routes that they could have used to access green and blue spaces close to home.

I have asked a number of questions about government policy and its impact, and about changes made and the reasons for them, and would be grateful for answers from the Minister, either today or subsequently in writing.

Lord Thurlow (CB): My Lords, I will take the same tack as the noble Lord, Lord Rosser, and add my voice to his, following his welcome return to his place in this Chamber.

Unless I have misunderstood the proposal—if I have, the explanation is well buried—why proceed with a cut-off date on the registration of these long-forgotten rights of way at all? They are an ancient and important contribution to our social fabric in England. For a thousand years and more, these rights of way have evolved into a wonderful network of publicly accessible walks and bridle paths, which are much enjoyed by a large and growing cross-section of society.

The objective of the 2000 Act appears to be a desire to create

"a final and complete record of historical public rights of way".

There seems to be no reason for not adding to maps as old, long-lost or forgotten rights of way come to light; simply update the records. As we know, this Government agreed to drop the cut-off date and, for no good reason, wish to reintroduce it. Scotland and Northern Ireland do not want a cut-off date. There is no explanation for why we need this. It sounds as though it is the result of a horse deal between different lobby groups of landowners and farmers. Where did the public fit into this discussion? I do not think that they have a voice or that they have been heard at all. I do not deny that irresponsible walkers in the countryside are a nuisance, but they are a small minority. Without access to the countryside, those who abuse it will never have a chance to learn the rules of good behaviour and learn to treat this resource as something so precious and special.

There has been comment on the backlog awaiting registration. This is a resourcing problem that can be dealt with, but the Act is not about resourcing; it should be about access to this national network. Defra says that it will

"speed up and streamline … bureaucratic procedures"

for the recording process. That is good news, but it is not a reason to prevent new registrations. The Explanatory Memorandum states, as we have heard more than once, that there will be no impact on businesses, charities, voluntary organisations or the public sector, but there is no mention of human beings. What about the impact on them—citizens, the public and society as a whole? Does Defra not credit this greater good?

5.30 pm

I too thank Ramblers for its briefing. As we have heard, it suggests that tens of thousands of miles of unrecorded public rights of way may exist and need to find the daylight. What Government who claim to represent the people would want to extinguish this public right? It is rather like locking the gates to public parks in towns and cities permanently. That is unthinkable, of course, but is snuffing out this public

[LORD THURLOW]
resource any different? As the Motion tabled by the noble Lord, Lord Hodgson, underlines, this is an important national asset.

I support the CLA and the NFU and the good work that they do for farmers and landowners, but to prioritise their interests over those of the public is not reasonable. The wider public do not have a collective voice in these matters, notwithstanding the good work of the many organisations that represent those with a keen interest in the countryside. Referring to prioritising farmers and landowners' interests over those of the public is not a generalisation or a political statement; I am simply suggesting that the public should be entitled to continue to enjoy the rights of way which have existed in former times and yet have been lost through whatever reason and then latterly rediscovered. I am asking not for special treatment for the public but simply that their rights continue to be recorded.

The noble Baroness, Lady Hayman of Ullock, mentioned Covid, which taught us how important the countryside is to those needing and able to escape their bubble to walk upon footpaths in these green spaces. I did it myself when dispensation was allowed. The Government are preparing resilience for a possible future pandemic—something that we all hope will never happen—but part of that process should be expanding the network of publicly accessible green spaces, not preventing the re-emergence of long-lost rights.

Another consequence of the pandemic was the impact on families and people living alone being bottled up in small spaces for months at a time with too little space to study or work—and the mental health crisis which has followed. Hundreds of thousands of working people are now out of work as a result of mental health conditions which emerged from those constraints, surely another sound reason to do all that we can to open up the countryside for public enjoyment. Once again, I remind the House that I am asking not for unlimited access but simply the right to enjoy the rights of way that were enjoyed by past generations but which will be lost under this proposal. Those rights are unlikely ever to be recovered for the benefit of society as a whole. I consider this to be a terrible loss to the people of this country, notwithstanding exemptions.

Let us not strangle the continuing emergence of lost rights of way. I ask the Government to embrace it.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to take part in this debate and particularly to listen to the powerful and incisive speech of the noble Lord, Lord Rosser. I seek to add to the content of the debate rather than to repeat what has been said, but I could not resist rising to support entirely the regret Motion tabled by the noble Lord, Lord Hodgson of Astley Abbotts. It is not often that your Lordships' House sees the two of us aligned, but it reflects the fact that, all around this House, every speech has expressed great regret, not just in technical but in real terms, about the direction that the Government are taking on these public rights of way.

I will very briefly set this in historical context. Since the election of Margaret Thatcher, 10% of what was public land in the UK has been sold into private hands. If we look back to centuries before that, it is one long tale of enclosure, of the public being excluded from more and more land. The real tragedy of the commons is that they were stolen from the people. Today, we are not talking about ownership but about rights of way: the right to walk on our own land. Maybe that path up the hill towards the church was once how people visited a family grave. Maybe the path between one village and the next was how courting couples got together and how, historically, families were created. We might make different uses of those rights of way today, but they should still exist. This country is sometimes referred to as a property-owning democracy, yet 40,000 land millionaires, 0.06% of the population, own nearly half our land.

We are in a situation where people have rights which are threatened with being cut off. I pick up one point that was highlighted in the excellent Ramblers briefing. As the Government are presenting this to us, it was never intended that paths in current use would not be cut off, yet our current arrangements are that this could be happening. These days with social media and mobile phones—I am probably not the only one with a walking app that often records the route that I took in various places—there may well be a great deal of data indicating that footpaths are in use. However, I invite your Lordships to consider for a second, as many others have referred to, how difficult it would be for volunteers and small local organisations to collect and collate all that data to provide the proof that is needed. That is not something that will happen quickly. We have lost so many rights. Let us not lose any more.

Baroness Scott of Needham Market (LD): My Lords, I support these Motions from a particular perspective. Back in 1993, I was first elected to Suffolk County Council. Somewhat to my surprise, I found myself chairing the rights of way committee, a position that I held for some years. With all the experience that I gleaned, I can do nothing but agree with all the comments that have been made tonight.

When I was first learning about rights of way, I came across a summing-up by Lord Denning in which he said that nothing excites an Englishman so much as a footpath—I always thought that said rather a lot about Englishmen. Nevertheless, what I learned pretty quickly from that is that you have the coming together of two polar opposites. On the one hand there is the right of access, often historic, that people want to exercise, and on the other, "This is my land, it is private and I do not want anyone on it". These are often irreconcilable. However, I also learned very quickly that, as public bodies and as legislators, it is not our job to pick a side but somehow to find a way of bringing them together. This is what saddens me about current proposals: they do not do that; they are partial and have come down on the side of the landowners.

The stakeholder working group, which other noble Lords have mentioned and which brought together local authorities, landowners and user groups, was able to come up with a consensus report. It is worth

reflecting on how nigh-on impossible that must have been, and yet the stakeholder working group did that. That ought to be a gift to the Government, to say, "Here is a package on which all the stakeholders agreed". Yet the Government have taken one piece of that and ignored all the rest, despite the conclusions of the group that

"implementation of the proposals in full is crucial to preserving the balanced nature of the package".

It is a real pity that, all this time later, we have not moved; in fact, this is a massively retrograde step.

As we have heard, we do not have information about the exemptions from the cut-off date. There are some really important categories of rights of way here. Many paths in urban areas have never been on a definitive map and yet are used all the time. There are paths which are already in use. Where I take issue with the speech, with which I otherwise agreed, from the noble Lord, Lord Thurlow, is that they are often not long forgotten and ill-used; many of them have been used for hundreds of years and still are but just happen not to have been recorded. It would be tragic if they were to be lost. Then there is the backlog of which we have heard: what is the status of those for which applications have already been made?

I want to finish by agreeing with noble Lords who share my disbelief at the Explanatory Memorandum, which says there will be no significant impact on the voluntary or public sectors, because that is palpable nonsense. Local authorities, as we have heard, already have a massive backlog and are hugely strapped for cash. If you are running a local authority and you have limited legal support, are you going to put it into childcare or public rights of way? That is the reality that many of them are facing. All that will happen is that the backlog will get larger. Who is putting in these claims? They are being put in by volunteers from various user groups. In all the years I chaired the rights of way committee, I never saw a specious claim. Every one of them had been immaculately researched, often over many years, and although occasionally we would disagree on the point of law or its interpretation, they were made in good faith and deserved proper consideration. How volunteers are to carry on working against this sort of deadline, and produce that quality of work, defies belief.

I urge government to prioritise the regulations governing these historical paths and the exemptions from the cut-off date, and to set out how government funding can be used to support the work of both local authorities and the voluntary sector, if we are not to lose them for ever.

Lord Redesdale (LD): My Lords, I want to support the Government on a couple of points, which I know the Minister will find surprising. Is it just me, or is it cynical to suggest that the date for the cut-off was set not for after this Government, nor for the next Government, but for the Government after, which always gives the impression that we have moved to the point where it is in the long grass and nobody is thinking about it?

The noble Lord, Lord Hodgson, talked about the 2000 Act, and I remember being part of the debates when we discussed that in 2000. There was great hope at that point that there would be money pouring into the rights of way from the Labour Government, but that sort of dissipated. I very much hope that the Minister can raise with his officials whether there could be discussion with the national heritage fund about coming forward with some funding, because it is not going to come from local authorities and the volunteer groups are going to find it difficult to push this forward.

I want to speak on this because I am one of those very rare individuals—one of the landowners that the noble Baroness, Lady Bennett, talked about: a rapacious landlord in the north of Northumbria. The success I have had recently is introducing a new right of way, in relation to higher-level stewardship. I give a note of caution to anybody who goes down that route, which is that we agreed the right of way on a map. This summer I decided to actually follow the right of way, as set out by Northumberland National Park. The first half a mile is absolutely fabulous, through bucolic pastureland. However, you then hit a stile, and if you go over the stile and follow the path, you go down a near-vertical cliff face, which is almost lethal. In fact, it is totally lethal because it is covered in bracken. If you manage to get to the bottom of this without breaking your ankle, you hit the next helpfully placed marker, which directs you straight through a bog, which my children used to call a "welly-eater"—a bog you get half way through and then realise it has sucked your welly off and you will never see it again. After that you get to the most beautiful site on the riverbank, before you then have to think about going back the other way. I was told by the local authority that I could change it, but that it would probably be a harder process than taking the route in the first place.

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, I thank the noble Baroness, Lady Hayman of Ullock, and my noble friend Lord Hodgson of Astley Abbotts for introducing these Motions, and all noble Lords who have contributed to this debate. I notice that the noble Baroness, Lady Mallalieu, is in her place and did not contribute to this debate, but I take the opportunity to wish her a very happy birthday.

The Government are committed to increasing access to nature. The environmental improvement plan sets out an ambitious commitment, as pointed out by the noble Lord, Lord Rosser, for everyone to live within a 15-minute walk of green or blue space, and to reduce other barriers that prevent people accessing it. My Secretary of State feels very passionately about this whole debate and, as Chief Secretary to the Treasury, got me and various others in, when I had responsibility for access at Defra, to drive forward an agenda that coalesced in the Agnew commission. A lot of fresh thinking is now taking place and breathing new life into that, and he is really committed.

This is part of a much wider debate, and I just want to put this on the record. We have nearly completed the 2,700-mile King Charles III England Coast Path, a product of the Marine and Coastal Access Act, which we firmly support and are proud to have delivered on

[Lord Benyon]
our watch. We are delivering a £9 million levelling up parks fund to improve green space in more than 100 disadvantaged neighbourhoods in the UK—a point that the noble Lord, Lord Rosser, raised—and delivering the £14.5 million Access for All programme to make access to green and blue spaces more inclusive. There are much wider issues around well-being, the social prescribing agenda and the success we have had through our farming and protected landscapes grant schemes, which have seen many new miles of footpaths in some of our most amazing landscapes.

5.45 pm

We want to see our reforms speed up the process for adding rights of way to the legal record for everyone to enjoy, and exceptions to the cut-off date will ensure that many valuable routes will be retained. We have discussed the Countryside and Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations 2023, which have extended the cut-off date for recording historical rights of way from 1 January 2026 to 1 January 2031. These regulations came into force on 17 November, following commencement of the cut-off date last month via the Countryside and Rights of Way Act 2000 (Commencement No. 16) Order 2023. This fulfilled the Government's intention, which I set out on 18 May in response to my noble friend Lord Hodgson's amendment to the Levelling-up and Regeneration Bill. This means that on 1 January 2031, any rights of way that existed before 1949 and are not recorded on the definitive map will, with certain exceptions, be extinguished.

My noble friend Lord Hodgson has referred to the rights of way network as an important national asset—a number of noble Lords referred to it in a similar way—and in this he and I, and I am sure the whole House, are in full agreement. We have a fantastic rights of way network across England, with some 120,000 miles of footpaths, bridleways and byways, which play a vital role in supporting the nation's health and well-being.

I will just comment on the point raised by the noble Lord, Lord Redesdale—there is nothing rapacious about him, and I am sure he is a very benevolent landowner. Like him, I have experience of providing public open space—in my case much closer to a large urban centre—and I understand how people want to access the countryside. We need to be much more flexible and provide points they can go to by public transport or in a car, where they can have a circular footpath, have different experiences, get in touch with nature and be made better in body and mind. I am absolutely committed to that agenda.

What we are talking about here is, in effect, the definitive map, which was introduced in 1949 to provide a legal record of rights of way, giving users and landowners alike certainty regarding the location and status of rights of way. The task of recording those pre-existing rights of way, so called historical rights of way, was considerable and is ongoing. The cut-off date was introduced by the Countryside and Rights of Way Act 2000, as the noble Baroness, Lady Hayman, pointed out, to provide certainty for both rights of way users and landowners. We are committed to reforming how we record historical rights of way on the definitive map, which will see this process become faster, less expensive, less confrontational and less bureaucratic. I totally accept my noble friend Lord Hodgson's point, and I regret the Kafkaesque process he had to go through to create a diversion of a footpath that improved the walking experience for people. I hope we can improve this, and I hope to set out some aspects of how we seek to do that.

The present regulations address delays to these reforms caused by Covid-19 and will provide another five years to submit applications for recording historic rights of way. To turn to a point raised by the noble Baroness, Lady Hayman, we are aware of the significant backlog of applications and recognise that, even with the reformed procedures in place, it is unlikely that all cases will be concluded by the cut-off date. Although it is for local authorities to prioritise as appropriate, we are committed to ensuring that all valid applications submitted before the cut-off date will remain live until they are concluded. That answers a key point that I think the noble Lord, Lord Rosser, made. We will also introduce exceptions covering certain other unrecorded historic rights of way, such as those in urban areas. These will ensure that key parts of our existing rights of way network are safeguarded.

On the issue of public consultation, which is another point that the noble Baroness raised, a five-year extension is the maximum permitted for most of England under the regulation-making powers. Therefore, a consultation on how long the extension should be would have served little purpose.

I turn to the noble Baroness's point regarding the amount of time for scrutiny. Care was taken to ensure that the regulations were laid during the morning of 26 October, while this House was sitting. I accept that it is a moot point as the House was about to prorogue, but the process we are going through shows that Ministers can be brought to the Dispatch Box and held to account. That date was no discourtesy to this House, but it was intended to be placed while the House was sitting. I draw your Lordships' attention to the report published by the House of Lords Secondary Legislation Scrutiny Committee on 9 November, which did not raise any concerns in this regard.

I turn to other points raised in this debate. There is a sense of urgency; I entirely accept the point my noble friend Lord Hodgson made. We want these measures to be carried forward as quickly as possible. I will come on to talk about some of those points further.

The noble Baroness, Lady Hayman, raised a point about issues relating to county authorities. We think that implementing the same extension across England provides certainty for all parties. The exceptions will introduce safeguards from extinguishment for important routes. If we were to have different speeds for different types of local authority it would lead to great confusion.

