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Wednesday
10 January 2024

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(HANSARD)

HOUSE OF LORDS

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

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10 January 2024

THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE FOURTH SESSION OF THE FIFTY-EIGHTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE SEVENTEENTH DAY OF DECEMBER IN THE
SIXTY EIGHTH YEAR OF THE REIGN OF

HER LATE MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCCXXXIV**

SECOND VOLUME OF SESSION 2023-24

House of Lords

Wednesday 10 January 2024

3 pm

Prayers—read by the Lord Bishop of Chelmsford.

Lord Speaker's Statement

3.07 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, before I call the first Oral Question, I should inform the House that the fourth Oral Question and a Statement being repeated later today concern the Post Office and Horizon. Members will be aware that there are relevant active legal proceedings relating to Horizon before the courts. Part of my role is to decide whether, in specific circumstances, it is appropriate to waive the application of the sub judice rule, under which we do not debate matters before the courts. I have decided that, with regard to business related to Horizon, it is right to do so on an ongoing basis. It is relevant to my decision that a similar waiver has been issued in the House of Commons.

Social Housing: Mould
Question

3.08 pm

Asked by ***Lord Khan of Burnley***

To ask His Majesty's Government what recent assessment they have made of conditions in social housing, including levels of mould.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, the *English Housing Survey* found that in 2022, 10% of social homes failed to meet the decent homes standard and 5% had a problem with damp. The Government have now introduced Awaab's law, requiring the Secretary of State to set out new requirements for landlords to address hazards such as damp and mould in social homes within a fixed period. We published our consultation on those requirements yesterday, 9 January.

Lord Khan of Burnley (Lab): My Lords, may I say how pleased I am to see the noble Baroness back in her place?

The death of two year-old Awaab, who was killed by mould in Rochdale, was a shocking insight into the condition of many social homes across the country. Unfortunately, millions of children in the private rented sector are also living with damp, mould or excessively cold temperatures, causing conditions such as asthma, pneumonia and respiratory illness. What plans do the Government have to tackle poor conditions for tenants in private rented homes?

Baroness Scott of Bybrook (Con): My Lords, there are differences between the rented housing tenures. Almost half of private rental landlords own a single property and the vast majority own fewer than five so, unlike social housing landlords, very few will have in-house or contracted repair and maintenance teams, which makes it more difficult. We have to consider proportionate timescales in legislation for the private rented sector. However, we are taking action to improve the safety and decency of private rented homes through the Renters Reform Bill, which will be in this House shortly. We have introduced an amendment to the Bill to apply a decent homes standard to the private rental sector for the first time and to give local councils enforcement powers to deal with non-decent homes. As I say, that Bill will be introduced to this House shortly. We will also set up a new private rented sector ombudsman through that Bill, which will also have extra powers.

Lord Young of Cookham (Con): My Lords, I welcome my noble friend back to the Dispatch Box. I welcome the speed with which the Government have implemented

[Lord Young of Cookham]
Awaab's law and issued the consultation documents. Is there not now a dilemma facing social housing tenants who want their landlord to effect repairs? They can either go to the social housing regulator or to the Housing Ombudsman, which have different regimes but overlapping powers. Will my noble friend issue guidance so that social housing tenants can use the new powers the legislation has given to them?

Baroness Scott of Bybrook (Con): My noble friend is right; this is all about communication, to make sure that tenants know what to do if they have an issue with their property. We have had a number of communications and marketing campaigns, such as Make Things Right, and the latest one is just being completed. That makes sure that all tenants know that, first, they should go to their social landlord, and if they do not get the right answer—or any answer, as sadly happens in some cases—they must go to the ombudsman. The social housing regulator will deal not with individuals but with bigger issues relating to individual housing associations.

Baroness Warwick of Undercliffe (Lab): My Lords, the Minister's response focused on social homes. Housing associations are very keen to do more to regenerate existing social housing but are unable to do so—at least, not very effectively—without improved access to government funding. Will the Minister confirm that the Government will look to maximise the use of existing funding through the affordable homes programme to support housing association-led regeneration?

Baroness Scott of Bybrook (Con): Yes. I think we already said in the levelling-up Act that the £11.5 billion in the affordable homes programme can be used for social housing, as it has in the past. It is important that social landlords understand that and use that money.

Baroness Thornhill (LD): I am pleased to see the noble Baroness back in her place; she has been missed. For this new legislation, the Government have sensibly constituted a Social Housing Quality Resident Panel to advise them and, presumably, to listen to its views. The panel stated that it did not believe that

"court action would … prevent and resolve housing hazards"

or

"incentivise landlords to meet the deadlines",

and that it would

"place the burden of enforcement on residents".

What is the Government's response to this plea? Most importantly, what support will be given to tenants to make this work?

Baroness Scott of Bybrook (Con): I thank the tenants' panel. I have been to a couple of its meetings, and it has been excellent. It was meant to last for a year, but we are going to continue with it. No, we are not expecting tenants to fund their own cases. That is not correct, and I do not know where that has come from. I would like to discuss the issue further with the noble Baroness and get a clearer answer, because I am not aware of that.

Lord Best (CB): My Lords, I am delighted to see the noble Baroness back in post. The Government are absolutely right to come down hard on social housing landlords who have not doing what they should have in keeping their properties up to a decent standard. The ombudsman, the social housing regulator and legislation are all great but the amount of money available for social housing remains the same, and switching resources to getting that older stock up to muster is going to absorb an awful lot of money in the years ahead. Are we going to see quite a big decline in the new affordable social housing that is so badly needed?

Baroness Scott of Bybrook (Con): No. Through the Levelling Up and Regeneration Act, which, sadly, I did not see the end of, we intend to deliver more social housing. That came out strongly throughout proceedings on that legislation. The noble Lord is right; there are a lot of challenges for the sector in upgrading its stock, after many years of not putting money into it. We will all be working on that. This year we gave £30 million to Greater Manchester and the West Midlands. We wanted to look at how such investment would help them make improvements, and we are looking at that intervention quite closely for the future.

The Lord Bishop of Chelmsford: May I say on behalf of these Benches, too, how pleased we are to see the noble Baroness back in her place. We know that cots are extremely important for the health and well-being of babies and young children. What is the Government's policy on the provision of cots to those in social housing? The charity Justlife states that around 25% of temporary accommodation falls under the purview of the social housing regulator. With nearly 140,000 children living in temporary accommodation in England alone, what steps are being taken to ensure that cots are provided for families in temporary accommodation under the purview of the social housing regulator?

Baroness Scott of Bybrook (Con): I thank the right reverend Prelate for that question. I do not know the answer to it, but I will certainly find out. I know that this is an important issue. Housing associations providing temporary accommodation have to provide the correct furniture and fittings for such families, and I will check that cots are included. I also know that such charities—which I have been involved with many times, and which do a wonderful job—are providing not just cots but all the other things that babies and young people need, particularly if they are being moved around a lot. I will get a Written Answer to the right reverend Prelate regarding cots.

Baroness Finlay of Llandaff (CB): My Lords, the NHS spends £1.4 billion a year on treating illnesses associated with mould. The evidence is that the number of damp problems in the private rented sector is almost double the number in the social sector. People renting often have great difficulty in knowing where to seek help and are frightened of going to the landlord in case of recrimination against them for having raised an issue. Have the Government considered asking every

local authority to establish a registration point where people who feel that their housing is seriously below standard can report the issue and discuss it, so that they can get support when going to the ombudsman or wherever else they might need to go? There is a real gap in their ability to advocate for themselves.

Baroness Scott of Bybrook (Con): No, we have not considered that, and I am not sure that local authorities have the capacity to that at this time. But it is important that we make sure that tenants know their rights and where to go. The ombudsman is creating many more positions, so it should be able to deal with these things quicker. I was pleased to learn that the Department of Health and Social Care has developed new, consolidated guidance, tailored to the housing sector, on the health aspects of damp and mould. There was some disagreement about what was important or how much damp and mould could be allowed in these homes in order for them to be safe; I am glad that that guidance has been consolidated. I hope that we are moving forward, and I absolutely know that when Awaab's law comes into effect, things will change considerably and at much greater speed.

HMRC: Tax Returns

Question

3.19 pm

Asked by ***Lord Sahota***

To ask His Majesty's Government what assessment they have made of the HMRC services to the public in processing tax returns.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, HMRC is responsible for collecting income tax, value added tax and a range of other taxes and duties. Tax returns are required to ensure the timely payment of the right amount of tax. The vast majority of returns are now submitted online, with information and guidance also available, plus a web-chat function. The satisfaction rate for digital services for the year to October is 83.6% and is higher than the rate for telephone services.

Lord Sahota (Lab): I thank the Minister for her Answer. My Question is about the running of the HMRC. As we all know, December and January are the busiest time of the year for people and their agents to return their tax files. As from 11 December up to 31 January, HMRC says that the self-assessment helpline will deal only with the most complex and priority cases. My first question is how the HMRC will know whether it is a complex and priority case if it does not answer the phone. The decision has been criticised by accountants and tax advisers as being very poor. Some callers say that they have been cut off without anyone answering the phone. What happens if they do not have computers or are not skilful in using them? Secondly, for the past 13 years the taxes have gone up, but the number of HMRC staff has come down in the past five years from 25,500 to 19,500. How do the Government justify HMRC's poor services to the public?

Baroness Vere of Norbiton (Con): If the noble Lord does not mind, I shall focus on the first part of his question, because it is very important. If a person phones the self-assessment helpline, what happens is that one gets asked what one's query is. Of course, if the computer recognises this, and if it is a simple query—of which two-thirds are, not related to tax returns currently in process—one is directed to the digital services. One also might receive an SMS with a link to the specific service that one might need. At that point, the customer can also use the digital assistant or web-chat service. The noble Lord mentions vulnerable and digitally excluded people, and they are exactly the people that this intervention is hoping to include. It will allow the HMRC to focus on 120,000 more people, which will include the vulnerable and digitally excluded. Of course, through that process of triage, they will be able to stay on the system and speak to a person.

Lord McLoughlin (Con): Will my noble friend tell us how many HMRC staff are working from home and how many are attending the workplace?

Baroness Vere of Norbiton (Con): HMRC is an office-based organisation. However, officials can work from home for two days a week, if they can be fully effective in their roles. On average, advisers answer the same number of calls per day and work the same number of hours, whether they are in the office or at home.

Baroness Kramer (LD): My Lords, I wonder whether the Minister is aware that so many people have become so intimidated and discouraged by the process of trying to claim a tax repayment that an industry has grown up. Tax repayment agents and companies are now stepping in as middlemen to provide that service to people, but there is no professional standard or certification, and there is no regulation of any of these bodies—so the potential for people to be abused and scammed is very great. Are the Government going to take action to deal with this, either by improving the service so that these people are not needed or else by regulating them if they are?

Baroness Vere of Norbiton (Con): The noble Baroness may be aware that the HMRC made a very targeted intervention on overpayments over the summer, to enable a backlog that had arisen to be repaid. That is now cleared, and the self-assessment helpline prioritises queries relating to returns, repayments and other complex matters.

Lord Harris of Haringey (Lab): My Lords, after Making Tax Digital, the HMRC expects small businesses and self-employed people to file returns and so on using approved accounting software. What consideration has HMRC given to the Horizon accounting software scandal? What steps are being taken to ensure that such software does not contain unexpected flaws?

Baroness Vere of Norbiton (Con): There is actually a very competitive market in software that is able to speak to the HMRC system. No flaws have yet been found, but of course one is always aware of that.

Lord Forsyth of Drumlean (Con): My Lords, further to my noble friend's first Answer, has she actually tried ringing the HMRC herself, and what was the outcome?

Baroness Vere of Norbiton (Con): My noble friend will be very pleased to know that I phoned HMRC on Monday and eventually managed to speak to a person. I did not tell them who I was, and I do not have very complex tax affairs. It was something very simple, but it could be done only by a real person.

Lord Sikka (Lab): My Lords, it is very interesting that the Minister here is defending an IT system installed by Fujitsu, after what we heard about the scandal at the Post Office. Coming back to the broader issue, as a result of fiscal drag there are more people filing self-assessment tax returns. Can the Minister tell us how many more people have been employed to handle the telephone queries? I have tried and I was unable to get through at all.

Baroness Vere of Norbiton (Con): First, let me clarify that I am not defending Fujitsu or any other software—I am not sure where the noble Lord got that from. It is the case that more people will be filling in self-assessment tax returns, but it is also the case that, given the current figures, it seems that people are perfectly capable of doing so. By 1 January, 6.49 million people had completed their self-assessment tax return; that is 200,000 more people than last year and well over half of those whom we would expect by this stage, so at this current time we are not seeing a significant drop-off of people being unable to fill in a tax return.

Lord Naseby (Con): My Lords, is my noble friend aware that, having seen the Question on the Order Paper, I contacted a number of professional accountancy firms to ask them whether the returns from HMRC are comparable to last year or not? The consensus appears to be that HMRC is running at least four to six weeks behind last year. Is there a particular reason for this?

Baroness Vere of Norbiton (Con): No, and I would be very happy to look at any evidence that my noble friend has. My understanding is that, for more complex tax matters which require the intervention of an HMRC adviser, those tax returns are dealt with within about three months.

Baroness Butler-Sloss (CB): My Lords, someone I know made an application online for information 15 months ago and has not yet had a reply, so I am wondering what happens online.

Baroness Vere of Norbiton (Con): Without further information about that case, it would obviously be very difficult for me to comment. If the noble and learned Baroness would like me to pass her friend's information to HMRC, I would be very happy to do so.

Lord Cormack (Con): My Lords, when my noble friend telephoned, as she said in answer to my noble friend Lord Forsyth, how long did she have to wait before she had a proper answer?

Baroness Vere of Norbiton (Con): That is an incredibly good question. I think I was probably waiting for about 20 minutes. Of course, I had no problem with that because I was able to do other things. Had I been online, I might have been googling as well, so I think there is a case to be made for ensuring that calls are triaged such that we can prioritise those customers that we need to get through the system as quickly as possible. As I say, HMRC hopes to be able to address the issues of 120,000 more people than it would otherwise have been able to do.

Lord Livermore (Lab): My Lords, the Government's decision to freeze national insurance and income tax thresholds for six years will cost taxpayers an additional £45 billion, equivalent to a 10 percentage point increase in the main rate of national insurance. This fiscal drag means that 4 million more people will now pay income tax. How many additional taxpayers will be required by HMRC to complete self-assessment tax returns in the next five years as a result?

Baroness Vere of Norbiton (Con): HMRC is well aware and has forecasts for how many people will be filling in tax returns or required to pay tax. It is prepared and has the workforce ready to do so. But I would ask the noble Lord how many more HMRC advisers it will take to collect the tax for the £28 billion a year that Labour intends to spend.

Lord Davies of Brixton (Lab): My Lords, is HMRC gearing up for the potential problems that will arise because of fiscal drag, as has been mentioned, and the triple lock on state pension benefits and its impact? Income tax is not deducted from state pension benefits directly and has to be paid separately, and many people on state pensions have low incomes and will receive demands to pay their unpaid tax the following year. Is the Minister on board with that, and are we going take action to make sure that people on low incomes do not receive large tax demands to be paid from their low state pensions?

Baroness Vere of Norbiton (Con): As I have said previously, HMRC is prepared for the type of people that may or may not be in the tax system in the future. At the heart of all this is communication. HMRC sends out tens of millions of messages to people each year. It has a social media campaign and also campaigns in the press to ensure that everybody understands how they can pay the right amount of tax at the right time.

NatWest: Account Terminations and Branch Closures

Question

3.30 pm

Asked by ***Lord Hacking***

To ask His Majesty's Government what discussions they have had with NatWest, as a major shareholder, regarding the numbers of (1) payment account terminations, and (2) local branch closures, since 1 January 2023.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, the Government's remaining 37% shareholding in NatWest is managed at arm's length by UK Government Investments. The Government do not intervene in the commercial decisions of NatWest, including with regard to branch closures and individual account terminations. None the less, the Government are strengthening requirements for all firms around account termination and support the FCA's guidance on bank branch closures and industry provision of alternative in-person services such as banking hubs.

Lord Hacking (Lab): I thank the Minister for her reply, but I think the matter should be a little further explored. Will she acknowledge that *Which?,* the trade magazine, has monitored all bank closures since 2015 and has calculated that in that period NatWest bank as a whole closed no fewer than 1,140 branches? In the same period—and more alarmingly—a total of 5,818 bank and building society closures took place. That must impact on a lot of people. Secondly, will the Minister acknowledge that NatWest and probably other banks are currently closing the accounts of innocent holders without notice and refusing to give any reasons? Again, the impact of that is a lot of distress: for example, for small traders, having their bank accounts taken away can be devastating.

Baroness Vere of Norbiton (Con): If I may, I will focus on the second part of the noble Lord's question around account termination. It is an issue that the Government take incredibly seriously. For absolute clarity, the Government are clear that payment account providers must not discriminate on the basis of political belief or, indeed, any other opinion. Therefore, following events over the summer, the Government issued a policy statement on 21 July which very clearly set out that 90 days' notification must be given to any customer whose account is to be closed. Also, the bank must give a reason for that closure. That will come into legislation in due course. We are working at pace to draft the secondary instrument and it will be laid in your Lordships' House soon.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, the Minister may recall that, towards the end of last year, I asked about the establishment of a banking hub for my home town, Lisnaskea, after the Ulster Bank, which is part of the NatWest group, decided to close the last remaining bank in that rural town. I mention rurality as I was surprised when I met the representatives of LINK, which has set up banking hubs, who told me that they do not take into account the rural nature of the area when they are deciding on banking hubs. I understand that there is a consultation ongoing: when changes are being made, will the Minister consider the needs of rural dwellers?

Baroness Vere of Norbiton (Con): I am grateful for that intervention, because that is precisely what we intend to do. We are placing the existing voluntary arrangements set up by the banking sector on a statutory footing. There is a consultation out at the moment by the FCA, part of which is asking what factors and criteria should go into any assessment—the number of people in the area, the number of SMEs affected, the impact on the vulnerable and what other cash access services there are. Of course, rurality will impact on all those factors, so it will be taken into account.

Lord Reid of Cardowan (Lab): My Lords, I suspect that I am not the only Member of the House to have noticed a marked deterioration in customer service from the banks over the past 20 years. Digitisation was supposed to improve that, but it has got much worse. Of course, this is generic—witness the comments made about HMRC—but banking, of all areas of commerce, depends more than anything else on trust. Trust is greatly enhanced by personal contact and greatly reduced when there is none. The Minister said earlier of HMRC that you are always given six options—yes, you are, but, mysteriously, none ever seems to apply appropriately to the question I have. So has she carried out a simple survey of customer satisfaction with banking and, if so, what are the results?

Baroness Vere of Norbiton (Con): The Government do recognise that banks hold a key position in our society. We need to ensure that our banking system meets the needs of that society. Certain banks, as I am sure the noble Lord is aware, pride themselves on keeping their bricks and mortar on the high street. If customers require that sort of service, they should be able to vote with their feet.

Baroness Kramer (LD): My Lords, I think we have something like 20 banking hubs—the Minister will correct me if I am wrong, but it is a piffling number. Will she assure me that, in the statutory instrument that is coming, the banks will be required to participate in banking hubs where their area meets the criteria standard? Everything I have heard up to now still leaves the banks with the ability to refuse to participate even where the standard is met.

Baroness Vere of Norbiton (Con): The noble Baroness is absolutely right. That is why we are putting this voluntary provision on a statutory footing. The Treasury has the power to designate not only banks but the operators of the cash access co-ordination services—Cash Access UK—to do the banking hubs, so they must then follow the requirements set out in the legislation.

Lord Livermore (Lab): My Lords, the average house in the UK now costs nine times average earnings—the most expensive ratio since 1876. Living standards are seeing their biggest ever fall and families remortgaging since the Government's disastrous mini-Budget have seen their monthly payments rise by an average of £220. Given this, does the noble Baroness agree with the comments of the chair of NatWest last week that it is currently "not that difficult" to get on the housing ladder?

Baroness Vere of Norbiton (Con): No, I think those comments were very ill advised and I rather wish he had not made them—as I am sure he does. The key to

[Baroness Vere of Norbiton]
a thriving housing market is ensuring that interest rates come down. To do that, one has to reduce inflation, and that is exactly what this Government are doing.

Lord Grantchester (Lab): It is excellent news that the Government have today commenced the statutory instrument by which so-called "politically exposed persons" will not be subjected to increased monitoring compared with the general public. Will the Minister ensure that banks no longer use the policy of "constant refresh know your client" as an excuse to close bank accounts?

Baroness Vere of Norbiton (Con): I am very grateful to the noble Lord for allowing me to highlight to the House that that statutory instrument, laid before Christmas, comes into force today. It means that banks should not treat all politically exposed persons the same; domestic politically exposed persons, as well as their family members and close associates, will be subject to a lower level of checks. In terms of "know your client", it is important that we have the right balance between the information the banks have about the client and any concerns about their involvement in illicit finance. There are money laundering regulations in place but they are not prescriptive—firms must apply them in a proportionate fashion and appropriate guidance for banks on customer due diligence has been published by the Joint Money Laundering Steering Group.

Lord Watts (Lab): My Lords, does it not show the weakness of the present regulation when banks are closing thousands of their branches all around the country, withdrawing services to their customers, and then promising banking hubs that they do not introduce? Do we not need stronger government and stronger regulation?

Baroness Vere of Norbiton (Con): I have to disagree, because that is exactly what we did, by making the change in the Financial Services and Markets Act. We are now putting that into place. Now, of course, we cannot do that immediately. A consultation is live at the moment and it will bring together all the information we need to ensure that customers get the banking services they need.

Lord Kamall (Con): My noble friend the Minister has explained that, now the SI has been laid, customers in future will be told why their accounts have been closed. Those customers will then want to open new accounts. Will they then be told why their application has failed and why they have not been given a bank account when they apply and are turned down?

Baroness Vere of Norbiton (Con): That is a very good question from my noble friend and I do not have the answer to it. But I would say that the banking sector for individuals is incredibly competitive, and for those individuals with a very poor credit rating, who are not able to access standard current accounts, the Government require banks to offer basic bank accounts. There are 7 million individuals who have those accounts, so it should be the case that all individuals can get a bank account.

Horizon: Compensation and Convictions

Question

3.41pm

Asked by ***Baroness Chakrabarti***

To ask His Majesty's Government whether they plan to introduce legislation to quash the convictions of, and compensate, those sub-postmasters and post-mistresses prosecuted and convicted of fraud by the Post Office as a result of faulty Horizon software.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): My Lords, the Prime Minister has announced today in the other place that the Government intend to bring forward legislation to overturn the convictions of all those convicted in England and Wales on the basis of Post Office evidence during the Horizon scandal who have not yet had their cases considered by the courts. Following measures to prevent fraud, the person will become eligible for compensation—this includes the upfront offer of £600,000—or to claim more through the individual claim assessment process.

Baroness Chakrabarti (Lab): My Lords, I am grateful for that, but forgive me for being even more grateful to Mr Bates and his colleagues, the noble Lord, Lord Arbuthnot, who is now in his place, and the dramatists and broadcasters who captured the imagination and sense of righteous indignation of the decent people of this country. What might we learn from this? Why did it take a prime time TV drama to cause the Government to leap into action? What might we learn about the appropriate relationship between Ministers and arm's-length agencies, about the unthinking reliance on new technologies, about using public inquiries to kick scandals into the long grass, and about government procurement and corporate greed?

Lord Offord of Garvel (Con): I thank the noble Baroness for those sentiments, which are shared on all sides of the House. The Post Office scandal is one of the biggest miscarriages of justice in living memory and the victims must get the justice they deserve. It is important that everyone knows the truth about what happened and that steps have been taken to right the wrongs of the past. Truth and accountability are one part of providing justice; another part is the compensation, which we are dealing with in this House next week. It is crucial that lessons are learned. I also pay tribute to our noble friend Lord Arbuthnot, who has acted tirelessly on behalf of the victims. He has been in the other place as well, to hear my colleague the Postal Minister give the Statement this morning, and has now taken his place in this House. He is a member of the advisory committee which will be a key part of the process as we work through this terrible chapter in our legal history.

Lord Weir of Ballyholme (DUP): My Lords, I join everyone in this House in recognising the appalling scandal that has been placed before us and the appalling position sub-postmasters have been put in. Any quashing of convictions is to be welcomed, but what is the position as regards prosecutions in Scotland and Northern Ireland, which are under a different system? The Minister made reference to the quashing of convictions in England and Wales. What action are the Government taking to ensure that all victims across the UK, from whatever jurisdiction, are able to have their convictions quashed? Justice has got to be for all, across the UK.

Lord Offord of Garvel (Con): I thank my noble friend for his point. There have been 983 wrongful convictions, of which 24 are in Northern Ireland and 76 in Scotland. We in this House know well that we have separate legal systems in Northern Ireland and Scotland. Conversations have begun with the devolved Administrations; formal discussions are going on now between the justice department in Scotland and the Lord Chancellor. The compensation remains a reserved matter, and will be paid by the UK Treasury, but due process must take place in Northern Ireland and Scotland. Those discussions are under way, to make sure that all are treated equally in all parts of the United Kingdom.

Lord Arbuthnot of Edrom (Con): My Lords, I will say two things. First, I give my thanks to my noble friend the Minister, to the Minister in another place, Kevin Hollinrake, and to noble Peers across this House for helping to produce a solution which, while difficult and inevitably a compromise, resolves the vast majority of the issues in this dreadful case. Secondly, does my noble friend the Minister agree with Sir William Blackstone, of a little time ago, when he said:

"It is better that ten guilty persons escape than that one innocent suffer"?

Lord Offord of Garvel (Con): I thank my noble friend again for being so dogged in his pursuit of these matters. We are absolutely indebted to him for continuing his role on the advisory committee; my colleague in the other place, Minister Hollinrake, is meeting actively with that committee. The William Blackstone principle has been around for 250 years, and it could not be said better than in this House.

Lord Butler of Brockwell (CB): My Lords, following the debacle of the failed prosecution of Matrix Churchill in the 1990s, the role of Customs and Excise as an independent prosecutor was brought to an end and supervision passed to the Attorney-General. In the light of what has happened, should not the same thing happen in the case of the Post Office? Is it not wrong in principle that a public body should have independent powers of prosecution when it has a financial interest in the success of that prosecution?

Lord Offord of Garvel (Con): I thank the noble Lord for his question. He highlighted exactly the anomalies that this case has thrown up; the Lord Chancellor in the other place and the Ministry of Justice are looking very carefully at them. In fact, the Post Office has not pursued any private prosecutions since 2015—thankfully—and there is a debate to be had as to whether this power should be withdrawn. We know that, in the Scottish jurisdiction, private prosecutions are not capable of happening; perhaps the English and Welsh system will follow the Scottish system.

The Lord Bishop of Gloucester: My Lords, this awful situation highlights so many of our inadequacies in focusing our attention on the right things at the right time and within the right timescale. It is obviously far too early for restorative justice processes to be put in place, but could the Minister offer assurance that attention is being given to mental and emotional support, as well as financial, for all who have lived with the consequences of this injustice for so long?

Lord Offord of Garvel (Con): I thank the right reverend Prelate. The consequences of this are absolutely wide-ranging and beyond just the immediate financial matters. Our Government are working hard to make the process full, fair and quick. Interim payments have already been made to GLO members, and those with lower-term convictions are having their full claims processed. The emphasis now is on speed and supporting the victims with the immediate issue of compensation. The second issue is getting to the bottom of this awful matter; that is where the Williams inquiry will do its detailed work, and we will get detailed answers to these questions.

Lord Fox (LD): My Lords, we welcome the Prime Minister's announcement that primary legislation will be brought forward, but we still would like to have some more details. Given the speed with which this has been moving, I understand that it is difficult to be specific, but it would help if the Minister could tell your Lordships' House whether it is the intention that the pardons will come en bloc or still have to be pursued individually. Will these people actually receive pardons? They have been publicly humiliated for years, so the process of exonerating them has to be more than just the stroke of a pen. It is very important that, more than just receiving a pardon, they are seen to be pardoned.

Lord Offord of Garvel (Con): I thank the noble Lord for that very important question. I can clarify that this is not a case of being pardoned; these convictions are being overturned. The primary legislation will take account of all of these convictions en bloc; it would take too long to go through each individual case and it would be too stressful. Of the 983 convictions, only 20% of the victims have actually come forward—so many people are just scunnered with the situation that they are in. Therefore, this will be a blanket overturn of convictions.

Lord McNicol of West Kilbride (Lab): My Lords, we on the Labour Benches welcome the Government's Horizon announcement, although more details would be appreciated, especially on the timescale. I hope there will be more detail in the Statement. Given the emergence of new pilot scheme victims since the ITV

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drama, how confident are the Government that they are aware of everyone who has been affected? What steps are they taking to make sure that all those affected are identified and fully compensated—surely Fujitsu has that data?

Lord Offord of Garvel (Con): When it comes to data, there are all sorts of confidentiality requirements that need to be kept. We know that a considerable number of claimants have come forward—more than 100—since the TV programme. We think that the total number of postmasters involved is about 3,500. We have compensated 2,700 of those already, and we will leave no stone unturned to make sure that we reach everybody affected by this scandal.

Horizon: Compensation and Convictions
Statement

The following Statement was made in the House of Commons on Monday 8 January.

"The Post Office scandal is one of the greatest miscarriages of justice in our nation's history, shaking people's faith in the principles of equity and fairness that form the core pillars of our legal system. I am very pleased that last week's excellent ITV drama 'Mr Bates vs The Post Office' has brought an understanding of the Horizon scandal to a much broader audience. I have received much correspondence about the scandal and the emotional impact that the dramatisation has had. Those of us who have been campaigning and working on the issue for some years were already well aware of what happened.

I pay particular tribute to Alan Bates and his fellow postmasters, including Jo Hamilton and Lee Castleton; to the right honourable Member for North Durham, Mr Jones; to my right honourable friend the Member for Haltemprice and Howden, Sir David Davis; to my honourable friend the Member for Telford, Lucy Allan, and the honourable Members for Jarrow, Kate Osborne, and for Motherwell and Wishaw, Marion Fellows; to the noble Lord, Lord Arbuthnot, and other members of the Horizon compensation advisory board; and of course to key figures in the media. They played a key role in seeking justice and compensation for the victims. I also thank the shadow Secretary of State, the honourable Member for Stalybridge and Hyde, Jonathan Reynolds, for his continually constructive approach, as well as my ministerial predecessors, including my honourable friend the Member for Sutton and Cheam, Paul Scully.

Watching last week's ITV programme has only reinforced our zeal for seeing justice done as quickly as possible. We are already a long way down that road. Sir Wyn Williams's inquiry is doing great work in exposing what went wrong and who was responsible. Full and final compensation has already been paid to 64% of those people affected. I have previously said to the House that my main concern now is regarding those still waiting for full and final compensation, and the slow pace at which criminal convictions related to Horizon are being overturned by the courts. Before Christmas, the advisory board published a letter that underlined exactly that.

This is not just a matter of getting justice for those wrongly convicted. Overturning their convictions is also key to unlocking compensation. Each person whose Horizon conviction is overturned is entitled to an interim compensation payment of £163,000. They can then choose whether to have their compensation individually assessed or to accept an upfront offer of £600,000. That offer is already speeding along compensation for a significant number of people.

In the light of the advisory board's letter about overturning convictions, I have spoken to the right honourable Member for North Durham, Mr Jones, and to the noble Lord, Lord Arbuthnot. I have also had a very positive meeting this afternoon with my right honourable and learned Friend the Lord Chancellor. All of us in the House are united in our desire to see justice done, and we have devised some options for resolving the outstanding criminal convictions at much greater pace. The Lord Chancellor will, rightly, need to speak to senior figures in the judiciary about those options before we put them forward, but I am confident that we should be able to implement measures that address the concerns expressed by the advisory board. I hope that the Government will be able to announce those proposals to the House very shortly.

Of course, there is clearly great concern about the role of the Post Office in prosecuting these cases. The Post Office rightly decided to stop undertaking private prosecutions in 2015. If we are to make sure that a scandal such as this can never happen again, we need to look at the way in which private prosecutions such as these have been undertaken. Any company can bring private prosecutions in this way: this is not a special power of the Post Office. I know that the Lord Chancellor wants to give this issue proper and thoughtful consideration, and I am sure that he will report to the House about the issue in due course.

