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

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

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

House of Lords

Monday 22 January 2024

2.30 pm

Prayers—read by the Lord Bishop of Gloucester.

Death of a Member: Lord Tomlinson

Announcement

2.37 pm

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, I regret to inform the House of the death of the noble Lord, Lord Tomlinson, on Saturday 20 January. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

Regulatory Approval for New Products and Services

Question

2.37 pm

Asked by ***Baroness Jones of Whitchurch***

To ask His Majesty's Government how they plan to support British innovators by tackling delays in getting regulatory approval for new products and services.

The Minister of State, Department for Business and Trade (Lord Johnson of Lainston) (Con): In the Autumn Statement, we set out proposals to improve the performance and accountability of regulators through reforms to the growth duty. These include asking regulators to set targets on regulatory approvals and monitoring their performance against those targets, alongside offering a fast-track service for regulatory approvals in certain circumstances. Through this, we are committed to working with regulators to ensure that we offer a world-class service to British businesses to support economic growth and innovation.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for that reply, but does he accept that British innovators often face a mountain of red tape just to get started? In some cases, it can mean getting approval from up to 11 different regulators. For example, the British Healthcare Trades Association reports that medical equipment suppliers face a complex array of interrelated laws and regulations to get their products to market in the UK, with 95% of them calling for greater regulatory certainty. Those costs and delays are dissuading many from creating new products, which in turn is reflected in patient care and outcomes. So what are the Government doing to address these complexities? Does the Minister support our proposal for a new regulatory innovation office to hold the regulators to account for any delays? What action is being taken to speed up decisions in granting university research funding so that innovators can play their full part in driving up economic growth?

Lord Johnson of Lainston (Con): I am grateful to the noble Baroness for her points. This is clearly a topic of much broader debate, and I am very grateful to have been given the regulatory reform agenda in my portfolio. We have three core priorities. The first is to minimise the regulatory burden and to future-proof regulations, which means looking at the current regulatory stock and seeing what we can do to make it more effective. The second is to work out the mechanisms that will allows us to better understand and establish how we can measure the cost of regulation on business when it comes through Chambers such as this. The third is to work with regulators to get them to promote the duty of growth and to look at regulation as a service, rather than simply a block, as we do sometimes.

I will answer two other quick points on the health side. My noble friend Lord O'Shaughnessy wrote an excellent report on getting clinical trials to operate more effectively; the Government have accepted most of those points. On innovation, my noble friend Lord Camrose pointed out to me, on the way in, the extraordinary number of initiatives he has taken with the various Bills we are bringing through and the co-ordinating function of the DRCF, which means that we are one of the most innovative regulatory environments in the world for AI and new tech.

Lord Fox (LD): My Lords, we are grateful to the noble Baroness for bringing up the issue of innovation, which I know the Minister also considers to be very important. Last week, I spoke with representatives of the highly innovative UK tech industry. Worryingly, they reported that tech start-ups that should be starting up in the UK are being very effectively lured to France. I think the Minister will agree with me that this needs to be nipped in the bud, so can he undertake to dispatch his department to find out what France is doing and how it is getting some success here and to make sure that the UK is doing at least as well if not better?

Lord Johnson of Lainston (Con): I am grateful to the noble Lord for his comments and am always stung by comparisons with our near and dear neighbour. But I can reassure him that our global investment summit raised over twice as much in terms of commitments as the one in Versailles. There are three trillion-dollar tech economies in the world: one is the United States, one is China and one is the UK.

Lord Fox (LD): Complacent.

Lord Johnson of Lainston (Con): We should celebrate the fact that we are raising more money for tech in this country than Germany, France, Spain and Italy combined in many sectors—but we are not complacent. I totally accept the need to ensure that organisations such as UKRI are given the firepower that we have given it to ensure that we can provide funding for these businesses. I personally take this very seriously and would be delighted to have further conversations with the noble Lord on how we can ensure that every tech company in the world sees this country as their international HQ.

Baroness Watkins of Tavistock (CB): My Lords, will the Minister comment on the fact that, during Covid, we were able to get very swift licences for new medical products, including an innovative external ventilator that was developed with UCL? Some of those ventilators are still left, and my understanding is that they are to be destroyed because they no longer meet either need or requirements—but it also seems to be about getting the licence re-evaluated because it was produced as an emergency. Surely we could be much quicker, and will the Minister comment on how we could fast-track, in particular, medical devices?

Lord Johnson of Lainston (Con): I am grateful to the noble Baroness for those comments. She is absolutely right: we can never move too fast as long as we can do it in a safe and appropriate way. My noble friend Lord O'Shaughnessy's report was enormously helpful in driving change, particularly for clinical trials. We want to ensure we are the number one place for trials in Europe, if not the world, because it benefits the patients, the NHS and our economy. I will just touch on some of the reviews that have recently been undertaken; it is worth highlighting them and engaging with noble Lords on them. There were reports on digital technologies—that was published last year—on green industries, on life sciences, on the creative industries, on advanced manufacturing and, fundamentally, there was a cross-cutting report on how we can have pro-innovation policies.

I also refer back to my fundamental role, which is to bring smarter regulation into the Government. I ask Peers on all sides of the House to please come to me with their ideas. Let this not be Oral Questions but oral suggestions on how we can reduce regulatory burdens on business and boost our economy.

Lord Harris of Haringey (Lab): My Lords, in that spirit, I refer to my interest in the register. The Minister said quite clearly that the Government are committed to regulating for growth and innovation. Will he also ensure that regulators have at the forefront of what they are doing ensuring that those they regulate are delivering services, facilities or products that are properly resilient and prepared for the various threats that as a nation we face?

Lord Johnson of Lainston (Con): I completely agree with the noble Lord's point and I absolutely take it to heart. The point is to see regulation as a service, where we have to take the appropriate action to ensure that the investors, the companies, the consumer and the broader environment of the body politic can work in harmony. It is that balance that we seek to achieve by promoting the growth agenda. Importantly, that is not at the expense of the protection of the consumer or of our overall habitats and environments. It is essential that people realise that we are looking for positive economic growth through better regulation, rather than derogating from our responsibility to ensure that regulation is truly to ensure that the consumer market functions properly.

Lord Naseby (Con): Is my noble friend aware that, at this point in time, the very successful mutual movement—in other words, building societies, friendly societies, et cetera—is facing difficulties for growth, particularly in the raising of future capital, from the existing regulatory regime? Given the offer that my noble friend made a few seconds ago, would he be prepared to meet the leaders of that movement to go through where the challenges for the movement are in order that it may grow even faster than it has been growing recently?

Lord Johnson of Lainston (Con): I am grateful to my noble friend for that point. I would be delighted to meet with any stakeholders he suggests are useful. The mutual movement is an ancient and important principle in our financial services industry in this country. It provides an incredibly valuable service and of course I will do anything I can to support it.

The Earl of Kinnoull (CB): My Lords, a couple of years or so ago, the European Affairs Committee published a report on the EU-UK financial services relationship. One of our key suggestions was that UK regulators should be responsive, consistent and proportionate—three words that we have not yet heard from the Minister. Does he agree that being responsive, consistent and proportionate are three very important things that all regulators should be aware of?

Lord Johnson of Lainston (Con): I am grateful for those important words and I absolutely agree. There are issues in ensuring that regulators' mandates are properly focused. It is important to get a balance between, for example, investment, growth and the other regulator duties. I look forward very much to working with the regulators when we assess the responses from the consultation that is currently being undertaken—some were completed last week—to bring together a suite of solutions to ensure that we can continue to grow our economy and regulate it properly.