A number of noble Lords asked how long it will take local authorities to get through the applications. That is obviously ultimately a matter for local authorities and how they are resourced. It is an important element

of local democracy, as the noble Baroness, Lady Scott, said: English men and women feel very strongly about footpaths, and there is a strong democratic driver for local authorities to prioritise this. I recognise the other constraints that local authorities have on their spending, but we think the reforms we are committed to implementing will help speed up the process by making it faster and less expensive to resolve historic rights of way applications.

An impact assessment was not carried out because the present regulations will have no direct impact on how applications are made, or on how they are handled by local authorities or the Planning Inspectorate. The Wildlife and Countryside Act 1981 sets out the existing procedures for applying for a definitive map modification order and these regulations will not change that. I again direct noble Lords to the report published by the Secondary Legislation Scrutiny Committee on 9 November, which agreed that a formal impact assessment was not required for these regulations.

We did not carry out a consultation because a five-year extension is the maximum permitted for most areas of England under the regulation-making powers, as I said. Implementing a five-year extension is a compromise between providing the certainty that the cut-off date will bring and recognising that more time is needed before the cut-off date takes effect. I believe this is a fair compromise. In my time as Minister responsible for this policy area at Defra I was assailed on both sides, by access campaigners and land management bodies. The feeling that I was in a pincer movement from both directions made me think that we were just possibly getting this right. I assure noble Lords that we intend to take forward that word "compromise", which was mentioned a number of times and was an achievement of the stakeholder working group, which meets every month and is very important to us. On the polarities of the argument, you have an often-depicted angry farmer saying, "Get off my land", and on the other side a rather extreme view that everyone should be able to go everywhere anytime they want. The rest of us—all of us in this House and most people in this country—sit in the middle. It is in all our interests that we see more access and more provision, and that we meaningfully tackle this problem.

Lord Hodgson of Astley Abbotts (Con): I sense that my noble friend has reached his peroration. Could we just go back to Oflog? I absolutely accept his good intentions and what he has told us, but we know that we will leave this Chamber, that things will move on and that this Office for Local Government will give those of us who are interested in this topic a chance to chase the laggards, because there will be information, if Oflog has this as part of its remit. Could my noble friend look at this and come back to those of us who have contributed to the debate with conclusions as to what he has found out?

Lord Benyon (Con): I thank my noble friend. I noted his point about Oflog. I will write to him with a detailed reply and convey his sensible suggestion to my colleagues at Defra. I hope they will be able to take that forward because it is a good suggestion.

I am conscious of the time, but I know there is concern about resourcing. I have talked about local authorities but, on funding for voluntary bodies, we recognise and value the important work carried out by the voluntary sector over many years to identify and apply for historic rights of way to be legally recorded. We want to continue the good working, particularly at a local level, between organisations such as the Ramblers and the land managers and the local authority through local access fora to get these issues resolved in a timely way.

A concern was raised about exceptions. Regulations to except certain historic rights of way from extinguishment will be laid as soon as possible. Officials are currently working with stakeholders to complete these regulations as part of our wider package of rights of way reforms.

There was some interest in what exactly is going to be excepted. We have committed to introduce regulations that will except unrecorded historic rights of way from extinguishment in a number of different ways. This will include all rights of way subject to applications that have not been concluded before 1 January 2031, rights of way in urban areas, and those that appear on the list of streets or National Street Gazetteer that are shown as maintainable at the public expense. Where the recorded width of a historic right of way is less than the actual true width, regulations will ensure that the width necessary for the continued safe and convenient passage of users will be saved from extinguishment—a key concern of many campaign groups.

Baroness Butler-Sloss (CB): I am sorry to interrupt the Minister. I am not a rambler and I do not walk on footpaths nowadays, but I fail to understand why the Government are prepared to extinguish some unrecorded rights of way. I find that very odd: you will have some exceptions but there may be many that are extinguished. I fail to understand, from what the Minister has said, why the Government are doing this.

Lord Benyon (Con): This was a product of an Act that was passed many years ago. There was a cut-off date of 2026 to give certainty, because otherwise this will roll on and on. It is also for people to be able to understand the complications in certain areas, such as biosecurity and safety. In the past, many footpaths went through farmyards, which are now not safe places for walkers to go, so this is also to be able to divert those paths to where they are safe, and protect stock from issues related to that. But the key point is about creating certainty; that is what we seek to do. By 2031, we should be able to get most of those historic rights established. I hope I have been successful in getting that point across, but I am happy to follow this up with meetings or further correspondence with noble Lords.

We recognise the benefits that our rights of way reforms will bring, and are working to complete and lay the necessary secondary legislation as soon as we can. Officials will continue to work closely with key stakeholders, including Members of this House, to ensure that all sides will benefit from these reforms.

[Lord Benyon]

The noble Earl, Lord Russell, raised a point about the cut-off date; there are approximately 4,000 applications for definitive map modification orders waiting to be determined by local authorities, most of which are applications to recorded historic rights of way. We expect the volume of applications to increase up to the cut-off date, which is why we have committed to ensuring that all applications remain live after the cut-off date until they are concluded—a key concern of the noble Lord, Lord Rosser. The reforms we are introducing will help to address the backlog, making it faster and less expensive to resolve historic rights of way applications. Commencing and extending the cut-off date now has provided certainty to all parties, both that the cut-off date will have effect and over when it will apply. By extending the date to 2031, we have provided an additional five years to submit these applications. We fully recognise the importance of regulations specifying exemptions from extinguishment, and we are committed to introducing these as soon as possible.

The noble Earl, Lord Russell, asked about the additional financial burden. I think I have addressed that. This will be a continuing concern for local authorities. We recognise that, but we hope that there are existing resources available to suit this. The noble Lord, Lord Rosser, asked how many local authorities are affected. All local authorities in England are affected—all 317 of them. The stakeholder working group meets monthly and has all parties of interest attending. It is chaired by a senior Defra official, and Ministers take close interest in what they bring forward and have been key to the debate surrounding this.

I recognise that a great many other points were raised. I do not believe I have the opportunity to answer them all in detail, but I will reply in letter form, if I may. I thank noble Lords for their attention. I hope that what I have said has persuaded the Members who tabled these Motions of this Government's commitment to greater access and to seeing historic paths recorded.

Baroness Hayman of Ullock (Lab): My Lords, I thank all noble Lords who took part in the debate. I particularly welcome my noble friend Lord Rosser, and listened to him speak with such passion and authority today.

When the Minister started, I thought perhaps he had listened to the debate and seen the light, as he seemed so keen on rights of access and preserving public rights of way. It was disappointing that he then went on to not acknowledge the challenges facing local authorities and voluntary groups to manage the task ahead of them. On the consultation point, I recognised in my speech that the cut-off date could not be postponed beyond 2031, but consultation does not have to be just about timing. It could have looked at exemptions and resources, and considered that as part of a wider consultation on the matter. But I hope the debate will enable the Minister to focus on the task ahead and keep a close watch on progress, because that is what we all want. Having said that, I beg leave to withdraw my Motion.

Motion withdrawn.

Countryside and Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations 2023

Motion to Regret

6.04 pm

Tabled by ***Lord Hodgson of Astley Abbotts***

That this House notes the laying of the Countryside and Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations 2023, welcomes the extension of the period for officially recording footpaths, but regrets that no permanent solution has been found to enable the preservation of this important national asset.

Relevant document: 1st Report from the Secondary Legislation Scrutiny Committee

Motion not moved.

Justification Decision (Scientific Age Imaging) Regulations 2023

Motion to Approve

6.04 pm

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

That the draft Regulations laid before the House on 13 September be approved.

Relevant document: 55th Report from the Secondary Legislation Scrutiny Committee, Session 2022-23 (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I thank all noble Lords for attending this debate. The first of these instruments, the Justification Decision (Scientific Age Imaging) Regulations 2023, sets out the affirmative decision made by the Lord Chancellor and Secretary of State for Justice on the Home Office's application to use ionising radiation, also known as X-rays, as a scientific method of age assessment for age-disputed individuals subject to immigration control.

The second instrument, the Immigration (Age Assessments) Regulations 2023, has been laid by the Home Office to specify scientific methods of age assessment, namely analysis of X-ray and MRI images of certain body areas. By specifying scientific methods in this instrument, a decision-maker will be required to take into account a refusal to consent to the specified methods without good reason as damaging to an age-disputed person's credibility.

On the use of X-rays, I remind noble Lords that the Ministry of Justice, as the justifying authority, has determined the practice justified under the Justification of Practices Involving Ionising Radiation Regulations 2004.

A regret amendment has been tabled by the noble Baroness, Lady Brinton, against both statutory instruments, and therefore the debates have been grouped. The Ministry of Justice has made the justification decision independently from the Home Office, as required by the 2004 regulations. I am sure noble Lords will understand that I cannot speak to this justification

decision, as it is imperative that the justification authority is functionally separate from all other persons concerned with the promotion or utilisation of the practice. However, I can speak to the process the Ministry of Justice undertook to make this decision.

I turn first to that instrument. Under the Justification of Practices Involving Ionising Radiation Regulations 2004, the Lord Chancellor has the powers as the nominated justifying authority to determine whether the individual or societal benefits of this practice outweigh the health detriments, and therefore whether it can be justified. Following a thorough statutory application, consultation and decision-making process, the justifying authority has determined that the Home Office's proposed practice was a new class or type of practice and that this can be justified, subject to the following conditions.

The first condition is that scientific age assessment involving ionising radiation is limited to radiography of the third molar and/or of the hand and wrist only. The use of computed tomography, or CT, scans for the purposes of assessing age is not permitted. The second is that the results of radiography of the third molar and/or of the hand and wrist must be used to assess only whether there is more support of the claimed age of the age-disputed person, or the age that assigned social workers have assessed them to be following a Merton-compliant age assessment. A likelihood ratio approach must be used to compare the weight of evidence.

The Home Office has committed to ensuring that all exposures are appropriate under the relevant legislation. The Home Office is also committed to exploring the viability of non-ionising scientific methods of age assessment, with the aim of eliminating the use of ionising radiation in age assessments if and when the effectiveness of such alternative methods is validated. The justifying authority notes this commitment and encourages the Home Office to cease using X-rays when alternative methods are validated.

The Lord Chancellor wishes to thank the consultees for their detailed and wide-ranging contributions in helping him make his decision, and the Secondary Legislation Scrutiny Committee for its thorough scrutiny of this statutory instrument.

I turn now to the Home Office instrument—the Immigration (Age Assessments) Regulations 2023. These regulations are being introduced to improve our current age assessment process, which is under pressure from rising numbers of age disputes, and relate to the introduction of scientific methods of age assessment. Since 2017, there has been an upward trend in the number of unaccompanied children entering the UK. In 2019, 3,775 unaccompanied children applied for asylum. In 2022, this had risen by 39% to 5,242. There has also been a rise in the number of age disputes; between 2016 and June 2023, there were 11,275 age disputes raised and subsequently resolved following an age assessment, of which nearly half—49%, 5,551 assessments—found the individual to be an adult.

Age assessment is a complex and difficult task. Many unaccompanied young people claiming to be children arrive in the UK without official documentation. While some are undoubtedly under the age of 18, in many instances it is not clear-cut. It is an unfortunate reality that some individuals misrepresent their age to gain an unfair immigration advantage. The public would rightly expect us to strengthen our processes accordingly.

The introduction of scientific age assessments is intended to improve our age-assessment system by providing additional biological evidence to aid better informed and more thorough decisions on age. Scientific age assessment will be one piece of evidence used alongside the existing Merton-compliant age assessment process, which is a holistic, social worker-led assessment. Importantly, the UK is one of very few European countries that does not currently employ scientific methods of age assessment. These regulations pave the way to the UK being more aligned with international practices.

This instrument specifies scientific methods for age assessment purposes, which are magnetic resonance imaging of the clavicle and the bones of the knee and radiographs of the lower wisdom teeth and the bones of the hand and wrist. These images will be used to assess the skeletal and dental development, or maturation, of the bones and teeth. These methods have been recommended by the Age Estimation Science Advisory Committee.

Once scientific methods have been specified, where an age-disputed person refuses to consent, without reasonable grounds, to the use of those methods as part of the assessment of their age, a decision-maker must take into account that refusal to consent as damaging the age-disputed person's credibility. This is referred to as "negative inference". The damage to credibility included in this instrument is only for the purpose of deciding whether to believe any statement they made that is relevant to the assessment of their age, not for deciding the person's credibility in their wider immigration claim.

The Home Office considers negative inference appropriate and proportionate to deter individuals who deliberately misrepresent their age in order to game the system. A refusal to consent to a specified scientific method of age assessment without reasonable grounds would not automatically preclude the individual being considered a child. That refusal would still need to be taken into account alongside other relevant evidence as part of a comprehensive, holistic age-assessment process by social workers.

Noble Lords should also note that there has to be reasonable doubt about an individual's age for them to go through the age-assessment process and be reassured that those who are clearly children will be identified at the initial age-determination process at the border.

I should note that the Supreme Court judgment in relation to the UK's agreement on the relocation of individuals to Rwanda bears no impact on the Immigration (Age Assessments) Regulations. Protecting genuine children, preventing abuse of the immigration system by those who knowingly misrepresent their age and improving our asylum system overall remain a priority for the Government.

I look forward to hearing the views of this House on the instrument before us today. I commend both sets of draft regulations to the House. I beg to move.

Amendment to the Motion

Moved by ***Baroness Brinton***

At end insert "but that this House regrets that (1) the Regulations are premature as the policy is still under development, (2) it is unclear whether a person can freely consent to the specified tests, (3) there is no defined mechanism for the Secretary of State to monitor and review the policy, and (4) neither an impact assessment, nor costs associated with the Regulations, have been presented to Parliament for scrutiny; and calls on His Majesty's Government to withdraw the Regulations until the policy has been developed in full and an impact assessment and costings have been provided to Parliament."

Baroness Brinton (LD): My Lords, I have laid a regret amendment to both the Motion on the Justification Decision (Scientific Age Imaging) Regulations and the Motion on the Immigration (Age Assessment) Regulations. I did not do this lightly but believe that the Government are contradicting themselves in moving ahead with legislation that medical and dental experts say should not be used yet. Despite substantial discussions on amendments during passage of the Illegal Migration Bill, many of which were supported across the House, when faced with the evidence on whether medical evidence, such as X-rays of wrist bones and third molars, was reliable, the noble Lord, Lord Murray of Blidworth—I am pleased to see him in his place—said on 12 June at the Dispatch Box:

"I assure the noble Baronesses, Lady Lister and Lady Brinton, and other noble Lords that the regulation-making power will not be exercised until the science is sufficiently accurate to support providing for an automatic assumption of adulthood".—[*Official Report*, 12/6/23; col. 1814.]

So, can the Minister please explain what changes have happened in the science world in the past six months to change the Government's approach on this?

Further, there is no provision in the SI for future monitoring and review of the policy. The Explanatory Memorandum for the age-assessment SI quotes the contested teeth and bone measurement and states:

"As per the AESAC report, the Home Office will not use the scientific methods to determine an age or age range, but rather use the science to establish whether the claimed age of the age disputed person is possible. This will be done by determining which hypothesis the science is more supportive of; the hypothesis that the assigned age by the social worker is possible versus the hypothesis that the claimed age is possible".

The Secondary Legislation Scrutiny Committee in its 55th report for the 2022-23 Session criticised both sets of regulations. It states:

"The Government did not provide an Impact Assessment or any estimates of the costs, stating that 'the policy and design are still under development'. This is not the way in which a policy should be made; it should only be brought forward once its costs and wider impact have been analysed".

6.15 pm

The Government rely heavily on the AESAC report *Biological Evaluation Methods to Assist in Assessing the Age of Unaccompanied Asylum-seeking Children*, but they minimise that report on the technology outlined in the SI. Recommendation 8 in the executive summary states:

"Dental and bone images should be acquired by those with the relevant training and expertise and reported by those with expertise in interpreting images for age estimation".

On radiography, paragraph 4.18 states:

"However, it is the view of the committee that there is as yet insufficient research undertaken to demonstrate the validity of MRI to allow this method to be used with confidence".

