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PARLIAMENTARY DEBATES
(HANSARD)

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

Tuesday 19 December 2023

11 am

Prayers—read by the Lord Bishop of Southwell and Nottingham.

Home and Online Schooling
Question

11.07 am

Asked by ***Baroness Gohir***

To ask His Majesty's Government whether there has been a rise in home schooling and online schooling, and what action they are taking to strengthen child safeguarding in this context.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, we are aware that the number of home-educated children has been rising for several years. While the rise in itself is not an inherent safeguarding concern, the view of many local authorities is that the increase is driven by reasons other than commitment to home education. That is why we remain committed to introducing local authority statutory registers, are consulting on revised elective home education guidance, and have launched an accreditation scheme for full-time online education providers.

Baroness Gohir (CB): My Lords, it is important to try to understand the reasons for the rise in home education. Can the Minister provide a demographic breakdown of home-schooled children by sex, age, ethnicity, location—there may be hotspots—special educational needs and reasons for home schooling? I do not expect that information to be provided now; I can have it in writing. If that information is not readily available through local authorities, could mechanisms be implemented to collect it? I am worried about children with special educational needs. Are their needs being met? I am worried about the content and quality of online education, although I acknowledge that it removes barriers to learning. I am very worried about the increased risk of children being subjected to sexual violence and domestic abuse—Sara Sharif is an example. Some girls will be at increased risk of FGM and forced marriage. What will the Government do about these things? I do not think the register is the only solution.

Baroness Barran (Con): I share many of the noble Baroness's concerns. On her first point, we believe there are three main reasons why parents might decide to educate their children at home. The first is that they want to do it and it is a positive choice. The second is that they feel that the school their child is at is not meeting their child's needs, particularly where special educational needs come in, as the noble Baroness suggests. The third group is where we have genuine safeguarding concerns. The Government are working on all three aspects, and part of the consultation will aim to address them.

Lord Blunkett (Lab): My Lords, there is surely another key element in the increase in home tuition: the aftermath of Covid and home working. Is it not true that we need a rapid increase in the availability of child and adolescent mental health services and direct support for parents who need help to get their children back into school?

Baroness Barran (Con): I do not disagree that the aftermath of Covid has impacted not just home education but perhaps more particularly the wider issues that we have debated in your Lordships' House related to attendance at school. The noble Lord is aware that we are expanding mental health support teams across schools and recruiting additional educational psychologists to support children.

Lord Storey (LD): My Lords, the Minister will be aware that literally hundreds of thousands of children are missing from our schools—potentially an educationally lost generation. The charity School-Home Support has found that, particularly in poor communities, where children do not want to go to school they pretend to home educate and it is not happening. Is the answer not for the Government to bring a simple Bill which would make it lawful for parents to have to register if they are home educating?

Baroness Barran (Con): I think we have to be slightly careful about the use of the numbers. The noble Lord talked about "literally hundreds of thousands of children" missing their education. That is conflating a number of different things, and I do not want to give the impression that there are hundreds of thousands of children missing all their education. There were 86,200 children identified as being home educated in the spring of this year, 24,700 children were classified as children missing education on the census day, and 94,900 missed education for a period at some point in the academic year. On bringing legislation, I think the noble Lord will have seen that a Private Member's Bill has been introduced in the other place, and he may have heard my right honourable friend the Secretary of State speak warmly about it.

Lord Bailey of Paddington (Con): My Lords, a large number of children went missing from the educational roll as the pandemic ended and we lifted lockdown. What is being done specifically to identify those children and return them to the roll?

Baroness Barran (Con): The department is working closely with schools, particularly around persistent absence and severe absence. Persistent absence is when a child is missing 10% or more of their school time, and severe absence is where a child misses 50% or more. We have an Attendance Action Alliance which the Secretary of State chairs, and we are expanding that to a number of other regional advice areas. We have expert attendance hubs and advisers working with schools to help identify and support these children back into school.

Baroness Twycross (Lab): My Lords, there has been a 50% increase in home schooling since 2018-19. There is currently no inspection regime to check quality and I understand that the lack of inspection extends to home education hubs or online provision. Also, the only sanction currently applied on parents by councils where there are concerns is a school attendance order. How soon will the register mentioned by the Minister be in place, and what more will the Government do to ensure that both quality and safeguarding are front and centre of policy on home schooling?

Baroness Barran (Con): Obviously I cannot comment on the timing of a Private Member's Bill. On the very valid points raised by the noble Baroness about the inspection regime, that is one of the things that we are looking at in the consultation, which closes on 18 January. In particular, we are looking at how to judge the suitability of education. Importantly, much of the work that has gone into preparing that consultation has been done with parents and local authorities together so that we can build trust in both communities going forward.

Lord Laming (CB): My Lords, the noble Baroness has set out very helpfully the figures relating to children who are not in school on a regular basis. This is such an important matter at a formative stage in their development. Can the House assume from these figures that each of these children has a named place in school? If so, can the Minister say, in particular, what is happening to enforce the law of the land so that these children have a proper education?

Baroness Barran (Con): I do not want to say that every single child has a named place, as children can move around and there can be a time lag, but obviously it is the right of every child in this country to have a named place. On enforcement, the noble Lord understands very well that there is a balance to be struck. We need first to understand why the child is not in school and aim to address that; then, if enforcement is appropriate, that should be followed through.

Lord Lexden (Con): My Lords, the introduction of registers, to which the noble Lord, Lord Storey, and others have referred, is accepted universally to be hugely urgent. Can we not have government legislation rather than waiting for a Private Member's Bill?

Baroness Barran (Con): My noble friend will be aware that government legislation was not in the King's Speech, but the Government remain committed to introducing statutory local authority registers for children not in school as well as a duty for local authorities to provide support to home-educating families.

Lord Addington (LD): My Lords, the Minister mentioned that we are dealing with special educational needs here. When will we have a structure where every school has at least some expertise in how to teach for the most commonly occurring special educational needs without going to an education and health plan? When is that going to come in?

Baroness Barran (Con): The noble Lord will be aware that we are introducing an NPQ—a national professional qualification—for SENCOs in schools. We are also introducing support and training for SENCOs in early years to encourage early identification.

NHS App: Medical Records

Question

11.17 am

Asked by ***Lord Allan of Hallam***

To ask His Majesty's Government what measures they have put in place to mitigate the risk of people being coerced into showing their confidential medical records to third parties as records become universally available through the NHS app.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): The Government want people to have access to their own records. For most, online record access is beneficial but for a minority, having access could cause harm or distress. In many cases, practices can identify these patients and ensure that safeguarding processes are in place. Furthermore, to access the NHS app, users must prove their identity through the NHS log-in and, before entering their record, are advised what to do if they are being pressurised to share their information.

Lord Allan of Hallam (LD): My Lords, the design goals for the NHS app should be to make it as easy and frictionless as possible for legitimate users to access the system, while making it as difficult and frictionful as possible for people trying to gain unauthorised access. But there is a natural tendency to focus on the first part of this equation as developers believe in the systems they build and find it hard to put themselves in the shoes of the cunning and resourceful attackers who will try to break them. Given this dynamic, can the Minister confirm that the NHS has a red team tasked with trying to identify all possible vectors of attack on the NHS app, and that the requisite resources will be put into mitigating any risks that they identify?

Lord Markham (Con): The noble Lord is absolutely correct on getting that balance right between the two; that is why the NHS has a safeguarding reference group on exactly this, which has been putting in protections as well as messaging patients, telling them to be aware and that they have the opportunity to redact their records if they are concerned. There are other features, such as multi-factor authentication and making sure that, for log-in with facial ID, you cannot have anyone else in the picture, to ensure that people are not being coerced. So, there are a number of measures in place, but I completely agree that we need to keep them under review with user groups checking all the way.

Baroness Owen of Alderley Edge (Con): My Lords, with the abundance of health data available to the NHS, what future technologies are being developed to identify patterns and trends to improve patient outcomes and reduce the pressure on the NHS?

Lord Markham (Con): My noble friend is correct. As the noble Lord, Lord Allan, said, there are many good uses for the app and data. As we all probably know, AI is only as good as the data that underlies it. The good situation we have—it is lovely to have a story for Christmas cheer—is that our 50 million primary care and hospital records are probably second to none around the world. We are already using that to positive effect, such as for image reading and using AI for cancer scans and strokes. We can also use that data for intelligent screening and, in future, for cause and effect to find cures, hopefully one day even for dementia.

Lord Turnberg (Lab): While it is obviously important to control confidentiality of patient data, it is vital to be able to use data for medical research. Much research, such as epidemiological research, the relationship between smoking and ill health—obesity, diabetes and all sorts of diseases—would not be known much about unless we were able to handle patient data. In the rush to control, let us make sure we can still do research with patient data.

Lord Markham (Con): Absolutely; it is about getting that balance correct. I welcomed the support of all sides of the House when we were introducing the FDP. A lot of work was done with noble Lords on that. The fact that the federated data platform was as well received as it was in the circumstances is because of support from all Members of the House on all sides, knowing the vital role of data in improving health outcomes.

Baroness Brinton (LD): My Lords, following the question from my noble friend Lord Allan about a red team, in the past not health data but personal financial data has been sold by subsidiaries or contractors of UK firms based abroad. I notice that we now have a deal with America on health data and GDPR. Is that true for other countries, such as India? Personal data, particularly medical data, would be seen as very valuable.

Lord Markham (Con): The fundamental principle underlying all this is that none of the data leaves the control. The data controllers today—be it GPs, the NHS or the hospital—stay as they are, and any use of that data has to be approved outside of that. The noble Baroness is absolutely correct. We want to make sure that it is not used for any purposes that are not going to improve health outcomes, such as the ones we have talked about.

Baroness McIntosh of Pickering (Con): My Lords, could my noble friend update the House on where we are with sharing data—in particular, the outcomes of clinical trials—with our European partners?

Lord Markham (Con): Clinical trials are among the key areas that are vital to the life sciences industry. We are all aware that, post-Covid, we were falling a bit behind. I am glad to say that now we have improved, so that 80% of the time we are doing the clinical responses in time. We can still do better; that should be 100% but 80% is good. Most importantly, our data is the envy of the world. Just to give noble Lords an example, about 90% of our hospital records are digitised. In Germany, it is less than 1%.

Baroness Merron (Lab): My Lords, easy access to medical records on the NHS app is indeed positive and helpful to many, but of course there are parents whose abusive spouse or partner might use that sensitive clinical information to undermine legal cases of custody of dependants in the family courts. What discussions have taken place with the Ministry of Justice to assess both this risk and how to avert it?

Lord Markham (Con): In terms of averting it, there are some of the measures I was talking about. For instance, with facial recognition, if anyone else is seen in the picture, it disregards it, so that you cannot have someone else holding it or holding their head in to do it. If the person's eyes are shut—if someone is trying to do it while you are asleep—it does not work either. Those safeguards are in place, as well as multi-factor authentication, so that if anyone tries to change their details by email or whatever, it comes back to them. We have worked with user groups on this. I will come back to the noble Baroness specifically on the Ministry of Justice conversations, but we are doing a lot in this space.

Lord Scriven (LD): My Lords, digital transformation of the NHS at pace is being held back by the number of vacancies for digital roles within the NHS, particularly when many people are going over to the private sector for higher pay. What could the Government do to deal with this, particularly regarding the inflexible Agenda for Change?

Lord Markham (Con): The noble Lord is absolutely correct. Digital resource is well sought after. I was approving something just the other day which gives us more flexibility in that space, because sometimes you have to pay over and above to get people on it. As we all agree, this is vital to the future of what we are trying to do.

Baroness Bull (CB): My Lords, as more people who are able to are switching between the National Health Service and private medical care for specific operations, is the Minister confident that relevant information is then transferred back to a single patient record? This will be very important if, for instance, somebody needs emergency care or is involved in an accident. Is the data all being kept in one place?

Lord Markham (Con): Patient records is what the federated data platform is very good at, in terms of drawing data and information from all sorts of sources into one place, so it is always in the ownership of the person, the GP or the individual place. You can make your data available to the private care providers, if you are having an operation with them, for instance, but the data always remains within the NHS and in the ownership of the person.

Baroness McIntosh of Hudnall (Lab): My Lords, following the question from the noble Baroness, Lady Bull, is the Minister confident, in all the talk about

[Baroness McIntosh of Hudnall]
advances in technology, that data-sharing within the NHS is fit for purpose? We frequently encounter an apparent disconnect between different departments in the NHS, or different levels of care, where information which should be available to everybody is palpably not or, if it is, it is not being taken any notice of.

Lord Markham (Con): The noble Baroness is absolutely correct. While I think everybody would say that 90% digitisation is pretty good—it is not 100%, but it is pretty good—always making sure people are talking to each other is often the issue. I am sure we have all had examples of that. That is what the federated data platform helps to do, in terms of drawing it all in. For example, Chelsea and Westminster has put what was on 10 different spreadsheets and records into one place. We are getting a lot better at that, but is it perfect and seamless? No, there is still some work to be done.

Baroness Finlay of Llandaff (CB): My Lords, given the importance of medical research, for the development of advances in knowledge and for inward investment into this country in research, what consideration is being given to ensuring that patients in different disease groups can be asked whether they would consent to being informed about clinical studies that may be relevant to their condition? This is so that pre-consent to being approached is being built into the system, because we know that one of the big delays in recruitment into clinical studies is the process of case finding and consent, particularly for less common conditions and when patients are living in more rural and remote areas.

Lord Markham (Con): It is fair to say that we have made massive improvements. At the beginning of the year, we only had around 10% of patients with GP records available in the app but today it is 80%, which is a massive change. That allows us to do things like "Be Part of Research" which we have had hundreds of thousands of people volunteer for. We have not yet taken it to the next stage, so that you can get ahead of the curve for approvals for certain types, as the noble Baroness said, but the beauty of all this is that it gives all the opportunities for the future. As it is my last time standing up this year, I would like to finish by wishing everyone a happy Christmas.

Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022

Question

11.29 am

Asked by ***Lord Balfe***

To ask His Majesty's Government why, having suffered a defeat in the High Court, they are seeking to revive the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): My Lords, the High Court overturned the Government's previous repeal of Regulation 7 of the conduct regulations due to insufficient consultation. The Government continue to believe there is a strong case for removing what is a blanket restriction, which disproportionately interferes with the freedoms of both employers and agency workers. The purpose of the consultation is to gather views and evidence to better inform a future decision on whether to proceed with repealing Regulation 7.

Lord Balfe (Con): I thank the Minister for the reply, but I am sure he realises that there is no demand whatever for this measure from employers or trade unions. Rather like the deduction of TU subs, which was debated yesterday, this is seen as a being a rather spiteful attack on trade unions. How many more Conservative votes does the Minister wish to dispose of from the trade union movement? I also have a question for the Labour Opposition. I was at the TUC on 9 December, and there was a widespread feeling of "We'll believe it when we see it" around the changes we may or may not get to trade union legislation. I did send the Leader of the Opposition an email—

The Lord Privy Seal (Lord True) (Con): I remind my noble friend that this is Questions for Ministers, not the Opposition.

Lord Balfe (Con): I think I have asked my question to the Minister.

Lord Offord of Garvel (Con): I thank the noble Lord for his supplementary question. The right to strike is enshrined in UK law. There is no ambition on the part of the Government to undermine that fundamental right. But there is a balance to be struck between the rights of employers and agency workers being able to find work if there is work available. Therefore, this consultation will focus entirely on whether there is a need for private companies to be able to provide agency staff where they have a need for employment.

Lord Woodley (Lab): My Lords, the REC, which supplies agency staff, warns that allowing bosses to bus in strike-breakers risks extending disputes by inflaming tensions between trade unions and employers. Unions and even the Government's own impact assessment agree it will undoubtably worsen industrial relations and lead to prolonged strike action. How can the Minister possibly justify pushing ahead with these damaging and counterproductive measures when employers, unions and even the Government—that is a first—all agree it will poison industrial relations and make it much more difficult to resolve disputes?

Lord Offord of Garvel (Con): Well-run companies can operate only with the consent of their workforce. Well-run bosses run companies well with the consent of their workforce. Therefore, no well-run company wants to be a position where there are disputes with its workforce except in extremist situations. Bringing in

agency workers is never a panacea, and is quite often more expensive. Well-run companies would not want to do that. It would be only in extreme situations where I could ever envisage this happening.

Lord Hendy (Lab): My Lords, on 20 June 2016, the relevant committee of the International Labour Organization called on the Government to review the proposal to revoke Regulation 7 with the social partners—that is to say the unions and employers' associations—bearing in mind that

"the use of striker replacements should be limited to industrial action in essential services".

The Government's response was to undertake to the ILO that they would conduct such a review. However, by 13 July this year—seven years later—in the judgment to which the noble Lord refers, the Government had not done so. Will they do so now?

Lord Offord of Garvel (Con): To be very clear, the appeal was put forward on two bases: the first was on the lack of consultation and the second was on the merits of Article 11. The court did not find on the second, only on the first. Therefore, the consultation is being done between now and mid-January, with a view to collecting views from all registered parties so that a decision can be made in the future or not.

Lord Watts (Lab): My Lords, given that nobody wants this—the employers and the trade unions do not want it—what is motivating the Government to bring forward legislation that nobody wants?

Lord Offord of Garvel (Con): As I said before, a decision has not been made on this—a consultation is going on. Regulation 7 is in some ways interference with the operation of private companies and other employers, and sometimes prevents work-seekers being offered employment in legitimate circumstances. We are trying to get the balance right here between maintaining the right to strike and providing companies with the ability to service their clients and fulfil their revenue.

Lord Sikka (Lab): My Lords, could the Minister inform the House, either now or in a Written Statement, of the cost of developing, processing, enacting and defending this unlawful legislation? Can he also promise to refer this legislation and the court case to the newly appointed Minister of State without portfolio as an example of how the Government waste public money?

Lord Offord of Garvel (Con): I think the decision was made on the basis that the court decided that full consultation had not taken place on what we would all agree is an important matter in employment law. It was quite legitimate to say that the consultation should be rerun. It was decided not to appeal the decision—so public money was saved in that regard—but that the consultation should be now run in the ordinary course.

Lord Leong (Lab): My Lords, first, I thank the noble Lord, Lord Balfe, for his support and his dogged opposition to this terrible legislation. I want to state again that employers do not want it, trade unions do not want it and the High Court has ruled against it, so what are these exceptional circumstances that the Minister has just mentioned?

Lord Offord of Garvel (Con): There are legitimate circumstances where a company wants to fulfil its orders and contracts, and look after its clients, and, for whatever reason, it can find agency staff but the workforce do not want to work. I agree that it is an unusual situation. All this is doing is trying to balance the rights of employers and employees.

Lord McLoughlin (Con): My Lords, will my noble friend at some stage—he may not have the answer today—look at all the legislation that has been passed by successive Conservative Governments on trade union reform? Will he place in the Library a list of all those that have been reversed subsequently by any Labour Government?

Lord Offord of Garvel (Con): It actually exists—it is three pages long and will take 10 minutes to read. It is very clear: most of it outlines the Conservative reform agenda for trade unions, and there is a very small section on Labour reverses.

Minister for Disabled People

Question

11.37 am

Asked by ***Baroness Brinton***

To ask His Majesty's Government why the status of the Minister for disabled people was downgraded from that of Minister of State to that of Parliamentary Under Secretary of State.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): All Ministers speak with the authority of the Government, and it is for the Prime Minister to decide how responsibility is allocated. The role of Minister for Disabled People has been undertaken at both Minister of State and Parliamentary Under-Secretary of State level in the past. The new Minister has been at the Department for Work and Pensions since 2019 and has the ability to get things done and extensive experience of the issues that disabled people face.

Baroness Brinton (LD): My Lords, disabled people are horrified by the Prime Minister's decision. DWP estimates that 16 million people have a disability—that is one in four—and they face multiple barriers in their lives beyond DWP. It is harder to get a job—29 percentage points less—their financial position is much worse, they have to spend much more on energy, and other barriers remain for health, education and transport. The former role of the Minister of State for Disabled People could focus on influencing change but the new PUS is covering a large portfolio including housing benefit, the military covenant and youth. Why have this Government once again downgraded support for disabled people?

Baroness Neville-Rolfe (Con): I do not see it as a downgrade at all. The previous Minister was also the Minister for Disabled People, Health and Work. To the extent that portfolios are changed, when Ministers are experienced—I know this myself—you can sometimes improve how the work is done through these other areas. There is a big example here in the back to work package announced in the Autumn Statement. We really need that multibillion-pound package pushed through with vigour and energy, which I am sure the new Minister for the Disabled will deliver.

Baroness Lister of Burtersett (Lab): My Lords, not only have the Government downgraded the role of Minister for Disabled People but a recent report of the Women and Equalities Committee concluded that:

"The National Disability Strategy does not resemble a strategy",

and that engagement with disabled people in its formulation was poor to say the least. What steps are the Government taking to try to restore—or perhaps I should say build—the confidence of disabled people and the organisations that represent them?

Baroness Neville-Rolfe (Con): The Government are doing just that. The noble Baroness will know that the national disability strategy promised in the 2019 manifesto was held up in the courts. That is now behind us because the courts found in favour of the Government. We are also developing a disability action plan for the next 12 months. These are immediate actions to help people. The consultation on the action plan closed in October, and we will carry that forward very soon.

Lord Wigley (PC): My Lords, when the definitive Disability Discrimination Act 1995 was passed, not only was there a senior Minister of State in charge but the then Prime Minister, John Major, took a direct personal interest in that matter. Does the present Prime Minister take any personal interest?

Baroness Neville-Rolfe (Con): The present Prime Minister does take an interest. I re-emphasise that the Budget had a major package for the disabled. The Secretary of State for Work and Pensions represents the disabled at Cabinet. Even more importantly, we all have a duty in relation to the disabled. I work to try to get the disabled into public appointments; we debated One Login in the Moses Room and talked about its accessibility. The whole point about the strategy is that it is cross-cutting, and it helps us to move forward and help the disabled into life, because they can make such a great contribution.

Lord McColl of Dulwich (Con): My Lords, so important is the title "Minister for Disabled People" that I managed to persuade Mrs Thatcher, when she was Prime Minister, to change the name to that from its original name, Minister for the Disabled, because disabled people do not like being called "the disabled". At first the Prime Minister objected, saying, "They'll want to change all the notepaper". I said, "Yes, they will, but make them use up all the old notepaper first". Using this economic principle, could we not find some way of doing what the noble Baroness, Lady Brinton, suggested and restoring the name, even though the pay may not be restored to what it should be?

Baroness Neville-Rolfe (Con): Mims Davies is the Minister for Disabled People, Health and Work, but I do not think we should spend all our time focusing on titles. I do not want to tread on my noble friend Lord Younger's toes but, having studied this subject in preparation, I was trying to talk a little about what we will actually do for the disabled. Of course we need to respect them and talk about them in an appropriate way but, as noble Lords will know, it is important to have action and get things done.

Baroness Sherlock (Lab): My Lords, words matter, but action matters even more. Are my back-of-an-envelope sums right—is Mims Davies now the 13th Minister for Disabled People since the Government came to power in 2010? If so, does the Minister think that all this moving around is damaging things? For example, it is introducing massive delays to the Access to Work scheme, which left one autistic woman waiting 13 months to get a job. We need some action now, do we not?

Baroness Neville-Rolfe (Con): The noble Baroness may be right: perhaps Ministers do move around more than is ideal on occasions. I was delighted to discover that I was not moving in the last reshuffle and can continue. The key thing is to focus on the work in hand, and I believe Mims Davies will do that, with support from across the Cabinet.

Lord Young of Cookham (Con): My Lords, was not one of the greatest Ministers for the Disabled the late Alf Morris, and was he not a Parliamentary Under-Secretary?

Baroness Neville-Rolfe (Con): I thank my noble friend. I also mention my noble friend Lord Hague, who in the 1990s took through Parliament some ground-breaking legislation on the disabled that has changed the infrastructure of the UK. Those of us who were in business found it quite challenging at the time—I see noble Lords around the House nodding—but it has had a beneficial effect across the UK economy.

Baroness Bull (CB): My Lords, even with a Minister of State in place, we have repeatedly seen regulations and legislation over recent years ignore the needs and concerns of disabled people. You can point to Covid regulations, the aborted social care cap and, most recently, the Online Safety Act, which was silent on the needs of adults with learning disabilities. Given that, how will this Government take a more holistic look at legislation and ensure that the varied needs of the varied communities of people with disabilities are addressed in regulations and legislation going forward?

Baroness Neville-Rolfe (Con): I mentioned the convening work done across departments, which is important in relation to legislation, as the noble Baroness says. Obviously, the Covid inquiry is looking at what happened during Covid, and these are the sorts of

issues that I hope it will tackle. On individual Bills, I know from those I have done that we often debate disability—perhaps sometimes in response to amendments from the noble Baroness and others. That is very useful because it gives departments an opportunity to explain what they are doing. We have duties to the disabled and other groups, and we need to make sure that we take them seriously.

Baroness Chakrabarti (Lab): My Lords, given the cross-cutting work that the Minister has described and feels so confident about, can she tell the House when the Government are next due to report to the United Nations Committee on the Rights of Persons with Disabilities? What are the challenges from the last reporting cycle that the Government will be keen to address in that report?

Baroness Neville-Rolfe (Con): This not being my area, I am not able to answer the question fully, but officials are due to represent the UK and attend the meeting of the UN in March to discuss these issues. I am certainly happy to take away any particular concerns that the noble Baroness would like me to pass on.

Lord Sterling of Plaistow (Con): My Lords, many people, including everybody in this and the other House, want to help disabled people. We have talked in this House about their having work. Does the Minister agree that hundreds of thousands of small companies would be prepared, if approached, to give disabled people what they would really like: the opportunity to work—if they can—and be part of society in the normal way?

Baroness Neville-Rolfe (Con): That is a great point, and noble Lords will know that I am very concerned about small businesses and how we can help them. This point needs to be taken into account in the work we are doing, following the Autumn Statement, to help millions more disabled people into work. I came from Tesco, and we employed a lot of disabled people who made a very valuable contribution to the business over many years. Some noble Lords will have met the leading official on the Procurement Act in the Cabinet Office, who was a blind senior civil servant. It just goes to show what a contribution they can make in both small and big business.

Equality Act 2010 (Amendment) Regulations 2023

Motion to Approve

11.48 am

Moved by ***Baroness Barran***

That the draft Regulations laid before the House on 7 November be approved.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 13 December.

Motion agreed.

Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023

Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023

Motions to Approve

11.48 am

Moved by ***Lord Johnson of Lainston***

That the draft Regulations laid before the House on 16 October and 7 November be approved.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the second instrument). Considered in Grand Committee on 13 December.

Motions agreed.

Hydrogen Production Revenue Support (Directions, Eligibility and Counterparty) Regulations 2023

Motion to Approve

11.48 am

Moved by ***Lord Roborough***

That the draft Regulations laid before the House on 8 November be approved. *Considered in Grand Committee on 18 December.*

Motion agreed.

Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2023

Motion to Approve

11.49 am

Moved by ***Baroness Neville-Rolfe***

That the draft Regulations laid before the House on 9 November be approved.

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 18 December.

Motion agreed.

Child Support (Management of Payments and Arrears and Fees) (Amendment) Regulations 2023

Motion to Approve

11.49 am

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

That the draft Regulations laid before the House on 13 November be approved. *Considered in Grand Committee on 18 December.*

Motion agreed.

Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023

Motion to Approve

11.50 am

Moved by ***Lord Gascoigne***

That the draft Regulations laid before the House on 9 November be approved. *Considered in Grand Committee on 18 December.*

Motion agreed.

Tributes

Announcement

11.50 am

The Earl of Courtown (Con): My Lords, as we move towards the Recess, we should take time to pay tribute to members of staff who are leaving your Lordships' House after periods of long and exemplary service. It goes without saying that we in the usual channels, and noble Lords from across the House, are in debt to staff of all grades and tenure for keeping this workplace functioning. Every year, they wrestle with new challenges. We are thankful for their support.

Having said that, as is traditional, I also want to take the opportunity to start tributes to individuals who have retired from their duties this year. My eyes turn first to the marshalled forces that guard this great Chamber. I have the privilege of first commending Karen Bridgman, who has served as a doorkeeper for over 10 years. When Karen left on 30 November 2023, she left an imprint of kindness and generosity on the doorkeepers' team. Karen was proactive and she sought to fix a problem before it burdened the team. Her colleagues praised her pleasant attitude and the time she made available for everyone who came across her path. These characteristics, when twinned together, made her into an incomparable doorkeeper and friend. The truest compliments are those that are said about you in your absence. The mark that Karen has left in this House continues to be felt and voiced by those who worked closest with her.

I now turn to Tim Banting, who retired this year from the Parliamentary Archives team. Tim joined the archives in 2010, where he became a much-valued member of the heritage photographers' branch of the office. Tim was renowned for creating high-quality images of archival documents for users of the archives, as well as for exhibitions and other forms of public engagement. He was instrumental in supporting the move from microfilm to digital cameras, and in the modernisation of the digitisation studio. I am told that his passion for photography went beyond his professional capacity. Tim created then and now images of the Palace. One of Tim's photographs of the Commons Chamber was subsequently shortlisted for the 2018 Historic Photographer of the Year awards. I am sure it was Tim's ability to crop out the scaffolding boards and construction hoardings from his parliamentary photographs that endeared him to the Administration. After 13 years in this place, Tim will be much missed and we wish him well in his retirement.

Finally, I would like to thank the team in the Government Whips' Office and colleagues across the usual channels for their support in the last year, and in particular for me personally over the last couple of weeks. As you know, the Whips' Office serves not just the Front Bench but the entire House. My colleagues and I are grateful for their hard work and I wish them, all the staff of the House and all noble Lords a very merry Christmas.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I associate myself with all the remarks made by the noble Earl, the Government Deputy Chief Whip. He has done a very good job in the last couple of weeks, and I want to pay tribute to the Opposition Whips' Office and the usual channels. We work well together and I always appreciate how we work together during the year in sometimes difficult situations. With courtesy and friendship, we can usually resolve most problems.

It is my privilege to mention two particular people who have served the House well over many years. The first is Stephen Perkins, who joined as the Head of the Catering and Retail Service in the House of Lords eight years ago, bringing with him many years of experience within the catering industry, working for companies within the contract catering sector, notably the Zoological Society of London. One of his first achievements after joining was to successfully deliver the outcomes of the catering change programme. This was a significant body of work, focusing on changes to the catering service, including flexible working patterns for staff and adjustments to the style and types of catering provided, the positive outcome being a catering service that was efficient and effective and that well supported the needs of the House.

During his time with the catering service, Stephen was also responsible for the implementation of the Cater 2020 digital project, delivering technological improvements to the catering operations that benefited both catering staff and users of the service. In more recent times, Stephen ably led the team to ensure that appropriate catering was provided as part of Operation Marquee, after the passing of Her Majesty the late Queen Elizabeth II.

Stephen had a warm, personable approach and, as such, was very well respected by colleagues within the catering service, but also by Members of the House, members of staff and more widely through other offices within the Administration. We have calculated that, throughout his eight years with the service, Stephen will have been directly responsible for over 2.1 million transactions within the catering venues in the House, as well as over 7,000 catered private events, attended by over 600,000 visitors to Parliament.

We wish Stephen well in his retirement, with the knowledge that he will have more time to spend on some of his other interests, including golf and Liverpool Football Club. He will also be able to further his appreciation of good food and wine, thankfully now from the perspective of a guest.

John Hanlon, who recently retired as a doorkeeper, for me epitomises public service. I first got to know John when he was a serving Metropolitan Police Officer, based here at the Palace of Westminster. He was friendly,

approachable, kind and always prepared to go the extra mile to help people on the Parliamentary Estate, be they Members of either House, staff or members of the public visiting for the day. In total, John served as a Metropolitan Police Officer for 32 years. During his time as a police officer, he worked on many incidents, including the King's Cross fire and the Clapham Junction train crash. He then spent 10 years in the vice unit at Charing Cross police station, dealing with vulnerable and trafficked women, before joining the police unit based here in the Palace of Westminster. John is a person who knows someone in every walk of life and was always willing to help others, while always aware that his primary duty as a police officer was to keep people safe and secure.

He has a very dry sense of humour, and there are many stories one could tell about John. He has been a supporter and non-playing member of the parliamentary rugby team for many years, travelling when he could to support them, and I recall many occasions when we would both be at Murrayfield to watch either Scotland v England or Scotland v Ireland games during the Six Nations.

On retirement from the Metropolitan Police, John joined us as a doorkeeper. In that role, he excelled, using his natural friendliness to help Members, staff and the public. The doorkeepers are a very special part of the parliamentary family, and John excelled at the job and very quickly gave the impression that he had been doing it for many years.

John grew up in Edinburgh and plans to move back to that wonderful city next year. He is a proud Scotsman, but he is also proud of being British and proud of his Irish heritage—something I share with John. I last saw John at the Irish embassy party last Wednesday, wearing his London Irish tie and enjoying a well-deserved pint of Guinness. He is a Celtic Football Club supporter and gets to Celtic Park whenever he can—although I do not think we should dwell on last Saturday's results. I fear his good friend the noble Lord, Lord Foulkes of Cumnock, might remind him of the Hearts win when he next sees him.

He was a regular in the Woolsack after work and, when he retired, his friends named an area in the Woolsack "Hanlon's Corner", in recognition of his service to this Palace and the Members here, as a police officer and doorkeeper for many years. He will be greatly missed by all of his friends, including me. I hope though for many years to be meeting John at rugby events, Irish embassy functions, and even a home game or two at Celtic Park.

We wish John all the very best for the future, and a long and happy retirement in Edinburgh where he plans to spend more time with his children, Kate and Sean. He is a keen amateur photographer, and he told me only a couple of days ago that he intends to climb as many Munros as possible before the mountain rescue unit tells him to stop. He also plans to travel extensively around the world. I wish him a long and happy retirement.

I also wish all Members of the House, all members of staff and everyone who works on the estate to keep us safe and secure a safe and joyful Christmas and new year.

Noon

Baroness Thornhill (LD): My Lords, I would love to join John in the rugby, for sure.

It is a privilege to be asked to give these tributes on behalf of these Benches. The quality and professionalism of the staff who serve this House is indeed one of its hallmarks. It is something that struck me forcefully when I first joined your Lordships' House, and something that we are reminded of every day.

Yet, like the iceberg, we mainly see those with whom we come into contact. For every one of those visible people, there are many more whom we never or rarely see and yet on whom the smooth running of this House depends. As is demonstrated day after day, year after year, they always deliver. It has been yet another busy year.

My two retirees fit into one of each category: Trudy Collins, a principal attendant, who was very visible, and Mary Cruickshank, a freelance reporter, beavering quietly away in *Hansard*. Trudy left us in May, having given almost 27 years' service from 1999, when she made her own little piece of history by being the first female attendant. That must have been quite something, working originally in Black Rod's department, to her leaving us at a time when we now have the first female Black Rod; that is long overdue, of course.

Trudy rose through the ranks to principal attendant, spending much of her time in the Palace but latterly at Millbank House. It was said of her that she was the first to offer a cup of tea and a friendly chat and was always willing to help, which of course made her very popular with both staff and Members, as such kindnesses were noted and valued. She also worked with many young starters and apprentice attendants, acting as a mentor, giving much support and valuable advice, and showing similar kindnesses to new Members. I am sure the same was bestowed upon her apparently numerous animal friends, including dogs, chickens, tropical fish and parrots, which must have helped her when herding us cats in your Lordships' House.

Now, to Mary. She joined *Hansard* as a freelance reporter, following a successful career in journalism. She clearly enjoyed the change, as she stayed with us for over 10 years. That previous role meant that she brought with her a wealth of experience, which she swiftly and ably transferred to the parliamentary context. During challenging times—especially, her colleagues said, during the tough times of the pandemic—they were grateful for her steady hand. Most importantly, they felt that she brought great personal warmth and congeniality to the office, which they will undoubtedly miss. Both these valued members of staff have earned their retirement, and we wish them well in the next chapter of their lives.

Finally, I know that the noble Lords, Lord Newby and Lord Stoneham, would want me to thank all those in the Government Whips' Office for all their work this year and particularly for their patience in making sure that things run smoothly in the usual channels. I also thank our own office staff in the Liberal Democrat office. They have much to put up with, and they do it so well.

I wish everyone a joyful Christmas. We know that whatever 2024 throws at us, we are indeed in capable hands.

The Earl of Kinnoull (CB): My Lords, I join my colleagues very much in thanking all the staff, both in and of the House, not just for their hard work this year but for the good humour that bubbles up so often, which has enabled the House to function very well, even during our rather regularly odd hours.

I pay tribute to Carl Woodall, recently our Director of Facilities, who retired in March. He worked in the House for 14 years and was the first ever Director of Facilities. At an early stage of my time in the House, I used to call on him in room 25, a rather splendid room just at the top of the stairs, having no idea at all that Carl had 200 staff working for him and that he ran a very large number of bits and pieces of the House. I got it completely wrong. I went to his room regularly, asking him about a dustbin or whatever it was, and he would always have time for me, he would always be polite, and the dustbin, or whatever it was, would appear. That was him to a T.

Carl was instrumental in bringing on our successful banqueting department, and in revitalising the shop, which was very helpful for me for my Christmas shopping this year. I find that there are many things in it that are a pleasure to give and a pleasure to own. He oversaw many initiatives, including, importantly, several addressing fire safety, such as the Mobility Impaired Persons project. Each of these initiatives has resulted in a better and safer Westminster for Members, staff and the public.

When Covid-19 hit, Carl was key in enabling the House to continue to exercise its core functions. He worked extremely hard to ensure that the House was operatable and safe. He was the man putting up all the arrows in the various different passageways so that we did not run into each other. He virtually slept here while that was being set up. He was the longest serving member of the management board, and indeed the chair of its health and safety committee. He was known for always standing up for his staff, especially staff who did not have a desk. His warm smile, consistent work ethic and collaborative approach mean that he will be missed.

Finally, on behalf of the Cross Benches, I add my own version of Happy Christmas to all the staff and Members who have helped us throughout the year. I wish everyone a Happy Christmas.

Trial of Jimmy Lai

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 18 December.

"The Foreign Secretary has called on the Hong Kong authorities to end their prosecution of Jimmy Lai and release him. He also urged the Chinese authorities to repeal the national security law and end the prosecution of all individuals charged under it. The Foreign Secretary and I welcomed the opportunity to meet Mr Lai's son, Sebastien, again last week and to listen to his concerns as the trial approached.

As the Foreign Secretary has made clear, Mr Lai's prosecution is politically motivated. He has faced multiple charges to discredit and silence him. As an outspoken journalist and publisher, he has been targeted in a clear attempt to stop the peaceful exercise of his rights to freedom of expression and association. The Foreign Secretary raised Mr Lai's prosecution with Foreign Minister Wang Yi on 5 December, as his predecessor did in Beijing on 30 August. We will continue to press for Mr Lai's release with the Hong Kong and Chinese authorities.

Diplomats from our consulate-general attended court today as a visible sign of the UK's support, and they will continue to do so. We will continue to press for consular access to Mr Lai, which the Hong Kong prison authorities have repeatedly refused. China considers anyone of Chinese heritage born in China to be a Chinese national. It does not recognise other nationalities and therefore considers Mr Lai to be exclusively Chinese.

More broadly, we have made it clear that the national security law has damaged Hong Kong and its way of life. Rights and freedoms have been significantly eroded and arrests under the law have silenced opposition voices. It is a clear breach of the Sino-British joint declaration, the legally binding UN-registered treaty that China willingly entered into. Its continued existence and use is a demonstration of China breaking its international commitments. We will continue to stand up for the people of Hong Kong, to call out violations of their rights and freedoms, and to hold China to its international obligations."

12.06 pm

Lord Collins of Highbury (Lab): My Lords, I too, like Iain Duncan Smith, welcome the change of rhetoric by the Foreign Secretary, who said yesterday that

"Jimmy Lai is a British citizen"

and called on the Chinese Government to release him. As Catherine West said, hopefully the Foreign Secretary's intervention will not be a one-off, and we will continue to stand up for Jimmy in a sustained way and to maintain what I hope will be regular and effective communication with his family.

I know the Minister will not mention specific designations, but does he agree that more use of the Magnitsky sanctions is really important? Also, is there not a clear need for a cross-departmental China strategy to ensure that we can be effective in challenging China on these horrendous human rights abuses?

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): I thank the noble Lord for his words. On his first point about the Magnitsky measures that were included in the Sanctions and Anti-Money Laundering Act, I was involved in that process. They are robust and they stack up with similar measures that have been brought in by so many countries through the hard work of a great many people but particularly Bill Browder. They have applications right across the civilised world against acts of gross human rights abuse. We will continue to consider designations under the Global Human Rights Sanctions Regulations. We do not speculate about those, and is quite right that we do not. On 6 July 2020, the then Foreign Secretary announced the global human rights sanctions regime, allowing the UK to target human rights violators directly for the first time.