Let me just add that our regulators are some of the best in the world. From travelling around the world, I know that a number of jurisdictions literally cut and paste our regulatory texts so that they can copy what we do because they admire it so much. That does not mean we should be complacent, but it does ensure that we should focus very much on the opportunities that the growth agenda will give us.

Lord Sikka (Lab): My Lords, perhaps I might urge the Minister to think about regulatory approval in a different way, by reminding him that Warren Buffett said:

"Derivatives are financial weapons of mass destruction".

We have seen so many financial products mis-sold in this country. Can I urge the Minister to ensure that regulators road-test all financial products before they are unleashed on the unsuspecting public?

Lord Johnson of Lainston (Con): I am grateful for that comment; of course, I would contact the Treasury about it, since that is its specific focus. I totally agree that we need to have trust in financial markets for them to function properly. That also entails significant responsibilities towards the consumer.

Lord Lamont of Lerwick (Con): My Lords, what my noble friend the Minister has said is extremely encouraging and very much to be welcomed, particularly on the

strong track record on investment into this country and small tech start-ups. However, I draw his attention to large tech companies, where the picture is slightly more mixed. Is he aware that the London Stock Exchange and the FTSE 100 are having great difficulty in attracting internationally mobile big tech companies for listing and, indeed, have recently lost a number of listings to New York? Is this not something that the Government ought urgently to have a look at?

Lord Johnson of Lainston (Con): It is always intimidating for a junior Minister to receive questions from someone as significant as my noble friend. He is absolutely right: over the past year, the Government have been working extremely hard, through the Edinburgh reforms and the Mansion House compact, to ensure that domestic pension fund money flows back into the markets. My noble friend is also completely right that we need to look extremely closely at how the LSE functions in order to attract the new type of modern company that lists in a different way. Work is ongoing at the moment; it is a complete priority. On venture capital and private equity, I am glad to say that, at the new start-up level, the funding is doing extremely well. We are having a very strong year—perhaps one of the best years we have ever had—in those new start-up and investment areas in this country. We should celebrate that. We are too down on ourselves; it is time that we start rejoicing in our position as one of the key venture capital hubs not just in Europe but in the whole world.

Non-custodial Sentences: Public Confidence

Question

2.49 pm

Asked by ***The Lord Bishop of Gloucester***

To ask His Majesty's Government what assessment they have made of the public's confidence in non-custodial sentences.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, it is important that the public have confidence in non-custodial sentences. The Government's response to the Justice Select Committee's report, *Public Opinion and Understanding of Sentencing*, was published last Thursday, 18 January. The Government are currently considering the Justice and Home Affairs Committee's report of 28 December 2023, *Cutting Crime: Better Community Sentences*, and further note the Sentencing Council's current consultation on revised guidelines for the imposition of community and custodial sentences.

The Lord Bishop of Gloucester: I thank the Minister for that Answer. I look forward to the Government's response to that committee report, given that a 2019 report by the Sentencing Academy suggested that public attitudes to sentencing are, in part, due to a lack of evidence-based information. Our prisons are overcrowded and, overall, what we are doing is not working to break cycles of reoffending and change the lives of offenders, victims and communities. So what more can the Government do to raise evidence-based awareness of the effectiveness of sentences and, perhaps, share outcomes from the female offender strategy and women's centres to promote public support for an alternative model for both male and female non-violent offenders?

Lord Bellamy (Con): My Lords, the Government accept that we can do more to increase public understanding of the working of the criminal justice system. We are committed to open justice: broadcasting judges' sentencing remarks is a notable step forward; the further availability of transcripts of those remarks is another step that we can take. It is also important to publish sentencing and other information in an accessible form, on GOV.UK and on social media. We should be ambitious to improve the data that we already publish on criminal justice statistics. The Sentencing Council website has extensive information on how sentencing works, and a number of other steps can be taken to improve public knowledge of what is happening.

Lord Carlile of Berriew (CB): My Lords, does the Minister agree that public support for non-custodial sentences would be improved considerably if the Government took immediate steps to deal with the workforce gap in the Probation Service? Every probation service in the country is undermanned; there is a shortage of 400 officers in London; and 20% of new probation officers leave the service before they finish qualifying.

Lord Bellamy (Con): I agree with the noble Lord that the key to public confidence in community sentences is rigorous offender management. We are investing £155 million a year in the Probation Service, which is in recovery mode. We have over 4,000 new trainees and even in London there has been a 10% increase in recruitment. The Community Payback programme, which is targeted specifically at community sentences, involves a further £93 million, and an increase in staff and resources for that programme.

Lord Bradley (Lab): My Lords, I note my interests in the register. A community sentence that has public and judicial support, particularly for women offenders, is one with a mental health treatment requirement, which is often combined with a drug rehabilitation and alcohol treatment requirement. A national rollout is well under way, but these sentences will be fully successful only if there is increased capacity in each of these services, especially mental health. Will the Minister therefore ensure that there is such capacity across the country to enable the successful completion of these community sentences and to reinforce judicial and public confidence in them?

Lord Bellamy (Con): My Lords, on behalf of the Government, I entirely accept the value of the various outcomes that the noble Lord just mentioned. We should celebrate success stories, particularly in relation to female offenders—mentioned by the right reverend Prelate a moment ago—and youth offenders. As the noble Lord just indicated, there are far more options for community sentences available now than there used to be. There is tagging, alcohol tagging, alcohol treatment and drug treatment. Quite a range of possibilities are therefore open to the court, combined

[Lord Bellamy]
with the national drug strategy being run by the Department of Health to get people off drugs. I cannot promise to ensure increased capacity, but the Government are certainly working to that end.

Baroness Hamwee (LD): My Lords, speaking not just from these Benches but as chair of the Justice and Home Affairs Select Committee, we found it persuasive that community sentences are followed by much lower rates of reoffending than custody. We know that prisons are "universities of crime". Should this not be a message that the Government promulgate?

Lord Bellamy (Con): My Lords, the actual message is, in essence, for the Sentencing Council to transmit. The Government and Parliament set the framework, the Sentencing Council sets the guidelines, and our independent judges impose the sentences. The Sentencing Council's present guidelines emphasise that community orders can be highly positive, last longer than short custodial sentences and involve important restrictions on day-to-day liberty; and that breaching them can result in significant adverse consequences. We must entirely combat the idea that community sentences are a soft option, and that is the Government's position.

Lord Farmer (Con): My Lords, the need to weigh public confidence against improving rehabilitation, reducing costs and the need for prison places seems to be ignored when sentencing for serious and violent crime. The trend here is for ever longer custodial sentences. People convicted of murder now spend 60% longer in prison, on average, than in 2001. No balancing act is being attempted, and no rehabilitation. Justice cannot be driven by vengeance, so why are the Government arguing for ever longer sentences?

Lord Bellamy (Con): My Lords, I am not aware that the Government are arguing for ever longer sentences. On the contrary, the sentencing Bill that your Lordships will shortly consider has a presumption to avoid prison sentences in certain circumstances—particularly short sentences. As far as murder is concerned, the statutory sentence is life imprisonment. That is not a matter for the Government. The time one serves as a sentence for murder is a matter for the Sentencing Council guidelines. I think I would accept—as the Justice Committee accepted—that it is true that public opinion in recent years seems to have moved towards heavier sentences for serious crime. But I do not accept that, as my noble friend suggests, that overrides rehabilitation in all circumstances.