Paragraph 4.24 states:

"the interim committee urges a move away from the use of radiography as soon as the research evidence makes it feasible to do so".

Paragraph 4.39 states:

"Caution is advocated in the use of a methodology that is not designed for the purpose to which it is applied and against which it has not been tested adequately. Therefore, further validation of the approach is advocated before it could be considered for age assessment in UASC".

Finally, paragraph 10.8 states:

"The interim committee recommends further investigation into development of the following methods to assist with the assessment of age"

and goes on to cite,

"third molars … hand/wrist ... Baseline assessment of accuracy and repeatability of the Merton-compliant age assessment process … use of the likelihood ratio to compare the relationship between claimed age and Merton assigned age via biological methods".

They are all referred to in these SIs.

The AESAC is laying out the investigation and research that must be done to give confidence that these methods can be relied on in the future. These SIs are not just about seeing if something is possible, but the Home Office's committee says much detailed work needs to happen first. Can the Minister say what further published evidence there is to support the introduction of these methods since that report was published just over one year ago?

What about the concerns of the Children's Commissioner and the Age Estimation Science Advisory Committee regarding the consequences should a child refuse to consent to imaging? The Illegal Migration Act's chilling clause states that any refusal would result in a child automatically being deemed to be an adult, but the Children's Commissioner raises concerns about competence. A child under 18 is deemed not to have competence in order to understand what that refusal means. Do children under 18 have the right to truly independent support to guide them through the process? The Children's Commissioner has noted that no child rights impact assessment was carried out on the implementation of using these biological methods for age assessments and this SI. Is that correct? If so, why are the Government moving forward on a matter that could well breach the UN Convention on the Rights of the Child?

Ministers referred frequently to international comparisons, in particular, practice in some European countries. It is important to compare the safeguards in the European Asylum Support Office's formal guidance for member states, which was published in 2019, just before the UK left the EU, with those in these SIs, the Illegal Migration Act and the impact assessment on child rights that was presented to your Lordships' House the night before we debated it on Report in July.

We need to use that CRIA from July as being the best possible evidence of what should be in a child's right assessment. That assessment says that the Home Secretary determining that

"the science and analysis is sufficient to support providing for an automatic assumption of adulthood … would bring the UK closer to several European countries like Luxembourg and the Netherlands".

However, the EASO guidance for Europe says this about the age assessment process:

"In applying benefit of the doubt, the applicant shall be considered to be below 18 years and, if unaccompanied, a guardian/representative shall be immediately appointed".

It also states that the best interests of the child

"shall be observed from this point onwards until conclusive results point out that the applicant is an adult".

It is evident from both the Bill's Explanatory Notes and the CRIA from the then Illegal Migration Bill that this Government do not plan to follow either.

The CRIA says this on page 13:

"The Bill includes a regulation-making power to make an automatic assumption that a person is an adult if they refuse to undergo scientific methods of age assessment without good reason".

How does that equate to the benefit of the doubt and the best interests of the child? It does not. By contrast, the EASO guidance says:

"The refusal to undergo the assessment should not imply an automatic consideration of age of majority".

Frankly, the CRIA makes an absolutely unforgivable error in saying this:

"The age assessment clauses aim to … avoid the safeguarding issues which arise if an adult is wrongly accepted as a child and accommodated with younger children to whom they could present a risk".

Under the Children Act, the responsibility for safeguarding rests always with the responsible body—in this case, the Home Office, the Department of Justice or a local authority carrying out an assessment—to ensure that all supposed minors are safeguarded at all times. If there are such worries, those whose age is doubted should be kept separately from clearly younger children. They should not be housed with adults either, which would deal with the issue that the Minister raised at the Dispatch Box earlier.

I look forward to hearing the Minister's response to these issues: the points raised by the Home Office's AESA committee and where the research that it demanded can be found, given that it tabled the SIs; the Children's Commissioner's concerns about the belief that the rights of children can be protected, especially in relation to competence and consent; and why, if this Government want to follow certain European countries, they are not following the safeguards for children that those countries have already put in place. If there are no clear answers, these two SIs are not yet ready to be put on to the statute book. Science and medicine, as well as the fundamental rights of children, are under threat. I urge the Government to withdraw the SIs until the deficiencies of evidence can be presented to Parliament. I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I am most grateful to the noble Baroness, Lady Brinton, for tabling her regret Motion, which sets out so well why these regulations should be withdrawn. Having challenged the proposals to use X-rays in the sensitive matter of age assessment in both recent immigration Bills in the early hours of the morning, I find it a relief to be debating the matter today at a civilised hour. The noble Baroness, Lady Neuberger—a fellow veteran of those debates—very much regrets that she cannot be here in time to speak but she has authorised me to speak on her behalf. Some of what I say will repeat points that have already been made but they are important and bear repetition.

It is unclear to me why these regulations are being brought forward now, given that the Explanatory Memorandum to the Home Office regulations states that

"the policy and design are still under development"

and gives that as a justification for the lack of an impact assessment, as the noble Baroness, Lady Brinton, pointed out. This clearly did not impress the SLSC, which described it as "sub-optimal policy-making". It suggested that we might wish to press the Minister on why this approach was taken and to provide a clear indication of the costs and wider implications for health service provision. As the Minister will have read its report, no doubt he is briefed to provide a response, although the Minister in the Commons failed to do so when that point was raised.

The committee was similarly unimpressed with the lack of real consultation. In its written questions to the Home Office, it asked various questions about what the Home Office described as engagement with key stakeholders. The response simply said,

"the MoJ to answer this section",

but answer came there none in the MoJ statement other than reference to a statutory consultation to which it had just three responses. Can the Minister please enlighten us now about the responses to the engagement with key stakeholders and tell us who they were?

One point raised in response to the MoJ's statutory consultation that is worth noting here is the poor representation from the dental community on the Age Estimation Scientific Age Committee, considering that dental X-rays are one of the proposed practices. It was the British Dental Association that first contacted me with regard to the age assessment clauses in the then Nationality and Borders Bill. It is just one of a number of professional bodies that have raised concerns—notably, the Royal College of Paediatrics and Child Health, the BMA and the British Association of Social Workers have also done so—together with children's and refugee organisations. They are surely stakeholders so what engagement was there with them? Why do their concerns appear to have been ignored?

What particularly struck me when we debated the clauses giving rise to these regulations were the ethical concerns raised by the BDA and the RCPCH at the prospect of the use of X-rays on children and young people without any medical justification. Those concerns have not been allayed. One line of justificatory argument used by the Government and the Minister is that the use of X-rays is in line with common European practice. However, the Helen Bamber Foundation, whose earlier work was so important in challenging the Government's figures on the number of adults posing as children, has questioned that line of argument, as the SLSC notes.

[Baroness Lister of Burtersett]

According to the foundation, a growing number of legal decisions in Europe have held that the scientific methodology is not sound enough to be relied on. It quotes the Council of Europe as concluding this:

"There is a broad consensus that physical and medical age assessment methods are not backed up by empirically sound medical science and that they cannot be assumed to result in a reliable determination of chronological age".

The CoE points to evidence of their harmful impact on the physical and mental health and well-being of those undergoing age assessment and thus advises that their use

"should be reduced to a minimum"

and should

"remain a measure of last resort".

Although the SLSC did not feel able to assess the strength of the arguments around international comparisons, it expressed its expectation that the Government take into account any changes in the legal position or practical implementation elsewhere, given that they have cited international approaches in support of the policy. Will the Minister give us an assurance that the Government will do so?

Another argument used in the Commons debate on the regulations was that Merton assessments are very time-consuming, yet it has also been emphasised that scientific methods, which all are agreed cannot provide a definitive answer, will be used alongside Merton assessments; presumably that will make the whole process even more time-consuming. Forgive me for my cynicism but I cannot help but fear that, ultimately, the plan is to replace Merton assessments with so-called scientific methods. Can the Minister give us a categorical assurance that that will not be the case?

A critical issue mentioned by the noble Baroness, the SLSC and those submitting evidence to it concerns consent. In its response to the committee's questions on the subject, the Home Office pointed out that the regulations are made under the Nationality and Borders Act, not the more recent Illegal Migration Act. However, that is not of itself sufficient to assuage concerns. Although it is welcome that the Home Office does not feel ready to go ahead with a lack of consent having automatic consequences, the Children's Commissioner is pressing for an assurance that the power will not come into force at all.

6.30 pm

The fact is that, to quote the Explanatory Memorandum,

"decision-makers must take refusal to consent to the use of the methods specified without reasonable grounds into account as damaging"

to a person's credibility, alongside other relevant evidence—or negative inference, as the Minister put it. The SLSC was clearly sceptical as to whether this was sufficient to meet the concerns raised, including by the AESAC and the Children's Commissioner, about supposedly informed consent. Perhaps the Minister would like to comment on that.

I would also like to press the Minister on the meaning of "reasonable grounds" or "without good reason" for refusal to consent. Both phrases are used in the Explanatory Memorandum, but nowhere are we told what would constitute reasonable grounds or good reason. Given the relevance to the operation of these regulations, it is not good enough to expect us to wait until regulations are tabled under the Illegal Migration Act, as the Explanatory Memorandum says they will be.

In its report on the latter Bill, the Joint Committee on Human Rights commented on the Home Office's failure to set out what would constitute a reasonable ground for refusal and called on the Home Office to issue guidance as soon as possible setting out what would constitute reasonable grounds for refusing consent. Has such guidance been drawn up? If not, why not? If so, why has it not been shared with Parliament? The absence of such public guidance, in my view, constitutes yet another reason why these regulations should be withdrawn.

The operation of the refusal to consent provisions needs to be a key part of the monitoring of the age-assessment provisions. The SLSC underlines that close monitoring and review, with adaptation as necessary, are "vital" and invites us to question the Minister on how this will be achieved. The Explanatory Memorandum simply refers to "internal monitoring and review". What form will this monitoring take, and can we have an assurance from the Minister that the results will be reported to Parliament, given the high level of concern?

In conclusion, I strongly support this amendment, for the reasons set out in it and that I have discussed, but also because the whole exercise is based upon a false premise about the proportion of age-disputed children found to be adults and apparent lack of concern about the safeguarding issues arising when children are wrongly classified as adults, as raised by the interim AESAC. Newspaper reports have suggested that this can lead to children wrongly being put in adult detention centres, or even adult prisons containing sex offenders, or made to share hotel rooms with adults. I have yet to hear a convincing response to the ethical concerns raised by professional bodies, some of whose members may be called on to operate medical procedures that they believe to be harmful in this context. I hope that today's debate will cause the Government to think again.

Lord Kerr of Kinlochard (CB): I know the convention of the House is that I should say it is a pleasure to follow two such brilliant speeches from the noble Baronesses, Lady Brinton and Lady Lister, but it is not actually a pleasure—it is intimidating; one fears the contrast. Mine will be an amateur contribution after those of two professionals.

I am grateful to the Secondary Legislation Scrutiny Committee for its report, particularly because it draws our attention to the evidence the Home Office gave in answer to its questions. The answers from the Home Office struck me as a little unsatisfactory and, in one or two cases, astonishing. With your Lordships' permission, I will give just one example, on the question raised by the noble Baroness, Lady Brinton, about the absence of the impact assessment. Here was the Home Office's answer:

"The Home Office has not produced"

an impact assessment

"due to the uncertainties regarding wider implementation"

of scientific age assessment

"within the end-to-end age assessment model".

If you can understand that, you are smarter than me. But it gets better:

"It is the Home Office's view to wait until we have an appropriate level of detail to better reassure and inform the public of our plans, especially given the controversial nature of the policy. As policy and operational development continues, the Home Office will take a view as to when it is appropriate to produce an impact assessment".

Well, that is nice of them. If you are buying a house, it is quite a good idea to have the survey done before completion of the deal. If one is buying shares, it is quite nice to see the prospectus for the sale of the shares before one makes the investment. And the purpose of an impact assessment is to accompany the legislative proposal and inform the legislator.

It is, of course, very important that the Home Office should monitor how these age assessments work out, but that is a completely different question from the need to provide an assessment ab initio of what the impact is expected to be. For the Home Office to say that it is better

"to wait until we have an appropriate level of detail to better reassure and inform the public of our plans, especially given the controversial nature of the policy",

is frankly absurd.

I have four questions for the Minister. The first is really a question from the Children's Commissioner in the evidence we have seen: can a child truly consent to a procedure if they know they may be punished if they do not consent? The Children's Commissioner thinks not. The young refugee, threatened with X-rays, might be bewildered, traumatised, frightened, and may not understand English; he may not understand the questions put to him or anything of what is going on. The Age Estimation Science Advisory Committee advised in January that

"no automatic assumptions or consequences should result from refusal to consent".

Why have the Government ignored what the committee said?

My second question is: how safe is the procedure? The committee is clearly uneasy. It says:

"The use of ionising radiation must be limited, with the ultimate aim of eradicating it".

That is the position of the Government's official advisers. The Council of Europe says that that the use of radiation for age assessment is

"in conflict with medical ethics and potentially unlawful".

My third question is: how reliable is the procedure? As the noble Baroness, Lady Lister, has mentioned, the British Dental Association does not like it at all. It believes that assessment using X-rays is inaccurate and unethical, and, as the noble Baroness mentioned, the Royal College of Paediatrics and Child Health, the BMA and the BASW all share that concern. As the noble Baroness also said, the Government themselves are aware, and admit, that the science is inaccurate. In their evidence to the committee explaining why they are not using the draconian automaticity procedures in Section 58 of this year's Illegal Migration Act but are instead using the provisions in last year's Bill, with the negative inference provision, they say that the procedure is not sufficiently accurate to permit using the 2023 Act. If that is so, how can it be accurate enough for using the 2022 Act, with the negative inference result detrimental to the interest of the refugee?

My last question is: who is to be responsible for carrying out this procedure? Last week, there was some alarm among local authorities when the Minister for Immigration seemed to suggest that the responsibility would fall to them. Who is to be in charge and if it is the Department of Health and the NHS, are they relaxed about the extra workload coming their way? An impact assessment might have looked into that.

The Government should shelve the regulations until they can: tell us how they are to work; conduct a proper public consultation; provide a normal impact assessment in advance; and answer our questions. I should have said at the outset that I used to be a trustee of the Refugee Council but I mention that now. Of course, I strongly support the regret amendments in the name of the noble Baroness, Lady Brinton.

Lord Winston (Lab): My Lords, in strong support of the noble Baroness, Lady Brinton, and the others who have already spoken in this debate, I would argue that this is primarily a matter of science. On the idea that this is a scientific assessment, it is not. We are using instruments developed by science but the assessment is certainly not a scientific one. I have six questions for the Minister.

First, with regard to bone age and the assessment, can the Minister give us the range for any particular ages? What assessment has been made of the confidence limits and the error bars in this? Without those statistics, you cannot possibly have such a test. I do not believe that these have been published but perhaps I am wrong and he can tell us otherwise.

Secondly, can the Minister tell us what the preceding situations are with those immigrant children? For example, what diet were they on before they came in? Did they have normal calcium in their diet or were they deficient in it? Did they have other issues which might have changed their bone age? That is quite possible.

Thirdly, what is their hormonal status? As we know, some children have pituitary tumours which will change their bone age and these would not be discovered by an X-ray of the wrist or, necessarily, of the lower part of the skull and the jaw. There would be no reason for that child to have symptoms, so that would have to be dealt with as well. There are many reasons why age changes, not least because of mitochondrial activity. Is the noble Lord aware—he might have realised this—that about a year and a half ago we had a Select Committee inquiry on ageing? The ageing process starts very early in life and among the things we had were the hallmarks of ageing. Horvath's clock, which includes mitochondrial age, for example, has 353 different points which give rise to ageing, yet we still cannot determine somebody's age accurately within about five years on any of these bases. Of course, it is better with X-rays but certainly not something which we should really be considering in this situation. The diet of that child is most important.