The noble Lord also asked about our China strategy. I refer him to the integrated review refresh, which has a very clearly set out approach to China—to protect, to align and to engage. Examples under protection are the National Security and Investment Act, removing surveillance equipment from sensitive government sites, and banning TikTok on government devices. Examples under alignment are deepening co-operation with core allies and a broader group of partners, G7 leaders and the like.

On engagement, we are strengthening contact with China. We invited China to the AI Safety Summit, we deliver messages on those occasions on human rights, and we press China not to support Russia. We will continue that kind of engagement, which we think is the right approach. It is all set out in the integrated review.

Baroness Smith of Newnham (LD): My Lords, as the noble Lord, Lord Collins, said, it is good to hear that the Foreign Secretary is supporting the rights of Jimmy Lai. Can the Minister tell the House what His Majesty's Government are doing in practical terms to try to re-engage China on the Sino-British agreement? In the other place yesterday, the Minister of State, Anne-Marie Trevelyan, simply said that

"the breaching of the Sino-British joint declaration is a great tragedy".—[*Official Report*, Commons, 18/12/23; col. 1126.]

That sounds a bit like hand-wringing. Is any more being done?

Lord Benyon (Con): The Sino-British declaration is a bilateral agreement registered with the United Nations. It is vital that we continue to raise it when we think it is being abused or when measures are being taken that are not in keeping with it or the values that underpin it, and we do that regularly. I have a list—I do not have time to relay it to the House now—of the times when we have raised these issues and examples of our continuing to raise them both bilaterally and multilaterally. I entirely agree with the noble Baroness that words are just that: words. The actions one can take when one side of a party is failing to sustain a bilateral agreement are very difficult to take, but we will continue to find all methods to raise the importance of this declaration.

Lord Alton of Liverpool (CB): My Lords, I draw attention to my non-financial interests as listed in the register. I know Jimmy Lai and his family personally, and the noble Baroness, Lady Kennedy of The Shaws, and I are sanctioned by the Chinese Communist Party. Is this Stalinesque show trail of Jimmy Lai not a moment of reckoning for all who claim that they value the rule of law, human rights, press freedom and democracy? Is it not a moment of reckoning for the duplicitous belief that you can deepen trade deals while United Kingdom citizens and 1,762 political prisoners are incarcerated in Hong Kong jails? In calling for Mr Lai's immediate and unconditional release, can the Minister say what practical steps we are giving him and his family? Do we intend to respond robustly if other United Kingdom citizens are caught in this CCP spiders' web? Why are we not sanctioning those responsible, as the noble Lord, Lord Collins, asked? What more will we do to expose this charade and travesty of a sham show trial that makes a mockery of justice and the rule of law?

Lord Benyon (Con): I thank the noble Lord for what he and others have done, and for their involvement with organisations such as Hong Kong Watch. The situation is exactly as he describes. He asked what the Government are doing to support Jimmy Lai and his family. We have met Sebastien Lai, as I know the noble Lord has; we are working with Doughty Street Chambers, which is running a very effective international campaign; and we have sought to provide consular access to Jimmy Lai, although it has been refused. The attempt by Jimmy Lai to have the legal support of his choice went to the highest court of appeal in Hong Kong, but that was rejected. At every stage, we have sought to represent the needs of a British citizen, and we will continue to do so. We will continue to seek consular access, which is currently being denied by the Hong Kong prison service, and to try to support his family here and around the world, while making sure that the campaign is as effective as it can be to get Jimmy Lai released.

Baroness Kennedy of The Shaws (Lab): My Lords, I echo what the noble Lord, Lord Alton, said about the fake nature of the charges concocted against Jimmy Lai. Many noble Lords will not know the details of this case, but it really is shocking. I am a member of Doughty Street Chambers, which is involved in the case. The charges are not only a way of dealing with one of the most eminent businesspeople in Hong Kong; their purpose is to threaten and silence others who are speaking about the erosion of democracy and the rule of law there. I am grateful to the new Foreign Secretary for what he has been doing, and I thank the team working with him on this. There are real threats to the legal team, so what advice and help with security is being given to them? The noble Lord, Lord Alton, and I have both experienced the business of being sanctioned. I am being attacked in cyber ways all the time, and I have the benefit of security advice from this House, so I wonder whether that is happening to the other lawyers involved. Is the trial conforming to due process and do we have observers in the court? Will those of us involved in following this case and campaigning be told what is happening during the trial?

Lord Benyon (Con): I pay enormous tribute to the noble Baroness for her work. The answer to her latter question is that we have consular staff attending the court daily and they are reporting back on the proceedings. She is right that it is a sham trial and that we need to make sure that we are raising this issue on every occasion possible. We are working with teams of expert lawyers, both nationally and internationally, and we are supporting Jimmy Lai in any way we can. The Foreign Secretary's response was very robust and clear. This will continue to be raised at the highest level, as it has been recently, in bilateral meetings with the Chinese Government.

The Lord Bishop of St Albans: My Lords, I too congratulate the Foreign Secretary on a much more robust approach. This is not happening only in Hong Kong; it is part of a much wider movement right across China, where not only human rights but religious rights are being denied. Churches are being knocked down, pastors are being arrested and, most notoriously

[The Lord Bishop of St Albans]
of all, there is, many people would argue, a genocide of the Uighur people. What are we doing with our colleagues internationally to press China on these rights in a consistent, long-term way that is backed up by sanctions?

Lord Benyon (Con): I thank the right reverend Prelate. The Sino-British joint declaration is an internationally registered, legally binding treaty between the UK and China, under which China committed to uphold Hong Kong's high degree of autonomy and to protect the rights and freedoms of its people. This explicitly includes freedom of expression and freedom of religion or belief; that is why we need to make sure that this declaration is upheld.

Baroness Bennett of Manor Castle (GP): My Lords, I declare my position as co-chair of the All-Party Parliamentary Group on Hong Kong. Jonathan Price, one of the members of the international legal team—which, as the Minister said, was denied the right to represent Mr Lai—said that

"the rule of law is eroded"

in Hong Kong. That is very evident to us all. Are the Government taking sufficient steps to warn British businesses engaged, or considering engaging, in Hong Kong that the rule of law does not exist there? Are they taking sufficient account of the fact that a number of British businesses—notably, banks—are cosying up to the Chinese regime in Hong Kong? Are the Government concerned about that and prepared to take action?

Lord Benyon (Con): The Foreign Office makes very clear the rules that should apply to all companies when they do business in different parts of the world, and to access and travel. We believe that the right kind of trade with China and Hong Kong is right; it is a good way of engaging with a country and of using those occasions to make sure that we are making the points about human rights. We have very strict rules in this country that require businesses to declare their supply chains in a whole variety of ways. There are rules covering some of the things the noble Baroness talked about. What is really important is that we focus on the case of Jimmy Lai and recognise that it concerns not only him but others. This is a human rights issue that the Government take very seriously and we want to see it resolved very soon.

Data Protection and Digital Information Bill

Second Reading

Scottish, Welsh and Northern Ireland Legislative Consent sought.

12.19 pm

Moved by ***Viscount Camrose***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Viscount Camrose) (Con): My Lords, in a time of rapid technological change, we need people to trust in how we can use data for greater good. By building understanding and confidence in the rules surrounding how we use data, we can unlock its real potential, not only for businesses but for people going about their everyday lives.

In 2018 Parliament passed the Data Protection Act, which was the UK's implementation of the EU general data protection regulation. While the EU GDPR protected the privacy rights of individuals, there were unintended consequences. It resulted in high costs and a disproportionate compliance burden for small businesses. These reforms deliver on the Government's promise to use the opportunity afforded to us by leaving the European Union to create a new and improved UK data rights regime.

The Bill has five parts that deliver on individual elements of these reforms. Part 1 updates and simplifies the UK GDPR and DPA 2018 to ease compliance burdens on businesses and introduce safeguards from new technologies. It also updates the similar regimes that apply to law enforcement agencies and intelligence services. Part 2 enables DSIT's digital verification services policy, giving people secure options to prove their identity digitally across different sectors of the economy if they choose to do so. Part 3 establishes a framework to set up smart data schemes across the economy. Part 4 reforms the privacy and electronic communications regulations—PECR—to bring stronger protection for consumers against nuisance calls. It also contains reforms to ensure the better use of data in health and adult social care, law enforcement and security. Part 5 will modernise the Information Commissioner's Office by making sure that it has the capabilities and the powers to tackle organisations that breach data rules, giving the ICO freedom to better allocate its resources and ensuring that it is more accountable to Parliament and to the public.

I stress that the Bill will continue to maintain the highest standards of data protection that people rightly expect. It will also help those who use our data to make our lives healthier, safer and more prosperous. That is because we have convened industry leaders and experts to codesign the Bill with us throughout its creation. This legislation will ensure that our regulation reflects the way in which real people live their lives and run their businesses.

On Report in the other place, we tabled a number of amendments to strengthen the fundamental elements of the Bill and to reflect the Government's commitment to unleash the power of data across our economy and society. I take this opportunity to thank Members of Parliament and the numerous external stakeholders who have worked with us to ensure that the Bill functions at its absolute best. Taken together, these amendments will benefit the economy by £10.6 billion over 10 years. This is more than double the estimated impact of the Bill when introduced in the spring.

These reforms are expected to lower the compliance burden on businesses. We expect small and micro-businesses to achieve greater overall compliance cost savings than larger business. We expect these compliance cost savings for small and micro-business compliance to be approximately £90 million a year as a result of the domestic data protection policies in the Bill.

The Bill makes it clear that the amount that any organisation needs to do to comply and demonstrate compliance should be directly related to the risk its processing activities pose to individuals. That means that in the future, organisations will have to keep records of their processing activities, undertake risk assessments and designate senior responsible individuals to manage data protection risks only if their processing activities are likely to pose high risks to individuals. We are also removing the need for organisations to do detailed legitimate interest assessments and document the outcomes when their activities are clearly in the public interest—for example, when they are reporting child safeguarding concerns. This will help reduce the amount of privacy paperwork and allow businesses to invest time and resources elsewhere.

Let me make this absolutely clear: enabling more effective use of data and ensuring high data protection standards are not contradictory objectives. Businesses need to understand and to trust in our data protection rules, and that is what these measures are designed to achieve. At the same time, people across the UK need to fundamentally trust that the system works for them too. We know that lots of organisations already have good processes for how they deal with data protection complaints, and it is right that we strengthen this. By making these a requirement, the Bill helps data subjects exercise their rights and directly challenge organisations they believe are misusing their data.

We already have a world-leading independent regulator, the Information Commissioner's Office. It is only right that we continue to provide the ICO with the tools it needs to keep pace with our dramatically changing tech landscape. The ICO needs to keep our personal data safe while ensuring that it remains accountable, flexible and fit for the modern world. We are modernising the structure and objectives of the Information Commissioner's Office. Under this legislation, protecting our personal data will remain the ICO's primary focus, but it will also need to consider how it can empower businesses and organisations to drive growth and innovation across the UK and support public trust and confidence in the use of personal data. We must ensure that our world-leading regulator is equipped to tackle the biggest and most important threats and data breaches, protecting individuals from the highest harm. The Bill means that the ICO can take a more proportionate approach to how it gets involved in individual disputes, not having to do so too early in the process before people have had a chance to resolve things sensibly themselves, while still being the ultimate guardian of data subjects' rights.

The Bill will create a modern ICO that can tackle the modern, more sophisticated challenges of today and support businesses across the UK to make safe, effective use of data to grow and to innovate. It will also unlock the potential of transformative technologies by making sure that organisations know when they can use responsible automated decision-making and that people know when they can request human intervention where these decisions impact their lives.

Alongside this, there are billions of pounds to be seized in the booming global data-driven trade. With the new international transfers regime, we are clarifying our regime for building data bridges to secure the close, free and safe exchange of data with trusted allies. Alongside new data bridges, the Secretary of State will be able to recognise new transfer mechanisms for businesses to protect international transfers. Businesses will still be able to transfer data across borders with the compliant mechanisms they already use, avoiding needless checks and costs.

The Bill will allow people to control more of their data. It will support smart data schemes that empower consumers and small businesses to make better use of their own data, building on the extraordinary success of open banking, where consumers and businesses access innovative services to manage their finances and spending, track their carbon footprint or access credit. Open banking is already estimated to have the potential to bring in £12 billion each year for consumers and £6 billion for small businesses, as well as boosting innovation in our world-leading fintech industry. With this Bill, we can extend the same benefits for consumers and business across the economy.

Another way the Bill ensures that people have control of their own data is by making it easier and more secure for people to prove things about themselves. Digital identities will help those who choose to use them to prove their identity electronically rather than always having to dig out stacks of physical documents such as passports, bills, statements and birth certificates. Digital verification services are already in existence and we want to put them on a secure and trusted footing, giving people more choice and confidence as they navigate everyday tasks, and saving businesses time and money.

The Bill supports the growing demand, domestic and global, for secure and trusted electronic transactions such as qualified electronic signatures. It also makes provision for the preservation of important data for coronial investigations in the event of a child taking their own life. Any death of a child is a tragedy, and the Government have the utmost sympathy for families affected by this tragic issue. I recognise, and I share, the strong feelings on this issue expressed by noble Lords on this matter and during the passage of the Online Safety Act.

The new provision requires Ofcom, following notification from a coroner, to issue data preservation notices requiring relevant tech companies to hold data that they may have relating to a deceased child's use of online services in circumstances where the coroner suspects that the child has taken their own life. This greatly strengthens Ofcom's and a coroner's ability to access data from online services and provides them with the tools they need to carry out their job. It will include, for example, if a child had taken their own life after interacting with self-harm or other harmful content online, or if they suspect that a child may have been subjected to coercion, online bullying or harassment. It would also include cases where a child has done an intentional act that has caused their death but where they may not have intended to die, such as the tragic circumstances where a child dies accidentally when attempting to recreate an online challenge.

The new provisions do not cover children's deaths caused by homicide, because the police already have extensive investigative powers in this context. These were strengthened last year by the entry into force of

[Viscount Camrose]
the UK-US data access agreement, which enables law enforcement to directly access content of communications held by US-based companies for the purpose of preventing, detecting, investigating and prosecuting serious crimes, such as murder and child sexual abuse and exploitation.

The families who have been courageously campaigning after their children were tragically murdered did not have access to this agreement because it entered into force only last October. To date, 10,000 requests for data have been made under it. However, we understand their concerns, and the Secretary of State, along with Justice Ministers, will work with noble Lords ahead of Committee and carefully listen to their arguments on potential amendments. We absolutely recognise the need to give families the answers they need and to ensure that there is no gap in the law.

Some aspects of the GDPR are very complex, causing uncertainty around how it applies and hampering private and public bodies' ability to use data as dynamically as they could. The Bill will help scientists make the most of data by ensuring that they can be reused for other related studies. This is achieved by removing burdensome requirements for scientific researchers, so that they can dedicate more time to focus on what they do best. The Bill will also simplify the legal requirements around research and bring legal clarity. This is achieved by transposing definitions of scientific, historical and statistical-purposes research into the operative text.

The Bill will improve the way that the NHS and adult social care organise data to deliver crucial health services in England. It will also improve the efficiency of data protection for law enforcement and national security partners, encouraging better use of personal data to help protect the public. The Bill will save up to 1.5 million hours of police time each year.

The Bill will also allow us to take further steps to safeguard our national security, by addressing risks from hostile agents seeking to access our data or damage our data infrastructure. It will allow the DWP to protect taxpayers' money from falling into the hands of fraudsters, as part of the DWP's biggest reform to fraud legislation in 20 years. We know that, over this last year, overpayments to capital fraud and error in universal credit alone were almost £900 million. It is time to modernise and strengthen the DWP's legislative framework to ensure that it gives those fighting fraud and error the tools that they need and so that it stands up to future challenges.

Through the Bill we are revolutionising the way we install, maintain, operate and repair pipes and cables buried beneath the ground. I am sure we have all, knowingly or not, been impacted by one of the 60,000 accidental strikes on an underground pipe or cable that happen every year. The national underground asset register—NUAR—is a brand new digital map that gives planners and excavators secure and instant access to the data they need, when they need it. This means not only that the safety and lives of workers will no longer be at risk but that NUAR will underpin the Government's priority to get the economy growing, expediting projects such as new roads, new houses and broadband rollout.

The Bill gives the people using data to improve our lives the certainty that they need. It maintains high standards for protecting people's privacy, while seeking to maintain the EU's adequacy decisions for the UK. The Bill is a hugely important piece of legislation and I thank noble Lords across the House for their involvement in and support for the Bill so far. I look forward to hearing their views today and throughout the rest of the Bill's passage. I beg to move.

12.34 pm

Lord Knight of Weymouth (Lab): My Lords, I start with apologies from my noble friend Lady Jones of Whitchurch, who cannot be with us due to illness. We wish her a speedy recovery in time for Christmas. I have therefore been drafted in temporarily to open for the Opposition, shunting my noble friend Lord Bassam to close for us at the end of the debate. As a result, what your Lordships will now get with this speech is based partly on his early drafts and partly on my own thoughts on this debate—two for the price of one. I reassure your Lordships that, while I am flattered to be in the super-sub role, I look forward to returning to the Back Benches for the remaining stages in the new year.

I remind the House of my technology interests, particularly in chairing the boards of CENTURY Tech and EDUCATE Ventures Research—both companies working with AI in education. I very much welcome the noble Lord, Lord de Clifford, to his place and look forward to his maiden speech.

Just over six years ago, I spoke at the Second Reading of the Data Protection Bill. I said then that:

> "We need to power the economy and innovation with data while protecting the rights of the individual and of wider society from exploitation by those who hold our data".

For me, that remains the vision. We are grateful to the Minister for setting out in his speech his vision, but it feels to me that one of the Bill's failings is the weakening of the protection from exploitation that would follow if it passes in its current form. In that 2017 Second Reading speech, I also said that:

> "No consent regime can anticipate future use or the generation of intelligent products by aggregating my data with that of others. The new reality is that consent in its current form is dead".—[*Official Report*, 10/10/17; cols. 183-5.]

Now that we have moved squarely into the age of AI, I welcome the opportunity to update GDPR to properly regulate data capture, storage and sharing in the public interest.

In the Online Safety Act, we strengthened Ofcom to regulate technology providers and their algorithmic impacts. In the Digital Markets, Competition and Consumers Bill, we are strengthening the Competition and Markets Authority to better regulate these powerful acquisitive commercial interests. This Bill is the opportunity to strengthen the Information Commissioner to better regulate the use of data in AI and some of the other potential impacts discussed at the recent AI summit.

This is where the Bill is most disappointing. As the Ada Lovelace Institute tells us in its excellent briefing, the Bill does not provide any new oversight of cutting-edge AI developments, such as biometric technologies or

foundation models, despite well-documented gaps in existing legal frameworks. Will the Minister be coming forward with anything in Committee to address these gaps?

While we welcome the change from an Information Commissioner to a broader information commission, the Bill further weakens the already limited legal safeguards that currently exist to protect individuals from AI systems that make automated decisions about them in ways that could lead to discrimination or disadvantage—another lost opportunity.

I co-chair the All-Party Parliamentary Group on the Future of Work, and will be seeking to amend the Bill in respect of automated decision-making in the workplace. The rollout of ChatGPT-4 now makes it much easier for employers to quickly and easily develop algorithmic tools to manage staff, from hiring through to firing. We may also want to provide safeguards over public sector use of automated decision-making tools. The latter is of particular concern when reading the legal opinion of Stephen Cragg KC on the Bill. He says that:

"A list of 'legitimate interests' (mostly concerning law and order, safeguarding and national security) has been elevated to a position where the fundamental rights of data subjects (including children) can effectively be ignored where the processing of personal data is concerned … The Secretary of State can add to this list without the need for primary legislation, bypassing important Parliamentary controls".

Furthermore, on lost opportunities, the Bill does not empower regulators with the tools or capabilities that they need to implement the Government's plans for AI regulation or the commitments made at the AI Safety Summit. In this, I personally support the introduction of a duty on all public regulators to have regard to the principles on AI that were published in the Government's White Paper. Would the Minister be willing to work with me on that?

There are other lost opportunities. I have argued elsewhere that data trusts are an opportunity to build public trust in their data being used to both develop better technology and generate revenue back to the taxpayer. I remain interested in whether personal data could be defined as an asset that can be bequeathed in one's estate to avoid what we discussed in our debates on what is now the Online Safety Act, where bereaved families have had a terrible experience trying to access the content their children saw online that contributed to their deaths—and not just from suicide.

This takes me neatly on to broken promises and lessons not learned. I am confident that, whether the Government like it or not, the House will use this Bill to keep the promises made to families by the Secretary of State in respect of coroners being able to access data from technology providers in the full set of scenarios that we discussed, not just self-harm and suicide. It is also vital that the Bill does nothing to contradict or otherwise undermine the steps that this country has taken to keep children safe in the digital world. I am sure we will hear from the noble Baroness, Lady Kidron, on this subject, but let me say at this stage that we support her and, on these Benches, we are fully committed to the age-appropriate design code. The Minister must surely know that in this House, you take on the noble Baroness on these issues at your peril.

I am also confident that we will use this Bill to deliver an effective regime on data access for researchers. During the final parliamentary stages of the Online Safety Bill, the responsible Ministers, Paul Scully MP and the noble Lord, Lord Parkinson, recognised the importance of going further on data access and committed in both Houses to exploring this issue and reporting back on the scope to implement it through other legislation, such as this Bill. We must do that.

The Bill has lost opportunities and broken promises, but in other areas it is also failing. The Bill is too long—probably like my speech. I know that one should not rush to judgment, but the more I read the Bill and various interpretations of its impact, the more I worry about it. That has not been helped by the tabling of some 260 government amendments, amounting to around 150 pages of text, on Report in another place—that is, after the Bill had already undergone its line-by-line scrutiny by MPs. Businesses need to be able to understand this new regime. If they also have any data relationship with the EU, they potentially also need to understand how this regime interacts with the EU's GDPR. On that, will the Minister agree to share quickly with your Lordships' House his assessment of whether the Bill meets the adequacy requirements of the EU? We hear noises to the contrary from the Commission, and it is vital that we have the chance to assess this major risk.

After the last-minute changes in another place, the Bill increasingly seems designed to meet the Government's own interests: first, through changes to rules on direct marketing during elections, but also by giving Ministers extensive access to the bank account data of benefit claimants and pensioners without spelling out the precise limitations or protections that go alongside those powers. I note the comments of the Information Commissioner himself in his updated briefing on the Bill:

"While I agree that the measure is a legitimate aim for government, given the level of fraud and overpayment cited, I have not yet seen sufficient evidence that the measure is proportionate ... I am therefore unable, at this point, to provide my assurance to Parliament that this is a proportionate approach".

In starting the scrutiny of these provisions, it would be useful if the Minister could confirm in which other countries such provisions already exist. What consultation have they been subject to? Does HMRC already have these powers? If not, why go after benefit fraud but not tax fraud?

Given the lack of detailed scrutiny this can ever have in the other place, I of course assume the Government will respect whatever is the will of this House when we have debated these measures.

As we did during last week's debate on the Digital Markets, Competition and Consumers Bill, I will now briefly outline a number of other areas where we will be seeking changes or greater clarity from the Government. We need to see a clear definition of high-risk processing in the Bill. While the Government might not like subject access requests after recent experience of them, they have not made a convincing case for significantly weakening data-subject rights. Although we support the idea of smart data initiatives such as extending the successful open banking framework to other industries, we need more information on how Ministers envisage this happening in practice. We need to ensure the

[Lord Knight of Weymouth]
Government's proposals with regards to nuisance calls are workable and that telecommunications companies are clear about their responsibilities. With parts of GDPR, particularly those on the use of cookies, having caused so much public frustration, the Bill needs to ensure appropriate consultation on and scrutiny of future changes in this area. We must take the public with us.

So a new data protection Bill is needed, but perhaps not this one. We need greater flexibility to move with a rapidly changing technological landscape while ensuring the retention of appropriate safeguards and protections for individuals and their data. Data is key to future economic growth, and that is why it will be a core component of our industrial strategy. However, data is not just for growth. There will be a clear benefit in making data work for the wider social good and the empowerment of working people. There is also, as we have so often discussed during Oral Questions, huge potential for data to revitalise the public services, which are, after 13 years of this Government, on their knees.

This Bill seems to me to have been drafted before the thinking that went into the AI summit. It is already out of date, given its very slow progress through Parliament. There is plenty in the Bill that we can work with. We are all agreed there are enormous opportunities for the economy, our public services and our people. We should do everything we can to take these opportunities forward. I know the Minister is genuinely interested in collaborating with colleagues to that end. We stand ready to help the Government make the improvements that are needed, but I hope the Minister will acknowledge that there is a long way to go if this legislation is to have public confidence and if our data protection regime is to work not just for the tech monopolies but for small businesses, consumers, workers and democracy too. We must end the confusion, empower the regulators and in turn empower Parliament to better scrutinise the tsunami of digital secondary legislation coming at us. There is much to do.

12.47 pm

Lord Allan of Hallam (LD): My Lords, even less than the noble Lord, Lord Knight, can I claim that this is my primary brief, so I want to make a short Back-Bench contribution to the subject, bringing some of my experience from former interests. I declare that I do not have any current financial interests but, if you look at my register entry, you will see that I spent a long time working for a company that was so much at the heart of the data protection debate that the 2016 EU regulation was nicknamed in Brussels "Lex Facebook".

I do not want speak to the details of the provisions in front of us, and I look forward to hearing some of the arguments, particularly from the noble Baroness, Lady Kidron, with whom I worked closely in the context of the Online Safety Act; I think she has some really important points to raise on what is in the Bill. I also look forward to the maiden speech of the noble Lord, Lord de Clifford.

The one thing I really want to spend a short amount of time on today is to flag a concern that I will not attempt to resolve: I would rather leave that to my noble friend Lord Clement-Jones and others who will to be in Committee on the Bill. It is the concern around EU adequacy that I think should really be front and centre of our discussions when we consider this legislation. As I say, I do not intend to be active in later stages of the Bill—unless we fix the NHS between now and Committee, which would be a blessing for more reasons other than enabling me to take part in consideration of data protection legislation.

The flag that I am raising will be in something of a Cassandra-like tone. It is something I think is very likely to happen, but I am not expecting the Government to believe me and necessarily change direction. I have been intimately involved in these discussions over many years. If people have been following this, they will know that the EU had an adequacy agreement with the United States that had full political support within the EU institutions but has successively been struck down in a series of actions in the European Court of Justice. All the politicians wanted data to flow freely between the United States and the EU, but the law has not allowed that to happen. So the alarm bells ring. The noble Lord, Lord Knight of Weymouth, said he thought the Commission had doubts; that worries me even more. Even where the Commission is saying that it is comfortable with the adequacy of the UK regime, the alarm bells still ring for me because it said that repeatedly over the US data transfers and it turned out not to be the case.

There are three main areas where we can predict that the risk will occur. The first is where the core legal regime for data protection in the UK is deemed to be too weak to protect the interests of EU data subjects. The second is where there are aspects of the UK legal regime for security-related surveillance that are seen as creating unacceptable risk if EU data is in the hands of UK entities. The third is where redress mechanisms for EU data subjects, especially in relation to surveillance, are regarded as inaccessible or ineffective. These are all the areas that have been tested thoroughly in the context of the United States, and any or all of them may end up being tested also in the European Court of Justice for the United Kingdom if EU citizens complain in future about the processing of their data in the UK. The first angle will test the complete package of data protection set out in the many pages of this Bill. The second will consider our surveillance practices, including new developments such as the Investigatory Powers (Amendment) Bill, which is before us right now. Any future changes to UK surveillance law, for example, following a terrorist outrage, may end up being tested and queried before the European Court of Justice.

Regarding redress, our relationship with the European Court of Human Rights is critical. Any suggestion that we start to ignore ECHR judgments, even in another area such as immigration policy, may be used to argue that EU citizens cannot rely on their Article 8 right to privacy in the United Kingdom. My advice to the Minister is to properly test all these angles internally on the assumption that we will be arguing them out at the European Court of Justice in the future. This is difficult. I know that the UK authorities, like the US authorities, will not be comfortable sharing details of their surveillance regime in a European court, but that is what will be required to prove we are adequately safe

if a complaint in respect of UK surveillance is made. It is really important that we hear the strongest lines of attack, and that we invite privacy activists, in particular, to offer them: the Government should invite in the kinds of people who will be taking those court cases so they can hear their strongest lines of attack now and test all our legislation against them. We certainly should not rely on assurances from the European Commission; I hope the Minister can give us more than that in his response. The key dynamic from the transatlantic experience is that this is between EU privacy activists and the European courts, rather than being something the Commission entirely controls.

The consequences of the loss of EU adequacy, or even significant uncertainty that this is on the horizon, will be that UK businesses that work on a cross-channel basis will be advised by their lawyers to move their data processing capability into the EU. They would feel confident serving the UK from the EU, but not the other way around. This is precisely what has happened in the context of transatlantic data flows and will hardly make Britain the best place in the world to do e-business. I hope the Minister will confirm that it would be a very undesirable outcome, to use parliamentary language, and that we will be taking one step forward but two steps back if that is a consequence of this Bill.

Having planted that flag, it is regrettable I will be unable to help noble Lords as they try and thread the needle of getting the legislation right. I have every sympathy for those seeking to do that; I have less and less sympathy for the Government, because they chose to bring the legislation forward, unlike other important legislation like the mental capacity Bill, which was left off the agenda, as I keep reminding the Government. I hope noble Lords will keep this Cassandra-like warning current in their minds as they consider the Bill; I do not want to be standing here in five years' time saying, "I told you so" and I do not think noble Lords want me here in five years' time saying that either. With that in your Lordships' ears, I hope the Minister and Members who are scrutinising the Bill can really dig into this adequacy point and not hold back, because it is a genuine, serious threat to all kinds of businesses in the United Kingdom, not just digital ones.

12.54 pm

Baroness Kidron (CB): My Lords, I declare my interests set out in full on the register, including as an advisor to the Institute for Ethics in AI at Oxford University, chair of the Digital Futures for Children centre at the LSE and chair of the 5Rights Foundation. I add my welcome to my noble friend Lord de Clifford, who I had the pleasure of meeting yesterday, and I look forward to his maiden speech.

I start by quoting Marcus Fysh MP who said in the other place:

"this is such a serious moment in our history as a species. The way that data is handled is now fundamental to basic human rights … I say to those in the other place as well as to those on the Front Benches that … we should think about it incredibly hard. It might seem an esoteric and arcane matter, but it is not. People might not currently be interested in the ins and out of how AI and data work, but in future you can bet your bottom dollar that AI and data will be interested in them. I urge the Government to work with us to get this right".—[*Official Report*, Commons, 29/11/23; col. 878.]

He was not the only one on Report in the other place who was concerned about some of the provisions in the Bill, who bemoaned the lack of scrutiny and urged the Government to think again. Nor was he the only one who reluctantly asked noble Lords to send the Bill back to the other place in better shape.

I associate myself with the broader points made by both noble Lords who have already spoken—I do not think I disagreed with a word that they said—but my own comments will primarily focus on the privacy of children, the case for data communities, access for researchers and, indeed, the promises made to bereaved parents and then broken.

During the passage of the Data Protection Act 2018, your Lordships' House, with cross-party support, introduced the age appropriate design code, a stand-alone data protection regime for the under-18s. The AADC's privacy by design approach ushered in a wave of design change to benefit children: TikTok and Instagram disabled direct messaging from unknown adults to children; YouTube turned off auto-play; Google turned on safe search on by default for children; 18-plus apps were taken out of the Play Store; TikTok stopped notifications through the night; and Roblox stopped tracking and targeting children for advertising. These were just a handful of hundreds of changes to products and services likely to be accessed by children. Many of these changes have been rolled out globally, meaning that while other jurisdictions cannot police the code, children in those places benefit from it. As the previous Minister, the noble Lord, Lord Parkinson, acknowledged, it contributes to the UK's reputation for digital regulation and is now being copied around the globe.

I set this out at length because the AADC not only drove design change, it also established the crucial link between privacy and safety. This is why it is hugely concerning that children have not been explicitly protected from changes that lessen user data protections in the Bill. I have given Ministers notice that I will seek to enshrine the principle that children have the right to a higher bar of data protection by design and default; to define children's data as sensitive personal data in the Bill; and exclude children from proposals that risk eroding the impact of the AADC, notably in risk assessments, automated processing, onward processing, direct marketing and the extended research powers of commercial companies.

Minister Paul Scully said at Second Reading in the other place:

"We are committed to protecting children and young people online … organisations will still have to abide by our Age-appropriate design code".—[*Official Report*, Commons, 17/4/23; col. 101.]

I take it from those words that any perception of, or diminution to, children's data rights is inadvertent, and it remains the Government's policy not to weaken the AADC as currently configured in the Bill. Will the Minister confirm that it is indeed the Government's intention to protect the AADC and that he is willing to work with me to ensure that it is that the outcome? I will also seek a requirement for the ICO to create a statutory children's code in relation to AI. The ubiquitous deployment of AI technology to recommend and curate is nothing new, but the rapid advances in generative AI capabilities marks a new stage in its evolution. In

[Baroness Kidron]

the hundreds of pages of the ICO's non-binding *Guidance on AI and Data Protection*, its *AI and Data Protection Risk Toolkit* and its advice to developers on generative AI, there is but one mention of the word "child"—in a case study about child benefit.

The argument made was that children are covered by the AADC, which underlines again just how consequential it is. However, since adults are covered by data law but it is considered necessary to have specific AI guidance, the one in three users that is under 18 deserves the same consideration. I am not at liberty to say today, but later this week—perhaps as early as tomorrow—information will emerge that underlines the urgent need for specific consideration of children's safety in relation to generative models. I hope that the Minister will agree that an AI code for kids is an imperative rather than nice to have.

Similarly, we must deliver data privacy to children in education settings. Given the extraordinary rate at which highly personal data seeps out of schools into the commercial world, including to gambling companies and advertisers, coupled with the scale of tech adoption in schools, it is untenable to continue to see tech inside school as a problem for schools and tech outside school as a problem for regulators. The spectre of a nursery teacher having enough time and knowledge to integrate the data protection terms of a singing app, or the school ICT lead having to tackle global companies such as Google and Microsoft to set the terms for their students' privacy, is frankly ridiculous, but that is the current reality. Many school leaders feel abandoned by the Government's insistence that they should be responsible for data protection when both the AADC and Online Safety Act have been introduced but they benefit from neither. It should be the role of the ICO to set data standards for edtech and to ensure that providers are held to account if they fall short. As it stands, a child enjoys more protection on the bus to school than in the classroom.

Finally on issues relating to children, I want to raise a technical issue around the production of AI-generated child sexual abuse material. I recognise the Government's exemplary record on tackling CSAM but, unfortunately, innovation does not stop. While AI-generated child sexual abuse content is firmly in scope of UK law, it appears that the models or plug-ins trained on generating CSAM or trained to generate CSAM are not. At least four laws, the earliest from 1978, are routinely used to bring criminal action against CSAM and perpetrators of it, so I would be grateful if the Minister would agree to explore the issue with the police unit that has raised it with me and make an explicit commitment to close any gaps identified.

We are at an inflection point, and however esoteric and arcane the issues around data appear to be, to downgrade a child's privacy even by a small degree has huge implications for their safety, identity and selfhood. If the Government fail to protect and future-proof children's privacy, they will be simply giving with one hand in the OSA and taking away with the other in this Bill.

Conscious that I have had much to say about children, I will briefly put on the record issues that we can debate at greater length in Committee. While data law largely rests on the assumption of a relationship between an individual and a service, we have seen over a couple of decades that power lies in having access to large datasets. The Bill offers a wonderful opportunity to put that data power in the hands of new entrants to the market, be they businesses or communities, by allowing the sharing of individual data rights and being able to assign data rights to third parties for agreed purposes. I have been inspired by approaches coming out of academia and the third sector which have supported the drafting of amendments to find a route that would enable the sharing of data rights.

Similarly, as the noble Lord, Lord Knight, said, we must find a route to access commercial data sets for public interest research. I was concerned that in the other place when former Secretary of State Jeremy Wright queried why a much-touted research access had not materialised in the Bill, the Minister appeared to suggest that it was covered. The current drafting embeds the asymmetries of power by allowing companies to access user data, including for marketing and creating new products, but does not extend access for public interest research into the vast databases held by those same companies. There is a feeling of urgency emerging as our academic institutions see their European counterparts gain access to commercial data because of the DSA. There is an increased need for independent research to support our new regulatory regimes such as the Online Safety Act. This is an easy win for the Government and I hope that they grasp it.

Finally, I noted very carefully the words of the Minister when he said, in relation to a coroner's access to data, that the Secretary of State had made an offer to fill the gap. This is a gap that the Government themselves created. During the passage of the Online Safety Act we agreed to create a humane route to access data when a coroner had reason to suspect that a regulated company might have information relevant to the death of a child. The Government have reneged by narrowing the scope to those children taking their own life. Expert legal advice says that there are multiple scenarios under which the Government's narrowing scope creates a gaping hole in provision for families of murdered children and has introduced uncertainty and delay in cases where it may not be clear how a child died at the outset.

I must ask the Minister what the Government are trying to achieve here and who they are trying to please. Given the numbers, narrowing scope is unnecessary, disproportionate and egregiously inhumane. This is about parents of murdered children. The Government lack compassion. They have created legal uncertainty and betrayed and re-traumatised a vulnerable group to whom they made promises. As we go through this Bill and the competition Bill, the Minister will at some points wish the House to accept assurances from the Dispatch Box. The Government cannot assure the House until the assurances that they gave to bereaved parents have been fulfilled.

I will stop there, but I urge the Minister to respond to the issues that I have raised rather than leave them for another day. The Bill must uphold our commitment to the privacy and safety of children. It could create an ecosystem of innovative data-led businesses and keep our universities at the forefront of tech development

and innovation. It simply must fulfil our promise to families who this Christmas and every other Christmas will be missing a child without ever knowing the full circumstances surrounding that child's death. That is the inhumanity that we in this House promised to stop—and stop it we must.

1.08 pm

The Lord Bishop of St Albans: My Lords, I too welcome the noble Lord, Lord de Clifford, and look forward to his maiden speech. We on these Benches appreciate that there is a need for updated data protection legislation in order to keep up with the many technological advances that are taking place and, wherever possible, to simplify the processes for data processing. From this perspective, we welcome the Government's ambition to remove unnecessary red tape and to support British businesses and our economy. However, as ever, these priorities need to be balanced alongside appropriate security of new legislation and we must ensure that there are appropriate safeguards in the Bill to protect human rights that are fundamental to our democracy.

I have been struck by just how many briefing papers I have received from the most extraordinarily diverse group of organisations. One thing that many of them highlight is the fact that, for many businesses that operate between the UK and the EU, this new legislation is no guarantee of simplified data processing. In fact, with the increased divergence between UK and EU data protection that this Bill will bring, it is worrying that we may struggle to work more closely with the EU. Working to two different standards and trying to marry two frameworks that are far less aligned does not sound like less red tape, nor does it sound particularly pro-business.

However, there is an important point in respect of the stated aims of the Bill. There are serious concerns from businesses, organisations and civil society groups across a wide range of sectors about the weakening of data protection law under this new Bill. Clause 1(2) tightens the definition of personal data, meaning that only data that could allow a processor or another party to identify the individual by

"reasonable means at the time of processing"

would count as personal data and be protected by law. As many others have drawn attention to, the use of the phrase "reasonable means" is imprecise and troubling. This will need to be more clearly defined as a minimum or the clause revoked altogether. "Reasonable means" would include the cost of identifying the individual, as well as the time, effort and other factors besides. This would allow organisations to assess whether they have the resources to identify an individual, which would be an extremely subjective test, to say the least, and puts the power firmly in the hands of data processors when it comes to defining what is or is not personal data.

As an example, GeneWatch has highlighted that, under the new Bill, some genetic information will no longer be classed as "personal data" and safeguarded as such, allowing the police and security services to access huge amounts of the public's genetic information without needing to go to court or to justify the requirement for this data. Crucially, data protection legislation should define what is or is not personal data by the type of data it is, not by how easy or feasible it may be for an organisation or third party to use that data to identify an individual at every given point. Personal data rights must continue to be protected in this country and in our law.

The new Bill also provides vastly expanded powers to the police and security services via Clause 19 and Clauses 28 to 30. As I read them, on the surface they do not look as though they provide proper accountability; perhaps the Minister can reassure me on that. Clause 19 would review the requirement in the Data Protection Act 2018 for the police to justify why they have accessed an individual's personal data. Clauses 28 to 30 allow the Home Secretary to authorise the police so that they do not need to comply with certain data protection laws via a national security certificate; this would give the police immunity even if they commit what would otherwise be a crime.