Baroness Chapman of Darlington (Lab): My Lords, pre-sentence reports are vital to improving the effectiveness of community sentences. They allow courts to tailor sentences, and give sentencers confidence that the interventions they are recommending are not only suitable but available in their area. Worryingly, according to the Justice and Home Affairs Committee, the number and quality of pre-sentence reports prepared by the Probation Service has been declining dramatically—thanks in no small part to the disruption caused by the Government's ill-judged attempt to privatise the Probation Service. Given that good pre-sentence reports and good sentencing decisions go hand in hand, what are the Government doing to reverse this decline?

Lord Bellamy (Con): My Lords, I agree entirely with the noble Baroness on the importance of pre-sentence reports. As I just said, the Government have put a great deal of investment into the Probation Service to, among other things, restore and improve pre-sentence reports. The Sentencing Council consultation—open now and completing in February—indicates that pre-sentence reports should be available in all cases except where the likely outcome is a fine or a conditional discharge. Once again, the Government are addressing the question the noble Baroness raises.

Environmental Policies: Timeliness and Effectiveness

Question

2.59 pm

Tabled by ***Baroness Hayman of Ullock***

To ask His Majesty's Government what assessment they have made of the timeliness and effectiveness of the implementation of their environmental policies.

Baroness Taylor of Stevenage (Lab): On behalf of my noble friend Lady Hayman of Ullock, and with her permission, I beg leave to ask the Question standing in her name on the Order Paper.

The Minister of State, Department for Environment, Food and Rural Affairs, and Foreign, Commonwealth and Development Office (Lord Benyon) (Con): My Lords, I refer the House to my entry in the register. The Government are committed to leaving the environment in a better state than we found it. Following the *Environmental Improvement Plan 2023*, we have stepped up our action, including announcing our multimillion-pound species survival fund and 34 landscape recovery scheme projects. Our annual reports on the 25-year environment plan and the outcome indicator framework assess our actions to improve the environment. The next annual report will be published this summer.

Baroness Taylor of Stevenage (Lab): My Lords, it is ironic that some noble Lords who would like to have participated in this Question, including my noble friend Lady Hayman of Ullock, will be unable to do so due to disruption caused by the ninth named storm of this winter. As we adjust to a world where extreme weather events are more frequent and other effects of climate change are more apparent, there can be little surprise that Dame Glenys Stacey has warned that the Government

"needs to speed up, scale up and make sure its plans stack up".

The positive picture painted by the Minister bears little resemblance to the OEP's report from last week, which found that UK environmental ambitions are "largely off track". Does the Minister accept the finding that while the Government may be good at announcing major initiatives, they are less effective at developing and delivering them?

Lord Benyon (Con): I do not agree with that. The report said that 25 areas were improving, 10 were static and eight were deteriorating, and we take these extremely seriously. The OEP said that the EIP targets are welcome but that scale and pace, as the noble Baroness says, have to be improved. That was reporting on the year to March 2023; our environmental improvement plan was announced only last January, so the report was only three months into that period. There is a real sense of urgency among Ministers, through Defra and across government to make sure that we hit our no-net-loss targets by 2030. You do not achieve that by taking action in 2029; you take action now, and we have been doing so over a number of years, to make sure that the multiple decades of decline of nature in this country are stopped and reversed. That is our absolute ambition across government.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend agree that part of the reason for sewage spilling into people's homes is that we still do not have an end to the automatic right to connect, and a greater use of SUDS? When does he intend to bring forward the consultation on Schedule 3 to the Flood and Water Management Act 2010 to permit greater use of these facilities?

Lord Benyon (Con): I have written to my noble friend to give her a detailed answer to that question, which is the same one she asked quite recently. I assure her that I asked whether we really had to consult again, and apparently we do; it is a statutory requirement under the Flood and Water Management Act. I suspect we will bring in those measures later this year.

Baroness Boycott (CB): My Lords, I heard the Minister speak about the Government's urgency, but I will make reference here to actual policies and plans that have been delayed. I will mention a few; this is not an exhaustive list. The horticultural peat ban, which was promised by this year, is not here yet. The implementing regulations for the introduction of due diligence measures on forest risk commodities are still not before Parliament. The UK chemicals strategy was promised last year, the deposit returns scheme has just been delayed until whenever, and there are the replacement protections for hedgerows, which followed the loss of cross-compliance at the end of last year. That is just five. Can the Minister comment?

Lord Benyon (Con): On hedgerows, I refer the noble Baroness to the fact that an enormous quantity of new hedgerows has been planted, and we have 11,000 kilometres of hedgerows under new management as a result of the sustainable farming incentive. On other measures, I am very happy to write to the noble Baroness to tell her the timetable for when those measures will be brought in. On forest risk commodities, it is important that we are in step with other countries; we are absolutely determined to make sure that consumers can know whether the commodity they are buying is putting forests at risk. The UK is a leader in making sure that happens.

Earl Russell (LD): My Lords, the Office for Environmental Protection's annual report shows that the environmental improvement plan, which sets out legally binding targets, is meeting only four out of 40 of them. With the OEP keeping legal action under active consideration, the Government taking almost a full year to respond to the first OEP report, and the Minister in the other place saying only that the Government will respond in due course, will the Minister give a firm date for when they will provide a formal response to this serious report?

Lord Benyon (Con): The Environment Act requires the Government to respond within 12 months, and we will respond considerably more quickly than that. I know that the noble Earl is asking me a question, but does he agree with me that this is without any measure of doubt the greenest Government ever? I am proud of that and happy to be held accountable for all these measures. We brought in a landmark piece of legislation in the Environment Act. We have brought in so many other measures that have addressed long-awaited needs in this environment, and without doubt we have the greenest Government ever.

Lord Watts (Lab): My Lords, is the Government not using the wrong benchmark? If they were to benchmark to, say, 13 years ago, and look at the improvements, that would be a different matter from looking at the last couple of years.

Lord Benyon (Con): I do not understand the noble Lord's position. Working off a baseline, we have to make sure that we are sharing data. We are publishing 800 pages of data so that the noble Lord, NGOs, parliamentarians and others can hold us to account on this. We use an accepted baseline in order to show an improvement. No net loss by 2030 and 10% improvement on that by 2042—those are pushing targets.

Baroness Bennett of Manor Castle (GP): My Lords, the tone adopted by the Minister is in stark contrast—180 degrees opposite—to that of the OEP report. That talks of Britain being locked in an irreversible spiral of decline of nature. We have what the Minister calls landmark pieces of legislation. Can he put his hand on his heart and say that Defra has adequate capacity to deliver the absolute flood of material that needs to be done to get anywhere near delivering what he is suggesting is needed?

Lord Benyon (Con): I think we can. We have put more resources into our agencies, particularly Natural England. We have a sense of complete determination to hit this, which comes from Ministers and goes down to the Natural England or Environment Agency individual who is dealing with a particular group of farmers. But for all the resources that we could put into government, we would fail if we doubled them. What is important is that we weaponise land managers and people who really know about this on the ground. That is why clusters of farmers working together—for example, in environmental farming groups—are the way forward to deliver an increase in abundance of species and

[Lord Benyon]
protection of nature, which is not just an environmental or societal matter. It is an economic one as well, as the Dasgupta report proved.