I also suggest to the noble Lord that we have used an assessment in pregnancy which is now regarded as fallible. For a long time, we looked at bone age of

[LORD WINSTON]
babies in utero; for example, by looking at the length of the femur. We now know that all those publications, which resulted in us again and again delivering babies at a certain time, are totally flawed and those assessments are no longer used. It is a great pity that the noble Lord, Lord Patel, who has great experience in this area, is not here but he and I absolutely agree on that. Again, we say that we have to be very much aware of bone assessment.

There are two other issues which have not come up in this debate. I am going to be quick. The risk of ionising age radiation is serious. How do we know that a child might not need another X-ray later on for a medical condition, in which case there will be an accumulative risk, or perhaps has had ionising radiation before getting to the United Kingdom or on their way here? That is one of the issues.

Lastly, the issue of informed consent has not been fully described here and we need to discuss it. The autonomy of the child, or the parent on behalf of the child, is critical here. What does the noble Lord suggest is done if, for example, they X-ray the baby or child's wrist and find a tumour in the bone? Do they then proceed to undertake some form of medical treatment? Suppose that that tumour is totally benign and could be living there indefinitely, without any harm to the child, but the child then has surgery which would not actually be necessary. That is not just a pretend risk. We really have to consider the risk of scanning people without clear medical evidence.

6.45 pm

Every single medical intervention, even taking blood, carries a risk which can, on rare occasions, be very serious for the person who is having it. Informed consent means that if we must take X-rays or do MRIs, or any other kind of investigation, we must make sure that we have explained that risk to the patient or to the person. Unless it is a medical procedure, we have to accept that this is not acceptable. I would therefore certainly go through the Lobby if the noble Baroness decides to have a Division on this matter.

Baroness Hamwee (LD): My Lords, I follow all the previous speakers, including that consummate professional, the noble Lord, Lord Kerr of Kinlochard. I have some similar questions for the Minister. I will try to edit as I go so as not to be too repetitive.

I started by wondering whether the Home Office could possibly be in a position to bring forward and implement these instruments. The GOV.UK website shows the Home Office as still seeking to recruit members to the Age Estimation Science Advisory Committee: a behavioural scientist with expertise in interview techniques and someone with expertise in children's social services. Is that recruitment still going on? The website shows the closing date as having been December 2022. These areas of expertise are surely crucial.

In this contentious area, does bringing forward instruments fall within the "doing everything it takes" message? How far have the Government got in preparing for these biological techniques? A few days before Prorogation, I asked a Written Question about the estimated cost of using X-rays, MRI and any other scientific methods provided by the legislation. The Written Answer, which I was told was a holding answer—because we were of course running out of Session—was:

> "The Home Office does not yet hold this information. Work is ongoing to determine the level and type of capacity required to support the imaging service".

Then on 24 November, a few days ago, I received what was described as "a full response". I was surprised that it was followed up by letter but here it is. I will not repeat the two sentences I have just quoted, because they are exactly the same. The letter goes on:

> "It is anticipated that the service will then"—

that is, after the ongoing work—

> "be subject to a competitive procurement process, which will provide final clarity on costs".

No wonder there is no impact assessment giving costs.

On Report on the Illegal Migration Bill, the noble Lord, Lord Murray, as my noble friend said, talked about the regulation-making power not being exercised

> "until the Secretary of State is satisfied that the science and analysis are sufficient to support providing for an automatic assumption of adulthood".

He also said that the Government will

> "continue to seek scientific advice"

to ensure the regulations

> "are based on a firm evidential basis".—[*Official Report*, 5/7/23; col. 1239.]

Can the Minister say whether the chief scientific adviser to the Home Office and AESAC have provided that basis? One must assume that the Secretary of State—either the Secretary of State in office when the SIs were published or the current one—was appropriately satisfied.

The interim committee in October 2022, which is where the website took me, dealt with proposing an age range and assessing whether the claimed age was possible. I am repeating what my noble friend has said because it is a really important point. The committee also recommended that

> "no automatic assumptions or consequences should result from refusal to consent"

to procedures—if that is the right term, because it is certainly not "treatment". Then, of course, legislation we passed through Parliament allowed for both.

During the passage of the same Bill, the noble Lord, Lord Murray, said, in response to my noble friend Lord Paddick, that refusal to consent can be treated in a variety of ways,

> "which will be described in the regulations".—[*Official Report*, 12/6/23; col. 1817.]

Where can we find those ways? They are not in the version of the regulations I have been reading. He also said that it is

> "crucial that we disincentivise adults from knowingly misrepresenting themselves as children".—[*Official Report*, 12/6/23; col. 1812.]

I note the word "disincentivise"; we have heard a lot about deterring immigrants. However, he then said:

> "I certainly would not compel any child to participate in age assessment".—[*Official Report*, 12/6/23; col. 1815.]

The problem is that the consequences of refusal are very close to compulsion.

During the passage of the then Nationality and Borders Bill, some of us had a very helpful briefing on age assessment arranged by the Home Office and chaired by the noble Baroness, Lady Black of Strome, who was then, as she described herself, the interim chair of the interim committee. We were given assurances that all information would be triangulated, so I ask for an assurance that the introduction of these techniques does not give them any particular status compared with—to quote an email from the Home Office I received following the briefing—

"views from a psychologist, or any other person with a role in the age-disputed person's life".

That speaks for itself.

During the passage of the two Bills the House discussed—not always at a user-friendly hour—the issue of consent linked with capacity and ethical considerations. By definition, the techniques do not benefit the child so it will be interesting to hear how they can be ethical. The House also discussed the culture, background and ethnicity of the young people seeking asylum in the UK who may be subjected to these techniques. I was glad to see that the interim committee report made it clear that socioeconomic factors and ethnicity affect the timing of development.

Home Office guidance acknowledges that

"physical appearance is a notoriously unreliable basis for assessment of chronological age" .

The committee report said that "any methodology should" minimise

"any health risk, whether physical or psychological",

and that there are many reasons

"not to give consent for biological age assessment … not linked to concealment".

Is the Home Office guidance being changed to fit the current policy? I doubt that many adults, were they in the same situation, could give informed consent. They could well be too traumatised to do so. We should also be aware that a good many asylum seekers come from countries where "medical procedures" are an instrument of torture.

The Secondary Legislation Scrutiny Committee report, of course in restrained language, was pretty damning. It pointed to the absence of the impact assessment, which has been referred to. The Explanatory Note to the instrument says that

"no, or no significant, impact on the private, voluntary or public sector is foreseen"

as the reason for not producing an assessment. Surely impacts are foreseen; they must be foreseen, including impacts on resources, with staffing and equipment diverted from the NHS for one. If the Minister cannot give a cost or range per person examined, can he give a unit cost for each application of each technique? Can he help the House on whether the health staff are available and whether they are willing to implement these techniques?

The scrutiny committee said that it is "vital"—not a term I can recall seeing before in such a report—

"that the Government closely monitor and review the policy and adapt it as necessary".

The committee is quite right in saying that

"The House may wish to question the Minister"

on monitoring and evaluation. We do. When can we expect this and what can we expect by way of keeping Parliament updated?

The committee badges the regulations as "politically or legally important". They are politically and legally contentious too. The techniques are "fraught with difficulty", to use the words of the Advocate-General for Scotland during debate on the first of the two Bills. The difficulties are not solved by these regulations, which is why we cannot support them.

The Lord Bishop of London: My Lords, I promise that I will be brief. I thank the noble Baroness, Lady Brinton, for moving this regret amendment and thank all those who have spoken so far and so well. I thank the noble Lord, Lord Winston, for pointing out that this is not science; it is the use of scientific instruments. My two concerns relate to consent, as many have spoken about, and to the workforce.

We have spent a long time in the health service over the last couple of decades to improve the way we consent and how people are able to give informed consent. Most of us going for tests and operations will have pages of documents that we will be taken through and then sign. I have concerns around whether people will truly consent. The Royal College of Paediatrics and Child Health has said that

"informed consent is fundamental to all medical practice, and by definition must be free from duress … This directly opposes both the principles of informed consent and the recommendations set out by the independent body commissioned to look at the policy—the Age Estimation Scientific Advisory Committee".

Questions of capacity have also been raised here. Who will make the decision on behalf of a child if they have no legal guardian present? I am concerned about not only the issue of the X-rays but the impact of being asked to do this psychologically, emotionally and mentally. Could the Minister tell us what consideration has been given to safeguarding and support during and after medical examinations, especially in relation to consent and capacity?

My final point relates to capacity. The House does not need to be reminded that the health service at present—both the estate and workforce—is under pressure. The question is: who will take the X-rays? Will it be radiographers or other trained professionals? Where will the kit be that will be used? I also have a concern around those professionals undertaking this. Has the department consulted with professional bodies, such as those for radiographers? Has the Home Office developed plans for capacity? If so, has this been done in partnership with the NHS and professional bodies?

Lord Scriven (LD): My Lords—

Noble Lords: Minister!

Lord Harris of Haringey (Lab): My Lords—

Noble Lords: Oh!

Lord Harris of Haringey (Lab): My Lords, as the Minister has not risen, I first declare my interest as the chair of the General Dental Council. I want to make two very brief points, which I do not think have been addressed by the discussion so far. First, the question has to be answered on who is going to carry this out. Are they going to be registered professionals? I should

[Lord Harris of Haringey]
say, incidentally, that in the definition of the noble Lord, Lord Kerr, I am on the amateur breadth of this, so I am not speaking as a professional. If they are a dentist, they should be registered by the General Dental Council. If they are a radiographer, they should be registered under the HCPC.

Lord Winston (Lab): Radiologists.

Lord Harris of Haringey (Lab): Radiologists should be properly registered. Will that be carried out by people who are professionally registered? If they are professionally registered, are they carrying this out as part of their profession or as an agent of the Home Office? If they are carrying it out on behalf of somebody else, how does that square with their professional obligations and requirements? Again, that has not been clarified. Can the noble Lord clarify that point, and if it is not going to be carried out by a regulated professional, is it legal for it to be carried out by somebody else? It is not legal for somebody to carry out something which purports to be dentistry if they are not a registered dentist, and the same will be true for radiographers. These issues which should be clarified.

7 pm

I am sorry—I appreciate that the hour is getting late—but this policy is a mess. I suspect that the Minister is persisting with this only because of a desire to be seen to be doing something about this problem, but this will not solve it; it will create more confusion. Given the extraordinary comments we have had about consent and whether someone can conceivably give unfettered, informed consent under circumstances in which they are being told that it will be counted against them, this is a mess and the Government should withdraw it.

Noble Lords: Front Bench.

Lord Scriven (LD): I will raise one point which has not been raised. This Chamber should not be legislating when legislation is not required, and the Government have not set out what the problem is and what the statutory instrument will solve. The Minister was very clear in describing the number of unaccompanied children seeking asylum, and he was also very aware of the numbers where there was a dispute over age. He then went on to say that by using the Merton assessment, nearly 49% were deemed to be adults and 51% children. That does not seem to be a system in disarray, but a system that weeds out those who deliberately try to deceive regarding their age.

The key question to determine the problem which the Minister has not answered, and which I would like him to answer, is: of that 51% since 2016 who have been deemed to be children by the Merton assessment, how many have then been found to be adults? That is a key question because if that figure is minimal, there is no need for the statutory instrument because there is not an age assessment problem to be solved.

Lord German (LD): My Lords, some things have been spoken of in this debate, but what is absolutely clear is that in every element the Government have provided more and more uncertainty. We have before us a set of regulations which are clearly down to a Government seeing themselves in a hurry to get things done in a way which might satisfy certain elements of its own party, but which is nothing to do with the case in question, which is about age assessment.

I just want to ask the Government four questions arising from the United Nations Convention on the Rights of the Child, which the Government have signed up to and to which we are party. First:

"An age assessment should only be conducted if it is in the best interests of the child".

Perhaps the Minister in replying can explain to us why this is in the best interests of a child.

Lord Murray of Blidworth (Con): Perhaps the noble Lord can explain why scientific methods are used to assess age in, among other countries, Sweden, Norway, Finland, France, Germany and the Netherlands.

Lord German (LD): The information provided by the Council of Europe, which of course does not reflect the notifications we have received from the Government, describes the legal cases which have been taken against the proposals made by some of those states and which have in fact been found to be in contravention of the very convention I am talking about.

Secondly:

"Age assessment should not take place without the child's and their guardian's informed consent".

How will that consent be provided and how is it meant to be independent?

Thirdly:

"Children undergoing age assessment have a right to be informed of their rights during the procedure, the purpose, steps and duration of the procedure, and to be assisted by a legal representative and/or guardian".

What steps are the Government taking to provide that support for these children, so we are clear about it?

In conclusion, "sub-optimal" is the word provided by our Secondary Legislation Scrutiny Committee. Everything that has been said about what we have in this House today suggests that it is below optimal.

Lord Ponsonby of Shulbrede (Lab): My Lords, I will discard most of my speech because all the points I was going to make have been made articulately. We will support the noble Baroness, Lady Brinton, if she chooses to test the opinion of the House and I thank her for the thoroughness with which she introduced her amendment to the Motion. I agree with her that this SI is not yet ready to be put on the statute book.

The Minister set out the figures, which have been repeated a number of times as the debate has progressed. A number of questions were put to him about the issue of consent, the state of the European Convention on Human Rights, and answering the questions put by the Children's Commissioner and other bodies which have expressed their extreme concern about the measures being put forward by the Government.

The noble Lord, Lord Murray, just intervened, giving examples of European countries which do some form of tested age assessment. However, this is of

course a contested area in many European countries; we are not unique in this being a politically contested issue.

Noble Lords also made a point about the review mechanism that the Government propose to put in place so that, as this progresses—if indeed it does progress—the Government can keep an open mind about how effective it is and whether further changes in assessment methods need to be made. However, I want to conclude on a different point which no other noble Lord has made, and to talk slightly wider than the SIs themselves.

Last May, with my noble friend Lord Coaker, I visited the old RAF Manston airfield and the landing site, Western Jet Foil, in Dover harbour. I repeat my thanks to the noble Lord, Lord Murray, for facilitating that visit. What became apparent to me then is that all the political debate, including today's debate, is about the vast majority of young men who are potentially claiming to be under 18, and the impact that has on them. That is the totality of the political debate. However, there is another group of young men, which was drawn to my attention, who appear to the officials to be under 18 but are claiming to be adults. They are doing that because they want to work, either legally or illegally. Many of them will have started working in their home countries when they were 14, and they will have had a few years work under their belt and are coming here to better their prospects.

What tracking is there of those young men? I have raised this issue with the noble Lord, Lord Murray, and as far as I am aware, there is no tracking of them. Whether they are more likely to abscond once they go into the adult system or whether the Home Office tracks them at all, it is a significant, not an insignificant cohort. It was drawn to my attention when I made that visit and I will be very interested to hear the noble Lord's answer, maybe by letter, on how those young men are tracked.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords for their contributions to this interesting and insightful debate. I thank the noble Baroness, Lady Brinton, for her regret amendment, which I will obviously refute, because the introduction of scientific methods of age assessment is an innovative approach for the UK. It is entirely right that the Government take action to disincentivise individuals from deliberately misrepresenting their age in order to game the system, as well as to safeguard and promote the welfare of genuine children, who have a need to access children's services. Scientific methods provide additional evidence and create a more consistent system, and there is nothing inhumane about those objectives. I hope that noble Lords will consider each regulation on its merits, and I will do my best to answer all the questions. If I miss any, I will endeavour to write.

The question of accuracy has come up. Determining the age of a young person is an inherently difficult task. The Home Office is aware that there is no current single age-assessment method, scientific or not, that can determine an individual's age with precision. In answer to the noble Lord, Lord German, there is a risk of harm to both the age-disputed individual and to the public interest through misclassifying children as adults, or adults as children, which the noble Lord, Lord Ponsonby, referred to—I will come back to this. That is why the UK Government are taking steps to improve the robustness of the age-assessment process. Scientific age assessment will be completed alongside the current Merton-compliant age assessment, and the age-assessment process will remain a holistic assessment. The well-being of the individual will continue to be at the forefront. I am happy to say categorically to the noble Baroness, Lady Lister, that scientific methods will not replace, but will be used alongside, Merton. The noble Lord, Lord Winston, asked me how accurate these methods are. For X-rays, I do not know—I will find out—but for teeth X-rays it is two years either side. I will come back to this in more detail in a second.