Taken together, these two measures give an extraordinary amount of unchecked power to the police and security services. With the amended approach to national security certificates, the police could not be challenged before the courts for how and why they had accessed data, so there would be no way to review what the Government are doing here or ensure that abuses of these powers do not take place. Can the Minister explain how such measures align with the democratic values on which this country and government are based?

The National AIDS Trust has been involved in cases where people living with HIV have had their HIV status shared, without their consent, by police officers, with a huge impact on the life of the individual in question. This is a serious breach of current data protection law. We must ensure that police officers are still required to justify why they have accessed specific personal data, as this evidence is vital in cases of police misconduct.

I am aware that there are many other concerns about this Bill. Noble Lords have touched on some of them, not least around online pornography, gambling and other matters that I hope other noble Lords will pick up on. In particular, there are doubts around the Bill's compliance with the European Convention on Human Rights. We in this House must do our duty to properly scrutinise and, wherever necessary, amend this Bill to ensure that we have the proper legislation in place to protect and safeguard our data. I look forward to working with Ministers and Members of this House when we move into Committee on this Bill.

1.15 pm

Lord Kamall (Con): My Lords, it is a pleasure to follow the previous speakers, including my noble friend the Minister, the other Front-Benchers and the noble Baroness, Lady Kidron.

I start by thanking the House of Lords Library for its briefing—it was excellent, as usual—and the number of organisations that wrote to noble Lords so that we could understand and drill down into some of the difficulties and trade-offs we are going to have to look at. As with most legislation, we want to get the balance right between, for example, a wonderful environment for commerce and the right to privacy and security. I think that we in this House will be able to tease out some of those issues and, I hope, get a more appropriate balance.

[Lord Kamall]

I refer noble Lords to my interests as set out in the register. They include the fact that I am an unpaid adviser to the Startup Coalition and have worked with a number of think tanks that have written about tech and privacy issues in the past.

When I look at the Bill at this stage, I think that there are bits to be welcomed, bits that need to be clarified and bits that raise concern. I want to touch on a few of them before drilling down—I will not drill down into all of them, because I am sure that noble Lords have spoken or will speak on them, and we will have much opportunity for further debate.

I welcome Clause 129, which requires social media companies to retain information linked to a child suicide. However, I understand and share the concern of the noble Baroness, Lady Kidron, that this seems to be the breaking of a promise. The fact is that this was supposed to be about much more data and harms to children and how we can protect our children. In some ways, we must remember the analogy about online spaces: when we were younger, before the online age, our parents were always concerned about us when we went beyond the garden gate; nowadays, we must look at the internet and the computers on our mobile devices as that garden gate. When children leave that virtual garden gate and go through into the online world, we must ask whether they are safe, in the same way that my parents worried about us when, as children, we went through our garden gate to go out and play with others.

Clauses 138 to 141, on a national underground asset register, are obviously very sensible; that proposal is probably long overdue. I have questions about the open electoral register, in particular the impact on the direct marketing industry. Once again, we want to get the balance right between commerce and ease of doing business, as my noble friend the Minister said, and the right to privacy.

I have concerns about Clauses 147 and 148 on abolishing the offices of the Biometrics Commissioner and the Surveillance Camera Commissioner. I understand that the responsibilities will be transferred, but, in thinking about the legislation that we have been talking about in this place—such as the Online Safety Act—I wonder about the amount of powers that we are giving to these regulators and whether they will have the bandwidth for them. Is there really a good reason for abolishing these two commissioners?

I share the concerns of the noble Lord, Lord Knight, about access to bank accounts. Surely people should have the right to know why their bank account has been accessed and have some protection so that not just anyone can access it. I know that it is not just anyone but there are concerns about this, and people have to be clearer on the rules.

I have talked to the direct marketing industry. It sees the open electoral register as a valuable resource for businesses in understanding and targeting customers. However, it tells me that a recent court case between Experian and the ICO has introduced some confusion on the use of the register for business purposes. It is concerned that the Information Commissioner's Office's interpretation, requiring notification to every individual for every issue, presents challenges that could cost the industry millions and make the open electoral register unusable for it, perhaps pushing businesses to rely more on large tech companies. However, I understand that, at the same time, this may well be an issue where there are clear concerns about privacy.

Where there is no harm, I would like to understand the Government's thinking on some of that—whether it is going too far or whether some clarification is needed in this area. Companies say they will be unable to target prospective customers; some of us may like that, but we should also remember that there is Clause 116 on unlawful direct marketing. The concern for many of us is that while it is junk if we do not want it, sometimes we do respond to someone's direct marketing. I wonder how we get that balance right; I hope we can tease some of that out. If the Government agree with the interpretation and restrictions on the direct marketing industry, I wonder whether they can explain some of the reasons behind it. There may very well be good reasons.

I also want to look at transparency and data usage, not just for AI but more generally. It is obvious in the Government's own AI White Paper that we want a pro-innovation approach to regulation, but we are also calling for transparency at a number of levels: of datasets and of algorithms. To be honest, even if we are given that transparency, do we have the ability to understand those algorithms and datasets? We still need that transparency. I am concerned about undermining the principle, and particularly weakening subject access requests.

I am also interested in companies that, say, have used your data but have refused an application and then tell you that they do not have to tell you why they refused that application. Perhaps this is too much of a burden to companies, but I wonder whether we have a right to know which data was being accessed when that decision was made. I will give a personal example; about a year ago, I applied for an account with a very clever online bank and was rejected. It told me I would have a decision within 48 hours; I did not. Two weeks later, I got a message on the app that said I had been rejected and that under the law it did not have to tell me why. I wrote to it and said, "Okay, you don't have to tell me why, but could you delete all the data you have on me—what I put in?". It said, "Oh, we don't have to delete it until a certain time". If we really own that data, I wonder whether there should be more of an expectation on companies to explain what data and information they have to make those decisions, which can be life changing for many people. We have heard all sorts of stories about access to bank accounts and concerns about digital exclusion.

We really have to think about how much access individuals can have to the data that is used to refuse them, but also the data when they leave a service or stop being a user. I also want to make sure that there is accountability. I want to know, in Clause 12, about "reasonable and proportionate search"; what does that mean, particularly when it is processed by law enforcement and intelligence services? I think we need further clarification on some of this for our assurance.

We also have to recognise that, if we look at the online environment of the last 10, 15 or 20 years, at first we were very happy to give our data away to social media companies because we thought we were getting a free service, connecting with friends across

the world et cetera. Only later did we realise that the companies were using this data and monetising it for commercial purposes. There is nothing wrong with that in itself, but we have to ask whose data it is. Is it my data? Does the company own it? For those companies that think they own it, why do they think that? We need some more accountability, to make sure that we understand which data we own and which we give away. Once again, the same thing might happen—you might stop being a user or customer of a service, or you might be rejected, but it is not there.

As an academic, I recognise the need for greater access to data, particularly for online research. I welcome some of the mechanisms in the Online Safety Act that we debated. Does my noble friend the Minister believe that the Bill sufficiently addresses the requirements and incentives for large data holders to hold data for academic research with all the appropriate safeguards in place? I wonder whether the Minister has looked at some of the proposals to allow this to happen more, perhaps with the information commission acting as an intermediary for datasets et cetera. Once again, I am concerned about giving even more power to the information commission and the bandwidth to do all this stuff, including all the powers we are giving.

On cookie consent, I understand the annoyance of cookies. I remember the debates about cookie consent when I was in the European Parliament, but at the time we supported it because we thought it was important for users to be told what was being done with their information. It has become annoying, just like those text messages when we go roaming; I supported that during the roaming debates in the European Parliament because I did not want users to say they were not warned about the cost of roaming. The problem is that they become annoying; people ignore them and tick things on terms and conditions without having read them because they are too long.

When it comes to some of the cookies, I like the idea about exemptions for prior consent—a certain opt-out where there is no real harm—but I wonder whether it could be extended, for example so that cookies to understand the performance of advertising and to help companies understand the effectiveness of advertisements are exempt from the consent requirements. I do not think this would fundamentally change the structure of the Bill, but I wonder whether we have the right balance here on harm, safety and the ability of companies to test the effectiveness of some of their direct marketing. Again, I am just interested in the Government's thinking about the balance between privacy and commerce.

Like other noble Lords, I share concerns about the powers granted to the Secretary of State. I think they lack the necessary scrutiny and safeguards, and that there is a risk of undermining the operations of online content and service providers that rely on these technologies. We need to see some strengthening here and more assurances.

I have one or two other concerns. The Information Commissioner has powers to require people to attend interviews as part of an investigation; that seems rather Big Brother-ish to me, and I am not sure whether the Information Commissioner would want these abilities, but there might be good reasons. I just want to understand the Government's thinking on this.

I know that on Report in the other place, both Dawn Butler MP and David Davis MP raised concerns about retaining the right to use non-digital verification systems. We all welcome verification systems, but the committee I sit on—the Communications and Digital Committee—recently wrote a report on digital exclusion. We are increasingly concerned about digital exclusion and people having a different level of service because they are digitally excluded. I wonder what additional assurances the Minister can give us on some of those issues. The Minister in the other place said:

> "Individual choice is integral … digital verification services can be provided only at the request of the individual".—[*Official Report*, Commons, 29/11/23; col. 913.]

I think that any further verification would be really important.

The last point I turn to is EU adequacy. Let me be quite clear: I do not believe in divergence for the sake of divergence, but at the same time I do not believe in convergence or harmonisation for the sake of convergence and harmonisation. We used to have these debates in the European Parliament all the time. There are those expressing concerns about EU data adequacy, and we have to split them into two groups—one is those people who really still wish we were members of the EU, but there are also those for whom this is irrelevant, and for whom this really is about the privacy and security of our users. If the EU is raising these issues in its agreements, we can thank it for doing that.

I obviously was involved in debates on the safe harbour and the privacy shield. As noble Lords have said, we thought we had the right answer; the Commission thought we had the answer, but it was challenged by courts. I think this will have to be challenged more. Are we diverging just for the sake of divergence, or is there a good reason to diverge here, particularly when concerns have already been raised about security and privacy?

I end by saying that I look forward to the maiden speech of the noble Lord, Lord de Clifford. I thank noble Lords for listening to me, and I look forward to working with noble Lords across the House on some of the issues I have raised.

1.28 pm

Baroness Young of Old Scone (Lab): My Lords, the Bill may contain some good elements in the search for a modernisation of data protection, but in overall terms it seems to tilt the balance of advantage to businesses and government authorities rather than to the individual. It has been marred in its passage by the profusion of late government amendments in the other place on Report, and an absence of scrutiny from the Joint Committee on Human Rights.

There are a number of issues that I think need to be seriously reconsidered. I will focus today on four. I also commend the passion of the noble Baroness, Lady Kidron, on the issues that she raised, some of which I will also touch on.

First, as my noble friend Lord Knight of Weymouth and the noble Lord, Lord Allan of Hallam, said—I do love the noble Lord's name; alliterative Peers are a wonderful thing—a number of proposals appear to put at risk the free flow of data from the UK to the EU. That has already been touched on. It could even

[Baroness Young of Old Scone]
undermine the UK's data adequacy decision. There seems to be some disconnect between what the EU Commission and the EU Parliament have begun to enunciate as a view: that the new powers of the Secretary of State to meddle with the objective and impartial functioning of the new Information Commission could result in the withdrawal of the UK adequacy decision. There seems to be a disconnect between that and the assurances that Ministers have given so far in the other place. Losing that decision, or even seeming to have that decision at risk, would be pretty disastrous for UK business, our trade and our research collaborations. Can the Minister tell the House how he intends to avoid this in the review due next year? How does he square the concerns of the EU with the assurances given by his ministerial colleagues?

My second point is about the new measures introduced at the last minute in the other place—Clauses 128 and Schedule 11—requiring the banks to monitor continuously all accounts to find welfare recipients and snitch on them if they reach certain as yet unprescribed criteria. This is not just an abstruse issue; it involves a considerable number of people. Knowing the age of the average Peer, it probably involves pretty well everybody in this House, because, of course, it includes pension recipients, so this is of personal concern to all of us. This is legitimising mass surveillance by algorithm. This seems to me to be a major intrusion into the privacy of pretty well all individuals in the UK and, to some extent, an infringement on the confidential relationship that you ought to be able to expect between a bank and its customer.

Can the Minister tell the House why he thinks this Big Brother mechanism is necessary? Why can the problem of benefit fraud not be dealt with in a way that does not mean that all customers are subject to surveillance? What alternatives were considered by Government and rejected? What safeguards will go alongside this provision to prevent it from being typified as a heavy-handed Big Brother approach?

It is strange that pension claimants are included. A pension, in my view, is a right, not a benefit; it was paid for by hard work during one's working life. The Minister said in another place that they intend to extend this sort of surveillance process to other data areas. Can the Minister tell us what other areas and when that extension might take place?

The third issue is AI safety, an issue that has already been raised by a number of noble Lords. The Government were quite bushy tailed about their recent AI Safety Summit and the commitment to see the UK as a world leader. I am afraid that every time I hear this phrase "a world leader" I have the urge to throw up in my handbag, so you will pardon me if I wrinkle my nose at that. The fact that we want to be somewhere in the front pack on AI safety and responsible and safe AI innovation is okay, but the Bill is a missed opportunity. I agree with my noble friend Lord Knight of Weymouth that the Bill should be the place where oversight challenges posed by a very fast-moving set of AI developments, such as in biometric technologies, needs to have been gripped.

I was a victim of a biometric technology development when I was chancellor of Cranfield University. It developed a process for detecting microscopic and invisible beads of sweat above your eyebrows if you were put under pressure, and it was to be used in cases of airport security and various other areas. They decided to put me under pressure by making me stand in the main square of the university and answer mental arithmetic questions over a loudspeaker. What they had not quite grasped is that I know I am rubbish at mental arithmetic, so it put me under no pressure whatever, because this was not going to be news to anybody. It therefore failed to detect microscopic sweat. I thought you might like the day to be raised by a humorous account in this pre-Christmas process.

The Bill is a real missed opportunity to grasp those AI developments and the safeguarding that needs to go with them. In fact, you could say that it erodes further the already inadequate legal safeguards that should protect individuals from discrimination or disadvantage by AI systems making automated decisions. We have heard about job hiring and loan applications; this is, "The computer says no", but on speed. We in your Lordships' House deplore late additions to Bills, although we have rather grown used to it in recent months, but if the summit's assurances are not going to seem a bit hollow, it would be good to hear whether the Minister intends to introduce additional measures on AI safety in the Bill and, if not, in what other legislation and to what timescale.

The fourth issue I want to raise is that of the role of the Information Commissioner's Office, soon to be the Information Commission. I entirely approve of the structure of an information commission as opposed to a commissioner. We need a powerful and effective regulator. The ICO's enforcement and prosecution record has not been sparkling, with low levels of enforcement notices, prosecutions and fines. If, when I was at the Environment Agency, I had had as low a level of those as the Information Commissioner has had, I would think I had gone to sleep somewhere along the line. Does the Minister acknowledge that improvements need to be made to the Bill to ensure that the new Information Commission has a clear statutory objective and is clearly independent and at arm's length from government, not the sort of arm's length that becomes very short in times of crisis, that its regulatory function at a judicial level can be effectively scrutinised, that it retains the office and surveillance camera commission rather than simply wiping them from the script, and that it is able to consider class action complaints brought by civil society organisations or the trade unions?

In my experience, all too often, Governments plural, not just the current Government, establish watchdogs, then act surprised when they bark, and go and buy a muzzle. If the public are to have trust in our digital economy, we need a robust independent watchdog with teeth that government responds to. The Bill will need a lot of work, and there are hours and hours of happy fun in front of us. I look forward to the Minister's response to my questions and to those of other noble Lords. I also look forward to the maiden speech of the noble Lord, Lord de Clifford.

1.38 pm

Lord de Clifford (CB) (Maiden Speech): It is two months since I took my oath in this esteemed Chamber, and every day since I have been grateful to your Lordships for the unique opportunity that has been

granted to me. Since that first day, I have been asked on many occasions by friends and colleagues, "How is it going?" My reply: "It is like being back at senior school". I feel very junior, but that is a nice thing, and I feel quite young too.

Being a new Peer, at times I look around and feel overwhelmed by the wealth of knowledge and depth of experience that your Lordships express in the Chamber and outside. I have been made to feel most welcome and supported, especially today in this debate with your kind word of support, but also by the doorkeepers with their immense knowledge of the workings of the House, its history and keeping me on the right side of its traditions and customs.

I would also like to mention the Convenor of the Cross Benches' office staff, who have encouraged and guided me to this point, and to the many other staff in the Palace who have made me feel so much part of this grand establishment. Finally, if you will indulge me, thank you to my wife and family, who are here today to support me.

Whenever you start a new opportunity, you always question where you can contribute. For me, it was today's debate on data protection. It would appear that I do not have in-depth knowledge of this extraordinarily complex subject—but on reflection I do, given my experience over the past 30 years of small business. I started with farming businesses, where I was part of the accountancy team, and then I ran the business side of a small firm of rural chartered surveyors. For the past 15 years I have managed a large independent veterinary practice which provides care and services to pets, horses and a large range of farming businesses. I know how important it is that we understand that the data we hold and care for on behalf of our customers and clients is important.

It is five years since the original GDPR legislation was introduced. At that time, it caused a significant amount of anxiety within the small business and veterinary world. This was reflected in the number of individuals and businesses attending seminars on the GDPR, put on by the Veterinary Practice Management Association, an organisation of which I am proud to be the current president. It promotes management and leadership, which are also a passion of mine, in the veterinary sector. The revision of this Bill is extremely well timed and needed. SME businesses are comfortable with the processes they have in place today to comply with the current legislation, but in the fast-moving and changing IT world, the simplification and clarity in the rules with regard to the use of data on a legitimate basis which this Bill intends to clarify are welcome.

Nearly all small businesses, from sole traders to large owner-managed companies, are data controllers. All collect personal data of some form in sales databases, client and patient relationship software and accountancy packages. The ability of the business to keep control of this data is becoming harder, as it has never been easier to export substantial amounts of data from these systems for many different purposes. Therefore, there is an increased risk that personal data can be lost or stolen due to the ever-increasing threat of cyberattack. It is essential that this updated legislation takes into account where all data is stored and its many different formats and ensures that it is not unknowingly shared with other users.

As my research for this debate has shown me, this Bill is immensely complex, which I know is required—but I fear that its complexity will mean that it will not be fully complied with by a number of small to medium-sized businesses that do not have the resources or time to research and instigate any changes that may be required. Therefore, investment will be needed from government to publicise the changes in a simple and understandable way to SMEs. If the Minister will say how he intends to communicate these changes to the sector, that would be welcome.

With regard to the section on smart data, this has brought immense efficiencies and security for small businesses with the changes made by the banking sector. Extending it further would bring more efficiencies for the business community. A cautious approach is needed when extending the use of smart data to ensure that businesses sharing and receiving personal data are compliant with these complex regulations, so that open application program interfaces cannot be infiltrated or hacked.

Individual personal data has without doubt grown in value significantly over the past five years since the introduction of the original data protection legislation. The desire to exchange of data between businesses, scientific institutions and government will only improve efficiency, productivity and scientific breakthroughs, which is one of the goals of this legislation. The protection of the data and recognising its value is essential as we review the Bill. Potentially, as it currently stands, the Bill could favour large IT corporations, whose ability to collect, process and monetise data is well known, so we must ensure that the new up-to-date regulations do not require large amounts of resources to implement them, so that we can ensure a level playing field for all businesses so that they can benefit from the power of data analysis. I agree with the noble Lord, Lord Allan of Hallam, on the need to access EU data so that small businesses can continue to trade without too much hassle and burden. I look forward to learning more of the way of the House as I continue to contribute to this Bill as it moves to Committee stage.

1.45 pm

Lord Vaux of Harrowden (CB): My Lords, it is a great pleasure to follow my noble friend Lord de Clifford and to congratulate him on an excellent and insightful maiden speech. I am pleased that he has chosen this important Bill for this occasion. Data protection is something of a minority sport and it is great to add another person to the select group in this Chamber.

Data protection is about finding the right balance between protecting individuals' privacy and the bureaucracy and costs that go with it, for small businesses and others. My noble friend's long experience in managing small and medium-sized businesses gives him great insight into how these regulations will impact the businesses that typically find it most difficult to deal with greater bureaucracy, as he so rightly pointed out. SMEs are often overlooked more generally, so having such an experienced voice to remind us of their importance during our deliberations will be a great asset to the House, and from a personal point of view it is a great pleasure to welcome a fellow finance professional to join us.

[Lord Vaux of Harrowden]

The noble Lord's experience in the veterinary sector should also be of enormous value to the House. I hope that my noble friend Lord Trees will not mind having his monopolistic position in the field broken. It seems that the noble Lord has also been hiding another light under a bushel: I believe that he has also competed for Great Britain in equestrianism, so he is clearly a man of many talents. I tried to find a joke to do with horsing around, but I am afraid that inspiration completely deserted me. I—and, I am sure, all noble Lords—look forward to his future contributions, both on this Bill and more widely.

I turn now to the specifics of the Bill. As I mentioned, data protection is about finding the right balance between individual privacy and the costs, processes and rules that must be in place, alongside the ability to carry out essential criminal investigations and national security. I think it is generally agreed that the GDPR has its flaws, so an effort to look again at that balance is welcome. There is much in the Bill to like. However, there are a number of areas where the Bill may move the balance too far away from individual privacy, as a number of other noble Lords have already mentioned. In fact, there is not much that I have disagreed with in the speeches so far.

It is a long and very complex Bill; the fact that the excellent Library briefing alone runs to 70 pages says a lot. It will not be possible to raise all issues; noble Lords are probably grateful for that. I am going to concentrate on four areas where I can see significant risks, but the Minister should not take that as meaning that I disagree with other things that have been said so far; I agree with almost everything that has been raised.

First, a general concern raised a number of times, in particular by the noble Lord, Lord Allan, is that the Bill moves us significantly away from our existing data protection rules, which were based clearly on the EU regulations. We are currently benefiting from an EU data adequacy ruling which allows data to be transferred freely between the EU and the UK. This was a major concern at the time of the Brexit discussions. At that time, data adequacy was not a given. This ruling comes to an end in July 2025, but it can be ended sooner if the EU considers that our data protection rules have diverged too far.

The impact assessment for the Bill—another inch-thick document—says:

> "Cross-border data transfers are a key facilitator of international trade, particularly for digitised services. Transfers underpin business transactions and financial flows. They also help streamline supply chain management and allow business to scale and trade globally".

It is good that the impact assessment recognises that. The loss of data adequacy would therefore have significant negative impacts on trade and on the costs of doing business. Without it, alternative and more costly methods of transferring data would be required, such as standard contractual clauses. There are also implications for investment, as the noble Lord, Lord Allan, pointed out. Large international financial services organisations would be much less likely to establish data processing activities in the UK if we were to lose data adequacy. Indeed, they may decide that it is worth moving their facilities away from here.

The impact assessment suggests surprisingly low costs that might arise: one-off costs of £190 million to £460 million, and annual lost trade of £210 million to £420 million. However, these are only the direct reduction in trade with the EU; as the impact assessment points out, they will likely be larger when taking into account interactions with onward supply chains.

The impact assessment does not judge the probability of losing the data adequacy status. I find that rather extraordinary, possibly even shocking, as it is so important. The New Economics Foundation and UCL conservatively estimate the cost of losing data adequacy at £1 billion to £1.6 billion; however you look at it, these are very large numbers.

What can the Minister tell us that could set our minds at rest? What discussions have taken place with the EU? What initial indications have been received? What changes have been made to the original draft Bill to take account of concerns raised by the EU around data adequacy? What is the Government's assessment of this risk? The Bill has been on the blocks for a long time now. I have to assume that a responsible Government must have had discussions with the EU around data adequacy in relation to these proposals.

Secondly, as we have heard, Clause 129 would enable Ofcom to require social media companies to retain information in connection with an investigation by a coroner into the death of a child, where the child was suspected to have died by suicide. This is a welcome addition but, as we have heard, it does not go far enough. It does not include all situations where a death was potentially related to online activity; for example, online grooming. My noble friend Lady Kidron has, as always, covered this with much greater eloquence than I could. I suspect the Minister already knows that the Government have got this wrong. As the noble Lord, Lord Knight, pointed out, it would be a brave Minister who tried to hold the current line in the face of opposition from my noble friend. I welcome the words that the Minister said at the beginning of this debate—that he is willing to engage on this matter. I hope that engagement will be constructive.

Thirdly, the Bill introduces draconian rules that would enable the DWP to access welfare recipients' personal data by requiring banks and building societies to conduct mass monitoring without any reasonable grounds for suspecting fraudulent activity. As the noble Baroness, Lady Young, pointed out, this includes anyone receiving any kind of benefit, including low-risk benefits such as state pensions, so, as she has pointed out, most noble Lords will be subject to this potential intrusion into their privacy—although, fortunately, not me yet. The Government argue that this power is required to reduce levels of benefit fraud. My enthusiasm to tackle fraud is well known, but the Government already have powers to require information where they have grounds to suspect fraudulent behaviour. This new power, effectively enabling them to trawl any bank account with no grounds at all, is a step too far, and constitutes a worrying level of creep towards a surveillance society.

That brings me neatly on to my fourth concern, which the noble Lord, Lord Kamall, raised earlier. The Bill will abolish the post of Biometric and Surveillance Camera Commissioner—currently it is one person—as

well as the surveillance camera code. It was interesting that the Minister did not mention this in his opening speech. It is extremely important.

The Government argue that these functions are covered elsewhere or would be moved elsewhere—for example, to the ICO—but that does not seem to be the case. An independent report by the Centre for Research into Information, Surveillance and Privacy, commissioned by the outgoing commissioner, sets out a whole range of areas in which there will be serious gaps in the oversight of handling biometric data and, in particular, the use of surveillance cameras, including facial recognition.

The independent report concludes that none of the Government's arguments that the functions are adequately covered elsewhere "bear robust scrutiny". It notes in particular that the claim that the Information Commissioner's Office will unproblematically take on many BSCC functions mistakes surveillance as a purely data protection matter and thereby limits

"recognition of potential surveillance-related harms".

Given the ever-widening use of surveillance in this country, including live and retrospective facial recognition, and the myriad other methods of non-facial recognition being developed, such as gait recognition or, as I was reading about this morning, laser-based cardiac recognition—it can read your heartbeat through your clothing—alongside the ability to process and retain ever greater amounts of data and the emerging technology of AI, having clear rules on and oversight of biometrics and surveillance is more important than ever. We see how the misuse of surveillance can go—just look at China. Imagine, for example, if this technology, unfettered, had been available when homosexuality was illegal. Why do the Government want to remove the existing safeguards? With the advances in technology, surely these are more important than ever. We should be strengthening safeguards, not removing them.

The outgoing commissioner—if the Government get their way, the last surveillance camera commissioner—Professor Sampson, put it best:

"There is no question that AI-driven biometric surveillance can be intrusive, and that the line between what is private and public surveillance is becoming increasingly blurred. The technology is among us already and the speed of change is dizzying with powerful capabilities evolving and combining in novel and challenging ways … The planned loss of the surveillance camera code is a good example of what will be lost if nothing is done. It is the only legal instrument we have in this country that specifically governs public space surveillance. It is widely respected by the police, local authorities and the surveillance industry in general. It's one of those things that would have to be invented it didn't already exist, so it seems absolutely senseless to destroy it now, junking the years of hard work it took to get it established".

These are just four of the areas of concern in the Bill. There are many more, as we have heard. In the other place, following the failure of the recommittal Motion after all the new amendments were dropped in at the last minute, David Davis MP said that the Commons had

"in effect delegated large parts of the work on this important Bill to the House of Lords".—[*Official Report*, Commons, 29/11/23; col. 888.]

That is our job, and I believe that we do it well. I hope the Minister will engage constructively with the very genuine concerns that have been raised. We must get this Bill right. If we do not, we risk substantial damage to the economy, businesses, individuals' privacy rights—especially children—and even, as far as the surveillance elements go, to our status as a free and open democratic society.

1.57 pm

Lord Arbuthnot of Edrom (Con): My Lords, I have now reached the grand old age of 71, and it is a worrying fact that I think this puts me bang on the average age of those in your Lordships' House. So, it is a huge relief to be able to welcome to this House the two Peers, such young Peers, who have preceded me. I echo what the noble Lord, Lord Vaux, said, and I find myself in agreement with him, in that I have agreed with most of what has been said in this debate so far. I also echo his welcome to the noble Lord, Lord de Clifford, who brings real front-line experience of the effects of what we do in this House on small and medium-sized enterprises. He is someone that I know noble Lords will want to hear from in the years to come—and in view of his age, we can look forward to very many of them.

I declare my interest as chairman of the advisory panel of Thales, a digital company, and a member of the Post Office Horizon Compensation Advisory Board. I have learned in relation to the Post Office scandal that the complexity of computers is such that nobody really fully understands exactly what programs will do, so it is absurd that there is still in law a presumption that computers will operate as they are intended to. I hope that noble Lords will be able to turn their minds to changing that in the relatively near future.

I can be brief, because I was intending to raise issues relating to privacy, cookies and information which have already been so well canvassed by my noble friend Lord Kamall. Currently, we have to consent to cookies and terms and conditions, but we do not read them, we do not understand them, we do not know their effect—we do not have time. We will do anything for convenience, so the consent that we give is neither informed nor freely given. My noble friend Lord Kamall said what I wanted to say about an open electoral register. The thought of sending paper letters to everyone to inform them about the use of their data seems disproportionate and I, too, would like to know what on earth the ICO is thinking of in demanding such notification to everybody in the Experian case. I also adopt his questions about exemptions from getting consent to cookies when they are purely functional and non-intrusive. But there is no need for me to say it again, so I will not.

2 pm

The Lord Bishop of Southwell and Nottingham: My Lords, on behalf of these Benches, I too welcome the noble Lord, Lord de Clifford. I pay tribute to his maiden speech and thank him for his insightful and valuable contribution to this debate. I also look forward to many future occasions on which he will contribute to the work of this House.

As the right reverend Prelate the Bishop of St Albans has said, we on these Benches recognise that high-quality data is crucial to creating and sustaining a healthy and efficient society. However, it is vital to get the balance

[The Lord Bishop of Southwell and Nottingham]
right between ownership, access, control, and legitimate use of that data. Human flourishing should be at the front of regulating how data is used and reused. As we said in our written response to the Government's 2020 data consultation:

"Fundamentally, the church welcomes any technology that augments human dignity and worth, while staunchly resisting any application of data that undermines that dignity. Questions of efficiency and cost-effectiveness are subsidiary to questions about how the types and uses of data will promote human flourishing in society and best practice in public bodies".

It seems that the real test of this legislation is how it will truly promote good democracy and the extent to which it will protect the safety and enhance the security of the most vulnerable in our society. I hope the House will permit me a brief seasonal reference in pointing out that it was, in fact, a comprehensive data collection exercise by Quirinius, motivated entirely by greed and an abuse of power, that first resulted in the Holy Family travelling to Bethlehem. It also meant that they would need to flee very quickly indeed when the Christ child's identity and location came to the attention of an insecure leader with unregulated power who also had exclusive access to the data, albeit in a very ancient form.

We acknowledge that current provision for data regulation is also outdated and in urgent need of reform. We support the Government's intention to reform the Information Commissioner's Office while preserving its independent footing, and the introduction of an information commission. But it is interesting to compare the Bill before us today with the concerns we expressed in 2020. First, our goal then was

"to flag some of the more significant risks we foresee in using data without adequate reflection on the pitfalls and harms that hasty and ill-considered data use gives rise to".

It is sobering, therefore, that the Bill arrives in this House substantially amended in ways the other place has had insufficient time to scrutinise. The Online Safety Act perhaps offers a valuable and recent template for how this House might examine and improve this important Bill.

Secondly, we said we acknowledged the benefits of data but also the importance of gaining and retaining public trust. Therefore, it is worrying that, with some of the measures in the Bill, the Government seem to be reducing the levers and mechanisms that public trust depends upon. The Public Law Project's assessment is that:

"While the Bill does not outright remove any of the current protections in data protection law, it weakens many of them to the extent that they will struggle to achieve their original purposes".

We share the concerns of many civil society groups that the Bill will reduce transparency by weakening the scope of subject access requests, although I welcome the concern to mitigate plainly vexatious complaints. In June, the chief executive of the Data Protection Officer Centre said:

"Whilst countries across the globe are implementing ever-more robust data protection legislation, the UK seems intent on going in the opposite direction and lowering standards".

What reassurance can the Minister give the House that the Bill will retain public trust and will not diverge even from current adequacy agreements?

Thirdly, we emphasised the Nolan principles as an aid to the public use of data. On 6 December 2023, the Public Accounts Committee in the other place published a report that noted that the DWP is piloting the use of machine-learning algorithms to identify potentially fraudulent claims. We are all in favour of proportional and effective measures to counter fraud, but Big Brother Watch argues that it is

"wholly inappropriate for the UK Government to order private banks, building societies and other financial services to conduct mass, algorithmic, suspicionless surveillance and reporting of their account holders on behalf of the state".

Will the Minister explain how the state demanding data without cause—including, as a number of Members pointed out, data on the bank accounts of recipients of the state pension that it itself says it has no intention of using—complies with the Nolan principles of openness and accountability? Is this not at risk of being an overreach of government into people's private lives?

His Majesty's Government made commitments at the recent AI Safety Summit to make the UK a world leader in safe and responsible AI innovation, so would we not expect that the Data Protection and Digital Information Bill would provide oversight of biometric technologies and general purpose artificial intelligence? My colleague the right reverend Prelate the Bishop of Oxford regrets that he is unable to participate in the debate today, but he will again lead for us as we scrutinise the Bill more thoroughly, including its gaps in protecting children's data and in the regulation of data use by AI foundation or frontier models.

Regarding the latter, an important failure to interlock regulation persists. As the BBC reported over the weekend, assurances given in this House during the passage of the Online Safety Act are being threatened. The draft amendment grants access to data only where children have taken their own lives. This is not what the Government promised on the record in either the Commons or the Lords, and we will continue to press for a proper resolution. Surely we cannot simply rely on other holders of important data to disclose information that is important in order to protect children's well-being.

I will comment briefly on death registration. The ability to move from a paper to an electronic register is commended. However, the UK Commission on Bereavement, chaired by my colleague the right reverend Prelate the Bishop of London, has recommended more that could be done to reduce the administrative burden on bereaved people. The Tell Us Once system is designed so that someone reporting a death need do so only once, and the information is then shared with the relevant public services. Currently, bereaved people must still notify private companies of a death separately. Can the Government please review the system to see whether this burden could be lessened? I would be grateful if the Minister could clarify how the extended priority service register announced in the Autumn Statement will work alongside Tell Us Once. In addition, do the Government have any plans to undertake an updated equality impact assessment of Tell Us Once, given that the last one was 12 years ago?

We look forward to working with everyone in this House to carefully understand and, where appropriate, strengthen an important Bill for the future flourishing of the country and the well-being of all.

2.09 pm

Lord McNally (LD): My Lords, I very much welcome the maiden speech of the noble Lord, Lord de Clifford. As one who entered this House in his early 50s, I can recommend that coming in here, just as the mid-life crisis starts to bite, and being, as I was then, Young Tom again, is a great boost to the morale.

I associate myself with the advice given by the right reverent prelate the Bishop of Southwell and Nottingham. At the end of the recent passage of the Online Safety Bill, there was general thanks to the noble Lord, Lord Parkinson of Whitley Bay, the Minister guiding the Bill safely through the Lords, for his willingness to listen to argument and to amend where necessary. I fear that the noble Viscount will hit some choppy water in this House unless he adopts a similar attitude, and he should certainly take the noble Baroness, Lady Kidron, very seriously concerning children's data rights.

The Government's declared intention of reducing burdens on organisations while maintaining high data protection standards has met with scepticism and outright criticism from a wide range of industry bodies, civil society organisations and individuals with expertise in this area. As has been said, the Official Opposition in the other place asked that the Bill be recommitted to a Public Bill Committee for further scrutiny, but this was refused. As the noble Baroness, Lady Young, indicated, this has put further onus on this House to make sure there is time to listen to and examine the wide range of criticisms and amendments seeking to improve the Bill.

In 2010, I became Minister of State at the Ministry of Justice. Among my responsibilities was the ICO and the early negotiations on what became the GDPR. One of my first roles was to go to a facility south of the river to look at our skills in this area. After looking at a number of things, I asked the government official who was showing me the facility whether there were any human rights or privacy issues involved. He said, "Oh no, sir. Tesco knows more about you than we do". There is a certain profligacy by the individual about their data, along with real concern about their privacy. It is riding those two horses at once that is going to be the challenge of this Bill. I oppose the Bill with an eye to ensuring, like the noble Baroness, Lady Young, that the ICO is well served by this legislation and continues in setting standards and protecting individuals.

Prior to Brexit, I was on one of your Lordship's sub-committees, where we constantly pressed the Ministers about data adequacy with the EU on our departure. The answers then were very much along the lines of, "Well, it'll be alright on the night". I hope that the Minister will again reassure us in his wind up that the data protection legislation in the Bill clarifies the law without deviating from the principles set out in GDPR. The UK's data adequacy status, granted by the European Commission, is important, and we do not want to see that jeopardised in pursuit of some mythical benefits from Brexit.

I am sorry that my noble friend Lord Allan will not be joining us for the rest of this; I would have valued his contribution. But I will keep an eye on it, as a number of other colleagues have indicated.

More widely, one of the problems with this Bill is that its scale and how it has been dealt with by the Government in its preparation, false starts and in the other place mean that we are going to legislate for myriad issues, each of which are of importance to the sector, the individual concerned or society and will require our full due care and attention. For example, new powers in Clause 87 and 88, which allow the Secretary of State to offer an exemption for direct marketing provisions used for the purpose of democratic engagement, may invite abuse. I put that mildly. This morning's *FT* contains an article raising precisely these fears and this issue must be examined in detail during the passage of the Bill.

One issue that I was going to deal with in detail was referred to by the noble Lord, Lord Kamall. The Minister might, even at this early stage in the Bill's progress, provide clarification about the use of the open electoral register for direct marketing purposes. This issue has also been raised with me by the Data & Marketing Association. As the noble Lord, Lord Kamall, explained, there are big concerns in the market about what companies can do with personal data from the open electoral register and this needs to be resolved.

Unfortunately, considerable market uncertainty has been caused by the enforcement notice by the ICO, which has already been referred to. In the light of all this legal and market uncertainty, and given that this Bill is before the House, the best and most timely option is to address the issue in the Bill and I urge the Government to consider what can be done on this. Perhaps the noble Lord, Lord Kamall, and other noble Lords could discuss a joint amendment.

That is just one example of the issues in the Bill that will require detailed examination and close attention. Much of it will be practical and will involve building a framework that brings within it the framework of law and regulation to keep pace with the new technologies that are now part of the digital and data revolution. In this, the impact of AI will cast a long shadow over our deliberations, as the noble Lord, Lord Knight, the noble Baronesses, Lady Kidron and Lady Young, and others have made clear.

The right reverend Prelate the Bishop of St Albans referred to the benefits of the wide-ranging briefings that we received prior to today's debate. Let me assure the authors that none of them will go to waste as we move into Committee. As well as dealing with the mundane and the practical, we have to take seriously the advice contained in one briefing, which read:

> "At a time of advancing AI-driven surveillance, and when public concerns over measures such as facial recognition technology are heightened, removing oversight and accountability could have serious implications for public trust in policing".

This warning could apply to almost any sector, service or industry covered by the Bill. Two quotes leap out to me from the excellent Lords Library briefing on the Bill, which has been referred to. One comes from the Information Commissioner, who calls for a regulator that is "trusted, fair and independent", and the other comes from techUK, which calls for a Bill that will

> "help spur competition and innovation in the market, whilst empowering consumers and delivering better outcomes".

Riding those two horses at once is now the task before us.

2.18 pm

Lord Sikka (Lab): My Lords, I join others in welcoming the noble Lord, Lord de Clifford, to this House. I look forward to hearing him in future debates.

This Bill is a large Bill, written in an utterly arcane language which normal people will struggle to understand and follow. Hopefully, the Government will try to write Bills in a better way, otherwise it is hard for people to understand the laws and follow them. I have grave misgivings about some parts of this Bill and I will touch on a couple of these issues, which have already been identified by a number of noble Lords.

George Orwell's iconic novel *Nineteen Eighty-Four*, published in 1949, raised the spectre of Big Brother. That nightmare has now been brought to reality by a Conservative Government supposedly rolling back the state. The Government have already undermined the people's right to protest and to withdraw labour. Now comes snooping and 24/7 surveillance of the bank, building society and other accounts of the sick, disabled, poor, elderly and unfortunate, all without a court order. Over 22.4 million people would be targeted by that surveillance, but the account holders will not be told anything about the frequency and depth of this organised snooping.