Lord West of Spithead (Lab): How is the programme going to provide shore power in our ports and harbours so that visiting ships do not have to run their diesel generators?

Lord Benyon (Con): That is a very good question from the noble Lord. I should always come armed with a list of marine shipping questions. I have not, but I will make sure that he gets an answer to that in due course.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, to implement effective policies, you need reliable and accurate data. For water, if an incident is reported but not inspected, or inspected too late, it becomes a category 3 or 4. The Environment Agency has reduced its responses to those categories, saying:

"You get the environment you pay for".

With this in mind, does the Minister have confidence that the official water pollution figures are accurate? If he has doubts, what are the Government going to do to ensure better monitoring?

Lord Benyon (Con): When we came into government, we knew about 10% of the sewage outflows from water companies into rivers. We now know 100%, because we require them to report them. Technology is our friend here: we are able to use telemetry, which can now do the work of hundreds of people in real time, producing a message to a phone requiring an instant response. I think we are much better equipped to deal with it. Is it perfect? No.

Baroness Altmann (Con): My Lords, I congratulate the Government and my noble friend, who I know is passionate about protecting the environment and the need to do so. I support his claim that this is the most environmentally friendly Government we have had. Before 2010, no Government took this matter particularly seriously. However, will he take on board some of the issues that have been noted about resourcing, particularly of the Environment Agency? It is apparently not attending all the sewage outflows, so it could well be that significant numbers are happening without us knowing. Will he take the issue of resourcing back to the department?

Lord Benyon (Con): I thank my noble friend. In my absolute belief in what we have achieved over the last decade and a bit, I am absolutely not complacent—none of us is. The OEP's report is really important. We set up the OEP to hold this Government and future Governments to account on this. On the issue my noble friend raises, we have increased the number of Environment Agency officers who should and must respond to all such reports. On water quality as a whole, we have put in place, through our plan for water, the most comprehensive list of measures possible to make sure that not only water companies but farmers, home owners and others who are responsible for the quality of the water in our rivers are held to account when they get it wrong.

Female Domestic Homicides: Black, Asian and Ethnic-minority Overrepresentation

Question

3.11 pm

Asked by ***Baroness Gohir***

To ask His Majesty's Government what assessment they have made of whether Black, Asian and minority ethnic women are overrepresented in female domestic homicides; and what steps they are taking to safeguard them.

Baroness Gohir (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my interests in the register.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, domestic homicide is a horrific crime that disproportionately impacts women. The Home Office homicide index shows that 22% of the 249 female victims recorded between March 2020 and March 2022 were from minority-ethnic groups. These groups were overrepresented in domestic homicide data when compared to the 2021 census. Preventing domestic homicide is a key government priority, and we have set out commitments to reduce it in the *Tackling Domestic Abuse Plan*.

Baroness Gohir (CB): My Lords, the Home Office funded a project in 2020 based in the vulnerability, knowledge and practice programme which confirmed that there is an overrepresentation of minority-ethnic women in domestic homicides rates—the rates may be higher because the police do not always record ethnicity data accurately. What follow-up has there been on that project? Will the Minister agree to holding a public consultation or an inquiry to uncover fully the contributing factors to safeguard black, Asian and minority-ethnic women and girls? Will he meet me to discuss that?

Lord Sharpe of Epsom (Con): My Lords, I am short on the detail of that specific programme, but in March 2022, we published the cross-government *Tackling Domestic Abuse Plan*, which invested more than £230 million in tackling this crime between 2022 and 2025. This includes more than £140 million for supporting victims and £81 million for tackling perpetrators. As regards the domestic homicide review, work is under way to review, improve and update the statutory guidance on that review. The consultation on that is about to open, so if any Peers are interested and would like to get involved, please let me know and I will be happy to supply the details.

Baroness Brinton (LD): My Lords, studies have shown that ethnic-minority survivors of domestic abuse are much less likely to have previously been known to the police than white victims, often because of a wish to protect their partner from police—rather than health interventions—because of institutional racism. What are the Government doing to ensure that all police are properly trained not to move to police intervention and to be able to signpost mental health support for all victims of domestic abuse?

Lord Sharpe of Epsom (Con): My Lords, the noble Baroness asks a good question. We understand the importance of specialist services in providing the tailored support that victims and survivors of domestic abuse need. The Home Office is providing funding of more than £2 million to the London Community Foundation, Peterborough Women's Aid, Diversity Matters North West and Sahara in Preston for the 2023-24 and 2024-25 financial years through the VAWG support and specialist services fund. This forms part of a programme called By and For, which is the Government's commitment to provide specialist services that are led, designed and delivered by and for users and communities they aim to serve.

Baroness Verma (Con): My Lords, does my noble friend agree that part of the issue for women from minority communities, particularly the south Asian community, is language, and that, before it gets to the stage that we hope it will not get to—homicide—those women should be able to report? Due to language barriers, they cannot. Will my noble friend look at ways of working with other departments to ensure that we can get English into communities? It may be through funding community groups, but the insistence should be that English is part of the programme. Secondly, will he look at how we do training within the Home Office—rolling it out to recognise the start of the need for intervention rather than waiting for it to become a big problem?

Lord Sharpe of Epsom (Con): My noble friend raises some very good points. It links into part of the question put to me by the noble Baroness, Lady Brinton, which I did not answer: about the police response to tackling domestic abuse. We have provided funding to support the rollout of the Domestic Abuse Matters training to police forces which have yet to deliver it, or which do not have their own specific domestic abuse training, to improve and ensure consistency in the police response to domestic abuse. I would imagine—I will check—that that includes the language barriers that my noble friend identifies. That programme has been completed by 34 police forces to date. Considerable work is also going on in building up the evidence base and, indeed, starting a library, which will help police forces to investigate these crimes.

Baroness Thornton (Lab): My Lords, the opening words of the briefing from Home Office-funded project referred to by the noble Baroness say:

"The onus is too often placed on survivors from minoritised ethnic groups to navigate a system that has not been designed to take account of their needs, rather than addressing structural barriers that prevent their access to support".

I suspect that not much has changed since that briefing was written and published in 2022. By the time a woman becomes a victim of domestic homicide, the truth is that she may have been repeatedly failed by the system. How is the Casey report into the Met Police feeding into the Government's programme, and what targets do the Government have to reduce domestic abuse and violence against women and girls? Of course, the Labour Party does have a target for if and when we are in government.

Lord Sharpe of Epsom (Con): My Lords, I have already gone through a number of the programmes that have been put in place, many of which started only in 2022. I do not think it is fair to characterise the Government as not treating this as a priority. As the noble Baroness will be aware, we made it a strategic policing priority alongside terrorism and other priorities only last year. It is worth mentioning at this point someone I have referenced many times from the Dispatch Box. Maggie Blyth, who is the VAWG lead at the NPCC, has recently been appointed as the new deputy CEO at the College of Policing. I think that is a very positive step forward from an enforcement perspective. I would also like to commend Louisa Rolfe, who is the domestic abuse lead at the NPCC. We are doing a great deal. A consultation is under way on the domestic homicide statutory guidance; I suggest that the noble Baroness participates.

The Lord Bishop of Gloucester: My Lords, after contacting the police to report domestic violence crimes, migrant women in the UK have often been reported to Immigration Enforcement. For this reason, those women often stay silent for longer. What are the Government doing to ensure that black, Asian and minority-ethnic women who are victims of domestic violence can report abuse without fear of detention or deportation?