On international comparators, to which my noble friend referred, the Home Office believes that the negative credibility inference in respect of someone's claimed age is necessary, logical and proportionate where a person refuses to undergo a scientific age assessment without good reason. It is important to note that negative consequences, such as automatic assumptions, are applied with variations by a number of ECHR signatories, including the Netherlands, Luxembourg, Poland, Slovakia and the Czech Republic. The UK is an outlier as one of the very few European countries that do not currently employ scientific methods such as X-rays as part of age assessments.

On our plans for operationalisation, the Home Office wants to specify these methods as soon as possible to pave the way for the introduction of scientific age assessments. The increasing number of age-disputed young people presents safeguarding challenges and puts additional pressure on children's services, which should be accessed only by genuine children. This is a new and complex process that the Government need to get right. The full plans for integrating scientific age assessments into the existing processes will be set out in good time, and full guidance and assessments will be provided. For now, the Home Office has welcomed the report from the Age Estimation Science Advisory Committee and is making clear steps to proceed with the recommendations and consider others.

Consent was raised by a number of noble Lords, including the noble Baronesses, Lady Brinton and Lady Lister, the noble Lord, Lord Kerr, and the right reverend Prelate the Bishop of London. To address the concerns regarding consent, I assure all that no X-ray or MRI image can or will be taken without informed consent from the individual. The Home Office will ensure that the individual has capacity, fully understands the process and is communicated to in a child-friendly and clear way. Interpreters will be available to assist with understanding information, and documents will be translated into a language the individual understands. If the individual refuses to consent to a scientific age assessment, they will continue to proceed with the current Merton-compliant age assessment. Those who are clearly children will be identified as part of the initial age assessment and not included in the cohort for an age assessment.

It is the Home Office's policy to refer individuals for an age assessment only when there is some doubt about their age—specifically, where that individual's

[Lord Sharpe of Epsom]
physical appearance and demeanour do not very strongly suggest that they are significantly over 18. This threshold is set purposefully high to ensure that individuals can be given the benefit of the doubt. As a result, only those whose ages are in genuine doubt would be referred for this scientific age assessment.

Baroness Bennett of Manor Castle (GP): My Lords, the Minister has repeated a statement he made in his introduction about it being only the clear-cut cases. Can he explain how, in the year to August, in just one city—Leeds—30 children arrived, having been assessed as adults by the Home Office on initial arrival, and were immediately identified by people in Leeds as children? Will those children not face the potential of ionising radiation and other medical procedures as a result of this regulation?

7.15 pm

Lord Sharpe of Epsom (Con): I am not familiar with the case that the noble Baroness refers to, so I am afraid I will have to look into it.

Individuals will be assessed for their fitness to undergo scientific age assessment, which will include consideration of both mental and physical health. The individual will not undergo scientific age assessment if they refuse to consent. Reasonable grounds for refusal will be set out in guidance and considered on a case-by-case basis. Appropriate adults, translators and others will be available to support the young person. If a young person is assessed as lacking the capacity to consent, they will not undergo any such methods and a negative credibility inference will not be taken.

Provisions under the Nationality and Borders Act 2022 allow for decision-makers to make a negative inference. As I have said, the Home Office considers negative inference to be proportionate to prevent individuals deliberately frustrating the system. There is precedent in other legislation of negative consequences being applied where an individual refuses to submit to a medical examination. For example, an individual may be asked to undergo a medical examination to determine their eligibility for employment and support allowance. If they fail to undergo such an assessment, they will be treated as ineligible. Therefore, consent can still be informed and freely given even if there is a negative consequence for a refusal to give that consent.

It is important to note that taking a negative inference from a refusal to consent does not result in an automatic assumption that the individual is an adult. Rather, the negative inference is taken into account as part of the overall decision on age. A decision-maker can still assess an individual to be a child following the holistic age-assessment process, even if they refuse to consent to scientific methods without good reason.

I will answer the questions from the noble Lord, Lord Ponsonby, and the noble Baroness, Lady Hamwee, about monitoring and review. The Ministry of Justice will monitor and review the Home Office's use of X-rays approved by this instrument and compliance with the conditions as per Regulation 10 of the Justification of Practices Involving Ionising Radiation Regulations 2004.

I would like to reassure the House that, as this is a new practice in the UK, the Home Office will monitor and review the policy to evaluate its success and make any changes necessary for its effective operationalisation. The Home Office will not do this in isolation but will continue to seek advice from the Age Estimation Science Advisory Committee and key stakeholders to support the process. Quarterly datasets including age disputes are already published on GOV.UK and, when scientific methods of age assessment are introduced, the Home Office will ensure that the relevant statistics are published alongside them.

The noble Baroness, Lady Brinton, questioned whether these regulations should be made before a full impact assessment and costings have been laid before Parliament. As I stated, scientific methods will be integrated into the current age-assessment process. A full impact assessment has not been produced at this point as it would not provide the rigour of economic value required at the early stage. The Home Office recognises the importance of transparency—please be assured that a full impact assessment will be prepared when appropriate, as my right honourable friend the Immigration Minister said in the other place.

I will go into the costs in a little more detail. As I have said, we could not provide the rigour of economic value that the impact assessment would require. Instead, the Home Office has produced an economic note that pertains to the narrow focus of the SI—the impact of introducing the specified methods for age-assessment purposes. We have decided not to publish this yet, as the information provided would be isolated from wider plans; it is the Home Office's view to wait until we have an appropriate level of detail to better reassure and inform the public of our plans. As policy and operational development continue, the Home Office will take a view on when it is appropriate to produce the full impact assessment.

Lord Kerr of Kinlochard (CB): I am rather surprised that the Minister has repeated the bits of the Home Office written evidence that struck me as a bit odd. The clue, surely, to the timing of an impact assessment is in the name: impact. It should be there at the start. We are not terribly interested in an impact assessment two or three years down the line. We would have liked to have one today.

Lord Sharpe of Epsom (Con): I take the noble Lord's point; obviously, I will take it back to the Home Office and make sure that it is well understood.

On the use of X-rays, I remind the House that the Ministry of Justice has determined the practice is justified under the Justification of Practices Involving Ionising Radiation Regulations 2004. The Ministry of Justice made this decision to justify the practice independently from the Home Office, as they are functionally separate on the policy of age assessment as required by the 2004 regulations.

Your Lordships will know that X-ray scans are commonly used in the UK for medical purposes by doctors and dentists. Although age assessment is for non-medical purposes, images will be taken by qualified professionals who are trained to minimise exposure to ionising radiation and any other potential risks. We

expect all professionals to abide by their own professional guidelines, as well as any set out in Home Office guidance, but medical professionals are required by the relevant legislation for ionising radiation.

The Age Estimation Science Advisory Committee suggests that any risk associated with this low level of exposure to ionising radiation is minimal when compared to the benefits of swifter, more informed age assessment in terms of both safeguarding and well-being.

Lord Winston (Lab): The word "benefits" applies to the subject who is being X-rayed, does it not? Can the Minister tell us what the benefits to that subject are because it does not apply otherwise?

Lord Sharpe of Epsom (Con): I am coming on to some more of the noble Lord's more detailed questions; I will endeavour to answer that question in a second.

The Ministry of Justice has undertaken a detailed consideration process to ensure that the use of X-rays is proportionate and justified. The noble Lord asked how we will ensure that the use of these scientific methods is ethical and not harmful to children. We have a statutory commitment to safeguard the welfare of children. One of the reasons for introducing scientific age assessment is to better protect against adults being treated as children in order to ensure that vulnerable children can swiftly access the support that they need. The use of ionising radiation is, for instance, highly regulated by the Justification of Practices Involving Ionising Radiation Regulations 2004, which require demonstration that the individual or societal benefits of their use outweigh any health detriments. For the methods that the Age Estimation Science Advisory Committee proposes, the ionisation risks are extremely low.

The Home Office will ensure that any methods used comply with all regulatory requirements and standards. AESAC suggests that radiation exposure is minimal when compared to the benefits of a more informed age assessment. For the purposes of the methods that the committee proposes, the ionisation risks are extremely low, as I have said. They are typically less than 0.001 of a millisievert for an extremity X-ray, such as the wrist, or 0.2 of a millisievert for a dental—I will not be able to pronounce this—X-ray. Those radiation risks relate to something like less than two hours on an international flight, I believe.

I turn to the AESAC advice and the automatic assumption. On the Secondary Legislation Scrutiny Committee's concern that the application of negative inference is contrary to advice provided by the Age Estimation Science Advisory Committee, let me assure the House that this is not the case. In answer to the noble Baroness, Lady Hamwee, I should also say that the Government's Chief Scientific Adviser, Patrick Vallance, and the Chief Medical Office, Chris Whitty, have supported this. The scientific advisory committee recommended that no automatic assumption or consequence should result from a refusal to consent. Taking a negative inference does not result in an automatic consequence; rather, the negative inference is taken into account as part of the overall decision.

I forgot to address the points raised by the noble Lord, Lord Winston, about various protected characteristics: environmental factors, race, diet and so on. We are conscious, of course, that methods to assess age such as bone development are affected by factors such as ethnicity, body mass, sex, puberty and so on. We are seeking scientific advice to explore this issue further and any steps we can take to mitigate these impacts. The Age Estimation Science Advisory Committee's advice suggests that, although skeletal maturation may differ slightly depending on ethnicity, there is also some evidence to suggest that differences in nutritional status, disease and social status may have more influence on maturation timings. In addition, dental development is less affected by such socio-economic factors; that is one of the reasons why the AESAC recommends using multiple biological areas of interest, which the Home Office is proposing to do.

I want to take this opportunity to thank the Age Estimation Science Advisory Committee for its report because, as I have set out, the science and analysis is being used as per the committee's recommendations. The Home Office will not use the scientific methods to determine an exact age or age range; rather, it will use the science to establish whether the claimed age of the age-disputed person is possible. It is key that methods used for age assessment have a known margin of error. Combining assessment of dental and skeletal development of multiple body areas is important as it increases the accuracy of the approach. The Age Estimation Science Advisory Committee advocates for a likelihood ratio method, which offers a logical and consistent summary of the evidence and permits greater confidence in the assessment of whether the claimed age is possible. The likelihood ratio is widely recognised as the appropriate way to summarise evidence, and this approach offers the best way forward for the introduction to scientific age assessments to strengthen our system.

The noble Lady Baroness, Lady Lister, asked who we have consulted. The Ministry of Justice consulted all the statutory consultees listed under the regulations, including the UK Health Security Agency and the Health and Safety Executive. The full list can be found in our decision document. In the review of the consultees, the Health and Safety Executive, the Office for Nuclear Regulation, the Environment Agency, the Scottish Environment Protection Agency, Natural Resources Wales and the Department of the Environment (Northern Ireland) have confirmed that this application falls outside their regulatory interests. However, the UK Health Security Agency, the Health and Safety Executive and the Food Standards Agency advise the following:

> "The decision to use X-ray imaging appears well considered and appropriate to minimise any individual's radiation exposure".

All exposures to ionising radiation will fall under the remit of the Ionising Radiation (Medical Exposure) Regulations, which place many responsibilities on those carrying out exposures. There should be careful consideration to ensure that the contracted parties carrying out the exposures conform to these regulations and that the predicted doses for both dental and wrist X-rays are appropriate estimates.

I have probably spoken for long enough—I have definitely spoken for long enough. I owe the noble Lord, Lord Ponsonby, an answer to his question about children pretending to be or behaving as adults. I will come back to him on that; I do not have the detail to hand, as your Lordships can imagine. I think I have

[Lord Sharpe of Epsom]
addressed the majority of the issues that were brought up. As I said earlier, I am grateful for noble Lords' constructive and helpful suggestions and questions. I trust that noble Lords will now recognise the need for this instrument; I assure them that the Government are fully committed to working towards a better-informed and more consistent age-assessment process. This instrument is essential to that aim; I therefore commend it to the House.

Baroness Brinton (LD): My Lords, I thank the Minister for his response. Unfortunately, I fear that many of the questions we asked across the House were not responded to. I heard very clearly that this has been designed as an innovative approach to discourage applicants but I also heard a lot of "We need to wait until we have more detail before we can tell you the answers to the questions that we want".

I refer right back to the beginning of this debate. The noble Lord, Lord Murray, gave an absolute assurance at the Dispatch Box that the regulation-making power would not be exercised until the science is sufficiently accurate to support providing for an automatic assumption of adulthood. These SIs do not do that—worse, the Government say that they know they are not ready. On that basis, I wish to test the opinion of the House.

7.28 pm

Division on the Amendment to the Motion

Contents 165; Not-Contents 86.

Amendment to the Motion agreed.

Division No. 1

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7.39 pm

Motion, as amended, agreed.

Immigration (Age Assessments) Regulations 2023

Motion to Approve

7.39 pm

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

That the draft Regulations laid before the House on 14 September be approved.

Relevant document: 55th Report from the Secondary Legislation Scrutiny Committee, Session 2022-23 (special attention drawn to the instrument)

Amendment to the Motion

Moved by ***Baroness Brinton***

At end insert "but that this House regrets that (1) the Regulations are premature as the policy is still under development, (2) it is unclear whether a person can freely consent to the specified tests, (3) there is no defined mechanism for the Secretary of State to monitor and review the policy, and (4) neither an impact assessment, nor costs associated with the Regulations, have been presented to Parliament for scrutiny; and calls on His Majesty's Government to withdraw the Regulations until the policy has been developed in full and an impact assessment and costings have been provided to Parliament."

Baroness Brinton (LD): I wish to test the opinion of the House.

7.40 pm

Division on the Amendment to the Motion.

Contents 164; Not-Contents 75.

Amendment to the Motion agreed.

Division No. 2

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Norton of Louth, L.
Offord of Garvel, L.
Owen of Alderley Edge, B.
Parkinson of Whitley Bay, L.
Patel, L.
Randall of Uxbridge, L.
Reay, L.
Roberts of Belgravia, L.
Sandhurst, L.
Seccombe, B.
Sharpe of Epsom, L.
Smith of Hindhead, L.
Stewart of Dirleton, L.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
Thurlow, L.
Trenchard, V.
True, L.
Tyrie, L.
Wharton of Yarm, L.
Williams of Trafford, B. [Teller]
Wrottesley, L.
Young of Cookham, L.

7.50 pm

Motion, as amended, agreed.

Public Service Obligations in Transport Regulations 2023

Motion to Approve

7.51 pm

Moved by ***Lord Davies of Gower***

That the draft Regulations laid before the House on 16 October be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, these draft regulations relate to arrangements to support the effective and efficient provision of transport services to customers, particularly in relation to rail passenger services. It will use the powers provided by the Retained EU Law (Revocation and Reform) Act 2023 to revoke what is called EU Regulation 1370/2007 and replace it with the Public Service Obligations in Transport Regulations 2023. In doing so, we will take advantage of the benefits of Brexit to put in place a regime which is better tailored to the transport sector in Great Britain, supporting the provision of services to customers. This will allow us to retain a flexible regime for contracting public transport services, separate to the mainstream procurement and subsidy regimes. It will provide greater clarity and certainty to industry by retaining the interpretive effects of relevant EU case law and underlying principles where this is in Great Britain's interest. In addition, it will streamline the existing regime by removing duplicative or unnecessary provisions.

I will start by providing some background information about these regulations. While the UK was a member of the EU, Regulation 1370/2007 created a bespoke procurement and subsidy regime for public service contracts in the transport sector. This was in recognition that such contracts are needed in the general interest of the public and cannot always be operated on an entirely commercial basis. The regulation contains some important exemptions from the complex rules surrounding subsidies and procurement. It recognises the special status of public passenger services as critical national networks. It also provides contracting authorities the freedom to let passenger services contracts more efficiently via simpler competitive processes, and when necessary, via direct award. This flexibility helps to minimise disruption to these important public services.