In true Orwellian doublespeak, the Government claim that the Bill will

"allow the country to realise new post-Brexit freedoms".

They link the surveillance to, and are stirring up, people's fears about benefit fraud, while there is absolutely no surveillance of those receiving public subsidies, those mis-selling financial products, those accused of PPE fraud or even a former Chancellor who abused the tax system. Numerous court judgments have condemned the big accounting firms for selling illegal tax-dodge schemes and robbing the public purse, but despite those judgments no major accounting firm has, under this Government, ever been investigated, fined or prosecuted. None of the accounts of those partners or firms is under surveillance. The Bill is part of a class war: it targets only low-income and middle-income people, while big beasts get government contracts.

Currently, the Department for Work and Pensions can request details of bank accounts and transactions on a case-by-case basis on suspicion of fraudulent activity, but Clause 128 and Schedule 11 give the Government unrestrained powers to snoop. The Government say that the Bill

"would allow regular checks to be carried out on the bank accounts held by benefit claimants to spot increases in their savings which push them over the benefit eligibility threshold, or when people spend more time overseas than the benefit rules allow for. This will help identify fraud"

and

"take action more quickly".

How prevalent is the benefit fraud that the Government wish to tackle? The Government estimate that, in 2023, they lost £8.3 billion to welfare fraud and errors, 80% of which is attributed to fraud. A government statement issued on 23 November said that, as a result of mass surveillance, benefit fraud would save the public purse

"£600 million over the next five years".

On 29 November, in a debate in the other place, the Minister mentioned the figure of £500 million and, despite a number of challenges, did not correct that estimate. The Government are hoping that mass snooping will generate savings of £100 million to £120 million a year, but we do not have a breakdown of this saving and do not know how they have arrived at that number. I hope that the number is more reliable than the Government's estimates of the HS2 costs. To put this into context, the Government are spending nearly £1,200 billion this year and they are introducing snooping to save about £100 million a year.

The snooping of bank accounts suggests that the Government are looking for unusual cash-flow patterns. What that means is that, if anyone gives a lump sum to a loved one for Christmas, a birthday, a holiday or home repairs, and it passes through their bank account, the Government could seize on that as evidence of excess resources and reduce or stop their benefits. Suppose that a poor person pawns some household items for a few pounds and temporarily boosts his or her bank balance. Would that person now be labelled a fraudster and lose benefits? The Government have not looked at the details of what would happen.

Many retirees have a joint bank account with another member of the family or with a friend. Under the Government's crazy plans, the third party would also be put under surveillance because they happen to have a joint account. Can the Minister explain why people not receiving any social security benefits are to be snooped upon, because they would be caught in this trap?

How will the snoopers distinguish temporary and easily explainable boosts in bank balances from others? My background is that I am an accountant and I have investigated things over the years; I helped the Work and Pensions Committee investigate the collapses of BHS and Carillion. So I hope that the Minister can enlighten me on how all this will be done.

I hope that the Minister can also clarify the scope of the Bill as it applies to recipients of the state pension. The Government have classified it as a benefit, so can the Minister explain why? After all, the amount one gets is determined by the number of years of national insurance contributions. So why is it actually a benefit? The Minister in the other place said:

"I agree, to the extent that levels of fraud in state pensions being currently nearly zero, the power is not needed in that case. However, the Government wish to retain an option should the position change in the future".—[*Official Report,* Commons, 29/11/23; col. 912.]

Why do the Government want to snoop on the bank accounts of OAPs when there is hardly any fraud? Do they have some sinister plan to treat the state pension as a means-tested benefit? Perhaps the Minister could confirm or deny that. If he wishes to deny it, can he explain why the Government are targeting retirees? What have they done?

In this House, we have more than our fair share of senior citizens who receive a state pension, and their bank accounts would also be under surveillance. How long before a Government abuse that information to blackmail Members of this House and erode possibilities of scrutinising the Government of the day? It is opening us all up to blackmail, now or in the future.

In the past, the Government assured us that health data would not be sold—but then sold it to corporations, as we heard earlier. How can we trust the Government not to do the same with data collected via snooping on bank accounts? What will they be selling?

The mass surveillance is not subject to any court order. Concerned citizens will not be told, as their right to know will be further eroded by Clause 9. It is for the courts, not Ministers, to decide whether requests for data are vexatious or excessive. Can the Minister provide us with some data on how many requests for information are received by departments each year and what proportion have been declared to be vexatious and excessive by the courts? The Government cannot just say that they are vexatious—I would rather trust the courts.

Clause 9 obstructs government accountability and further erodes the Nolan principles. As a personal example, I fought a five and a half-year battle against the Treasury to learn about the closure of the Bank of Credit and Commerce International in 1991. It was the biggest banking fraud of the 20th century, which has yet to be investigated. I asked the Treasury for some information and was totally fobbed off. I went to the Information Commissioner, who sided with the Treasury. So I went to the courts to get some information, with the possibility that the judges might declare my attempts to learn the truth vexatious and might even impose legal costs on me. Fortunately, that did not happen—I won the case and the Treasury had to release some documents to me.

The information showed that the Conservative Government were covering up money laundering, frauds, the secret funding of al-Qaeda, Saudi intelligence, arms smugglers, murderers and others. The information given to me has never been put on public record by this Government. Can you imagine what will happen now if quests to learn something about banking fraud are simply labelled vexatious and excessive? How will we hold the Government to account? The Bill makes it harder to shine some light on the secret state and I urge the Government to rethink Clause 9.

Finally, I urge the Minister to answer the questions I have raised, so that we can have a better Bill.

2.30 pm

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Sikka. I very much share his concerns about the Government prying into the bank accounts of benefit recipients and pensioners. This is a historic moment, for all the wrong reasons, with the Government looking to pry through the private lives of millions of people, with no evidence that it is in any way necessary. The biggest problem with benefits, of course, is the large amount of money that is left unclaimed or unpaid, due to errors made by the Department for Work and Pensions.

I will also pick up the noble Lord's point about economic crime. I note that this happens to be the week that, in a Frankfurt court, the former global head of tax at Freshfields Bruckhaus Deringer acknowledged in his testimony that he had

"glossed over the fact that my legal advice was used for illegal means".

This was a man who, until 2019, was earning €1.9 million a year.

I have a direct question for the Minister. The Government have talked a great deal about the DWP and their plans in that area. What does the Bill do to tackle economic crime, given that the head of UK Finance described the UK as

"the fraud capital of the world"

and that we have an enormous problem with enablers, down the road in the City of London, who we know are getting around sanctions from the UK Government and others, swishing so much dirty money through London that it is now known as the "London Laundromat"? What does the Bill do on these issues?

I will tick off some points of agreement and concern from previous speeches. The Minister spoke of

"the highest standards of data protection".

From what I recollect of the Minister's speech, there was a surprising lack of the Government's favourite word, "world-leading". What does it mean if these data protections are not world-leading?

The Minister also said the Bill was "codesigned all the way". A number of noble Lords pointed to the 260 amendments on Report at the other place. That really does not look like a codesigning process. The benefit of working across many Bills is that this Bill reminds me—and not in a good way—of the Procurement Bill, where your Lordships' House saw a similar deluge of government amendments and had to try to disentangle the mess. I fear that we are in the same position with this Bill.

I pick up the speech of the noble Baroness, Lady Kidron—spectacularly excellent, as always—and her points about edtech and the situation with technology and education systems, and the utter impossibility of teachers, nursery nurses or people in similar positions dredging through the fine detail of every app they might want to use to ensure that their charges are protected. That is obviously not a viable situation. There have to be strong, protective general standards, particularly for apps aimed at children. The Government have to be able to guarantee that those nursery nurses and teachers can just pick up something—"It's approved, it's okay"—and use it.

I will also pick up the points that the noble Baroness, Lady Kidron, made about the importance of data being available to be used for the public good. She referred to research, but I would like—and I invite NGOs that are interested—to think about community uses. I was recently with the National Association of Local Councils, of which I declare that I am a vice-president, in Shropshire, where we saw parish and town councils doing amazing work to institute climate action. I am talking about small villages where data protection is not really an issue, as everyone knows everything about everybody. But we might think of a suburb of Liverpool or a market town, where people do not have the same personal knowledge of each other but where a council or community group could access data for good reasons. How can we make it possible to use these tools for positive purposes?

Briefly picking up on the points made by the noble Lord, Lord Allan—another of our experts—I echo his stress on the importance of EU equivalency. We have dumped our small businesses, in particular, in the

[Baroness Bennett of Manor Castle]
economic mire again and again through the whole process of Brexit. There is a reason why #brexitreality trends regularly. We have also dumped many of our citizens and residents in that situation. We really must not do it again in the technology field.

I have a couple of what I believe to be original points. I want to address specifically Clauses 28 and 30, and I acknowledge here a briefing from Rights and Security International. It notes that that these clauses enable the Government to grant an opt-out to police forces from having to comply with many of the data protection requirements when they are working with the intelligence services. For example, they could grant police immunity from handling personal data unlawfully and reduce people's right of access to their personal data held by the authorities.

In the Commons, the Minister said these provisions would be "helpful" and "efficient". I put it to your Lordships' House that to interfere with rights such as these, at the very least the Government should claim, to have any justification, that they are "proportionate" and "necessary". That is an area that I suspect my noble friend Lady Jones of Moulsecoomb will pick up in Committee. There are also issues raised by the Ada Lovelace Institute and by other noble Lord, about the oversight of biometric technologies, including live facial recognition systems, emotion detection and the foundation models that underlie apps such as ChatGPT. These already limited legal safeguards are being further undermined by the Bill, at a point when there is general acknowledgement in the community that we should be heading in the opposite direction. I think we all acknowledge that this a fast-moving area, but the Government are already very clearly behind.

There are two more areas that I particularly want to pick up. One is elections. There has only just started to be focus on this. The Bill would allow the Government to tear up long-standing campaign rules with new exemptions. Now we have safeguards against direct marketing. These are being removed and,

"for the purposes of democratic engagement",

anyone from 14 years and above can be targeted. I feel like warning the Government: my experience with young people is that the more they see of the Government, the less they like them, so they might want to think about what messages they send them. Seriously, I note that the Information Commissioner's Office said during the public consultation on the Bill—and we can really hear the bureaucratic speak here—

"This is an area in which there are significant potential risks to people if any future policy is not implemented very carefully".

The discussion of the Bill has reflected how this could put us in a situation where our elections are even more like those in the United States of America, which is of course no recommendation at all with the place of big money in their politics. I note that we really need to link this with the Government's recent decision to massively increase election spending limits. Put those two things together and I suggest that is a real threat to what limited democracy we already have left in this country.

There is a further area which I am not going to go into in great detail, given the hour and the day, but which I will probably come back to in Committee. There is an extensive briefing, which I am sure many have seen from Understanding Patient Data. It is really important how the Bill comes up with a different definition of identifiable data. In the health sector, it is very common to use pseudonymous information from which key bits are removed, but it is still quite possible to go backwards and identify an individual from their data because they have an extremely rare disease and they live in this area of the country, or something like that.

This new Bill has, instead, more of a subjective test; the definition seems to rely on the judgment of the data controller and what they know. If the Minister has not looked at the briefing from Understanding Patient Data, I really urge him to because there are concerns here and we already have very grave concern in our community about the use of medical data, the possible loss of anonymity, and the reuse of data for commercial research. We are, again, coming to an Americanisation of our health system.

I conclude by saying that we have an enormous amount of work to do here in your Lordships' House; I am trying not to let my head sink quietly on to the Bench in front of me, but we are going to have a break first, of course. I say to all noble Lords and—echoing the comments earlier—the many members of staff who support us by working so hard and often so late: thank you very much and Merry Christmas all.

2.41 pm

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to take part on Second Reading; I declare my interests in financial services and technology, in Ecospend Ltd and Boston Ltd. There is a fundamental truth at the heart of our deliberations, both on Second Reading and as we progress to Committee: that is it is our data. There are no great large language models; perhaps it would be more appropriate to call them large data models —maybe then they would be more easily and quickly understood by more people. Ultimately, our data is going into AI for potentially positive and transformational purposes but only if there is consent, understanding, trustworthiness and a real connection between the purpose to which the AI is being put and those of us whose data is being put into the AI.

I am going to focus on four areas: one is data adequacy, which has already, understandably, been heavily mentioned; then AI, smart data and digital ID. I can probably compress everything I was going to say on the first subject by simply asking my noble friend the Minister: how will the Bill assure adequacy between the UK and the EU? It is quite a large Bill— as other noble Lords have commented—yet it still has a number of gaps that I am sure we will all be keen to fully fill in when we return in 2024. As already mentioned, AI is nothing without data, so what checks are being put in place for many of the suggestions throughout the Bill where AI is used to interrogate individuals' data? Would it not be absolutely appropriate for there to be effective, clear, transparent labelling across all AI uses, not least in the public sector but across all public and private sector uses? Saying this almost feels like going off track from the Bill into AI considerations, but it seems impossible to consider the Bill without seeing how it is inextricably linked to AI and the pro-innovation

AI White Paper published earlier this year. Does the Minister not agree? How much line-by-line analysis has been done of the Bill to ensure that there is coherence across the Government's ambitions for AI and what is currently set out in this Bill?

On smart data, there are clearly extraordinary opportunities but they are not inevitabilities. To consider just one sector, the energy sector, to be able potentially to deploy customers' data in real time—through their smart meters, for example—with potential to auto-shift in real time to the cheapest tariff, could be extraordinarily positive. But again, that is only if there is an understanding of how the consent mechanisms will work and how each citizen is enabled to understand that it is their data. There are potentially huge opportunities, not least to do something significant about the poverty premium, where all too often those who find themselves with the least are forced to pay the most, often for essential services such as energy. What are the Government doing in terms of looking at additional sectors for smart data deployment? What areas are the state activities? What areas of previous state activity are being considered for the deployment of smart data? What stage is that analysis at?

On digital ID, about which I have spoken a lot over previous years, again there are huge opportunities and possibilities. I welcome what is in the Bill around the potential use of digital ID in property transactions. This could be an extraordinarily positive development. What other areas are being looked at for potential digital ID usage? What stage is that analysis at? Also, is what is set out in the Bill coherent with other government work in other departments on digital ID? It seems that a lot has been done and there have been a number of efforts from various Administrations on digital ID, but we are yet to realise the prize it could bring.

I will ask my noble friend some questions in conclusion. First, how will the introduction of the SRI improve things compared with the data protection officer? Again, how will that impact on issues such as, but not limited to, adequacy? Similarly, linking back to artificial intelligence, a key principle—though not foolproof by any measure and certainly not a silver bullet, but important none the less—is the human in the loop. The Bill is currently some way short of a clear, effective definition and exposition of how meaningful human intervention, human involvement and human oversight will work where autonomous systems are at play. What are the Government's plans to address that significant gap in the Bill as currently drafted?

I end where I began, with the simple truth that it is our data. Data has been described in various terms, not least as the new oil, but that definition gets us nowhere. It is so much more profound than that. Ultimately it is part of us and, when it is put together in combination, it gets so close to giving such a detailed, personal and almost complete picture of us—ultimately the digital twin, if you will. Are the Government content that the Bill does everything to respect and fully understand the need for everything to be seen as trustworthy, to be understood in terms of it being our data and our decision, and that we decide what data to deploy, for what purpose, to whom and for what time period? It is our data.

2.49 pm

Baroness Uddin (Non-Afl): My Lords, it is a real privilege to follow the noble Lord, Lord Holmes. I hope that the Government will learn from his wisdom. I congratulate the noble Lord, Lord de Clifford; I am glad that his family was here to witness his powerful contribution.

I support the Government's laudable aim to make the UK the most innovative society in the world of science and technology. I wish to record my gratitude for the many briefings provided to us by the Library, the 5Rights Foundation, Big Brother Watch, CRISP and Marie Curie, among many other notable organisations and individuals. The Government make sweeping assurances that this legislation is based on their commitment to all citizens enjoying access to a fair, inclusive and trustworthy digital environment. It is grounded in the hopes that an algorithmic system would be designed to protect people from harm and from unsafe, unaccountable surveillance, with public involvement in its development, ensuring adequate safeguards as well as improved skills and information literacy. That really describes the mouthful of different aspects of the Bill.

Every part of our life is determined by some form of digitalisation, not least via our devices; they are an ever-present reminder, if any were required, of the interconnectedness of our existence at home and across the globe. We are living through an exponential rise in social media information alongside the extraordinary growth of technologies' surveillance capacity. It is sometimes impossible to differentiate truth and reality in the mass of content across multiple platforms, and thus an assurance of public safeguarding within fast-moving technologies may not be achievable quite as easily as the Government suggest. Experts are consistently warning us of yet uncharted harm in the advent of AI-driven technology, causing legitimate concerns for civic society organisations.

So where does an ordinary citizen turn to if they get caught up in some of the Bill's punitive measures? As has been stated by noble Lords, contradicting progress made in this House, the Bill will provide the Government with yet more unprecedented powers, which will evidently result in the limiting of and infringement on citizens' rights to privacy; this was detailed powerfully by the noble Lord, Lord Sikka. The Bill is complex and has a broad spectrum of remits that will impact every aspect of our lives: in the home, at work and outside. Time will not permit us all to consider adequately the questions and concerns raised by many well-respected organisations; we in this Parliament are therefore obliged to all our citizens to ensure that our legislation is not immune to proper scrutiny.

Noteworthy parts of the Bill that cause concern include those regarding the safeguarding of children's well-being. I thank the 5Rights Foundation for its briefing and agree that the Bill's proposed changes to the UK's data protection regime risk eroding the high level of privacy that children currently have a right to, making them less safe online. My noble friend Lady Kidron raised these matters thoroughly with her usual expertise; I absolutely agree that children's safety cannot be designed to maximise economic benefits and add my voice to her call that the Government

[Baroness Uddin]
must keep their promise to bereaved families and ensure that children continue to be given heightened levels of data protection.

This leads me on to the matter of data collection, including how data is stored and shared with external organisations. In this context, there must be absolute commitment from the Government to preserving the integrity of our personal data. Without informed consent, organisations and institutions should not and cannot be allowed to access personal information by assuming consent.

We know that huge datasets are gathered by law enforcement, our NHS, welfare and financial services, alongside local authorities for voter registration purposes. The Data and Marketing Association, representing around 700 companies, including charities and commercial brands, suggests that Clauses 114 and 115, on the new exemption for direct marketing used for democratic engagement, could be open to abuse. While recognising that an open electoral register has been an important resource for business and charities for verification of addresses, it has also been used for direct business marketing, as has been stated.

Any amendments to this aspect of the Bill must not be on the assumption that, if a person does not opt out, she or he is fully cognisant of giving automatic consent for data sharing. I do not accept that this is well known to and understood by the millions of elderly and vulnerable people who do not opt out, or that they do so knowingly. It is our duty to empower all citizens, not just those who can readily access and are confident in this rapidly expanding digital environment. Noting the Minister's comment on co-designing the Bill with stakeholders, will he give an assurance that partners included advocacy and civil rights organisations?

Clause 9 would give public authorities and other bodies wider scope to refuse subject access requests, making it more difficult for people to find out what information about them is being held and how it is being used. Clause 9 should not have a place in this legislation.

Clause 20 would water down requirements to carry out a proper impact assessment. This means that in many cases, organisations and businesses, including local authorities processing data, will not have to fully consider whether data processing is necessary and proportional. Clause 20 should also be removed from this Bill.

I hope to see us strengthening Clauses 110, 113 and 116 providing greater protection to consent and safeguarding consumers. Whatever the final impact of the legislation, many public and corporate institutions already hold a ginormous amount of digital materials. As someone with years of local authority experience, I can say that safeguarding paper files seems like an alternate universe. All the protocols were written on every manager's file, and any breaches or failures could have landed any one of us in court. I cannot comprehend all the protocol that may be required to protect individual data under this Bill. How will the Government monitor whether protocols issued as a result of this legislation are actually being adhered to? Who will be held accountable for the anonymity of data holders, given the heightened concern raised by the noble Lord, Lord Knight, and the noble Baroness, Lady Kidron?

When it comes to issues of surveillance of our citizens and the use of retention of biometric data, no matter the reason we must provide the highest standards and maximum safeguards to all those who will determine whether an individual has transgressed rules. The Commons' deliberation on bank spying on welfare claimants would have caused many vulnerable elders distress, as will continuous police profiling of some sections of our communities for perceived fraudulent behaviour and/or acting against national security interests. We must not feel a false sense of security by relying on any individual Ministers to make arbitrary decisions and add another list to surveillance. Like my noble friend Lady Young, I question how the DWP, bank personnel and police officers will implement a law that falls below parliamentary scrutiny and the highest standards of ethics.

We must acknowledge that the Bill has caused widespread concerns. I agree with many who have written to me that we require a nationwide education programme to ensure wider public knowledge, and that consumer groups and charities understand thoroughly how they are likely to be affected by the proposed legislation and, more importantly, the potential impact of the proposed power vis-à-vis the relationship with the DWP and other institutions, if we are to avoid thousands of litigations.

In fact, CRISP's insightful briefing reminds us to consider genuine, meaningful and trustworthy oversight of the Bill, which aims to simplify the regulatory architecture of UK surveillance oversight but risks creating a vacuum in the regulation of digital surveillance, abandoning clear guidance and standards, complicating oversight governance, and creating vulnerabilities for users of these technologies and for the rights of those subjected to them.

The Bill removes the reporting obligations of the Biometric and Surveillance Camera Commissioner's role on appropriate surveillance use, as has been stated to Parliament and the public, which endangers visibility and the accountability of police activities. This gives extensive powers in relation to the causes raised by the right reverend Prelate the Bishop of St Albans. The Bill must therefore retain the surveillance camera code of practice, which is essential for public trust.

The Bill gives the Secretary of State broad powers to amend our data protection laws via statutory instrument without adequate scrutiny by Parliament. Many fear that such extensive powers cannot possibly be for the public good, given the records of all Governments, be it with regard to the manipulation of facts or institutional profiling of black and other minoritised communities adversely used in the name of national security. This will simply not be accepted by today's digitalised generation, and the proposition that such information can be held indefinitely without remedy or recourse to justice cannot bode well for our nations.

At a glance, the UK GDPR sets out seven principles, including integrity and accountability. These fundamental rights for citizens cannot be guaranteed under the Bill as it is now. I look forward to all of us making the necessary changes to make better laws for public good.

Finally, I wish all our outstanding staff across the House, noble Lords and their families who are celebrating a loving and joyful Christmas. I wish everyone well.

3.02 pm

Lord Davies of Brixton (Lab): My Lords, I congratulate the noble Lord, Lord de Clifford, on his excellent maiden speech. I am sure that in this area and others he will be a valuable addition to the House.

One of the advantages of speaking towards the end of the debate is that much of what one could have said has already been said. I particularly enjoyed the speech from my noble friend Lord Knight of Weymouth highlighting the way in which the Bill is consistently behind the curve, always fighting the last war. To some extent, that is inevitable in a field like this, which is developing so rapidly, and I am not convinced that sufficient thought has been given to how developments in digital technology require developments in how it is tackled in legislation.

I think we will have an interesting Committee, in which I will participate as much as I can. The Minister will have a busy spring, with at least two major Bills going through. I hope the Whips have taken account of the number of concerns that have been expressed in this debate, and by external bodies, and that enough time will be allowed in Committee. A particular concern is the large number of amendments added at a late stage in the Commons, which have not had sufficient consideration. It will be our job to look at them in detail.

The proposal to allow the inspection of people's bank accounts with no due cause is a matter of due concern, which has been mentioned by many people in this debate. I highlight the remarks of UK Finance, the representative body for the banking and financial sector. It says:

"These Department for Work and Pensions proposals have been suggested previously, but they are not part of the economic crime plan 2 or fraud strategy, which are the focus of industry efforts in terms of public-private partnership in tackling economic crime".

UK Finance goes on to suggest that powers should be more narrowly focused, that they should not leave vulnerable customers disadvantaged—as would appear to be the case in the current drafting—and that further consultation is needed with consumer groups and charities to capture the wider needs of people affected by this proposal. It also suggests that the delivery time for this proposal should be extended even further into the future. For the benefit of the Minister, I shall just interpret that by explaining that what it is saying is, "We have no idea where this proposal came from. It has no part in the overall strategy that was being developed to tackle fraud and we want it pushed off into the indefinite future"—in other words, do not bother. Perhaps the Minister will listen to UK Finance.

I want to focus my remarks particularly on health and health data, which is a particular concern. It is so intimate and personal that it requires additional consideration. It is not just another piece of data; this goes to heart of who we are. The Government said in the context of the King's Speech that this Bill has been written with industry and for industry. Well, quite. It is possible that some of the changes might result in less work for businesses, including those working in healthcare, but the danger is that the additional flexibility which is being proposed will in fact create additional costs because it is less clear and straightforward, there will be increased risks of disclosure of information that should not be disclosed, and the non-standardised regime will just lead to confusion.

Data regulation can slow down the pace of data sharing, increase people's concerns about risk, and make research and innovation more difficult. Patients and the public generally quite rightly expect particularly high standards in this area, and I have concerns that this Bill makes the situation worse and that its influence is negative rather than positive. This is a danger, because it affects the public's attitude to health and health data. If people are worried about the disclosure of their information, this impacts on them seeking and taking advantage of healthcare. That affects all of us, so it is not just a matter of personal concern.

One of the big arguments for the disclosure of health data is that it is available for scientific and developmental research. The need for this is recognised and there are additional safeguards. The UK Health Security Agency can reuse data that is collected by the NHS for the business of disease control, and that is something I am sure we all favour. However, the concept that any data can be reused for scientific purposes has grave dangers, particularly when this Bill fails to define tightly enough what the scientific and developmental research amounts to. The definition of scientific research here appears to apply to commercial as well as non-commercial outfits, whether it is funded publicly or is a private development. This is the sort of concern that we are going to have to tackle in Committee to provide people with the protection that they quite rightly expect.

If we look in more detail at health data, we see that it is protected by the Caldicott principles for health and social care data. It is worth reading the eight principles. The first sets the scene. It says, in the context of social care:

"Every proposed use … of confidential information should be clearly defined, scrutinised and documented, with continuing uses regularly reviewed by an appropriate guardian".

This Bill is in grave danger of moving beyond that level of protection, which has been agreed and which people expect. People want and expect better regulation of their personal data and more say over what happens to it. This Bill moves us away from that.

It is worth looking in this context at the views of the BMA, which is particularly concerned about health data. It emphasises the fact that the public expect high standards and calls on this House to challenge what it regards as the "problematic provisions" and to seek some reassurance from the Government. I will list what the BMA regards as problematic provisions and why it does not like them: Clause 11, which erodes transparency of information to data subjects; Clauses 32, 35, 143 and 144, which risk eroding regulatory independence and freedom; Clause 1, which risks eroding protections for data by narrowing the definition of "personal data"; Clause 14, which risks eroding trust in AI; Clause 17, which risks eroding the expertise and independence of organisational oversight; and Clauses 20 and 21, which risk eroding organisational data governance. We will need to explore all of these issues in Committee. The hope is that they will get the attention that they deserve.

[Lord Davies of Brixton]

When it comes to medical data, there is an even stronger case, which the Bill needs to tackle straight on, around people's genetic information. This is the holy grail of data, which people are desperate to get hold of. It says so much about people, their background and their experiences. We need a super level of protection for genetic data. Again, this is something that needs to be tackled in the Bill.

There are other issues of concern that I could mention—for example, the abolition of the Biometrics Commissioner and Surveillance Camera Commissioner. This is a point of particular concern, raised by a number of bodies. It is quite clear that something is being lost by moving these over to a single commissioner. There is a softer power held by the commissioners, which, to be honest, a single commissioner will not have the time or the bandwidth to deal with.

There is also concern that there needs to be explicit provision in the Bill to enable representative bodies, such as trade unions and commercial organisations, to pursue complaints and issues of concern on behalf of individuals. The issue of direct marketing, particularly of financial services, needs to be addressed.

So there is lots to do on this Bill. I hope the Minister recognises that, at this stage, we are just highlighting issues that need to be looked at in detail, and that time will be provided in Committee to deal with all these issues properly.

3.14 pm

Lord Kirkhope of Harrogate (Con): My Lords, at this late stage in any debate much of the field is likely to have been covered, but, as someone deeply involved in the crafting, drafting and evolution of the EU GDPR while an MEP in Brussels, I declare a strong vested interest in this subject. I hope that the Minister will not be too negative about the work that we did —much of it was done by Brits in Europe—on producing the GDPR in the first place.

I raised this issue at the recent UK-EU Parliamentary Partnership Assembly and in bilateral discussions with the European Parliament's civil liberties committee, on which I served for many years, on its recent visit to London. Let me be candid: while the GDPR stands as a significant achievement, it is not without need for enhancement or improvement. The world has undergone a seismic shift since the GDPR's inception, particularly in the realm of artificial intelligence. Both the UK and the EU need to get better at developing smart legislation. Smart legislation is not only adaptive and forward-looking; it is also flexible enough to evolve alongside emerging trends and challenges.

The importance of such legislation is highlighted by the rapid advancement in various sectors, and particularly in areas such as artificial intelligence—as so well referred to by my noble friend Lord Holmes of Richmond—and how our data is used. These fields are evolving at a pace that traditional legislative processes struggle to match. Such an approach is vital, not only to foster innovation but to ensure that regulations remain relevant and effective in a swiftly changing world, helping to maintain our competitive edge while upholding our core values and standards.

The aspirations of this Bill, which is aimed at modernising and streamlining the UK's data protection framework while upholding stringent standards, are indeed laudable. I regret that, when my noble friend Lord Kamall was speaking about cookies, I was temporarily out of the Chamber enjoying a culinary cookie for lunch. While there may be further advantages to be unearthed in the depths of this complex legislation, so far, the biggest benefit I have seen is its commitment to removing cookie pop-ups. Above all, we must tread carefully to ensure international compliance, which has been referred to by a number of noble Lords, and steadfastly adhere to the bedrock GDPR principles of lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation and citizens' redress.

On a procedural note, following other noble Lords, the Government's recent flurry of amendments—I think there were 266 in total, including 38 new clauses and two new schedules, a staggering 240 of which were introduced at the 11th hour—places a key duty on our House to meticulously scrutinise the new legislation line by line. I have heard other speakers refer to my friend, the right honourable Member for Haltemprice and Howden, in the other place, who astutely observed that that House has

"in effect delegated large parts of the work on this important Bill to the House of Lords".—[*Official Report*, Commons, 29/11/23; col. 888.]

I have to say that that is wonderful because, for those of us who are always arguing that this is the House that does the work, that is an acknowledgement of its skills and powers. It is a most welcome reference.

I wish to draw the House's attention briefly to three important terms: adequacy, which noble Lords have heard about, equivalence and approximation. Adequacy in data protection primarily comes from the EU's legal framework. It describes the standard that non-EU countries must meet to allow free flow of personal data from the EU. The European Commission assesses this adequacy, considering domestic laws and international commitments. The UK currently benefits from the EU's two data adequacy decisions, which, I remind the House, are unilateral. However, we stand on the cusp of a crucial review in 2024, when the Commission will decide the fate of extending data adequacy for another four years and it has the power to withdraw its decision in the meantime if we threaten the basis for it. This Bill must not increase the risk of that happening.

Equivalence in the realm of data protection signifies that different systems or standards, while not mirror images, offer comparable levels of protection. It is about viewing a non-EU country's data protection laws through a lens that recognises their parity with GDPR in safeguarding personal data. Past EU adequacy decisions have not demanded a carbon copy of laws; rather, they seek an essentially equivalent regulatory landscape.

Approximation refers to aligning the laws of EU member states with each other. In data protection, it could describe efforts to align national laws with GDPR standards. The imperative of maintaining data adequacy with the EU cannot be overstated; in fact, it has been stated by many noble Lords today. It stands as a top priority for UK business and industry, a linchpin in

law enforcement co-operation, and a gateway to other vital databases. The economic stakes are monumental for both sides: EU personal data-enabled services exports to the UK were worth approximately £42 billion in 2018, and exports from the UK to the EU were worth £85 billion.

I commend the Government for listening to concerns that I and others have raised about democratic oversight and the independence of the Information Commissioner's Office. The amendment to Clause 35, removing the proposal for the Secretary of State to veto ICO codes of practice, was welcome. This move has, I am informed, sent reassuring signals to our friends in Brussels. However, a concern still remains regarding the UK's new ambition for adequacy partnerships with third countries. The Government's impact assessment lists the United States, Australia, the Republic of Korea, Dubai International Finance Centre, Singapore and Colombia, with future agreements with India, Brazil, Kenya and Indonesia listed as priorities.

Some of these nations have data standards that may not align with those of the EU or in fact offer fewer safeguards than our current system. I urge extreme caution in this area. We do not want to be in the situation where we gain a data partnership with Kenya but jeopardise our total data adequacy with the EU. Fundamentally, this Bill should not weaken data protection rights and safeguards. It should ensure transparency in data use and decision-making, uphold requirements for data processors to consider the rights and interests of affected individuals and, importantly, not stray too far from international regulations.

I urge my noble friend the Minister and others to see that adopting a policy of permanent dynamic alignment with the EU GDPR is important, engaging actively with the EU as a partner, not just implementing new rules blindly. Protecting and strengthening the UK-EU data partnership offers an opportunity for closer co-operation, benefiting businesses, consumers, innovation and law enforcement; and together, we can reach out to others to encourage them to join these truly international standards.

3.23 pm

Lord Clement-Jones (LD): My Lords, I thank the Minister for his introduction to the Bill today and congratulate the noble Lord, Lord de Clifford, on his maiden speech. I think we all very much appreciated his valuable perspective on SMEs having to grapple with the intricacies of data protection. I very much look forward to his contributions—perhaps in Committee, if he feels brave enough.

The Minister will have heard the concerns expressed throughout the House—not a single speaker failed to express concerns about the contents of the Bill. The right reverend Prelate the Bishop of Southwell and Nottingham reminded us that the retention and enhancement of public trust in data use and sharing is of key importance, but so much of the Bill seems almost entirely motivated by the Government's desire to be divergent from the EU to get some kind of Brexit dividend.

As we have heard from all around the House, the Bill dilutes where it should strengthen the rights of data subjects. We can then all agree on the benefits of data sharing without the risks involved. The Equality and Human Rights Commission is clearly of that view, alongside numerous others, such as the Ada Lovelace Institute and as many as 26 privacy advocacy groups. Even on the Government's own estimates, the Bill will have a minimal positive impact on compliance costs—in fact, it will simply lead to companies doing business in Europe having to comply with two sets of regulations.

I will be specific. The noble Lord, Lord Davies of Brixton, set out the catalogue, and I will go through a number of areas where I believe those rights are being diluted. The amended and more subjective definition of "personal data" will narrow the scope of what is considered personal data, as the right reverend Prelate the Bishop of St Albans pointed out. Schedule 1 sets out a new annexe to the GDPR, with the types of processing activities that the Government have determined have a recognised legitimate interest and will not require a legitimate interest human rights balancing test to be carried out. Future Secretaries of State can amend or add to this list of recognised legitimate interests through secondary legislation. As a result, as the noble Baroness, Lady Bennett, pointed out, it will become easier for political parties to target children as young as 14 during election campaigns, even though they cannot vote until they are 16 or 18, depending on the jurisdiction.

The Bill will change the threshold for refusing a subject access request, which will widen the grounds on which an organisation could refuse requests. The noble Lord, Lord Sikka, reminded us of the existing difficulties of making those subject access requests. Clause 12, added on Report in the Commons, further tips power away from the individual's ability to access data.

There are also changes to the automated decision-making provisions under Article 22 of the GDPR—the noble Lord, Lord Holmes, reminded us of the importance of the human in the loop. The Bill replaces Article 22 with articles that reduce human review of automated decision-making. As the noble Lord, Lord Knight, pointed out, Article 22 should in fact be strengthened so that it applies to partly automated processing as well, and it should give rights to people affected by an automated decision, not just those who provide data. This should be the case especially in the workplace. A decision about you may be determined by data about other people whom you may never have met.

The Bill amends the circumstances in which personal datasets can be reused for research purposes. New clarifying guidance would have been sufficient, but for-profit commercial research is now included. As the noble Lords, Lord Knight and Lord Davies, pointed out and as we discussed in debates on the then Online Safety Bill, the Bill does nothing where it really matters: on public interest researcher access.

The Bill moves away from UK GDPR requirements for mandatory data protection officers, and it also removes the requirement for data protection impact assessments. All this simply sets up a potential dual compliance system with less assurance—with what benefit? Under the new Bill, a controller or processor will be exempt from the duty to keep records, unless they are carrying out high-risk processing activities. But how effective will this be? One of the main ways of demonstrating compliance with GDPR is to have a record of processing activities.

[Lord Clement-Jones]

There are also changes to the Information Commissioner's role. We are all concerned about whether the creation of a new board will enable the ICO to maintain its current level of independence for data adequacy purposes. This is so important, as the noble Baroness, Lady Young, and my noble friend Lord McNally pointed out.

As regards intragroup transfers, there is concern from the National Aids Trust that Clause 5, permitting the intragroup transmission of personal health data

"where that is necessary for … administrative purposes",

could mean that HIV/AIDS status is inadequately protected in workplace settings.

Schedule 5 to the Bill amends Chapter 5 of the UK GDPR to reform the UK's regime for international transfers, with potential adverse consequences for business. The noble Lord, Lord Kirkhope, reminded us of the dangers of adopting too low standards internationally. This clearly has the potential to provide less protection for data subjects than the current test.

In Clause 17, the Bill removes a key enabler of collective interests, consultation with those affected by data and processing during the data protection risk assessment process, and it fails to provide alternative opportunities. Then there is the removal of the legal obligation to appoint a representative. This risks data breaches not being reported, takes away a channel of communication used by the ICO to facilitate its investigations, and increases the frustration of UK businesses in dealing with overseas companies that come to the UK market underprepared to comply with the UK GDPR.

Given that catalogue, it is hardly surprising that so many noble Lords have raised the issue of data adequacy. If I read out the list of all the noble Lords who have mentioned it, I would probably mention almost every single speaker in this debate. It is clear that the Bill significantly lowers data protection standards in the UK, as compared with the EU. On these Benches, our view is that this will undermine the basis of the UK's EU data adequacy. The essential equivalence between the UK and the EU regimes has been critical to business continuity following Brexit. The Government's own impact assessment acknowledges that, as the UK diverges from the EU GDPR, the risk of the EU revoking its adequacy decisions will increase. So I very much hope that the Minister, in response to all the questions he has been asked about data adequacy, has some pretty good answers, because there is certainly a considerable degree of concern around the House about the future of data adequacy.

In addition, there are aspects of the Bill that are just plain wrong. The Government need to deliver in full on their commitments to bereaved families made during the passage of what became the Online Safety Act, regarding access to their children's data, as we have heard today from across the House, notably from the noble Baroness, Lady Kidron, in insisting that this is extended to all deaths of children. I very much hope that the Minister will harden up on his assurances at the end of the debate.

The noble Lords, Lord Kamall and Lord Vaux, questioned the abolition of the Surveillance Camera Commissioner, and the diminution of the duties relating to biometric data. Society is witnessing an unprecedented acceleration in the capability and reach of surveillance technologies, particularly live facial recognition, and we need the commissioner and *Surveillance Camera Code of Practice* in place. As the Ada Lovelace Institute says in its report *Countermeasures*, we need new and more comprehensive legislation on the use of biometrics, and the Equality and Human Rights Commission agrees with that too.

As regards what the noble Lord, Lord Sikka, described as unrestrained financial powers, inserted at Commons Report stage, Sir Stephen Timms MP, chair of the DWP Select Committee, very rightly expressed strong concerns about this, as did many noble Lords today, including the noble Baroness, Lady Young, and the noble Lords, Lord Knight and Lord Fox. These powers are entirely disproportionate and we will be strongly opposing them.

Then we have the new national security certificates and designation notices, which were mentioned by the right reverend Prelate the Bishop of St Albans. These would give the Home Secretary great and unaccountable powers to authorise the police to violate our privacy rights, through the use of national security certificates and designation notices, without challenge. The Government have failed to explain why they believe these clauses are necessary to safeguard national security.

There is a whole series of missed opportunities during the course of the Bill. As the noble Lord, Lord Knight, said in his opening speech, the Bill was an opportunity to create ethical, transparent and safe standards for AI systems. A number of noble Lords across the House, including the noble Lord, Lord Kamall, the noble Baroness, Lady Young, the right reverend Prelate the Bishop of Southwell and Nottingham, and my noble friend Lord McNally, all said that this is a wasted opportunity to create measures adequate to an era of ubiquitous use of data through AI systems. The noble Baroness, Lady Kidron, in particular talked about this in relation to children, generative AI and educational technology. The noble Lord, Lord Holmes, talked of this in the public sector, where it is so important as well.