Lord Sharpe of Epsom (Con): The right reverend Prelate will be aware that, if they do, they are not subject to immigration action—a subject that has been talked about a number of times from the Dispatch Box.

Baroness Falkner of Margravine (CB): My Lords, I declare an interest as the chair of the Equality and Human Rights Commission. The Minister will know that, in the Istanbul convention, which is the foundation of much of our statutory work in this area, Article 12.5 refers specifically to honour-based killings and violence. The Minister has indicated that a consultation is about to open in this area. Will the Article 12.5 requirement, which calls for the Government to have improved statutory definitions of honour-based violence, be part of that consultation?

Lord Sharpe of Epsom (Con): I cannot answer the last part of the noble Baroness's question, but I can say that last week we hosted at the Home Office GREVIO, the organisation looking at our compliance with Istanbul, and I think we had a very positive meeting. It was a privilege to be able to host them in the office and to go through much of the work that we have already done. I will try to come back in writing on the specific question that she asked.

Baroness Hussein-Ece (LD): My Lords, the report by the Centre for Women's Justice, which the Minister has probably seen, highlights a number of barriers faced by women, particularly from black and minority-ethnic communities, in reporting domestic violence and abuse. One of them—and there have been a number of high-profile cases of this—is that victims face criminalisation by counter-allegations. As they lack the ability to navigate the service and the relevant support, that often leads to devastating consequences.

[Baroness Hussein-Ece]
Another issue is a fear of losing their children when social services get involved. The Minister mentioned police training, but specialist services and access to them are also important. The report says that cuts to those services have cost lives. I ask the Minister to comment on those issues and how best women can be supported to make sure that we bring down the level of fatalities in this cohort of women.

Lord Sharpe of Epsom (Con): The noble Baroness makes a good point. Obviously, I cannot comment on individual cases or indeed on the operational aspects of this. The criminal justice system will have to look at all those individual matters and judge them appropriately. What I can do is repeat what I have said about police training, which has now been rolled out to 34 forces. Obviously, there is more to do. The police force is being very well led in this area, as I have just highlighted. I will also say that the By and For programme to which I referred earlier supports services by and for those specifically affected. That makes perfect sense, and it should be as local as possible.

Measles Cases

Private Notice Question

3.21 pm

Asked by ***Baroness Merron***

To ask His Majesty's Government what assessment they have made of the declaration of a national health incident by the UK Health Security Agency over a surge in measles cases across the country.

Lord Evans of Rainow (Con): My Lords, the UK Health Security Agency declared a national incident on 8 January 2024. The government health system is taking control of the disease's spread. Our aim is to protect as many individuals as possible through convenient vaccination, targeting our offer to low-uptake communities; to contain outbreaks by working with local partners to effectively contact, trace and reduce risk to the most vulnerable; and to promote vaccination through engagement and communication with GPs, teachers and trusted community leaders.

Baroness Merron (Lab): My Lords, this is a grave yet preventable situation, especially as 80 countries across the world are measles-free while the UK has lost its status. I am sure that the Minister recognises that the Government should have read the warning signs and acted sooner to tackle vaccine hesitancy and low take-up. How will lessons be learned from the pandemic and used to focus on the communities, children and young people at greatest risk? Will a taskforce be established to co-ordinate relevant partners and oversee a rapid improvement to get to the WHO 95% target for take-up?

Lord Evans of Rainow (Con): From 1 January 2023 to 30 November 2023 there were 209 laboratory-confirmed measles cases in England. Over three-quarters of those cases are from the West Midlands, predominantly Birmingham and Coventry. In the West Midlands, an NHS integrated care board system partnership group has been establishing and co-ordinating a regional response. Extensive local communications and engagement have been undertaken in the West Midlands alongside the immediate response to support the uptake of the measles, mumps and rubella vaccine. Nationally, the UK Health Security Agency has established an incident management team to oversee the public health response to the outbreak. The noble Baroness is exactly right: this country had a proud record on vaccination prior to Covid-19 but there has been a decline in recent years since the pandemic, and we have to do more to get back our status.

Lord Allan of Hallam (LD): My Lords, a large group of adults in this country have not been vaccinated against measles for a variety of reasons. Can the Minister confirm that any adult who believes that they have not had the MMR vaccine can receive it free of charge on demand from their GP? Is he confident that there is enough capacity in the system for the routine childhood immunisations, as well as for making sure that when adults do the right thing and protect themselves with vaccination they can receive one quickly?

Lord Evans of Rainow (Con): The noble Lord raises a very good point; about 25 years ago there were rumours and misinformation about the MMR vaccine, so there is a cohort of those in the younger generation—mid-20s or so—who should contact their GP today and ask for an appointment, which can be confirmed. I believe that there is capacity for all those who wish to have vaccinations at their GP surgeries.

Baroness Verma (Con): My Lords, will my noble friend work with community groups that I am working with to get the message across about the importance of the measles vaccination? I have realised that, especially since Covid, there is a fear among particular groups of getting their families vaccinated. Perhaps we should have a communication plan that is accessible for everyone.

Lord Evans of Rainow (Con): I am very happy to meet my noble friend's community leaders. It is very concerning that certain segments of our communities feel uncertainty and doubt about these very safe vaccines, and the Government are working very hard with all sections of the community.

The Lord Bishop of St Albans: My Lords, on the relatively low take-up in minority communities, either the message is not getting through, sometimes for language reasons, or there is a lack of trust. There is quite a lot of evidence, not least in other parts of the world, that the way to address that is to clearly target the recognised community leaders so that they can act as brokers. What attempts are being made to work in our gurdwaras, temples and mosques in particular, to get those leaders to commend these vaccinations to the people with whom they are in direct contact?

Lord Evans of Rainow (Con): The right reverend Prelate is right to bring up this subject. Pop-up clinics are a quick and easy way to serve hard-to-reach communities. He mentioned mosques, where the Government are using a new initiative to encourage parents to take their children for immunisation. He also mentioned distrust of the vaccine; for example, there are variations with different make-ups. For those

with religious beliefs about using pig content, there are alternatives. There is no reason why anybody in this country should not take up this very safe vaccine; as he says, we have to encourage all sections of the community to take it up.

Baroness Watkins of Tavistock (CB): My Lords, will the Minister comment on the fact that there is such an unequal distribution of health visitors among different communities? Often young mothers and fathers, in particular, do not have the attention of and discussion with a health visitor about the importance of vaccinations generally. Will the Government look at this in detail so that we can return to the situation we had five years ago?

Lord Evans of Rainow (Con): The situation varies across the country. What is clear in the more deprived sections of certain communities is that such communications are not what they could and should be. The message to any parents of young children is that they should contact their GP today and get them vaccinated.

Lord Hodgson of Astley Abbotts (Con): My Lords, for those who were involved in the vaccine reluctance programme 20 or more years ago, the major difficulty was that the simultaneous MMR vaccine had a stabiliser called thimerosal, and it was believed that thimerosal led to adverse reactions in a number of young people. Will my noble friend confirm that thimerosal as a stabiliser has been removed; I am sure that he cannot answer that now, but will he write to me and put a copy of the letter in the Library?

Lord Evans of Rainow (Con): I am grateful to my noble friend for that question. He is right that I cannot answer his specific point on the make-up of the vaccine, but I will write to him and place a copy in the Library. The MMR vaccine is perfectly safe; that is not to say that some individuals—a tiny proportion—might not have an allergic reaction or whatever to it, but it is very safe and can save lives.