Getting justice for the victims of this scandal and ensuring that such a tragedy can never happen again is my highest priority as a Minister, as it has been throughout my 15 months in office. When we talk about compensation, we have to remember that the lives of the postmasters and their families caught up in this scandal have been changed for ever. They have faced financial ruin, untold personal distress and a loss of reputation that no amount of financial compensation can fully restore. The Government recognise that we have a clear moral duty to right those wrongs to the best of our ability. To support those whose lives were turned upside down by the scandal, we have provided significant funding for compensation. We have also been clear that it should not be the taxpayer alone who picks up the tab. We will wait for the inquiry to report to make clear the extent of any other organisation's culpability for the scandal and any individual accountability.

Our aim is to ensure that every victim is fully recompensed for their losses and the suffering they have had to endure. To date, more than £148 million has been paid to 2,700 victims across all compensation schemes, 93 convictions have been overturned and, of those, 30 have agreed full and final settlements. Just over £30 million has been paid out in compensation to those with overturned convictions, including interim payments. Of course, we want to ensure that the

process for agreeing compensation is fair, transparent and open to independent assessment. That is one of the reasons why I am today announcing that retired High Court judge Sir Gary Hickinbottom has agreed to chair an independent panel that will assess the pecuniary losses of those postmasters with overturned convictions where disputes arise. That will bring independent oversight to compensation payments in a similar way to Sir Ross Cranston's oversight of the group litigation order scheme and the independent panel in the Horizon shortfall scheme.

Of the original 555 courageous postmasters who took the Post Office to court and who first brought the Horizon scandal into the public eye, £27 million has been paid out to 477 claimants in addition to the net £11 million received through the December 2019 settlement. Forty-seven members of the original GLO group have also received compensation following the overturning of their convictions, totalling more than £17 million. We have received full claim forms from 59 of those postmasters who are eligible for the GLO scheme and issued 43 offers. There have been 21 full and final settlements paid and a further seven full and final settlements accepted. That brings the total number of accepted full and final GLO settlements to 28. I would encourage claimants' lawyers to continue to submit GLO claims, because my department stands ready to review them and turn them round quickly.

It is worth noting that the 2,417 postmasters who claimed through the original Horizon shortfall scheme have all received offers of compensation. Around 85% have accepted those offers, worth over £107 million. In total, over £91 million has been paid out through the scheme, with the Post Office now dealing with late applications and with cases where initial offers were not accepted.

However, this is not just about compensation; it is about restoration—the restoring of people's good names and the restoring of the public's trust, both in our postal service and in our justice system. It is therefore only right that we get to the bottom of what went wrong and of who knew what and when. Although the scale of the problem is immense, the Government are unwavering in their resolve to tackle it, to compensate those affected and to leave no stone unturned in the pursuit of justice. We owe that to the victims, to their families, to the memory of postmasters who have died since this tragedy first came to light and to those who, tragically, took their own lives after being accused of awful crimes they never committed. We owe it to everyone who has been caught up in this tragic miscarriage of justice.

I thank all Members across the House who are supporting us in this effort. Together we stand united, not just in memory of those who have suffered but in shared purpose to ensure that such a tragedy can never, and will never, happen again. I commend this Statement to the House".

3.51 pm

Lord McNicol of West Kilbride (Lab): My Lords, in preparing for today, I had a look back over previous Statements, debates and Written and Oral Questions that we have debated in your Lordships' House. What shocked me the most was just how repetitive it all is: the same interventions, the same problems, the same people and the same lack of solutions. I have raised questions and spoken in debates on this issue many times since 2019, and I am just a newcomer. We have all known about the scandal for years, thanks to some great campaigning by individual sub-postmasters and by parliamentarians across the political divide and across both Houses. They include the noble Lord, Lord Arbuthnot, and Kevan Jones MP in the other place, to name just two.

The scandal is an absolute disgrace on so many levels: financially, judicially and on a human level. Most worryingly, it is a governmental oversight failure as well. We all know the details: thousands of sub-postmasters sacked or prosecuted in the space of 16 years and wrongfully labelled as thieves and fraudsters by the Post Office, Fujitsu and our judicial system. Their lives were made hell, and all because of an IT glitch in the system. What makes this so shameful are the lengths to which Post Office Ltd went to cover it up. The fact that it spent £32 million denying these claims and bullying those wrongfully accused into false guilty pleas is bad enough. But what makes this story even worse is that we got the national moral outrage not when the cases went to the highest court in the land and were won, three years ago, but only when ITV produced a drama on the scandal. As my noble friend Lady Chakrabarti asked earlier, where has the moral outrage of the state been in the last two decades?

Many postmasters and postmistresses have so far received only a fraction of their costs and expenses. Can the Minister guarantee that compensation payments will immediately follow any exonerations under the terms of the scheme as they stand today, and can he indicate any sort of timescale for this? We have waited so long. I know that he, like his predecessors, appreciates that victims cannot continue to wait for years for payments. Sixty sub-postmasters have died since the scandal, four of them taking their own lives. The final compensation is critical, but so too is overturning the convictions. Justice must be served for those workers and their families, which is why Labour has called for all sub-postmasters to be exonerated in full. As my colleague Jonathan Reynolds MP said in the Commons,

"I extend our support for any actions that may be required to overturn these convictions as quickly as possible".—[*Official Report*, Commons, 8/1/24; col. 84.]

One of the lessons we have learned—the Minister touched on this—is the trauma and lack of trust that the whole process has caused for the victims. We want to ensure that no victim has to re-enter litigation and relive the traumas that they have experienced. We also welcome the announced review into private prosecutions, because the public want assurances that nothing like this can ever be allowed to happen again. One of the most alarming and shameful aspects of the whole scandal is the failure of our courts and our judicial system. In all the cases of the sub-postmasters being wrongfully found guilty, the courts believed the computer. There were originally 640 legal cases, although I think there are more now. How did that not ring alarm bells at the time? I hope the inquiry will also look into the legal processes that exacerbated the problem.

[Lord McNicol of West Kilbride]

In conclusion, I will press the Government on a few of the key matters. First, can the Minister confirm the timescale on the overturning of those wrongly convicted so that they can carry on with their lives? Secondly, this is not just a Post Office issue; Fujitsu as the provider has its share of culpability. What plans do the Government have to hold Fujitsu to account for its actions? Thirdly, how much money has the Post Office spent on prosecuting the sub-postmasters and then on defending itself against them over the last 20 years? Fourthly, have the Government made any assessment of the impact of the 2014 law changes on the ability of people wrongly convicted and imprisoned to claim compensation in a scandal? Fifthly, are there any plans to seek redress from the chief executive, the Post Office board and the senior management at the time who oversaw this scandal? Finally, why did it take a TV drama for the Government to act so decisively when parliamentarians in this place and others have been raising this scandal for more than a decade?

Lord Fox (LD): My Lords, as we have heard, it has taken a television drama to set light to what has been smouldering for a very long time. I suppose that all those associated with that drama should be congratulated, because they have managed to do what we failed to do: to ignite public indignation to such an extent that the Government had to move. In that respect, they deserve a great deal of congratulations. Of course, the script has been played out here and, thanks to the noble Lord, Lord Arbuthnot, at the start, and others, we are very familiar with it.

I have a few questions about where we are now. First, we welcome the news that Scotland Yard is looking into potential offences in relation to the Post Office overall, but can the Minister confirm that this will be able to progress in a speedy way in a twin-track approach alongside the public inquiry? It is very important that both these things can happen as fast as possible. We do not want one to impede the other, so can the Minister assure us that this twin-track approach will be pursued?

Turning to compensation, in the case of individual assessment, can the Minister please enlighten your Lordships' House on the role of retired judge Gary Hickinbottom's panel? This was announced only on Monday and, according to the Minister then, this panel is apparently going to assess the pecuniary losses for those with overturned convictions if there is a disagreement. Is this now obsolete, or will it still be operating? If it is still operating, why does it deal with only pecuniary issues when the Secretary of State has on a number of occasions said that this harm goes way beyond simply those? How is this to be incorporated into the two announcements spread over three days?

In the Commons, the Father of the House, Peter Bottomley, said that

"the titanic error was a belief in technology"—[*Official Report*, Commons, 8/10/24; col 86.].

It was that belief, coupled with zero faith in the decency of the sub-postmasters, that set the problem going. In that, the role of Fujitsu was central, and it is clear that the failure of its technology was at the heart of the issue. It remains to be seen how it perpetuated the myth of its technology, and that is what the public inquiry will address; but however you look at it, it continues to benefit from UK consumers' and taxpayers' money. It is still operating Horizon for POL, and benefiting as a result to the tune of tens of millions of pounds annually. That is not all: further government contracts have been issued. Is this right? Is it appropriate that this should continue?

Speaking yesterday, the Work and Pensions Secretary, Mel Stride, is quoted as having stressed that not only the taxpayer will be on the hook for this compensation. The spirit of that was reiterated by the Parliamentary Under-Secretary, Kevin Hollinrake, today. So, does this now signal that the Government are going after Fujitsu for money to support the compensation of these people?

It is a terrible saga, but it has demonstrated characteristics of other sagas we have seen. For example, the process of compensating the victims of the Windrush scandal has been achingly slow. The contaminated blood scandal has dragged on and on. Another terrible example is the way the Hillsborough tragedy victims have been denied justice. There is a pattern of denial, cover-up, and then redress being delivered at a very slow pace. Does the Minister agree that there appear to be institutional problems that we ought to try to address?

The Parliamentary Under-Secretary of State, Department for Business and Trade and Scotland Office (Lord Offord of Garvel) (Con): I thank the noble Lords, Lord Nicol and Lord Fox, for their contributions and detailed questions. It is worth reminding ourselves of the timeline of this sorry story. The Horizon accounting system was introduced in 1999, and between 1999 and 2013—a 14-year period—the 700 postmaster direct prosecutions in England were brought. In 2017, the group litigation order was got together and in 2019 the High Court judge discovered that the case was flawed and the judgment was made, whereupon 75% of the settlement money had to go to fund the litigation.

In 2020, the then Prime Minister committed to holding an inquiry into the Horizon scandal, so that starts the clock on government action. The Criminal Cases Review Commission then began its work and referred the initial 39 cases to the Court of Appeal. In 2020, the Horizon shortfall scheme was set up, designed on the understanding that compensation was going to have to be made. So at that moment, there was an understanding that there was a major problem.

In 2021, the High Court quashed the 39 convictions in a landmark judgment, and the Government announced funding for Post Office Ltd to pay the compensation. On 19 September, my predecessor, my noble friend Lord Minto, made the announcement in this House on the £600,000 upfront offer, so that pre-dates the TV series.

My DBT colleague in the other place, Minister Hollinrake, was vocal on this issue when he was on the Back Benches, and now, as a Minister, he has committed entirely to getting justice. He has come up with the £600,000 scheme, which is saying to people, "You don't need to go through any more trauma or see any more lawyers. Here is an interim payment of £163,000, and you can get up to £600,000 without seeing another lawyer, get your conviction overturned and be done and dusted". Yes, it is clear that the TV series brought

this to light and to public attention. However, it has been acknowledged in government that this is a big problem that needs to be sorted. I commend my colleague, Minister Hollinrake, for what he has done so far.

In the process going forward, time is of the essence. The timeline will involve a triple track. First, there is overturning the convictions, which will require primary legislation. This breaks a lot of precedents in terms of legal procedure; ordinarily, convictions are given by a court and should then be overturned by a court on an individual basis. It is possible that in respect of some individuals, an otherwise safe conviction in another matter will be overturned. We do not have the time to dwell on that. We talked about the Blackstone principle: it is better that we get justice for the many as fast as we can. That process will be immediate.

The second part of that process is accountability. We need to know what happened; we need the facts and to get to the bottom of this. We cannot repeat the mistake the Post Office made, which was to go half-cocked, without evidence, against people who cannot then defend themselves. We need to go through a process to understand who is accountable; people are innocent until proven guilty. We will take this on with the Williams inquiry, which is determined to report through the rest of this year and will get to the bottom of the accountability issue. The third track, as the noble Lord, Lord Fox, mentioned, is the police making their own inquiries. It is fair to say that, post the TV series, this is uppermost in all minds, and the timeline will be expedited considerably.

Going back to accountability and culpability, there are a number of players in this: the Post Office management, Fujitsu and, obviously, the role of various Ministers. That is why the Williams inquiry must do its work and get to the absolute bottom of this, in order to understand what we are dealing with. In the case of Fujitsu, are we dealing with rogue employees, corporate malfeasance, or was the Post Office instructing its client to do what it wanted it to do? We do not know the answers to these questions, so we must get to the bottom of that. That process will run through and when we have that, we can then discuss accountability. As the noble Lord has said, Fujitsu has been involved in many government contracts across many departments for the last 20 years and continues to do its business according to the contracts it has with the Government. I am sure that there is heightened awareness now around some of its performance. But this process will continue until such time as we find evidence to suggest that it has been outside of its contract, and if so, the consequences will follow.

We have to separate out the payment of compensation, speeding this process up and making it as painless as possible. Today, my colleague in the other place, Minister Hollinrake, announced that the 2,100 postmasters who were not convicted and who were not part of the GLO 555 have already had a compensation scheme, which is running though; 80% of those claims have now been met, and we see that process continuing. Retired judge Sir Gary Hickinbottom is there to deal with those sub-postmasters who feel despondent at being back in dialogue with this thing called Post Office Limited: "Why is the compensation being done by Post Office Limited?" Therefore, to give assurances around that relationship, with Post Office Limited paying compensation through the HSS, the presence of Sir Gary Hickinbottom ensures some level of independence and an appeal process, which will come through.

So I believe that everything is being done now to expedite the process on the compensation side. In terms of accountability—as was asked by the noble Lord, Lord McNicol, and the noble Lord, Lord Fox—we will let the Williams inquiry move through. As far as the timeline is concerned, this has to happen with all speed and, again, we are very grateful that we have my noble friend Lord Arbuthnot and Kevan Jones MP, who are so vital to this and have the trust of the sub-postmasters. That advisory committee will be clear in making sure that everything is done as fast as possible.

4.10 pm

Baroness Manzoor (Con): My Lords, I will ask the Minister a follow-up question to the question from the noble Lord, Lord Fox. What happened to the sub-postmasters and how long it has taken to deal with these issues is, of course, absolutely outrageous, but there are other scandals that we know about as well, such as infected blood, Hillsborough, Windrush and Grenfell. These too involve people who have been badly affected by what has happened to them and they have caused significant harm and distress to those individuals and also to their families. Can the Minister say what the Government are doing to ensure that, once we know a scandal has happened, we deal with it quickly and in a very timely fashion so that it does not take almost a generation?

Lord Offord of Garvel (Con): I thank my noble friend for that question. We must recognise the common interest of people impacted by the Horizon scandal and those affected by, for example, the infected blood scandal and Hillsborough and other tragedies. It is important to recognise that each of those circumstances was different and unique and unprecedented; each case is a personal tragedy.

In the infected blood case, the Government have already made interim support payments of £100,000 to individuals and bereaved partners, and the cost of that will be £400 million in terms of interim compensation. That compares with a likely figure of £1 billion for the Horizon postal scandal. I cannot speak with any great authority on the wider picture, but it must surely be the case that, as the Government look at this case, there will need to be a wider conversation and look at the broader picture on all these issues.

Lord Browne of Ladyton (Lab): My Lords, I accept that with this particular scandal the priorities should be the exoneration and compensation of those who have been so badly damaged by it, the exposure of the reality of the corruption that led to the scandal in the first place and accountability for those who have been acting so corruptly. However, at the heart of this, the biggest miscarriage of justice in terms of scale that this country has ever seen, there is another issue that needs immediate attention: a faulty legal presumption that requires immediate re-evaluation. In England and Wales, there is, as a matter of law, a presumption that computers are working properly, unless there is evidence

[Lord Browne of Ladyton]
to the contrary, and therefore that what they produce is reliable. If it were not for the group litigation, the fundamental unreliability of the software in the POL Horizon system would never have been revealed. That is because challenging that computers are not working properly is far outwith the resources of most people in this country and, unless they work together in this way, they have no chance of doing this in our courts. It is time now to re-evaluate this and replace this presumption with a requirement that those who rely on computer evidence should justify to the court that it is reliable and not the other way around. We could do that relatively quickly and easily, and the onus would then lie on the people who are relying on that evidence to show that it is reliable and that the computer is working properly. In the Horizon case, without perjury, nobody would have been able to do that.

Lord Offord of Garvel (Con): The noble Lord highlights perhaps one of the most cynical aspects of this terrible case: each of the sub-postmasters was told that they were alone and that this was happening only to them. We have all seen the programme and we all know the people in our communities who do these vital jobs. They work alone in small shops in small towns and villages and do not necessarily have the support that they need. That was perhaps one of the most invidious parts of the drama series and, at the end of the day, perhaps the help given by one or two constituency MPs was to believe these folks and get them together, which resulted in the group of 555 coming together. It is very relevant to say, "Why does the little guy have to keep convincing the big guy? What is going on?" Again, I know that the Lord Chancellor and the Ministry of Justice are now very focused on this issue and that they will come out of this with some serious questions that need to be answered. That will be part of the follow-up to the Williams inquiry. Let us find out exactly what happened. Out of this, I think that some serious questions will be asked about future processes and that this House will come back to this issue more in the coming years.

Lord Maude of Horsham (Con): My Lords, nothing that is done at this stage can even get close to putting right these terrible wrongs, which will be a dark stain on our polity for a long time. The whole House will welcome what is now being done, which is the best that can be done at this stage. I will focus on the issue of the company, Fujitsu. In 2010, we found that it was deeply entrenched across the whole of central government. Its performance in many of these contracts was woeful, and the procurement system regulations then in place made it impossible—although we tried—to prevent it getting further contracts. Does my noble friend agree that, if that company has any sense of honour, let alone a concern for its reputation, it should come forward very quickly, without waiting for the results of these inquiries, which we know will take some time, and make a big ex gratia payment towards the compensation that is rightly being paid?

Lord Offord of Garvel (Con): I thank my noble friend for that. He speaks with great experience of the inner workings of Whitehall, obviously, and has seen the way that these anomalies arise. The public would be entitled to say, "Why has this company been so embedded for so long and made so much money out of the taxpayer?" So, with emotions running high at the moment, we understand the calls for compensation. It has been made very clear in the other House that the cost of this should not fall solely on the taxpayer. If there are other sources of compensation, there must be access. I must say that, if I were the chief executive of a company in this situation, I would be thinking about that matter very carefully.

Baroness Chakrabarti (Lab): My Lords, I am grateful for the Minister's approach so far to this very difficult subject. He has spoken very clearly of exoneration and compensation, which it would seem could be achieved by primary legislation fairly swiftly. He is right to say that accountability may take longer, because that is about due process, investigations and, we hope, prosecutions and quite possibly restitution, including in relation to Fujitsu. In a previous answer, I believe he said that government involvement had started around 2021. What about the fact that Governments were represented on the Post Office board? What about the question of what these arm's-length entities, including privatised entities such as Post Office Ltd, do to the concept of ministerial responsibility? What will we do about that precious constitutional principle going forward?

Lord Offord of Garvel (Con): I thank the noble Baroness for that. This is another area that will demand further consideration. Within the system of government now, we have a lot of quangos, third-party agencies and off-balance-sheet activities. The question that must always arise is what the relationship is between those and the shareholders, who are effectively the taxpayers. What is the role of Ministers to sit in between them, and what is the accountability of Ministers to make those decisions? A large number of noble Lords in this House have been Ministers and understand how that works and that we have conservations with officials. But we also need to have a sniff test, do we not, about what sniffs right and what sniffs wrong. There is a requirement to look at this again, so as to not be in a position where we just always take what officials tell us, and a need to actually be a bit more canny about the questions we ask.

Lord Harries of Pentregarth (CB): My Lords, the enormity of this seems so appalling that, even when the sentences have been overturned, the compensation paid, and the committee inquiry taken place and blame apportioned, we will need some great public, symbolic act to recognise that something terrible has gone wrong and that hundreds of people who were wrongly accused have now been clearly and publicly vindicated. Will the Minister think about the possibility of doing something, perhaps in Westminster Hall, on behalf of the state and in a public and symbolic way, to express the sorrow of the state and the clear, public vindication of these hundreds of people?

Lord Offord of Garvel (Con): I thank the noble and right reverend Lord for that intervention; it is a very insightful comment. Ironically, when the management

were asked in court what they felt one of their core duties was, they said it was to protect the reputation of the Post Office. But what of the reputation of the Post Office today? I would argue that, funnily enough, the reputation of the Post Office has in some ways gone up, in that people now understand the value of sub-postmasters. Are they not what the Post Office actually is? Those who have suffered reputational damage have been the management of the Post Office, and rightly so, but has not this sorry saga perhaps brought to our attention just how valued the sub-postmasters must be in our community? What the noble and right reverend Lord has called for is a demonstration of that. It is a very good idea, and one that I will take back to the department.

Lord Sterling of Plaistow (Con): My Lords—

Lord Palmer of Childs Hill (LD): My Lords—

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

Lord Palmer of Childs Hill (LD): My Lords, following on from what the Minister said, could he explain the role of the audit committees, at any level, and the National Audit Office? Where were they in this scandal? There are audit committees and they had a role to play. The elementary precaution used by all firms of accountants is that, when a new system is put in place, you run a parallel system for a few months to make sure there are no errors. Why was that not done?

Lord Offord of Garvel (Con): The noble Lord is absolutely right to raise these points. This is what the Williams inquiry will be looking at in fine detail. My understanding of the situation is that there was no shortage of committees all over this terrible saga, but there was a shortage of good judgment, inquiring minds, sympathy and common sense. These questions will all be answered. They need to be run through the Williams committee, and we need to know the answers to all of these. I know that he will do his work in great detail.

Lord Sterling of Plaistow (Con): My Lords, can I comment as follows? There was a most sad interview this morning on the "Today" programme; it was really upsetting, to say the least. On following up with Fujitsu, could I suggest that the Prime Minister ring the Prime Minister of Japan, who was elected to bring back the standing of Japan in world terms? In practice, trust and respect is a key factor to them. It is not impossible that, in the case of wanting that recognition, trust and respect, the Prime Minister of Japan would quietly ring the chairman of Fujitsu and that, in a charitable form, they could arrange something which would suit us. They would consider it generous while we would not. Nevertheless, it is something to try; it would just be a phone call.

Lord Offord of Garvel (Con): I thank my noble friend for that idea, which is a good one. With his permission, I will take it back to the department.

Baroness Ritchie of Downpatrick (Lab): My Lords, in the other place today, Minister Kevin Hollinrake said that engagement with the Scottish and Northern Ireland Administrations would take place. How will that happen in Northern Ireland whenever there are no political institutions up and running? Who will the Government actually engage with, since post offices are very much the financial hub, and have been over the last 20 years, particularly in rural communities?

Lord Offord of Garvel (Con): I thank the noble Baroness for that point, which is well made. We have to work with the situation we find ourselves in, and this has to be moved along at great speed. I am happy to write, as I do not know the exact answer to that question in detail, but I do know that conversations and dialogue happen between the MoJ and those in both Scotland and Northern Ireland. I am happy to find out more about the precise mechanics of that.

Lord Forsyth of Drumlean (Con): My Lords, further to the question which was asked earlier this afternoon by a right reverend Prelate, the BBC is reporting that Paula Vennells was shortlisted to be the Bishop of London. The media are very much focused on her, but there was a board and there were successive chief executives, all of which seems to be being ignored. It is really important that accountability is clear. We cannot wait for the inquiry. Does my noble friend not think that something is desperately wrong with our procedures, and with the judicial system, when it takes 20 years for this to be established, and where the net beneficiaries have been the lawyers? They have earned millions and millions of pounds, while ordinary people have been bankrupted and unable to defend themselves. Does he accept that this requires, as has been pointed out, a root-and-branch assessment of how these systems operate and the arrangements with agencies, where Ministers—far be it for me to defend the leader of the Liberal Party—are held to account for bodies with which there are arm's-length relationships and where they are unable to execute responsibility, although they are held accountable for it?

Lord Offord of Garvel (Con): I thank my noble friend for that contribution. On the lawyers, that is certainly a point well made—it is quite extraordinary how much has been made out of this so far by the lawyers. That is why my colleague, Minister Hollinrake, has been so assiduous in coming up with a plan which allows for compensation to be paid immediately—whether that is the £75,000 minimum to the GLO group or the £600,000 for those who are having their convictions overturned—without the need to have any more legal input. That is a very important part of the process. If any claimant feels that they want to make a bigger claim than that, they will need to interact with lawyers again to do so; again, we have given a tariff and a certain cap, which will at least minimise that. On the wider point from my noble friend Lord Forsyth, I completely agree that this highlights serious flaws in the corporate governance of the Post Office, and in the role of the board and its interaction with government officials of whichever colour and creed. We need to

[Lord Offord of Garvel]
have a serious look at this. Once we have gone through the Williams inquiry, I believe that this will be worthy of much further consideration in this House.

Baroness Fox of Buckley (Non-Afl): My Lords—

Lord Sikka (Lab): My Lords—

Baroness Williams of Trafford (Con): Can we let in the noble Baroness, Lady Fox, from the non-affiliated Benches, please?

Baroness Fox of Buckley (Non-Afl): My Lords, one of the reasons this has resonated so widely is not just because it was a brilliant drama but because so many ordinary people recognise what it feels like to be fighting the establishment and getting nowhere. We have all spent hours shouting at the phone on those helplines on the computer—that is in relation not just to HMRC but to the NHS and everything you deal with—but people were also treated as though they were criminals, not believed, and gaslit by these experts who know what they are talking about.

Anyway, there is an issue here. The whole establishment, not just the Post Office but the judiciary, seems to have a lot to answer for. I therefore ask, if the judges believed the computer, how we feel about the fact that the police national computer is maintained by Fujitsu. Britain's criminal records database is run by Fujitsu. It has all the details of convictions, cautions, fingerprints, DNA data and—something I have been banging on about for a while—non-crime hate, when you have not committed a crime but you are on a database run by the police. Fujitsu has it. I do not feel safe in these circumstances, and I identify with the little man against the establishment.

Lord Offord of Garvel (Con): I completely concur with the noble Baroness's sentiments. Emotions run high at this moment, and quite rightly because we have seen a lot of very decent innocent people treated very badly over such a long period; it is quite extraordinary. We are now at a point where we are facing this issue. We are going to move fast to get compensation into place. Let us get the inquiry under way, and out of that will flow a lot of further debate.

Storm Henk

Statement

The following Statement was made in the House of Commons on Monday 8 January.

"The heavy rainfall following Storm Henk has affected communities across the UK, with the worst impacts being seen in widespread areas across the Midlands, including in Leicestershire, Lincolnshire, Nottinghamshire and Northamptonshire; in parts of the West Country, including Gloucestershire, Worcestershire and Warwickshire; and in other areas. Parts of the country had a month's-worth of rain in the first four days of January, and that rain fell on already saturated ground. Several of our biggest river systems—the Trent, Thames, Severn and Avon—saw record levels, or close to record levels, as they drained huge volumes of rain from across their catchments.

In the past few days, I have seen at first hand the devastating impacts that flooding can have on local communities. This morning, I returned from Alney Island in Gloucester, which saw the third-highest water levels in the last 100 years. Last week, I visited Nottinghamshire, where I met residents in Colwick with my honourable friend the Member for Gedling, Tom Randall, and spoke to residents in Radcliffe-on-Trent with my honourable friend the Member for Rushcliffe, Ruth Edwards, where unfortunately residents had to be evacuated to keep them safe. My thoughts are with all those who have been impacted.

Over the weekend, the Secretary of State visited flooded communities in Newark-on-Trent and Leicestershire. Together, we met farmers in Lincolnshire to see at first hand the impacts of flooding in their area. We discussed what more could be done to support agricultural businesses to prevent flooding and minimise the impacts of flooding in the future. I met Henry Ward at Short Ferry, whose farm has been completely submerged under water, and we discussed just how devastating the financial impact can be.

I also visited a primary school in Heighington, just south of Lincoln, that had been completely flooded. The head teacher, the Environment Agency, Councillor Carrington, my honourable friend the Member for Sleaford and North Hykeham, Dr Johnson, and I discussed next steps to get the school reopened and the children back into their classrooms.

The Prime Minister was in Oxford yesterday, talking to those affected and thanking the first responders for the fantastic job they have done over the past week to keep communities safe. I echo those thanks to the Environment Agency, emergency responders, local authorities, internal drainage boards and all volunteers for their tireless efforts to keep our communities safe right across the country.

This was a severe weather incident. Storm Henk caused high winds and large amounts of rain across England last Wednesday—Met Office amber and yellow warnings were in place across the country—and this was followed by heavy rainfall on already saturated ground, after a wetter than average autumn. There is now an improving picture across the country but, as we enter a dry spell, flood warnings remain in place. We will continue to monitor the situation very closely.

Since 2010, the Government have invested over £6 billion to better protect over 600,000 properties from flooding and coastal erosion. Over recent days, more than 75,000 properties have been protected as a result of the Government's investment in flood defences. To date, unfortunately, 2,000 properties across the country are recorded as having been flooded.

In the east Midlands, a major incident was declared in Colwick when the Trent peaked at over 5 metres. In Leicestershire, 350 properties were flooded, including in Loughborough. In Lincolnshire, river levels exceeded 2000's record on the Trent at Torksey Lock. In Staffordshire, we saw the highest recorded water levels in Burton-on-Trent, where the flood defences completed in June 2022 protected hundreds of properties.

The Government began planning for the elevated flood risk as soon as the Met Office forecast indicated an unsettled period of weather over Christmas and the new year. The Environment Agency started planning and preparing in the week before Christmas. River channels and trash screens were cleared to prepare watercourses for flooding, and there was continued work to repair assets following the damage caused by Storm Babet. The Environment Agency's incident teams were double-rostered, with the national duty manager leading regular planning and preparedness calls with all areas. The Environment Agency wrote to all Members of Parliament in England to provide local contacts and information for use in the event of a flood.

Over the last week, the Environment Agency issued 300 flood warnings to communities. It deployed more than 1,000 staff to affected communities, set up 125 pumps and put in place over 12 kilometres of temporary and semi-permanent defences to protect communities. It worked closely with local resilience forums to manage the impacts on the ground. My department has been holding daily cross-government meetings to ensure that we are doing everything we can to minimise the impacts on our communities.

Over the weekend, the Government took swift action by activating the flood recovery framework earlier than usual to reassure people that we will step in. This support will provide immediate relief to householders, businesses and farmers affected by flooding.

Officials in the Department for Levelling Up, Housing and Communities wrote to the chief executives of the eight county councils that will be eligible, based on the data on the impacts so far: Leicestershire, Gloucestershire, West Northamptonshire, Warwickshire, Wiltshire, Nottinghamshire, Lincolnshire and Worcestershire. Others may well qualify, and we are monitoring the situation closely. Flooded households in eligible affected areas can apply for up to £500, giving them quick access to help with immediate costs. Affected households and businesses will also be eligible for 100% council tax and business rate relief for at least three months. Through the property flood resilience repair grant scheme, eligible flood-hit property owners can apply for up to £5,000 to help make their homes and businesses more resilient to future flooding.

My department has switched on the farming recovery fund so that farmers who have suffered uninsurable damage to their land can apply for grants of up to £25,000, recognising the exceptional rainfall that has taken place. Small and medium-sized businesses, including farmers, can also apply for up to £2,500 of support from the business recovery grant to help them return to business as usual.

The Government's UK-wide Flood Re scheme will continue to provide reinsurance for those UK households at high flood risk. Last year, that cover supported 265,000 household policies, and more than 500,000 properties have benefited since the scheme's launch.

Outside the immediate response, the Government continue to take action to protect communities from flooding. Since 2010, we have invested more than £6 billion to better protect 600,000 properties from flooding and coastal erosion. We are on track to spend a record £5.2 billion on new flood defence schemes in the current six-year period. That is double the spend in the previous six years. It includes £100 million to support communities that have experienced repeated flooding, and last April the first 53 projects set to benefit were announced. We have made £25 million available for innovative projects that use the power of nature to improve flood protection, including actions by farmers and land managers. I will announce the successful projects shortly.