The EU has just agreed in principle to a new AI Act. We are miles behind the curve. Then, of course, we have the new identification verification framework. The UK has chosen not to allow private sector digital ID systems to be used for access. Perhaps the Government could explain why that is the case.

There are a number of other areas, such as new models of personal data control, which were advocated as long ago as 2017, with the Hall-Pesenti review. Why are the Government not being more imaginative in that sense? There is also the avoidance of creating a new offence of identity theft. That seems to be a great missed opportunity in this Bill.

As the noble Baroness, Lady Kidron, mentioned, there is the question of holding AI system providers to be legally accountable for the generation of child sexual abuse material online by using their datasets. My noble friend Lord McNally and the noble Lord, Lord Kamall, raised the case of ICO v Experian. Why are the Government not taking the opportunity to correct that case?

In the face of the need to do more to protect citizens' rights, this Bill is a dangerous distraction. It waters down rights, it is a huge risk to data adequacy, it is wrong in many areas and it is a great missed opportunity in many others. We on these Benches will oppose a Bill which appears to have very few friends around the House. We want to amend a great many of the provisions of the Bill and we want to scrutinise many other aspects of it where the amendments came through at a very late stage. I am afraid the Government should expect this Bill to have a pretty rough passage.

3.36 pm

Lord Bassam of Brighton (Lab): My Lords, first I want to thank all those noble Lords who have spoken today, and actually, one noble Baroness who has not: my colleague, the noble Baroness, Lady Jones. I am sure the whole House will want to wish her a safe and speedy recovery.

While I am name-checking, I would also like to join in the general congratulation of the noble Lord, Lord de Clifford, who, as others have observed, made a valuable case on behalf of small businesses and SMEs generally, and also called, in his words, for investment to assist this sector to deal with the challenges of data protection.

The range of concerns raised is a good indication of the complexity of this Bill and the issues which will keep us pretty busy in Committee, and I am sure well beyond. We have been well briefed; a record number of briefings have been dispatched in our direction, and they have been most welcome in making sure that we are on top of the content of this Bill.

At the outset, let me make it clear that while we support the principle of modernising data protection legislation and making it suitable for a rapidly changing technological landscape, one that is fit for purpose, we join with noble Lords like the noble Lord, Lord Kirkhope, who made the case for ensuring that the legislation is relevant. We need to properly scrutinise this, and we understand the need to simplify the rules and make them clearer for all concerned. Most speakers commented on this real need and desire.

However, as others have said, this Bill represents a missed opportunity to grasp the challenges in front of us. It tinkers rather than reforms, it fails to offer a new direction and it fails to capitalise on the positive opportunities the use of data affords, including making data work for the wider social good. I thought the noble Lord, Lord Holmes, made a good case in saying it is our data and therefore needs to be treated with respect. I do not think this Bill does that.

The Bill fails to build on the important safeguards and protections that have been hard won by others in other fields of legislation covering the digital world, in particular, about the use of personal data that we want to see upheld and strengthened. The noble Baroness, Lady Kidron, made an inspired speech, pleading with us to hold the Government's feet to the fire on this issue and others.

The Bill also fails to provide the simplicity and certainty that businesses desire, given that it is vital that we retain our data adequacy status with the EU. Therefore, businesses will find themselves navigating two similar but, as others have said, divergent sets of rules, a point well made by the right reverend Prelate the Bishop of St Albans and the noble Lords, Lord Vaux and Lord Kirkhope. In short, it feels like a temporary holding position rather than a blueprint for reform, and I suspect that, all too soon, we will be back here with a new Bill—perhaps a data protection (No. 3) Bill—which will address the more profound issues at the frontier of data use.

Before that, I must take over the points made by my noble friend Lord Knight, who opened the debate for us. It is an affront to our parliamentary system that the Government chose to table 266 amendments on the last available day before Report in the Commons—about 150 pages of amendments to consider in a single debate. The marvellous notes that accompany the Bill had to be expanded by something like a fifth to take account of all these amendments; it has grown over time. Clearly, our Commons colleagues had no way of being able to scrutinise these amendments with any degree of effectiveness, and David Davis made the point that it is down to us now to make sure that that job is well done.

I agree that some of the amendments are technical, but others are very significant, so can the Minister explain why it was felt necessary to rush them through without debate? For example, the new Schedule 1 will grant the Secretary of State the power to require banks, or other financial institutions, to provide the personal data for anyone in receipt of benefits. These include state pensions and universal credit, but they also include other benefits—working tax credit, child tax credit, child benefit, pension credit, jobseeker's allowance and personal independence payments. That is a long list; we think that it probably covers some 40% of the population. What is the Government's real need here?

Yesterday, we had a consultation session with the Minister. I asked where the proposals came from, and he was very honest that they were included in a DWP paper on fraud detection some two years ago. Why is it that the amendments were put into the Bill so late in the day, when they have been around and accessible to the Government for two years? Why has there not been any effective consultation on this? Nobody was asked whether they wanted these changes made, and it seems to me that the Government have acted in an entirely high-handed way.

Most of the population will fall into one or the other of the categories, as my noble friend Lady Young and the noble Lord, Lord Vaux, made clear. Some, such as the noble Lord, think that they might be exempted—but, having listened to my list, he may think otherwise. The criteria for these data searches are not clarified in the Bill and have no legislative limit. Why is that the case?

As Mel Stride and the DWP officials made clear when giving evidence to the Work and Pensions Select Committee recently, this is not about accessing individual bank accounts directly where fraud is suspected, it is about asking for bulk data from financial organisations. How will the Government be able to guarantee data security with bulk searches? When were the Government planning to tell the citizens of this country that they were planning to take this new set of powers to look into their accounts? I warn the Minister that I do not think it will go down very well, when the Government fully explain this.

[Lord Bassam of Brighton]

Meanwhile, the banking sector has also raised concerns about the proposals, which it describes as too broad and liable to put vulnerable customers at a disadvantage. The ICO also questions the proportionality of the measure. Let me make our position clear on this: Labour is unreservedly committed to tackling fraud. We will pursue the fraudsters, conmen and claimants who try to take money from the public purse fraudulently or illegally. This includes those involved in tax fraud or dodgy PPE contracts. As our shadow Minister Chris Bryant made clear in the Commons:

"I back 100% any attempt to tackle fraud in the system, and … will work with the Government to get the legislation right, but this is not the way to do it".—[*Official Report*, Commons, 29/11/23; col. 887.]

I hope that the Minister can confirm that he will work with stakeholders, banks and ourselves to find a better way to focus on tackling fraud in all its guises.

Another aspect of the Bill that was revealed at a late date are the rules governing democratic engagement, to which a number of Peers have referred today. The Bill extends the opportunities for direct mail marketing for charitable or political purposes. It also allows the Secretary of State to change the rules for the purposes of democratic engagement. It has now become clear that this will allow the Government to switch off the direct marketing rules in the run-up to an election. Currently, parties are not allowed to send emails, texts, voicemails and so on to individuals without their specific consent. We are concerned that changing this rule could transform UK elections. These powers were opposed in the public consultation on the Bill; this is not what the public want. We have to wonder at the motives of the Government in trying to change these rules at such a late stage and with the minimum of scrutiny. This is an issue to which we will return in Committee; I hope that the Minister can come up with a better justification than his colleagues in the Commons were able to.

I turn to other important aspects of the Bill. A number of noble Lords gave examples of how personal rights to information and data protection, which were previously in the GDPR and the Data Protection Act 2018, have been watered down or compromised. For example, subject access requests have been diluted by allowing companies to refuse such requests on the grounds of being excessive or vexatious—terms that, by their very nature, are hard to define—or by allowing the Secretary of State to define who has a recognised, legitimate interest for processing personal data. Similarly, there is no definition in the Bill of what constitutes high-risk processing —risking uncertainty and instability for businesses and the potential misuse of personal data. We will want to explore these definitions in more detail.

A number of noble Lords quite rightly raised the widespread fear of machines making fundamental decisions about our lives with no recourse to a human being to moderate the decision. The impact of this can be felt more widely than an individual data subject—it can impact on a wider group of citizens as decisions are made, for example, on policing priorities, healthcare and education. This can also have a hugely significant impact in the workplace. Obviously, algorithms and data analysis can bring huge benefits to the workplace, cutting out mundane tasks and ensuring greater job satisfaction. But we also need to ensure that workers and their representatives know what data is being collected on them and have an opportunity for human contact, review and redress when an algorithmic system is used to make a decision. For example, we need to avoid a repeat of the experience of the Just Eat couriers who were unfairly sacked by a computer. We will want to explore how the rights of individuals, groups of citizens and workers can better be protected from unfair or biased automated decisions.

The noble Baroness, Lady Kidron, and others have argued the case for new powers needed to give coroners the right to access information held by tech companies on children's data where there is a suspicion that the online world contributed to their death and demise. This is a huge and tragic issue that the Government have sadly ducked, although the promise to listen that I heard from the Minister was very welcome. We shall ensure that we keep him to that commitment.

Despite all the promises made, however, the Government have broken the trust of bereaved parents who were expecting this issue to be resolved in the Bill. Instead, the amendment addresses only cases where a child has taken their own life. We will do what we can in this Bill to make sure that the commitments made in the Online Safety Act are fully honoured.

On a separate but important point, Clause 2 allows companies to exploit children's data for commercial purposes. We believe that without further safeguards, children's rights will be put very much at risk as companies collect information on where they live, what they buy, how they travel and what they study. We will seek to firm up those children's rights as the Bill goes forward.

On cookie pop-ups, it is widely accepted that the current system is not working, as everyone ignores them and they have become an irritant. But they were there for a purpose—to ensure that the public were informed of the data being kept on them, so we do not believe that simply removing them is the answer. Similarly with nuisance calls, we want to ensure that the new rules are workable by clarifying the responsibilities of telecoms companies.

As I said at the outset, we regard the Bill as a disappointment that fails to harness the huge opportunities that data affords and to build in the appropriate safeguards. My noble friend Lord Knight put his finger on it well, at the front of the debate, when he said that we need a data protection Bill, but not this Bill.

The Government's answer to a lack of clarity in so many areas of the Bill is to build in huge, sweeping, Henry VIII powers. When reviewing the legislation recently, we managed to count more than 40 proposed statutory instruments. That is an immense amount of power in the hands of the Secretary of State. We do not believe that this is the right way to legislate on a Bill that is so fundamental to people's lives and the future of our economy. We want to bring these powers back into play so that they have the appropriate level of parliamentary scrutiny.

With this in mind, and taking into account all the concerns raised today, we look forward to a long and fruitful exchange with the Government over the coming months. This will be a Bill that challenges the Government.

3.50 pm

Viscount Camrose (Con): My Lords, I sincerely thank all of today's speakers for their powerful and learned contributions to a fascinating and productive debate. I very much welcome the engagement in this legislation that has been shown from across the House and such a clear setting out, at this early stage, of the important issues and caveats.

As I said, the Bill reflects the extensive process of consultation that the Government have undertaken, with almost 3,000 responses to the document *Data: A New Direction*, and the support it enjoys from both the ICO and industry groups. The debate in which we have engaged is a demonstration of noble Lords' desire to ensure that our data protection regime evolves and works more effectively, while maintaining the highest standards of data protection for all.

I will respond to as many of the questions and points raised as I can. I hope noble Lords will forgive me if, in the interests of time and clarity, I do not name every noble Lord who spoke to every issue. A number of noble Lords expressed the wish that the Government remain open to any and all conversations. Should I inadvertently fail to address any problem satisfactorily, I affirm that I am very willing to engage with all noble Lords throughout the Bill's passage, recognising its importance and, as the noble Lord, Lord Bassam, said, the opportunity it presents to do great good.

Many noble Lords raised concerns that the Bill does not go far enough to protect personal data rights. This is certainly not our intent. The fundamental data protection principles set out in the UK GDPR—as my noble friend Lord Kirkhope pointed out, they include lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, security and accountability—remain at the heart of the UK's data protection regime. Certain kinds of data, such as health data, remain special categories to which extra protections rightly apply. Changes such as requiring a senior responsible individual, rather than a data protection officer, mean that organisations still need to be accountable for how they process personal data but will have more flexibility about how they manage the data protection risks within their organisations.

On other specific points raised on the data protection framework, I agree that the right of access is key to ensuring transparency in data processing. The proposals do not restrict the right of access for reasonable requests for information and keep reasonable requests free of charge. On the creation of the new recognised legitimate interests lawful grounds, evidence from our consultation indicated that some organisations worried about getting the balancing test wrong, while others said that the need to document the outcome of their assessment could slow down important processing activities.

To promote responsible data sharing in relation to a limited number of public interest tasks, the Bill acknowledges the importance of these activities, which include safeguarding, crime prevention and national security, responding to emergencies and democratic engagement, but data controllers should not be required to do a case-by-case balancing test.

On cookies, the Bill will allow the Secretary of State to remove the need for data controllers to seek consent for other purposes in future, when the appropriate technologies to do so are readily available. The aim is to offer the user a clear, meaningful choice that can be made once and respected throughout their use of the internet. However, before any such powers are used, we will consult further to make sure that people are more effectively enabled to use different technology to set their online preferences.

On democratic engagement, extending the exemption allows a limited number of individuals, such as elected representatives and referendum campaigners, to process political opinions data without consent where this is necessary for their political activities. In a healthy democracy, it is not just registered political parties that may need to process political opinions data, and these amendments reflect that reality. This amendment does not remove existing rights. If people do not want their data processed for these purposes, they can ask the controller to stop doing so at any time. Before laying any regulations under this clause, the Government would need to consult the Information Commissioner and other interested parties, as well as gaining parliamentary approval.

I turn now to concerns raised by many about the independence of the regulator, the Information Commissioner. The ICO remains an independent regulator, accountable to Parliament, not the Government, in its delivery of data protection regulation. The Bill ensures it has the powers it needs to remain the guardian of people's personal data. It can and does produce guidance on what it deems necessary. The Government welcome this and will work closely with it ahead of and throughout the implementation of this legislation.

New powers will also help to ensure that the Information Commissioner is able to access the evidence he needs to inform investigations and has the time needed to discover and respond to representations. This will result in more informed investigations and better outcomes. The commissioner will be able to require individuals to attend interviews only if he suspects that an organisation has failed to comply with or has committed an offence under data protection legislation. This power is based on existing comparable powers for the Financial Conduct Authority and the Competition and Markets Authority. A person is not required to answer a question if it would breach legal professional privilege or reveal evidence of an offence.

As the noble Lord, Lord Clement-Jones, pointed out, EU adequacy was mentioned by almost everybody, and concerns were raised that the Bill would impact our adequacy agreement with the EU. The Government believe that our reforms are compatible with maintaining our data adequacy decisions from the EU. While the Bill removes the more prescriptive elements of the GDPR, the UK will maintain its high standards of data protection and continue to have one of the closest regimes to the EU in the world after our reform. The test for EU adequacy set out by the Court of Justice of the European Union in the cases relating to UK adequacy decisions requires essential equivalence to the level of protection under the GDPR. It does not require a third country to have exactly the same rules as the EU in order to be considered inadequate. Indeed,

[Viscount Camrose]
14 countries have EU adequacy, including Japan, New Zealand and Canada. All of these nations pursue independent and often more divergent approaches to data protection.

Regarding our national security practices, in 2020 and 2021, the European Commission carried out a thorough assessment of the UK's legislation and regulatory framework for personal data, including access by public authorities for national security purposes. It assessed that the UK provides an adequate level of data protection. We maintain an ongoing dialogue with the EU and have a positive, constructive relationship. We will continue to engage regularly with the EU to ensure our reforms are understood.

A great many noble Lords rightly commented on AI regulation, or the lack of it, in the Bill. Existing data protection legislation—the UK GDPR and the Data Protection Act 2018—regulate the development of AI systems and other technologies to the extent that there is personal data involved. This means that the ICO will continue to play an important role in applying the AI principles as they relate to matters of privacy and data protection. The Government's view is that it would not be effective to regulate the use of AI in this context solely through the lens of data protection.

Article 22 of the UK GDPR is currently the primary piece of UK law setting out the requirements related to automated decision-making, and this Bill sets out the rights that data subjects have to be informed about significant decisions that are taken about them through solely automated means, to seek human review of those decisions and to have them corrected. This type of activity is, of course, increasingly AI-driven, and so it is important to align these reforms with the UK's wider approach to AI governance that has been published in the White Paper developed by the Office for Artificial Intelligence. This includes ensuring terms such as "meaningful human involvement" remain up to date and relevant, and the Bill includes regulation-making powers to that effect. The White Paper on the regulation of AI commits to a principles-based approach that supports innovation, and we are considering how the framework will apply to the various actors in the AI development and deployment life cycle, with a particular focus on foundation models. We are analysing the views we heard during the White Paper consultation. We will publish a response imminently, and we do not want to get ahead of that process at this point.

I turn to the protection of children. Once again, I thank noble Lords across the House for their powerful comments on the importance of protecting children's data, including in particular the noble Baroness, Lady Kidron. On the very serious issue of data preservation orders, the Government continue to make it clear—both in public, at the Dispatch Box, and in private discussions—that we are firmly on the side of the bereaved parents. We consider that we have acted in good faith, and we all want the same outcomes for these families struck by tragedy. We are focused on ensuring that no parent is put through the same ordeal as these families in the future.

I recognise the need to give families the answers they require and to ensure there is no gap in the law. Giving families the answers they need remains the Government's motivation for the amendment in the other place; it is the reason we will ensure that the amendment is comprehensive and is viewed as such by the families. I reassure the House that the Government have heard and understand the concerns raised on this issue, and that is why the Secretary of State, along with Justice Ministers, will work with noble Lords ahead of Committee and carefully listen to their arguments on potential amendments.

I also hear the concerns of the right reverend Prelate the Bishop of St Albans, the noble Lord, Lord Vaux, and the noble Baroness, Lady Young, on surveillance, police powers and police access to data. Abolishing the Surveillance Camera Commissioner will not reduce data protection. The role overlaps with other oversight bodies, which is inefficient and confusing for police and the public. The Bill addresses the duplication, which means that the ICO will continue to regulate data processing across all sectors, including policing. The aim is to improve effective independent oversight, which is key to public confidence. Simplification through consolidation improves consistency and guidance on oversight, makes the most of the available expertise, improves organisational resilience, and ends confusing and inefficient duplication.

The Government also have a responsibility to safeguard national security. The reports into events such as the Manchester Arena and Fishmongers' Hall terrorist incidents have clearly noted that better joined-up working between the intelligence services and law enforcement supports that responsibility. This is why the Bill creates the power for designation notices to be issued, enabling joint controllerships between the intelligence services and law enforcement. The Secretary of State must consider the processing contained in the notice to be required for the purpose of safeguarding national security to grant it. This mirrors the high threshold for interference with the right to privacy under Article 8 of the Human Rights Act, which requires that such interference be in accordance with the law and necessary in a democratic society.

Concerns were raised by, among others, the noble Baronesses, Lady Young and Lady Bennett, and the noble Lords, Lord Sikka and Lord Bassam, on the proportionality of the measure helping the Government to tackle both fraud and error. Despite taking positive steps to reduce these losses, the DWP remains reliant on powers derived from legislation that is in part over 20 years old. The DWP published the fraud plan in May 2022. It set out clearly a number of new powers that it would seek to secure when parliamentary time allowed. Tackling fraud and error in the DWP is a priority for the Government but parliamentary time is tight. In the time available, the DWP has prioritised our key third-party data-gathering measure which will help to tackle one of the largest causes of fraud and error in the welfare system. We remain committed to delivering all the legislation outlined in the DWP's fraud plan when parliamentary time allows.

To develop and test these new proposals, the DWP has been working closely with the industry, which recognises the importance of modernising and strengthening these powers to enable us to better detect fraud and error in the benefit system. This includes collaboration on the practical design, implementation and delivery of this measure, including establishing a working group with

banks and the financial industry. The DWP has also regularly engaged with UK finance as well as individual banks, building societies and fintechs during the development of this measure, and continues to do so. It is of course important that where personal data is involved there are appropriate checks and balances. Organisations have a right to appeal against the requirement to comply with a data notice issued by the DWP.

Through our appeal process, the Government would first seek to resolve all disputes by DWP internal review. If this failed, the appeal would be referred to the First-tier Tax Tribunal, as currently is used in similar circumstances by HMRC. The third-party data-gathering powers that the DWP is taking are only broad to the extent that this ensures that they can be future-proofed. This is because the nature of fraud has changed significantly in recent years and continues to change significantly. The current powers that the DWP has are not sufficient to tackle the new kinds of fraud that we are now seeing in the welfare system. We are including all benefits to ensure that benefits such as state pension retain low rates of fraud. The DWP will of course want to focus this measure on addressing areas with a significant fraud or error challenge. The DWP has set out in its fraud plan how it plans to focus the new powers, which in the first instance will be on fraud in universal credit.

I thank noble Lords, particularly the noble Lord, Lord Vaux, for the attention paid to the department's impact assessment, which sets out the details of this measure and all the others in the Bill. As he notes, it is substantive and thorough and was found to be such by the Regulatory Policy Committee, which gave it a green rating.

I hope that I have responded to most of the points raised by noble Lords today. I look forward to continuing to discuss these and other items raised.

Lord Sikka (Lab): I would like some clarification. The Minister in the other place said:

"I agree, to the extent that levels of fraud in state pensions being currently nearly zero, the power is not needed in that case. However, the Government wish to retain an option should the position change in the future".—[*Official Report*, Commons, 29/11/23; col. 912.]

Can the noble Viscount explain why the Government still want to focus on recipients of state pension given that there is virtually no fraud? That is about 12.6 million people, so why?

Viscount Camrose (Con): Although proportionately fraud in the state pension is very low, it is still there. That will not be the initial focus, but the purpose is to future-proof the legislation rather than to have to keep coming back to your Lordships' House.

Let me once again thank all noble Lords for their contributions and engagement. I look forward to further and more detailed debates on these matters and more besides in Committee. I recognise that there are strong views and it is a wide-ranging Bill, so there will be a lot of meat in our sandwich.

I congratulate the noble Lord, Lord de Clifford, on his perfectly judged maiden speech. I thoroughly enjoyed his description of his background and his valuable contributions on the Bill, and I welcome him to this House.

Finally, on a lighter note, I take this opportunity to wish all noble Lords—both those who have spoken in this debate and others—a very happy Christmas and a productive new year, during which I very much look forward to working with them on the Bill.

Bill read a second time.

Commitment and Order of Consideration Motion
Moved by ***Viscount Camrose***

That the bill be committed to a Grand Committee, and that it be an instruction to the Grand Committee that they consider the bill in the following order:

Clauses 1 to 5, Schedule 1, Clause 6, Schedule 2, Clauses 7 to 14, Schedule 3, Clauses 15 to 24, Schedule 4, Clause 25, Schedules 5 to 7, Clauses 26 to 46, Schedule 8, Clauses 47 to 51, Schedule 9, Clauses 52 to 117, Schedule 10, Clauses 118 to 128, Schedule 11, Clauses 129 to 137, Schedule 12, Clause 138, Schedule 13, Clauses 139 to 142, Schedule 14, Clause 143, Schedule 15, Clauses 144 to 157, Title.

Motion agreed.

Israel and Gaza

Commons Urgent Question

4.11 pm

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, as an Answer to an Urgent Question in the other place today, my colleague there gave the following response:

"The whole House will be gravely concerned about the desperate situation in Gaza. It cannot continue and we are deploying all our diplomatic resources, including at the United Nations, to help find a viable solution.

The scale of civilian deaths and displacement in Gaza is shocking. I was particularly disturbed to hear about the situation of civilians trapped in the Holy Family Church complex in Gaza City, the lack of water and food, and reports of sniper fire causing civilian deaths inside the complex. Although Israel has the right to defend itself against terror, restore its security and bring the hostages home, it must abide by international law and take all possible measures to protect civilians.

No one wants to see this conflict go on a moment longer than necessary; we recognise the sheer scale of the suffering and are appalled at the impacts on civilians. What we urgently need are more humanitarian pauses to get all the hostages out and life-saving aid in. We welcome the recent opening of the Kerem Shalom crossing to help achieve this, but it is not enough. Our immediate priorities are to secure the release of British hostages, to show solidarity with Israel in defending itself against Hamas while complying with international humanitarian law, and to call for such pauses—both at the UN and directly with Israel—to ensure that emergency aid can be distributed in Gaza, including fuel, water and medicine.

[Lord Benyon]

The Foreign Secretary will discuss the situation in Gaza with regional leaders this week in his visit to Egypt and Jordan. The Government have recently announced an extra £30 million of British aid, tripling the UK's aid budget for the Occupied Palestinian Territories this financial year. To date, we have delivered 74 tonnes of aid, but there is still more to do: casualty numbers are far too high and we are calling on Hamas to release each and every kidnapped hostage. We are also actively exploring other routes for aid into Gaza, including maritime options.

Of course, as both the Prime Minister and Foreign Secretary have said, ultimately this must end. We of course want to see an end to the fighting, but this must be a sustainable ceasefire, meaning that Hamas must stop launching rockets into Israel and release the hostages. Over 130 hostages are still unaccounted for. They must be released immediately and returned to their families. To achieve long-term peace in the Middle East, a viable two-state solution is needed. Leaving Hamas in power in Gaza would be a permanent roadblock on the path to this. No one can be expected to live alongside a terrorist organisation committed to its destruction and dedicated to repeating those attacks".

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating the Statement. As the ongoing humanitarian catastrophe worsens in Gaza, it is vital that the United Kingdom helps to build the conditions for a sustainable ceasefire—and that includes our work on the United Nations Security Council. I know that Ministers, including the noble Lord, Lord Ahmad, have been working hard to find a text which can be agreed on that can lead to a cessation of violence and the release of hostages. While the outcome of the Security Council deliberations will not be known until later today, the mobilising of humanitarian support must be stepped up. Andrew Mitchell said in the other place that we will increase support for UNRWA directly into Gaza which, he said, now has US backing. Can the Minister give us more details of this and of how we are working with all UN agencies to get aid into Gaza?

Lord Benyon (Con): I thank the noble Lord. He is right that things are at a crucial stage at the Security Council. We are expecting a vote at approximately 5 pm our time and are working really hard to make sure that we have a text that can be agreed on. It is involving all the diplomatic skills we have at hand. We will make sure that we keep the House informed on the progress of that and will explain the text we have achieved.

The noble Lord is absolutely right to raise humanitarian support. Some £10 million to support Palestinian refugees has been committed at the UN Relief and Works Agency for Palestine Refugees. In addition, £150 million has been committed to support vulnerable Syrians and £70 million has been contributed to the UNHCR. A whole range of different schemes have been adopted in the region, but we have tripled our particular support to those in Gaza to make sure that we are supporting them. The humanitarian aid we want to see delivered has a number of potential routes in. One, which I mentioned earlier, was a maritime option, but that of course requires the agreement of both Israel and Hamas. We are also investigating a cross-land route via Jordan through Israel through to the Kerem Shalom crossing. These are complicated issues to negotiate, and we will continue to keep the House informed on our progress.

Baroness Smith of Newnham (LD): My Lords, we seem to be facing something of a moving target. When the Minister of State made the response in another place, the suggestion was that the UN vote was expected at 3 pm our time. My honourable friend Layla Moran, in asking her supplementary in the other place, noted that the Government

"talk now of a sustainable ceasefire",

and asked whether they will demand "an immediate bilateral ceasefire". It is not clear that the Minister of State in the other place gave a direct answer to that, so I wonder whether the Minister is able to do so and whether he can tell us whether the naval support being sent will be able to support ships getting through the Red Sea and keep trade lines open as well.

Lord Benyon (Con): I am mindful that the noble Baroness's friend in the other place has family in the Holy Family church in Gaza. We are very keen to make sure that we are supporting both getting aid to people like that but also to make sure that we are holding Israel to the very clear statement of President Herzog, who said that:

"The State of Israel and the IDF continue to act in a humanitarian manner and in accordance with international law".

The eyes of the world are on this. We were all appalled by what happened on 7 October; Many Members of this House have seen the footage of those terrible attacks, and absolutely accept the right of Israel to defend itself. But we want to get aid in and make sure that Israel is operating in accordance with humanitarian law. The sustainable ceasefire that we are talking about, which my colleague the Foreign Secretary and his opposite number in Germany have put together, is about stopping the launching of rockets, releasing the hostages, and moving to that key two-state solution. That is what "sustainable" means in this context.

Lord Swire (Con): My Lords, I declare an interest as a past chairman of the Conservative Middle East Council, and ask my noble friend for clarification. The Permanent Representative to the UN, Dame Barbara Woodward, suggested that the reason the UK abstained at the recent vote in New York was because the Motion did not condemn Hamas. Can the Minister be very clear—had it condemned Hamas, would the United Kingdom have actually voted for the resolution? Secondly, when you have the spokesman for the Israeli Government, the Ambassador to the UK, Tzipi Hotovely, ruling out ever having a two-state solution, do we not need to finally admit that the two-state solution is over, and we need to be a little more creative and forward-leaning in working out where we go from here?

Lord Benyon (Con): I hope that we are being as creative, forward-leaning and dextrous in our diplomacy. Our permanent representative to the UN is working

on the text which, we believe, must make some reference to the atrocity of 7 October but also—it is possible to hold two thoughts in our head at the same time—we want to make sure that aid is getting in and that we have a political solution. We know that this conflict cannot continue, and certainly not in its current form, and we want to see an end to it.

Lord Austin of Dudley (Non-Afl): My Lords, the reason civilians in Gaza are at risk is because Hamas hides its weapons in densely packed residential areas and in hospitals and schools. What the atrocities on 7 October show, which Hamas has promised to repeat, is that there is no prospect of the peace process we all want to see with Islamist terrorists committed not just to killing every Israeli but to the murder of Jews worldwide. This is why the UK Government should be doing all they can to support Israel's campaign to deal with Hamas and free the hostages.

Lord Benyon (Con): My Lords, that is what we are seeking to do. The reports of weapons being found in child incubators in hospitals are appalling, if true. They should be condemned by everybody, and we should be working to secure a lasting peace in this area. I understand the noble Lord's frustration; in order for this to happen we have to get both sides to move, and we are trying to use all the diplomatic levers at our disposal to achieve that.

The Lord Bishop of Southwell and Nottingham: I am grateful to the Minister for his comments so far. I want to raise two specific incidents with His Majesty's Government that are of particular concern to these Benches.

News arrived overnight of the actions of the Israel Defense Forces in destroying the entrance wall of the Anglican Al-Ahli hospital in Gaza City, closing that facility, detaining most of its staff and leaving a tank on the rubble. The second incident relates to comments made by the deputy mayor of Jerusalem on LBC radio this morning, where she was questioned about a sniper attack on two Christian women in the compound of the Holy Family Church. She said that there were no Christians or churches in Gaza and that they have been "driven out by Hamas". There remains a small, yet highly visible, Christian community in Gaza, which is very notably engaged in the provision of Gaza's healthcare facilities.

While I recognise the right of Israel to pursue its legitimate military objectives, I ask the Minister to ensure that His Majesty's Government make clear to the Government of Israel that the targeting of religious buildings, their people and the healthcare facilities they provide to the community is unacceptable, and that the Church in this country expects the prompt release of medical staff detained from the Al-Ahli hospital.

Lord Benyon (Con): I do not have time to go into the details of the two incidents that the right reverend Prelate raises, but our information is that there were no Hamas fighters in or around the Holy Family compound and that the people who work and live there are nuns and other employees, or people who work with them. We want to make sure that they are protected and given all the protection one has a right to require for such people in a conflict situation.

Baroness McIntosh of Pickering (Con): My Lords, may I press my noble friend on the possibility of delivering humanitarian aid through maritime routes? Will he also look at the conflict in the Red Sea that is now impacting on our own merchant shipping?

Lord Benyon (Con): RFA "Lyme Bay" is off Cyprus, ready to go, and will require, as I said, the agreement of both sides in the conflict for it to make a maritime landing of aid—I cannot say more on that.

On the other question, which I think I did not answer the noble Baroness about, relating to the situation in the Red Sea, we are working with our allies. The United States Secretary of Defense, Lloyd Austin, has put together a plan, which we are part of, to ensure that international shipping will continue to be able to head through the Strait of Hormuz. It is an absolutely vital seaway for the security of the region and for the trade routes throughout the world, and we are treating that as an absolute priority.

Infected Blood Inquiry: Government Response

Statement

4.25 pm

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): With the agreement of the House, I will repeat a Statement made yesterday in the other place by the Minister for the Cabinet Office, John Glen:

"With permission, I would like to make a Statement on the Government's response to the Infected Blood Inquiry. I made clear my intention to do so at Cabinet Office questions on 23 November, and the Minister of State at the Ministry of Justice, my right honourable friend the Member for Charnwood, reiterated this on the Floor of the House on 4 December.

First, and most importantly, the suffering of the victims must be recognised. The distress and trauma that each individual has faced as a result of this tragedy is unimaginable, and the Government understand that no measures can fully compensate for the losses and hardships that they have suffered. The priority here must be to ensure that victims get the justice they deserve.

With the interim compensation payments issued last October, the Government recognised the immediate and urgent needs of those most severely impacted. This was the start of the process, not the end. The Government have accepted the moral case for compensation, and I am fully committed to ensuring that we bring this matter to its long-awaited conclusion.

In April 2023, the Government welcomed the publication of the Infected Blood Inquiry's second interim report, which set out a detailed framework for compensation for both those infected and those affected by infected blood, and it is a significant step towards the culmination of the inquiry's deeply important work.

[Baroness Neville-Rolfe]

The inquiry has taken a wide-ranging and innovative approach to compensation, and I was pleased to see that the Government's commissioning of Sir Robert Francis KC's compensation study assisted in the inquiry's work. It is now a year on from the Government's acceptance of the moral case for compensation, and I understand the calls for urgency. I know that, from many of those infected and affected, there is anger and frustration with the Government's response so far.

The inquiry's recommendations are not without complexity, and it would be inappropriate for the Government to prejudge the findings of the final report. For these reasons, the Government are not yet in a position to share any final decisions on compensation. However, Members on both sides of the House have made it clear that we must do right by the victims, and the Government recognise this. I am personally committed to making sure that we do that.

I also give enormous credit to the right honourable Member for Kingston upon Hull North on her continuing hard work to advocate for the victims of the infected blood scandal. The Government recognise the strength of feeling across the House on this matter and the importance of what the amendment seeks to achieve.

The Government are working through the implications of the amendment. Cabinet Office officials worked hard under my predecessor, my right honourable friend the Member for Horsham, to develop this policy and we are reviewing this work in the light of the amendment made two weeks ago today.

I am also pleased to provide the House with an update on the wider progress we have made in this area, and on the steps we are taking to address the concerns of this House. First, I announce that the Department of Health and Social Care will fully implement a bespoke psychological service for people infected and affected by infected blood products, delivered by NHS England. Our intention is for this service to go live in early summer 2024. We recognise the harrowing impacts of the infected blood scandal and the psychological impact this has had on many infected and affected individuals. This announcement is an important step for victims in England. The service will provide tailored support to meet the unique needs of infected and affected individuals.

The Government are also urgently appointing clinical, legal and social care experts to advise the Cabinet Office on detailed technical considerations early in the new year, which will ensure that the Government have the relevant expertise to make informed choices in responding to the inquiry's recommendations on compensation.

Finally, I reiterate the commitment that the Government will seek to provide an update to Parliament on next steps through an Oral Statement within 25 sitting days of the inquiry's final report being published. As my predecessor made clear both to this House and to the inquiry, there are a number of technical issues that must be considered as they will have a significant impact on public finances. It is important that any decisions on compensation funding are taken carefully, and the House should expect the Government to work through the associated costs to the public sector while, at all times, considering the needs of the community and the far-reaching impact that this scandal has had on their lives.

The victims of the infected blood scandal deserve justice and recognition. Their voice must be heard, and it is our duty to honour not only those still living and campaigning but those who have passed without recognition. This is my highest priority, and I will continue to progress this work with all the urgency it deserves. I commend this Statement to the House".

4.31 pm

Baroness Chapman of Darlington (Lab): My Lords, we are grateful to the Minister for reading the Statement out this afternoon, and we very much welcome it.

Someone dies every four days as a result of this scandal. Time is passing. Each week, more families are left to grieve. The campaign led by victims, by their families and, in Parliament, by Diana Johnson, and the vote in the other place to amend the Victims and Prisoners Bill, forcing the Government to establish a body to administer compensation in anticipation of the final report of the inquiry, are no doubt focusing Ministers' minds. I had hoped that the Statement that the Minister helpfully read out would provide some assurance that the Government are proceeding with this work. Can the Minister clarify what they are doing in anticipation of the completion of the passage of the victims Bill to comply with its new Clause 40?

It is clearly the will of Parliament that the Government make progress quickly. They could, for example, set about appointing a chair and members of the compensation awarding body. They could begin conversations with devolved Governments about how to work together to ensure fairness across the United Kingdom. Much could be done ahead of the final report. Can the Minister inform the House when these steps will happen? We are pleased to hear that the Government are establishing specialist psychological support, but can she explain why this will not be available until next summer?

We pay tribute to the bravery and determination of the victims of this scandal and their families. These Benches would gladly work on a cross-party basis to ensure that a scheme can be agreed and implemented as soon as possible to provide certainty to those infected and affected.

The Minister said that the Government are appointing clinical, legal and social care experts to advise the Cabinet Office on detailed technical considerations in the new year. It is not clear from the Statement what this will involve or what technical considerations are meant. Can the Minister elaborate? Is it the Government's view that primary legislation will be needed to establish the body to administer the compensation? If so, this could also be done in January, given the cross-party support that exists. When do they plan to introduce any necessary legislation?

There is no need to wait for the victims Bill to pass, given the clarity of the words of the Minister of State in the Ministry of Justice that the Government would

"put in place the necessary legislative framework and timescales for a delivery body for compensation for the victims of infected blood".—[*Official Report*, Commons, 4/12/23; cols. 136-37.]

In the light of this Statement, when does the Minister anticipate that payments can start to be made?

We cannot undo what has happened. We cannot bring people back, but we can, through a fair compensation scheme, recognise the wrong that has been done to so

many families and individuals. We can provide the financial support that is due. But I reiterate that we do not have the luxury of time. We have a moral duty to act, which the Government accept, and Parliament has demanded. I look forward to the Minister's response.

Baroness Brinton (LD): My Lords, I would like to pick up from where the noble Baroness, Lady Chapman, left off. We need to occasionally remind ourselves of the history of this. I thank the Minister for repeating the Statement and thank the various campaign groups that continue to persevere for justice and compensation and to ensure that we are kept informed about the current situation.

I particularly thank Colette Wintle and Carol Grayson for their briefing and their amazing campaigning over the years. They reminded us that the history of this started in 1991 with the HIV litigation, when the Conservative Government blocked compensation. In 2003, the Skipton Fund was set up, but that was blocked by the Labour Government. In 2009 and 2010 there were other incidents that were also blocked by that Government. In 2012, the coalition Government also blocked compensation, delaying things for a further decade. This year, given that Sir Brian Langstaff's second interim report made it absolutely clear that compensation should be set up and run from now, it is extraordinary to have a three-page Statement, in which the first page says all the right things but the second and third pages then put it into the long grass.

It is good news about Clause 40 in the Victims and Prisoners Bill. It had its Second Reading in your Lordships' House yesterday and, had we heard the details of the Statement before that, some of us might have changed our speeches. It is almost as if Ministers have not yet seen Sir Brian Langstaff's recommendation on 5 April. To remind your Lordships' House, he said:

"I recommend that a compensation scheme should be set up now and it should begin work this year".

The Statement says that the Government will work through everything before starting the scheme. Can the Minister say on what grounds they are going specifically against Sir Brian's recommendation that the scheme should start immediately? Time is not on the side of the victims or their families.

From these Benches, we too welcome the proposals for a bespoke psychological service for people infected by and affected by the infected blood products. But can I ask the Minister if there is new funding for this? There has to be funding outside the existing mental health budgets, which are severely under strain. If there is not, it will just put further pressure on an overwhelmed service and lead to further distress for people who believe that it will be available to help them when it is not. Even worse, others who have been waiting years for urgent mental health services will find that they cannot get them.

It is important because, as the Factor 8 scandal campaign has said, in a recent case of a young man whose father, mother and sister all died of AIDS when he was three years old, he has received nothing. He gets no ongoing support and struggles deeply with his mental health. Factor 8 says that it is "unimaginable" that his case is not

"described as 'one of those most severely impacted'".

There is also reference to setting up a group of experts. Who is appointing these experts? It would be normal for the chair of the compensation panel to choose their experts. There would usually be two panels —one would be medical advisers and one would be legal advisers. There is, of course, the important element of making sure that there is the voice of the people affected. Can the Minister say whether this is being done by the Government in advance of the panel being set up?

It would really good if we could have some speeding up of this process. There is no time, as everyone has said—but we have been saying this for close to 30 years, and it needs to be actioned now.