Lord Harris of Haringey (Lab): My Lords, 11 months ago there was a gathering in the Carlton Club of those who believed that vaccines are part of some great global conspiracy. This is an international problem of people undermining trust in medical solutions such as the MMR vaccine or Covid vaccinations. Have the Government been complacent about this, perhaps because so many of their right-wing friends support this nonsense?

Lord Evans of Rainow (Con): I do not accept the premise of the noble Lord's question. The Government are committed to tackling vaccine misinformation. This includes ongoing monitoring of vaccine uptake and attitudes towards vaccines by the UK Health Security Agency. The Department of Health has always worked alongside the NHS, other government departments and social media companies to develop innovative and effective ways to tackle anti-vaccine messaging and limit misinformation. The Government also work with the UKHSA and the NHS to support parents, to ensure that patients have access to up-to-date and accurate information on all vaccines delivered by the NHS, and to identify and rebut false information.

Lord Laming (CB): My Lords, have the Government been able to ascertain why the vaccination rate in the West Midlands is so low in contrast to other parts of the country?

Lord Evans of Rainow (Con): My Lords, the vaccination rate in the West Midlands is below the national average but not as low as in London. In London it is 75% and in the West Midlands it is 80%, so it not just a case of the West Midlands. There are many reasons why: large concentrations of social deprivation, transient communities and misinformation bring that all to a head, and to a very low and unacceptable uptake in vaccination.

Lord Bethell (Con): My Lords, it is not just the rate for MMR that has fallen behind but that for the majority of childhood vaccines recommended by the WHO. Last year, the House of Commons Health and Social Care Committee published a report with a large number of recommendations on how to catch up on those important vaccinations, including the deployment of retired clinicians and nurses to increase the capacity. Those recommendations have been largely ignored. Will my noble friend please advise me whether the Government are inclined to relook at that important report and implement some of its helpful suggestions?

Lord Evans of Rainow (Con): I am grateful to my noble friend for his helpful suggestions. I do not have an answer to his question here and now but I will certainly feed it back to the department.

Lord Turnberg (Lab): My Lords, it is extremely difficult to influence public opinion when people latch on to the misinformation that is floating around. One way of combating it is by using different techniques to get to the public. I wonder whether the security agency has engaged with PR companies or used IT, such as TikTok and various other things which I know nothing about but which seem to influence public opinion.

Lord Evans of Rainow (Con): The noble Lord raises a very good point. There are modern communications tools, such as TikTok, which young people use. Given the collective memory of this dreadful disease that our parents or grandparents used to talk about—how debilitating measles in the first half of the 20th century could be in ruining lives, including affecting babies' ability to see and hear—this is a success story. We almost eradicated this disease in 2015, but the collective memory means that it is perfectly safe in some people's eyes. There is misinformation saying that not to take this vaccination is a safe thing to do. It is not and we have to do more, including through social media, to make sure that younger people realise they should get their children vaccinated.

Baroness Bennett of Manor Castle (GP): My Lords, NHS England is recommending that all our staff in GP surgeries who deal with patients with suspected and confirmed cases of measles—which, given the symptoms, means a large number of patients—should wear PPE. Is the Minister confident that there are enough supplies of PPE? Do the GPs have to bear the extra cost of that PPE or will there be support from the centre to ensure that cost is covered?

Lord Evans of Rainow (Con): The noble Baroness asked a very important question about PPE. I am not aware of any issues in GP practices when GPs are meeting patients from their communities to discuss vaccinating their children.

Baroness Hayman (CB): My Lords, regarding communication with parents and community leaders, are the Government looking at and talking about the fact that vaccination is not simply a personal decision and has consequences beyond it? It has gone away from public consciousness that a decision not to vaccinate a healthy child in one's own family can have catastrophic effects for immunocompromised children in other families and for children who cannot medically be vaccinated. It is very important, given the social impact of vaccination and immunisation programmes, that the Government take that message about responsibilities regarding other children at schools or nurseries with unvaccinated children to their communications with the public.

Lord Evans of Rainow (Con): I wholeheartedly agree; the noble Baroness raises a very important point. It is a decision for parents to make about their child. However, when that child goes to school, it is also about the children within their class and wider society. As I said in a previous answer, we have lost the collective memory of what a terrible disease it is for those young people. As outlined by the noble Baroness, it is really quite simple. I say again to anybody with young children who have not been vaccinated, or who thinks they have not been vaccinated: contact your GP and arrange a vaccination visit.

Lord Carlile of Berriew (CB): My Lords, in Germany children cannot attend school if they have not had a measles vaccination. In France, Italy and some other countries, such vaccinations are compulsory. Will the Government introduce such legislation here?

Lord Evans of Rainow (Con): The noble Lord asks a very good question. That is how Germany and France deal with their children; this is Britain. I will take the noble Lord's suggestion to the department and will write to him.

Online Safety (List of Overseas Regulators) Regulations 2024

Motion to Approve

3.36 pm

Moved by ***Viscount Camrose***

That the draft Regulations laid before the House on 28 November 2023 be approved.

Relevant document: 6th Report from Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 16 January.

Motion agreed.

Wine (Amendment) (England) Regulations 2024

Motion to Approve

3.37 pm

Moved by ***Lord Harlech***

That the draft Regulations laid before the House on 4 December 2023 be approved.

Relevant document: 7th Report from Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 16 January.

Motion agreed.

Public Offers and Admissions to Trading Regulations 2023

Motion to Approve

3.37 pm

Moved by ***Baroness Swinburne***

That the draft Regulations laid before the House on 27 November 2023 be approved.

Relevant document: 7th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 16 January.

Motion agreed.

Asylum: UK-Rwanda Agreement

Motion to Take Note

3.37 pm

Moved by ***Lord Goldsmith***

That this House takes note of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Agreement to Strengthen Shared International Commitments on the Protection of Refugees and Migrants.

Relevant document: 4th Report from the International Agreements Committee (special attention drawn to the agreement)

Lord Goldsmith (Lab): My Lords, there are two Motions in my name on the Order Paper, and I shall speak to both. The first ask the House to take note of the fourth report of the International Agreements Committee, which I have the honour to chair. The report addresses the UK-Rwanda asylum partnership agreement, known as the Rwanda treaty. The second Motion invites the House to agree with the committee's unanimous conclusion that the Government should not ratify the treaty

"until the protections it provides have been fully implemented, since Parliament is being asked to make a judgement, based on the Agreement, about whether Rwanda is safe".

Both Motions are tabled on behalf of the committee and not on behalf of the Labour Party.

The second Motion engages Section 20 of the Constitutional Reform and Governance Act 2010. I will explain the significance of this and comment briefly on the statutory framework under which the committee's report was produced before turning to the substance of the issue. The mandate of the International Agreements Committee is to scrutinise treaties laid before Parliament which the Government propose to ratify. Section 20 of the Constitutional Reform and Governance Act, or CRaG, gives Parliament 21 sitting days to review a treaty. The main essentials of the process for parliamentary scrutiny of treaties have not changed for 100 years, since 1924, when Foreign Office Minister Sir Arthur Ponsonby made a commitment that the Government would lay all treaties before Parliament for 21 days before ratification. CRaG codified this practice in legislation but did not substantially alter it.