We are investing more in maintaining existing flood defences to help ensure that they are kept in good working order. The Government increased funding by £22 million a year at the last spending review, meaning that funding reached £201 million last year and £221 million this year.

The Government strengthened planning guidance on flood risk and coastal change in 2022. This asks local authorities to apply stricter criteria to new developments at risk of flooding before they are approved. In the year following that change, 99% of proposed developments complied with Environment Agency advice on flood risk.

In conclusion, working with local partners, we have acted swiftly to respond to the recent flooding and to provide funding support for the most affected. We will continue to lead the emergency response to flood incidents as they occur. At the same time, we will invest for the long term to create a nation better protected against our changing climate. I commend this Statement to the House".

4.32 pm

Baroness Hayman of Ullock (Lab): My Lords, the Statement refers to the dreadful floods caused by Storm Henk very recently. Unfortunately, extreme floods are becoming increasingly common. We now understand that up to one in six properties are at risk of flooding. The Environment Agency estimates that a 2 degree rise in temperature could lead to increases in winter rainfall of 6% and in peak river flows of up to 27% by the 2050s. Does the noble Lord, Lord Benyon, support his Government's policies that are rolling back our climate pledges and risking even worse floods? How are the Government going to protect communities from this increased risk?

The Statement mentions the money invested to date to protect properties, but what steps have been taken following the Environment Agency revealing that its flood defence programme will protect 200,000 fewer properties than planned by 2027? The number of flood defences in inadequate condition has increased every year since this Government were elected. Before Storms Babet, Ciarán and now Henk, there were more than 4,000, with more than 200,000 properties under threat as a result. Can the Minister inform us how many defences failed in these storms and what action is being taken to tackle this? Does he accept the National Infrastructure Commission's recommendation that the Government should set long-term plans with measurable targets to significantly reduce the number of properties at risk of flooding by 2055?

The Statement mentions the impact of flooding on farmers; I know the Minister has a particular interest in this. Persistent wet weather over Christmas and the

[Baroness Hayman of Ullock]
new year caused further damage to farms that had already been hit by Storms Babet and Ciarán. Crops were ruined and livestock had to be rescued. The Secretary of State has said that the Government are helping farmers by investing in flood defences, telling the BBC that

"we are committing … over £5bn of investment in 2,000 schemes … over a six-year period from 2021".

But NFU deputy president Tom Bradshaw has said that farmers currently facing

"the huge financial stress and misery"

that flooding brings need more direct and immediate help. What are the Government doing now to support and compensate the farmers who have been so badly affected?

Floods take a huge toll on farmers' mental health. In May last year, the EFRA Committee published a report into rural mental health. It found that extreme weather events and animal health crises left farmers, workers and vets dealing with mental health trauma with little support. The report called on the Government to provide dedicated emergency funding

"to enable local areas to quickly access more resources to respond to rural communities' mental health needs during and, crucially, after crisis events".

But the Government would not allocate specific funding, saying that current levels of support are sufficient. Does the Minister agree that there is sufficient support during such a crisis? Farmers are concerned that rivers and drainage channels are clogged up. What assessment has been made of the Environment Agency spending reduction on clearing essential drainage routes?

Following Storm Babet, the Association of Drainage Authorities wrote to the Secretary of State expressing its serious concerns about the condition of many lowland river embankments and warning that many had slumped and were seeping during high flows, with some completely breached. What action has been taken following this warning?

The Statement mentions planning guidance on flood risk being strengthened, yet last year the Government refused to support Lords Amendment 45 to the Levelling-up and Regeneration Bill, which Labour supported. This would have required the Secretary of State to have special regard to the mitigation of, and adaptation to, climate change in relation to planning. Does the Minister believe he made the right decision in voting against it?

The Statement explains that the Government began planning for an elevated flood risk as soon as the Met Office forecast indicated an unsettled period of weather over Christmas and the new year, and that the Environment Agency started preparing in the week before Christmas—but we must be more proactive in our approach. Labour will establish a flood resilience task force to ensure that vulnerable areas are identified and protected, building flood defences, natural flood management schemes and drainage systems. It will meet every winter ahead of floods, co-ordinating preparation and resilience between central government, local authorities, local communities and emergency services.

Serious storms and floods are only going to get worse. We need a consistent and serious response.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I declare my interest as a vice-president of the LGA.

Storm Henk and those that preceded it have caused havoc across the country. Nearly everyone in this House will know someone who has been flooded by the storms; I have neighbours who have suffered flooding. I have great sympathy for those who have had their home, business or land inundated by flood-water. It is a truly depressing experience to see your life's work washed away.

All the emergency services have been brilliant in responding to the rising water, evacuating those flooded out and trying to keep people safe, at the same time as initiating emergency measures to try to stem the flood-waters. We all owe them a great debt of gratitude.

However, sadly, this was not an isolated incident. Excessive rainfall over a sustained period of time has resulted in the ground becoming completely waterlogged, with new rain having nowhere to go but into the already overfull rivers. We have experienced the type of flooding that was originally assessed as a one-in-200-year occurrence. This type of flooding is now occurring on a regular basis, several times a year in some areas.

The impact on the farming community is dire, with the loss of crops and the impact on grazing stock, with farmland and buildings under water. Farmers have nowhere to keep their animals in safety. Although the Government and the Environment Agency responded fairly rapidly with relief and announcing packages of financial help for those affected, there was little preparation over previous years to ensure that flood resilience was sufficiently robust. In October, the Environment Agency found that 4,000 flood defences were rated "Poor" or "Very poor". At the same time, its budget had been underspent by £310 million. Of the £11.7 million allocated two years ago for flood defences in one area of Nottinghamshire, less than 1% of that money has actually been spent so far.

There is an element of not really taking climate change seriously here. We are getting one storm after another; these are not freak occurrences. The Government have invested £6 billion since 2010 to protect 600,000 properties; that is roughly £10,000 per property. Decent and well-maintained flood defences protect properties and businesses, but farmland is a different matter. Depending on the area of the country, flooding farmland can be part of the solution to preventing towns and villages from being flooded—a sad but necessary fact. The Environment Agency had been working hard after Storm Babet to clear river channels to ensure that water could flow freely but, surely, these issues are part of routine maintenance which should occur regularly, not just when a storm is threatened.

The Government have activated the flood recovery framework to provide relief to all those affected by flooding. This is good news. Can the Minister say when this will come in? Eligible flooded households can apply for £500 to help with immediate costs, together with 100% relief on council tax and business rates for three months. But it could be six months before flooded householders will be back in their homes; some people may be out for a year. Would the Government agree to looking at extending this tax relief longer in

some cases? I welcome the scheme for flood-hit properties to be able to apply for £5,000 to help with flood resilience measures; this will help. What it will not do is stop it raining.

I also welcome the recovery fund for farmers who have uninsurable damage, with grants of up to £25,000 and up to £2,500 to help towards business-as-usual recovery. This should help many who have been severely affected. However, I am concerned about the Flood Re scheme, with over half a million properties benefiting so far from the scheme. As flooding incidents occur more frequently, I wonder whether the scheme will cope with the additional numbers and would be grateful for the Minister's reassurance on this matter.

The Statement indicates that £5.2 billion is to be spent on new flood defence schemes in the current six-year period. The Minister in the other place indicated that there would be an announcement shortly on the application of successful innovative projects. Can the Minister give an indication of when "shortly" is likely to be? Will it be before the end of the month?

As for building on natural flood plains, I agree completely that local authorities should apply strict criteria covering new developments and ensure that they receive robust advice from the Environment Agency. It is also essential that future Secretaries of State do not overrule local authorities' decisions to refuse developments on the grounds of potential future flooding.

The Statement gives a great deal of information on the actions taken in the wake of Storm Henk, but it makes little reference to climate change. The weather we are experiencing, which is causing such havoc, is the direct result of rising temperatures due to climate change. Last year was the hottest on record since records began. This is not going to change overnight unless the Government, businesses and the population take climate change seriously. Extensive drilling for oil in the North Sea, along with slowing down measures which would move the country more quickly towards reaching our carbon targets, are deliberately increasing the risk of more storms and floods. I hate to use the phrase "rowing back", but that is exactly what the Prime Minister is doing when it comes to the implementation of the 25-year environment plan.

All government departments have a part to play in ensuring that the country tackles climate change. It is ludicrous to allow one department to deliberately throw caution to the wind and then expect another department to pick up the cost and mop up the mess caused. It really is time for co-ordination between all government departments to tackle this problem and help towards preventing yet another disaster for the farmer, householder and small business owner who will suffer life-changing events due to the lack of sufficient planning. If I were rating the Government's actions on this issue, as other institutions are rated, I would give a "Good" for the last-minute emergency response, but for the long-term co-ordinated planning I fear I would give only a "Very poor" rating. It is time for climate change to be taken seriously.

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): I start by referring noble Lords to my entry in the register. I thank the two noble Baronesses for their questions: I will try to get through as many of them as possible and give other noble Lords a chance to ask questions. I know I speak for the whole House when I say we are very mindful of the impact that these floods have had on a great many households, individuals and businesses. Our thoughts are with them as they try to cope with the aftermath.

Several of our biggest river systems—the Trent, the Thames, the Severn and the Avon—saw record or close to record levels as they drained huge volumes of rain from across their river catchment areas. So far, 2,000 properties were flooded during Storm Henk and more than 80,000 properties were protected as a result of the Government's investment in flood defences: we have to remember that there are a lot of people who did not flood because of the investment that has taken place. Over 1,000 Environment Agency staff have been working tirelessly in incident rooms to protect communities across the country—I thank the noble Baroness for raising the good work they have done. There is now an improving picture across the country as we enter a colder, drier spell and we see flood warnings continue to reduce over the coming days.

Ahead of the winter, early forecasting by the Met Office and the Flood Forecasting Centre enabled preparatory action to be taken at national and local levels, and I can assure noble Lords that that did take place, has taken place and will continue to take place. We exercise for these incidents. The largest civil contingency exercise ever undertaken, Exercise Watermark, took place a decade ago and since then there have been a number of others testing all the new systems we put in place following the Pitt review following the 2007 floods where we saw nearly 50,000 properties flooded. We have learned from that. Those who say that the way forward is some new, centralised system are ignoring the very important findings of that review, which said that we have to put more trust in local resilience fora, working with the emergency services, local authorities and the Environment Agency at a local level. It is really important that we continue to do that.

The Environment Agency wrote to all Members of Parliament in England to provide information for use in the event of flooding and launched its annual flood action campaign on 7 November, encouraging people to be prepared. Throughout the winter, Defra monitored the flood risk and chaired daily government meetings during Storm Henk to ensure that appropriate actions were being taken to minimise impacts to communities.

For all those who have, sadly, been affected, the Defra and Department for Levelling Up, Housing and Communities Secretaries of State activated the flood recovery framework, which the noble Baroness mentioned, on 6 January. This will allow eligible communities impacted by the flooding to apply for financial support. This will provide financial support to help with immediate clean-up costs and up to £5,000 to make homes and businesses more resilient for future flooding. Our flood recovery fund will support those farmers who have suffered uninsurable damage to their land; they will be able to apply for grants of up to £25,000—I will come on to talk about support for farmers in a second.

[Lord Benyon]
Small and medium-sized business will also be able to apply for up to £2,500 from the business recovery fund to support their return to business as usual.

On the points raised by both noble Baronesses that there is somehow a rowing back, I would just state that when the noble Baroness's party and mine came into government in 2010, 40% of our energy needs came from coal; that is now 1% and the 1% will be eliminated in years to come. No Government in the G7 or the European Union have taken more action on climate change. Our predictions for decarbonising our economy in the roll-up to the net zero date of 2050 outperform so many of our near neighbours and other developed economies.

The noble Baroness is absolutely right that the Environment Agency has said that it will be able to protect fewer homes. Construction inflation has had an impact on public procurement right across the piece —there is no doubt about it—but we have put more money into the programme and we will continue to protect homes.

The noble Baroness asked a very specific question about asset condition. There have been three Environment Agency asset breaches in January 2024. All were raised earth embankments in rural parts of Lincolnshire. There was minimal risk to properties but some impact on farmland. The Environment Agency is working with local landowners to understand the impact, assess the damage and plan for repairs. There were eight breaches during Storm Babet across the East Midlands. They have been inspected and repairs are under way.

On farmland, under the current schemes some 45% of the projects that have been put in place were in rural areas. So that protects farmland: we have protected over 700,000 acres. We are taking the impact of floods on our food security, the rural economy and the businesses concerned very seriously and are busy doing what we can to protect land and ensure that farmers can be supported in recovering from this. It is certainly going to have an impact on our food security, because large areas of counties such as Lincolnshire are very important for the production of crops that we all need.

On asset condition, I also say to the noble Baroness that our target is for 98% of all assets to be in a good condition: at the moment, it is about 93.5%. In this comprehensive spending review, we will get to somewhere between 94% and 95%. We have increased the maintenance budget to £221 million, an increase of £20 million.

I am conscious that time is too short to answer other questions and will certainly write on any other issues that have been raised.

4.52 pm

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for coming to answer questions on the Statement. He referred to the Pitt review of 2007, in which Sir Michael Pitt clearly stated that we should end the automatic right to connect. A lot of the floodwater will contain sewage: it is sewage on farmland and in people's houses. When is he going to introduce the consultation that will lead to the implementation of Schedule 3 to the 2010 Act that we were promised would be implemented this year? That is now absolutely urgent.

The noble Baroness on the Liberal Democrat Benches mentioned mapping and building inappropriately on flood plains. Can my noble friend give the House an assurance today that we are ensuring that local authorities are mapping to ensure that nothing is built on zone 3b land, where building should be an absolute no-no?

Lord Benyon (Con): On my noble friend's last point, 99% of planning permissions given in the last financial year were done in accordance with the Environment Agency's advice on whether those developments should go ahead. Over the last 50 years there have been some appallingly bad decisions and we have seen housing going where it should not. But I absolutely do not agree, if that is what my noble friend is saying, that we should say that there should be no building on flood plains, because that would mean having no new buildings in cities such as York, Leeds, London and Exeter. Of course, it is not what you build but how you build it and how resilient it is, so building in resilience is vital.

I do not know a precise date for the final stage of our implementation of the Pitt review—a point that my noble friend raised—but as soon as I can find out I will drop her a line.

Lord Watson of Wyre Forest (Lab): My Lords, I wish the Minister a happy new year. Given the increased frequency and impact of flooding, how confident is he that current assumptions on infrastructure adaptation and resilience are accurate? Will he take a personal interest in proposed flood defences for the people of Wyre Forest in Worcestershire? The good people of Bewdley were promised defences by the then Prime Minister Boris Johnson but, since then, have been flooded twice.

Lord Benyon (Con): The noble Lord raises an important point. I assure him that, through the various fora looking at weather patterns—not least the Environment Agency and Defra working closely together—and through our entire adaptation programme, we are changing our view of the risk, in accordance with the best available science, particularly meteorology. This is a requirement under our adaptation programme, but it is also something we have to do to make sure that our plans and the vast amounts of taxpayers' money that go into these schemes reflect this.

An important difference that has allowed us to take many more schemes forward has been the partnership funding approach. I do not know the specifics of the noble Lord's Wyre Forest scheme, but so many did not qualify under the value for money criteria in the past and were not built. Now that we have introduced our partnership funding scheme, with other sources of funding, planning conditions, local levies and a variety of other measures, we have seen hugely increased numbers of schemes and protections put in place. I hope the noble Lord's scheme will benefit from that and I will raise it personally with the floods Minister to ensure that it is in the programme.

Lord Bellingham (Con): My Lords, I pay tribute to the Minister for the effort he made to visit some of the residents affected and also to the Prime Minister, who went to the East Midlands and Oxfordshire. That does

them great credit. I understand from what the Minister said that 2,000 homes have been severely affected and badly damaged and that the vast majority will have full insurance. However, some have not been able to get cover, for a variety of reasons. Can anything be done to help residents facing that plight?

Lord Benyon (Con): I thank my noble friend for his point about visits. It is hard to get this one right. Ministers should not be on site and getting in the way while an emergency is happening—but they should also not be too late. I think my colleagues hit the sweet spot; they were able to hear from people affected, feed that through to officials and make sure that, where changes needed to take place, they did. Our job is now to make sure that we learn from this, as we do from every incident.

On my noble friend's second point, insurance available for people at flood risk has changed dramatically since we introduced Flood Re, which has meant that households that could not get insurance can now get it. That scheme must be constantly reviewed in the light of increased risk. Alongside that, £5,000 will be available to the households he mentioned and Flood Re can also fund resilience repairs under our build back better programme, which provides up to £10,000 towards the cost of like-for-like reinstatement after flood damage.

Automated Vehicles Bill [HL]

Committee (1st Day)

Scottish and Welsh legislative consent sought.

4.59 pm

Clause 1: Basic concepts

Amendment 1

Moved by ***Baroness Bowles of Berkhamsted***

1: Clause 1, page 1, line 14, at end insert—

"(3A) Vehicle testing must include substantial real testing on roads in the United Kingdom in addition to simulation testing."

Member's explanatory statement

This amendment would probe the intention with regard to real as well as simulation testing for UK road situations.

Baroness Bowles of Berkhamsted (LD): My Lords, I think that this is the first time I have had an Amendment 1, but, in any event, it gives me pleasure to start the Committee stage of the Bill. For the purposes of Committee, I declare my interest, in that a family member works in the vehicle connectivity sector, but I have no financial interests.

I have three amendments in this group: Amendment 1, and Amendments 20 and 27, which are the same text appearing in different clauses. Amendment 1 is very much a "does what it says on the tin" amendment, and states that vehicle testing must include substantial real testing on roads as well as simulation testing for UK road situations. As well as for initial licensing, this may also have relevance when vehicles licensed in other countries are brought here, especially when driving on different sides of the road and road signs are differently placed. I was prompted to put in this rather obvious statement because among the various things that I read in the documents it was pointed out that simulation testing for UK road situations would be allowed—and I can accept its usefulness as an element when converting from well-proven automation on roads in other countries, for example. However, what I cannot accept is simulation on its own being sufficient, and I wish to ensure that that is not the case.

A further reason for this amendment is that I am aware of how, in the US, there have been issues moving from one city location to another, because of different road widths, despite those having been simulated. Noble Lords who do transport all the time can probably identify what I have read, but I am sure that moving from Los Angeles to the UK would have even more issues, including, for example, more narrow, ancient, humpback or bendy traffic bridges without traffic lights where it is possible only to go one way at a time.

Despite having come up with amendments, I take the approach across this legislation that I understand it is an enabling framework and will not contain detail and, further, that with consultations and so on, a broadly sensible approach will result. Nevertheless, when we have been given documents that explain current thinking and direction, they also explain that they are not fixed promises—presumably because there is still quite a lot of work to do and we do not yet know what the priorities will be. From looking at other amendments generally, it seems that other noble Lords also think we need a few more fixed promises on things that we can be certain will not be left out, and therefore seek to have them in the Bill. For me, real UK road testing, rather than only simulations, is one of them. Obviously, within that, I would expect the road testing to apply to the roads on which the vehicles will be licensed for automated use: on motorways for motorway driving, in towns for town driving, and country lanes with single-lane passing places—if you are lucky—for country lane driving. Will the Minister confirm that this will be the approach, and can we have assurance by some text in the Bill?

My other two amendments, Amendments 20 and 27, relate to adding insurance and captive insurance into the provisions that establish the financial soundness of an authorised self-driving entity. The Law Commission referenced insurance as being able to provide part of the financial soundness, and I would like to see that included, rather than it being thought an additional measure on top of everything else.

I also raised the issue of captives with the Minister at Second Reading, and I thank him for his reply. In the Bill, I would like to see captives acknowledged alongside mainstream insurance as an acceptable form of insurance in the context of ASDE financial stability. Call me cynical or pedantic, or probably both, but I have had too much involvement in financial services and insurance not to think that it needs specific elaboration to ensure that captives, as well as independent insurance, can be considered as an element of the financial stability package.

As I said, I found insurance mentioned in the Law Commission documents as a possible part of the financial stability assurance, so can the Minister say

[Baroness Bowles of Berkhamsted]
whether there was any specific reason for not following suit and not mentioning it in the Bill? If there were no specific reasons, will the Minister be inclined to recognise my warning, as there might be quibbling if it is not specified? I beg to move.

Lord Lucas (Con): My Lords, I have a number of amendments in this group. I begin by asking my noble friend the Minister to encourage his team to get me a reply to what I call my Eastbourne email. I hope to use that as a means of understanding exactly where the Government find themselves with a practical example of an early-stage project. It would be helpful to have that by the second day in Committee. If I have already received it, I have missed it, so I would be grateful to him for pointing that out to me.

What binds the amendments in this group together is, first, that I do not expect these things to appear in the Bill because I think that they are covered. But they are covered in a way that does not make it clear what the Government will actually do, so I hope to draw out of them some information on what their intentions are.

Secondly, the amendments encourage the Government to take the standards-setting process seriously. I have some long experience observing the telecommunications industry. That has faded from my early days in the City, when we were one of the dominant world players, to now, when we are nothing. Part of that decay has been because we let standards-setting slip. If you want to be a place where a new technology is establishing itself and where companies want to come and be part of what you are doing, being part of the standards-setting is absolutely key. You have to assign good people to it—people who will be internationally respected for their views and insights in the industry—and give them the time to make a really serious contribution to the process. It is then independent of what is happening in the UK; they become part of the wavefront of what is happening, because the whole standards-setting process involves understanding the way things are going, what is happening and who is doing what. That information then flows back into the structures in the UK, and you get a local understanding of where the opportunities are and how the UK might take advantage of them.

If we had had that with telecommunications, we would not be in the dire state we are in now. We started with huge advantages, but they have all gone. Here we are with a new industry and a very clear need for international standards, so we absolutely must take that seriously and put our backs into being part of that process.

I will pick up on the individual amendments. The vehicle identification system—the way in which vehicles will say, "Hi, this is me"—will clearly be electronic. The whole business of using number plates has broken down, and there are 10 million or so unauthorised vehicles on British roads, for all sorts of reasons—vehicles that are just not known to the DVLA, are not taxed and have strings of outstanding parking tickets. Nobody knows whether a number plate they see is real or cloned. We do not need this happening in a new industry, where it will be really important to establish exactly which vehicle was doing what and at which time. It has to be an electronic system, it has to be something that is embedded in hardware, and it absolutely has to be consistent internationally. A vehicle coming over from the continent has to use the same system. This is an example of something that we have to develop and a direction we have to go in, and we absolutely have to be part of setting that standard.

Amendment 15 looks at the question of a passenger alarm. If you are in a vehicle that is travelling totally autonomously and something is wrong and you want to raise the alarm, how do you do it? What is the system? What should you expect to find in the vehicle? Are we going to restrict travelling to people who happen to have mobile phones on them at the time? I hope not. What is the system to be? Again, we ought to be part of establishing international standards, because we want to be able to admit vehicles to the UK. This should be about not just our own domestic expectations; there should be something running internationally.

We want vehicles to be able to communicate where they are and, if they are part of some kind of lending, taxi or other scheme, whether they are available. Again, this needs to be done in a standard way, so that different owners and manufacturers are all sending this information out in a consistent way, and on the back of it can be built the sort of systems consumers will need to know whether or not an autonomous vehicle is available to them. We should not reach a block or allow this to become balkanised, with different companies owning little bits; the information available to consumers ought to be clearly available to everybody.

Amendment 17 looks at the process of reporting on the condition of vehicles, as there are various bits of the Bill that make it clear that automated vehicles are expected to be well maintained. If a vehicle detects that it is not in the state that it ought to be in, that needs to be reported. It needs to be reported not just internally to the system but in a way that makes that information, and the fact that it was reported, available to investigating authorities. Again, we need a standard for that, and it needs to be an international one.

Amendment 18 looks at the question of waymarkers: how a vehicle knows exactly where it is in a relatively autonomous landscape. Are we going to be totally reliant on the navigation satellites working or are we going to have a more ground-based reference system? Some manufacturers clearly think that they will have within their vehicles an image of the routes that they are taking and that the vehicles will recognise where they are. That is a darned hard thing to do on some motorways—you just do not know which bit you are on, or indeed which country you are in: "Am I in Germany or am I still in the UK?" There is a system on motorways where, in the physical sense, you can look at the waymarkers—if you are not travelling too fast—and see where you are; if you break down, it allows you to read the sign and say what distance from it you are. Are we thinking of building that into automated vehicles?

Lastly, how will vehicles communicate with the emergency services, whether it is a fire engine coming up from behind asking the vehicle to pull over and let it through or a policeman standing at the edge of the

road, waving down the vehicle to stop? How will that be achieved? Again, we will want there to be an international standard; we do not want to find that vehicles coming in from abroad are unable to speak English. There has to be a common system in there somewhere. However, we absolutely want it to happen—we do not want our police to be powerless and for the automated vehicles to sail past them because they do not understand a hand wave. There has to be some communication system. There are lots of options, but we have to specify it.

5.15 pm

In all these areas, I am really asking that the Government get their thinking cap on as to what will need to be standard—universal across the fleet of automated vehicles—and how we can get involved in making sure that we are one of the leading group in setting these international standards.

Lord Berkeley (Lab): My Lords, in principle I support the amendments in this group. Noble Lords who have tabled them have given us some pretty concerning views on what might happen when things go wrong. It all boils down to the fact that there needs to be proper standards, as the noble Lord, Lord Lucas, said, and proper testing of those standards in real life, as the noble Baroness, Lady Bowles, said. My worry is that government has a habit of cutting corners on these things, saying, "It's going to be all right on the night".

Looking at the number of cars, 4x4s and other vehicles on the road in this country, and adding the trucks which go all over Europe, if not further, one wonders what kind of standard approach will be developed. It cannot be done just by the British Government or their agencies; it has to be done on a worldwide basis. If we do not have the right standards, we will have no means of checking, when these things are tested on the road, whether they comply with the standards. We had this discussion two or three weeks ago, before Christmas, on the pedicabs Bill and batteries catching fire. It is the same issue here; we probably have the same type of batteries, although maybe just a bit bigger. There has to be a standard, not just for the batteries and other components but for how the whole thing works together. I hope the Minister can tell us how this will work in real life.

As we know, many regulations will be introduced to tell us the detail we have not had today. How many such vehicles that come here, for whatever reason, are not registered in this country? Will they be able to take part in this electric vehicle trial or will they be told that they have to have a driver? If they have to have a driver, somebody will say that that is anti-competitive, and they will take us to a European court of some description because we are keeping foreign drivers—if we can call them foreign—at a disadvantage.

All these questions need answering, as well as the fundamental question of what the backup is when there is a failure—whether it is the satellites, the GPS or whatever else. What will happen when it fails? I am sure the Minister has many good answers to these questions, which I shall enjoy listening to. If he cannot answer them, perhaps we can have another long letter—his are very helpful—explaining what might happen with all these things. We are coming to Report, so this will be our last opportunity to question him. I very much look forward to his comments and I support these amendments in this group.

Baroness Brown of Cambridge (CB): My Lords, I will make a comment on Amendment 1, but perhaps also a more general comment on some of the amendments in this group and the next. I absolutely recognise that these automated driving systems need to be accepted by the public, and I see that many of the amendments look to do that by increasing the emphasis on ensuring safety. I am sure that we are all hugely sympathetic to that, so I am very sympathetic to the motivation for many of the amendments—but we need to be a bit careful. This is a new area of technology—it is still developing, of course—and there may be some unintended consequences of some of the changes that people are proposing.

In talking about this, I will briefly refer to some recent research by Konstantinos Mattas and his colleagues from the European Joint Research Centre in Ispra in Italy. For example, in Amendment 1 we are asked to include a phrase about

"substantial real testing on roads".

I think we really need to explore the value of this. Human drivers have a frequency of fatal crashes of one every 3.4 million hours, which would imply continuous driving for 380 years. To demonstrate that automated vehicles are safer than humans, you would need to run 100 automated vehicles for 24 hours a day for 225 years. Of course, if you change the software or the hardware, you might well need to repeat tests of this length. We need to recognise the challenge of demonstrating safety by long periods of testing on roads. The vehicles will have to be significantly unsafe for a realistic period of testing to start to show up the problems.

I cannot support Amendment 1, even though I hugely sympathise with it, because it is an apparently simple ask but I do not think it is likely to deliver the benefits intended. Unfortunately, it could be counterproductive, so I think the wording of the Bill as it stands is preferable to the proposal in Amendment 1.

Lord Holmes of Richmond (Con): My Lords, I will speak to Amendment 55C in my name in this group and apologise to the noble Baroness who moved the initial amendment. I was just sitting down when she started to speak, so I apologise for not being fully in my seat. I declare my technology interest as adviser to Boston Ltd.

What we are talking about here with autonomous vehicles is really mobility enabled through technology. My Amendment 55C seeks to take some of the themes that have already been spoken to, not least by my noble friend Lord Lucas: the sense of how technologies are able to interact and communicate with one another—what we call interoperability. Interoperability should be a golden thread running through many sections, because it is critical to the success of these technologies.

There are extraordinary economic, environmental, decongestion and safety benefits to potentially be gained through the mass deployment of automated autonomous vehicles, but they will be gained only if

[Lord Holmes of Richmond]
the systems are interoperable with one other, so all the vehicles can speak to one another and to the transport control centres and emergency services control centres. Only through having that key golden thread of interoperability will we enable the economic, environmental, social, safety and accessibility benefits. That is what my Amendment 55C is all about, and I look forward to my noble friend the Minister responding in due course.

Baroness Randerson (LD): My Lords, I am pleased to take part in this debate, first to support the amendments in the name of my noble friend Lady Bowles. I will also speak to Amendments 22 and 43 in my name.

My noble friend has raised some important issues about the adequacy of simulation as a way of establishing the safety of automated vehicles. Cycling UK, in its briefing to some of us, has raised similar issues in the context of the more vulnerable road users. Experience in the USA—very definite real-life experience, especially in San Francisco—has revealed that there is no substitute for real-life testing and that permission to operate on real roads can be given too easily.

We all know that how we drive is based on the skills we have learned and the experience we have developed as human beings. I have no doubt that a vehicle driving itself will in some ways be a lot less vulnerable than we are to feeling sleepy, losing concentration and so on. But it is a very complex thing to simulate and build something that, for example, notices that the gentleman ahead, who has a white stick, will therefore be blind or very poorly sighted. It is difficult for a simulation to tell the difference between the hesitation by the side of the road of an elderly person who is looking anxiously around and that of someone who is hesitating because they are reading their phone at the same time, or to notice that someone who has just stepped off the pavement is a teenager who was having a joke with his mates 10 seconds before and may not be concentrating. These are all things that we notice every day and make a judgment on; we see potential issues that we may have to take into account.

I am sure that simulating all that can be done, but it is the real-life, real-road experience that needs to be taken into account—the subtle messages. It is difficult to imagine a road system much more complex than that in the UK, with its bendy roads that are heavily trafficked and a high number of pedestrians. I was recently in the USA, where I was immediately struck, as I looked down from the air, by the regularity of the grid system. When I got into towns and cities, I was struck by the very low number of pedestrians in the streets compared with Britain. We have a much more complex and unpredictable set of circumstances.

My Amendment 22 refers to the checks and permissions that will be required before foreign vehicles are allowed on UK roads. Foreign vehicles drive on our roads all the time, but it will be much more complex in future. At the moment, we rely on the fact that foreign vehicles have had permission in their own country and are deemed to be satisfactory for their own country, and that the driver, if they have come from abroad, will be adapting—some much better than others, obviously. We rely on that awareness and adaptation. The cars, vehicles, vans and HGVs concerned will have to download a whole new lot of software, because every perception of the vehicle—all the distance, width and so on—will have to be done from a different point of view. They will have to download the map of the whole UK that these vehicles will operate on. Some of our road signs are different from those in other countries, so awareness of them will be a more complex issue.

5.30 pm

Most of the foreign vehicles on our roads are from EU countries. It is certainly true that the EU is well ahead of us in regulating automated vehicles—France and Germany are particularly advanced—despite the fact that it was said that our situation would be a Brexit benefit. My question to the Minister is: are we learning from the EU's experience? How are we monitoring the issues that have arisen in other countries so that we can take those into account? We have one difference, which is that we drive on the left, that makes it much more complex than moving, for example, from France to Germany or any other EU country. In future, it will have to be a more formal process for foreign vehicles to drive on our roads. As my noble friend has commented, the USA has already discovered problems as vehicles adapt to what are relatively minor differences from one state to another.