The intent of the regulation is to encourage competition, and this will remain the default process for the award of passenger services contracts. The regulation recognises, however, that in certain circumstances it will be necessary to award a contract without competition by instead making a direct award to maintain the continuity of essential public services; for example, the contracts which were put in place following the pandemic to secure train services. Discussions with experts from the transport sector have identified opportunities to remove some of the ambiguities and conflicting provisions in the regulation. This will provide greater certainty and clarity to industry and contracting authorities.

I now turn to the detail of the regulations. We are using this opportunity to use our post-Brexit flexibilities to revoke and replace Regulation 1370/2007. This will ensure that a robust and reliable regime for public transport service contracts is maintained, which is independent of the mainstream procurement and subsidy regimes. It will also increase efficiency by removing duplicative or unnecessary provisions and clarifying drafting wherever possible; for example, by defining terms which were previously left undefined in the EU regulation. The instrument will also bring the regime in Great Britain into compliance with the subsidy control chapter of the EU-UK Trade and Cooperation Agreement.

Crucially, this instrument will preserve the current powers to make direct awards of rail contracts, which would otherwise sunset on 25 December 2023, due to a pre-existing sunset clause within Regulation 1370/2007. This means that without this instrument, the Department

for Transport, as well as other contracting authorities such as Transport for London, would lose important powers on which we currently rely to award rail franchises. Leaving the EU has given us the opportunity to retain these important powers, and it is in the best interests of the railways in Great Britain that we retain the flexibilities they provide. The private sector has an important role to play to drive innovation and growth and we remain committed to returning to competition for rail contracts as soon as possible; however this instrument recognises that in certain circumstances it will be necessary to award a contract by making a direct award.

Additionally, this instrument will provide greater clarity and assurance to industry by retaining the interpretive effects of EU case law and underlying principles. Under the retained EU law Act, EU case law will no longer be binding on UK courts after 31 December 2023. Relevant EU case law relating to procurement notices and to in-life changes to contracts, which was not codified by the regulation, has been relied on for clarity by authorities and contractors. This case law is therefore being codified by this instrument as it provides helpful clarity. Likewise, EU principles will no longer apply to underpin public service obligation procurements from the year end. The instrument replaces these with principles based on the new mainstream procurement regime for England and Wales, and with principles based on Scottish procurement law for Scotland. Beyond the changes I have outlined, this instrument largely maintains the status quo. This will provide certainty, clarity and confidence to contracting authorities, operators and passengers alike.

This instrument will put in place a regime for the award of public service obligation contracts in the rail, light rail, bus and tram sectors which is tailored to the transport systems in Great Britain, while largely enabling contracting authorities and operators to continue operating as they do now by maintaining the default position of competitively tendering for public service obligation contracts. It will enable the Government to meet their international obligations and will ensure consistency with other domestic legislation, and crucially, it will retain important flexibilities in the way we award contracts, which would not have been possible had we remained a member of the European Union. I commend these regulations to the House.

Baroness Randerson (LD): My Lords, I thank the Minister for his introductory comments. These regulations are one set of many that will undoubtedly be required to amend legislation as we establish British legislation separately from the EU legislative framework. It serves to illustrate how complex this process is going to be, and how much intensive work by officials is being required in order to produce it. It also, by the way, illustrates that the original concept of the REUL Bill was absolute pie in the sky.

This is modelled on the principles of the Procurement Act, which itself had some issues for debate as it went through this House. I noted the difference in the way in which Scotland and Wales are referred to in these regulations, because in Scotland, procurement is stated to be devolved, but not in Wales, where procurement is embraced by the same system as in England.

8 pm

As the Minister knows as well as I do, if not better, rail and bus services and their management are devolved to the Senedd and the Welsh Government. Can the Minister explain what consultation has taken place with the Welsh Government on the terms in which these regulations are placed? Are they content with the way they have been put forward? For practical purposes, the Welsh Government make the decisions on the procurement of public service provision for rail and bus services in Wales. As I stated, the whole purpose of this instrument relates to rail and bus services, and it is a matter of great regret that the amount of money available for the public service procurement of these services is so very tight these days and has declined considerably.

The Government do not have a shining record on the procurement of anything—from PPE to HS2. Therefore, can the Minister give us an absolute assurance today that nothing in these regulations waters down the principles of transparency and fairness that were enshrined in the EU-based legislation? It may be expressed differently, but is there any intrusion on those basic principles? Can he give us an assurance that this is not, in any way, a second best?

Lord Tunnicliffe (Lab): My Lords, I welcome this instrument. The Government are right to permit the making of direct awards for PSO contracts and to ensure that they are able to meet the obligations under the EU-UK Trade and Cooperation Agreement. I have no intention of opposing the regulations.

I had a number of questions, but the Minister has already answered most of them—although I will not go as far as saying that he did so satisfactorily—and at this late hour, I do not intend to repeat them. Along with the answers he will give to the noble Baroness, Lady Randerson, I think that this will be sufficient debate.

Lord Davies of Gower (Con): I thank the noble Baroness and the noble Lord for their consideration of the draft regulations. I will turn to the points raised.

Regulation 1370 provides a bespoke, flexible procurement and subsidy regime for public service contracts, reflecting the fact that they are vital public services and cannot always be operated on an entirely commercial basis. Now that we have left the EU, we are able to preserve essential flexibilities and simplify the regime where possible, giving contracting authorities a strong basis for providing these key public services. Simply revoking the regime altogether would mean allowing to fall away direct award powers which provide government and franchise authorities such as Transport for London with important flexibilities in awarding rail contracts. That would create significant challenges in ensuring the effective operation of public transport services, particularly rail services.

Following privatisation 25 years ago, passenger numbers had more than doubled before the pandemic, rising more quickly than in most of Europe. The private sector has invested billions in new, modern trains and upgrading our stations—investment that would not have happened under nationalisation.

[Lord Davies of Gower]

It is the Government's intention to return to competition as quickly as possible. The intent of regulation 1370 is to encourage competition, so the default process for the award of a passenger services contract is primarily through competition. However, regulation 1370 recognises that, in certain circumstances, it will be necessary to award a contract without competition by instead making a direct award. The powers to award directly are not new but were due to expire under EU legislation. We feel that it is in the best interests of the railways and passengers in Great Britain to retain them, and leaving the EU has given us the flexibility to do so. We have committed to restart the competition for contracts as soon as possible, which will require stable market conditions and sufficient long-term certainty.

Engagement with the proposed amendments to regulation 1370 has been ongoing since early summer 2022. The key amendments to regulation 1370 were publicly consulted on as part of the plan for rail consultation. Stakeholders were generally supportive of the proposed amendments, and the Government response will be published shortly. We have held targeted engagement with key affected stakeholders on the amendments proposed in addition to those publicly consulted on. In addition to face-to-face meetings to talk stakeholders through the additional amendments and our reasoning, we have sent written detail for further consideration, including to rail partners, franchising authorities and bus and light rail stakeholders. The wide engagement enabled the Department for Transport to work closely with stakeholders affected by the instrument and address issues raised; for example, updating the definition of "rail" in line with survey feedback enabled us to achieve a broad consensus on the change.

The noble Baroness, Lady Randerson, raised the point about engagement and consultation carried out with the devolved Administrations. As a result of close engagement, both Scottish and Welsh Ministers have provided agreement to the regulations. My officials met with each of the devolved Administrations covered by this instrument on a regular basis during the formulation of the policy and the drafting of the instrument. We worked closely with the devolved Administrations to address any concerns, including detailed work on the SI with Transport Scotland, with the result that, following ministerial approval to the instrument, Scottish parliamentary agreement was received. I commend the Motion.

Motion agreed.

Vehicle Emissions Trading Schemes Order 2023

Motion to Approve

8.07 pm

Moved by ***Lord Davies of Gower***

That the draft Order laid before the House on 16 October be approved.

Relevant document: 1st Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, this Order in Council creates regulatory frameworks with the purpose of reducing road transport emissions from new cars and vans in Great Britain and Northern Ireland and supporting the vehicle manufacturing industry in the transition to new zero-emission technologies.

The Government's cost-benefit analysis projects emissions reductions of 411 million tonnes of carbon dioxide out to 2050 as a result of the instrument. The trajectory they set for the transition to new zero-emission cars and vans out to 2030 is strongly supported by industry and is the most ambitious of its kind in any country in the world. It is in such ambition that there is opportunity. Already, over £6 billion has been invested in UK automotive manufacturing from the likes of Tata, BMW and Stellantis. It is a particular pleasure to congratulate Nissan's Sunderland plant on its success in securing the fully electric Qashqai and Juke models. Beyond manufacturing, there has been a further £6 billion investment in charging infrastructure from the private sector. This demonstrates beyond all doubt that legislation will provide certainty, and that certainty will deliver investment, growth and jobs.

As noble Lords know, effective consultation is crucial. The Department for Transport, along with the Scottish Government, the Welsh Government and the Department for Infrastructure in the Northern Ireland Executive, has consulted extensively since the UK Government first committed to bringing forward a zero-emission vehicle mandate in 2021 in support of the commitment for all new cars and vans to be 100% zero emission by 2035. For such an impactful policy, a wide range of views had to be taken into account: global multinationals investing billions in net zero, specialist vehicle manufacturers at the cutting edge of new technology, charge point operators tracking demand to inform investment, and the general public who rely on these vehicles for their day-to-day needs.

Industry supports these measures because at every opportunity the Government have sought to engage constructively. This includes not just the UK-based manufacturers—Aston Martin, BMW, Bentley, Ford, Jaguar Land Rover, McLaren, Nissan, Stellantis, Toyota and more—but international manufacturers such as Hyundai, Mazda, Mercedes-Benz, Mitsubishi and Tesla. Across the economy these measures have support. The chief executive of the Society of Motor Manufacturers and Traders called this

"the single most important measure to deliver net zero".

The chief executive of the AA has said that the measure will

"support investment in ZEVs and associated technologies and industries … and … it will help the UK's motorists manage the transition".

Such positivity is down to how the Government have listened to industry. The chief executive of the British Vehicle Rental and Leasing Association said that

"the breathing space afforded by the ZEV Mandate van trajectory changing, car club parameters being adjusted, and commitment to an accessible transition will be welcome".

The chair of Ford UK welcomed that the ideas and discussions that took place as part of the consultation were so clearly reflected in the final design.

The headline measure of the legislation is the creation of a zero-emission vehicle mandate—a framework designed to guide the transition to zero emissions by setting targets for the sale of new zero-emission cars and vans that increase each year. The ZEV targets start in 2024, at 22% for new cars and 10% for new vans, rising to 80% and 70% in 2030. It is these percentage targets that will give charge point operators the information that they need to invest in charging infrastructure and give vehicle manufacturers certainty on which products and technologies to focus their research and development on for the UK market. While this instrument covers only the period to 2030, subsequent legislation will set out the pathway to achieving the Government's commitment to 100% zero-emission new car and van sales in 2035, in line with other major global economies including France, Germany, Sweden and Canada.

Of course, emissions from the remaining new non-zero emission cars and vans must also be considered. That is why the order makes provision for a per-manufacturer carbon dioxide target, based on the manufacturer's emissions in 2021, that will apply from 2024 until 2030 when the instrument ends. This approach, when taken in conjunction with a ZEV mandate, ensures that average emissions from new non-ZEVs do not increase when compared with 2021 and enables manufacturers to invest in zero-emission technology rather than being forced into delivering small, incremental emissions reductions.

To implement this policy, the Government are creating trading schemes using powers under the Climate Change Act 2008. The Government have taken this approach because it offers the most flexibility to automotive manufacturers—the only group regulated by this legislation—and gives them agency in their technology choices as well as absolute certainty on the milestones on what their investments must deliver for the UK market in the next decade.

The instrument provides incentives to innovation and investment where there is particular social value. Zero-emission special purpose vehicles such as ambulances, armoured vehicles and wheelchair accessible vehicles are eligible to earn bonus credits. Non-zero emission special purpose vehicles are exempt from the regulation so as not to restrict their availability while zero-emission technology develops.

Low-volume manufacturers make an outsized contribution to the automotive industry, nowhere more so than in the UK, where the likes of Bentley, Aston Martin and McLaren lead the world with their research and development. That is why the Government have implemented a small-volume derogation from the ZEV targets, meaning that a manufacturer selling fewer than 2,500 vehicles annually is not subject to the targets and in addition will receive credit for every zero-emission vehicle that they sell.

The Climate Change Act 2008 requires that each devolved legislature passes the order for the trading schemes to apply UK-wide. In the absence of a sitting Northern Ireland Assembly, the trading schemes cannot apply in Northern Ireland. At such time as a sitting Assembly is able to approve the required legislation and chooses to do so, it is the intent of the UK Government, the Scottish Government and the Welsh Government that the order be extended to apply in Northern Ireland. In the interim, Northern Ireland will be covered by an appropriately scaled extension of existing UK-wide new car and van emissions regulations, provided for in part 8 of the order.

The Vehicle Emissions Trading Schemes Order is a critical step on the path to net zero and it is taken with the support and co-operation of the vehicle manufacturing industry, which is a crucial partner in delivering a long-term, sustainable transition to zero-emission vehicles. As the automotive sector undergoes the seismic shift to zero-emission technology, this order ensures that the UK will continue to punch above its weight in the global transition to net zero. I beg to move.

8.15 pm

Baroness Young of Old Scone (Lab): My Lords, I declare an interest, as I sit on the Environment and Climate Change Select Committee, which is currently looking at electric vehicles. However, the views here are my own.

I am very pleased that the Government have brought forward a ZEV mandate, for all the reasons that the Minister has given. Quite a lot of us were fearful that it might not appear after the Government retreated into the herd when they slipped the phase-out target to 2035. The Government appeared to step back and let the manufacturers take the strain, which is a pity because Governments have a clear role in taking this issue forward.

The worry that I had was on the chilling effect of that change of date. There was a particularly poignant moment last week when the Select Committee was undertaking one of its outreach sessions with young people across the country in support of its electric vehicle enquiry. It was great to talk to these young folk. They are incredibly committed to the environment and absolutely get the net-zero thing. We were talking to them about the greater environmental awareness of young people, the pester power that they have with parents, and I asked them whether they were using their pester power to persuade their parents to adopt electric vehicles.

It was a bit shattering to hear them say, "There is no point in us trying to influence our parents on this because the Government have just said to them, by slipping the date, 'Don't worry, there is no rush. You don't need to do it now—you can take all the time you like'". I would like the Minister to understand just how chilling some of these changes of direction are. Even if they have internal logic of their own, the public see them as less commitment by the Government to these issues.

It would be great to see the Government active in some other measures to encourage uptake of electric vehicles, as well as introducing the mandate. I am a great believer that bans work—if you have an ultimate date for something not being permissible it concentrates the mind wonderfully—but it would be great if the Government undertook a major campaign of reliable information to counteract the huge amount of misinformation about electric vehicles that is currently out there. The progress that has been made in both the

[Baroness Young of Old Scone]
technology and supporting technologies, such as charging, has been so great over the last few years. Any cries of doom and gloom about electric vehicles not being practicable at this stage are really misinformation. I hope the Minister could be persuaded to do more to have reliable information presented to the public, rather than just have it on the government website.

I note that the mandate is subject to review mid-term. I hope that, as well as the additional credit schemes for accessible vehicles and others that the Minister talked about, he might consider incentivising lighter vehicles, if that is not already being delivered by the scheme. Lighter vehicles create less pollution and road wear, and additional credits for manufacturers that create them would be a welcome step, if that is not already well advanced by the review period.

Lord Lilley (Con): My Lords, like the noble Baroness, I too am a member of the Environment and Climate Change Committee doing a study of this. Unfortunately, I was unable to benefit from the huge wisdom of young people at the school she attended. Had I been there, I would have mentioned that, since we export over 80% of the cars produced in this country, the mandate for sales in this country and the phase-out date has very little effect on British manufacturers. They have to abide by the rules in their export markets. Meanwhile, 85% of the cars we consume are produced abroad.