Baroness Neville-Rolfe (Con): My Lords, I thank the noble Baroness for her comments about cross-party support because, after all, this dreadful scandal dates back, I think, 40 years and has involved many different Governments. She is also right that we have to recognise what has gone before us and do the right thing. It has been an awful scandal and, even more, it has left a stigma—particularly in the days before HIV and AIDS were properly understood—on all those involved. She is right to say that the amendment to the victims Bill has helped to focus minds on this issue.

Obviously, the Government recognise the strength of feeling across the House and the importance of what this amendment seeks to achieve. We are working through the implications as drafted and considering the question of primary legislation and, having this amendment, what is the right vehicle.

As I said, the inquiry's final report is expected in March 2024. There was, I suppose, a small ray of light in the last day or two, as the inquiry said it would announce the date of its report on 17 January. The Government have already made it clear that, within 25 sitting days following the publication of that report, we will provide a full response to Parliament with an Oral Statement on the next steps. That gives us a better timetable than we have had before. I understand, of course, the points made about speed, and I look forward to being able to fill in on them.

I reiterate the news about the bespoke psychological service for people infected and affected by infected blood products and the appointment—I hope, imminently —of clinical leader and social care experts. The role of social care experts will be to advise on technical issues that require a high level of relevant knowledge in order to make informed choices in responding to the inquiry's eventual recommendations on compensation—things such as tariff schedules. These experts will be independent and will be appointed solely to advise on technical issues. Our feeling is that it is right to get on and make those appointments: the Minister for the Cabinet Office was very clear about that. That probably means that it is not possible to do the chair and the experts at the same time. He made it clear that that process was ongoing, would be communicated early in the new year and that he was working, as it were, right over Christmas on this important issue.

In relation to the psychological support service in England, I understand the concerns that the service cannot go live until early summer 2024. The reason for

[Baroness Neville-Rolfe]
that is that we need time to recruit suitably experienced and qualified staff and for all the necessary arrangements to be made for them to start seeing patients. What is good about the scheme is that access is anticipated to be primarily by people referring themselves. There may be onward referrals from GPs and hospitals, but people will not be reliant on that.

The noble Baroness, Lady Brinton, was right to run through the history of this again and remind us of that and of individual cases. I am the process of reading Caroline Wheeler's book on this blood scandal in preparation for today and have been shocked by the individual cases. I commend that, and think it has been influential in this whole matter. We have made a Statement because we promised to do one before Christmas and, as I have said, the Minister for the Cabinet Office is working relentlessly on moving these schemes forward so that we are in the best possible stage of readiness for the final report when it emerges.

4.44 pm

Lord Lancaster of Kimbolton (Con): My Lords, as a former Member of Parliament, and like many other former MPs in this House, I had constituents affected by this awful condition. I will ask my noble friend a point of clarification. In the original Statement, the Government welcomed

"the publication of the infected blood inquiry's second interim report, which set out a detailed framework for compensation for both those infected and those affected by infected blood".

However, on certain occasions in the Minister's responses in the other place, he referred only to those who were infected by this blood. For absolute clarity, is it the Government's intention to compensate those both affected and infected?

Baroness Neville-Rolfe (Con): I thank my noble friend Lord Lancaster for his comments. Of course, many people who had constituencies had similar experiences to him, including Mr Glen himself. The interim compensation scheme that we set in train last October paid out £400 million in interim compensation to a combination of infected people and their bereaved partners if they were registered on the scheme. That gives some understanding of the way we look at this—or at least how we did then—but, obviously, the report is much more wide ranging. We were able to deliver payments quickly then because of the clear parameters of eligibility. As my noble friend suggests, the final report will no doubt be much broader, which is one of the reasons why we have to do so much more work on the complexities involved.

Lord Cashman (Lab): My Lords, I welcome the Statement repeated by the Minister and pay tribute to the campaigners who have campaigned for nearly four decades. There is an urgency to this issue: as we heard, there is a death every four days, and the families and the victims need an explanation. Can the Minister explain why it has taken Governments so long to accept the moral case for compensation?

Baroness Neville-Rolfe (Con): That is a question for many previous Governments. I can speculate, as can the noble Lord, but this Government have accepted the moral case. That has implications, and we have made interim payments. This is not a difficult matter; I always go back to the need to give the victims the justice they deserve and our intention to do that.

Baroness Meacher (CB): The Government's Statement on their response to the Infected Blood Inquiry is a deep disappointment—that is an understatement. The Commons Minister said, and our Minister repeated it—I in no way criticise our Minister for this; I respect her greatly—that the

"distress and trauma that each individual has faced as a result of this tragedy is unimaginable".

Yet the Minister went on to do absolutely nothing about it, other than establish a psychological service 40 years on. In my view, all this does is recognise the extraordinary depth of the damage done to these people—nothing more.

The Government have had the full and final recommendations on compensation and redress from the inquiry since April 2023, when it said that the compensation scheme should be set up and work should begin in 2023—of course, the Government ignored this. The noble Baroness, Lady Brinton, mentioned the Government appointing legal and clinical experts to advise them further on the operation of the compensation scheme, when the inquiry made it very clear that the chair of the arm's-length body should make those appointments.

As president of the Haemophilia Society, I remind the House of the sheer numbers of people affected in this appalling way by those administrative errors. Over 5,000 people with haemophilia and other bleeding disorders were treated with contaminated blood products brought over from the United States that were taken from prisoners, drug addicts and others. This is a shocking history, and it is surely time that all those directly or indirectly affected should be compensated fully and immediately.

Baroness Neville-Rolfe (Con): I am sorry for the disappointment that the noble Baroness found it necessary to express. I cannot help sharing it, to some extent. I thank her for reminding us of the numbers involved, which may be even more than she talked about. We do not exactly know, which is one of reasons why we are not in a position to do the necessary moving forward.

I reiterate the point made on previous occasions when we have discussed this: the lack of a timetable is very worrying to us all. As I explained, we will have a firm date for the final report very shortly, by 17 January. We expect the report in March, and within 25 sitting days we will provide a proper response to Parliament, with an Oral Statement on next steps. We have to move forward, as well as being disappointed and complaining about the slowness of this. This is a major scandal and we are, as a Government, trying to move forward and sort it out.

Baroness Hooper (Con): My Lords, as a former Health Minister who was called to give evidence at the inquiry, I know how thoroughly Sir Brian Langstaff conducted it. That is why it has gone on for so long—I think over a year longer than originally intended. I therefore welcome the steps the Government outlined

in the Statement and the action they propose to take immediately. However, as has already been said on all sides, it is not only the tragedy of the case but the length of time which makes a final settlement so urgent.

Most of the supplementary questions I planned to ask have already been asked, about interim payments and the composition of the new clinical, legal and social care expert committee, which is to advise the Cabinet Office. I understand that similar supplies of infected blood went to other countries in Europe and around the world. How have they dealt with it, and to what extent have we been guided by their examples?

Baroness Neville-Rolfe (Con): I thank my noble friend Lady Hooper for her question. In another life, she and I worked together on food safety and health issues. I know how much she knows about these issues, and there are many difficulties and tragedies in these areas.

I will write to my noble friend with an answer on the international practice. I am reading the Caroline Wheeler book, which talks about some of this. We may not have done as well as we could have done, and we need to learn from that for the future. The noble Baroness is right to ask about what they did. I know that some countries had similar problems but others did not. We should learn from that for the future.

Tackling Spiking

Statement

The following Statement was made in the House of Commons on Monday 18 December.

"With permission, I will make a Statement about the Government's action to tackle spiking. Spiking is an insidious act with potentially life-threatening consequences. We know it constitutes a danger to people, particularly women, in nightclubs, bars, on student campuses, at festivals or in any social setting. No one should have to worry that a substance has been put into their drink or that they could be targeted with a needle. More than 5,000 cases were reported last year, and that is perhaps only the tip of the iceberg.

These offences have potentially devastating effects. First, there are the immediate physical effects, which can include struggling to speak or to stand up, loss of consciousness and hospitalisation, to name just a few. Secondly, there is the psychological trauma, which can manifest itself in a number of ways, including anxiety or, most acutely, shame about what happened and what may have ensued. The impact can last for months, years or a lifetime. Some will be victims of secondary offending, which they may struggle to recall, that may well be of a sexual nature. Thames Valley police told the Home Secretary and me just last Friday that spiking is the hallmark of the sexual predator. Anyone who has read the harrowing accounts of victims will understand why it is vital that we crack down on these crimes. We owe it to all of them to redouble our efforts, and that is precisely what this Government are doing.

As Members will be aware, the Government were required, under Section 71 of the Police, Crime, Sentencing and Courts Act 2022, to produce a report on the nature and prevalence of spiking and the action we intend to take. Publication has been delayed, and I understand why the hold-up has been a source of frustration, but that delay has enabled the Home Secretary and I—both new in post—to take a step back and consider how best we can focus our efforts to address this crime.

We want the law to be crystal clear and for individuals to have no doubt as to their rights and remedies. We have concluded that there is a case for a legislative change to capture the modern and insidious nature of this crime. I can therefore confirm to the House that the Government intend to bring forward amendments to the Criminal Justice Bill that modernise the language of the Offences against the Person Act 1861. This will remove any ambiguity and make it clear that the offence covers spiking in every form, be that via food or drink, vape or by needle. We hope that this step will improve public awareness but, most importantly, encourage victims to come forward.

I will add two points. It has been said, and we of course accept, that the existing laws already cover the range of behaviours that incorporate spiking. While it is not in dispute that that is the case, we recognise that some of the existing offences on which we rely are not readily seen to cover spiking. We give the illustration of Sections 22 to 24 of the Offences against the Person Act 1861, which use the language of poisoning for nefarious purposes, which we believe we can clarify through this change.

By their very nature, spiking cases are complex. The work we have done tells us that there are particular challenges in identifying perpetrators and gathering evidence. To bolster our legislative plans, we have developed a package of practical measures to improve public safety. The police have already developed a rapid, lab-based urine testing capability, but we want to go further. First, the Home Office will be funding efforts to research the capability and reliability of existing rapid drink testing kits. There are never any guarantees with this sort of work, and we are only at the beginning, but to understand what is possible, we have to gather evidence on testing efficacy, and that is what we will be doing in the months ahead.

Secondly, additional funding will be provided to the police to run several spiking 'intensification weeks', which we have seen successfully deployed for other types of criminality, including county lines and knife crime. Thirdly, the Security Industry Authority, the regulator of the UK's private security industry, has committed to introduce spiking training for door supervisors as part of its existing licence-linked qualifications. This will enable them to better and more quickly identify victims onsite.

Fourthly, we will support the police to roll out their spiking reporting and advice tool, to improve the quality of data. This enables the public to report cases of spiking quickly and simply, including anonymously if they so wish. It has been successfully rolled out across 20 forces as part of a pilot programme in England and Wales, and will be expanded to the remaining 23 forces shortly. Several other measures are detailed in the statutory report, but I am conscious of the time, so I will simply add that the report is available on the GOV.UK website and emphasise that we are strengthening our response across the board.

Before I conclude, I take this opportunity to urge the public to remain vigilant, particularly over Christmas. If anybody believes that they or someone around them has been spiked, they should report the incident to the venue and the police. I also want to offer my thanks to the campaign group Stamp Out Spiking and Members on both sides of the House. I will not mention them all, but I particularly thank my honourable friend the Member for Gloucester, Richard Graham, my right honourable friend the Member for Chelmsford, Vicky Ford, the honourable Member for Bradford South, Judith Cummins, my right honourable friends the Members for Romsey and Southampton North, Caroline Nokes, and for Witham, Priti Patel, my honourable friend the Member for Mid Sussex, Mims Davies, and the right honourable Member for Kingston upon Hull North, Dame Diana Johnson, who have campaigned so assiduously on this issue. Their insight and commitment have been instrumental, and they will no doubt continue to provide support and scrutiny as our work progresses.

Spiking is an appalling, predatory crime that ruins lives. As we have shown time and again, this Government will do everything in their power to protect the public and reduce violence against women. I commend this Statement to the House."

4.52 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, yesterday's Statement on tackling spiking was welcome. It said that 5,000 cases of spiking had been reported last year—as it very realistically said, this is likely to be just the tip of the iceberg. As it also said, spiking is not just the spiking of drinks but by needles and sometimes of food. It is a prevalent problem that needs tackling.

The danger is to everybody, but it is particularly to young women in nightclubs and bars. There is very often a sexual motive to those who perpetrate spiking. The other point the Statement made, which is worth saying, is that it is often a trigger to secondary offending as a result of the spiking itself.

I have spoken to a number of young people about this and every one of them knows about spiking. They either know it through their own experience or that of close personal friends. Everybody who I have spoken to says it is an issue for undergraduates at universities, for example. They have all got their story to tell about spiking.

As a magistrate, I have dealt with spiking a few times over the last few years. However, on reflection, I have mainly dealt with cases where it is not the perpetrator who is in front of me in the court, but a defendant who claims their alleged criminal activity is because of the spiking. That is something for the court to try and disentangle, but from my own experience that is what I have actually seen in court. It must be quite difficult to bring these cases to court.

The other point worth making, which I am sure the noble Lord will be well aware of, is that the vast majority of young people who have experienced this do not report it to the police. They do that for a variety of reasons, but that is a common thread from what they have said to me.

In the Statement, the Government said that they are going to bring forward amendments to the Criminal Justice Bill that will modernise the language of the Offences against the Person Act 1861—clearly, that is welcome—and that there will be additional funding, which will be provided to the police to run spiking intensification weeks. The other undertaking within the statement is that the Security Industry Authority, the regulator of the UK's private security industry, has committed to introducing spiking training for door supervisors as part of its existing licence-linked qualifications. One question for the Minister is: what responsibilities do nightclub owners have to try and stamp out spiking from their premises?

A further commitment of the Government is that they will support the police rolling out their spiking reporting and advice tool to improve the quality of data. We of course welcome these announcements as far as they go, but they are long overdue. I have had correspondence with the noble Baroness, Lady Williams, when she was a Home Office Minister, on exactly this matter, so I know that the Government are seized of the issue. Can the Minister say something about how much longer he expects it to be before the legislative changes which may be proposed are made, and how much longer it will be before any funding support which may be provided to the police will be made and get off the ground?

I conclude on a slightly different note. I am very conscious of the limits of changing the law. Of course, we must change the law to make sure there is adequate punishment and to recognise spiking in its many manifestations, but really, the best defence is information. As I said, young people are aware of this but are not necessarily aware of the best ways of defending themselves against spiking. It may be the responsibility of universities, and maybe also of police forces, but also of the Government to make sure that the right information is made available to young people to try to reduce this crime.

Baroness Brinton (LD): My Lords, I too thank the Minister for this Statement about understanding and tackling spiking, and indeed for the document which accompanies it. It is good that the Government are making a series of proposals. If I pick up where the noble Lord, Lord Ponsonby, finished, on the change of the law, that is a useful clarification because if the law—even though it is there—is not being used by the criminal justice system, it is failing. I hope we will all be able to get behind that amendment when it comes through in the Criminal Justice Bill.

When I read the report, my heart sank. There are some good points, and I will come on to those in a minute. However, there is very little emphasis on tackling the prevalence of behaviour by perpetrators. There is a mention at the very end of the recommendations in the document that prevalence will be part of trying to highlight spiking, including

"increased arrests, detections, and prevention activity taking place".

However, that prevention activity is unlikely to change the mindset of a young man—it is usually a young man—going out with some drugs that he wishes to use to spike somebody's drink or even to use a needle. It always worries me that victims are the ones who need to read up and learn about how they can best protect

themselves, while nothing is done to attempt to change the culture of the behaviour of the perpetrator. It seems to me that that is a big issue. Can the Minister say what is planned on this? For example, are there advertising schemes? We must get the perpetrators to think that it is absolutely unacceptable even to think about it—but I am struggling to see that.

Having been a health spokesperson, I am interested in the research into the capability of existing test kits. I know that most of the current test kits involve using a urine sample, which is impractical at the time: you can find out only afterwards if you have one of those tests. If it is the equivalent of the lateral flow test that was developed during the Covid pandemic, it would be enormously useful—but 150,000 will not go very far. I note the wording in the document is very careful in talking about the plan "to begin research", but we ought to put some urgency on this. If there are 5,000 cases a year that we are aware of, they are putting a considerable burden on not only the victims but the entire criminal justice system. It seems that this should be a bigger priority for prevention.

My final point is on the training programme. Noble Lords will know that I go on and on about training programmes in relation to victims and the criminal justice system. They are really helpful for upskilling staff in the night-time economy. I declare an interest that one of my children works in the night-time industry, as a security guard. I know that she would welcome some training to accompany the other training that she has on safeguarding and other matters; it would be extremely helpful. It would be useful for particular sectors that work very much with young people—universities and further education providers—as well as the night-time industry.

My real concern is that we need to get to the people who think that it is acceptable to perpetrate this crime. I do not see any of that in the Statement.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I thank both noble Lords for their comments. They are right: everybody deserves to feel safe when they are out enjoying Britain's thriving night scene, especially over the festive period, when everyone's social calendar gets a little busier.

The statutory report on spiking has been laid in Parliament and published on GOV.UK. As has been noted, spiking is already illegal, but we have listened and will change the law to make sure that spiking, as it manifests itself in the modern world and in all its forms, is clearly and comprehensively reflected in legislation. We hope that this will encourage more victims to come forward and report this often-underreported crime, which will then send a clear message that spiking will not be tolerated and that offenders can expect to face justice.

We have announced a package of new measures to tackle spiking, which, as all noble Lords will be aware, is an abhorrent crime and undermines the public's right to feel safe in their communities. As the noble Lord, Lord Ponsonby, noted, that particularly applies to women and girls. The measures range from equipping the police to intensify their proactive interventions to prevent offences, to empowering venue staff to respond, protect victims and collect vital evidence, as well as the rollout of a reporting and advice tool for spiking incidents, including anonymous reporting.

I will get to the specific questions asked of me soon, but it might be of interest to noble Lords to know that, between May 2022 and April 2023, the police received 6,732 reports of spiking, including 957 reports of needle spiking, as was referenced by the noble Lord, Lord Ponsonby. On average, the police receive a total of 561 spiking reports a month, which includes through needles, drinks and other forms. The majority of those come from females who believe that their drinks have been spiked, although spiking can and does affect anybody.

The measures that we are taking, which are non-legislative, are as follows. We are providing funding for the research into the capability of existing spiking testing kits, which the noble Baroness, Lady Brinton, referred to, and the potential development of new kits for venues and the police to detect whether someone's drink has been spiked in real time. That is not as straightforward as it sounds. There are a lot of drugs that can be detected, many of which are perfectly legitimate—including quinine, which of course comes in tonic. That makes life a little complicated when we are looking at this space, but the work is being done and funded.

There will be funding to train night-time venue staff to promote better detection of possible spiking incidents, as well as training in supporting and collecting evidence. We are working with the Security Industry Authority on its commitment to introduce spiking training to its existing licence-linked qualifications, which all applicants for DS licences have to undergo. We are working with the police on the national rollout of the online reporting tool for spiking, which allows individuals to report incidents quickly, easily and, if they wish, anonymously. We are introducing the intensification weeks, as referenced by the noble Lord, Lord Ponsonby; police forces will conduct additional work on spiking, similar to current initiatives for county lines drug trafficking and knife crime. We are supporting the higher education regulator, the Office for Students, in the delivery of any requirements for English higher education providers to prevent and address various offences, including spiking. The publication of new information and support pages will set out organisations' roles and responsibilities in tackling spiking, as well as updating the statutory guidance that accompanies the Licensing Act 2003.

On specific questions, the noble Lord, Lord Ponsonby, asked what measures are in place to deal with premises whose irresponsible management, for example, might make it easier for offences such as spiking to take place. If there are concerns about how a licensed venue is being run, the police have the power under Section 76 of the Anti-social Behaviour, Crime and Policing Act 2014 to issue a closure notice if there are reasonable grounds. There is also an expedited review process that allows licensing authorities to alter the licensing conditions granted to premises.

Mandating to carry out searches of nightclubs and so on is not quick or simple, but will require considerable consultation and potentially primary legislation.

On whether a new spiking offence would make it easier to collect data, for example, which the noble Lord mentioned, we have worked closely with the

[Lord Sharpe of Epsom]
National Police Chiefs' Council, which established Operation Lester to co-ordinate the national policing response to the crime. This has included ensuring that there is co-ordination between all 43 forces in England and Wales to centrally track incidents of spiking to gain a better understanding of the scale of the problem. That has demonstrated that we do not need legislation to ensure the consistency of recording and gain data insights from crime recording. Using the established network of crime registrars to develop central procedures can help to improve data capture more quickly when compared with the lengthy process involved in introducing and training law enforcement on the new offence. That is important work, and it is ongoing.

On timelines, we are in the early stages of developing the package. It is important that we do not overpromise and then underdeliver, but we will ensure that Parliament is well apprised of progress against these measures. The updated guidance for Section 182 of the Licensing Act 2003 was published yesterday. The spiking information and support pages will be published this week, ahead of Christmas, and both are available on GOV.UK.

As of 14 December, the police's spiking reporting and advice service has been rolled out to 20 police forces across England and Wales; it will be rolled out to the remaining 23 in due course. The vehicle for refreshing the legislation and the language around the legislation, as referred to in the Statement, is the Criminal Justice Bill, which is in Committee in the other place and will be with us at some point in the new year.

The noble Lord, Lord Ponsonby, made a very good point about Christmas—everybody deserves to feel safe when they are out and about at this time of year. We recognise that it will take some time for these legislative and non-legislative measures to take effect, but there are obviously steps that can be taken to reduce the risk of spiking. It is encouraging to hear from the noble Lord that the young people he has spoken to are all aware that this is a problem. Young people need to watch out for friends and make sure they look after each other; never leave their drinks unattended; be cautious if they are given or bought a drink and consider accepting a drink only from people they know and trust; be wary of people reaching over their drinks; and alert staff and police immediately if they see anyone acting suspiciously around their drink or someone else's. If they or a friend feel unwell, they should seek help from staff or call an ambulance immediately. These things are necessary; we should not have to say them, but they bear repeating.

The noble Baroness, Lady Brinton, asked me what the Government plan to do to develop our understanding of the motivations of the perpetrators. A literature review has been carried out by a team from the National Crime Agency and the University of Birmingham, as part of the statutory report on spiking. It concluded that it is hard to determine the actual levels of spiking from the existing literature, so we are considering what more we can do to shed light on this as we move forward with the recent measures announced as part of the report's publication. I hear what the noble Baroness says, and there is more to be said on that in due course.

I have already referred to the testing kits, to some extent. We are not committing to producing new spiking testing kits, but we are carrying out research into the capability of existing kits. First we have to identify whether they meet police requirements or whether something new is needed to help venues and police detect, in real time, whether a drink has been spiked. At this stage, it remains our position that the only reliable testing method that can detect the range of potential substances used in spiking and that can later be used in court is the rapid urine-testing capability established by the police. Obviously, that is not ideal and has to be done in a very short space of time. I go back to this point: we strongly encourage anyone who believes that they or someone around them has been spiked to contact the police as soon as possible, so that samples can be taken for testing.

As I have said, the majority of samples—51%—contain a drug of no concern or no drug at all. A drug of no concern is one that does not have a rapid sedative effect or cause confusion to a victim. The most common are paracetamol and quinine, which illustrates the difficulty with this particular kit.

I think I have covered all the questions that were asked of me. I appreciate the House's welcome for these measures, and we look forward to delivering on them in the new year.

5.11 pm

Lord Cashman (Lab): My Lords, I welcome the list of measures, on which we have now heard from the Minister, but point out that spiking affects people of all ages, and men as well as women. There was excellent coverage on "Channel 4 News" yesterday evening of a young man who was spiked anonymously and then contracted HIV. Of course, this happens not only in pubs, clubs and anonymously but in dating. In that respect, one must remember the murders by Stephen Port. I pay tribute to the sisters Donna and Jenny for getting justice for those who were subsequently murdered. What further measures can the Government take to address the institutional attitudes, often homophobia and biphobia, that prevent the proper investigation of spiking when it occurs not only in licensed premises but in prearranged dating?

Lord Sharpe of Epsom (Con): The noble Lord makes an extremely important and welcome point. It is a fact that young men are less likely to record incidents of this sort of thing, for what reason I do not know, although I imagine that embarrassment and shame probably play a major part. Education has to be a factor in this, and we have to make it clear that, if you suspect that you have been a victim of spiking, it is necessary to get tested as soon as you can.

We are dealing with the culture behind some of these aspects in a much broader context. The Angiolini inquiry, which is looking into various incidents that have happened within the police over the last two years, will deliver its results soon. I hope that they go a considerable way to improving some of the cultural failings that have perhaps led to these things.

Baroness Owen of Alderley Edge (Con): My Lords, given that the data collected by the NSPCC found that student was the highest-recorded occupation of those

who had been spiked, does my noble friend the Minister agree that the Government should work with universities and colleges to offer support for students and raise awareness when they are attending events in non-licensed private premises, such as student accommodation?

Lord Sharpe of Epsom (Con): I thank my noble friend for her question. She is absolutely correct, of course. As I have already said, we all have a part to play in tackling spiking and it is vital that we do this collaboratively. The Government and law enforcement have engaged with the sector, both through the Department for Education's spiking working group, which is chaired by Professor Lisa Roberts, the vice-chancellor of the University of Exeter, and as part of a range of freshers-related communications activity carried out this year and last. As part of its most recent phase, the Government's behaviour-change campaign "Enough" has partnered with more than 30 universities in the UK and produced a range of bespoke online and offline communications assets, which look to speak directly to student and university scenarios. Spiking assets form part of this package of work.

I could go on, but I completely agree with my noble friend and there will be a lot more to say on this. A consultation is ongoing with the Office for Students, which is due to deliver its report at the beginning of next year. We will have more to say then.

Global Combat Air Programme Treaty

Statement

The following Statement was made in the House of Commons on Monday 18 December.

"With permission, I would like to share details of the treaty that I signed with my Japanese and Italian counterparts last Thursday.

A year ago, the Prime Ministers of the UK, Japan and Italy agreed to work together on a joint programme to develop a new generation of military combat aircraft. Supersonic and armed with an array of revolutionary new capabilities, our Global Combat Air Programme, or GCAP for short, will deliver vital military capability, strengthening and sustaining our combat air sectors, and setting the standard for future combat air. Above all, it will bolster our collective security. The fact is that we are living in a much more dangerous and contested world. Our skies and international airspace are increasingly contested, not least from threats posed by Russia and China. All three treaty countries are already making significant investments in combat air to pursue these lofty ambitions. During recent years, the Ministry of Defence alone has invested £2 billion in UK combat air technology, with a further £600 million from industry to shape the capabilities and develop the necessary skills pipeline to deliver this state-of-the-art aircraft for the future.

Today I am pleased to announce, as an early Christmas present to the House, a major milestone in that programme. On Thursday 14 December in Tokyo, alongside my Italian Defence Minister colleague Guido Crosetto and my Japanese colleague Minister Minoru Kihara, I signed the GCAP treaty. It establishes the legal basis for the formation of a new GCAP international governmental organisation. As everyone seems fond of acronyms, the GIGO—or, as Guido Crosetto told me, the 'JIGO'—is now formed. It is with great pleasure that I now confirm that the headquarters of the GIGO will be in the UK.

The GIGO will be responsible for delivering vital military innovation, strengthening our trinational industrial capacity, and getting the most punch out of our pounds, euro and yen. While located in the UK, it will, however, be a partnership of equals, which is why the first chief executive of the new GCAP agency will be from Japan, and the first chief executive officer of the joint venture will be from Italy.

It is worth spending a brief moment reiterating why GCAP is so strategically important. It will immeasurably enhance our freedom of action, ensuring that the RAF has the global reach and cutting-edge capabilities it needs to conduct operations and exercises for decades to come. It will deepen our collaboration with partners in the Euro-Atlantic at a time of increasing instability, and it will ensure that we remain a key player in the Indo-Pacific theatre, which will only grow in geopolitical influence and importance over decades to come. Indeed, our new treaty already builds on our existing defence relationships with Japan, complementing the recently signed reciprocal access agreement, which facilitates mutually beneficial defence co-operation, and I was able to speak about that in Japan last week.

Like AUKUS, today's treaty is a truly multi-decade endeavour with like-minded partners who share our view of the international environment. The agreement arrives two years after we deployed our magnificent Royal Navy carrier strike group in 2021, and it is two years away from a planned carrier strike group deployment in 2025, which will include Japan. Collectively the signal we are sending both to our allies and to our adversaries is clear: the UK is deeply committed to Indo-Pacific security and Euro-Atlantic security, as well as global security. In increasingly uncertain and deadly times, we will do everything in our power to preserve an open and stable international order.

We should never forget, however, that GCAP is more than just an engine of security; it is also an engine of prosperity. With key combat air hubs in the north-west and south-west of England and in Edinburgh, GCAP will help accelerate economic growth across the country. There are already around 3,000 people working on the future combat air programme in the UK, with almost 600 organisations on contracts across the country, including many SMEs and academic institutions. The GIGO headquarters alone will support hundreds of jobs here in the UK. It will attract substantial inward investment in research and development, providing opportunities for our next generation of highly skilled engineers and technicians, not to mention the prospect of thousands more high-value jobs right across the supply chains of our three nations.

More than that, it is a programme of such size and sophistication—it is a programme that will innovate on such an extraordinary scale, using artificial intelligence, digital twinning, open architecture and robotic engineering—that I believe it will inspire a whole new generation to get into engineering, aerospace and defence. Today, we are glimpsing the future, and it comes after months of intensive work to get this together with Japan and

Italy, establishing the concept of a GCAP aircraft and the joint structures to launch the development phase in 2025.

One year on from the landmark deal that three Prime Ministers put together, our GCAP partnership is soaring to new heights. Getting here has been the product of immense effort and long sleepless nights from colleagues in all three countries. I pay tribute to their tireless effort, because today we fire up the thrusters to turbo-boost our nations towards a revolutionary air capability. That capability will one day surpass an earlier pantheon of legends in the sky, from the Spitfire to the Tornado and from the Typhoon to the F-35. It is a capability that will initiate a step change in the industrial co-operation between our three nations and will usher in a new era of combat air power. Given all it will do for our country, I have no doubt that, when it comes to formally laying the treaty for ratification before this Parliament, it will meet with the approval of colleagues on both sides of the House. The treaty has been published on GOV.UK today, and I commend this Statement to the House."

5.14 pm

Baroness Anderson of Stoke-on-Trent (Lab): My Lords, I remind your Lordships' House of my entry in the register of interests, including my role as an honorary officer of the Royal Navy.

I had the privilege of leading the first debate in the other place on the need for a new fast-jet work stream for a post-Typhoon world. That debate, and the cross-party campaign, laid the foundation for the Tempest programme and, in turn, the announcement of this treaty and GCAP. So it should be no surprise that I am personally invested in the development of a sixth-generation British fighter jet. His Majesty's Opposition welcome the development of the trination treaty and confirmation that the GCAP programme will be developed with Italy and Japan.

As with AUKUS, this alliance demonstrates our commitment to global long-term security in both Europe and the North Atlantic, as well as in the Indo-Pacific. It sends a clear message to those nation states that may wish us ill. With our allies, we can and will invest in our collective defence as a deterrent to hostile actors, because there is nothing more important than global stability and security.

There have been moments this year when the world has felt anything but stable. Therefore, in a more complex strategic environment, it is increasingly apparent that only by working with our closest allies will we be able to guarantee our global reach. However, given the scope of the project and the current challenges in the department's procurement budget, as outlined by the National Audit Office only a fortnight ago, I have some questions for the Minister.

In June, the defence Command Paper reaffirmed that the UK would spend £2 billion on this project out to 2025. Given that the development phase will begin in 2025, can the Minister confirm what funding has been made available for GCAP in the defence budget for 2025 and 2026? The procurement budget currently has a £17 billion black hole. Can the Minister confirm that this vital additional investment in GCAP will not lead to further cuts of the F-35B procurement budget? The Minister will be aware that our carrier strike capability is at the heart of our defence planning, and we cannot afford to put it at risk by failing to procure enough airframes.

We are very lucky to have a vibrant and engaged defence industrial base in the UK. However, it is dependent on the development, manufacture and export of new technologies. As GCAP is to be headquartered here, can the Minister confirm what proportion of the workshare for GCAP will be based in the UK, so we can support British business and workers? Finally, can the Minister confirm within what scope the treaty allows us to work with other allies, both at secondary level and as primary partners?

As this is my last contribution of 2023, I take the opportunity to wish the noble Earl and all Members of your Lordships' House—as well as our wonderful staff—a lovely break and a joyous, happy and electorally successful 2024.

Baroness Smith of Newnham (LD): My Lords, starting where the noble Baroness, Lady Anderson, left off, I think the noble Earl, Lord Minto, and I have the dubious distinction of being the last two people standing this afternoon, because we have the next two items of business as well. I am not quite ready to wish everyone happy recess, happy Christmas, happy holidays or anything else, and I am afraid I am going to ask the noble Earl a few more questions. In many ways, they are in a similar vein to those of the noble Baroness, except that I cannot take credit for any activities in the other place, never having served there.

From these Benches we welcome this treaty and the commitment, which is very clear, to the Global Combat Air Programme. I would be interested to hear, in addition to the answers that the Minister will give to the questions from the noble Baroness, Lady Anderson, a few more specifics about what this programme is going to mean in practice for the United Kingdom and for our wider relations with NATO and our other security partners. Clearly, one of the other partners in this trilateral arrangement is Italy. Japan is obviously an ally, and one with which we have strong bilateral relations, but how will this programme relate to our commitments within NATO? Is it enabling the United Kingdom and Italy to play a greater role, strengthening our positioning in NATO? The original Statement in the other place seemed to suggest that this is really about demonstrating our commitment not just to the Indo-Pacific but to the Euro-Atlantic area. I should like to hear a little more about the strategic thinking behind this.

Like the noble Baroness, I want to press the Minister a little more on the financial arrangements. We are in an unprecedented situation, with the present conflicts in Ukraine and in Israel and Gaza, and with further problems in the straits in the Red Sea—that is associated with the situation in Israel and Gaza but could potentially become even more difficult for our trading relations, and beyond that there are further ramifications for our naval commitments. What assessment have His Majesty's Government made about this programme, alongside the carrier strike group and other commitments that we need to be thinking about?

I am sure the Minister's briefing says something about the integrated review refresh saying X, Y and Z, but we need to move beyond that. The situation globally, and the commitments that His Majesty's Government are rightly making, mean that many of the financial questions that might have been addressed a year or 18 months ago will not necessarily be adequate now. This is a programme looking forward, as the Statement says, not just for the next few years but for decades ahead, like AUKUS. Some sense of the long-term planning, relations with our wider allies and questions about interoperability are the key issues.

Furthermore, what work is being done with the defence industrial base to ensure that the contracts can be let, as far as possible, to companies that will give jobs in this country and to our partners in the European supply chain?

The Minister of State, Ministry of Defence (The Earl of Minto) (Con): My Lords, first, I welcome the cross-House support, because this is a very important treaty and a meaningful allied programme. The launching of the Global Combat Air Programme in December 2022, along with Italy and Japan, our partners in this key initiative, was a significant moment in the future development of the new generation of military combat aircraft. In signing the GCAP treaty last week in Tokyo, my right honourable friend the Secretary of State for Defence proved that this programme is proceeding at pace, with a commensurate level of commitment that anticipates treaty ratification in early 2024, concept and assessment phase complete by 2025, and Tempest in service and operational by 2035.

This treaty is excellent news for the UK and our partners. It establishes the legal framework that allows contracts to be awarded, GIGO, and the joint business construct that is the government industrial delivery organisation. GIGO will be co-located here in the UK, alongside the joint business construct. Importantly, as a partnership of equals, the first CEO of GCAP will be from Japan and the first CEO of the joint business construct will be from Italy. On the noble Baroness's point about the sharing out of the work programme, I think it is clear that the intention is that it should be joint, in so far as it is possible. Having said that, the choice of locating the GIGO and the joint business contract here in the UK is recognition of our ability within this area. Of course, international connectivity and all sorts of other things make the UK a sensible place to do this.

I will address some of the issues specifically. The noble Baroness, Lady Anderson, is right: so far, we have spent about £2 billion on this programme and industry has spent about £600 million. From the UK's perspective, the expenditure is expected to be between £10 billion and £15 billion, running over the next 10 years. Remember, this is equal shares here.

The F35B is within the budget figures that we have been talking about, which noble Lords will recall were £228 billion over the next 10 years, of which only 25% is committed so far. There is still huge flexibility within the budget to ensure that the important priorities for this country are properly addressed at the appropriate time. It is too early to say exactly what percentage of the workforce will be in the UK, but the intention is that it should be equally shared between the three partners. We will have to see. It is a long time into the future, so who can tell?

On the question of whether other allies are to be involved, the base model programme, the platform, will be very flexible, so there is an absolute intention to involve other allies, whether they be NATO or not, and more customisation can be built into the programme as and when appropriate. The impact on NATO is an extremely good point. This is to do with the global situation that we face. As we all know, we are in an unstable place at the moment. There are issues popping up everywhere, Houthis attacking one of our warships and our warships downing a Houthi missile being the latest examples. These are uncomfortable times, and it is important that we address both the Far East and our responsibilities under NATO. There is no issue in this respect.

On the question of the financial arrangements and the cost of Ukraine, Israel and these latest commitments, Ukraine, as the House will know, is dealt with through a separate budget. Both the Prime Minister and the Defence Secretary have given an absolute commitment that we will carry on for as long as it takes. Our commitment is unwavering, and our support will be there. The situation in Israel and Gaza is a very moveable feast but we have given full support and are right there, ready to provide supportive aid whenever that is necessary. The movement of ships into the Red Sea and the Gulf is to act as a deterrent to any escalation in that area and to ensure that our forces are protected.

I think that I have answered the question on the global commitments. The last point outstanding was about the industrial base in the UK. There is a Team Tempest, which involves BAE Systems, Rolls-Royce, Leonardo UK and MBDA UK, but there are over 1,000 companies across the three countries involved, including academia and SMEs. We have huge strength in this country on digital design and additive manufacturing, both of which reduce lead times and costs. We can hope and aspire to this being an extremely successful and very important programme as we progress it, for UK defence and industrial strength in this country.

5.28 pm

Lord Lancaster of Kimbolton (Con): My Lords, I declare my interests as a serving member of the Armed Forces and as the Prime Minister's defence and security advocate and add my congratulations to the Government on the signing of this very important treaty, hot on the heels of AUKUS. These together underline the United Kingdom as a partner of choice in the international defence community.

I have two questions for my noble friend, built on the latter part of his previous answer. First, the key cornerstone members of the treaty are, obviously, the UK, Italy and Japan, but is the door now closed for other founder members of this treaty? I cannot help but feel that with potential competition in Europe, the more founder members that we buy in from the start, the greater the security of this programme and decreasing costs for the UK going forward.

[Lord Lancaster of Kimbolton]

My second point concerns the industrial base. In the past, successive Governments have allowed various parts of our industrial base to atrophy. This is in part because, all too often, we have procured the exquisite in the United Kingdom, building, for example, ships such as the Type 45—undoubtedly the best in the world but simply unaffordable for other nations. The key to ensuring that the industrial base continues for many years to come is, as the Minister has hinted, ensuring that this platform is exportable. Sometimes, exportable variants do not have the same kit that we may want for ourselves, but the whole point is that we need open architecture so that variants of this platform can be exported, thereby ensuring the longevity of both the platform and the UK industrial base.

The Earl of Minto (Con): My noble friend makes some good points. My understanding is that, as the treaty is now signed, the founder members are in effect locked in—although there is, I believe, a bit of flexibility. There is no question that this platform is being built with the view that it will be of interest to allies across the globe. As I am sure we all know, 85% of defence exports are combat aircraft, so it is extremely important that this is a successful and flexible platform that appeals to others. There may be a worry about us trying to be all things to all men. I do not believe that that is the case; I believe that the intention of the three equal partners is to ensure that the platform is definitely fit for purpose and will definitely be of interest to allied countries.

My noble friend made a good and salient point about the industrial base in the UK. I imagine that there will be stiff competition in deciding where the GIGO will be located because it will engender a lot of inward investment; some 1,000 people in various organisations have already been taken on to work on it. Obviously, a lot of new technology is involved, rather than older technology. Again, it is about this country having been chosen for the headquarters, which suggests a certain level of commitment to our industrial strength.

Post Office (Horizon System) Compensation Bill

First Reading

5.33 pm

The Bill was brought from the Commons, endorsed as a money Bill, read a first time and ordered to be printed.

LGBT Veterans Independent Review

Statement

The following Statement was made in the House of Commons on Wednesday 13 December.

"With permission, I would like to set out the Government's formal response to Lord Etherton's LGBT veterans Independent Review.