There are also issues, of course, about security and the ownership of the personal information that goes with the vehicle. This is not just an issue of Europeans bringing their cars to the UK on holiday; it is about a massive number of goods vehicles, light vans to HGVs, on which our economy largely depends. Obviously, you would be aware of this issue if you traded regularly in this country and would treat it as a business issue and a business cost to be dealt with, but there are, of course, companies that will visit the UK only occasionally. Of course, any issues would apply in reverse to British companies wanting to trade abroad using automated vehicles in other countries.

I turn to Amendment 43. An obvious issue that is bound to occur regularly is what happens when a manufacturer or software developer ceases to trade. I hope that the Government have a full response to this because I am sure I am not the first person to think of it, but I could not find a satisfactory answer within the Bill. This is an industry made up of many small businesses, as well as the giants, and failures will be common. Various studies and reports have been sent to us in the last few weeks. Of those that I have looked at, the ones from the Society of Motor Manufacturers and Traders, the Transport Committee in the other place and the Law Commission have all touched on the need for the ongoing maintenance and updating of software. That becomes an acute issue when a company goes bust.

Time is of the essence: anyone who has a modern car will know that, from time to time, you get software updates on almost a weekly basis. For the safety of the car, there can be no time lapse between a company going bust, or ceasing to trade for any number of reasons, and dealing with updating the software. Who will inherit the responsibility for that? Who will have the legal obligation to do it, and how will it be enforced?

I hope that the Government have a full answer on that very practical issue. I look forward to the Minister's response.

Lord Liddle (Lab): My Lords, since this is the start of Committee, I reiterate the support on this side of the House for the principles of the Bill, and we want to facilitate innovation as much as possible in a safe and secure way—by God, our economy needs innovation if we are going to get out of the rut of stagnation that we have seen in the last period, which has been too long. There is a consensus behind this measure. The important things that we have to debate are not in this group of amendments but on the questions of safety, which we are addressing next, and on how the Government go about what will be an evolving process of regulation and consult widely at all stages.

On the specifics, these amendments are all probing in their nature: we are not being very specific about how we want to change the Bill, but we are very interested in what the Minister has to say about the issues raised. That is a good reason for putting down the amendments. I will comment on what others have proposed, then on a couple of things that we have proposed.

I agree completely with the noble Lord, Lord Lucas, about the importance of standards-setting. His example of mobile phones is an area where Britain was able to put itself in the lead and to work to get European regulation in line with what we wanted. As a result, we initially had a very successful industry. I fear that that is not happening in the case of automated vehicles. Someone referred to how we were already behind France and Germany—I think that the briefing we received from techUK said that we were three or four years behind not just the United States, where we know there have been a lot of advances in this area in particular states, but France and Germany. That is a serious concern. The Government should consider seriously all the detailed points that the noble Lord made. There will probably be an argument that they should not be in legislation; none the less, this is our opportunity as a House to say what issues we think the regulation has to take into account. That is a good thing about what the noble Lord has proposed.

I have to say that, when I listened to the noble Baroness, Lady Bowles, talking about the need for real testing rather than relying on simulation testing, I thought, "Gosh, this is spot on here—absolutely right". But of course, that shows the depth of my ignorance of the subject, because I thought that the noble Baroness, Lady Brown, with all her scientific expertise, countered that argument very well. Of course, the truth is that we will have to rely on simulation in large part, though we should do as much real-time testing as we can and as is realistic.

I also agree with the noble Lord, Lord Holmes, on the importance of interoperability. I hope the Government will take that into account in their future regulatory policy.

In terms of the amendments in my name, Amendment 13 is on the question of foreign manufacturers, as it were, and our attitude to them. I gathered from the noble Lord, Lord Borwick, outside, that it is poorly drafted. I am sure that is right, but what we are trying to do here is raise an issue of concern. We cannot find ourselves in a position that, just because something has been approved in one country that has approved the specifications of its manufacturers, this automatically transfers into the UK. I think that would be dangerous.

I think there are also some national security arguments in this area, given the reliance on the systems on artificial intelligence. I have been reading a lot in newspapers recently about how Chinese electric vehicles are poised to take over the European market and are in a very strong position. What would happen if we thought that Chinese automated vehicles were in such a position in a few years' time? Would we be very relaxed about that, or would we be anxious that a wider range of considerations should be taken into account? I suggest the latter.

I turn to Amendment 26. I think it is essential that we have a public record of all authorisations, and as much information as possible that people can query. On Amendment 28, to put it in simple terms, as I see it, we have these no-user-in-charge operators. Of course, I am sure the scheme of regulation that the Law Commission devised is sound in legal terms, after they put so much effort into it. However, what is the kind of MoT that these no-user-in-charge people will have to satisfy every year? What guarantees do the people who are running the automated vehicles have to show to prove that they are continuing to keep these vehicles in the state in which they were sold originally? With those comments, I look forward to a reply from the Minister.

5.45 pm

Lord Borwick (Con): My Lords, I will quickly come in to comment on the amendment from the noble Lord, Lord Liddle, while first referring to my interests in the register, which I referred to in more depth at Second Reading. The comment I made, which was mentioned so generously by the noble Lord, is that his Amendment 13 talks about a "specified manufacturer". However, there are two different ways of making an automated vehicle. One is to make it from scratch—something that Tesla does. The second is to adapt somebody else's vehicle, as Waymo, Wayve, Oxa and other automated vehicle people do. Because the word "manufacturer" is defined in type approval legislation, I believe that those companies are not called "manufacturers" because they are adapting somebody else's vehicle. So there is a problem in using the words "specified manufacturer" for those who are adapting other vehicles. This is all part of the immense complexity of this subject and it is not surprising that it would be easy for an amendment to fall into the wrong section if we were not very careful about it.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, I am very grateful to colleagues across the House for their contributions this afternoon and for the discussions that we have had on the Bill in recent weeks. The amendments in this first group relate to the assessments we will apply both to vehicles and the corporate entities that operate and take responsibility for them.

I will begin with Amendments 14, 15, 16, 17, 18 and 19, all tabled by my noble friend Lord Lucas. I wholeheartedly agree with the points that he and the noble

[Lord Davies of Gower]
Lord, Lord Liddle, raised about the importance of standard setting. Indeed, we are already well established in the key international fora on these issues and are funding the British Standards Institution to help develop industry best practice. However, as always, a balance must be struck between the benefits of leading the way and the risks of acting prematurely. I absolutely acknowledge what my noble friend says about the intention of these amendments. None the less, taken at face value, these amendments risk creating an inflexible system that could hamper, rather than enhance, the UK's international influence in this industry.

I will take each amendment in turn. On Amendment 14, it is the Government's view that the number plate remains fit for purpose and that mandating an alternative, as yet unproven, technology would be of little value without significant investment in the corresponding roadside monitoring equipment. On Amendment 15, our policy scoping notes already set out our intention to consider passenger communication as a component of operator licensing. We believe that this is the right place to specify these types of requirements. On Amendment 16, Clause 12 requires that licensed operators oversee their vehicles and respond to issues that may arise. This means that the ability to monitor location is already implicitly required. The requirement to indicate availability is confined to automated passenger services. It is therefore disproportionate to apply it to all self-driving vehicles.

Moving on, we believe that the intent of Amendment 17 is already provided for. In order to satisfy the self-driving test, Clause 1 requires that vehicles be capable of operating safely and legally. A vehicle that was able to enter self-driving mode while aware of a safety-critical fault, such as a sensor failure, would not satisfy the self-driving test and would not be authorised.

Turning to Amendment 18, self-driving vehicles must be capable of operating using the road infrastructure as it exists today. This will necessitate the ability to recognise the range of signs currently found on our roads. Adapting road signs or developing other way-markers to accommodate self-driving vehicles is therefore, in our opinion, unnecessary.

Finally, we believe that Amendment 19 is already largely addressed by the stopping powers provision in Clause 57. I hope this also addresses the point raised by my noble friend Lord Holmes of Richmond. I will finish on this section by assuring my noble friend Lord Lucas that we will get a prompt response to his email regarding the Eastbourne scheme.

I turn now to my noble friend Lord Holmes of Richmond's Amendment 55C. The benefits of harmonisation must be considered carefully against the impact on innovation, costs and cybersecurity. A harmonised interoperability standard will be lengthy and complex to negotiate. Doing so quickly risks picking the wrong technologies and falling behind.

Amendment 28, tabled by the noble Lord, Lord Liddle, risks confusing the role of the no-user-in-charge operator with that of the authorised self-driving entity or ASDE. Before a self-driving feature can be authorised, the ASDE must demonstrate the technology can deal safely with faults by executing a minimum-risk manoeuvre and bringing the vehicle to a safe stop. We would not wish to undermine this key ASDE responsibility by suggesting that a no-user-in-charge operator can compensate for inadequate design in the technology. Operators will of course be subject the ongoing requirements of their licences. We will have broad powers to ensure these are followed.

Moving on to Amendment 13, I reassure the Committee that all manufacturers will be subject to the same high expectations and robust requirements, regardless of who they are. To arbitrarily constrain the pool of manufacturers which can be authorised would risk stifling innovation. Our focus is rightly on ensuring that corporate entities meet the appropriate standards of competence, repute, financial standing and technical capability. The powers in Clauses 6 and 91 already make ample provision to set such standards. On the point the noble Lord raised about national security, such issues could be taken into account in a consideration of the good repute requirement.

On Amendment 26, Clause 10 already requires that the register of authorisations be made public. In line with standard practice for official government publications, I can confirm that this will be done online. The amendment is therefore unnecessary.

Turning to Amendment 43 in the name of the noble Baroness, Lady Randerson, we intend to explore technical solutions to ensure that automated vehicles cannot operate unless they can do so safely. For example, we could require a vehicle to check it has the latest software update before the self-driving feature can be engaged. Such provisions are possible under the powers of the Bill. Due to the technical nature of such requirements and the continued development of the technology, this is best achieved through secondary legislation. We also have the safeguard that, where an authorised-self driving entity ceases to assume responsibility for the vehicle, the vehicle's authorisation would be withdrawn. In such a case, standard consumer protections would apply. On the specific question of responsibility for safety-critical updates, this sits with the authorised self-driving entity as the body accountable for a vehicle's safety.

This brings me to the noble Baroness's Amendment 22. I am conscious that the noble Lord, Lord Berkeley, also touched upon this issue. The Bill does not prevent foreign vehicles from being authorised as self-driving in the UK. However, they will naturally need to demonstrate that they are capable of operating safely and legally on our roads. Requirements to be overseen by an appropriate authorised self-driving entity and licensed operator will also apply as usual. Any non-authorised feature would be classed as driver assistance. The driver could therefore be charged with motoring offences if they divert their attention from the road. Of course, appropriate information will need to be provided at the border. We are working with international partners to develop guidelines to facilitate automated vehicles passing from one jurisdiction to another, including as part of the relevant UN expert group. In the interim, we expect other jurisdictions to apply similar safeguards as we intend to, for example, that vehicles' systems be designed to deactivate outside of their authorised geographic area. I hope this offers the noble Baroness a sufficient explanation of the position.

On Amendment 1, tabled by the noble Baroness, Lady Bowles of Berkhamsted, the Government agree that real-world testing will play an important role in ensuring the safety of self-driving vehicles. That is why we are already funding real-world trials here in the UK. Setting requirements for real-world testing through the powers in Clauses 5 and 91 will allow these requirements to evolve alongside the standards they assess. Regarding the "substantial" amount, I would also add that it is ultimately the quality of testing that matters, rather than the quantity. This point was made very well by the noble Baroness, Lady Brown of Cambridge. For example, 100 hours of rush-hour driving is likely to be more revealing than 1,000 hours of navigating empty streets. Again, these nuances are best captured in secondary legislation.

Moving finally to the noble Baroness's Amendments 20 and 27, the Bill leaves flexibility for financial standing to be demonstrated through insurance cover—a model we refer to in our policy scoping notes. While I believe it would be too specific to make a reference on the face of the Bill, it will be appropriate to expand on this issue as part of authorisation and licensing requirements. I will welcome the noble Baroness's expertise if she wishes to make representations at that stage. Lastly, I can confirm the Government's wider consultation on insurance captives is due to be published in the spring. On that basis, I hope the noble Baroness will be prepared to withdraw her amendment.

Lord Lucas (Con): My Lords, I was struck by my noble friend's answer on Amendment 43. Is he saying that, should one of the small innovative companies we have in the UK go bust, anybody who has bought their product will immediately find it is valueless because they are no longer allowed to use it? That would seem a considerable disincentive to buy kit from small British companies.

Lord Davies of Gower (Con): I am sorry if the noble Lord took that view of it, but that was not my intention.

Baroness Bowles of Berkhamsted (LD): My Lords, I thank the Minister for his responses. At this stage, of course, everything is probing. I possibly still entertain a hope that we can have some little light-touch mentions that are not overbearing somewhere in the text. Maybe we will return to some of these issues on Report.

There are one or two things other noble Lords have said that I would like to touch on. The noble Lord, Lord Lucas, mentioned connectedness. We are falling into a bit of a trap if we start talking about the connectedness of automated vehicles, because the big prize is the connectedness of all vehicles—those which are driven and those which are automated. That is where the real benefits to traffic management and the economic benefits reside. That is a much bigger scheme of interconnectedness, and we are doing ourselves a disfavour by almost sidelining the connectedness and connected car issues as if they are something small and of less importance than the big goal of automated vehicles. In the near term, connectedness is a lot more relevant and moves into what is happening with automated vehicles. We should try to think of it as more of a whole.

I am aware on the simulation aspects, which were addressed, and that we cannot have millions of hours of road driving. Simulations are important and it is an iterative process between simulated tests and road tests. I am perhaps reassured that that is what is in mind. I still do not like the vision that, sometime in the future, it might happen that there are absolutely no road tests—even small ones. Maybe it is wrong to try to insert "substantial", implying that—this is not what I intended—it would be more than the simulated tests. I still think there should be a significant amount in there for a very long time into the future.

The noble Lord, Lord Liddle, said that his main interest is safety. Certainty is quite fundamental to safety. There is lots more to get to, so I will not say any more now. With the notion that I might return with this in a gentler form on Report, I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

6 pm

Amendment 2

Moved by ***Lord Tunnicliffe***

2: Clause 1, page 2, line 3, at end insert—

"(5A) For the purposes of subsection (5), an individual must be in the driving seat of the vehicle."

Member's explanatory statement

This is to probe the meaning of individual in subsection (5).

Lord Tunnicliffe (Lab): My Lords, I will also speak to the rest of the amendments in this group. I think someone suggested that this was the safety group; I agree and see it as pivotal to the Bill. Although we all support the idea of this being a vigorous and enthusiastic area of activity, it is not the role of this legislation to tell us how to do it. What is important is what we are seeking to achieve. I will in this group mostly be talking about how and what should be achieved rather more than how one achieves it.

First, Amendment 2 could not be more purely probing, because it reveals that neither my noble friend Lord Liddle nor I are able to understand the particular subsection that this refers to. The whole issue of whether there is a driver and what that driver does is complex. It is perfectly easy to understand the situation, and where the quality of design and management of the vehicle do not need human intervention under any circumstances. It is easy to understand a situation in which the level of intervention by the driver is not as comprehensive as in a conventional vehicle by the extent of automation. However, we have this difficult concept whereby for periods of an operation, the human being in the vehicle is a pure passenger and does not have to be alert to the environment. Then we envisage a situation in which that is no longer possible—there is in the legislation something about an interim period where the person is notified that they now have to become the driver. We have difficulty identifying the specifications as to where that person is—whether they should be in the driving seat. The concept of the driving seat needs clarifying—presumably there would be a concept called controls. I am sorry that we have

[Lord Tunnicliffe]

not understood it but I should be grateful if the Minister could explain that, and I should be happy if he cannot do so now and can send a letter. I am sure that he has it right; it is just that we have been unable to understand it.

I now move, broadly speaking, into the safety part of the Bill. Amendments 3, 4, 5 and 7 say that the target should be safer than the target in the Bill. Do not lose sight of the fact that there is a target in the Bill, which is no worse than where we are now. In other words, the new vehicles being introduced to the fleet must be safer by 1% or 2%, or 70%; it is not defined. I share the enthusiasm to have the target safer than that, and I will come back to that.

Amendment 6 touches on an area that is referred to in many places in the paperwork and so on as diversity and equity. It is touched upon in the report from the law commissions. They say it better than I could, so I will quote paragraph 4.59 in the Law Commission and Scottish Law Commission's report:

"Many consultees stressed to us that AVs should not cause greater risks to particular groups of road users, even if they were to save lives overall. During the course of this project, we have received responses from those representing vulnerable road users, including pedestrians, cyclists, motorcyclists and horse riders. They emphasised that AVs must be trained to be safe around all current road users: existing groups should not be subject to greater risks than they are now. We would expect this to be reflected within the published safety standard".

That is an extremely important concept. It is, curiously enough, a concept we rarely follow in transport. We are usually willing to disadvantage part of our society for the greater benefit of the rest. We can have no greater example than that of HS2, but virtually any transport scheme or introduction of innovation will have winners and losers. This principle says there should be no losers. I should be interested as to the extent to which the Government accept the concept of no losers.

Amendment 7 touches on the wider issue of the importance of where can these vehicles operate and where do the rules relating to them operate? As far as I know, one has driverless vehicles called farm machinery these days—or they seem to be from the pictures on "Countryfile", because people are reading *Farmers Weekly* and not looking where the harvester is going. There has to be a clear definition of where these rules apply. However, both issues need to be addressed.

I turn to the crucial issue of safety itself, which is in my Amendment 9. I did not find the structure of the Bill particularly convenient. I read the Bill the first time as saying in Clause 1 that there shall be a safety standard—it says other things as well but it introduces "safety" at some point—and that Clause 2 sets out what that standard should be. It is confusing, but we would like to particularly centre on my Amendment 9 on this issue. That works on the basis that you read Clause 1 to say there should be a standard, and you use Clause 2 as the mechanism by which you come to that standard. The whole issue of standard is discussed by the law commissions—I cannot get used to saying it in the plural but it was two commissions working together, the English and Scottish commissions. Their report at page 56, paragraph 4.10, sets out the three options as to what the standards should be:

"Option A: as safe as a competent and careful human driver; … Option B: as safe as a human driver who does not cause a fault accident; … Option C: overall, safer than the average human driver".

One would have hoped that, after three rounds of consultation between November 2018 and March 2021, involving 350 meetings with individuals and organisations, and analysis of over 400 written responses, we would have an answer.

In fact, the answer is in paragraph 4.55, where, after three years' consultation, it says:

"Ultimately, the decision over how safe an AV should be while it is driving itself depends on whether the remaining risks are acceptable to the public. This is essentially a political question, best taken by ministers. Ministers need to set a policy which can then be interpreted and applied by regulators with the support of experts, as part of the authorisation and monitoring processes".

So it is down to Ministers, and I hope that by implication means politicians. Which are we going to pick? If you pick one of those standards, the rest is a matter of process. They might sound vague, but they are not that vague.

The most successful safety legislation in this country, the Health and Safety at Work etc. Act 1974, has a very simple objective: to reduce risk to as low as is reasonably practicable. In areas where it has been applied it has worked very well. It has had a tremendous impact on safety in construction, manufacture and so on. What is the golden objective that we should seek here?

We have option B, which was

"as safe as a human driver who does not cause a fault accident".

I find that very difficult to interpret anyway. The Government in this Bill have chosen option C:

"overall, safer than the average human driver".

That in my view means that there is no aspiration to improve road safety. It says that it must be greater than but the hard line, with people spending lots of money, doing the development and making the software and so on, would look for the hard point, and the hard point is that it merely has to be better than the average human driver.

As is pointed out elsewhere in the literature, the average human driver is not necessarily careful and may not be that competent. We are hopeful that the driving test makes sure that every driver is competent but, from our personal experience, are we sure that is universal? What is particularly important, which is brought out somewhere in the commission's report, is that the average driver includes the

"distracted, drowsy, drunk … or disqualified".

That is average—it includes all those people. There are the competent and careful human drivers, but that is but part of the universe out of which you take the average.

Therefore, I strongly recommend, as my amendment says, that we should go for the

"careful and competent human driver".

That would be a significant improvement on today's standards. It would be a real road safety improvement, and it would be capable of developing tests from that objective. Every proposal that the Government brought forward would be subject to that general test.

It also passes what I call the "toddler test". We should not lose sight of the fact that these vehicles are going to kill people, not because they are intrinsically dangerous, but moving about on roads is dangerous. It is not very dangerous in the United Kingdom, thank God, but we want to improve it, and there will be deaths. When the first toddler dies by being run down by one of these vehicles, in this modern age you have to have a process about what you say to the mother. I believe that if you say that it would have occurred even with a careful and competent driver, you could at least say that it is not because of the automation. It is because it was a genuine accident, as far as there is such a concept to any extent.

I have knowledge of what it is like to kill people, because I ran a railway. It was quite a big railway, and it used to kill two or three people a year. It was actually a one in billion chance because we carried that many passengers, but you still have to be able to face the public, the television cameras and so on and say, "This is what we spent on it. This is how our safety plans work, and so on. These were our targets, and this is how we set about them". I believe that that test

"competent and careful human driver"

is the right test, and we should put it in the Bill.

6.15 pm

The remaining amendment would turn the secondary legislation from negative to affirmative. I am pleased that there seems to be space in the legislation as drafted for an amendment process; this is something that we have been looking for in secondary legislation for years. I hope that the Government hold their nerve and that it is a good way, but the problem with negative statutory instruments is that nobody ever notices them; they get debated only if they are chosen or picked out by the Secondary Legislation Scrutiny Committee—and you have to be pretty committed to read through all its stuff—or a special interest group actually lobbies on one. It is nothing like the involvement implied in all the paperwork that we have been sent, particularly from the Government, who have said that the underlying way in which standards would be achieved is by active parliamentary involvement. Negative SIs will not achieve that. At least affirmative SIs, despite how we are all virtually committed to voting for them all the time, have to come in front of the House and appear on the Order Paper.

When we come to Report we will almost certainly pursue these two points—the careful and competent driver as the test, and having affirmative secondary legislation so we can be fully involved.

Baroness Bowles of Berkhamsted (LD): My Lords, I have two amendments in this group, which add to the safety principles. Amendment 7 would add "road environs" to Clause 2(2) so it reads that

"The principles must be framed with a view to securing that road"

and road environs

"safety in Great Britain will be better".

I had two broad points in mind—one that it is relevant what happens next to the road, on pavements, driveways or anywhere else that a vehicle might stray if navigation goes wrong. It would be relevant, for example, if a consequence of some event meant that the vehicle swerved off road instead of stopping. The swerve might be safer for the road, but the vehicle might hit people not on the road, so it would not be safer for the road environs. I accept that the general standard is to stop not swerve, but that was an easy example to give. It is an obvious point, but something relating to the environs needs inclusion and the statistics that are analysed need to take those kinds of things into account.

I happened to come across a paper today—it was actually published yesterday—entitled *Unreliable Pedestrian Detection and Driver Alerting in Intelligent Vehicles*, by Professor Mary L Cummings, a senior member of the IEEE and a professor of mechanical engineering, electrical and computer engineering and computer science at George Mason University, and Ben Bauchwitz from Duke University. They have done some testing to try to detect pedestrians and, as the title might indicate, it did not work out all that well. Among the suggestions are that

"intelligent vehicles … detected the pedestrian earlier if there were no established lane lines, suggesting that in well-marked areas, typically the case for established crossings, pedestrians may be at increased risk"

because of the road markings. Obviously, these are all kinds of things that we have to take into account: it just shows that we have to look at what is happening in the whole environment.

There are other things that are going on in, around and among roads that are not part of whatever connected systems are developed, whether it is pedestrians, cyclists, animals that can be ridden or animals in the wild. Of course, we have plenty of such roads, where sheep graze in the Dales and ponies in the New Forest: they are not going to be part of the connected systems, so we need to be sure that the actions of those are taken into account. Less picturesque than those but omnipresent—I flagged them in my reasons—are delivery vehicles. Delivery vehicles already have a big and frequently annoying effect on roads. I doubt that I am the only person who has experienced near misses caused by bad or inconsiderate driving, or an inability to see the road ahead due to dangerous stopping by delivery vehicles, and there is no doubt that the tight scheduling of drivers bears some of the blame for that. Of course, we are hoping that automated driving will be more observant of legalities, but several noble Lords mentioned delivery vehicles at Second Reading. There are papers that explain how little robots are going to be coming up your drive, so what is the situation there? What testing will there be with delivery vehicles that are going to be partly on the road and partly going into private driveways?

An interesting point here is that, when I submitted my amendment, my explanatory statement had to be truncated to remove reference to private driveways because that was out of scope. It seems to me that the Bill is only about public highways, but we cannot get away from the fact that private driveways and private roads are pretty abundant, so what is the legal situation there going to be? Because that is out of scope, is it abandoned? Presumably, regulations cannot be being made, and I cannot help feeling that this is a little bit of a hole. The closest I could get to it was by "road

[Baroness Bowles of Berkhamsted]
and road environs", which at least seemed to pass the sniff test in the Bill Office. Thus, in connection with both these amendments, my question to the Minister is: how much will testing and licensing take account of effects that are beyond the highway? What is actually included within the "highway" definition, so far as the Bill is concerned, and what is left out?

I have quite a lot of interaction with the highway, because I live with one going all the way up alongside me, and it is quite remarkable, from time to time, what the local authority thinks is part of the highway but is actually a 130 year-old ancient hedge that they wanted to chop down. Anyway, the corollary to all this is that, if testing and authorisation is done only in the context of highways and what happens there, what is the legal framework for these private and residential roads and driveways? If they are left out, are we going to have something in addition?

Lord Berkeley (Lab): My Lords, this is a very interesting and incredibly important group of amendments. My noble friend Lord Tunnicliffe's introduction was masterful in setting out all the problems. Before I comment on them, however, I would like to comment on a remark by the noble Baroness, Lady Bowles, just now about which bits of the country, whether they are highways or not, are covered by this legislation. A few years ago, it was nothing personal but I had to investigate whether somebody who was driving a vehicle under the influence of alcohol on an unmade road—in other words, a private road—could be guilty of drink-driving offences. The answer was that they would not be guilty of just about anything apart from drink-driving, because of course that comes under the Health and Safety at Work etc. Act, which covers a much wider scope in this country than roads. It is worth asking the Minister what would happen if someone in control of these vehicles was actually found to be under the influence. Under what legislation would they be prosecuted, if they were liable?

The question of safety, as noble Lords have said, is fundamental. What worries me is that the Bill defines safety as meaning only

"to an acceptably safe standard".

Acceptable to whom? What about the risk? Is there an acceptably low risk of committing a traffic infraction? Again, acceptable to whom? I am very concerned about the need, in all this legislation, to achieve a step change in road safety for all people who are affected by vehicles or what happens. At present, the risks of death or injury on our roads are significantly higher than for life in general or, indeed, on other transport networks, such as rail. Pedestrians and people who cycle —we have debated scooters before—bear a disproportionately higher risk of injury. If we add in children, old people and people with disabilities, who are particularly vulnerable, this is something that we do not really seem to take very seriously.

One issue that came up in a debate on the last group of amendments, which the noble Baroness, Lady Bowles, raised, quite rightly, was the question of testing on the road, but it is a question of "Which roads?". Most people think that the first location for testing these vehicles will be on a motorway, because there are no pedestrians—or there should not be any pedestrians or cyclists there—and that is quite simple, really. But then, when we drill down, apart from motorways or dual carriageways, what other groups of roads would one have to test these vehicles on? It becomes very much more difficult and very subjective. I do not have an answer to this, but I am absolutely certain that the noble Baroness is right to say that it needs doing, and in a comprehensive way across all the different types of roads and tracks, in the countryside as well as in the towns. I am not quite sure where we are going to end up, because the amendments in this group on safety are fundamental. I do not have a detailed preference for which ones, but I am absolutely certain that we need to tighten up the definition of road safety to something that is not just acceptable but very acceptable, to a high standard, safely and legally.

6.30 pm

My last point on all these things is that we ought to be better than other countries. It is no good just saying "Let's just have a slight improvement for road safety generally" if some groups of road users are adversely affected. I think we had a debate at Second Reading about the benefits of doing what Sweden has done—at one stage it wanted to reduce road fatalities per year to zero. It has not achieved it, but it has made quite significant improvements.

I have one other issue to raise, which I am not going to speak to in detail now—it is in my Amendment 37A —suggesting that all these issues should be considered independently of government by, I suggest, the Office of Rail and Road, because it is doing a very good job on road safety at the moment. It also does a very good job on rail safety. The key for me is that this should be done by an organisation that is independent of government, and of people in Swansea and everyone else. It should be independent of those who quite rightly want to pursue electric vehicles for all the benefit they are going to bring. There has to be some brake and some independent check on what they are doing, to make sure that all the other intentions that the public have a right to achieve and wish for will be provided—and, if they are not, there will be a voice independent of government. We can go on talking about independent voices on post offices, railways and things like that, but it is just as important to have an independent body for this, and I shall speak to that when we get to Amendment 37A.

Lord Hampton (CB): My Lords, I will speak to Amendments 3, 5 and 8 in my name. I thank the Minister very much for the very informative meeting we had, and the Society of Motor Manufacturers was very helpful on any questions he could not answer on technicalities. That and a trip round the streets of King's Cross in an automated vehicle thanks to Wayve—which was actually remarkably boring, which is what they tell me it is supposed to be—have put my technical questions to one side.

My concerns and my amendments, rather like those from the noble Lords, Lord Berkeley and Lord Tunnicliffe, are all about safety. The Minister said, as I recall, that safety would be the cornerstone of this Bill and, if we

lose the confidence of the public—who are very concerned about safety—we are going to run into trouble and, as the noble Lord, Lord Tunnicliffe, said, there are going to be bumps in the road. If we lose confidence, people are going to lose confidence in the whole concept.

In the meeting, the Government said that, if we set safety standards too high, it will deter manufacturers and companies from coming into the market. But, at the moment, if raising these standards is deterring companies, maybe these companies should not be entering the market anyway and should not be involved in the development of automated vehicles.

Like the noble Baroness, Lady Randerson, I think that cyclists will bear a disproportionate brunt of any casualties. As the noble Lord, Lord Tunnicliffe, said, they will be the "losers" in this whole equation. I turned to Cycling UK for some amendments, which seem to beef up the safety standards. Amendment 3 says

"leave out 'an acceptably safe standard' and insert 'a high standard of safety'".

That does not strike me as rocket science. In the same way, Amendment 5 says

"leave out 'an acceptably' and insert 'a very'"

to make

"a very low risk of committing a traffic infraction".

That is very similar to Amendment 4 from the noble Lord, Lord Liddle.

Amendment 8 says that, instead of "better", the Bill should state that road safety would be

"significantly better for all road users".

To me, this seems self-explanatory and would mean that safety truly is in the heart of the Bill. This seems like common sense to me and I look forward to the Minister's answers.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Hampton, who has done sterling work in contributing to this Bill. I apologise for the fact that I have not managed until today to fully engage with Committee stage. I also thank the noble Baroness, Lady Bowles, who raised a crucial issue which, as the noble Lord, Lord Berkeley, said, really does not seem to be covered here.

I want to take a specific example here of the tragic case—which is far too common—of small children, toddlers up to the age of about seven, being killed on domestic driveways by human drivers. A report from the Royal Society for the Prevention of Accidents which was supported by the Department for Transport shows that, since 2001, 34 children have been killed in domestic driveways, nearly always in their own home. There have been 19 deaths since 2008. In 22 of those cases, the child was killed by a reversing vehicle.

Here we have circumstances where—one would assume—usually competent and careful human drivers were not able to make allowance for what was happening around them. If we are going to think about automated vehicles, we need to think very hard about circumstances where we are not on the road but are in situations where vulnerable people, or animals for that matter, are not going to behave in manners that follow some logical kind of algorithm. That is not how the world works and, if we are going to have automated vehicles, we have to allow for circumstances like that.