The International Agreements Committee has previously reported on a range of deficiencies in the CRaG scrutiny process. This is not the occasion to debate those in detail, but the committee's current report does highlight that consideration of the Rwanda treaty brings into sharp focus the inadequacy of a 21-day scrutiny period for reviewing treaties of significant public interest and political importance. Our task in this case was made more difficult by government delays in publishing key information and providing responses to our inquiries.

Our consideration of the Rwanda treaty also highlights the limits on Parliament's role in the scrutiny of treaties, which is weaker than in many other countries. If either or both Houses wish to express concerns about a treaty, Section 20 of CRaG provides that they must pass a resolution before the end of the 21-day period that the treaty should not be ratified. If the House of Commons passes a Section 20 Motion, the Government must lay a Statement and wait a further 21 days before they can proceed. That process can be repeated, which means that, in theory, ratification could be indefinitely delayed, so long as the Commons continues its objections. The Government, however, can override a Section 20 Motion passed by this House.

This is the first occasion since CRaG came into force in 2010 that either House has considered a Motion under Section 20 of CRaG, which perhaps illustrates the inadequacies of the current framework for treaty scrutiny in general and the specific concerns that the committee has about the way the Government have proceeded in relation to the Rwanda treaty—I will expand on this as I address the substance of the report.

The treaty was negotiated between the UK Government and the Government of Rwanda as a response to the judgment of the Supreme Court on 15 November 2023 that the Government's policy of sending asylum seekers to Rwanda was unlawful. The Supreme Court found, relying heavily on evidence from the United Nations High Commissioner for Refugees, that there were deficiencies in Rwanda's asylum system and evidence of refugees being sent on to unsafe countries—a practice known as refoulement—in breach of Rwanda's international obligations. The Supreme Court did not doubt the good faith of the Government of Rwanda but found that the practical application of asylum and refugee law was inadequate. On this basis, the Supreme Court concluded that there was a risk of refoulement in relation to any asylum seeker sent by the UK to Rwanda.

The Rwanda treaty sits alongside the Safety of Rwanda (Asylum and Immigration) Bill, which will have its Second Reading in this House on 29 January. This debate is not about the Bill, but aspects of the Bill are relevant to our consideration of the treaty. In particular, Clause 2 of the Bill provides that:

> "Every decision-maker must conclusively treat the Republic of Rwanda as a safe country".

Clause 2 is an ouster clause and has the effect that the Bill's declaration of the safety of Rwanda could not be subject to appeal or judicial review in any legal proceedings.

The Government's case is that the new arrangements they have negotiated with Rwanda, which are now set out in a legally binding treaty that replaces the previous memorandum of understanding, change the factual position considered by the Supreme Court and thus allow Parliament to conclude definitively that Rwanda is safe. The Home Secretary's foreword to the policy statement accompanying the Bill and the treaty published on 12 December referred to the treaties as containing,

> "significant new protections in response to the Supreme Court's conclusions".

And went on to say:

> "This work will enable Parliament to conclude that the Supreme Court's judgment has been addressed and that Rwanda is safe for relocations under the Migration and Economic Development Partnership".

The committee therefore considered that its job was to consider whether the protections in the treaty do indeed enable Parliament to conclude now that the Supreme Court judgment has been addressed and that Rwanda is, in fact, safe. The committee agreed that, on paper, the enhancement provided by the treaty undoubtedly improves the arrangements under the memorandum of understanding. First, the treaty includes an explicit obligation that no person sent to Rwanda will be removed to any other country, except back to the United Kingdom at its request. Secondly, a new system to process asylum claims will be established, with safeguards to ensure compliance with refugee law, including new institutional structures with international judges. Thirdly, the role of the independent monitoring committee is enhanced, with additional staff to support its functions. Fourthly, a binding mechanism to settle disputes between the parties is established. These are all important changes, and the committee acknowledges the efforts of both Governments to address the issues raised by the Supreme Court.

However, it is plain from the Government's evidence to our inquiry, and from the background information in the Home Office policy statement, that much work needs to be done before the protections that the treaty envisages could be fully in effect. This includes not just the adoption of new laws, systems and processes but the recruitment and training of personnel.

All these legal and practical steps are set out in our report, but I will highlight just a few of the most important ones. The Home Office told our inquiry that it is still discussing with the Government of Rwanda key aspects of the new asylum processing

[Lord Goldsmith]
system. The new Rwandan asylum law, which will underpin this important part of the treaty, will be adopted in the "coming months", according to the Home Office policy statement. Additionally, the Home Office told us that the process for selecting the co-presidents of the appeal body is still being discussed between the UK and Rwanda. Only after that process has been agreed can the co-presidents be appointed. They, in turn, will need to identify and select the other international and Rwandan judges. The Home Office was unable to tell us how many international judges there would be in total, or how they would be allocated to individual appeals. It is clear that significantly more work is needed on this important aspect of the treaty.

The obligation not to remove asylum seekers to any other country, except if requested by the UK, is central to the Government's contention that the treaty meets the concerns of the Supreme Court. The treaty provides an added assurance—although it could also be taken as a lack of confidence in compliance by Rwanda—in stating that the parties will co-operate to "agree an effective system" to ensure that refoulement does not take place. We asked the Home Office for further information about this but did not receive a clear answer on when this system would be in place or whether the measures would be published.

The Government also place heavy emphasis on enhanced monitoring arrangements, but, from information we received from the Home Office, it appears that the monitoring committee has yet to recruit its support team. This is important because the noble Lord, Lord Anderson of Ipswich, whom I see in his place, told us, based on his experience of reviewing similar monitoring processes in his previous role as Independent Reviewer of Terrorism Legislation, how resource-intensive effective monitoring is and how important it is to have people on the ground.

Another important new aspect of the monitoring arrangements provided for by the treaty is a process to allow asylum seekers or their representatives to submit confidential complaints, but this system has not yet been set up by the monitoring committee. It is also unclear whether the arrangements are to be subject to public scrutiny. In total, our report identifies at least 10 sets of issues in respect of which, on the basis of the Government's evidence, significant additional legal and practical steps are needed in order to implement the protections the treaty is designed to provide.

The UNHCR published its assessment of the treaty last week. It also acknowledged that:

> "Detailed, legally binding commitments set out in the treaty would, if enacted and fully implemented in practice, address some of the key deficiencies in the Rwandan asylum system identified by the Supreme Court".

However, the UNHCR, in common with many witnesses to our inquiry, stressed that the changes in the treaty require sustained long-term efforts at capacity building which can only be assessed over time. The committee agreed with that assessment, which is why we concluded that the treaty is unlikely to change the position in Rwanda in the short to medium term.

On 19 December, when the Home Secretary came and gave evidence to us, he told us that he did not intend to "operationalise" the Rwanda relocation scheme until the Government are

> "confident that the measures underpinning the treaty have been put in place, otherwise the treaty is not credible".

The difficulty is that the Government have already presented a Bill to Parliament asking it to make a judgment that Rwanda is safe now. Yet, on the Home Secretary's own evidence, it cannot be so, because the measures are not in place and have not been shown to be effective. The treaty is held up by the Government as the justification for the measures in the Bill, yet the treaty cannot at present provide a basis for Parliament to judge that Rwanda is safe while so many aspects of the treaty remain unimplemented and untested.