The treatment of those Armed Forces personnel perceived to be LGBT between 1967 and 2000 has long been a stain on the conscience of the nation. Last year, this Government asked Lord Etherton to conduct a review into the impact of the historic ban on homosexuality in Defence. Following the call for evidence, the inquiry received 1,128 responses from those who were dismissed or discharged because of their sexual orientation; from those who felt compelled to resign, purchase their release from service or curtail their contracts because of the ban; and from those who, while not part of the LGBT community, witnessed the trauma of such antediluvian rules, as family members, colleagues or friends. Etherton paints an unflinching picture of the most shocking treatment of gay members of our defence community by an institutionally homophobic organisation.

Out of the blue, when applying to be a reservist in 1980, I was asked if I was gay. Even then that struck me as hugely inappropriate, but that strong sense of impropriety, which has stayed with me for 43 years, pales into insignificance against the wall of hurt experienced by LGBT people in the course of their defence journey, much of it evidenced by Terence Etherton.

Different members of the community have been impacted differently. Yet, for each and every one, the repercussions were enduring, with the tentacles reaching into all dimensions of their lives since. Sadly, we cannot turn back the clock, but we can apologise for decades of hurt. That is what the Prime Minister did after Lord Etherton published his report in July and what the Defence Secretary and chiefs of service have done in their turn. However, apologies alone are not enough.

Etherton demands more and we agree. That is why the Government took steps to right historic wrongs, even before the report was published. In 2021, we began handing back medals to anyone who had had them withheld or removed because of their sexuality. Medals matter; they should never have been snatched away. In December 2021, we removed the barriers that prevented those living with HIV from joining the military and, back in June, the Home Office extended its disregard and pardon scheme, wiping historic convictions for same-sex sexual activity. The extension was especially important for veterans, because it broadened the eligibility to include any same-sex conviction that would not be a crime today, thereby covering service disciplinary offences.

In addition, we published guidance helping to make LGBT veterans aware of things to which they might not have felt they were entitled. That includes information on mental and physical health support, as well as benefits that all veterans are able to receive, not to mention the Armed Forces veterans badge, which I handed out to a number of veterans at this year's Pride event in London.

However, today we go further still. I can announce we are accepting the intent behind all 49 of Lord Etherton's recommendations. In fact, to date we have already implemented almost half of them. We have established a legacy website to host the review, the Government response and information collected by the review, including testimonies. Through Op Courage, we are ensuring a focus on the non-combat mental health impacts of the ban.

Significantly, in some instances we have gone above and beyond the review recommendations. For example, Etherton advised making certain restorative measures

available for the next of kin of deceased veterans, but we have created a broader definition of next of kin—namely, persons of sufficient interest—recognising the impact the ban may have had on LGBT veterans' relationships and ensuring that those they would have nominated as next of kin are seen as such. Next year will see the expanded rollout of the Armed Forces veterans card to all veterans who served in the UK Armed Forces before 2018, and planning for a veterans memorial at the National Memorial Arboretum is also now under way.

Today, we are throwing open the front door to our LGBT veterans. Today, we ask them to apply or register an interest for restorative measures that are relevant to them, including individual apology letters, return of berets and cap badges, amendments to veterans' service history and additional personal testimony to evidence collected by the review. That testimony will eventually become part of the historic record in the National Archives, signalling that our LGBT veterans will never be forgotten and that 33 years of national shame will never be expunged, and affirming and celebrating the part that those veterans played in our country's history. I strongly urge colleagues across the House to encourage LGBT constituents to come forward, read the online guide and complete the application form for restorative measures. Importantly, the form will also allow veterans to indicate their interest in applying for a financial award when eligibility is confirmed and that scheme goes live.

Lord Etherton recommended that an appropriate award should be made to affected veterans, with the Government's overall exposure capped at £50 million. We have agreed to that in full, but, in order to develop the scheme, we will first need to gain a much better understanding of what the affected cohort looks like. Hence we are calling for veterans to indicate their interest on the form that goes live today. That data will help officials and the community—working together—to design a fair and equitable scheme for distributing the funds that Lord Etherton has called for and that we accept. There will be an opportunity for a full debate in the new year once the financial award scheme is matured and we have the benefit of the data captured through the front door that I am opening today.

Once again, I place on record my gratitude to Lord Etherton and his team for their outstanding work compiling a comprehensive and deeply affecting report. I thank Fighting With Pride and our working group, including trusted stakeholders and independent LGBT veterans, who not only made sure that their voices were heard, but helped steer our response throughout. They will not seek it, but may I mark out Craig Jones and Caroline Paige in particular for their part in bringing us to where we are today? Above all, I pay tribute to all those who came forward in the first place. Those veterans showed tremendous courage in chronicling traumatic experiences, which for many had been suppressed, causing grief and groundless silent shame for decades.

Today's defence has come a long way since 2000. We cannot change the past, but we can make the future better. In accepting Lord Etherton's recommendations, we salute a slighted generation and ensure that its successors can hold their heads high in a place that wants them, values them and honours them. I am today placing a copy of the Government's response in the Library, and I commend this Statement to the House".

5.33 pm

Lord Coaker (Lab): My Lords, I start by thanking the Government for this welcome Statement on the outstanding review of the noble and learned Lord, Lord Etherton, with respect to this matter.

Between 1967 and 2000, the treatment of those Armed Forces personnel deemed to be LGBT was a total disgrace. They were discharged or dismissed while others felt that they had to resign. Their friends and families felt the trauma of these individuals' pain. It was 33 years before the ban was lifted, following a change in legislation in 2000. Here we are, nearly 24 years later, with the outstanding review of the noble and learned Lord, Lord Etherton; although it cannot right the wrongs of the past, it means that we can do all we can to recognise these injustices fully, to put what we can right and to fight for a better future.

In doing so, I praise, as I have already, the noble and learned Lord, Lord Etherton, for his review, and the efforts and campaigning in this House of the noble Lord, Lord Lexden, who I am pleased to see in his place, and my noble friend Lord Cashman. However, why is it that these injustices, inflicted by the state and often covered up, not just in this instance, take so long to put right? Had it not been for brave individuals whom I have mentioned, plus the Royal British Legion, Help for Heroes, Fighting With Pride, and many others, these injustices would have remained unresolved for many more years with respect to our Armed Forces.

The Government have said that there will be continuing debate and discussion on this issue, so can the Minister guarantee that this will also be the case for your Lordships' House? Will he make sure that such debates cover not only the Etherton review but the current situation with respect to LGBT+ personnel in today's Armed Forces?

At the heart of the review were the testimonies of those who were victims of an overt, brutal, homophobic policy. The review had 49 recommendations, and I believe this to be the case, but can the Minister confirm in this House whether the Government intend to implement all these recommendations in full? If that is not the case, which ones are not to be implemented?

The Prime Minister has himself apologised, which is very welcome. We also welcome the handing back of medals, an Armed Forces veterans badge, and a proper memorial at the National Arboretum. We also welcome the opening of the registration of interests. Can the Minister say more about how the MoD is to make sure that everyone and every family are to be made aware of what is happening and what they have to do to register? Is there any closing date for such registrations to be made in terms of restorative measures or compensation?

The Government will know that, specifically, the Royal British Legion and others are concerned that an arbitrary cap on the total amount offered in compensation is unfair. Can the Minister explain to us why such a cap was introduced and how it will be calculated? How can a cap be set now, before people have come forward

[Lord Coaker]
with their claims? What if it is found that claims actually exceed any cap? Personally, I think—as I am sure others do—that the Government will have to revisit this. Will all of the restoration of rights, including pensions, include the accrual rates that were lost when people were forced to leave?

I have a final point on the cap. There is a provision for £50 million from the 2024 MoD budget. I believe that is the actual cap, and I am aware that there was discussion with the noble and learned Lord, Lord Etherton. However, I believe that at the very least this will need to be kept under review. Can the Minister outline how the £50 million is to be distributed—to which groups and how might they make these claims?

As I say, the report from the noble and learned Lord, Lord Etherton, sets out the need to do as much as we can to address the wrongs of the past. But it also has to be a further watershed moment for our Armed Forces now. We know that discrimination on the basis of sexuality still exists, as does sexism and misogyny, despite recent progress. We owe it to all those who came forward to honour their service, and that of their comrades and families. It shames us all; it saddens us all. But, at the very least, let it be an inspiration to us all, to build that better, more inclusive Armed Forces and society that we all want and deserve.

Baroness Smith of Newnham (LD): My Lords, when the report from the noble and learned Lord, Lord Etherton, was first published, we had the opportunity in your Lordships' House to debate it at some length. The noble Lord, Lord Coaker, has already touched on some of the issues that were discussed then. For many of us who are not from a service background, the issues that went on in Her Majesty's Armed Forces, as they were then, were absolutely shocking, just as they were for the people who served. It is noticeable that, in his Statement in the other place, Dr Andrew Murrison made the point that when he became a reservist, he was asked, "Are you gay?" As he said, even in 1980 that seemed out of place. And that was because it was out of place.

It is important that we look again at the report by the noble and learned Lord and remind ourselves of the injustices that were done, while at the same time paying tribute to the Government for taking on board almost all of the recommendations. I know that the noble Lord, Lord Coaker, asked, "Is it all of them?" My understanding is that one or two of them will be taken on in a slightly different way—but the acceptance of this report is hugely welcome.

There are some questions we might all need to understand in a little more detail. They are, in particular, how do those people who were affected by the ban know where to access the ways of getting restoration? In particular, if somebody was sacked, that is straightforward, but if somebody felt the need to give up their commission early because they felt that their sexuality was putting them in extreme difficulties within the Armed Forces, what information will be available to them? How far will His Majesty's Government be making clear to the wider service community and to veterans' communities that people can come forward, and explaining how they can do so?

When we talked about the report when it was initially published, the issue was in part about next of kin and those who had service personnel who had died—perhaps who had committed suicide. Yesterday's government Statement is very welcome in saying that it will be a little more open in terms of who counts as next of kin, recognising the very nature of relationships that might be important to those who are veterans, or who were veterans but are no longer alive. Again, how will those people be informed about ways of ensuring that their loved ones are able to have their service records reinstated? The commitment in itself is good, but we need to ensure that the reality works for both LGBT veterans and their next of kin, and also for those other people who were not actually LGBT service personnel but who, for some reason, were thought to be. This is another group of people who were victimised not because of their sexuality but because of their perceived sexuality—which, again, suggests that there is, or was, a real issue within the Armed Forces about inclusion and diversity.

Picking up on the point made by the noble Lord, Lord Coaker, about the fact that there are still issues around gender within His Majesty's Armed Forces—are there other issues we should be picking up on and thinking about, to make sure that, going forward, whether it is about gender or sexuality, people are not victimised for who they are?

This report and the Government's response are very welcome, but we need to ensure that the inclusivity is there for the service family of today as well.

The Minister of State, Ministry of Defence (The Earl of Minto) (Con): My Lords, it is gratifying to see that everybody is on the same page in this. The treatment of LGBT serving personnel between 1967 and 2000 was wholly unacceptable, and I think everybody accepts that. But it does not reflect the situation today—far from it. Today, the MoD works hard to ensure that all our policies are inclusive in every respect. His Majesty's Government, with the establishment of the report of the noble and learned Lord, Lord Etherton, and the acceptance of all 49 recommendations, have made a clear statement of that position. In fact, 24 of the 49 recommendations have already been implemented, including all 14 restorative measures. That is an indication of how seriously the Ministry of Defence takes the wrongs of the past.

The Government, and I am sure all of us here, are extremely grateful to the noble and learned Lord, Lord Etherton, and his team for their thoroughness and commitment in completing such an important report and paving the way to right such an historic wrong to such a deserving section of our Armed Forces. The Government are also deeply indebted to those veterans who shared their testimonies and are committed to ensuring that such bravery is the catalyst for all future change. There is no doubt, in reading the more recent policies put out by Ministers here and in the devolved nations, that there is a clear intent to ensure that this is absolutely seen through and that zero tolerance is absolutely zero tolerance. When it comes down it, there can be no flexibility on this. It is absolutely zero tolerance.

On the question that the noble Lord raised specifically, it has taken a long time to get to this point. That bears testament to the complications in some of the issues that the information-gatherers have faced. As a start, there is not an accurate set of records about why people left the Armed Forces. That is one of the reasons, which we will come on to. I do not know if anybody has had an opportunity to take a look at it, but the "LGBT veterans: support and next steps" webpage is extremely thorough and informative. It attempts to seek out exactly what the issues were, who was treated badly and how badly—different grades of dreadful behaviour. We will do all that we can to ensure that people engage with that website to get the information that allows us to move forward and start talking about the financial arrangement.

The recommendation for the financial award scheme has been completely accepted. We are working at pace with experts across government to develop an appropriate scheme. There have been other schemes like this elsewhere in the world. The Canadian scheme is a good model. The £50 million cap that came out from the Etherton report is to some extent based on the experience that the Canadian Government had in approaching this. It would seem to be, at this stage, an appropriate sum of money. It is a meaningful sum of money. I am afraid that nobody knows how many people have been involved in and affected by this, but as a statement of intent it is a proper sum of money that should go to deal with the issue.

Although we are at the early stages, the Government are working at pace. The question about the number of claimants and the likely size of the award will be gone into only after the front door to the website is open and people can apply. There is no intention of closing the door. It will remain open. The expectation is that we should start to see some payments from the financial award scheme towards the end of next year. I know that it has taken a long time, but at least progress is being made.

Perhaps I should say at this point that this is not compensation and does not exclude people applying for compensation. This is an award scheme to recognise the wrongs of the past. If individuals or groups of individuals want to go for compensation through our legal system, it is entirely open to them to do that.

The other question that the noble Lord raised was about pensions. I have read some misinformation about accrued pension rights being negated. That is absolutely not the case. Accrued pension rights are protected under law, but I am afraid that the "lost" pension rights, once people had left the forces, cannot be dealt with because people may have gone to other businesses and accrued other pensions in other directions. It is not something that we can get involved in.

The noble Baroness raised the extremely important question of next of kin. Again, the hope and expectation is that this will come out in the amount of people who apply through "LGBT veterans: support and next steps". This should be an emerging picture. Hopefully, individuals and organisations will apply fairly quickly.

I think that I have answered all the specific questions raised so far. If I have not, I am sure that noble Lords will let me know.

5.51 pm

Lord Cashman (Lab): My Lords, I welcome the reply from the Minister. I reflect that I have been working on this issue for 32 years, since I first gave evidence to the Select Committee in 1991, and working more recently, over the last seven years, with my noble friend Lord Lexden. It is clear that we need a future debate on implementation and I have a couple of questions that I will canter through.

It is an excellent report by the noble and learned Lord, Lord Etherton, who it is good to see is in his place. It should be recorded that it was conditional on the report that an award cap be recommended. I am pleased to hear, and I hope that the Minister will again guarantee, that the cap can, if the Government so decide, be increased and that the report is in no way a veto on any increase.

Recommendation 26 deals with the amending of relevant records of those who were subjected to administrative discharge. The Government have adopted the approach suggested. However, there is a problem. The Government's guidance states that this process will be available to veterans who were administratively discharged during the ban, but it is highly likely that applications will be received prior to 1967. Does the Minister agree that it is important that these people are not excluded from the scope of this measure of redress? Indeed, the draft legislation set out in Annexe 10 of the excellent report by the noble and learned Lord, Lord Etherton, offers a legislative way forward. Finally, therefore, can the Government pledge that LGBT people discharged from the Armed Forces before 1967 solely on the grounds of sexual orientation and gender identity will have their records amended if they meet the criteria?

The Earl of Minto (Con): I thank the noble Lord for his important contribution. On the question of a cap, as I said, until we know the full picture, it is difficult to say whether the cap will be sufficient, but there has to be a level of understanding that, if it is necessary, there must be flexibility within it. On the question of recommendation 26, I think it best if I write to the noble Lord on the detail. Thirdly, on the pre-1967 discharges, there was no difference between the military law and the civil law at that point, so I am not absolutely certain where we stand on that. My suspicion is that it was the law of the nation at that time and that there is not much to go on, but I may well be wrong.

Lord Lancaster of Kimbolton (Con): My Lords, I have to remind the House again of my interest as a serving member of the Armed Forces. Indeed, I was just reflecting that, while this may all seem a long time ago, I had in fact served in the Army for some 12 years before the ban on homosexuals serving in the Army was lifted. I congratulate the noble and learned Lord, Lord Etherton, on his excellent review and, indeed, the Government on accepting the spirit, we could say, of all 49 recommendations.

In response to the frustration of the noble Lord, Lord Coaker, about how long this has taken, I could not agree more. Indeed, I am probably partly to blame as a former Minister for Veterans, when this was

[Lord Lancaster of Kimbolton]
across my desk on a regular basis. The frustration in trying to push this along was genuine. I am delighted that, finally, it has been done.

I have one specific question for my noble friend, and I hope it is an easy one. Of the 49 recommendations, one is ongoing. Recommendation 11 is the commitment to launch an application process for restorative measures and maintain it for 24 months, which is clearly an excellent recommendation. My only concern is that I understand that, during the process, as is often the way in the MoD, some historic records were lost. If, at the end of that 24-month process, there are any concerns that individuals have not had the opportunity to find their records or apply, will there be a review of that deadline and will it be extended if necessary?

The Earl of Minto (Con): My Lords, I assure the House that if, at the end of 24 months, we do not feel we have got to the bottom of this, the deadline will be extended.

Baroness Barker (LD): My Lords, I declare an interest as a patron of Opening Doors. It is in that capacity that I have met, over the last 25 years, many of the individuals we are talking about and listened to their stories. We are all indebted to the noble and learned Lord, Lord Etherton, for bringing those stories to the attention of the nation.

I have three brief questions. First, there were in the forces senior officers who were compassionate and understood the devastation that would befall anyone who was discharged for this reason. Therefore, in acts of kindness and humanity, they sometimes trumped up other charges and made those the reasons for the discharge. If individuals come forward with evidence that they should be eligible to be part of this scheme, but technically they are not, will their cases be given due consideration?

Secondly, I raise a question that I raised with the noble Earl's predecessor, the noble Baroness, Lady Goldie, about HIV. The report deals with health in its wider sense, particularly mental health, but the issue of HIV is buried deep within it. There is an ongoing issue concerning recruitment of and support for individuals with HIV in the forces. Would the Minister be willing to meet with me and other members of the All-Party Parliamentary Group on HIV and AIDS to discuss that matter further?

Finally, this report has been very well received; it is a source of immense gratification and support to the people in this position, but the hurt runs deep and lasts. Therefore, will the Minister consider what we can do to ensure that the organisations involved in providing that ongoing support, which they have given for 25 years, continue to be in a position to do so? Some of them are having financial issues at the moment.

The Earl of Minto (Con): I thank the noble Baroness for her questions. On that of personal issues and compassionate leaders, that is completely accepted. There is opportunity within the "LGBT veterans: support and next steps" webpage—what we refer to as the open door—to produce that level of information to ensure that nobody is left out. It is very important that nobody feels that they do not have the opportunity to put their case and have it heard.

On the question of meeting the HIV group, I would be more than delighted to do that. Thirdly, we will certainly look at which organisations have been particularly supportive. Nobody wants these well-meaning charitable organisations to suffer unnecessarily. I have noticed that quite a lot of charities, for one reason or another, have merged and gathered together in the last few years to create a slightly more forceful and valuable contribution. That is often the way. If we can help in steering groups together, that may be a very good solution and make certain that the intention is still kept in mind.

Lord Lexden (Con): My Lords, it is good that the Commons Statement has been repeated here; less good that it has taken nearly a week to reach us and that we deal with it so close to the Recess. This underlines the need for a full debate in this House on the momentous report from the noble and learned Lord, Lord Etherton, and the Government's response to it. I understand that there is to be a debate in the Commons. Can we please have a commitment from the Government that there will be a debate here?

On the question of pensions, there really must be no resiling from the Government's commitments and duties in this area. The issues are of such immense importance to LGBT veterans, and I was not altogether reassured by my noble friend's comments earlier on pensions. I urge him to ensure that everything that can be done is done to bring justice to LGBT veterans in respect of pensions.

The Government state that they accept "the intent" behind all the recommendations in the report. That is not an entirely helpful statement: either recommendations are accepted wholly or in part, or they are not accepted. Worry is likely to arise among LGBT veterans about the apparent equivocation in that statement.

I draw attention to Recommendation 25 in the report from the noble and learned Lord, Lord Etherton. This relates to Part 12 of the Police, Crime and Sentencing Act 2022. My noble friend Lord Cashman and I, along with our good friend and adviser in academic life, Professor Paul Johnson, have a deep interest in its provisions, having campaigned for them, as my noble friend Lord Cashman said, over many years. Through these provisions, service personnel can secure pardons for past disciplinary offences which were deeply unjust at the time and have now been swept away. Can my noble friend assure the House that the MoD will promote the scheme with vigour and encourage LGBT veterans living with unjust convictions to apply for pardons through it? As things stand, separate applications have to be made through the Home Office, which will prove confusing for LGBT veterans. Will the MoD stop this happening by ensuring that application forms are readily available to them?

The Earl of Minto (Con): I thank my noble friend for that very valuable contribution, and I agree that rather a long time has elapsed between the Commons Statement and me standing here. I will undertake to

talk to the Whips about getting a full debate. If we are going to have one in the Commons, then we should certainly have one here.

On pensions, I did not mean to be less than fully committed to ensuring that we do all we can to make sure that pension rights are protected and that pensions accrued are properly taken care of under the law. The point I was trying to make is that one can accrue only one pension at time, and if individuals have accrued further pensions after leaving Her Majesty's Forces—as they then were—one needs to take that into account.

On the use of the word "intent", I think it is more to do with interpretation than intent, in that, while the recommendations from the noble and learned Lord, Lord Etherton, are incredibly thorough and very well thought through, one or two individual practical things may need to be got absolutely right. All the recommendations are accepted and, as I think I said earlier, more than half have been implemented, including all 14 of the restorative measures.

On the final point from my noble friend, the MoD will definitely promote with vigour and at every opportunity—and it is the third or fourth time I have mentioned it—the "LGBT veterans: support and next steps" front door to the website, where one can read through in great detail the breadth of opportunity to make valid points. That is completely accepted, and the point about pardons is equally well made.

Lord Cashman (Lab): My Lords, the Minister questioned why I asked that the process be widened to those discharged before 1967. To clarify, as the noble Lord, Lord Lexden, intimated, we widened and extended the pardons and disregards before 1967 and then widened this to include the armed services. Therefore, legislatively, we have a way to consider those discharged before 1967.

The Earl of Minto (Con): My Lords, I will certainly take that away and look at it properly.

Ukraine

Commons Urgent Question

6.05 pm

The Minister of State, Ministry of Defence (The Earl of Minto) (Con): My Lords, I will now repeat an Answer to an Urgent Question given earlier today in the House of Commons:

"Since the Minister for the Armed Forces last updated the House on 28 November, the situation on the ground has remained largely unchanged. Ukraine has been fortifying its borders with Belarus with dragon's teeth, razor wire and anti-tank ditches, and is pivoting to a more defensive posture following Ukrainian President Volodymyr Zelensky's 1 December 2023 call for rapid fortification across the front.

On 12 December, Kyivstar, Ukraine's largest mobile network operator, suffered a cyberattack. The incident is likely one of the highest-impact disruptive cyberattacks on Ukrainian networks since the start of Russia's full-scale invasion. The Russian air force is highly likely to have carried out the first use of the AS-24 Killjoy air-launched ballistic missile since August 2023. Killjoy has almost certainly had a mixed combat debut. Many of its launches have likely missed their intended targets, while Ukraine has also succeeded in shooting down examples of the supposedly undefeatable system.

We will continue to support priority areas for Ukraine in the coming months, including air defence and hardening critical national infrastructure sites. Our foundational supply of critical artillery ammunition continues. Most recently, on 11 December, the Defence Secretary announced that the UK will lead a new maritime capability coalition alongside Norway, delivering ships and vehicles to strengthen Ukraine's ability to operate at sea. This represents a step change in the UK's support for Ukraine both in defending against Russia's illegal and unprovoked invasion and in developing Ukraine's maritime capabilities for the future. The new coalition will deliver long-term support to Ukraine, including training, equipment and infrastructure to bolster security in the Black Sea. We could not be more clear: as the Prime Minster has said, we are in this for as much as it takes for as long as it takes.

The maritime capability coalition initiative reinforces our collective long-term commitment to Ukraine and provides a permanent mechanism through which we can support the development of Ukraine's maritime capability. Agreed during recent meetings of the 50-nation-strong Ukraine defence contact group, it forms part of a series of capability coalitions to strengthen Ukraine's operations in other domains, including on land and in the air. On 13 and 14 December, the Ministry of Defence, along with the Department for Business and Trade, successfully conducted the first UK trade mission to Kyiv since the invasion in 2022. The mission enabled discussions with and between UK and Ukrainian officials and industry on opportunities for long-term co-operation, and resulted in tangible agreements for industry.

The UK has committed £4.6 billion of military support to date as we continue to donate significant amounts of ammunition and matériel from our own stocks, as well as those purchased from across the globe. In addition, we have trained more than 52,000 soldiers since 2015. The UK and our allies have been clear that we will not stand by as the Kremlin persists in its disregard for the sovereignty of Ukraine and international law. This includes the recognition of Ukraine's sovereignty over its territorial waters, which is established in accordance with international maritime law".

6.10 pm

Lord Coaker (Lab): My Lords, I thank the noble Lord for that Statement with respect to an Urgent Question. It is important to say at the outset that His Majesty's Opposition continue to fully support the Government in backing Ukraine in its war with Russia. Wherever possible, we need to accelerate this support to meet the needs of Ukraine.

The noble Lord will know that President Zelensky recently warned that Ukraine needed the delivery of ammunition and vital shells to be speeded up. Can the noble Lord update us on the current situation, and on

[Lord Coaker]
what plans the Government have to ensure that the supply of much-needed equipment and weapons to Ukraine is, in the words of President Zelensky, speeded up?

It is welcome that the Government and the Minister have repeated the announcement of a new maritime capability coalition, alongside Norway, to strengthen Ukraine's ability to operate in the Black Sea. Is this now operating, or when does the noble Lord expect it to be fully operational? Is there any more he can say about what ships et cetera are involved with respect to that?

We are proud to support Ukraine and have always recognised that their fight is our fight, and that our resolve must not, and will not, weaken. I also welcome in the Minister's comments the fact that the Government recognise that they are not only supporting Ukraine's armed forces but that we need to do as much as we can to support the Ukrainian people in their fight as well. That is a very important part of the Statement and I urge him to continue with it.

The Earl of Minto (Con): My Lords, the noble Lord, Lord Coaker, makes a number of very good points. On the final point, we have committed, including humanitarian aid, in excess of £9.5 billion—close £10 billion. I note his point about supporting the Ukrainian people and I would say that the way that the citizens of this country have opened their doors has been exemplary.

On the question of equipment support and ammunition, we are continuing to get as close as we can, as are the rest of the allies, to what President Zelensky is after. To date, we have supplied over 300,000 artillery shells. It is increasingly becoming an artillery war, certainly during the winter months—in fact, it is becoming a sort of manufacturing war, about who can manufacture the weapons fastest. Of those 300,000 shells, some 50,000 have been produced since July 2023. We have supplied 31 armoured vehicles, 14 mine ploughs to go on the front of the T-62s, 6 million rounds of small arms ammunition and, of course, spares for the AS-90 artillery guns. We are absolutely committed to maintaining that level of support and ensuring that Ukraine has the weaponry that it needs to continue to fight against the Russian aggressors.

What is interesting about the Black Sea is that everybody is trying to ensure that it does not become a sort of Russian lake. Through some extremely clever and intelligent use of small amphibious weapons, Ukraine has been successful in pushing the Russians further eastwards. It is that level of support and training that this new coalition is particularly enthusiastic to support.

At the same time, from a trade perspective, the opening of the maritime corridor across the Black Sea has started to have a fairly significant effect on the ability of Ukraine to earn foreign currency through its exports, particularly of grain. While it maintained overland routes and used the Danube ports, it is the maritime corridor across the Black Sea which really provides the greatest opportunity. In recent months, I think there were about 200 ships in total that got out for trade, including 5 million tonnes of grain. We are getting there; it is incumbent upon us all. The maritime coalition opened only on Monday. We have already got 12 countries involved, with three more expressing interest. It is obviously going to become very productive.

Baroness Smith of Newnham (LD): My Lords, I am aware that this is a UQ rather than a Statement, so I will not detain the House too long, to allow others to get in. This is obviously a welcome response to an Urgent Question. Maritime co-operation, particularly bilateral relations with our Norwegian colleagues, is hugely important, and that is very welcome. This morning, a Ukrainian general suggested that there was not sufficient military aid going into Ukraine. President Zelensky has just given a press conference and said that Ukraine is not losing. What are His Majesty's Government—both the Secretary of State for Defence and the Foreign Secretary—doing to ensure that our partners in NATO, whether the United States or Hungary, are really going to give Ukraine the sort of support that the United Kingdom is still giving so clearly?

The Earl of Minto (Con): The noble Baroness is quite right to raise this issue. We were the first to support Ukraine in its endeavour and we continue to encourage everybody to come along. The Ukraine Defense Contact Group is very important, and we continue to push for support wherever it is possible with all our allies.

Lord Lancaster of Kimbolton (Con): My Lords, I declare again my interest as a serving member of the UK Armed Forces. I commend the Government on their continued support, and indeed His Majesty's Loyal Opposition for theirs, and for being convenor to ensure that the international community continues to support Ukraine. However, I have always had a concern. One day, this war will end, but what comes next? I often worry that we have not learned the lessons of the past, from the war in Iraq when we did not plan for what comes next. It has now been over a year since there has been an assessment as to what the reconstruction of Ukraine will cost. Unless we know that on an ongoing basis, it is very hard to bring countries together to commit to the reconstruction of Ukraine. I simply ask my noble friend to commit to put in the Library the latest assessment of the cost of reconstruction.

The Earl of Minto (Con): I fully commit to doing that.

Baroness Lawlor (Con): My Lords, I thank my noble friend for his repeating the Answer and follow on. Can he say a little more about the maritime capability of Ukraine? One of the aims of this maritime alliance or coalition is to reinforce the maritime capacity of Ukraine. It would be very helpful to know what exactly that maritime capability is.

The Earl of Minto (Con): My noble friend raises a particularly topical subject. There are obviously areas I cannot go into, but the new coalition will deliver long-term support to Ukraine, including training, equipment and infrastructure, to bolster security throughout the Black Sea.

Lord Evans of Rainow (Con): My Lords, I take this opportunity to wish each and every one of your Lordships, the Deputy Speaker, Table Clerks, *Hansard* reporters, doorkeepers and everybody who makes this House such a pleasant place to work a very merry Christmas. It has gone a bit mild, but I am told we could have a white Christmas on high ground. I beg to move that this House do now adjourn.

House adjourned at 6.19 pm.

Second Reading Committee

Tuesday 19 December 2023

Arrangement of Business

Announcement

1 pm

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, before the Minister moves that the Bill be considered, I remind noble Lords that the Motion before the Committee will be that the Committee do consider the Bill. I should perhaps make it clear that the Motion to give the Bill a Second Reading will be moved in the Chamber in the usual way, with the expectation that it will be done formally.

Arbitration Bill [HL]

Motion to Consider

1 pm

Moved by ***Lord Bellamy***

That the Committee do consider the Bill.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, as our learned Chairman has just indicated, the procedure is, as I understand it, that we will formally move a Motion for Second Reading on the Floor of the Chamber after this debate and then I will move a Motion that the Bill be referred to a Special Public Bill Committee for further consideration. It is a kind of hybrid Bill procedure because this is a Law Commission Bill following the Law Commission report of 5 September 2023, which contained a draft Bill.

I should say at the outset that there are two changes to the draft Bill presented by the Law Commission. First, Clause 1(3) of the Law Commission version provided that the Bill would not apply to any existing arbitration agreement. That caused a certain amount of concern because there are many thousands of existing arbitration agreements going back many years and, if that situation had prevailed, we would have had a dual system for a very long time, as old arbitration agreements became subject to arbitration. The Bill now provides that its changes do not apply to arbitrations that have already commenced, as distinct from existing arbitration agreements. I have taken the precaution of checking with the law officers that that is regarded as satisfactory and that it is in line with earlier precedent in relation to the Arbitration Act 1996, which this Bill amends. That is the first point.

The second point is that the Bill now extends to Northern Ireland, which is thought to be consistent with policy. It does not extend to Scotland, as the noble and learned Lord, Lord Hope of Craighead, well knows. Scotland has its own regime under the Arbitration (Scotland) Act 2010.

Following those introductory comments, I will briefly take your Lordships through the Bill, conscious as I am that almost everyone in the Room knows much more about it than I do. I have a certain sense of déjà vu, as this is not unlike appearing once again in front of the Supreme Court, or the House of Lords as it was, considering the galaxy of knowledge and experience that we have before us this afternoon. Your Lordships well know that the arbitral process is of great importance and value, particularly to the commercial community of this country, which is a most important centre for international arbitration. Arbitration is a method of resolving disputes to which the parties willingly submit and, in the Government's view, it should be promoted and kept up to date.

The background to this Bill is the decision by the Lord Chancellor in 2021 to ask the Law Commission to review the Arbitration Act 1996, which contains the present law—I know that certain noble Lords, notably the noble Lord, Lord Hacking, go back well before that and have lived this development over many years. The 1996 Act contains a thorough code of the principles and practice of arbitration in this country. This Bill is intended to bring that structure and framework up to date and ensure that we remain abreast of international developments and that London and these jurisdictions remain competitive on the international scene. Arbitrations in England and Wales generate some £2.5 billion annually in arbitral and legal aid fees alone and in 2021, according to the Law Commission, London was the world's most popular seat for international commercial arbitration, notably in banking, insurance, trade and other businesses.

Your Lordships will be very familiar with the provisions of the Bill, but I will briefly summarise them. Clause 1 provides that the law governing the arbitration will, unless the parties agree otherwise, be the law of the seat of arbitration. As noble Lords know—I will try to get this completely right—in contractual disputes, the contractual liability will normally be determined by the proper law of the contract, but the contract may provide that the arbitration be elsewhere. A contract may be governed by Russian law but have arbitration in London. In that event, what is known as the curial or supervisory jurisdiction is governed by English law; for example, whether an arbitrator should be removed or to which court some challenge to the arbitral award may be made will be the subject of the law of the seat—in that example, English law.

However, suppose the question is whether the dispute is within the agreement to arbitrate in the first place. In my example, would it be governed by the Russian law of the contract or the English law of the seat? This question has exercised the courts over many years and there have been different views and decisions. In Enka v Chubb in 2020, the Supreme Court, in a split 3:2 decision, arrived at a somewhat complex test for deciding exactly which law governed the agreement to arbitrate. That gave rise, among other things, to a desire for certainty and a clear and simple rule. That simple rule is now provided in Clause 1, which provides that it would normally be the law of the seat unless the parties agree otherwise.

My understanding is that that is already in line with certain standard arbitration agreements and the rules of bodies that provide arbitration services. That is the essential provision of Clause 1. As I am sure the noble and learned Lord, Lord Hope of Craighead, is well

[Lord Bellamy]
aware, England, Wales and Northern Ireland will thereby align with Scotland, so we will have a common position across the four jurisdictions.

Clause 2 provides a statutory duty on arbitrators to disclose circumstances that might reasonably give rise to justifiable doubts as to their impartiality, to maintain the integrity of arbitration in this country. There have been some well-publicised incidents, as a result of which it should be put beyond doubt that arbitrators have a full duty to disclose anything that may reasonably give rise to justifiable doubts as to their impartiality.

Clauses 2 and 3 support arbitrators in making impartial and proper decisions without fear that they might incur some personal liability. In the case of an application for the removal of an arbitrator, Clause 3 provides that the arbitrator will not be liable personally for costs unless they have acted in bad faith. Clause 4 provides that an arbitrator will not be liable for resigning unless the resignation is shown by a complainant to be unreasonable. Those provisions effectively support the independence of arbitrators.

Clauses 5 and 6 deal with jurisdiction. Under Clause 5, if there is a challenge to the tribunal's jurisdiction on which the tribunal has already ruled, the losing party cannot go directly to the court on a preliminary point to challenge that; it must await the final arbitral award and then make that challenge under Section 67. That in effect rules out earlier challenges to the court on jurisdiction.

Clause 6 clears up something of a mystery: when an arbitral tribunal decides that it has no jurisdiction, does it none the less have jurisdiction to award costs? Clause 6 provides that it does; there is a power to award costs even if the arbitral tribunal has found that it has no jurisdiction over the dispute in question. Clause 7 effectively replicates the summary judgment procedures available in the court and empowers arbitrators to make an award on a summary basis if a particular issue has no real prospect of success.

Clauses 8 and 9 pertain to the powers of the court. Clause 8 empowers it to make court orders reinforcing the orders of emergency arbitrators. These powers already exist in relation to normal arbitrators, but on occasion emergency arbitrators are appointed, so this makes sure that the existing powers to issue court orders apply equally where there is an emergency arbitrator. Clause 9—again, similarly to normal court proceedings—entitles arbitrators to make orders in support of arbitral proceedings against third parties, most likely banks that may be holding relevant funds. That provision resolves a certain conflict in the case law and aligns the position of arbitral proceedings with that in court proceedings.

Clause 10 is essentially a tidying-up measure. There are various bases for challenging an arbitral award in the 1996 Act: Section 67 for lack of jurisdiction, Section 68 for serious irregularity or Section 69 for a point of law. Clause 10 ensures that, where there is a challenge under Section 67 for lack of jurisdiction, the remedies available to the court are the same as they would be were the challenge under Sections 68 or 69, to bring a certain degree of consistency across the three main ways of challenging arbitral awards.

Under Clause 11, if an arbitral party applies to the court to challenge an arbitral award on the basis that the tribunal had no jurisdiction under Section 67, that challenge should not be a full rehearing with new evidence and arguments—it should, in effect, be decided on the existing record so that the court does not have to restart or do the whole thing afresh on the basis of the challenge to the jurisdiction of the tribunal. That will streamline and simplify the operation of such challenges.

There are then some quite short, technical provisions. Clause 12 clarifies certain time limits. Clause 13 codifies the law in relation to the staying of legal proceedings and Clause 14 streamlines the process of applying to the court under the 1996 Act for certain preliminary rulings on jurisdiction and points of law. Clause 15 repeals certain sections that have never been brought into force and are therefore redundant.

That is a very brief outline. I am not sure whether it was a fast trot or a slow canter. Your Lordships are much more familiar with this area than I am. The Bill is intended to increase the competitiveness of England, Wales and Northern Ireland, and primarily London, as a seat of international arbitration, to foster growth in both domestic and international arbitration, to introduce a fairer and more efficient process and to reduce reliance on resort to the court. I beg to move.

1.16 pm

Lord Hacking (Lab): My Lords, I have never spoken in the Moses Room in the two years since my return to the House of Lords and I am not familiar with the procedure, so if I go wrong, I hope that our Deputy Chairman or someone else will put me right.

I am in a rather poignant position, in that I am the sole surviving parliamentarian who took part in the 1979 Bill and the 1996 Bill. That is not to say that I am the only creature still alive who was involved in that Bill, because Robert Ayling was the assistant solicitor in the Department of Trade—the 1979 Bill was taken through partly by the Lord Chancellor's Department and partly by the Department of Trade. As far as I know, he is alive and kicking; I have not seen him for a little time. Mark Saville, now the noble and learned Lord, Lord Saville of Newdigate, played a critical part in the 1996 Act, but he had not by then arrived in the House of Lords Judicial Committee, which he did a year later, and therefore he sat on the steps of the Throne. He was a very important person, but not a parliamentarian at the time.

Of the parliamentarians of the time—if we could remember them—there was Lord Maurice Peston, who spoke for my party throughout the Arbitration Bill. He mugged up on the subject very well and was a very good participant in our debates. Lord Peter Fraser of Carmyllie was the government spokesman to take through our debates. Alas, both have departed this world, as indeed have other prominent Members of the House who took a very active part, including Lord Mustill, Lord Donaldson and Lord Roskill. So here I am as the one surviving parliamentarian. There is another name I must mention at once—Mr Toby Landau. Not only is he alive and kicking but he is here in this Room to listen to our debate. At least somebody other than me is still alive and kicking.

As I said, I am not familiar with the proceedings in the Moses Room and I am ready to be corrected at any time. I have some memories of the 1979 and 1996 Acts which I think it would be valuable for the Committee to be reminded of. Therefore, I intend to take a little time in doing so. I am aware that this is very close to the Christmas Recess. If any noble Lord, particularly one who is listed to speak, thinks that I am going on too long, I would ask him not to suffer me but to stand up and, if needs be, cut back my words.

The foundation of this Bill, and indeed the foundation of all arbitration law, goes back to the Act of 1698. The Bill in its preamble was described as:

"An Act for determining Differences by Arbitration".