I will pick up a point that the noble Lord, Lord Hampton, and a number of others made. Whether we have this Bill or not, and whether we have automated vehicles or not, we should be aiming to do vastly better than we do now on road safety. In the most recent figures we have, in 2022 there were 1,711 fatalities and nearly 30,000 when you put the "killed" and "seriously injured" figures together. That was five fatalities per billion vehicle miles travelled. That sounds like a big number, but the figure is up 2% on the last time we had a year like it, which was 2019, the pre-Covid year. So, on the metric we should be counting, we are heading in the wrong direction.

Like the noble Lord, Lord Hampton, I think that, of the amendments we have before us, Amendment 8, which says

"significantly better for all road users"

is probably the best one; we have a number of ranges before us. Again, I am not sure that this would get past the Table Office, but I believe, and the Green Party very strongly believes, that the Government should be adopting a policy known as Vision Zero. It is the idea that we should have the goal of no deaths or serious injuries on our roads. We know that humans will make mistakes, that pedestrians will make mistakes and that there will be children, animals and all sorts of things. We have to design everything to reduce the risk to as close to zero as we can possibly manage. I do not know whether we could write Vision Zero into this Bill. I can foresee the wrestle we might have with the Table Office now, but I think that

"significantly better for all road users"

at least takes us in the right kind of direction.

Like the noble Lord, Lord Hampton, I thank Cycling UK for its excellent briefing. We often talk about cyclists as vulnerable road users and this briefing is from Cycling UK, but the most vulnerable road users are pedestrians, particularly young people and, increasingly, older pedestrians who on average tend to move more slowly and are more vulnerable in all sorts of ways. In recent years we have seen a real increase in the dangers to older pedestrians, such as in changes made a few years ago to traffic lights in London that had disastrous, hideous impacts on them. Amendment 8 refers to "all road users"; a lot of the discussion at Second Reading was about interactions between two motorised vehicles, but we have to make sure that we think about all the other interactions as well. We need a great deal more work and thought on this Bill, particularly this element of it.

The Earl of Lytton (CB): My Lords, this may be the only contribution I make to this part of the Bill, but I wish to follow the noble Lord, Lord Hampton, and other noble Lords because this business of safety in Clause 2 seems to be the most pivotal thing in the entire Bill. As the noble Lord said, the public are looking to us to make sure that it is enshrined here.

One thing the noble Lord did not mention is the claim that these automated vehicles will be materially safer than the human-driven equivalent. It is therefore right that it is not "no worse than" or even "as good as"; it has to be "materially better than". Otherwise,

[The Earl of Lytton]
we simply should not go there. As this Bill paves the way for what will have to come through a lot of secondary legislation, that is vital to get across at this juncture. If we do not agree it today, I hope we will at some other stage on the Bill.

The noble Baroness, Lady Bowles, made a really important point about road safety in the debate on the previous group of amendments and elaborated on it in the debate on this group with her Amendment 7. Clause 2(2) says:

"The principles must be framed with a view to securing that road safety in Great Britain will be better as a result of the use of authorised automated vehicles".

That is a low aspiration. In my view, it needs to be considerably better. The noble Baroness said that she wanted to include private drive entrances, but they were declared out of scope by the clerks. I encourage her to persist. In my profession as a chartered surveyor, over many years I have helped people with their property boundaries, and one point that often comes up is where the private property ends and the highway starts. The customary arrangement is that between the blacktop—the adopted surface—and the front of the property boundary there is usually a verge or sometimes a pavement. Over it, the private driveway has what is known in the cant of the trade as a crossover. It is still part of the public highway, although it may be maintainable by the householder. That is an important distinction. The noble Baroness might go back to the clerks and say, "I want something that deals with crossovers". I obviously do not wish to make a legal pronouncement, and I certainly defer to the views of the clerks, but that has been my understanding over many years of the principle behind the interface between the highway and private property.

6.45 pm

The Long Title of the Bill is to:

"Regulate the use of automated vehicles on roads … and to make other provision in relation to vehicle automation".

This is a vehicle-focused Bill, and to that extent the clerks are right. But Clause 2(2) refers to

"securing … road safety in Great Britain".

The term "road safety" requires further unpicking, because it is an amalgamation of several different constructs. There is vehicle safety—the use and construction of vehicles—driver competence and conscious ability when at the wheel, and highway design and construction, including signage and lighting. If you asked me about road safety, highway infrastructure, signing and lighting would immediately come to mind, but I realise that this Bill is intended to have wider implications. I shall let that rest for the moment, but "road safety" may be a matter of confusion.

In between all those things are non-standard issues of a transitional nature. The noble Baroness, Lady Bowles, referred to things such as narrow bridges, winding roads and poor visibility. Having been brought up in west Somerset, I know about all those and many more, including the odd cow in the road around a sharp bend. There are other transient things such as leaves, ice formation because of leaky water mains or road gullies not having been replaced, spillages on highways and objects both animate and inanimate, moving or stationary, in the road. Are these a danger or not? I think I might recognise and take the chance of driving over a slumped olive-green household waste sack in the road, but I would not take the chance of driving over something that looked like a rubble sack that had fallen off the back of a builder's lorry. They are much the same size and shape. Whether automated systems can tell the difference will be tested.

I said at Second Reading that I have a reasonably modern car that tends to put on the emergency brakes—I have no control over it—depending on what it happens to see in front of it in the road. When I told the dealers that it was putting on the brakes in circumstances that I considered dangerous, they said there was nothing they could do about it. I asked, "Well, what triggers it?", and they said, "It could be something like a plastic bag blowing across the road". That is great. What happens if a plastic bag blows across the road when a vehicle in automated mode is going down the middle lane of a motorway and suddenly puts on the emergency brakes? I do not know, but I wonder about that.

There are other things related to the maintenance of our highways—the potholes, large puddles, illegible road markings and general maintenance issues. If the principle is that "road safety" includes these matters, as I think the noble Baroness, Lady Bowles, assumed and I suggest has to be part and parcel of all this, we are talking about not just the fitness for purpose of automated vehicles and their systems but a wholesale upgrading of the quality of our road infrastructure at the moment, which I regard as pretty lamentable. It has been lacking in general maintenance, which has led to safety issues, before you get to the visibility obstructions that other noble Lords have referred to. We have to set a high bar to make sure that this is the trigger for compliance for the vehicles on the road, those who are using them and may be asked to step in at a moment's notice and the basic highway infrastructure.

In the debate on the previous group, the Minister referred to the transition from a safe self-driving situation to a driver-in-charge mode. I hope this is not going to be like the supermarket trolley that suddenly locks its wheels at the perimeter of the car park because you have parked in the next road. We have enough trouble with delivery vehicles and maintenance contractors putting vehicles in strange places where you cannot see beyond them and they obstruct the forward vision. We cannot have vehicles that suddenly die because they have somehow gone out of range. The range may be to do not so much with their geographic situation but with the weather conditions, because it cannot see forward. Perhaps the conditions are such, as happens with my car, that a little light comes on and tells you the forward sensor has been disabled. It is usually to do with drizzle or things like that.

I am sure that, over time, the designers of sensory equipment will solve a lot of these problems. I have every confidence that that will happen but we have to start here, in setting our standards and principles, and that is where we come back to the basic principles of safety. That is why I support the general thrust of these amendments, and in particular Amendment 7 from the noble Baroness, Lady Bowles.

Baroness Randerson (LD): My Lords, I dare say the noble Earl, Lord Lytton, will be pleased to know that I have amendments later that relate to the need to improve things such as the quality of road surfaces for all this to work smoothly.

As several contributors have emphasised, this group points to the limitations in the narrowness of the Bill's scope. My noble friend Lady Bowles's amendments address the limitation to public roads and highways, rather than to the marginal areas. The problems of this limitation have been addressed by organisations representing cyclists, for example, and other more vulnerable road users, as well as organisations already engaged in the automated delivery sector. If you think about it, when you have a product delivered to your home by a drone, in most cases that drone is required at the last point to leave the highway or pavement and go on to private land.

This is important. As a nation we are very concerned about road safety and prize it very highly. Although there have not been many improvements to road safety in the past 10 or 15 years, we have previously been very proud of an improving record on safety, and public expectations remain there. If you think about the process of accidents and injuries on the roads, many injuries, and much physical damage to buildings, are caused by accidents that take place off the highway, when a swerving vehicle hits a boundary fence or a house, for example. Those who have spoken, including the noble Baroness, Lady Bennett, have referred to the high number of injuries to children. This will be at the forefront of public concern in judging automated vehicles.

My noble friend also referred to the coexistence of traditional vehicles and automated vehicles. For possibly two decades we will have a hybrid system, so any expectations have to take that into account.

I turn now to the amendments to which I added my name, which are amendments in the names of the noble Lords, Lord Hampton and Lord Liddle. The Law Commission reports emphasised that the public have high expectations of road safety. They used the point that there is strong support among the public for criminalising those who do not drive safely, and they transferred that concept into the situation in relation to support for automated vehicles. The experience in San Francisco illustrates the dramatic impact of accidents involving automated vehicles on support for them and trust in them. There is support for the progress of these vehicles, and the concept of them, across the Chamber. Therefore, it is so important that the Bill gets the approach right.

I support several amendments in this group, all of which are aimed at raising safety standards. The definition of safety must be more ambitious than that set out in this Bill. The Royal Society for the Prevention of Accidents gave evidence to the Transport Committee in the other place and made it absolutely clear that the expectation has to be much better than just improving on average. It must be more ambitious. It must be an improvement in safety across the board, not just an "on average" approach to it.

I am well aware that there are international definitions of safety in this context, and I am sure the Minister will explain where the Government's definition sits within those international expectations. To my mind, an acceptable standard is just not adequate, because you could have a situation in which the average safety has improved but, when you look at the detail, all the improvement lies in the reduction in motorway accidents, and to offset that there is an increase in accidents involving cyclists, pedestrians, older people or disabled people. It could be the more vulnerable road users who are badly impacted, so I am interested in the Government's concepts in relation to this, and how they intend to approach this issue in detail.

Lord Davies of Gower (Con): My Lords, as has already been mentioned, this group relates to the standard of safety to which we will hold self-driving vehicles. Clause 1 establishes the concept of the self-driving test: the basic principle that a vehicle must be capable of travelling safely and legally to be authorised as self-driving. With Clause 2, we then establish that the application of the self-driving test is to be informed by a statement of safety principles. The Government will be obliged to develop those principles in consultation with relevant stakeholders and to lay the statement before Parliament before any self-driving vehicles can be authorised. Noble Lords will recall that this approach—in which the safety standard is established in statutory guidance—was recommended by the Law Commission. I also recognise the desire to see a standard articulated in the Bill. That is the rationale behind the safety backstop in Clause 2(2), which states that the safety principles

"must be framed with a view to securing that road safety in Great Britain will be better"

due to the use of self-driving vehicles.

7 pm

I turn now to the specifics of each amendment. Amendments 3, 4 and 5 all look to amend the definitions of "safely" and "legally" as applied to the self-driving test. Naturally, I do not disagree with the intention; our desire to see vehicles operate to a very high standard of safety, with very low risk of committing a traffic infraction, is already implicit in the "careful and competent driver" standard set out in our non-statutory safety ambition. However, I do not believe that these amendments are necessary, nor that they would have the desired effect. The phrases "very high" and "very low" are open to wide interpretation. By contrast, what is acceptable to the public can be established through consultation. That is the role of the statement of safety principles: to allow for public consultation and scrutiny, in a meaningful degree of detail, on how the self-driving test should be interpreted in practice. The same process would still be required if the amendments were accepted, and it is not immediately clear that its outcome would be any different.

Further, it is possible that Amendments 4 and 5 could make the courts responsible for interpreting the meaning of "very low" and "very high", and hence determining the legality of self-driving vehicle authorisations. In our view, it is for the Government—in consultation with stakeholders and with scrutiny by Parliament—to take ongoing responsibility for determining what is acceptable. Indeed, the Law Commission reached that same conclusion. For those reasons, I believe that the current wording is the most appropriate.

[Lord Davies of Gower]

The same rationale applies to Amendment 9, tabled by the noble Lord, Lord Tunnicliffe, which looks to incorporate the Government's stated safety ambition into the Bill's text. Naturally, I believe our ambition is the right one. As the noble Lord himself touched on, it is the highest of the three standards consulted on by the Law Commission. It gives a straightforward, publicly understandable indication of the level of safety that the Government are looking to achieve through the more formal mechanisms we are establishing in the Bill.

Lord Tunnicliffe (Lab): I am not sure I heard the Minister. Did he say that, of the three tests that the Low Commission proposed, the Government's test of "better than average" was the highest standard?

Lord Davies of Gower (Con): What I said was that, naturally, I believe our ambition is the right one. As the noble Lord himself touched on, it is the highest of the three standards consulted on by the Law Commission. It gives a straightforward—

Lord Tunnicliffe (Lab): I am sorry to interrupt, but the Law Commission, in the next paragraphs, says that the "competent and careful driver" test is the highest standard, not the Government's aspiration of at least on average. We can leave it for now, and the Minister can write to me with an apology, or I can write to him with an apology, if one of us is wrong.

Lord Davies of Gower (Con): With respect to the noble Lord, I think there is a misunderstanding here and he thinks that we have picked the average. Perhaps we can clarify that with him at a later date.

To continue, it gives a straightforward, publicly understandable indication of the level of safety that the Government are looking to achieve through the more formal mechanisms we are establishing in the Bill. However, to incorporate this language as proposed would, once again, override the principle established by the Law Commission—in other words, that the appropriate level of safety is ultimately determined by public acceptance of the risk, and that the safety standard should be set out in statutory guidance. That then allows the standard to be evolved as necessary on the basis of consultation.

I add that the wording of the amendment would appear to require a standard even higher than that of the safety ambition. While I know that this is well-intended, we must also be mindful of the risk of stifling genuine near-term safety improvements by setting an unnecessarily stringent target early on.

Amendment 12, tabled by the noble Lord, Lord Tunnicliffe, looks to make the statement of safety principles subject to the affirmative procedure. While we acknowledge the arguments that he puts forward, it is the Government's view that the Highway Code remains the most salient precedent for the safety principles. It follows that a negative procedure, comparable to that applied to the Highway Code, is most appropriate in this instance.

Turning to Amendment 8, the use of the phrase "significantly better" is, again, open to interpretation and risks introducing ambiguity. More pertinently, the second part of the amendment, tabled by the noble Lord, Lord Hampton, looks to ensure that improvements in road safety apply to all road users. The noble Lord, Lord Liddle, and the noble Baroness, Lady Bowles of Berkhamsted, also look to explore a similar point in Amendments 6 and 7. I can confirm that, just as in the Highway Code, the current reference to road safety already applies to all road users. Similarly, it is established that "road" encompasses pavements and similar areas; road safety is therefore not strictly confined to incidents occurring on the carriageway itself.

On the specific comments from the noble Baroness, Lady Bowles of Berkhamsted, all vehicles subject to authorisation as self-driving vehicles must be intended or adapted for use on roads. Although private driveways are mostly out of scope, the authorisation can recognise use in places other than roads, as referenced in Clause 4(4). The use of vehicles on private land is covered by other legislation.

Returning to the issue of equality and fairness, I can confirm that it will of course be explicitly considered during the development of the statement of safety principles. The granting of self-driving authorisations will also be subject to the public sector equality duty, and we intend to make an assessment of fair outcomes part of the authorisation process. I believe that the remainder of Amendment 6 is already provided for by Clause 1, which specifies that the assessment of a vehicle against the self-driving test must refer to

"the location and circumstances of … intended travel".

A further reference in Clause 2 is therefore unnecessary.

On Amendment 10, we already envisage that the statement of safety principles will reflect the simultaneous presence of both self-driving and conventional vehicles. Indeed, this is implicit in the requirement set out in Clause 1(3). However, we also wish to preserve flexibility for the principles to cover scenarios where only automated vehicles are present. The amendment would preclude that option.

On Amendment 2, in the spirit of the initial comments by the noble Lord, Lord Tunnicliffe, I begin by offering a brief clarification. His comments slightly confused the concepts of a no-user-in-charge vehicle and a user-in-charge vehicle. A no-user-in-charge vehicle can complete a whole journey in self-driving mode, and any human in the vehicle is merely a passenger; it will never need to hand back control. A user-in-charge vehicle can complete only part of a journey in self-driving mode, so a human will be expected to take control of the vehicle to complete the journey. The Bill requires that this person be in the vehicle and in a position to assume control; for virtually all current use cases, that will mean being in the driving seat. However, there may be some future use cases and designs—perhaps in larger vehicles, such as buses—where control could be exercised from multiple places within the vehicle.

The amendment, as drafted, would allow for human-controlled vehicles to be considered autonomous, provided that the human did not sit in the driving seat. One of the key concepts of the Bill is that liability should be transferred away from the human driver when a self-driving feature is engaged. It would clearly be inappropriate to do that in a situation where a human still exercised control over the vehicle, regardless of their physical location.

Finally, I will briefly address the question from the noble Lord, Lord Berkeley, about drivers under the influence. The Bill is clear that the user-in-charge immunity does not extend to the condition of the driver. The person acting as the user in charge in a vehicle could therefore be prosecuted for being under the influence in the same way as a conventional driver. This makes sense, considering their responsibility to resume control if directed to. As I have said, when a no-user-in-charge vehicle is driving itself, everyone in the vehicle is considered simply a passenger. Just as for passengers in conventional vehicles, there is no requirement that those individuals be in a fit state to drive. On that basis, I respectfully hope that the noble Lord, Lord Tunnicliffe, will see fit to withdraw Amendment 2.

Lord Tunnicliffe (Lab): I thank the Minister for his response. I shall read it with enormous care. Perhaps we will have to meet in order to achieve a common view. With that, all that formality requires is for me to beg leave to withdraw Amendment 2.

Amendment 2 withdrawn.

Amendments 3 to 5 not moved.

Clause 1 agreed.

Clause 2: Statement of safety principles

Amendments 6 to 10 not moved.
House resumed.

7.12 pm

Sitting suspended.

Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024

Motion to Approve

7.30 pm

Moved by ***Lord Benyon***

That the draft Regulations laid before the House on 30 November 2023 be approved.

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, I refer to my entry in the register. The draft instruments—the Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024 and the Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024—were both laid before the House on 30 November. The instruments have been grouped as they are part of a package of regulations which work together to introduce the new framework for mandatory biodiversity net gain. Although biodiversity net gain is a key policy delivered by the Environment Act, some of the policy involves amendments to the planning system. I will speak to both instruments together, given their interlinks, but I will not profess to be an expert om the intricacies of the planning system and commit to writing to noble Lords on points of particular detail.

The instruments laid before the House today form part of a package of SIs that will commence the new, world-leading biodiversity net gain requirement. This is a new approach to development and land management that was legislated for in the Environment Act 2021 and had strong support across both Houses. It aims to leave the natural environment in a measurably better state than it was beforehand through requiring a 10% net gain for biodiversity on each eligible grant of planning permission. These gains must be delivered, first, through on-site habitat enhancement or creation where possible, then through off-site enhancements or through purchasing units from the market and, finally, as a last resort, through purchasing statutory credits sold by the Government.

A public consultation on the policy and implementation of biodiversity net gain was held in 2022. The government response, published at the beginning of 2023, confirmed the policy intention for mandatory biodiversity net gain and has informed the drafting of these regulations.

I turn first to the Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024. The Environment Act 2021 gives the Secretary of State for the Environment, Food and Rural Affairs the power to make provision for a register of biodiversity gain sites. The core purpose of this publicly available register is to record allocations of off-site biodiversity gains to developments. The register will be established by the Biodiversity Gain Site Register Regulations 2024.

This instrument makes provision for the imposition of a financial penalty and the payment of fees relating to applications to that register. This instrument provides for imposing financial penalties to help ensure that the biodiversity gain site register contains accurate information. The provision for financial penalties will encourage compliance, deter individuals from submitting incorrect information and remove illicit financial benefit—for example, through cost avoidance.

This instrument also provides for fees to be charged for different applications to the register. These applications include gain site registration, amendment applications and applications for the allocation of habitat enhancements to development. The fees have been set to achieve cost recovery for the set-up and ongoing maintenance of the register. Developers are not obliged to use the biodiversity net gain register and should first aim to achieve biodiversity gains on site before turning to off-site gains. Landowners who choose to supply off-site gains to developers must apply to register their land. We expect that they will do so only if the benefits from selling units outweigh the costs. Without these regulations setting the requirement for fees to be paid and the amount to be paid, the register would not achieve cost recovery and there would be a significant cost to the Government.

I now turn to the Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024, which have been ably drafted by the Department for Levelling Up, Housing and Communities. The Environment Act 2021 amended the Town and Country Planning Act 1990 to make provision for biodiversity net gain in the planning system. The Act specifically adds a new Schedule 7A, which sets out the statutory basis for the 10% biodiversity gain objective, the metric and the general biodiversity gain condition

[Lord Benyon]
which will apply to those planning permissions. It also made consequential changes to other parts of the Town and Country Planning Act.

These regulations will make further consequential changes. First, they provide rules within Schedule 7A for determining the local planning authority which is responsible for the approval of a biodiversity gain plan required under the general biodiversity gain condition. Secondly, they further amend Section 73 of the Town and Country Planning Act, which enables the variation of conditions of previous planning permission to cover the circumstances when an earlier biodiversity gain plan is to be regarded as approved where the development's on-site habitat is irreplaceable habitat. Finally, they make amendments to Section 78 of the Town and Country Planning Act for the purpose of appeals about determinations by planning authorities in respect of the biodiversity gain plan. These are technical amendments to ensure the provisions for biodiversity net gain in the Town and Country Planning Act work.

In conclusion, let me emphasise that the regulations are essential to the successful delivery of the new mandatory net gain requirement, which will help to deliver much-needed gains for nature. Once the regulations are approved by both Houses, we will lay the rest of the biodiversity net gain regulations, which we have published in draft. I commend these draft instruments to the House.

Baroness Bennett of Manor Castle (GP): My Lords, I was expecting more people than this. I thank the Minister for his introduction, and I think it is very clear that what we are looking at here are two instruments from a very major set that will finally implement the idea of biodiversity net gain, which your Lordships' House and the other place have been debating for what now feels like many years.

Before looking at the detail of these two statutory instruments, I think that it is worth thinking about what we are talking about here. We are trying to deliver a system, however much some of us—I include the Green Party in this—have doubts about it, that means that we do not keep going backwards. As we stand in the House tonight, we are about to see the destruction of a veteran oak tree in Melton Fields in East Riding for the construction of an Amazon warehouse. I have been on the site and seen this happening. The biodiversity net gain that is being offered is "We will have some wetlands over there"—I am not quite sure where the sign that says "Birds, go that way" will be—but there is huge concern and there is still so much that we are losing. I think it is crucial that we see that.

I have a couple of questions about the instruments that I would like to put to the Minister. He talked about ensuring full cost recovery in the fees being charged. What will be the situation for projects for the public good, such as a new hospital for the NHS, a community centre or group? What provision is there to make sure that the people who can afford to pay are paying and that those community projects are not stopped but able to go ahead?

The other point which I think reporting in recent days has raised—this fits in with the levelling-up Bill that your Lordships' House spent an inordinate of time on last year—is that we are seeing controls being put on for more than 10% biodiversity net gain, and that is overwhelmingly concentrated in the south of England, where there are local area partnerships. In terms of these instruments, but also more broadly, will there be allowance for the regional differences, the regional cost differences and, perhaps even more importantly, the regional ability to pay, in the provision in these statutory instruments?

Lord Deben (Con): My Lords, this is a thoroughly good change and we should be entirely pleased that we are taking this step because it is a step that we have not taken before. I sometimes argue with the noble Baroness, Lady Bennett, but saying thank you is important if we are to get Governments to do more, so I start by saying thank you.

I recently attended a very interesting conference in Essex in which an expert explained exactly how this system worked. I am now much better informed, but it took some time to explain it in a way that, to put it simply, ordinary people understand. I hope the Minister agrees that we need to explain this much more effectively than we have until now if we are to get people to join in the "thank you" I started with.

I know that the Minister has rightly suggested that he is not an expert on planning, but he will understand when I say that I am disappointed that this Government have still not introduced the necessary overarching element in the planning laws that says that no planning permission should be given unless it fully takes into account the national statutory requirement for net zero in 2050 and the two important promises that we made at COP 26 on the targets for 2030 and 2035. Until the planning system as a whole insists that decisions are made within that context, the planning system will not be working properly for us to be able to deliver what we now, by law, have to deliver.

He may want to write to me on this subject, and it may be a long letter, but if it does not say, "Yes, we are going to do it", it will not be acceptable because we have to do that as a central issue. It is barmy to have a planning system in which we fiddle about with little bits of what my noble friend said were technicalities when we cannot make the fundamental decision that the planning system itself should be beholden to the Government's and the nation's commitment to net zero.

Lastly, I hope that the Minister will be very careful about how this thing works. There are real issues about how it will work on the ground. Can he help us by telling us what measures the department has for monitoring how it works and for reporting back, so that we know how that monitoring has worked out? This is a new thing and something we should very much cheer on, but like most new things I would like to know how it is working and how we can improve it in future.

Baroness Thornhill (LD): My Lords, I will make just a short intervention as my noble friend will be leading on this. I have learned recently that some 20 councils have emerging plans or have adopted local plans that are above the impending prescribed national 10% level. That is a big improvement on last year. During the passage of the levelling-up Bill we had quite a long conversation about the role of the national development

management plans and did not get to a satisfactory conclusion on whether councils would be able to demand this higher level. We would like to think that they will and could, but there was still a question mark over that. Can the Minister chat to his planning colleagues and clarify that? I am sure that if it were clarified, more councils would want to take that higher standard.

7.45 pm

The Lord Bishop of Norwich: My Lords, I welcome the two statutory instruments before us and the Minister's helpful introduction. I declare an interest as a Church Commissioner and a member of Peers for the Planet.

Having an accurate register of biodiversity gain is of key importance as we move ahead with the Government's commitment to nature recovery. There is only one parcel of land and it is increasingly being competed for. We eat from it, grow on it, live on it, move across it, build infrastructure over it, make things on it, extract things from under it, drink water that flows over it, breathe the air above it, sequester carbon in it and generate energy on it. The list goes on and on.

But we share our land with rich flora and fauna—biodiversity that we have seen drastically decline in our own lifetimes. Making space for biodiversity to thrive in an integrated way is part of living more harmoniously with ourselves and with each other on the limited space of our island home but also on this single island planet home of ours, which we share with the whole of creation. Does the Minister agree that when biodiversity thrives, people thrive? To be out in nature, to see nature around us, to smell and touch, to hear and taste nature is good—good for our mental health, good for children's learning, good for communities to live more contentedly together, good for financial returns and sustainability of business and good for rekindling in us a sense of joyous wonder.

I am interested that the ancient word "covenant" appears a number of times in the statutory instruments before your Lordships. The word reminds us that land is a gift but also of the danger that land can become a temptation, not least to exploit, and we forget what it has been and what it could be. "Covenant" reminds us that we are stewards and that land comes with responsibilities. There is a good biblical precedent in the 10% tithe that in these instruments is the target, though I praise those local authorities and developers that, as the noble Baroness mentioned, have increased that target, because I suspect that a collective greater ambition will be needed to reverse biodiversity decline.

What I would really like to see as a result of this secondary legislation is for all involved in land to begin to take a real pride in enhancing biodiversity, halting and reversing the decline in species abundance, reducing extinctions and restoring and creating wildlife-rich habitats. Does the Minister agree that this should become a badge of honour, something that every development strives for, enhancing developers' brand and reputation and, more than that, doing it because it is the right thing for us all to do?

We must leave our natural world in a better state than we have inherited it and how we have allowed it to decline under our stewardship. I thank the Minister and all the officials involved in bringing these statutory instruments before your Lordships.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his introduction to these two SIs and declare my interests as set out in the register. Both instruments are straightforward and in line with the Environment Act requirements for setting up a biodiversity gain site register in which each planning application will, in future, be required to have an entry.

A fee is levied to cover the cost of this register, as the Minister has said. These fees range from £639 for the actual entry down to £45 for recording the habitat enhancement and £89 for an application to have an entry removed. These fees do not seem very large to me, but I am not the person who will be paying them.

There is a penalty fine of £5,000 for providing false information that has been included in the entry in the BNG register. I am unclear whether the original inclusion fee and the penalty fine of £5,000 are paid to the relevant local authority that is responsible for keeping the register; can the Minister please provide clarification? There is also a further penalty charge for non-payment of the original £5,000 fine, which according to the instrument is paid to the consolidation fund. Can the Minister clarify where the responsibility for the consolidation fund lies? Neither the instrument itself nor the Explanatory Memorandum explains this; perhaps it is assumed that everyone knows.

I agree with the comments made by the noble Lord, Lord Deben, on the planning system. I also congratulate the right reverend Prelate the Bishop of Norwich on his thought-provoking contribution. I am reminded of the land use committee I sat on last year, which produced a report about land use across the whole country that the Government, due to a change of Secretary of State, were quite dismissive of.

These SIs are a step in the right direction. There was discussion in the other place on Monday about off-site biodiversity gain, with Minister Pow indicating that the requirement was for a 10% net gain for biodiversity from each eligible grant of planning application. That gain could be delivered through on-site habitat enhancement or creation where possible. Otherwise, it could be delivered through off-site enhancements, purchasing units from the market or, in the last resort, purchasing statutory credits sold by the Government, as the Minister indicated.

I would like the Minister's reassurance that both local authorities and the Government will stress that on-site habitat enhancement and creation are always preferable, especially for the benefit of local residents and businesses. Once enhancements are off-site or are in the form of purchased credits, there is a loss of ownership that could lead to complacency about the value of the register and the scheme. Can the Minister say whether the Government are considering keeping a second register alongside the first, which records specifically whether the biodiversity gain is off-site or in the form of a purchased unit from the market or the Government? Such a register would increase both transparency for the public and accountability for the development or business concerned.

I turn now to the second instrument, the Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024. The EM indicates that not every planning application will be eligible for

[Baroness Bakewell of Hardington Mandeville] a biodiversity gain plan because the gain might be less than 10%. Can the Minister give an example of what kind of land or development this might be? At the other end of the spectrum is the loss of "irreplaceable habitat", but the EM does not indicate that planning approval will not be granted where this is the case, only that development of on-site habitat should minimise the effect of the loss of irreplaceable habitat. I am extremely concerned that it should appear to be acceptable that irreplaceable habitat would be lost. This is hardly likely to help the country meet its biodiversity targets.

Lastly, I raise the issue of the availability of local authority ecology officers. As everyone is aware, local authority budgets are under extreme pressure, not least due to social care issues. Approximately 30% of local authorities employ an ecology officer, which leaves 70% with officers who do not have the skills to accurately assess what constitutes a biodiversity gain and what does not. Perhaps the Government think that the fees for the entry on the register and the fines for inaccurate information will help local authorities to train up their current workforce in ecology matters or to buy such services in. It would be much better to have a properly trained and experienced workforce in place from the start of this register, to ensure its success. Nevertheless, I am supportive of these two SIs and look forward to the Minister's comments.

Baroness Hayman of Ullock (Lab): My Lords, I thank the Minister for introducing these two instruments, which we very much welcome as they are integral to rolling out the new biodiversity net gain framework and integrating it with the planning system. I intend to discuss them together but, sadly, not as poetically as the right reverend Prelate the Bishop of Norwich did in his comments.

When these regulations were debated in the other place, a number of concerns were raised about how the new framework would operate in practice; the noble Lord, Lord Deben, talked about this as well. These included concerns regarding local planning authorities. Some of the questions raised were not completely addressed, so I will come back to some of these; I also have a few other questions.

The noble Baroness, Lady Bakewell of Hardington Mandeville, talked about ecology officers. One thing that was raised by my colleague in the other place, Barry Gardiner MP, was a statistic that only a third of local authorities have an ecological officer. This was not addressed by the Minister in her response in the other place, so can the Minister confirm whether this is the case? If it is correct, how will the Government address the shortfall and support local authorities? If the Minister is unaware of it, he could write to me as it would be interesting to know whether that figure is correct.

I looked at the Government's impact assessment on biodiversity net gain and local nature recovery strategies, and it says:

> "Normal enforcement procedures at the local authority level, along with transparent site planning documents and habitat management plans, will provide some confidence that on-site habitat delivery will be faithfully carried out".

It also states:

> "We continue to work with local authorities and our agencies to quantify any additional costs to deliver biodiversity net gain, in addition to professional organisations to make sure there is access to the right training, ecological expertise and systems required".