I want to ask the Minister whether I understand properly how this system will work. Take a year when we are half way through, when the zero-emissions mandate requires any manufacturer's sales to be at least 50% electric vehicles and no more than 50% combustion engines. Supposing that a manufacturer finds, in the course of a year, that his sales of electric vehicles fall short and the ratio turns out to be 40:60, am I correct that the manufacturer will have to pay a £15,000 fine on all 20 extra vehicles—the difference between 40 and 60—per 100 that are combustion engine? If so, my arithmetic shows that he will effectively have a penalty of £5,000 for every combustion-engine vehicle he has sold. That is a very serious penalty. I do not think people realise quite how serious it is. I am not sure whether the Government have thought through the reaction there would be from motorists if that turns out to be the case, especially as the people who tend to buy combustion-engine vehicles rather than electric vehicles are those who cannot afford expensive vehicles—because electric vehicles tend to be more expensive. They would find themselves paying that fine on usually cheaper, smaller vehicles—to the benefit of the richer purchasers of larger, more expensive, electric vehicles. Am I correct that this is how the system works?

The Minister may say that if manufacturers have excess sales of electric vehicles from previous years they can offset those, and can go out and buy permits from other manufacturers that are, perhaps, only selling electric vehicles. Who will be the manufacturers only selling electric vehicles? They will, by and large, be Chinese manufacturers exporting their vehicles to us. A manufacturer producing only electric vehicles and importing them into this country from China will be able to sell its permits on 50% of the vehicles it sells. It can get £15,000 for each of them and enjoy a subsidy equivalent to £7,500 for every vehicle it sells. Whizzo for the Chinese manufacturers—that far exceeds the effect of the 10% tariff they will have to pay on the vehicles. Am I correct too that we have invented a system that could really subsidise the import of Chinese electric vehicles?

Then I want to ask whether this will all be worth while. If it will reduce emissions, of which I am all in favour, then great. Questions have been raised about the inbuilt emissions of electric vehicles, which are heavier and more expensive than vehicles with internal combustion engines. I do not want to deal with that point. I want to deal with the fact that electric vehicles save emissions only if they use electricity produced from renewables or non-fossil fuel sources. More than 40% of the electricity we produced in this country last year came from fossil fuels. More importantly, 100% of the marginal electricity comes from fossil fuels. If we increase the demand for electricity by switching from fossil fuel powered cars to electric powered cars, the marginal electricity supplied to them will come entirely from fossil fuels, because you can increase the supply of electricity only from fossil fuels. You cannot summon the sun or hail up extra wind but you can increase the supply of electricity from gas-fuelled power plants. We probably will not actually reduce emissions until we have made all our electricity and have spare capacity from renewables or non-fossil fuel power sources. That is not planned to be achieved until 2035, which makes the phase-out date actually have some logic—at least it ties in with something else.

My noble friend the Minister read out a figure about the expected emissions savings. Does that assume that only 40% of the electricity will come from CO_2-producing fossil fuels or that 100% of it will? I suspect it is the former, whereas logically it could be the latter. I do not propose to divide the House on this issue, and I rather suspect I would not win if I did, but we should have honest answers to serious questions and not treat this whole issue as if it is a matter of virtue signalling.

Baroness Randerson (LD): My Lords, I will leave it to the Minister to respond to those points. I am confident that he will be able to satisfy the noble Lord, Lord Lilley, but I cannot resist pointing out that it is a case not of summoning up more sun or wind but of capturing more sun and wind through solar panels and wind energy.

Lord Lilley (Con): Sorry, can I explain that to the noble Baroness? I am very grateful to her for giving way. At present, we use 100% of the electricity generated by wind or sun and it still provides less than 60% of the electricity, so if we increased the demand we would have to persuade the sun to shine at night or the wind to blow on calm days to create extra electricity from them now.

Baroness Randerson (LD): Of course that is not the only option. The other option is to build more solar panels and more wind farms, and I am delighted to see that there is a gradual rolling out of those facilities across the country. The noble Lord is entirely right that as we build more we will use it all, as we should.

I have no doubt about the need for this legislation, because the UK transport sector is responsible for the largest share of domestic greenhouse gas production and has seen relatively little reduction in the amount it produces since 1990, in contrast with other sectors. Cars and vans alone create 18% of the UK's total domestic greenhouse gas emissions. There are also, of course, strong health reasons to support this legislation, because air pollution in particularly densely trafficked areas is a cause of lung and heart disease, and even has links to dementia.

So the Government's recent U-turn on their rhetoric about the date for phasing out the combustion engine was at least confusing and at worst reprehensible, because it has slowed down the transition to zero-emission vehicles and has had a negative impact on manufacturers and their investment. They have told me about their concern. The problem is that the media have obediently repeated that change in rhetoric and it has caused confusion.

8.30 pm

I strongly welcome the principles of this order; it implements the ZEV mandate, with yearly targets for cars and vans which must be zero-emission. This applies only to new vehicles, so it is important to point out that, as a policy, it has a long tail, because there will of course be people buying second-hand, third-hand or fourth-hand vehicles, and those sales will continue for decades.

The policy introduces—and I admire the Government's response on this—a series of what I regard as cunning schemes to incentivise manufacturers to produce more ZEVs, by penalising those that fall short. There are plenty of sticks involved in this policy, but where are the carrots? This is a macro mechanism to steer manufacturers in the right direction, and I know that they welcome that, but consumers, many of whom are now confused by government rhetoric, need carrots to encourage them to buy electric vehicles.

I have some questions. The first is very precise. The van targets are lower than those for cars—70% sales by 2030 as opposed to 80% for cars. I simply ask the Minister why. Light vans have the same technology as cars and often, as a class of vehicle, tend to do more miles than domestic family cars, so their potential contribution to climate change is higher.

Secondly, members of ChargeUK, the charge point operator industry body, are concerned about the impact of the change in government rhetoric on investment in the charge point sector. Of course, there are also serious constraints on grid capacity in some areas, which is affecting the rollout of charge points. I want to raise with the Minister the disparity between one set of areas and another in the number of charge points per electric vehicle owned. There are some places in Britain where there is one charge point for every three EVs, whereas other areas in Essex, Hertfordshire and Lincolnshire—not every area in those counties but some local authorities—have over 50 electric vehicles per public charge point. That is not practical in the long term. Rural areas are a particular problem; that will not surprise anyone.

There are some understandable reasons why some types of vehicle are exempt from the schemes the Government are introducing, and I understand in respect of small-volume manufacturers. I also understand why wheelchair-accessible vehicles are exempt, but I will just press the Minister on this issue. This is the kind of exemption that could become a loophole. Do the Government have a good, tight definition of what they mean by wheelchair-accessible vehicles?

I am glad to see the Government working with the devolved Administrations on this policy in Scotland and Wales, but of course, as the noble Lord pointed out, Northern Ireland cannot have these regulations applying to it and has a separate scheme. What liaison has there been between the Republic of Ireland Government and the UK Government on the way in which the Northern Ireland scheme will operate?

I shall explain my reasoning. I am concerned in case the scheme that will operate in Northern Ireland would put retailers, sellers and manufacturers of cars in that place at a disadvantage with those selling in the Republic, and I am very concerned that British manufacturers and British auto traders are given the best possible opportunity.

Predicted sales of electric vehicles were recently revised downwards as a result of the Government's change of policy. What is the Government's official estimate of the impact on sales of EVs of the change of date?

The Government have retained plans, albeit delayed, but their ambitions are being impeded almost on a daily basis by media coverage, some of it wildly inaccurate, about electric vehicles. How are the Government planning to combat this misinformation, which is having a bad effect on automotive industry sales and is of concern to those manufacturers?

There has been a trend over many years towards heavier and larger vehicles on our roads. Electric vehicles do not do anything to reduce this issue. Heavier vehicles have an impact on road surfaces and congestion. What plans do the Government have to incentivise and encourage people to buy smaller and lighter vehicles? It has a real impact on the cost to local authorities, for example, of road repairs. They could, for example, use this scheme to award additional credits under the ZEV mandate to sales of lighter vehicles. Can the Minister tell us what the Government plan to do about heavier vans and HGVs?

Finally, this is all connected with the period up to 2030. Up to 2030, the regulations include CO_2 from vehicles that are not zero-emission. Will the Minister explain what happens after 2030?

I realise there are a lot of questions there. I am sure the Minister will not be able to answer all of them here, but I would be grateful if he could in due course write to me about those issues that he is not able to answer now.

Lord Tunnicliffe (Lab): My Lords, the global shift towards zero-emission vehicles presents opportunities and challenges here in the UK. The automotive industry will be at the forefront of each of them, and it will need the support and engagement of the Government to address the challenges and maximise the opportunities. I am therefore pleased that Ministers are turning their attention to new incentive schemes to encourage the production and sale of new ZEVs, and we will not oppose this instrument.

[Lord Tunnicliffe]

The commitment to ending new sales of ZEVs by 2035 is fast approaching and schemes such as this will play a vital part. Nevertheless, I hope the Minister can provide clarity on a couple of points. First, given that the UK is no longer part of the EU new car and van emissions regulatory framework, how does this compare with similar systems internationally? Secondly, will the Minister explain how many special-purpose vehicles will be exempt?

In the consultation section of the Explanatory Memorandum there is a reference to the Climate Change Committee's contribution. I am a great fan of that committee and, although this is not personal, the quality of the Government's decision-making over the recent past leaves me with some discomfort in taking their statements for granted. The Climate Change Committee, under the leadership of the noble Lord, Lord Deben, has established an excellent reputation for carefully thought-out positions, and I therefore wonder why the letter referred to in paragraph 10.2 has not been responded to. There is every possibility, given the volume of paperwork on this, that it has been and I have missed it. Has it been responded to? If not, why not? If it was, why is that not in the EM?

The letter is important. As a generality it is quite supportive, but it makes two important points. Since it is better than my speech, I will read from it. The first point is this:

"The mandate will provide clarity for manufacturers, businesses and motorists on the direction of the UK market and the rate of change required. To build on this and demonstrate consistency to the market, we recommend that your department"—

that is, the Department for Transport—

"also sets targets for the period from 2030-2035, making sure these are ambitious enough to minimise the impact of continuing petrol and diesel vehicle sales on UK emissions".

A theme that has come from the industry over the last decade is that it wants consistency, as far into the future as possible. The committee makes the good point that the period needs to be stuck on to the end of this instrument somehow so that the industry can plan right through that period.

The committee's second point is this:

"Another critical element of the proposed legislation are the efficiency standards for new petrol, diesel and hybrid vehicles which will continue to be sold until 2035. Typical new cars remain on the road for around 14 years. Therefore, ICE and hybrid vehicles that continue to be sold alongside the mandate will continue producing emissions for a considerable period. We are concerned that the regulations proposed for this portion of the market, which would require that the average emissions of each manufacturer's new non-zero-emission car and van sales remain constant at 2021 levels each year, are insufficiently ambitious to deliver the emissions savings required to meet the UK's Nationally Determined Contribution to the UNFCCC"—

I looked that up, and it is the United Nations Framework Convention on Climate Change—

"and the Sixth Carbon Budget. Our calculations"—

and I have faith in the committee's calculations—

"show that this policy of maintaining flat emissions intensities will reduce emissions savings by around 3 $MtCO_2e$ per year by 2030 compared to my Committee's Net Zero Pathway".

I hope the Government will reconsider this element, because I find both arguments convincing and significant.

8.45 pm

Lord Davies of Gower (Con): My Lords, I thank all noble Lords for their consideration of this draft Order in Council. I will now respond to the specific points raised where I can, but I assure noble Lords that, where I miss any points raised, I will endeavour to ensure they are answered in writing.

The order creates four trading schemes: the car registration trading scheme, known as CRTS, the car carbon dioxide emissions trading scheme, knowns as CCTS, and equivalents for vans known as VRTS and VCTS. The car schemes, CRTS and CCTS, may interact with one another but not with the van schemes. The van schemes, VRTS and VCTS, may interact with one another but not with the car schemes. The CRTS and VRTS schemes apply the ZEV targets and the CCTS and VCTS schemes apply the carbon dioxide targets. This structure enables manufacturers to pursue multiple routes to compliance with their ZEV and carbon dioxide emissions targets.

Compliance in the trading schemes is tracked using units called allowances and credits. Each of the four trading schemes has its own allowance, and the two trading schemes that enforce the ZEV targets have their own credit. One credit is worth one allowance in the respective trading scheme.

Each year, the administrator of the trading schemes will allocate manufacturers enough allowances in each trading scheme, based on their in-year sales so that, if they meet their targets, they will require no allowances in addition and will be able to sell the excess to other manufacturers, bank it for future use or convert it for use in another scheme. Manufacturers who sell zero-emission special-purpose and wheelchair-accessible vehicles will receive bonus credits in the relevant scheme, as will manufacturers who sell zero-emission vehicles to car clubs.

The instrument provides a range of tools that facilitate different zero-emission vehicle transition strategies. Manufacturers who overcomply with their ZEV targets may bank that overcompliance for use in later years, convert it into compliance for the carbon dioxide targets at an exchange rate or sell it to other manufacturers. Manufacturers whose sales alone are not enough to meet the ZEV targets may borrow from their own future compliance at an interest rate of 3.5%, convert compliance from the carbon dioxide targets at an exchange rate or buy from other manufacturers.

Borrowing and conversion from carbon dioxide targets to ZEV targets are only allowed for the first three years of the schemes, expiring in 2026, and are capped proportionally to a manufacturer's total car registrations or van registrations. This approach allows manufacturers to choose a path that makes sense for their business without increasing overall carbon dioxide emissions.

Vehicle manufacturers may trade freely among themselves. The only requirements are a short notification to the administrator of the trading schemes and enough units of compliance to fulfil the transaction. The price of trading units of compliance is determined by the market; however, there is effectively a cap on the maximum price per unit due to the final compliance

payments to government required if a manufacturer does not meet their target. These are set at £15,000 per car in all years, £9,000 per van in 2024 and £18,000 per van from 2025, and, for the carbon dioxide emissions schemes, £86 per gram of carbon dioxide over the target multiplied by the number of non-zero emission vehicles sold.

The Secretary of State for Transport is responsible for the administration of the schemes for the UK. A specialist team in the Department for Transport is working with devolved Administrations and vehicle manufacturers to prepare for scheme commencement, with the vast majority of administrative obligations on manufacturers not falling before summer 2025. Draft guidance has been circulated to vehicle manufacturers as part of a collaborative process to ensure that they have the documentation they need to support this change. Officials are in regular contact with vehicle manufacturers and will continue to engage closely throughout implementation and operation.

On the point raised by my noble friend Lord Lilley on the environmental impact of zero-emission vehicle manufacturers, a battery electric vehicle, the most common type of zero-emission vehicle, produces only a third of the lifecycle emissions of an equivalent petrol car. They can make the best use of the UK's renewable energy, which already represents around 40% of UK electricity generation and is set to rise to 100% by 2035.

If, after having the opportunity to make use of banking, borrowing, conversions, derogations, pooling and trading, a manufacturer has not met its target it will be required to make a payment. This is set at £15,000 per car for all years, as I said, and £9,000 per van in 2024, rising to £18,000 from 2025 onwards. The payment for missing the carbon dioxide target will be £86 multiplied by the number of non-zero-emission vehicles registered. These amounts are comparable to comparator schemes in the EU, California and Canada. The payment levels reflect the difference in emissions between a new zero-emission and new non-zero-emission vehicle and will serve as an effective incentive to meet targets.

Further to my answer to my noble friend Lord Lilley on the renewable energy mix and the grid, since 2010 renewables have gone from less than 7% of our electricity supply to 48% in the first quarter of this year. The UK will phase out coal from power generation in 2024 and is accelerating the growth of renewables, such as wind and solar, to meet our net-zero target and decarbonise our electricity system by 2035. We have seen £198 billion of investment into low-carbon energy since 2010 and our global leadership is set to attract another £100 billion by 2030. The very technical points that my noble friend raised perhaps deserve a more technical response than I can provide at the Dispatch Box this evening. On that basis, I will make sure that he gets a fulsome response in writing to his points.