Further on in the preamble, we have the words: now this Bill is

"for promoting Trade and rendring the Awards of Arbitrators the more effectual in all Cases for the final Determination of Controversies referred to them by Merchants and Traders or others".

This important Act of so long ago established the support that was needed for the conduct and, indeed, the encouragement of the use of, arbitration as a means of settling disputes. Right up to the present time, our statutory law should create a balance between the courts and arbitrations. It should also be promotional for the conduct of arbitration in the United Kingdom. The importance of that comes out clearly in a briefing that we have just received from the Law Society, which calculates that currently there are no fewer than 5,000 arbitrations annually, bringing an income of £2.5 billion to the economy, so it is of importance. I would suggest that what we are doing today is of importance.

I actually doubt whether 5,000 arbitrations is the right calculation, when one takes into account the numerous LMAA and GAFTA arbitrations, and other arbitrations in the commodity field. Indeed, when I headed up an action group in 2000—I have its paper here—there were then more than 3,000 LMAA arbitrations. But whatever it is, the figure is very large and, I suggest, very important.

The 1979 Act was specifically directed to two matters. One was the setting aside and annulment of these two procedures: the "case stated" procedure and the procedure for setting aside awards for errors on its face, which was also being used. It was used by parties when they were not doing very well in an arbitration and who then sought to take their arbitration to the courts to cause delay, embarrassment and difficulty to the plaintiff or complainant.

Indeed, in the debate that I opened in May 1978 in the Chamber of this House, I read a letter from the general counsel of Raytheon, the massive defence producer of weapons and the like. In that letter, the general counsel said that, because of the way in which two of the major arbitrations were being sucked into the court by the case stated procedure, he had given directions that there should not be any arbitration agreement signed by Raytheon, carrying a London arbitration jurisdiction. That is how serious it was. Thanks to Lord John Donaldson, the 1979 Act effectively got rid of both the case stated procedure and the procedure of setting awards aside on their face. It also created what I believe to be the right balance between the law courts and arbitration, and that has been continued ever since.

When I was citing the 1698 Act, I should have mentioned that were other arbitration Acts in the 19th century, one based on the MacKinnon report. There was of course the consolidating Arbitration Act 1950, but none were developing arbitrations on the foundation Arbitration Act 1698.

The big challenge for getting the 1979 Act through was to get Lord Diplock on side. A former commercial judge—I think he was the first judge of the Commercial Court—he was a man, a judge and a Lord of great influence, and if we did not get him on side, we had no hope of getting the 1979 Act through. The second great challenge in 1978-79 was to get the Government to give time and support for what became the 1979 Act. We achieved the first, getting Lord Diplock on side. We were greatly assisted by Bob Clare, who was then senior partner of the very big American law firm of Shearman & Sterling. He walked Lord Diplock round and round the lake at Selsdon Park until he managed to get his support.

The other way of getting Lord Diplock on side was achieved by Lord Donaldson in creating special categories of arbitrations—those relating to admiralty, commodity and insurance—and setting those aside, so that they were not entitled to opt out of the new arbitration process. Lord Diplock felt very deeply on the subject; he described the commodity and admiralty arbitrations as providing the water in the fountain of the development of English commercial law. That was quite an achievement on the part of Lord Donaldson. Incidentally, at that time Lord Donaldson was the senior judge in the Commercial Court, and, in the very active way that he approached matters, he set up a special committee which issued a report. That was then given accord by the Government of the day, being made into a Command Paper, which was of great influence in getting the 1979 Act.

As for getting the Government on side, we really had to thank Lord Cullen of Ashbourne, who was a retired stockbroker. I won the ballot and therefore succeeded in having the right to open a debate on the future of arbitration in London. There are a number of noble and learned Lords behind me now; at that debate, there were a number of Law Lords in front of me. Lord Diplock took part—I am just trying to remember all those who did—as did Lord Scarman and Lord Wilberforce. This somewhat surprised the Opposition Benches. They could well have replaced Lord Cullen of Ashbourne with Lord Hailsham, who, for example, was close to arbitration law and took an active part in the 1979 Act. However, they remained loyal to Lord Cullen, which meant that we received the evidence from him of the loss of £500 million in invisible earnings, which is what the loss of income to the Government was called then. That was an astounding figure—probably close to £5 billion in today's currency. The Lord Chancellor spoke to me about it afterwards and said, "Is it really that much?" I was quite sure that it was not, but just said to him, "I think it is a very large sum of money". He then seized upon the opportunity to push forward that Bill, because the Labour Government were not doing awfully well and he thought it would be awfully good for them to do something that was wholly friendly to the City of London.

It was given the Rolls-Royce treatment—that was the term Sir Thomas Legg gave it, from the Lord Chancellor's Department—but it nearly got into a disaster. I am

[Lord Hacking]
going on a little but am getting quite close to my end. We nearly got into a disaster at the end of that because the Labour Government collapsed in March 1979. We had just had the Bill go all the way through the House of Lords and it had not got near the House of Commons. As a result, there was a happy trade-off with the House of Commons through the official channels, which was how the Bill was saved.

Onward therefore to the 1996 Act: it was a rather slow process, which caused Arthur Marriott to take up an initiative. That then brought about the setting-up of what was called the departmental—

Lord Roborough (Con): I give a gentle reminder to the noble Lord that there is an advisory speaking time of 15 minutes. We have time, but if there are points he wishes to make—

Lord Hacking (Lab): I appreciate that, and I am not yet at 15 minutes, but there is nothing on the speakers' list that stipulates a time of 15 minutes.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): If I could clarify, it is normally expected in a Second Reading that 15 to 20 minutes is the maximum. Obviously, sometimes there are exceptions, but particularly as the noble Lord asked at the beginning for any clarification, I thought that would be helpful.

Lord Hacking (Lab): Yes, I am very aware that behind me, and in other parts of this Committee Room, there may well be those who are anxious about getting away for their Christmas. I will therefore be responsive to this interjection and bring the Committee to another very important crisis—one which leads directly to what I have said about the importance of an arbitration Bill. It should not only set the right relationship between arbitration and the courts but be promotional in nature.

The departmental committee was headed up first by Lord Mustill and then by Lord Steyn. They gave up the fight with the parliamentary draftsman who was, dear lady, a very pedantic one. She produced a Bill which was enormously complicated and quite unreadable. It included, most surprisingly—Mr Toby Landau would remember this—the writ of habeas corpus. We had a meeting about it in Queen Mary College, down the Mile End Road, and there was an uproar against it. I remember Jan Paulsson, a leading international arbitrator, making scathing comments. There was a skeleton hang-up and what we should therefore be grateful for, and what I would like to record, is that the noble and learned Lord, Lord Saville, and Mr Toby Landau started all over again. That is the product we have now in the 1996 Act.

The important thing about what we are doing now is that this is a wholly readable Bill. It does not have a whole lot of parliamentary junk in it. It takes you all the way through each stage of the arbitration. What we should be doing now is to make quite sure that we follow in that line. I do have comments about the Bill itself, but I will leave those to another time.

1.34 pm

Lord Etherton (CB): I am grateful to the noble Lord, Lord Hacking, for his fascinating historical overview from a personal perspective. For my part, I consider the Bill to be good and extremely useful, and I congratulate the Government on seeking to implement the Law Commission's recommendations so quickly after the publication of its final report.

There is one matter I should like to raise for the Government to consider, but I want to emphasise that it is not my intention that there should be any amendment to the Bill. The issue concerns discrimination in arbitrator appointments. This matter was raised by the Law Commission in its consultations, in which it observed that women were up to three times less likely to be appointed than men. Consultees had different views about this but in the end the Law Commission decided that there should be no anti-discrimination provision in its draft Bill.

I ask the Government to consider, perhaps when there is next a review of the Equality Act 2010, whether there might be some provision in that Act concerning discrimination in arbitrator appointments. I recognise that it would be important for the Government to carry out a consultation prior to any decision on the matter to see whether such a provision would for technical or other reasons place the United Kingdom at a disadvantage in competing with other countries for the conduct of international arbitrations.

As I have said, this should not be the subject of an amendment to the Bill, not least because it is proceeding in accordance with the special expedited procedure for uncontentious Law Commission Bills. It is a matter for future consideration, possibly in relation to the Equality Act.

1.39 pm

Lord Verdirame (Non-Afl): My Lords, I declare an interest on this matter: I am a practising member of the Bar and my practice includes arbitrations including proceedings under the Arbitration Act. I am also a member of the Commercial Bar Association, but I had no involvement in Combar's response to the consultation on the Bill.

I, too, welcome the Government's decision to press ahead with this Bill so soon after the completion of the excellent work by the Law Commission, to which I pay tribute. The number and quality of the responses to the two consultations is also to be commended. It is a testament to the breadth and depth of expertise and experience in the field of arbitration that we are lucky to have in this jurisdiction.

I should like to say a few words in support of the conclusions reached by the Law Commission, as reflected in this Bill, on a couple of points. The first is the scope of the court's review of an arbitral tribunal's jurisdiction under Section 67 of the current Arbitration Act. This is addressed in Clauses 10 and 11 of the Bill. In its first consultation paper, the commission suggested that in order to avoid delay and costs for the parties, instead of a full review, there should be an appeal. After two rounds of consultation, the commission concluded that there should not be a radical departure from the current system, proposing instead some limited and pragmatic procedural improvements.

That is the right conclusion. A key question in any system of consent-based jurisdiction is who should police the boundaries of that jurisdiction. An arbitral tribunal can of course rule on its own jurisdiction under the principle of kompetenz-kompetenz, but it does not follow from this principle that that tribunal should be the final arbiter of its jurisdiction. Arbitration is successful because it is widely seen as having legitimacy. That legitimacy depends to a significant degree on the jurisdiction of the arbitral tribunals being subject to effective controls that go well beyond the self-policing by the same tribunal of its own jurisdiction.

In the wider world of international law, where consent-based jurisdiction is also the norm, an exorbitant jurisdictional determination by an international court or tribunal does not always have a clear or easy fix and that can create a legitimacy problem, and it sometimes does so. It was therefore important to preserve the architecture created under Section 67 of the Arbitration Act, as interpreted by our courts. At the same time, I believe that Clause 11 provides some protection to the winning party from the risk of unnecessary time-wasting and delay that follow from having to relitigate jurisdiction. Under Clause11, this objective would be achieved through the use of rules of court, which strikes me as a sensible and pragmatic solution.

The other question on which I wanted to touch was the one on which the noble and learned Lord, Lord Etherton, has spoken: the principle of discrimination and whether there should have been an amendment to the Act to ensure that it applied to the appointment of arbitrators. There were a number of problems with that, as the Law Commission rightly identified. One is that under Article V of the 1958 New York convention, it is stated:

"Recognition and enforcement of the award may be refused"

where it is shown that

"The composition of the arbitral authority … was not in accordance with the agreement of the parties".

Another difficulty discussed in the consultation was that, particularly in international arbitration, it is quite common to require arbitrators to be of a nationality different from that of the parties.

In the course of considering this question, the commission helpfully set out the ways in which discrimination already applies to arbitration. That is so particularly through the duty of impartiality but also, as far as barristers and solicitors are concerned, through our professional codes of conduct. The obligation not to discriminate is, of course, a core professional duty.

It bears noting that in the 2022 review of discrimination in professional codes of conduct by the International Bar Association, England and Wales came out as one of the best jurisdictions. We have codes of conduct that prohibit discriminatory conduct by lawyers in any capacity, and not only in the exercise of professional functions. This matters because it is lawyers who advise clients on the contractual terms on the appointment of arbitrators and, ultimately, on whom to appoint. In doing so, in this jurisdiction, lawyers have to be mindful of their responsibilities. The Law Commission was right to conclude on this point, after its thorough consideration of the question, that there should not be "any further legislation within the Arbitration Act to prohibit discrimination, in particular in the appointment of arbitrators by … parties, because we think that this will not improve diversity of arbitral appointments, but could well lead to unwarranted satellite litigation and challenges to awards".

My final, brief point is on Clause 1, which settles a complex question—one on which the case law had never been fully and satisfactorily settled. New Section 6A has the clear benefit of clarity and simplicity.

In sum, I too very much welcome this Bill. It is a timely and measured intervention in our law that we should all be grateful to the Law Commission for, and to the Government for pressing ahead.

1.41 pm

Lord Hope of Craighead (CB): My Lords, I too, I think in common with all your Lordships, very much welcome this Bill. It is plain from the Law Commission's report that it is the product of a great deal of hard work on the parts of the Law Commission itself and those who responded to its papers in the course of this process.

The result is a compact measure that seeks to amend the Arbitration Act 1996 in 15 distinct respects. I do not think that anything in the Bill is controversial. On the contrary, the proposals will all contribute to the improvement of the law of arbitration in England and Wales in the various ways that the Minister explained in his helpful introduction. Our thanks must go to all the members of the Law Commission who contributed to this process and to His Majesty's Government for finding time to bring the Bill before us. We very much hope it will achieve its results before the next election.

At first sight, the best guide to what has been going on might be thought to be found in Appendix 3 to the Law Commission's final report, which sets out for the reader a list of all the suggestions that have not been taken forward. No less than 54 such suggestions are listed. I thought that this was perhaps quite a good indication of the amount of interest among practitioners that this project has generated. However, my sense of excitement was somewhat dampened when I read in paragraph 3.3 that almost all these suggestions were raised by only one consultee, and that there was, indeed, no widespread clamour for reform in respect of the various suggests that that consultee put forward. On the other hand, the consensus was that the 1996 Act works well, as indeed it does, and that root and branch reform was not needed or wanted. What was looked for, instead, was some updating and refinement of what we already have. Indeed, this is essential if we are to ensure that England and Wales remains the jurisdiction of choice for the resolution of international disputes.

The fact is that there is a very competitive market out there in the wider world. We must keep our heads in front. We do not want to lose our place to others in the Middle East and elsewhere, who are marketing their services vigorously to attract as much business as they can. That is why the work that the Law Commission has done in bringing this Bill forward is so important and so much in the public interest.

Leaving Appendix 3 aside, a word should be said about the work done by some very experienced

[Lord Hope of Craighead]
practitioners in Brick Court Chambers, including my noble and learned friend Lord Hoffmann. I should mention that, although I am a door tenant there, I was not one of those practitioners. They worked to persuade the Law Commission to include a provision in the Bill about the law applicable to the arbitration agreement. I understand that what is now Clause 1 was not in the first draft of the Bill, but it is good to see that the Law Commission was persuaded that there was a need to clarify the rules as to its determination.

As the Minister mentioned in his introduction, the position in Scotland is set out in Section 6 of the Arbitration (Scotland) Act 2010, which provides that:

"Where (a) the parties to an arbitration agreement agree that an arbitration under that agreement is to be seated in Scotland, but (b) the arbitration agreement does not specify the law which is to govern it, then, unless the parties otherwise agree, the arbitration agreement is to be governed by Scots law".

There is currently no such provision in the Arbitration Act which precedes this Bill. On the contrary, as the law stands in England and Wales, no necessary inference can be drawn that by choosing an English seat, and with it English law as the law which governs the proceedings in the arbitration, the parties also, by implication, have chosen English law as the law which governs the arbitration agreement itself.

The need for clarity was rendered all the more pressing by the decision of the UK Supreme Court in Enka v Chubb in 2020. In that case, it was held that the question as to the law applicable to the agreement was to be determined by applying English common law rules for resolving conflicts of laws. According to those rules, the law applicable to the arbitration agreement was the law chosen by the parties or, in the absence of such choice, the system of law with which the arbitration agreement was most closely connected.

The reasoning in that case—it was a majority decision, as mentioned earlier—was perfectly orthodox, but it seemed to open up issues which, in this context, were best avoided. It was argued that the better view was that where there was no agreement, the law to be applied to the arbitration agreement should be the law of the seat of the arbitration. That simple solution is what is now provided for in new Section 6A(1) of the 1996 Act, which is set out in Clause 1 of the Bill. This provision achieves the clarity that is needed, in line with the position in Scotland.

However, new Section 6A(2) adds a rider to what is set out in Section 6A(1), which perhaps need to be clarified. It states that:

"For the purposes of subsection (1), agreement between the parties that a particular law applies to an agreement of which the arbitration agreement forms a part does not, of itself, constitute express agreement that that law also applies to the arbitration agreement".

The words "of itself" beg the question: what do they mean? What do they envisage as necessary to displace the default rule that, where no such agreement is made, the law to be applied is the law of the seat of the arbitration?

These questions arise because it may be said that the wording of subsection (1) is perfectly clear in itself; it already uses the word "expressly". We are told there that the law applicable is "the law that the parties expressly agree applies to the arbitration agreement".

What, then, does subsection (2) add to what is already provided for in subsection (1)? Indeed, do we need that provision at all? I hope that, at some point, clarity could be given as to the reasoning behind subsection (2) so that we fully understand how it interacts with what is already set out in the clearest language in subsection (1).

That point aside, the wording of the other provisions in the Bill, all of which are very welcome, do not seem to me to give rise to any questions. I hope that the Bill will receive a Second Reading in due course and as soon possible, and I wish it well as it proceeds through its remaining stages in this House and in the other place.

1.49 pm

Lord Faulks (Non-Afl): My Lords, I too welcome the Bill and agree with what noble Lords have said about it. The Library Note on the Bill suggests that the arbitration industry centred on London could be worth at least £2.5 billion to the UK economy each year, although that is described as possibly an underestimate.

There have always been some areas of doubt about certain aspects of the law in relation to arbitration and the Bill is a welcome clarification of many of them. I did not wholly anticipate the problems that the noble and learned Lord, Lord Hope, identified in Clause 1 —it seemed on the face of it to be the answer to what was a somewhat uncertain position as to the law—and I am sure the Minister will consider carefully what he said.

That change and others have been generally welcomed, not least by the Chartered Institute of Arbitrators. I declare an interest as a fellow of the institute, although I have to say that my services have not been called upon very often. I should also declare that the Independent Press Standards Organisation, which I chair, provides for arbitration—extremely cheaply—for those who have complaints against regulated newspapers and their online manifestations. Unfortunately, lawyers for the parties seem to prefer litigation to arbitration.

There is one area that the Law Commission considered but decided not to include in the draft Bill. This was a matter raised not just by the one very assiduous consultee referred to by the noble and learned Lord, Lord Hope; it was in relation to the secrecy or confidentiality of arbitration. Confidentiality has long been a hallmark of the arbitration process and a significant attraction to users. The rule is not absolute. The contours of those circumstances where one party or another loses confidentiality or secrecy have been developed by the courts. I understand that the reason for omitting any provisions about this may have been that it is regarded as preferable to leave the law to the courts rather than try to capture in legislation in what circumstances there should be a departure from the general principle. It is, of course, always open to those entering into an arbitration agreement to be specific about these matters.

The case law acknowledges that the courts have an important role in ensuring standards of fairness in arbitrations. The 1996 Act, particularly Sections 67 to 69, provides the basis on which a party can challenge an arbitration award in the courts. However, there is an inherent tension between the principle that justice

should be both done and seen to be done and the privacy and confidentiality that go with arbitration.

My attention has been drawn to a case reported a few months ago before Mr Justice Robin Knowles, the Federal Republic of Nigeria v P&ID. In a lengthy and comprehensive judgment, Mr Justice Knowles found that P&ID had practised

"the most severe abuses of the arbitral process".

The judge said in his decision that it

"touches the reputation of arbitration as a dispute resolution process".

He asked himself whether, on the facts, there was an irregularity within Section 68 of the 1996 Act and found that, notwithstanding the high bar that has to be surmounted to prove a serious irregularity, it had been proved. He found that documents had been obtained by fraud and in breach of professional obligations, that deliberate lies had been told to the panel and that there had been wholly inadequate disclosure. In his view, it was important that Section 68 was available to "maintain the rule of law".

The case involved huge sums of money that the arbitration panel decided were owed by Nigeria to a shell company in relation to a gas pipeline. After carefully examining the facts and concluding as he did, the judge said:

"I hope the facts and circumstances of this case may provoke debate and reflection among the arbitration community, and also among state users of arbitration, and among other courts with responsibility to supervise or oversee arbitration. The facts and circumstances of this case, which are remarkable but very real, provide an opportunity to consider whether the arbitration process, which is of outstanding importance and value in the world, needs further attention where the value involved is so large and where a state is involved".

In discussing the principle of confidentiality, the judge said:

"The privacy of arbitration meant that there was no public or press scrutiny of what was going on and what was not being done. When courts are concerned it is often said that the 'open court principle' helps keep judges up to the mark. But it also allows scrutiny of the process as a whole, and what the lawyers and other professionals are doing, and (where a state is involved) what the state is doing to address a dispute on behalf of its people. An open process allows the chance for the public and press to call out what is not right".

The judgment was unusual and should cause the arbitration community to reflect on the risks inevitably involved in the confidentiality of arbitration proceedings. I do not have any amendments to suggest for the Bill, but I respectfully seek a response from the Minister on the serious questions this judgment raises about the appropriateness of arbitration, in particular its confidentiality, when the facts are similar to those of that case. Are the Government satisfied that there is no need for further provision and the matter can be left to individual judges, or has this case caused any change of heart such that they will legislate specifically to avoid a repetition? I do not necessarily expect a response now, except in general terms, but I ask for a more substantial response in writing.

I do not suggest that there is anything inherently unsuitable in encouraging arbitration, for the reasons we have heard, but I wonder whether there are sufficient safeguards to prevent the abuse of the process so starkly illustrated by this case. That said, I welcome the Bill.

1.55 pm

Lord Thomas of Cwmgiedd (CB): My Lords, I shall be brief as I agree with almost everything that has been said so far. I declare my interests as set out in the register in respect of arbitration and institutions that try to engage with those in arbitration to ensure better enforcement and a better relationship with the courts.

This is an excellent Bill. I commend the work of Professor Sarah Green, who has produced a number of proposals to modernise our law. However, it is important to reflect on one matter. The attempt to establish an online procedural rule committee was frustrated by three general elections, even though it was an uncontroversial, technical piece of law. As it is inevitable that there will be a general election within 13 months—it could be much sooner—I hope we will get on with this Bill as soon as possible so that it is not lost. Progress and speed are essential.

My noble friend Lord Faulks raised concerns about arbitration in London in relation to fraud and other matters. It is important to look at this in the context of what my noble and learned friend Lord Hope said about the competitiveness of the arbitration market. Without any doubt, London is under pressure. It is extremely important that London does not in any way fall under suspicion that something unsavoury can be done in its arbitrations or through its arbitral process.

I therefore hope that the Ministry of Justice takes up this suggestion or, given that its funds are almost non-existent, gets some work done by those who profit so much from the success of London—the Law Society, the Bar Council and arbitral institutions—to ensure that people understand three things: first, that the case to which my noble friend referred is an extraordinarily rare and quite exceptional example of things going wrong, and that it is easy for one case to contaminate things; secondly, that in other debates the legal profession has unfortunately gained a reputation in some quarters for not being anxious to have transparency; thirdly, that there has been concern about the tactics lawyers have used, particularly SLAPPs, on which the Minister brought forward such an important amendment in recent legislation.

I am sure that there is no problem in London, but it would be very good if a small body could quickly report that everything possible is being done to ensure that London arbitration is fair, honest and clean, and that the issues which arose from the Nigeria case and the concerns sometimes expressed about lack of transparency do not affect its fundamental integrity. Otherwise, I have a horror that that kind of criticism will undermine London's competitiveness. We must not be complacent. However, this is not a matter for the Bill, which needs to go through before the general election.

2 pm

Lord Hoffmann (CB): My Lords, I will make a declaration. Since I retired from being a member of your Lordships' Appellate Committee some 14 years

[Lord Hoffmann]
ago, I have practised as an arbitrator in London, including having presided over the Nigerian arbitration to which my noble and learned friends on my right referred.

I have come only to make a modest suggestion for improvement, which has already been anticipated by my noble and learned friend Lord Hope, in relation to new Section 6A(2). I can see entirely why it has been inserted into the draft; it has been done in case some literal-minded judge, not really knowing much about the background to this legislation, might say, "It says that the law which the parties expressly agree applies to the arbitration. The parties have expressly agreed that the document in question shall be governed by the law of Patagonia, so why doesn't that include the arbitration agreement, which is part of that document?" As I say, you have to be fairly literal and ignorant to be able to come to such a conclusion, but there it is—that is what it is for.

However, I am afraid that, as I think my noble and learned friend Lord Hope pointed out, the existing new Section 6A(2), which is meant to deal with that problem, has problems of its own because of the words,

"does not, of itself, constitute express agreement".

If you say that, you can say, "What else is needed, and what else will count as sufficient?" You find that all you can do is to go back and say, "Well, you need an express agreement that the arbitration agreement shall be governed by a different law". I do not want to say anything which might possibly derail the special procedure under which the Bill is going through the House but, if it were possible quietly to drop new Section 6A(2), that would be an improvement.

The Minister said that we are now aligning our law with the law of Scotland, but the law of Scotland does not have such a provision—it manages perfectly well with Section 1. Likewise, if you sign up to the rules of the London Court of International Arbitration, you get the law of Scotland, not this extra new Section 6A(2). The draftsmen of both those instruments had sufficient confidence in the judiciary to be able to arrive at the proper conclusion, simply on the basis of what is now Section 1. That is the only contribution which I have to make to your Lordships' debate.

2.03 pm

Lord Mance (CB): My Lords, I shall make just a very brief intervention. First, I disclose that, since retiring from the Supreme Court, I practise as an arbitrator. I have also taken part in the representations which were made to the Law Commission, and indeed met with it, and I was one of the judgment writers in a case called Dallah against the Government of Pakistan, which forms part of the background to the clause which amends Section 67.

I echo the congratulations to the Law Commission on its responsiveness and diligence in this matter. The fact that the most significant clause in practical terms emerged only part way through the consultation process shows the commission's willingness to listen. The way it has dealt with this seems largely satisfactory. I hear what was said about the words "of itself", which must be read against the background that, as my noble and learned friend Lord Hoffman said, express agreement otherwise is required. There may be a difference regarding Scottish law here, which says simply

"Unless the parties otherwise agree".

It does not require them "expressly" otherwise to agree. However, that sort of nuance will probably not be decisive. I suspect that the courts will make good sense of Clause 2, even though it looks a bit awkward.

I will say a few words on the important question: what is the approach to review? This will depend in part on the nature of the rules that are permitted to be made under Clause 11. However, I heard the Minister say that the aim was that the challenge should not be de novo. That is an oversimplification; the position is quite nuanced. In new subsection (3C), provision is understandably made for circumstances whereby someone, having argued a jurisdictional point before a tribunal, then seeks to raise objections that they could have raised but did not previously, or seeks to allow evidence that they could have adduced but did not before the tribunal. Not surprisingly, that sort of conduct, without good excuse, potentially will be sanctioned, assuming rules giving effect to new subsections (3C)(a) and (b) are passed.

Otherwise, the scene is largely discretionary. New subsection (3B) simply indicates what type of provision may be made by rules where the tribunal has already ruled, and new subsection (3C)(c) prescribes that,

"evidence that was heard by the tribunal must not be re-heard by the court, unless the court considers it necessary in the interests of justice."

Like my noble friend Lord Verdirame, I emphasise that it can be important to retain the ability for a court to review de novo the jurisdictional basis on which a tribunal acted, so long as it does not fall foul of one of the situations that I mentioned. It is wrong for a tribunal's analysis of its own jurisdiction to be axiomatically final. That would be a classic case of bootstrapping and there is a considerable risk—which, I am sure, escapes no one—of conferring on to individuals the power to be arbiters of their own powers. It is healthy to have a review.

That is also internationally contemplated. Take the New York convention, which contemplates that the court of the seat will have an important role in reviewing, among other things, the jurisdictional basis of an arbitrator's activity and if the arbitrators have exceeded their jurisdiction in setting aside their award. The convention also contemplates that enforcement courts may have a parallel role, although their activity may be subject to considerations of issues of estoppel and abuse of process if there has been a prior decision by the court of the seat or, indeed, by another enforcement court.

I join my noble friend Lord Verdirame in what he said on this area. Otherwise, I strongly commend the Bill.

2.09 pm

Lord Beith (LD): My Lords, it is a very good principle in the House of Lords to speak mainly on things of which you have a great deal of knowledge and experience. That principle has been followed in this debate admirably so far, and would have continued to be followed had my noble friend Lord Marks of

Henley-on-Thames not been otherwise engaged today, leaving me with the task without that essential qualification.

What a fascinating debate it has been. We had the long sweep of history from the noble Lord, Lord Hacking, whose knowledge goes back even further than I had realised. The emphasis on the competitive market in arbitration, in which England is currently very successful, and its wider legal implications, which the noble and learned Lords, Lord Hope and Lord Thomas of Cwmgiedd, mentioned, means it is important to keep the laws and procedures up to date so we can continue to get that benefit. It is indeed competitive: was it last year or the year before when Singapore equalled the amount of arbitration that England had been able to achieve?

In the course of the debate, the noble and learned Lord, Lord Hope, initiated a discussion, in which others joined, of the additional subsection in Clause 6 of the 1996 Act. When I read it, I took it to mean that you could not automatically read across, from the contract being by English law, that the arbitration would necessarily be governed by the law of the seat unless it was expressly stated. It seems bizarre that you could conduct proceedings on a contract that was expressly stated to be of English law but you chose to do it by arbitration not under English law, but sometimes Bills have to prohibit bizarre things from happening. No doubt the Minister will be able to explain that to us.

I was helped by the noble Lord, Lord Faulks, who saved me the task of explaining the Nigerian case, the anxiety that it promotes about how corruption could be concealed within arbitration proceedings and what restraints there were on preventing that from happening by the clear, common-sense statement that if you discover serious corruption, you should not allow it to be buttressed or assisted by the legal process that you are engaged in—that is, the process of arbitration. Arbitration takes place under commercial confidentiality, but it is not meant to be there as a means of allowing corrupt actions to be perpetrated. If the Minister could help us on what might be necessary to deal with that, I would certainly be very grateful. However, I recognise that amending the Bill at this stage, given the special procedure to which it is subject, is not necessarily an easy option even if we could agree on what that amendment should be.

The history of arbitration in England and Wales in recent years is a huge success. It is a major source of foreign earnings and, even more importantly, a great reputation support for our legal system in general and, consequently, for our commercial success. The 1996 Act has operated as a model of its kind and has worked extremely well. There are a huge number of commercial contracts, often nothing to do with England or English entities, that include English arbitration clauses, making England the seat of any arbitration and often subject to English law. A large number of such contracts make English law the law of the contract, not just the law of the arbitration. Undoubtedly significant in that success is the reputation of English arbitrators, including many well-known retired judges—some of them might be Members of this House—for legal incisiveness, incorruptibility, impartiality, courtesy and an unfussy and relatively informal style.

The Bill makes small changes to the Arbitration Act 1996 and introduces some reforms, all of which will be beneficial. It is a model of the Law Commission's work and, welcome to say, a model of Parliament attending to the Law Commission's work with due expedition, which has not always been the case. When I chaired the Justice Committee in the Commons, we were constantly complaining about the work that the Law Commission had done that was going nowhere because parliamentary opportunities had not been found to take it forward. This is a very good example of the Government taking it forward and using the fast track that is available. The work itself—two public consultations and thorough consideration of the responses—is also commendable.

The debate so far has identified most of the significant features of the Bill. Other things that I have not mentioned so far include the duty of disclosure, which may be important for parties from outside the UK who are not accustomed to the way in which normal practice would support disclosure in this country. Having an explicit provision may be helpful from that point of view.

Then there is the power to make awards on a summary basis, which reflects the power that courts have to make summary determinations where one party or the other has no real prospect of success. That does not have to be in relation to the whole claim but can relate to particular issues, and the benefit is to stop parties running hopeless points, often at the risk of running up costs for both sides that may not prove recoverable, and at further risk of delaying the proceedings.

Good case management by arbitrators, with the help of the parties in identifying and defining issues suitable for summary determination, could save time and costs. Importantly, it can encourage parties to settle proceedings where summary awards are given on particular issues.

Then we have in Clause 11 the streamlining of the procedure for determining challenges to the courts for awards on jurisdiction under Section 67. That, too, is a helpful improvement in the Bill.

This Bill has been carefully prepared. We spend a lot of time in this House looking at Bills which have been woefully or inadequately prepared, contain numerous unresolved issues or do not even give proper effect to their stated purposes. We cannot say that about this. It is a model of its kind, as is the way that it has been gone about, and I welcome it.

2.15 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, the noble and learned Lord, Lord Bellamy, introduced the Bill by saying "Everyone in the Room knows more about this than me". There is an exception—I suspect that I know less about it than any other noble Lord here.

I am the only speaker in this debate who is not a lawyer. However, I have employed a lot of lawyers in my time and my business experience in employing them was in trying to avoid litigation or arbitration. I was very much of the view that it was not a route that would be beneficial to the businesses which I was involved with, but it was very welcome that that resource was there. Litigating or arbitration within England

[Lord Ponsonby of Shulbrede]
and Wales was trusted by all international parties with which I was dealing. There was never any question about the jurisdiction in which any future disputes would be agreed and it was always an easy thing to agree with international colleagues.

My noble friend Lord Hacking gave us a tour de force on the historical context. He took us all the way back to 1698 and talked about his early days in this House. I have been around here quite a long time too and remember very well Maurice Peston, Peter Fraser and a number of the other noble Lords to whom he referred when the 1996 Bill was being considered, although I do not go back as far as 1979.

The noble and learned Lord, Lord Etherton, opened by congratulating the Government on the Bill, as I think everyone did. However, it is fair to say that all noble Lords, while congratulating the Government, raised particular issues. The noble and learned Lord referred to anti-discrimination procedures, the Equality Act and the appointment of arbitrators. I will be interested to hear what the Minister has to say on that.

The noble Lord, Lord Verdirame, spoke in a wider context, if I can put it like that, about how English and Welsh arbitration fits within an international framework. I have been on the edges of those types of procedure and they have been wholly unsatisfactory, from my point of view. There is an international framework for dealing with matters when they cross boundaries and, when there are disputes about jurisdiction, it can be an extremely lengthy and expensive procedure in which to be involved. When there are these jurisdiction issues, I would be interested to know whether the Bill may, for example, go some way to resolving them, because I understand that they can be difficult.

The noble and learned Lord, Lord Hope, asked a particular question about the Scottish position on arbitration. Again, I will listen to the Minister's response on that.

The noble Lord, Lord Faulks, raised Nigeria v P&ID Ltd. This case was referred to in the Explanatory Notes and I had a look at that judgment. It seemed that the concern raised within it by Mr Justice Knowles was whether going through the arbitration process itself can be used as a way of money laundering. That is a concern. The noble Lord asked a number of questions of the Minister on whether, in that set of circumstances with those particular concerns raised, the Bill will go any way to addressing those concerns or whether it is such a particular set of circumstances that it is not appropriate for this Bill. I thought that was an interesting question.

The noble and learned Lord, Lord Thomas, essentially raised the same point about making sure, to quote his words, that London arbitration is seen as fair, honest and clean. If it is anything less than that, it will undermine its competitiveness and its standing in the world.

We then had the two speakers in the gap, the noble and learned Lords, Lord Hoffmann and Lord Mance. They both spoke with huge amounts of expertise and raised their own particular technical points, which I am sure the Minister will answer fully. The noble Lord, Lord Beith, concluded that he agreed that this is an important and well-prepared Bill—a model, to use his word, of how Bills should be handled in this House.

The Labour Party obviously supports this Bill. The only point I have for the Minister is that none of the measures introduced in the Bill can be easily measured. Will there be any sort of assessment, in a year or two's time, of whether the changes introduced are working satisfactorily and whether this may need to be returned to in the next few years? Whether the changes are actually having any impact would not seem to be easily measured but, other than that, we support the Bill.

2.22 pm

Lord Bellamy (Con): My Lords, I thank all noble Lords and noble and learned Lords for their contributions to this debate, in particular for the broad welcome that the Bill has received from the Committee. I take it on myself—authorised, if I may, on behalf of this Committee—to pass on our warm thanks to the Law Commission and its team, one of whose representatives are here, for the extraordinary work that has been done on the Bill, and indeed to all those who participated in the consultation. As has been said, it is a model of its kind. All legislation should aspire to reach this kind of standard. That is the first thing I need to say.

Secondly, I also warmly congratulate the noble Lord, Lord Hacking, on his tour de force, going back to 1698—almost as if he was there in 1698, though not quite perhaps—and thank Mr Landau for coming today and blazing an earlier trail, in which we follow with diffidence as the years go by. We are well aware of the points he made on the importance of achieving a good balance between the courts and arbitration on the one hand, and promoting arbitration in this country and pursuing that objective, as the Law Society has today underlined.

With those introductory comments, perhaps I could deal briefly with at least some of the points that have been made, bearing in mind that we still have the Public Bill Committee to come; further points can, of course, be raised then. The equality point, raised by the noble and learned Lord, Lord Etherton, and commented on by the noble Lord, Lord Verdirame, is a difficult one. The Law Commission decided not to proceed to do anything about it but it is something that we can, of course, keep under review. When the Equality Act next comes up for consideration, I anticipate that this point would need to be addressed.

The noble Lord, Lord Faulks, raised the Nigeria case and the tension inherent in arbitration between privacy and transparency. I will make two points about that case. First, in a sense, it established that London is capable of dealing with this kind of fraud, because there was a judge who was able to expose it, and a procedure and, in the end, it was demonstrated that the supervisory jurisdiction in England and Wales works very well.

Secondly, I agree with the noble and learned Lord, Lord Thomas of Cwmgiedd, that it was almost certainly a one-off—a quite extraordinary exception to the general rule. However, the Government ought to take under advisement whether we should do anything to further

establish or reinforce what is undoubtedly the case—that London is clean, to use the word of the noble and learned Lord. With the co-operation of the professions, we ought to quietly establish whether anything further should be done to ensure that that is indeed the case. However, it was a disturbing case and, as the noble and learned Lord, Lord Thomas, observed, question marks remain in some cases, over some aspects of the legal profession in relation to SLAPPS, transparency and so forth. In some areas, further consideration may be necessary in due course.

I am glad that the issue with the words "of itself" in new Section 6A(2) has been drawn to the Government's attention. Again, we should reflect on that. I think that I understand what the draftsman is driving at, but perhaps we should embark on further amendment to that section and whether it is necessary—perhaps we should consider that further.

The noble and learned Lord, Lord Mance, raised the issue of the review under Clause 11 and the whole question of what the rules of court should do and how far they should go. That may link back to our earlier discussion about the Nigeria case, because this is the court taking a very active review role. No doubt there will be a consultation in due course on the rules of court, and it will be important to bear in mind the points made today.

Those were the main points raised. The noble Lord, Lord Ponsonby, asked whether we planned to have an assessment in a year or two. That is a little far ahead for the Government to be looking at the moment.

Noble Lords: Oh!

Lord Bellamy (Con): However, this is an area where Governments, the profession and practitioners are constantly aware of the need for London to be competitive, fair, open and transparent and to prosper. As the years pass, this will be reviewed over time to ensure that London remains competitive by the natural play of market forces.

I think I have covered the main points raised. I thank all noble Lords for their contributions.

Lord Hacking (Lab): Could I draw the Minister's attention to Section 61 of the 1996 Act, which the Law Commission has not pronounced upon? This is the section on the power of the arbitrators to award costs, and how they should do so. Section 61(2) says that

"the tribunal shall award costs on the general principle that costs should follow the event".

That is the regular jargon used in cases conducted before our law courts. At the very end of the case, the winning party gets up and asks the judge to award costs following the event—namely, that that party has won and therefore the other party should pay all the costs. That goes to the point that I was making that this should be a promotional Act, attractive to those from overseas—and how are those overseas persons meant to know or understand what

"costs should follow the event"

means?

It is more complicated than that. This came out in two cases, both under the jurisdiction of the wonderful Law Lord, Tom Bingham. When he was a mere Mr Justice, he did the case of "Catherine" in 1982—and then, when he was the Lord Justice of Appeal, he presided on the Norwegian Cruise case of April 1988. In both those cases, he did not follow the normal rule of costs following the event, because in both those cases the winning party had taken up excessive time on matters that it lost in the dispute. Therefore, it is not so simple as costs following the event and the loser paying.

What I suggest concerning this clause is that we take the opportunity during the passage of the Bill to remove that phrase and leave it as a simple judgment of the arbitrator or arbitrators—what is the fair order on costs that that they should make.

Lord Bellamy (Con): My Lords, I thank the noble Lord, Lord Hacking, for that intervention. As far as I know, the Law Commission did not consider that specific question, so I am not entirely sure, as of now when I am on my feet, to what extent we should widen the debate in the context of this particular Bill. But I shall take his point back and further consider it, and see whether the Government have a position on the point that he very strongly makes.

Motion agreed.

Committee adjourned at 2.32 pm.