It has been mentioned that local authorities are under a certain amount of financial pressure, so it would be helpful if the Minister could outline how the Government see all this working in that context and whether that figure about the lack of ecological officers is correct.

The noble Baroness, Lady Bakewell, also mentioned off-site enhancement, and there was another question that did not have a full answer in the Commons debate regarding off-site provision. This was in the event that a development in one local authority area opts to achieve off-site gain on land that falls within another local authority area. It would be very helpful if the Minister could confirm which authority is responsible for the monitoring and enforcement if this happens. These SIs deal with the split between different levels of local authority—county or borough, for example—but do not seem to address the geographical issues that might arise.

According to the impact assessment that I mentioned earlier, the total funding for biodiversity net gain is expected to be less than £200 million per year. Can the Minister comment or shed any light on why this figure is so low? In addition to biodiversity net gain, the Government also have a target to halt the decline in species abundance by 2030. Given that we are talking about increasing biodiversity from current levels, can the Minister provide any update on the current level of species abundance? What is the baseline assessment being used?

In his introduction, the Minister mentioned the appeals process. The SI deals with the time limits that apply for appeals procedures should a local authority decline, or otherwise fail to approve, a biodiversity gain plan. What are the anticipated costs for local authorities, or the potential for developers to submit sub-par plans knowing that they can then go to court? I ask this because, in the past, some developers have cited viability as a means of avoiding Section 106 or community infrastructure levy contributions and have occasionally threatened to go to appeal if officers recommend refusing an application. This is to ensure that we do not have those sorts of issues arising in this case.

8 pm

Looking at the SI that deals with the financial penalties, which the Minister mentioned in his introduction, we have heard that the maximum fine that can be imposed by the register operator if an applicant is suspected of providing false or misleading information when registering land is £5,000. It would be interesting to know how this sum was arrived at, and whether it is deemed an appropriate disincentive.

I draw attention the Explanatory Memorandum to the SI on site registration fees. Paragraph 7.5 states:

> "Someone might attempt to secure the registration of land by providing false or misleading information, or to have false or misleading information about the nature or extent of habitat enhancements required on the land recorded in the register, so as to make a financial gain from selling fake habitat enhancements to developers".

Will a threat of a £5,000 fine really stop this happening? I do not know whether anything else could be done if it were seen to be the case.

Finally, I very much support the comments of the noble Lord, Lord Deben, regarding our planning system and how we deliver net zero. That was a very important point to make.

Having said all that, as I mentioned at the beginning, we very much support the regulations, but some clarification in the areas that I have drawn attention to would be helpful and very much appreciated.

Lord Benyon (Con): My Lords, I am very grateful for the contributions to this debate. The regulations debated here today will support the new mandatory net gain requirement, which will help secure positive outcomes for biodiversity, create better places for local communities and support a more consistent, streamlined and transparent planning process. This is very much only part of how we seek to deliver our 2030 targets, which my noble friend Lord Deben mentioned, of no net loss of species, and an increase by 2045. It is really important to make that clear.

We estimate that we are talking about around 6,900 hectares a year, but hundreds of thousands of hectares of other nature improvements are being incentivised by wider biodiversity credit schemes, carbon credit schemes and nature conservation measures that are being led through our environmental land management and other agri-environment schemes. Communities across England will benefit from new developments that work for both wildlife and people and create nature-rich places to live, while ensuring that they have the new homes that they need.

To take the point made clearly by the noble Baroness, Lady Bennett, there will continue to be a need for development under any party of government, which means that there will continue to be a risk of the loss of biodiversity. We need a system that works and is clear.

I take my noble friend's point: I suspect that they were talking about the Natural England metric when he was at that conference. I would be the first to admit that that is a very complicated piece of work: it runs to a great many pages, and I have tried to run a competition in my head, if not in the department, about how many people understand it. The point is that, as we develop this and as those metrics are understood by more people—the people advising the businesses that seek to purchase the credits and the land managers who seek to make the land available—we will see a robust scheme that is accountable.

I will try to address the key points raised. The noble Baroness, Lady Bennett, quite rightly raised the issue of whether 10% goes far enough—why 10%? We consulted on the percentage gain to be required in the 2018 public consultation. Respondents set out varying views on the appropriate percentage gain, and there were calls for both higher and lower percentages—obviously, there will be people out there who did not want any and people who wanted a great deal more. We maintain the view that 10% strikes the right balance between the Government's ambition for development and the certainty of achieving environmental outcomes to support the pressing need to reverse environmental decline while being affordable and deliverable for developers.

Developers and local authorities may wish to voluntarily pursue gains higher than 10%—a very good point made by the noble Baroness, Lady Thornhill. Where higher net gain percentages may be set in local planning policy, careful consideration in those events should be given to the feasibility of requirements above 10%, for example for smaller, self-build and community developments—I think that is really important. To be clear, biodiversity net gain means a strengthening, not a weakening, of the protections for the environment. The existing strong statutory and policy protections for our statutory protected sites, protected species and irreplaceable habitats will remain in place.

My noble friend talked about on-site enhancements and how they will be enforced. Local authorities will have a range of existing planning enforcement tools at their disposal, and the Environment Act includes mechanisms to ensure that commitments through conservation covenants are adhered to. The enforcing body which has entered an agreement to secure the site will play a key role in ensuring enforcement. This may be a local authority or could be a responsible body for a conservation covenant. Significant on-site biodiversity gains must be secured by a planning condition, planning obligation or conservation covenant, all of which bind the land, meaning that they apply to successor landowners as well. Off-site biodiversity gains must be secured, including management, by either a planning obligation or conservation covenant. Failure to deliver, or attempt to deliver, biodiversity net gain outcomes which are secured with conditions or obligations, subject to which planning permission is granted, can result in enforcement action by the planning authority.

The fines, along with the registration fees, will have to be reviewed as time goes by. Of course, we will see how it works. So much of this can and will need to be amended as we work it through. On the point about fines, if the kinds of greenwashers that the noble Baroness was referring to have not built the wetland or planted the trees or the wildflower meadow or whatever it is, the 30-year clock will not start until they have—so it is not only a fine but a delayed benefit to them.

The noble Baroness talked about projects for public good, which was a very good point. On the question of a hospital, the fees will be paid by the landowner, so it will not come out of the cost to the public purse, if you like. There will, of course, be a degree of management of those fees: some of them may find their way into front-ending the costs. There is a key point about nationally significant infrastructure projects: we are delaying the implementation of biodiversity net gain until next year for NSIPs because it is a more complicated matter. These are obviously much larger schemes and we want to make sure that there is biodiversity net gain—but we want to do it in the right way, so we will consult on that.

My noble friend talked about net zero. Our commitment on net zero, as he knows better than anyone, and for no net loss by 2030, are just some of those that are locked in law—we have to do it—so the Government have taken a range of measures, not least this extraordinarily exciting piece of legislation, the Environment Act, to deliver that. It is important that we see it working and we will continue to make sure that we look at all suggestions that can improve the planning system to deliver this.

[Lord Benyon]

The noble Baroness, Lady Thornhill, talked about monitoring. Integrating the biodiversity net gain requirement into existing planning processes is obviously what we are talking about. The Government are allowing the outcomes to benefit from existing enforcement and monitoring powers in the planning system. Planning application data is routinely published online and will describe how a development is achieving biodiversity net gain. Off-site habitat enhancement will be registered and will need to be secured, including any appropriate monitoring arrangements, through a conservation covenant or planning obligation. Planning authorities are required under the Natural Environment and Rural Communities Act 2006 to report on the actions they have carried out to meet their biodiversity net gain obligations and the details of biodiversity gains delivered or expected to be delivered.

There are some real-life examples, and here I will big-up Buckinghamshire Council, which this week has put information on its website setting out how landowners and developers should engage with it to seek to enter into Section 106 agreements to secure their land, including the estimates of associated costs. These will be negotiated through the Section 106 agreement process, but should cover the costs of the ongoing monitoring that the local planning authority—in this case Buckinghamshire —will carry out. One such estate, the Iford Estate, has already entered into Section 106 agreements to secure portions of land. In the example of Iford, it has entered into a Section 106 agreement with the local authority—the South Downs National Park Authority. Private sector marketplaces are emerging which list BNG units for sale, operating to join up landowners with developers looking to find off-site units. Examples include Addland, the Environmental Trading Platform and Savills Environmental Exchange. I think the Environment Bank is one of the leaders in this field.

Baroness Bennett of Manor Castle (GP): It is interesting that the Minister chose the example of Buckinghamshire. I was referring to the apparent difference that is developing between north and south—that, broadly speaking, higher standards appear to be being set in the south. Are the Government planning to monitor the regional impacts of this, and is the north going to get the biodiversity net gain that it urgently needs? Will the Government act if it is not?

Lord Benyon (Con): The legal requirement is across the country; there is no geographical lessening of the need for it. We will certainly be monitoring which local authorities we think do this properly and which do not, and that will be a matter of public record.

I should just comment on the key question of irreplaceable habitats. These are obviously England's most valuable habitats. They have a high range of biodiversity value and are so difficult to recreate—ancient semi-natural woodland, peat bogs and that sort of thing. On 29 November, we published the draft irreplaceable habitat regulations, which set out the list of habitats to be considered irreplaceable habitat for biodiversity net gain purposes. The local planning authority must be satisfied that the adverse effect of the development on the biodiversity of the on-site habitat is minimised and that there is an appropriate compensation plan in place. The regulations also set out that losses of irreplaceable habitats cannot be compensated for using statutory biodiversity credits. It is important to note that irreplaceable habitats already have significant protection in the National Planning Policy Framework. Impacts on these habitats from development require the strongest of justifications.

I will address another point made by the noble Baroness, Lady Bennett. Off-site gains, which could be biodiversity gains, on other landholdings, or purchasing biodiversity units from the market, are part of the new hierarchy that sets out the draft regulations on biodiversity procedures. This ensures that, where impacts on habitats cannot be avoided or mitigated, compensation should be delivered either through off-site gains, as I say, or through enhancing and creating habitats on site, and, as a last resort, through purchasing statutory credits from the Government.

The right reverend Prelate the Bishop of Norwich speaks with great knowledge—I heard his outstanding maiden speech in this House. He is an ecologist, and I would say that his erstwhile career is now a growth industry, which answers some of the points he made. I do not know the exact number of local authorities that employ their own ecologists; I am very happy to seek that out and to write to noble Lords. It is a growth industry, because developers and local authorities are going to need them. There are a great many local authorities that use a contractual arrangement, and so do not employ them directly, but many still do.

8.15 pm

The right reverend Prelate also made a very important point: biodiversity is not just about bugs, bees, animals and flowers; it is about humanity as well. The Dasgupta review—which I think is one of the great reports—was commissioned by the Treasury, and the first time anywhere in the world that a piece of work on biodiversity has been commissioned by a finance department. It makes very clear the economic importance of restoring biodiversity. As somebody once said: we are not free-holders; we are the tenants on this planet, with a full repairing lease. That was Margaret Thatcher. The question of stewardship which she raised is absolutely vital. It is an old-fashioned word with a very relevant meaning. If we want to hand on this planet and the environment in a better condition than we found them, we need to re-understand what stewardship really means.

The noble Baroness, Lady Bakewell, talked about the level of fees and who gets the fine. The fees go to Natural England to set up the register. Fines are snaffled by the Treasury, but, I am sure, in a way that will ultimately be redistributed back to the Environment Department.

Noble Lords: Oh!

Lord Benyon (Con): They are warm and cuddly people, and they always bend to our will.

I absolutely reject what the noble Baroness said about the land use framework. The report that she and her colleagues produced is one of the best reports that I have read produced by a committee of either House. It is being taken extremely seriously. I understand that

it is taking longer than we would like to produce our land use framework, but we are certainly not dismissive of it; we think it is an extremely valuable piece of work. She asked for an example of land that would perhaps have a lower requirement: on much brownfield land there will be very little biodiversity loss, so that is an example.

I turn to all noble Lords who raised the question of costs. We fully comply with the new burdens rules in government, and we want to make sure that local authorities are using them to their best needs. The Government have already committed over £15 million this year to assist local planning authorities in preparation for biodiversity net gain. Defra is working to make sure that the information that local planning authorities need to prepare is in place before mandatory biodiversity net gain comes into force. We know that many local planning authorities are already delivering biodiversity net gain and that there are examples of good practice; I have already cited one of them.

We are aware of a range of preparation activity ongoing. This includes increased ecological skills capacity and training, including in the biodiversity metric, evidence-gathering and a range of other areas. Defra has also funded the Planning Advisory Service to support local authority planners to prepare for mandatory biodiversity net gain, and there are 600 members in its practitioner network.

I hope I have covered most of the points raised. As confirmed in the Government's *Environmental Improvement Plan*, this Government are committed to halt and reverse nature's decline. Biodiversity net gain is a key enabler for this, giving the development industry an opportunity to work with the planning system to ensure development improves and protects our precious biodiversity, rather than further eroding it. I commend the draft regulations to the House.

Motion agreed.

Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024

Motion to Approve

8.18 pm

Moved by ***Lord Benyon***

That the draft Regulations laid before the House on 30 November 2023 be approved.

Motion agreed.

Automated Vehicles Bill [HL]

Committee (1st Day) (Continued)

8.20 pm

Amendment 11

Moved by ***Lord Liddle***

11: Clause 2, page 2, line 19, leave out "such representative organisations as the Secretary of State thinks fit" and insert "representatives of road user groups and other groups whose safety or other interests may be affected by the application of the principles"

Member's explanatory statement

This is to probe consultation provisions.

Lord Liddle (Lab): My Lords, the amendments I am speaking to are basically about the process of external scrutiny and oversight of what the department is doing. In the previous discussion, we had a perfect illustration of why this is necessary, because the Minister said, "No—you can't put the critical issue of safety in the legislation. It's got to be left to the department". That is what he was saying. Is that what we want in the public interest? Does it satisfy the concerns that people have?

I speak as a supporter of automated vehicles, but I believe that if we do not exercise the highest standards of safety in their introduction, we will get a public backlash which will put all this back for years. I say to the Minister: if he is so adamant that he is not prepared to accept my noble friend Lord Tunnicliffe's amendment on safety standards, how is it also logical for him to reject all the amendments in this group, which are designed to improve stakeholder involvement and ensure that there is the widest possible consensus about what changes are to be proposed?

All the amendments in this group that are in my name are basically on this theme. Again, it is not the detail of the wording that matters at this stage—I am sure there are errors and faults in that—but the principle. Are the Government prepared to accept the principle that there should be widespread stakeholder involvement in this evolving issue of what regulation is necessary? As we know, there will not be a sudden change to automated vehicles. It is going to be a long process of evolution and change, as I think one of the noble Baronesses here said. We are going to have hybridity for a long time, so we have to face these questions of how we adjust our regulation in the light of experience.

The first amendment I put down was on the business of the statement of safety principles. The Government, unless they accept my amendment, are not even prepared to recognise the point in their legislation that there should be representative consultation on what the safety standards should be before they table them. That seems to be fundamental, so I am moving that as Amendment 11 and then speaking to the others.

On Amendment 33, we have the case that there will be reports, but there is absolutely no provision that they will be laid before, and provide an opportunity for discussion in, Parliament. Is that not pretty fundamental?

Amendment 49—let me find this part of the Bill; I do not want to mislead the Committee—would come after Clause 93. Its principal proposal is for the establishment of an advisory council, which would bring together stakeholders and people who are relevant to this debate. At one end, it would include trade unions, because if you are talking about automated delivery vehicles and automated bus services—that may be one of the first areas where automated vehicles will be used fully—then you have to carry the representatives of working people with you. It is only right that trade unions and employers should be involved.

When we are talking about an advisory council, these things cannot just be driven by the industry and the producer interest. We have to look at the views of people such as cyclists. Cyclists are probably more at risk in a hybrid situation, alongside pedestrians, than any other group. The cycling association has thought

[Lord Liddle]
about this quite hard and has quite sensible views, so I would like to think that the department was institutionally obliged to consult it and take its views into account.

That is the very valid point of this group of amendments. I would like to hear from the Minister why he cannot accept them, because it seems self-evident that if we are not prepared to put things in law which require high safety standards, then we will have to find some other mechanism by which the public can be reassured.

Baroness Brinton (LD): My Lords, I want to make a brief intervention on this group of amendments. I thank the noble Lord, Lord Liddle, for raising the important issue of an advisory council. The disabled community talks about the importance of co-production right from the start to make sure that there is not consultation at the end when it is really too late to do things. I hope that the Minister will take that on board. The Government have finally begun to understand the importance of co-production with disabled people. You can never have just one representative and it is important to understand all the issues. But as the noble Lord, Lord Liddle, said, that also applies to other users, so an advisory council is going to have to cover a fairly broad range of interests. As the Minister reminds us continually during the course of the Bill, we are in new territory and design is inevitably going to have to change, so I hope that he will support these amendments.

Lord Berkeley (Lab): My Lords, I will intervene very briefly and apologise for being late. I support my noble friend Lord Liddle in his comments on Amendment 49 and the need for an advisory council. We have come across this before in many other Bills and Ministers always seem to say, "We don't want to list those people who might be on it, because they might change". I just draw the Committee's attention to the news, which I think came yesterday or today, about the new board for Channel 4. The comment was made that the only person who had any experience in diversity had been rejected. Whether it was because of that or because she was female we do not know, but everybody else—except for one—was a white male. The Government may say these things, but they do not always appear to do it.

8.30 pm

Baroness Randerson (LD): My Lords, I support the amendment in the name of the noble Lord, Lord Liddle, to which I have added my name. I added my name because, as a member of the Secondary Legislation Scrutiny Committee, and a previous member of the Common Frameworks Scrutiny Committee, I am used to looking at what different departments consider to be proper consultation. This Government have a very poor record on recognising what is really inclusive consultation. I cannot think of a topic with a broader range of organisations to which the Government should be offering consultation than safety on roads. Almost everyone in our nation uses the roads in one way or another and has the right to a viewpoint and to have it considered.

It is probably a very little-known fact that the Secondary Legislation Scrutiny Committee keeps a record of the progress of individual departments on issues such as this. The Department for Transport does not have a wonderful record on consultation and reporting. Consultation cannot be only with the organisations, for example, producing the automated vehicles. It has to be with a whole range of organisations representing people who use the roads and directly with the people who use the roads themselves. I support the noble Lord, Lord Liddle, in his views.

Amendment 55, which is in my name, would require the Secretary of State from time to time to review the rules for driving tests to ensure that the public can safely drive both automated and non-automated vehicles in places where there are many automated vehicles on the road. It would also allow the Secretary of State to update the rules on driving tests. It is blindingly obvious to me that, over time, people's driving skills will wither and die if no effort is made at keeping them refreshed.

This is an issue that the Transport Committee of the House of Commons addressed directly in paragraph 63 of its report:

> "Greater automation will reduce time spent driving. Over time drivers may become less practised and therefore less skilled. Conversely, the demands on drivers will grow as they will be called upon to retake control of vehicles in challenging circumstances with little notice. The Government should set out a strategy for the future of human driving in a world of self-driving vehicles. This should include possible changes to driving tests and a plan to ensure that all drivers fully understand self-driving vehicles and both acquire and maintain the necessary skills for taking control of a vehicle in all circumstances".

Looking at the circumstances in which you would retake control of a vehicle, it seems it would be when it has become too complex for the automated vehicle to cope. You would be sitting there, quite relaxed, and suddenly you would be in an emergency situation. That requires new and different skills and a new and different approach. It is essential that the Government look at the driving test and the issue of refreshing skills. This is going to be possibly most acute as an issue for older drivers and for young and inexperienced drivers. Skills can become stale very quickly.

The noble Lord, Lord Liddle, has one approach to this in Amendment 47; I have a slightly more urgent approach in Amendment 55. The principle of the two amendments is the same. The issue needs to be looked at and it needs to be looked at now, so that everyone is prepared for when this situation comes into existence—which people tell us could be in the next few years.

I urge the Minister to give us a positive response on the issue of consultation and to reassure us that the Government are considering the issue of skills.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, the amendments in this group concern external oversight of the operation of the self-driving regulatory framework. This includes duties to report and consult.

On the opening remarks of the noble Lord, Lord Liddle, it is a mischaracterisation to suggest that the issue of safety is simply being left to the department, and I said nothing of the sort. Indeed, it is on the face of the Bill that the statement of safety principles is to

be developed in consultation with stakeholders—a point I will return to shortly—and subject to proportionate parliamentary scrutiny.

Turning to the noble Lord's Amendments 11, 46, and 49, the Government are clear that we will consult with representative organisations on the proposed use of the Bill's powers before they are used. Following government best practice, we anticipate this will bring in the views of the public, academia, trade unions and other representative bodies for affected groups. Notwithstanding the comments of the noble Lord, Lord Berkeley, it remains the case that this is a particularly uncertain policy area with a rapidly developing industry, and any statutory list of consultees risks falling out of date rapidly. Additionally, I note the consultation that has already taken place as part of the Law Commissions' four-year review, which included road safety groups, trade unions and businesses. Many of the concerns raised during this process have already been reflected in the Bill. Examples include the introduction of the incident investigation function and the embedding of accessibility into the automated passenger service permitting process. On Amendment 49 specifically, we also believe an external advisory council of the type proposed would risk duplicating the vital functions of the statutory inspectors conducting independent safety investigations.

On Amendment 55D, an extensive public engagement programme has already been conducted over the course of the many years spent developing this legislation. That work is not stopping. For example, in 2022 we funded an unprecedented study called *The Great Self-Driving Exploration*. This award-winning public engagement exercise was explicitly designed to allow people from all walks of life to understand and give their views on how self-driving vehicles might affect their lives. The learning from this research is being used to develop future engagement plans, including ones that will inform our programme of secondary legislation. We also run the AV-DRIVE group, which focuses on how we can all engage consistently about self-driving vehicles. The group brings together vehicle manufacturers, software developers, vehicle leasing representatives, insurers, road safety groups and others. Work to date has focused on education, communication and building public understanding of the technology. This will also be supported by Pave UK, a new resource hub and education group launching this spring, with government support. I hope this offers my noble friend Lord Holmes of Richmond sufficient reassurance.

Amendments 32 and 33 look to attach additional requirements to the general monitoring duty set out in Clause 38. This clause requires that reports be published on the performance of authorised automated vehicles, including assessments of the extent to which this performance is consistent with the statement of safety principles. Since the principles are required to be framed with a view to securing an improvement in road safety, any assessment against them is already an assessment of safety. The exact format of these reports is yet to be determined and will likely vary depending on the number and types of relevant deployments in any given year. However, I can confirm they are expected to include some fleet-level reporting on safety incidents. Finally, the existing publication requirement in subsection (3) will ensure that reports are available for all interested parties, including parliamentary colleagues. For these reasons, Amendments 32 and 33 are unnecessary.

I turn now to Amendment 30. Clause 43 specifies that authorisation and licensing fees may be determined by any costs incurred, or likely to be incurred, in connection with any function under Part 1 of the Bill. This includes the cost of controlling data collected through information notices. Part of these fees may therefore be used in relation to this function. However, to require separate reporting on these specific costs could add an additional administrative burden and therefore additional costs to the in-use regulatory scheme. It would therefore be disproportionate.

On Amendments 47 and 55, the Government recognise the importance of keeping driver skills up to date in a self-driving world. However, this needs to be done on an ongoing basis rather than to arbitrary reporting cycles. The foundations of that work are already well under way. We have commissioned research on how authorised self-driving entities can best educate those who use their vehicles, and we expect appropriate user training and support to form part of authorisation requirements. We have already updated the Highway Code to explain the difference between driver assistance and self-driving. Just as satnav use is now part of the driving test, driver training will continue to evolve with the arrival of new technology. For example, the Driver & Vehicle Standards Agency is already drawing on research from the RAC which proposes the new CHAT procedure, thereby teaching users of self-driving vehicles to "Check", "Assess" and then "Take over" control.

I hope that this goes some way to reassuring the noble Lord, Lord Liddle, and the noble Baroness, Lady Randerson, that these issues are at the forefront of the Government's mind and will continue to be tackled on an ongoing basis over the coming months, years and even decades. In answer to the noble Baroness's specific point, a user-in-charge is not expected to retake control at a moment's notice. There are safeguards in place in the Bill to promote safe transition, including requiring multisensory alerts and sufficient time to resume control. Vehicles must also be capable of dealing safely with situations where the user-in-charge fails to resume control.

In conclusion, I hope that the noble Lord, Lord Liddle, and the noble Baroness, Lady Randerson, see fit to withdraw the amendment.

Baroness Randerson (LD): I return to the point the noble Lord made about taking over control and not taking over at a moment's notice. From what I have read, 10 seconds seems to be the period specified for taking over control. Is that the Government's accepted view? What research have the Government used in order to home in on that particular period, because 10 seconds is actually a fairly short period in which to get oneself from relaxed to fully in control of emergency situation mode.

Lord Davies of Gower (Con): The noble Baroness makes a fair point. I cannot give her an absolute answer on that one, but it is something I will certainly look into and come back to her on.

Lord Liddle (Lab): My Lords, I agree with what the noble Baroness, Lady Randerson, said about the 10-second question. We need more explanation of that.

I would make three points. I did not detect in what the Minister said any great sympathy for the amendments that I have put down—for three reasons. First, the Government seem to want to minimise future parliamentary involvement in this question of what the safety standards are as well as involvement in being able to discuss reports on the progress of the rollout of automated vehicles. That is point one: Parliament should be involved, and there is no reason why that should not be in the Bill.

Secondly, with automated vehicles there are clear implications for existing, well-established industrial sectors—buses, lorries and delivery vehicles—where many people are employed. It may be that there will continue to be new jobs in these areas; that is generally the experience of technological change, and it may get rid of the labour shortages that exist in some of these areas. That may well be true, but why not try to take the trade unions with you, as well as the employers, when you discuss the regulation of these things? That seems to me to be self-evident.

8.45 pm

Thirdly, on the question of an advisory council, I take the point that you might want to have flexibility of membership, but establishing an advisory council does not preclude that. As members of an advisory council, surely you would want to have the interest groups concerned with road safety, as well as having the organisations that represent cyclists, just to cite two examples. You would not ever want to exclude them from a role in commenting on proposed regulation. So again I do not see that this is an objection in principle. It would actually help the Minister to have an advisory council on what will be, as we all accept, very difficult issues.

Lord Davies of Gower (Con): I am grateful for the point that the noble Lord makes, but I come back to the point that the Government are very clear that we will consult representative organisations on the proposed use of the Bill's powers before they come into force. The noble Lord seems to imply that these bodies are not onside. As I have said previously, we anticipate that we will bring in the views of academia, trade unions and other representative bodies, so I do not really accept what the noble Lord says.

Lord Liddle (Lab): I beg leave to withdraw Amendment 11.

Amendment 11 withdrawn.

Amendment 12 not moved.

Clause 2 agreed.

Clause 3: Power to authorise

Amendment 13 not moved.

Clause 3 agreed.

Clause 4 agreed.

Clause 5: Authorisation requirements and conditions

Amendments 14 to 19 not moved.

Clause 5 agreed.

Clause 6: Authorised self-driving entities

Amendment 20 not moved.

Amendment 21

Moved by ***Baroness Brinton***

21: Clause 6, page 4, line 39, at end insert—

"(6) A person may not be an authorised self-driving entity unless they meet the following requirements—

(a) they have obtained a certificate of compliance with data protection legislation from the Information Commissioner's Office for their policy in regard to the handling of personal data,

(b) their policy in regard to the handling of personal data clearly outlines who has ownership of any personal data collected, including after the ownership of a vehicle has ended, and

(c) they are a signatory to an industry code of conduct under the UK General Data Protection Regulation."

Member's explanatory statement

This amendment seeks to probe a number of concerns around data protection and ownership and seeks to prevent authorisation of companies as self-driving entities unless robust personal data practices are in place.

Baroness Brinton (LD): My Lords, we move to a group that looks at data protection issues, which were covered at Second Reading. In this group, I have Amendment 21, the Clause 42 stand part notice and Amendments 35 and 36. I have found the Information Commissioner's Office response to the joint consultation from the Law Commission and the Scottish Law Commission on automated vehicles, dated March 2021, extremely helpful. That response set out the legislative landscape and said, in paragraph 6:

"The consultation refers to Directive 2002/58/EC, known as the ePrivacy directive ('ePD'), however, reference should be given instead to PECR, which is the UK law that gives effect to the ePD … Section 17.54 notes that the legislator 'clearly did not have AVs … in mind' when the Directive was enacted, and that 'At the time, the typical terminal equipment was a telephone handset' … Therefore, care must be taken when interpreting the legislation, so that its underlying rationale, and technology neutral approach is fully understood and any proposals accord with its objectives. The ICO has produced guidance"

on this. It is saying that GDPR rules are clearly not enough on their own.

I was grateful at Second Reading for the Minister's clear response on the protection of personal data—I may disagree with what he said but I was grateful for the clarity of the response. He said:

"However, data must remain properly protected. Self-driving vehicles will be subject to existing data protection laws in the UK. Our proposed Bill does not alter that, so manufacturers and government will have to ensure that data is protected".—[*Official Report*, 28/11/23; col. 1072.]

I remain concerned that the Bill, especially Clause 42, sets out a very high level, a top level, of legislation—whether primary or secondary, of which we know

nothing yet—by which information will be protected, but it does not put in place the mechanisms by which individual people could rest assured that their personal data was being appropriately protected. The ICO further commented on personal data in its response to the Law Commission, at paragraph 12:

"Automated vehicles pose particular challenges in relation to personal data, as often they will process the personal data of several individuals: owners, drivers, passengers and even pedestrians. If the personal data of these users is processed inappropriately, there is a heightened risk of intrusion into individuals' work and private lives. The Government and technology providers should therefore adopt a data protection by design and default approach, ensuring that privacy protections are built into the design and development of automated vehicles".

To return to the Bill, Clause 42(4) sets out the offence of breaching data protection, but then Clause 42(5) gives a very wide range of defences, which is, frankly, quite worrying. It says:

"But it is a defence to prove that—(a) the person from whom the information was obtained as described in subsection (1) consented to the disclosure or use, or (b) the recipient reasonably believed that the disclosure or use was lawful".

I have been trying to think through what this might mean in practice. Let us say that you call an AV—it could be yours; it could be a neighbourhood vehicle; it could be a taxi; it could even be getting on a bus—and when you call it, it will ask you, probably in your app, to confirm the terms and conditions. We all do this every day when we go online; we just tick "Yes", but do we know what the operating licence holder might be doing with our personal data? Worse, the licence holder or a future recipient of that data, somebody else in the chain of information, might think that disclosure was lawful. Amendment 21 sets out the baseline good practice for any organisation that is dealing with personal data, especially data that the individual is not necessarily aware of.

I want to give the Committee an example I experienced when a number of people and organisations were involved in handling personal data. My dentist—please do not laugh; it is relevant—requires patients to sign online, before they are seen every time, that they are content with their personal, medical and other personal data being held, so that the surgery can better look after patients, with an assurance that it will be held appropriately. That is fine. A couple of years ago, the regular online form changed, and after page one I was asked to sign a different set of Ts and Cs from a specialist data processing company. I clicked through, read the 17-odd pages and discovered that in the small print this multibillion-dollar company wanted my permission to be able to pass my data, medical and personal, on to other interested parties in its group and for other associated services. This included insurance companies, providers of healthcare and pharmaceuticals. I was not happy.

When I raised it with the dental surgery, it was really shocked. It had not clocked the detail because it had not clicked through two or three times, as I had to do, and it dealt with it straightaway, but I am making a point: we are not expecting a single authorised organisation to process all the data. There will be many different tracks coming down the line, and the problem here was that this was an American company using American law, not GDPR. The defence in Clause 42(5) would have succeeded, because one would have automatically ticked on the Ts and Cs thing on the app. That is one of the reasons that, at Second Reading, I probed on protection for data. I hope that my amendments will strengthen what the Government are planning to do.

Amendment 21 sets out the criteria that would have to be met before a person or a body would be permitted to be authorised as a self-driving entity. First, they must

"have obtained a certificate of compliance with data protection legislation"

from the ICO for their policy of handling of personal data. Secondly, their policy relating to handling personal data of clients, passengers et cetera must clearly outline

"who has ownership of any personal data collected, including after the ownership of a vehicle has ended".