The order contains robust provisions that will enable the Secretary of State for Transport to take action where necessary. There are four enforcement powers: to require information, to question an officer of a company and, as a last resort, to obtain a warrant and enter premises, where the final power—to seize documents—may be used. These powers would be used as a last resort only where all other forms of formal and informal engagement with the manufacturer concerned had been unsuccessful in resolving concerns.

As a result of the trajectory and flexibilities on offer, manufacturers will be able to comply with the requirements of the legislation in 2024 without selling any more ZEVs than they had planned to. Manufacturer commitments to transition to ZEVs by 2030 already amount to more than 67% of the UK car market, with manufacturers such as Ford, Stellantis and Nissan all committed to selling 100% zero-emission new cars and vans by 2030, and all major manufacturers committed to being fully ZEV by 2035. On the point raised by the noble Baroness, Lady Young of Old Scone, when the 2030 end-of-sale date was announced in December 2020, there appeared to be a clear difference in the carbon dioxide emissions performance between some hybrid and plug-in hybrid technologies and normal petrol and diesel cars.

On the point raised by the noble Baroness, Lady Randerson, on wheelchair-accessible vehicles, the Government recognise how important these vehicles are to their users as a vital lifeline that provides freedom and dignity. That is why the order exempts new non-zero-emission wheelchair-accessible vehicles from the requirements. This means that users who continue to need petrol, diesel or hybrid models can continue to access them. The order also applies a bonus credit for any zero-emission wheelchair-accessible vehicles that are registered, recognising the additional manufacturing and value that such a vehicle represents.

The noble Baroness, Lady Randerson, also asked about Northern Ireland regulations. The regulations that apply to Northern Ireland are a scaled-down version of the existing regulations that currently apply UK-wide and will end in Great Britain with the commencement of this order. In broad terms, manufacturers are set individual targets for their average emissions across all the cars or vans that they sell.

I think it was my noble friend Lord Lilley and the noble Baroness, Lady Randerson, who talked about charge-point disparity. On deploying those charge points and geographical disparity, the Government and industry have already supported the installation of over 49,200 publicly available charging devices. The number of local public charge points needed will vary by area and over time, depending on the types of charge point installed, travel patterns and consumer preferences. Setting binding targets at this stage would risk stifling innovative approaches and could lead to the installation of charge points in the wrong place at the wrong time. The Government's local electric vehicle fund provides over £381 million of funding to all local authorities in England to ensure good coverage of charge points. The funding was allocated to local authorities using a number of set variables, including charge points by population and the level of rurality. The inclusion of the rurality variable means that local authorities in rural areas were allocated additional funding, compared to urban areas.

The noble Baroness, Lady Randerson, mentioned the impact on sales. We consulted on whether we should incentivise certain specifications of vehicles, and responses were overwhelmingly in favour of a simple one vehicle, one credit allowance scheme. Otherwise,

[Lord Davies of Gower]
we shall keep this under review. In response to the noble Lord, Lord Tunnicliffe, and the Climate Change Committee, the letter was responded to by Minister Norman during his time at the Department for Transport. We can commit to sending the letter to the noble Lord.

As I have outlined, this legislation sets out a clear pathway for the decarbonisation of new cars and vans. It will allow industry and households to plan confidently for the future. The order will establish the strongest targets of their kind in any country globally and will be a crucial catalyst for new investment, new jobs and new technology, which will drive the transition of our economy to net zero.

I hope I have answered some of the questions. I will certainly go through *Hansard* and see what is outstanding and write to noble Lords. I commend the order to the House.

Motion agreed.

Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023

Motion to Approve

8.56 pm

Moved by ***Lord Offord of Garvel***

That the draft Regulations laid before the House on 17 October be approved.

Relevant document: 1st Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): My Lords, these regulations were laid before the House on 17 October 2023. They implement the world-leading recognition of professional qualifications provisions within the UK's free trade agreement with Norway, Iceland and Liechtenstein—the EEA/EFTA states. This was one of the first free trade agreements to be agreed by the UK following our departure from the EU and continues our strong trading relationship with these valued partners. They provide certainty for professionals with qualifications from these countries who want to be recognised by UK regulators and work in the UK.

Given that the provisions in the agreement are reciprocal, UK professionals also benefit from reduced barriers when having their qualifications recognised in Norway, Iceland and Liechtenstein. I will begin with some background to explain what the provisions achieve. I will then move on to discuss the regulations in detail.

The UK signed a world-leading free trade agreement with Norway, Iceland and Liechtenstein in July 2021. Chapter 12 of the agreement outlines an ambitious system for the recognition of professional qualifications between the parties. Under the agreement, UK regulators are required to recognise comparable professional qualifications obtained in Norway, Iceland and Liechtenstein. Regulators in those countries are required to recognise comparable professional qualifications obtained in the UK.

Reciprocal provisions on recognition of professional qualifications are an important part of the UK's services trade agenda, helping UK professionals enter new markets and deliver our world-leading services overseas. They also help at home, supporting overseas professionals to enter the UK labour market. Enabling this free flow of skills internationally leads to enhanced UK prosperity. Recognition of professional qualifications is a common feature in the UK's modern trade deals, but the provisions we agreed with Norway, Iceland and Liechtenstein are relatively distinct by introducing binding obligations on regulators.

This agreement underpins our valued co-operation with long-standing trading partners on the recognition of professional qualifications. The Government understand the importance of continuity for British businesses. As such, this agreement seeks to maintain similar recognition of professional qualifications outcomes to the UK's previous arrangements with these countries.

The UK is required to meet the terms of the agreement by 1 December 2023, and the Government are using powers contained in Section 3 of the Professional Qualifications Act 2022 to do so. Enshrining this system in legislation is necessary to ensure that the UK fulfils its obligations under international law. Without these regulations, some regulators will not have the necessary legal powers to meet the requirements of the agreement. These regulations will come into force at the same time that the UK's EU-derived system for recognition of professional qualifications ends. This will ensure clarity and a smooth transition for regulators and professionals.

If it is helpful, I will now provide some detail on these regulations. They place a duty on all regulators of professions across the UK to recognise comparable professional qualifications obtained in Norway, Iceland and Liechtenstein. The regulations also give regulators the powers to recognise these qualifications where necessary. Regulators will be required to treat qualifications in accordance with the system set out in the agreement and in the regulations.

9 pm

This system does four things. First, it requires regulators to recognise comparable professional qualifications. Secondly, it enables regulators to refuse to recognise comparable professional qualifications where certain conditions are met. Thirdly, it prescribes compensatory measures which regulators can require a professional to take in certain circumstances. Finally, it prescribes the procedure for applications to obtain recognition. Taken together, this means that professionals that benefit from the agreement will have a clear, predictable and timely route to practise a profession in the UK.

Crucially, professionals with UK qualifications will also benefit from similar access to the three countries. Agreements such as these allow the UK's world-leading professions to be exported around the globe. I should also note that the regulations contain amendments to UK and devolved legislation which tidy up the UK's statute book. These amendments remove references to EU-derived legislation for recognition of professional qualifications.

I must inform the House that after they were laid in Parliament on 17 October, a correction slip was issued to address a minor formatting issue in Regulation 3(1): in the definition of "medical regulator", the numbering started at (d) instead of (a). This has been corrected and incorporated into the version on legislation.gov.uk.

It remains the responsibility of individual regulators to set standards for their professions and to decide who meets these standards. Some of my noble friends may recall that during debates on the then Professional Qualifications Bill, concerns were expressed about regulator autonomy. I will understand if my noble friends have similar concerns about these regulations. However, I strongly assure your Lordships that these regulations protect regulators' autonomy.

Under this system, regulators will need to decide whether a qualification from Norway, Iceland or Liechtenstein is comparable with a UK qualification. Regulators can refuse to recognise the qualification where certain conditions are met, such as the applicant having inadequate English language proficiency. The regulator can prescribe compensatory measures which a professional can be required to take. I assure your Lordships that regulators remain the experts for their professions under these regulations. They remain responsible for setting standards for their profession, assessing applications and deciding whether an individual can practise in the UK.

My department has consulted carefully with regulators while developing the regulations, fulfilling the duty to do so under the Professional Qualifications Act. In January 2023, the former Department for Business, Energy and Industrial Strategy ran a targeted consultation with regulators. We sought their views on the implementation approach and draft regulations. Respondents were generally supportive of the proposed approach to implementation, and most indicated that adapting their processes would not be costly or burdensome. My officials engaged extensively with regulators on their feedback. My department appreciates this close involvement, which has been invaluable in developing the regulations. Through the consultation, some regulators indicated that their existing sectoral legislation was insufficient to enable them to comply with the agreement. Therefore, we have included amendments to sectoral legislation in these regulations for a small number of professions.

This is a UK-wide instrument. The Government are using concurrent powers in the Professional Qualifications Act to implement this agreement in areas of devolved competence. This approach has been taken after careful consideration and extensive engagement with the devolved Governments. The Government judge it necessary for these regulations to have a UK-wide remit, for two reasons. First, all regulators across the UK must be covered by legislation for the UK to be compliant with the agreement. Secondly, UK-wide legislation ensures that regulators across the UK have the necessary legal powers to put this new system in place. This approach means that the experience of professionals with qualifications from Norway, Iceland and Liechtenstein seeking recognition in the UK will be predictable and consistent across the four nations. Importantly, it also means that these professionals will have legal recourse if a regulator is not following the terms of the agreement.

In June 2023, the Department for Business and Trade ran a consultation with the devolved Governments. The consultation sought views on the implementation approach and the draft regulations. The Government published the report on the consultation on 13 October 2023, fulfilling our duty under the Professional Qualifications Act. This provided the devolved Governments with the opportunity to identify necessary amendments to devolved legislation and explain whether the regulations would be workable in practice.

Amendments submitted by the devolved Governments were incorporated into the regulations. In their responses, the Scottish and Welsh Governments opposed the UK Government exercising the concurrent powers in the Professional Qualifications Act without their consent. Although our preferred approach has always been to secure the agreement of the devolved Governments, we have decided to proceed without their full agreement to the instrument.

To conclude, when the UK's free trade agreement with the EEA EFTA states was signed in 2021, it was clear that British businesses valued the opportunity that it provides with close trading partners and the opportunity that it creates to continue exporting services overseas. These regulations bring into force the recognition of professional qualifications system contained within this agreement, meeting our obligations under international law. I commend the draft regulations to this House.

Baroness Randerson (LD): I thank the Minister for his introduction, which has, I think, answered my questions. As when we discussed the Bill in this House, my concern is very much with the status of the devolved Administrations, the issues and implications for the devolved Governments and the different systems that exist within the nations of the UK for both professional qualifications and the education system that feeds into them.

I have one small remaining question. The Minister referred to English language proficiency. If there were to be a requirement within a particular profession for the Welsh language in Wales, would that also be satisfactorily recognised in these regulations?

Lord McNicol of West Kilbride (Lab): I also thank the Minister, the noble Lord, Lord Offord of Garvel, for outlining and explaining the regulations, which are largely uncontentious. I will pick up a few of the issues that the Secondary Legislation Scrutiny Committee—the SLSC—raised. I am sure that the Minister will be well aware of them but they are worth touching on.

Before that, on the regulations themselves, do the Government expect the new RPQ system to have any bearing on immigration levels? If it is expected to be net neutral overall, are there any particular sectors that may be affected either way, positively or negatively? Are there any staffing gaps? The Minister talked about exporting British talent around the globe but are there any particular gaps within the UK that we are hoping to use these measures to help fill, in terms of inward migration?

[Lord McNicol of West Kilbride]

The Department for Business and Trade says that this may require regulators to change some of their current processes. The Government acknowledged this impact but a full impact assessment has not been carried out or produced. So have the Government made any assessment of the extent of the requirements? In his introduction, the Minister said that they expect it to be minimal, but can he elaborate on that a little? Can he highlight any particular areas where that impact would be most severe?

Also, with the new timeframe, from my reading of the Explanatory Memorandum and the SLSC papers on this, I think there may be some issues for a few of the regulators with the reduced timescale for turning round their regulations.

I turn to the Secondary Legislation Scrutiny Committee's report and some of the areas it touches on, which the Minister has raised. The Department for Business and Trade said that the consultation with regulators received "generally supportive" feedback. This is one of the areas on which the SLSC takes the department and the regulations to task, because there was no publication of the consultation. In fact, the committee goes on to say:

"Where a consultation is conducted, a full analysis of the consultation responses should always be published at the time an instrument is laid before Parliament. … It is therefore important that an analysis of the feedback is made available, in the interest of transparency and so that all relevant material is available to support the scrutiny process".

Does the Minister agree, and will he aim to make sure that this is dealt with in future consultations? I think we have the RPQ with Switzerland coming in the next few months. Can the Minister ensure that a full consultation will be carried out and published?

The committee report mentions:

"The Department for Business and Trade is deliberating how to broaden and deepen its approach to engagement on trade policy, to ensure it is fit for purpose".

Has there been any progress on looking to broaden and deepen its approach to trade policy to make sure it is fit for purpose?

My final point is on paragraph 13 on page 4:

"We welcome the Department's commitment to consider how to improve its consultation and engagement processes ahead of any future negotiations on RPQ and trade agreements".

I agree with that statement, but I also think it is very weak, and I wondered if I could push the Minister to move a little further from the word "consider" to "deliver". Will his department look to deliver how to improve consultation and engagement process rather than just consider?

Turning to the Explanatory Memorandum at the back of the draft statutory instrument, I shall raise only one point about paragraph 3, where, under

"Matters of special interest to Parliament"

and

"Matters of special interest to the Joint Committee on Statutory Instruments"

the department has written, "None". That is fair enough, but there is an SLSC report which raises a number of concerns, and it would have been nice to see in the Explanatory Memorandum some note on the issues that have been raised by the SLSC. With that, I look forward to the Minister's response.

Lord Offord of Garvel (Con): I thank the noble Lord, Lord McNicol, and the noble Baroness, Lady Randerson, for their contributions to this SI debate. We can deal with the points about the devolved Governments right now. Of course, the UK has a strong tradition of different professions and different countries doing different things. It is only since 1707 that we have all been working with one Parliament, and we had lawyers long before then. But on balance, we want to try to work as one country, and the whole point of doing these FTAs is that we form up to the rest of the world as one United Kingdom.

But there is a lot of flexibility within the devolved Governments. We have consulted with the Governments, and the devolved Administrations have confirmed that they can work with this SI—and they will then implement it in their own territories. It is perfectly within the rights of the Welsh to make a Welsh language requirement, in the same way as it might be in the Western Isles in Scotland to do it in Gaelic. That would be for those Governments to decide.

On the specific question raised by the noble Lord, Lord McNicol, on immigration, these three countries, Norway, Iceland and Liechtenstein, are pretty—well, we should not use the phrase "small countries", but they are contained in terms of their interaction with the UK. Where is Liechtenstein? We would not expect there to be any eventual impact on immigration with reference to those three countries.

On the FTAs, as I said once before, we want to form up to the rest of the world as one UK. In fact, in my own portfolio, dealing with the utilisation of a lot of the FTAs, such as the one we have just done with Australia, we are finding that the key thing in their implementation is to make sure that we benefit the whole United Kingdom.

There has been extensive discussion with the regulators. As required by Section 15 of the PQ Act, we consulted affected regulators. When using the regulations using Section 3, we formally consulted the regulators, in January 2023. We are not required to publish a report online on that consultation. I hear what the noble Lord says about the SLSC, but there is very much a commitment from this Government to broaden and deepen trade policy. Probably the main benefit that we get from Brexit is going to be international trade, so we have an obligation to broaden and deepen trade policy.

With that, we can say that we now have these arrangements in place to proceed. As a reminder, this instrument places a legal duty on the UK regulators to recognise comparable qualifications in Norway, Iceland and Liechtenstein, and it gives regulators the power to recognise those qualifications, when they do not currently have the power in the relevant sector legislation.

This instrument has UK-wide application, and it will ensure that the UK is fully compliant with our obligations in the agreement. It will provide consistency across the statute book and provide clarity for Norway, Iceland and Liechtenstein, as well as for our own professionals.

Motion agreed.

House adjourned at 9.17 pm.