Thirdly, they must be

"a signatory to an industry code of conduct under the UK General Data Protection Regulation".

Because I remain concerned about Clause 42, I have laid that it should not stand part, partly as a probing issue to get the issues out and bring a response from the Minister. I hope the Minister can provide the Committee with stronger reassurance than that given at Second Reading, given the 10 pages of response from the ICO to the Law Commission consultation.

I have two further amendments in this group. In every debate so far—and in meetings with the Minister—the Government have made it plain that the Bill is charting new territories and new technologies that not one other country has yet managed to do. Much of the focus on the Bill is understandably on vehicles, but the other element of newer and untested technology is how data will be used. We know just from the advances in AI over the last few months, let alone year, how fast it changes. Amendment 35 sets out for an annual report to Parliament on the use of personal data in relation to automated vehicles. This way, when the sector responds it can see how many breaches there are and how new technology as yet unseen and unknown—not even thought of—will affect individuals. Equally importantly, we will be able to see trends in data collection so that Governments and Parliament can consider whether further legislation is needed to further regulate the collection of data. Amendment 36 sets out the requirement for the Secretary of State to consult with the ICO in relation to the collection of personal data prior to the Secretary of State making any regulations in relation to personal data collection.

I know that the noble Lord, Lord Liddle, made the point about the Secretary of State making these decisions, and I just want to add at this point that this Government have had a habit of pushing an enormous amount of information into secondary legislation. I think we all understand that some of it needs to be there but, particularly with new technologies and new areas, Parliament is very concerned about giving permission for things that are not yet even understood, let alone explicit.

I also want to add that I support the other amendments in this group from my noble friend Lady Bowles and from the noble Lord, Lord Holmes of Richmond, all of which strengthen the protections needed for a technology that will have even more access to people's

[Baroness Brinton]
personal data than we know now, whether it is commercial or third-party data. All the amendments in this group are following the ICO's principal concern.

I say again that AVs pose a risk to individual rights if they have insufficient control over their data and their data protection rights. The ICO says that data systems for AVs should have a data protection system by a design and default approach. After all, it is a new technology.

I really look forward to hearing the Minister's response. I beg to move.

Baroness Bowles of Berkhamsted (LD): My Lords, I have four amendments in this group. I am looking more at the commercial interest side of things, partly because "information" is a very broad word that can mean all kinds of things. My Amendment 29 adds to the end of Clause 14 that information sharing

"must respect rights of ownership and privacy, including with a view to compensation in respect of any commercial rights".

I will talk more on compensation in connection with later amendments as well, but there is a significant issue here.

Under Clause 14, authorisation requirements may state that there has to be information sharing with the Secretary of State, public authorities and private businesses. Clause 14(4) says that the purpose of the shared information must be disclosed, which is fair enough as far as it goes, but says nothing about privacy or commercial rights. Further, the information may not belong to the body being authorised. It may belong to individuals. Even in an anonymised state, it may belong to others than the authorised entity. I accept that there may be instances where sharing is needed—accidents and failures come immediately to mind—but there will still need to be ways to make sure that neither individual nor commercial rights are undermined.

9 pm

Others are far more expert than I on the personal data side, but I have some claim to understanding intellectual property rights, as my profession was as a patent attorney. Here, and elsewhere in the Bill, there seems to be no recognition of these rights, of the multiple entities in the chain that may hold them or of the disastrous effect that disclosures in these terms may have, particularly in forcing smaller companies out of their only protections and out of business. If their information, commercial or otherwise, must be disclosed to other bodies, they will end up undermined, which will leave us with only the megabusinesses that have the power and size to withstand such conditions.

What specific attention has been given to intellectual property rights? I am happy to discuss this with the Minister or officials if that would be helpful. Fundamentally, is there an intention to set aside such rights and, if so, under what conditions? Meanwhile, my suggestion is to put in a reference to observation of commercial and privacy rights.

Amendments 34 and 42 are also relevant to intellectual property. They would insert a provision that

"both fair and reasonable compensation"

for commercial data

"and protection of personal data are provided".

Amendment 34 would put this at the end of Clause 42, on protection of information, and Amendment 42 would place it at the end of Clause 88, on the collection, sharing and protection of data. The final subsections of both clauses state that provisions made are

"not to be taken to authorise disclosure or use that would be liable to harm the commercial interests of any person, except to the extent that"

the provision otherwise applies or

"the person disclosing or using the information reasonably considers such disclosure or use necessary in view of the purpose of the regulations".

This provision is useless. It offers commercial and personal protection, but that protection can be taken away by either the provision itself or a person who wants to disclose or use the information. That seems extraordinary. This drives a coach and horses through personal and intellectual property rights.

Whereas in my previous amendment I was concerned about what might be confidential information, here I am also concerned about flouting statutory patent or copyright rights. Data may be commercially confidential as well as valuable, and the means of generating some information could well be patented. Software will have copyright. Setting that aside is astonishing, and it reads as though all those things are possible under these terms. Is it a whole new system of compulsory licensing, setting aside fair commercial reward? The Commons Transport Committee report suggested that there might be occasions when commercial interests had to be overridden, but this was a suggestion from one witness in the context of cybersecurity. I cannot envisage that a free-for-all on data was intended, as that would surely increase vulnerability and help hackers.

Have the Government decided to take that view and, if so, to what extent? Can the Minister please explain? If such a position is being suggested, it needs much tighter drafting as to circumstance and compensation. After all, when we had compulsory licensing provisions for patents, there was reasonable compensation. Those compulsory licence provisions proved both difficult and costly to implement, and ultimately were removed in the Patents Act 1977 because, among other reasons, they were against TRIPS. There may be a recent resurgence of interest, given India's actions, but are we really joining in the repudiation of WTO positions?

Wary of that history, I think these provisions are unsustainable, as they read to me, and at the very least there should be a provision for fair compensation regarding commercial rights and, of course, protection of personal data. That is what my exploratory amendments suggest, but even compensation is tricky under international conventions, unless there is a right to refuse.

I stress again that these issues are particularly important for smaller companies and that the information that is sought may well come from such a source, as often there are consortiums surrounding how the vehicle is going to be produced in its final version. This is especially the case when looking at software and the connected vehicle aspects. Their entire protection of a

small company may be based on commercial information and patent rights, and they will be destroyed if those are set aside.

Finally, my Amendment 31 relates to telling people when information that they have given in an inquiry can be used for other purposes. This amendment inserts at the end of the provision that says:

"The Secretary of State may use the information for any of the investigative purposes in relation to any regulated body, irrespective of the purpose for which it was initially obtained".

It is another provision that leaves me somewhat queasy, but for now I am suggesting that notice has to be given to whoever gave the information. It may also be reasonable to allow an objection mechanism. The looseness of this provision, allowing use of information, also seems inconsistent with provisions elsewhere—for example, relating to inspections, where information is more closely controlled—and it also seems against judicial provisions, which surely should indicate guiding principles. I am not sure whether I have always correctly interpreted what is written from the Government's point of view, but in interpreting what is written on the page as I see it, I think there are some substantial problems. When it comes to information being swapped from one inquiry to another, normally if you have given evidence, certainly in a court, it cannot just be then swapped and used in something else. When there are inquiries, individuals may give away information believing that it is for a narrow and specific purpose. I do not believe, if there was any confidentiality or other things around it, they have given permission for it to be swapped elsewhere.

I hope the Minister can look at my amendments and what is in the Bill, and, as well as a response now, maybe come back with a more considered response on whether there are things that can be amended along the lines that I suggest.

Baroness Randerson (LD): My Lords, I support the amendments in the names of my noble friends Lady Brinton and Lady Bowles. I start by emphasising the importance and strength of the Information Commissioner's Office's response to the Law Commissions' report. Amendment 36 is therefore essential because it involves the ICO in setting the rules and standards.

It seems to me that the issues are twofold: first, the issue of the protection of personal privacy and personal data, and, secondly, the issue of national security. On national security, these vehicles will have an entire knowledge of every part of the UK and the details of the traffic arrangements for the whole of the UK. Can you imagine the impact on the economy of a major cyberattack that could paralyse traffic over a considerable area? I am trying to avoid the idea of some kind of updated version of "The Italian Job". Any kind of hacking into the system would have national security implications.

Turning to personal privacy, I will pose a couple of simple examples. Imagine that I own a car and I sell it to someone else. The car has collected my data; it knows where I visit on a daily and regular basis. Whose data is it when I sell the car to someone else? The data is an essential part of the operation of that car. It has learnt its way around my city using my favourite routes; it has amended how it operates according to my preferences. At what point does that data cease to be mine and start to belong to the car or its manufacturer? Do I have a right to say, "Wipe it, start afresh and reinstall"? If that is the case, there is the whole issue of public awareness to be tackled.

My second example is of a taxi company. I hire a taxi, so the company concerned therefore knows where I picked it up and where I left it. Does that data belong to the taxi company or to me? I realise that a taxi company now has data on things such as this, but it is in a very much less systematic way.

Turning to whether Clause 42 should stand part, I will quote a couple of sentences from the clause. It says:

"The Secretary of State may make regulations authorising the recipient to … use the information for a purpose other than the purpose for which it was obtained".

That is a pretty bald phrase and therefore pretty risky. It adds:

"It is an offence for the recipient to … disclose the information … except as authorised by regulations under subsection (3) or any other enactment".

That is remarkably broad. It also says that

"it is a defence to prove that … the recipient reasonably believed that the disclosure or use was lawful".

That is a very weak position. It seems to me that in neither respect does the Bill adhere to data protection norms. I urge the Minister to take it back and look at tightening up the data protection aspects of the Bill, in relation to both data protection for the individual and, as my noble friend Lady Bowles emphasised, the commercial aspects of the rights to data.

9.15 pm

Lord Tunnicliffe (Lab): My Lords, we on these Benches have no amendments in this group, largely because the area is so complex and we cannot rustle up anybody bright enough to understand it—I wish I had got a good lawyer. Hence, I would like to thank the noble Baronesses, Lady Bowles, Lady Brinton and Lady Randerson, for making the subject so interesting and explicit. The closest I got to this area was trying to read the whole Bill, which I staggered through over Christmas. I kept coming across these various little phrases, including the one about such a weak defence for giving away my data. I really feel that the three Baronesses have a very strong point. I look to the Government not to dismiss it because they were told to give no points away but to take it back and discuss with the noble Baronesses how this Bill can be improved. It is a horrible precedent to see data handled so loosely and in such a cavalier manner.

Lord Davies of Gower (Con): My Lords, once again I thank noble Lords for their contributions. I begin with Amendments 29, 34 and 42, tabled by the noble Baroness, Lady Bowles of Berkhamsted. The protection of personal and commercial data is of course a critical issue and one that requires careful consideration. On Amendments 34 and 42, all information collected and shared under Clauses 42 and 88 is subject to restrictions on unauthorised use, breach of which constitutes an offence. Where personal data is collected, this is also subject to data protection legislation. This information can be disclosed or used only for the purposes specified in the regulations made under each respective clause.

[Lord Davies of Gower]

As set out in our policy scoping notes, this is a novel policy area, and it is not yet known exactly how information may need to be used or shared. However, as the examples in the notes illustrate, this is likely to be for public interest purposes such as road safety or improved passenger services. On the basis that information sharing will be proportionate and in the public interest, a requirement to pay commercial compensation would be inappropriate.

To further support data protection, the Government will be considering the recommendations by the Centre for Data Ethics and Innovation, in its report *Responsible Innovation in Self-Driving Vehicles.* These include a recommendation to work with the Information Commissioner's Office to issue guidance on how data protection obligations apply to self-driving vehicles.

On Amendment 29, all information required to be shared under Clause 14 will be subject to the requirements and safeguards of data protection legislation. The Bill does not change these protections. This information will be used for regulatory purposes to ensure the safe and legal operation of self-driving vehicles. It will also be used to determine criminal and civil liabilities associated with the use of these vehicles. Again, these purposes are proportionate and in the public interest. Businesses will be aware of the regulatory requirements for information sharing prior to seeking authorisation or licensing, and the information will be subject to these obligations from the outset. There would therefore be no expectation that it could be treated as commercially confidential information which holds a market value.

I turn to Amendment 31. The department does not notify entities when using information obtained under an investigation and used in the public interest—for example, to improve road safety. In the case of Clause 22(2), the information would be used for

"any of the investigative purposes in relation to any regulated body".

These purposes aim to ensure the continued safe and legal operation of self-driving vehicles, and are therefore in the public interest.

The amendment would place an additional administrative burden on the Secretary of State that brought minimal benefit to the regulated body in question, as the investigative purpose would continue none the less. In the case of a regulatory issue being identified, the body would be notified by the appropriate regulatory action, such as a compliance notice. This would then allow the regulated body to challenge the use of information by representations under paragraph 5 of Schedule 1.

On Amendment 21, tabled by the noble Baroness, Lady Brinton, I recognise that she made a characteristically incisive series of detailed points on these issues. I will be happy to meet with her, in addition to the separate meeting we have scheduled on accessibility, to have a fuller discussion on her questions, and I extend the same invitation to other noble Lords.

We believe it is right that the protection of personal data will be considered alongside the detailed development of authorisation requirements—it is an important issue. These requirements will be set out in secondary legislation and will be subject to consultation and impact assessment. The schemes referred to in the amendment are industry led and therefore not within the control of government. There is therefore a risk that they would not achieve the intended result.

On Amendment 35, it is the role of the Information Commissioner's Office to regulate on data protection issues. The ICO has an existing obligation to report annually to Parliament on the commissioner's activities. Any report by the Department for Transport would risk duplicating this work. The Department for Transport is also not the data controller for information collected by regulated bodies, which means that such reporting would be inappropriate. Further, the Secretary of State already has a duty under Article 36(4) of the UK GDPR to consult the ICO on proposals for legislative measures. Amendment 36 therefore duplicates an existing requirement.

On Amendment 55B, the Information Commissioner's Office is the independent regulator responsible for upholding information rights in the public interest. Given its role as a whole-economy regulator, it would be unnecessary and duplicative to establish a separate third-party body, with the same expertise, to oversee the use of personal data by self-driving vehicles.

I turn to the proposal that Clause 42 be removed. Clause 42 contains provisions that constrain the use and disclosure of information obtained through the regulatory framework. The removal of these provisions would open up the possibility of personal data being processed in a much wider manner, such as for reasons of "legitimate interest". This would amount to a weakening of the data protections in the Bill.

On the points raised about national security, whole-life cyber resilience will be tested as part of the approval processes. The UK has co-chaired the UNECE group developing standards in this area, and government is working with colleagues in the National Cyber Security Centre and the National Protective Security Authority on these issues.

Finally, on the point regarding the protection of personal data when selling a vehicle, in cases where manufacturers and supporting services store data outside the vehicle, all relevant data protections will need to be met. If a vehicle user has given access rights and connections to personal information, it is the responsibility of the user to delete the data from the vehicle. Indeed, this is the same approach as that applied to devices such as mobile phones, which contain similarly large quantities of sensitive data. I ask noble Lords not to press their amendments on this.

Baroness Bowles of Berkhamsted (LD): Can I just clarify something? I accept what the Minister says. In most cases there may be a public interest provision and there are not statutory protections on the information that the public interests can win. But where there are—I will take the statutory protection of a patent—that is essentially exerting a Crown user provision with no compensation, which would offend against international treaties.

Lord Davies of Gower (Con): I thank the noble Baroness for that. She raised a number of important points that I have perhaps not addressed fully, and

I would be very happy to go back and write to her comprehensively on a couple of them.

Lord Tunnicliffe (Lab): Will the Minister copy that to those who have been involved in the debate?

Lord Davies of Gower (Con): I omitted to say that I will copy in all those noble Lords.

Baroness Brinton (LD): My Lords, I thank all the contributors to this debate. We are delighted that others have been so supportive of our amendments, which cover a considerable range of data protection issues. I am grateful to the Minister for his response and thank him, because, yes, I think a meeting is particularly important. He said in response to my noble friend Lady Bowles's first amendment that the Government are not yet sure how data will be used or shared. That is the reason that the ICO is so clear that there needs to be extra provision, because otherwise, if everyone just assumes that it will be the way we have always used GDPR, we—being the Government and the public—are going to come a cropper pretty quickly, not least because technology has changed, is changing and will change again so fast. I hope that, as we have our meeting and progress towards Report, the Government will seriously consider following the ICO's advice and make very clear, designed-by-default arrangements for this sector, which will be like none that we have seen so far. With that, I withdraw my amendment.

Amendment 21 withdrawn.

Amendment 22 not moved.

Clause 6 agreed.

House resumed.

House adjourned at 9.27 pm.

Grand Committee

Wednesday 10 January 2024

Arrangement of Business

Announcement

4.15 pm

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Judicial Pensions (Remediable Service etc.) (Amendment) Regulations 2023

Considered in Grand Committee

4.15 pm

Moved by ***Lord Bellamy***

That the Grand Committee do consider the Judicial Pensions (Remediable Service etc.) (Amendment) Regulations 2023.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, your Lordships last considered matters relating to judicial pensions following the McCloud judgment on 15 June, when the Judicial Pensions (Remediable Service etc.) Regulations 2023 were before them. On that occasion, in answer to a question from the noble Lord, Lord Ponsonby, I said that I hoped your Lordships would not be troubled by this matter again. Unfortunately, a small technical point has arisen on those 2023 regulations that we were then considering; these amendment regulations address that point. Perhaps I could briefly explain.

As your Lordships may recall, in 2015 the Government introduced new pension arrangements across the public sector following a report from the Public Services Pensions Commission. As far as judges were concerned, the new arrangements were set up in the Judicial Pensions Regulations 2015, which I will refer to as the 2015 scheme. Those aged over 55—that is, those approaching retirement—were allowed to remain in their previous legacy schemes and were not required to join the 2015 scheme, as every other judge was required to do.

Those judicial arrangements were then challenged by younger judges who said that they were victims of age discrimination in being required to join the 2015 scheme without the option to remain in their previous legacy schemes, which were supposedly more favourable. The challenge succeeded in the McCloud case in 2018 so, after various consultations and actions, Parliament passed the Public Service Pensions and Judicial Offices Act in 2022; in effect, it remedied the McCloud judgment by giving everyone the option to choose between their previous legacy scheme and the 2015 scheme. I understand that around 3,000 judges were affected by the McCloud judgment and that the process of allowing them the option to choose is currently in train and is so far proceeding according to plan. However, a group that apparently numbers between 30 and 50 judges has a particular situation: largely prior to the McCloud judgment, they made payments into the 2015 scheme. Typically, it was top-up payments, pension transfer payments or other supplementary payments.

However, as it turns out, through the effect of the McCloud judgment and what is thought to be the effect of Section 61 of the Equality Act, they were never technically in the 2015 scheme. In law, they always remained in their legacy schemes, so what is the status of the payments that were made into the 2015 scheme to which these judges did not, in law, belong? It is simply to correct that issue that these regulations are being put before your Lordships.

Effectively, the regulations simply say—one sees it in particular on page 2 of the regulations in the new Regulation 38A, which is introduced into the 2023 regulations—that the value payments made into the scheme are referred to as purported value payments and are to be treated as having been received by the scheme. Although there was doubt about whether they could be received by the scheme, this now deems them to be treated as having been received by the scheme. There are similar parallel provisions in relation to the various kinds of transfer payments that we are referring to.

That is, as I understand it, the essential purpose of these regulations: simply to tidy up a point. I have to say that it is not a particularly clear point, but the Government feel they should make assurance doubly sure by putting that matter beyond argument.

Finally, another group of judges numbering no more than three, I gather, benefit from an earlier judgment—the O'Brien judgment—which said that fee-paid judges were actually entitled to a pension. Those judges similarly made some payments into the 2015 scheme and the question is about the exact status of those payments. These regulations again provide that those payments are deemed to be in the 2015 scheme. I know there is a famous phrase that we have too much damned deeming going on in the legal system, but this is simply there to clarify the position.

Unless I have omitted some fundamental point or made any misstatement, that is the essential purpose of the regulations and I beg to move.

Lord McNally (LD): My Lords, it is a great pleasure to follow the noble and learned Lord, Lord Bellamy. I held his position in the Government between 2010 and 2013. I became Minister of State at Justice with the now noble Lord, Lord Clarke—Ken Clarke—as Lord Chancellor. One of our first visits was to go across Parliament Square to pay a courtesy call on the Supreme Court. He was, of course, in his element as a QC and a former Home Secretary, but I was filled with trepidation when soon after we arrived three Supreme Court judges bore down on me, clearly to seek some discussion on some high point of law—some difficult and abstruse point. I need not have worried: what they wanted to press me on was judicial pensions. There was some passion in that. I remember one of the first stages in the coalition Government, which probably ended up in the 2015 Act, was to try to address the various anomalies and uncertainties in judicial pensions, so it is with a sense of closure that I come this afternoon to support what the noble and learned Lord memorably described at an earlier stage as

[Lord McNally]

"44 pages of the densest technical complexity one could imagine".—[*Official Report*, 15/6/23; col. GC 375.]

Why am I not surprised that that should be the legislation dealing with judges' pensions?

I am sure that we share with the Minister the hope that this is the final tweak to the regulations. In voicing our support from these Benches, I ask him how the regulations fit in with the more general objectives of judicial reform. Will we see a judiciary—particularly a senior judiciary—more diverse in social, gender, ethnic and educational background than hitherto has been the case? Does the Minister agree that it is important that our legal system should as much as possible reflect the society it serves? There is much to admire in the intellectual quality, integrity and independence of our judiciary. Its members are most certainly not "enemies of the people", but they must not be seen as a Brahmin caste, separate from society as a whole.

The direction of travel in recent years has been slow but steady. I hope that a sensible and secure pension scheme will underpin the flexibility and social mobility necessary to retain confidence in and respect for our judiciary.

Lord Ponsonby of Shulbrede (Lab): My Lords, I too remember when the noble Lord, Lord McNally, had his time in office as a Minister of State.

Lord McNally (LD): The noble Lord was a lot of trouble.

Lord Ponsonby of Shulbrede (Lab): Well, one of my roles is to be a lot of trouble—although I will not be a lot of trouble in this particular debate.

The noble Lord spoke about the Supreme Court judges talking with passion about judicial pensions. As a lowly magistrate, I have sat in magistrates' retiring rooms with district judges, and I can say that they talk with equal passion about judicial pensions—I have heard about it for a number of years. A number of them are of course part-time district judges, and the matter is of great importance to them.

The noble Lord said that he approaches this debate with "a sense of closure". I think that everybody hopes for a sense of closure on this issue, so the first question that I put to the Minister is: are we right to think that this is the last time that we will hear about this issue? It would be interesting to hear his reflection on that.

Previously when I have taken part in these debates, I have had sitting behind me my noble friend Lord Davies of Brixton, who is an actuary and an expert on these matters. The particularly interesting question that the noble Lord, Lord McNally, raised was on how these pension reforms will fit in with the wider objectives for the judiciary as a whole in building diversity and flexibility and other desirable objectives, which will affect pension entitlements, one way or another. If the Minister could say something about this in the wider context, that would also be of interest.

I have a further question about the likely timetable for implementing this remedy. Is it already under way and when might it be complete? A final question is on whether any judges would need independent advice on whether they should accept these proposals. Is it their responsibility to get their own independent advice? I do not know how that works. Is there an expectation that judges should take independent advice before receiving these pensions?

Other than that, we clearly support the measures as far as they go. I look forward to the Minister's response.

Lord Bellamy (Con): My Lords, I thank noble Lords for those remarks. I respectfully tiptoe in the distinguished shoes of the noble Lord, Lord McNally—let me make it absolutely clear: he was one of the most astounding Ministers in the ministry for many a long year. The Government entirely accept and support the sentiments he expressed that the judiciary should reflect as fully as possible the society it serves. There is still a way to go on that, and we may well touch on it in the debate on the next statutory instrument, where I have some observations to make on that very point.

All I can say from a pensions perspective is that it is important to be able to attract very good people into our judiciary. We increasingly call on them to do very difficult and demanding work. The judicial pension scheme is aimed at being a secure and attractive scheme sufficient to ensure that we attract a competent, robust and diverse judiciary. It is difficult for the Government to go beyond that but, clearly, this has to be a part of the general move to make sure that we have a sufficiently diverse and competent judiciary. As far as that general point is concerned, it is indeed a matter of ongoing concern to the judges that that should be the case, as both noble Lords said.

In relation to the points raised by the noble Lord, Lord Ponsonby, I hope—again—that we will now see the end of these processes and that we have now got it right. As your Lordships will appreciate, it is a fiendishly complicated area. It has been complicated by some quite intense litigation in the background. Judges may well want to take independent advice, but the judiciary has shown no lack of either independence or knowledge about the pension arrangements in the various fora in which that has been debated. It is partly because of the detail into which the Government have had to go that these statutory instruments have been introduced. I understand that the timetable for implementation is in the next few months. It is rolling forward and there should be no further difficulty; we very much hope that the end is in sight.

I hope that I have answered your Lordships' questions and points. I see that the noble Lord, Lord Ponsonby, is quickly refreshing his notes. I commend these regulations to the Committee.

Motion agreed.

Employment Tribunals and Employment Appeal Tribunal (Composition of Tribunal) Regulations 2023

Considered in Grand Committee

4.33 pm

Moved by ***Lord Bellamy***

That the Grand Committee do consider the Employment Tribunals and Employment Appeal Tribunal (Composition of Tribunal) Regulations 2023.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, this draft instrument will delegate the power to determine the composition of employment tribunals and the Employment Appeal Tribunal to the Senior President of Tribunals. The regulations form part of a wider ongoing policy on the part of the Government to create a single judiciary in which all parts of the judicial system form a seamless whole, whether courts or tribunals, and to further the work of ensuring consistency of operation within the tribunal system.

Your Lordships may recall that, in the very old days —I am not completely sure but this may even predate the noble Lord, Lord McNally—tribunals were, in effect, almost a part of the department to which they were associated. Down the end of the corridor in the Ministry of Health or the Ministry of Social Security, there would be a tribunal that was supposed to review the decisions of the department. Over the years, however, it has been the Government's policy, pursued particularly by the Labour Government and later by the coalition, to create a proper, independent, separately administered tribunal system.

From mid-2007 onwards, we have had a formalised, unified tribunal structure, in which all the various tribunals form the first tier. We have First-tier Tribunals, which consist of a series of tribunals dealing with social security, educational special needs, immigration and asylum, and various other things, with an appeal to the Upper Tribunal. The whole is presided over by a Senior President of Tribunals, who is currently the right honourable Sir Keith Lindblom. The Senior President of Tribunals decides on the composition of those various tribunals, across the board.

For historical reasons, employment tribunals have been an exception to this system. As your Lordships will recall, employment tribunals have a rather special history: they were originally called industrial tribunals and were set up at a time when, to gain public confidence, it was thought—rightly so—that those tribunals should have a particular statutory set-up shared jointly by what are now the Department for Business and Trade and the Ministry of Justice. The composition of employment tribunals was set out separately under the Employment Tribunals Act 1996. As your Lordships know, the original idea, dating from the 1970s, was that there would always be someone representing the workers, someone representing the bosses and a legal chairman of that composition.

Times have moved on a lot since. The Judicial Review and Courts Act 2022 set out a new framework, which provides that the Lord Chancellor has the power to determine the panel composition of employment tribunals, which he can delegate to the Senior President of Tribunals. These regulations implement that provision and allow the Lord Chancellor to delegate to the Senior President of Tribunals powers to determine the panel composition of employment tribunals, thus bringing them more fully within the unified system of tribunals and making the panel composition the same as all other tribunals.

The Senior President would be able to issue practice directions of the types of cases that can, for example, be heard by a judge alone, but he has to consult the Lord Chancellor about any practice direction that he is minded to make. The idea is to update the system, to create a more flexible process and to bring arrangements for employment tribunals and employment appeal tribunals in line with those that apply across the unified tribunal system.

Your Lordships will know that, particularly following the Covid pandemic, the tribunal system has been under great pressure. There is a need to be as flexible as possible to tackle these backlogs and to implement processes that are as efficient as possible. I take this opportunity to say that tribunals, particularly employment tribunals, have recovered well from the pandemic; the outstanding case load is falling and is below the pandemic peak. Members of employment tribunals and the judges in this sphere have done great work to tackle the backlog.

There is a matter that relates to what the noble Lord, Lord McNally, asked about on the previous statutory instrument: the status of non-lawyers who work in the judicial system. I will not call them lay members, as that phrase is not particularly appealing to them. It is not the Government's intention that this should be a kind of backdoor to reduce the role of non-lawyers in our legal system. The Government's view is that, from time immemorial, non-lawyers—citizens—have played an essential part in our legal system as a whole. That might have been as magistrates—the noble Lord, Lord Ponsonby, is a notable example—in a jury, or as members of tribunals.

We feel that this "lay participation" brings an extra texture, adds extra confidence, brings extra insights and greatly enhances the system as a whole—particularly from the point of view of diversity, which was the point made by the noble Lord, Lord McNally. You are drawing on a wide pool of potential appointments to tribunals and, generally speaking, that is an avenue in which you can enhance diversity in the wider judicial system. The regulations are not intended to undermine that in any way. I have had the great privilege of sitting as a judge in the Employment Appeal Tribunal, where the effect of the lay members was particularly striking. I will follow the noble Lord, Lord McNally, with a moment of personal reminiscence. In those days, the Employment Appeal Tribunal had some very distinguished trade union members: I think of George Wright of the Transport and General Workers' Union; Norman Willis, the former secretary-general of the TUC; and others— I think I just missed Jack Jones, but only by a short margin. They brought enormous skill, wisdom and common sense to the operation of the appeal tribunal, and one would not wish to jeopardise that.

I thought that I would take the opportunity to make the Government's position on that point clear. This statutory instrument is designed to bring employment tribunals in line with the rest of the system and to enable us to be as flexible as possible without in any way undermining the principle of lay participation, which I have just emphasised. On that basis, I beg to move.

Lord McNally (LD): My Lords, it is perhaps one of the wonders of our system that the noble and learned Lord, Lord Bellamy, and I should both have had the same job in government. I am not a lawyer, whereas he is a very distinguished lawyer and indeed a very distinguished judge. I used to be—if you are going to invite people of my age to speak at these gatherings,

[Lord McNally]

you are going to get some reminiscences—very nervous of that. At any meeting, I would say, "I have to explain that I am not a lawyer". Then I entertained a distinguished jurist from the United States and explained that I was not a lawyer, and he said—very slowly—"Then I will speak very slowly", so I stopped doing that.

I should also say that, in background and upbringing, I belong to a generation that was—and is—supportive of dialogue rather than confrontation in industrial relations. The Employment Tribunals Act and the setting up of the tribunals certainly underpinned and strengthened that approach to industrial relations. Of course, we will probably give a nod to it today.

4.45 pm

The noble and learned Lord said that the industrial tribunals are being treated differently and that this will bring them into line with the rest. However, I think that the industrial tribunals are different and bring with them qualities that we should at least hesitate on before we lose them. I would like the Minister to clarify how the legislation would work in practice. For example, it would be important to know when and why the Lord Chancellor would decide to delegate the decision on panel composition to the Senior President of Tribunals. In the light of some of the more bizarre and short-term appointments of the Lord Chancellor in recent years, it would be equally important to know how and when the Lord Chancellor would reserve those powers to himself or herself.

In asking that question, I should emphasise that I have heard only the highest of comments of approval about the present Lord Chancellor. Nevertheless, it would be useful to know what criteria or conditions would lead the Secretary of State to delegate panel composition to a President of Tribunals and, by extension, to know what kind of case would lead the Secretary of State to retain these decision-making powers on panel composition. Has any estimate been made of the proportion of cases that would be delegated? What appeal process would be in place for decisions made in either direction? We on these Benches welcome making the process more streamlined. It would be useful to know whether the thinking is to offload most decisions to the Senior President of Tribunals and retain only a few for the Secretary of State. Then again, in those cases, what would justify such a retention?

I want to make a number of points; I am relying on an excellent brief by the TUC. I will not read it all out because it is quite a long one but the key points are worth repeating. It says:

"There have been a number of consultations in the last … years on panel compositions … The consistent view from employers, HR professionals, employment lawyers and trade unions is that non-legal members are of vital importance … Non-legal members bring a knowledge and understanding of the workplace and employment practice which judges often do not possess, and that when facts are in dispute, the quality of decision-making is higher, and the appearance of justice being done is greater when non-legal members are present. It is not clear why consistency … has been deemed of greater importance"

than those undeniable facts. It goes on to say that the trade unions

"oppose the proposed changes because lay members root tribunals in the realities of working life, build confidence in the process among claimants and respondents, and contribute to the diversity and inclusiveness of the tribunal system … The TUC believes that lay members should sit on all employment related cases, including fast track, unfair dismissal, whistleblowing and discrimination cases. Employment judges should only have the discretion to sit alone where a case involves complex issues of law, and all issues of fact are uncontested".

Those are quite serious criticisms—and we are talking about a system that works.

Let me call back on my own experience again. When I was a Minister, I went along to a number of tribunals to see them in action. It was clear that the lay members' knowledge and workplace experience, which a professional judge does not have, offered an injection of a practical perspective in discussing the arguments before a tribunal. The presence of lay members can also be an important reassuring presence for unrepresented parties. I sometimes felt a little queasy when I observed a tribunal and saw an unrepresented party on the one hand and a well-lawyered employer on the other.

Although the noble and learned Lord, Lord Bellamy, put the best gloss on it, a more fundamental change is being proposed. Those of us who do not see industrial relations in a confrontational way but encourage the tribunals' approach should not allow it to be finessed away with common-sense orderliness. The industrial tribunals are special—their composition makes them special—and we should be careful before we lose those qualities in terms of what they deliver to our industrial relations.

Baroness Lawlor (Con): My Lords, it is a great honour to follow the noble Lord, Lord McNally, but I do not have his great experience or knowledge. I will make a very lay man's point. I thank my noble and learned friend Lord Bellamy for his illuminating outline of the background to this question and the history, taking us through why the Government are now keen to unify the employment tribunals within the overall structure of the tribunal system and keep them more obviously within the judicial system than they might have been before.

My question is one of clarification. My noble and learned friend explained that the Government do not seek to reduce or undermine in any way the lay composition of employment tribunals in future. Will there be specific instructions to the Senior President about the composition of the panel, including whether one, two or three members will be present? Will there be guidance on the balance between judicial and lay members?

In particular, I pick up on the point from the noble Lord, Lord McNally, about the employer-heavy element in tribunals. I recall when my noble and learned friend Lord Bellamy brought the academic freedom Bill through the House last year. At the time, it seemed important to me that we did what we could to redress the balance for single employees battling against a powerful establishment, often with the law behind them but unable to bear the pressure of finances and the stress that such cases can bring. For these reasons, I say to my noble and learned friend the Minister that it is necessary to keep this in perspective, even if we want to bring it in line with our overall judicial system.

Lord Ponsonby of Shulbrede (Lab): My Lords, in his opening remarks, the noble and learned Lord said that

this is not a backdoor to reduce the lay members within the judicial system. He went some way to say how much judges appreciate working with lay members, who are sometimes experts in other fields. The two noble Lords who spoke before me raised concerns on exactly this issue.

Although my brief is to accept the proposals of the Government without reservation—which I do, of course—I have reflected on my own experience. A number of magistrates sit on a number of tribunals; I can think of about 10 colleagues who do this, as it is quite common. Some sit on employment tribunals and some on other tribunals. Sometimes they are experts and sometimes they are lay people in other contexts. I remember a couple of separate discussions, with a magistrate who was a trade unionist and with magistrates who were employers, all of whom sat on these employment tribunals and were sceptical about the changes foreseen by these regulations. That scepticism was about money-saving and about trying to get consistency within the system when there is no merit beyond that consistency itself. There needs to be more of a reason than just consistency to make a change such as this. The noble and learned Lord gave us some reassurances in his opening, but there is scepticism out there nevertheless.

The question that both the noble Lords asked is: after these regulations go through, what criteria will the Lord Chancellor look at, if and when proposals come for more tribunals to be determined by single judges sitting alone, rather than by a panel of three? Will there be a process to review this? We heard from the TUC and I gave my personal anecdotes about colleagues with whom I have sat, and it seems to me that the justification of consistency alone is not sufficient. There needs to be a more profound justification to make this change. I look forward to the noble and learned Lord's response.

Lord Bellamy (Con): I thank noble Lords for their comments. On the mechanics of this—I will be corrected by those sitting behind me if I get this wrong—if your Lordships approve these regulations, that in itself delegates to the Senior President of Tribunals the power to decide on composition. There is no further step by the Secretary of State; he simply delegates it, as he is empowered to do under the 2002 Act.

It is then for the Senior President of Tribunals to issue a practice direction setting out how he proposes to exercise those powers. There have already been some consultations in relation to that, which are possibly those referred to by the Trades Union Congress. The Senior President has intimated that, until he has the power to make the practice direction, it is not appropriate for him to make the result of the consultation public. I am sure we will know that in due course, but it is not too difficult to speculate, as a lot of reservation has been expressed about the very point that your Lordships are making. This point is not new; it is in the public domain. In effect, it is: "Don't tinker with the well-established working relationships of employment tribunals". That is thoroughly understood.

The Senior President of Tribunals does this job with all tribunals across the piece. Employment tribunals are special up to a point, but this is a job that he does and, if I may say so, we have to acknowledge that we have a wise and experienced president, as I am sure we will in the future. I am equally sure that he will exercise those powers responsibly.

5 pm

However, in exercising those powers, first, he has to take account of the responses to the consultation. Secondly, I am sure that, de facto, he will take account of the reservations expressed in this debate and possibly in the other place as well. Thirdly, he has to consult the Lord Chancellor. I have stated the Government's position on that—it is a major factor. Lastly, if, heaven forfend, there was real concern about the way things were going, this is only a delegated power: it can be taken back again. I venture to reassure your Lordships that I see no real prospect of the important role of lay members in employment tribunals being reduced as a result of this legislation. If that risk arose, there are sufficient checks and balances and reserve powers to make sure that it does not materialise.

The consistent view expressed by the Trades Union Congress was that

"non legal members are of vital importance".

I may not have agreed with everything it said, but the Government agree with that; there is no difference between us. I anticipate that almost all noble Lords who have spoken, including myself, are at one on the importance of lay representation and membership from both sides of industry—those who know the workplace and those who know the employers' and the employees' perspectives.

Indeed, anecdotally—if your Lordships will forgive me—I cannot remember a case when I sat with a so-called employee representative where there was the slightest suggestion that that member of the tribunal favoured the employee. On the whole they did not; they could see when somebody was shooting a lion—which was also a valuable protection for the businessman. But in terms of public confidence in the system and particularly the imbalance of power—the lack of equality of arms—when you have a well-lawyered employer and a lay unrepresented employee, it is important that the appearance is of, and the reality is, a balanced tribunal. I trust that that will continue going forward. On that basis, I commend these regulations to the Committee.

Motion agreed.

Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 2) Regulations

Considered in Grand Committee

5.04 pm

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

That the Grand Committee do consider the Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 2) Regulations.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, these regulations have been laid to update the UK's list of high-risk third

[Baroness Vere of Norbiton]
countries in Schedule 3ZA to the Money Laundering, Terrorist Financing and Transfers of Funds (Information on the Payer) Regulations 2017, which I will refer to as the money laundering regulations.

The Government recognise the threat that economic crime poses to the UK and our international partners, and are committed to combating money laundering and terrorist financing. The Government are committed to bearing down on kleptocrats, criminals and terrorists who abuse the UK's financial and services sectors. The Economic Crime and Corporate Transparency Act built on the earlier Economic Crime (Transparency and Enforcement) Act to ensure that the UK has robust, effective defences against illicit finance.

The money laundering regulations provide the legislative framework for tackling money laundering and terrorist financing, and set out various measures that businesses must take to protect the UK from illicit financial flows. Under these regulations, businesses are required to conduct enhanced checks on business relationships and transactions with high-risk third countries, which are listed for these purposes in Schedule 3ZA to the money laundering regulations. These are countries identified as having strategic deficiencies in their anti-money laundering and counterterrorist financing regimes which could pose a significant threat to the UK's financial system.

This statutory instrument amends the money laundering regulations to update the UK's list of high-risk third countries. It removes Albania, the Cayman Islands, Jordan and Panama from the list, and adds Bulgaria, Cameroon, Croatia, Nigeria, South Africa and Vietnam. This means that the UK's high-risk third-country list will be aligned with the decisions of the Financial Action Task Force, the global standard-setter for anti-money laundering and counterterrorist financing.

FATF's methodology ensures that countries around the world are subject to expert, robust evaluations of their anti-money laundering and counterterrorist financing regimes. Where countries are found to have strategic deficiencies which they fail to address, FATF members can agree to add them to one of two lists: jurisdictions under increased monitoring and jurisdictions subject to a call to action.

By aligning our own high-risk third-country list with that of FATF, we ensure that the UK remains at the forefront of global standards on anti-money laundering and counterterrorist financing. This protects the UK financial system from illicit finance linked to the jurisdictions being listed. Where countries have made significant progress to address their strategic deficiencies, it is equally important that we recognise that and promptly remove them from the UK's list.

This is the eighth SI amending the UK's list of high-risk third countries to respond to the evolving risks. In June, Schedule 3ZA was amended to remove Cambodia and Morocco after they were de-listed by FATF, but otherwise updates to the high-risk third-country list have been paused since November 2022. As set out in the Explanatory Memorandum, that was to allow time for a full impact assessment to be conducted. This was required due, in particular, to the listing of Nigeria and South Africa, given their significant economic ties to the UK. The pause in updating Schedule 3ZA has led to the need for this more significant SI, with six countries being added and four removed.

I am aware that many noble Lords have expressed frustration at parliamentary time being taken up by these relatively routine matters, which keep our high-risk third-country list aligned to FATF. The Economic Crime and Corporate Transparency Act enables the Government to amend the money laundering regulations to create an ambulatory reference to the FATF lists. This will result in the same legal effect, with regulated businesses being required to apply enhanced due diligence to relevant business relationships and transactions with these countries, but without the need for secondary legislation after every change to the FATF lists.

The Government will bring forward an SI to implement this provision in the MLRs shortly and, in notifying the Committee of this, I emphasise two things. First, the Government retain the authority and autonomy to deviate from the FATF list at any time if the Government change their policy decision with regard to mirroring the FATF lists and, secondly, if we were to do so, it would require further secondary legislation and a debate in both Houses of Parliament.

I conclude by noting that the high-risk third-country list is an important mechanism that the Government have to clamp down on illicit financial flows from overseas threats, but we will also continue to use other mechanisms to respond to wider threats from other jurisdictions, including, for example, by applying financial sanctions.

These amendments will enable the money laundering regulations to continue to work as effectively as possible to protect the integrity of the UK financial system. I beg to move.

Lord Sharkey (LD): My Lords, it is a pleasure to speak to this made SI, which is a model of its kind. It is succinct, admirably clear and well supported by a helpful EM and an exemplary impact assessment. We are happy to support it and we have only a few comments to make.

We continue, of course, to be enthusiastic about the work of FATF both in general and in the particular cases of money laundering and terrorist finance which are addressed by this SI. It is clear from the EM that FATF is extremely active in these areas. Reading the appendices to HMT's updated guidance of 4 December makes it clear that there are both significant signs of progress and significant issues yet to be resolved. The removal of four countries from the old Schedule 3ZA is somewhat outweighed by the addition of six countries, two of which—Nigeria and South Africa—represent large challenges to the implementation of successful MLR regimes. Nevertheless, for many of the countries on the new Schedule 3ZA brought into being by this SI, FATF has been able to detect progress but not yet sufficient progress to warrant removal from the list.

As the Minister pointed out, the United Kingdom has revised this list seven times previously to follow FATF's findings and I think we all hope that this revision will be the last in its current form. Debating this SI in the Commons on Monday, the Economic Secretary to the Treasury said, as the Minister explained:

"I am aware that many noble Lords have expressed frustration at parliamentary time being taken up in the other place by such

relatively routine matters to keep our high-risk third countries list aligned to the task force's".—[*Official Report*, Commons, First Delegated Legislation Committee, 8/1/24; col. 4.]

I have no idea who these people are, but clearly they were extremely influential because the Economic Secretary to the Treasury has proposed a solution, as the Minister explained. He proposed using the powers in the Economic Crime and Corporate Transparency Act to amend the MLRs to create an ambulatory reference to the FATF list which will result in the same legal effect as at present, but without the need for a SI every time there are changes. All of that seems much more sensible than having to debate an SI every time the list changes, but it raises the question of whether the Government have in contemplation any adjustments to the current FATF list that they want to make independently of the list itself, as it were. Perhaps the Minister could comment on that when she replies.

Returning to the current instrument, I commend the impact assessment. It is thorough, reasoned and appropriately self-critical. I am, as are the authors of the assessment, somewhat sceptical about what appears to me a likely false precision in the associated costs of implementing this SI. The high-level estimate of £237 million for transition costs seems just that—very high—as does the upper estimate of £131 million per annum in ongoing costs. The impact assessment thoroughly explains the data problems involved in arriving at these estimates and explains the methods and proxies used to arrive at them. It concludes its summary by saying that:

"Over the longer term the government is taking proactive steps to improve the available data on the cost of compliance with MLRs, which should help to inform IAs in future years".

Will the Minister write to us saying what these proactive steps are and over what timescale they will be adopted?

The IA reminds us that the NCA believes that,

"it is a realistic possibility that over £100 billion pounds is laundered every year through the UK or through UK corporate structures".

It goes on to say that:

"In particular, the size of the UK's financial and professional services sector, the openness of our economy and the attractiveness of London for investors makes the UK particularly exposed to international money laundering risks".

These risks will not disappear, but the UK's role as a money laundromat should reduce as the MLR provisions in this SI and elsewhere take effect. Will the Minister undertake, in any subsequent revisions to our MLR regime, to give us the latest estimates of money laundered through the UK or UK corporate structures? We need to see clear evidence that our MLR regime is working.

5.15 pm

Lord Livermore (Lab): My Lords, I am grateful to the Minister for introducing the latest iteration of the list of high-risk countries from the Financial Action Task Force. As she outlined, this is a routine piece of secondary legislation and one that we are pleased to support.

I note that often there is only a relatively small number of countries added or removed from the list but that, on this occasion, there are significantly more countries involved. Specifically, Albania, Cayman Islands, Jordan and Panama have been removed.

In past debates, the Government have said that UK institutions do not necessarily stop enhanced due diligence just because a country is removed from the list. However, the impact assessment accompanying this SI states that if no action were taken to update the list, firms would have to continue undertaking enhanced due diligence on Albania, Cayman Islands, Jordan and Panama, which have rectified the systemic deficiencies identified by the Financial Action Task Force, leading to unnecessary costs for UK firms. These two statements might potentially be contradictory, and I would be grateful if the Minister could clarify exactly what the appropriate level of due diligence is for a country removed from the list. Is it defined anywhere, or are firms simply able to determine their own levels?

Finally, I note that Gibraltar remains on the list, despite previous assurances that the authorities there are making good progress on implementing the Financial Action Task Force's recommendations. Can the Minister provide an update on Gibraltar's progress and indicate whether she sees Gibraltar coming off the list in the near future?

Baroness Vere of Norbiton (Con): I am grateful to both noble Lords for their contributions to this short debate. I will try to answer as many questions as possible. The noble Lord, Lord Sharkey, has already asked for a letter; I am very happy to provide him with one because I absolutely do not have the information that he requires on the steps that we will be taking in order to improve the data in the impact assessment.

There are some important elements raised by both noble Lords, Lord Sharkey and Lord Livermore, around whether we will make an independent—non-FATF—adjustment to the list. At the moment, we have no intention of doing so. The rationale is that there are of course many other routes to ensuring an appropriate level of due diligence, and we would therefore expect regulated firms to pursue those instead or in addition.

That raises the point that the noble Lord, Lord Livermore, talked about: if a country is removed from the list, what then? Does it come out of the naughty corner, off the naughty step, and back to being exactly the same as everybody else? Of course, that is not the case because there is a much more nuanced way of looking at it. It is good to follow FATF because one of the big benefits of that is that the enhanced measures are implemented in a co-ordinated manner by the international community. If the UK puts a country on the FATF list, then many other nations will do so too, which therefore magnifies the preventive effect.

However, the list is just one of the many measures to prevent illicit finance entering the UK. The money laundering regulations also require enhanced scrutiny in a range of situations that present a high risk of money laundering, including geographic risk. This is the case not just for those on the list of high-risk third parties; individual organisations will take their own view about the risks they perceive in a particular region and, indeed, in a particular sector in a particular region. Regulated firms will take into account credible sources where they identify the risk of money laundering, terrorism and designated entities operating in a country or significant levels of corruption. Noble Lords will know that regulated firms devote significant resources

[Baroness Vere of Norbiton]
to this because it is in their interests to ensure that they do not support illicit finance. This means that, regardless of the listing, firms would still need to be nuanced. As is always the case in money laundering regulations, one cannot be too prescriptive because the circumstances are different for most of the regulated firms.

On the latest estimates of the amount of money laundering going on, when I took up this role in mid November, my first question was: how do we know it is £100 billion? Of course, we do not; it is an estimate. We will endeavour to provide estimates going forward, but it is a known unknown, and it is very difficult to establish the amount of money laundering going on because if we knew it was there, we would try to stop it, but we can certainly look to do that in future.

I recognise that the impact assessment has an element of certainty that perhaps does not exist. It is a very difficult thing to do, which is why there was a slight delay to laying this SI. Noble Lords will note that the impact assessment itself states that there is

"low to medium confidence in the accuracy of the overall quantitative conclusions".

We will write to set out the steps we are taking to understand the impact of changing the list. It is the case that complying with money laundering regulations is an expensive business, but it is necessarily so to protect the integrity of the UK financial services sector. However, I will write with further information.

I will write to the noble Lord about what progress has been made in Gibraltar. My understanding is that it has made very good progress against its action plan, and we continue to work with it on this. We expect Gibraltar to be removed from the list soon due to the improvements in its illicit finance regimes. It is worth mentioning that we work closely with the overseas territories to ensure that they get the benefit of our expertise because they are treated as independent nations. They are members of a FATF-style regional body themselves. Part of the rationale behind FATF is to share understanding and make sure that we lift people to the highest possible standard in terms of stopping illicit finance.

Motion agreed.

Data Reporting Services Regulations 2023

Considered in Grand Committee

5.23 pm

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

That the Grand Committee do consider the Data Reporting Services Regulations 2023.

Relevant document: 7th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, both these instruments are made under powers in the Financial Services and Markets Act 2023, which I will refer to as FiSMA 2023. The regulations form part of the Government's ambitious programme to deliver a smarter regulatory framework for financial services. As highlighted by the SLSC, these SIs replace areas of assimilated law—formerly known as retained EU law—in financial services with an approach to regulation that is tailored to the UK. Under this programme, the Government are delivering a regulatory framework that is logical, consistent and conducive to economic growth, while preserving the robust regulatory standards that are the cornerstone of the attractiveness of the UK markets.

I turn to the Data Reporting Services Regulations 2023. This instrument establishes a new legislative framework for the regulation of data reporting service providers—which I will now refer to as DRSPs—replacing the framework we inherited from the EU.

DRSPs are a type of financial market infrastructure that report trade data to either the public or the FCA. They are commercial entities that allow investment firms to fulfil their regulatory reporting obligations.

The appropriate reporting and dissemination of market data is key for markets to be supervised effectively, and for them to function properly. Information on trades and prices is essential for markets to properly value shares and other traded instruments, and therefore allow trades at the most effective price. More broadly, universal information is key in helping market participants to identify investment opportunities and evaluate positions.

There are three types of DRSPs. First, there are approved reporting mechanisms, which report details about transactions in financial markets to the FCA on behalf of investment firms. Secondly, there are approved publication arrangements, which publish trade reports to the public. Thirdly, there are consolidated tape providers, which collate trading data from a variety of sources and publish it in a single live data stream. All three of these types of DRSPs are vital to our financial services ecosystem and this instrument establishes a proportionate framework for their regulation, tailored to UK markets.

Under this new framework, the UK's expert financial markets regulator, the FCA, will make detailed firm-facing requirements in its rulebook, making regulation for DRSPs more agile and more able to respond quickly to market developments and emerging technologies. This instrument also delivers on the Government's Edinburgh reforms commitment to set up a regulatory framework for a UK consolidated tape. Currently there are no consolidated tape providers in the UK. This means that market participants must purchase market data from individual trading venues or data vendors to get a cross-market view, which is burdensome and costly.

It is the Government's view that a UK consolidated tape will improve market transparency and facilitate data access, making it easier and cheaper for market participants to meet best execution requirements and manage risk. That is why the Government consulted on a number of legislative changes to facilitate the emergence of a consolidated tape as part of the wholesale markets review. There was broad support for the Government's proposals which this instrument delivers. Most notably, this instrument introduces a power for the FCA to run a tender process to select one or more consolidated tape providers per asset class, and removes requirements which previously made running a tape in the UK commercially unattractive. These reforms will facilitate the emergence of a UK consolidated tape for

any asset class. This will improve market efficiency, lower costs for firms and investors and make UK markets more attractive and competitive.

I will now move on to the second instrument, the Securitisation Regulations 2023. This instrument also forms part of the Government's programme to deliver a smarter regulatory framework for financial services, by establishing a new legislative framework that replaces the assimilated law on securitisation. Securitisation is the process of packaging loans to form instruments that can be marketed to investors. It allows firms to transfer the risk of their loans or assets to other investors. This in turn allows lenders to free up their balance sheets, to provide further lending to the real economy.

The introduction of the securitisation regulation in 2019 kickstarted high-quality securitisation activity after a decline in the market following the global financial crisis. The securitisation regulation did this by introducing robust regulatory standards which addressed financial stability deficiencies which arose after the financial crisis. The securitisation regulation also encouraged investors to invest in safer, simpler, transparent, and standardised securitisations, by granting this form of securitisation beneficial regulatory treatment.

The Treasury conducted a review of the securitisation regulation in 2021. This review aimed to bolster securitisation standards to increase market transparency and investor protections, and to develop securitisation markets, to facilitate increased real economy lending. The new framework that this instrument establishes will allow the independent financial services regulators—the FCA and PRA—to make and further reform most firm-facing rules for securitisation with more agility and proportionality.

These regulators will consider taking forward reforms in line with the outcomes of their own consultations and the review of the securitisation regulation in 2021. All of these were received positively by the industry.

5.30 pm

Beyond setting this new regulatory framework for securitisation, this instrument takes forward other reforms identified by the 2021 review. This includes, for example, boosting the UK securitisation market's competitiveness by no longer subjecting certain overseas firms to UK requirements when they invest in UK securitisations. This will make overseas firms' requirements more proportionate, increase their incentives to invest in UK securitisations and remove extraterritorial supervision issues for the regulators.

This instrument also reduces administrative burdens by clarifying and standardising certain requirements, such as for firms that hold or assess securitisation data. Finally, it facilitates UK firms' participation in international securitisation markets. This will be done by updating the process that allows the Treasury to grant UK firms beneficial treatment for investing in overseas securitisations that are safer and more soundly structured.

In closing, these SIs replace key parts of assimilated EU law, putting in place new frameworks tailored to the UK as the Government deliver a smarter regulatory framework in financial services. I beg to move.

Lord Sharkey (LD): My Lords, I will speak first to the data reporting services SI. The Explanatory Memorandum for this instrument helpfully reduces its 28 pages to a succinct six pages. It makes plain what the scrutiny situation with regard to the SI will be. Paragraph 7.4 says:

> "Before FSMA 2023, the FCA did not have any rule-making powers over DRSPs, except for some limited powers in respect of technical standards, as well as limited powers of direction enabling them to establish the current authorisation process. These were not sufficient to replace the detailed provisions currently in retained EU law".

Paragraph 6.6 goes on to remind us:

> "Separately, Section 11 of FSMA 2023 inserts new section 300H into FSMA 2000 which establishes a general rule-making power for the FCA in relation to DRSPs. Going forward, it will be the responsibility of the FCA to make firm-facing rules in relation to DRSPs within the powers established by FSMA 2023".

These new FCA rules will not be subject to parliamentary scrutiny—unlike the retained EU law provisions, which were. We should be clear that Parliament will be bypassed by these new FCA rules.

In this SI, we are simply being asked to consider a set of framework proposals for these new FCA rules, not the rules themselves. The helpful de minimis assessment makes this point very clearly in its opening paragraph when it says:

> "Retained EU law will be replaced with rules set by our independent and expert regulators, operating within a framework set by government and Parliament".

We regret that Parliament is being excluded from effective scrutiny here.

There are some questions relating to this framework; I would be grateful if the Minister could address them. In paragraph 7.10 of the Government's response to the consultation on the WMR, there is a note on the issue of removing the requirement for CTPs to provide data streams free after 15 minutes. The report notes that most respondents favoured removing this requirement but others argued that

> "retail and non-professional investors currently benefit from this obligation and removing it, even for CTPs, could risk disadvantaging them".

Have the Government discussed this with the FCA? Which approach is currently favoured? Are we going to leave the 15 minutes in or take it out?

In paragraph 7.11 of the WMR response, it is noted that some respondents suggested that

> "the current requirement in legislation for market participants, operators and data reporting services providers to make data available on a 'reasonable commercial basis' (RCB) is not working".

These respondents argued that this is because the FCA

> "does not have sufficient enforcement powers and asked for the FCA to be given appropriate enforcement powers to control the cost of market data".

Can the Minister say whether this framework SI will allow the FCA to take on these obviously necessary enforcement powers?

I turn now to the 44 pages of the second SI before us, the Securitisation Regulations 2023. We acknowledge the need for action in this area but, as with the previous SI, we strongly regret that Parliament is in effect excluded from scrutiny of the rules to be set by the

[Lord Sharkey]

FCA and PRA. There are several areas in the instrument where it would be helpful to hear more detailed explanations from the Minister.

Paragraph 7.12 of the EM notes:

"This SI makes some changes to the regulatory perimeter, including scoping out"—

I take that to mean "ruling out of scope" rather than "investigating"—

"non-UK AIFMs from the definition of institutional investor",

and transferring

"the responsibility for the supervision of providing securitisations by occupational pension schemes"

from TPR to the FCA. Can the Minister explain on what basis these two changes are thought to be beneficial and to whom?

I am also puzzled by this comment in paragraph 7.14 of the EM:

"Due diligence requirements for occupational pension schemes will remain in legislation and be supervised by TPR".

It goes on to say:

"These requirements will be restated as part of a further SI in 2024".

Why is there a need for restatement? What deficiencies are there in the current legislation?

Paragraph 7.20 of the EM says that

"this instrument exercises sections 71N(3) and 71N(4) FSMA to allow the FCA to disapply or modify their rules in relation to securitisation activity".

Are there any limitations here to what the FCA may do or does it have carte blanche to do as it sees fit, absent any scrutiny from HMT or Parliament? If there are any limitations, where are they set out?

I close by referring to paragraph 10.4 of the EM and the Q2 2024 date for the publication of the outcomes of the FCA and PRA consultations and, therefore, of their new rules. This is a long wait. It is extremely unfortunate that these outcomes and the final new rules are not available to Parliament to inform our debate on this SI. No doubt we will have many more financial services SIs in this Session. Will the Minister ensure that the relevant consultation outcomes and proposed new rules are available to Parliament before we debate future SIs?

Lord Livermore (Lab): My Lords, I am grateful to the Minister for introducing these two grouped SIs, both of which we support.

The Explanatory Memoranda accompanying these regulations note that the repeal of retained EU law remains subject to the entry into force of commencement regulations in order to ensure that there is no overlap or gap between the two different regimes. How soon is commencement expected once this package of SIs has been debated and passed?

I note that the consultations and reviews underpinning these regulations were held in 2021. Although the industry has commented on drafts of the SIs, not all feedback was incorporated and, in some specific areas, the regulators' rules are still being finalised. Is the Minister satisfied that the changes in timelines have been communicated adequately to the relevant entities? Does she believe that any further communication needs to take place before commencement?

The Explanatory Memorandum for the first of these SIs notes, as did the Minister in her introduction, that

"there is no consolidated tape provider in the UK".

Apparently, the MiFID II framework "attempted" to bring one about but the requirements for running a tape were thought to have made it "commercially unattractive". The EM goes on to outline new measures contained in the SI aimed at facilitating a UK consolidated tape, including giving the FCA the power to run a tender exercise based on revised governance arrangements.

I wish to ask the Minister three related questions. First, what practical impact is the lack of a UK tape having and what alternative data sources are being used? Secondly, what is the timescale for the tender process? Thirdly, what will the Government do should there be no suitable bids or if concerns around the governance of a tape remain?

The Explanatory Memorandum for the second of these SIs notes that the FCA will have the power to review and modify its securitisation rules for specific purposes. When is the next overall review of securitisation expected?

Baroness Vere of Norbiton (Con): My Lords, I am grateful to both noble Lords for their consideration. I will definitely have to write. I am grateful to the noble Lord, Lord Sharkey, for all his questions; I am just not clever enough to listen, write them all down and come up with a response at the same time. Had he given me fair warning, I would have come very well prepared and been able to answer all his questions. I am sure I can, but I will have to do so in writing.

I take issue with the premise behind many of the noble Lord's comments about where Parliament sits in all this. He asked why we are not discussing the very detailed rules around what sits at what is in essence the back end of the market, to ensure that it functions in an appropriate way. Independent regulators fulfil many different roles within our society. Obviously, the FCA and PRA do many of those within the financial services sector. We entrust to them the role of making the detailed rules. That was agreed when FiSMA was passed by your Lordships' House last year.

I reflect on my recent experience as Aviation Minister, when I worked with the Civil Aviation Authority all the time. I did not expect to take to Parliament detailed rules about how to build a safe aircraft. It was agreed with FiSMA that we hand over certain elements to the independent regulators. Part of the reason for handing over the regulation of the back end is to improve the agility and proportionality of regulation and to respond to changes to the market. There is a feeling that we are not particularly agile at the moment, and we could do much better. Clearly, we want UK financial services to maintain their place at the very top of the global financial services sector. That is my overarching response to some of the questions raised by the noble Lord in regard to both SIs.

I turn to the tender process for the consolidated tape. I mentioned in my opening remarks that we intend to remove the 15-minute requirement and the requirement to have a per-user charge. However, we have given the FCA the power to run a tender process for a consolidated tape. It has chosen the bond markets

first, and the process for developing that is now well under way. We expect the tape to be in place during 2025, if all goes well. Between now and a tape being in place, it will be for the FCA to decide what the tender looks like, given the data in the market now, the market players, what the technology looks like and what information is required by whom, at what price and when. The FCA will do that detail; it is certainly not within my skill set to be able to scrutinise that.

That is the power we are giving the FCA. It may well be—who knows?—that all sorts of things are included as part of that tender process. We have taken out the requirement to make data free after 15 minutes, but that does not necessarily mean that this would not be in the final tender or the winning bid. It is all about providing agility. Previously, people tried to set up or thought about doing consolidated tapes on a commercial basis, and it just does not work. As it has not worked, the industry feels that the best way to do it is via the FCA process. We have now given the FCA the powers to do that. It will move from bonds on to equities next.

The noble Lord mentioned some issues around enforcement powers, and I will have to write to him about that. Indeed, on many of the other questions, I will probably write with further information.

On the issues raised by the noble Lord, Lord Livermore, the industry has been extensively consulted on both of these instruments. Draft SIs have been published. We believe that the industry is fully aware of where things currently stand, and we communicate regularly with it. Of all the industries that I have worked with, financial services are fairly on the ball about what is happening in government and do not necessarily always need to be nudged into responding to consultations or looking at draft statutory instruments. I am content with the amount of interaction that we have had with the financial services sector.

Returning to the impact of the consolidated tape, the practical impact of not having one would be very difficult to quantify, but one might imagine that it would cause our markets to be slightly less efficient and, as all good economists know, efficient markets are happy markets. That is why we think it would be a positive step for the UK to start to have consolidated tapes—we expect there to be one for each asset class.

I feel that was a slightly substandard response, but I will write with more information.

Motion agreed.

Securitisation Regulations 2023

Considered in Grand Committee

5.46 pm

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

That the Grand Committee do consider the Securitisation Regulations 2023.

Relevant document: 7th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Committee adjourned at 5.46 pm.