When the United Kingdom ratifies a treaty, the long-standing practice of government is to ensure that all necessary implementing measures are in place before the Government proceed to ratification. It is true that some of the required steps to implement the treaty need to be taken in Rwanda. However, it is clear from the information supplied to our inquiry that the Government are fully engaged with the Government of Rwanda in developing those implementing measures. The Government should therefore abide by their usual practice of satisfying Parliament that all measures are in place before ratifying. That is why the committee has recommended that ratification should not take place until certain conditions are met.

We consider that the Government should return to Parliament when they believe that the treaty is ready for implementation. They should then give Parliament a further opportunity for scrutiny of the treaty arrangements. Only at that point will Parliament be able to assess properly whether Rwanda is safe. The principle of the separation of powers provides a further reason for pausing. It would be constitutionally inappropriate for Parliament to seek through statute to overturn findings of fact by the Supreme Court; I underline findings of fact because that is what the Supreme Court did. It is therefore important for Parliament to be clear that the facts have indeed changed before making its assessment.

If the Government proceed to ratify the treaty immediately after the end of the CRaG scrutiny period, it could enter into force without being fully implemented, because the Government lose control of the timing of entering into force once it has been ratified. Yet, once the Bill is in force, the judgment that Rwanda is safe is a fait accompli, regardless of whether the treaty has been implemented or not.

Before I conclude, I thank all the witness who took the time and trouble to contribute evidence to our inquiry over Christmas and the new year. I thank all my colleagues on the International Agreements Committee, some of whom I am very happy to see in the Chamber, for their co-operation and support. I thank our officials and advisers for dealing with a substantial amount of material submitted in response to our call for evidence, including a very large amount of material submitted at a very late stage by the Home Office. Finally, I thank the Government for offering us such a prominent debate spot within the CRaG period.

The Section 20 Motion I have tabled in unusual—in fact, unprecedented. We are not saying that the treaty should never be ratified, but we are saying that Parliament should have the opportunity to scrutinise the treaty and its implementing measures in full before it makes a judgment about whether Rwanda is safe.

The Government propose in their Bill that the courts will be precluded from considering whether the Supreme Court's concerns have been addressed, so it is now for Parliament alone to make that assessment. It is the unanimous view of the International Agreements Committee that we need first to see the protections fully implemented and working. For that reason, the committee concluded in its report that the treaty should not be ratified until the protections that it provides have been fully implemented. I beg to move.

3.54 pm

Lord Howell of Guildford (Con): My Lords, the noble and learned Lord, Lord Goldsmith, presided with very great skill over this report on an extremely difficult set of issues, as he has described in the last few minutes.

Before I make an additional comment, I will observe that we are concerned with a small but dangerous and damaging part of a much wider picture. When I say "small", I have in mind one estimate that suggests that there are about 60 million people in Africa, the Middle East and central Asia who, even now in the present situation, wake up each morning considering migrating, mostly heading for Europe. Indeed, there between 5 million and 6 million migrants already in Turkey—that is just a start.

We have to lay beside that the fact that 90% of the world's territorial surface has no inhabitants at all. So what I am saying is that there is something badly out of balance with this entire scene and the adjustment of handling migration and refugee problems in the totally changed conditions of the 21st century. Nevertheless, the urgent problem remains for us of how to halt the appalling trade and tragedy of illegal immigrants coming by extremely dangerous means into the United Kingdom.

As the noble and learned Lord, Lord Goldsmith, made clear, the report is not about the safety of Rwanda Bill, which comes before the House next week—and should, in my view, be agreed and passed as quickly as possible. But the report does include useful advice on signing the subsequent treaty, which is worth taking note of—I hope that the Government will take note—and which will assist in ensuring that the whole process works effectively and serves its various purposes.

Also, I am glad that the report is free of the rather patronising tone one hears in some comments about Rwanda and its judiciary and legal systems, as though they could not possibly have high enough standards. I can understand the Rwandan Government's exasperation, and that of senior legal figures there, at the implication that their system somehow has to be reinforced, made over and renewed to bring it up to scratch so that it can be called "safe". Despite a very dark past, Africa has changed radically—particularly Rwanda, which has changed most rapidly of all in the last few decades. We need to keep that in mind when making our judgments. People also forget that Rwanda is not only evolving into a modern state but is a signed-up member of the Commonwealth and its charter, which insists on full respect for the rule of law and human rights. So I hope that the House will find the first Motion useful.

The second Motion also rightly urges that the normal CRaG—Constitutional Reform and Governance Act—processes, for which the parliamentary scrutiny period appears to expire next week on 31 January, should be properly observed by Parliament. Surely that would be wise; I hope that it is not in question. That raises much broader questions, which the noble and learned Lord touched on, about the severe defects in our entire committee system for holding the Executive to account, despite all the excellent and noble work that the clerks undertake. Every other Parliament I know that seeks to run a democracy—I have visited very many, as have many other noble Lords—has a far stronger committee scrutiny power system for treaties and indeed for everything else than we have here. We must face the fact that we are hopelessly behind in the digital age in this area of scrutiny—but I accept that that is a debate for another day.

The last phrase in the second Motion about Parliament having to make a judgment—to which the noble and learned Lord also referred—about whether Rwanda and its legal system are "safe" is the bit that worries me most, and which I realise runs through the whole debate. I have to ask colleagues: what does "safe" mean? It is an entirely subjective concept and always will be. Is our own judicial system safe? I do not know. I am not sure that all our postmasters would agree about the safety of our judicial system now. No amount of elaborate monitoring, training, appeals body advisers and all the rest is going to convince those who do not want to be convinced that Rwanda is safe.

I hope that the first Take Note Motion put forward so eloquently by the noble and learned Lord will be agreed completely and that the second one is seen simply as a useful agenda, since I see the debate about safety never being conclusive except through practice and experience. We will have to wait, put it into place and see how it goes.

My final hope—probably unattainable—is that both major political parties will support this project with the basic unity and balance which is what the public long for from their politicians and media, in combination with an internationally collective all-out attack on the revolting smuggler parasites, thereby saving the lives of many sad and frightened people. This in turn would decisively assist thousands of other genuine asylum seekers and refugees who are fleeing for their lives from terror and oppression and who have arrived here by legal means in receiving the swift and sympathetic treatment that is in line with our nation's traditional instincts. It will also give us a breathing space to work out together and with all our neighbours and allies how on earth best to cope with the vast coming wave of migration, which no national Government alone can begin to handle—but perhaps that is too much to hope for right now.

4.02 pm

Baroness Chakrabarti (Lab): My Lords, it is an enormous pleasure to follow the two noble Lords, and in particular my noble and learned friend. I congratulate

[Baroness Chakrabarti]
not just him on his remarks but the whole International Agreements Committee, a cross-party committee, on, among other things, the succinctness and clarity of this report, which I hope we will all take as a model for the vital work that the committees of your Lordships' House do. That clarity and succinctness are so important to expressing the message, and I think we have heard it delivered with enormous precision. I shall try, therefore, not to be repetitive. There are many noble Lords to follow in this debate.

I have a few additional comments, if I may, on the treaty. It is light on numbers. The actual number of asylum seekers who would be sent—transported, even—to Rwanda under this scheme is not there. These numbers may exist in some private communications between the two states, but they are not in the treaty. What is in the treaty is the suggestion that it would be for the Republic of Rwanda to make a case-by-case judgment on accepting each individual asylum seeker. That is very interesting because, among other things, it would mean that the Republic of Rwanda would get to do a case-by-case assessment that it is now impossible to do through any Minister, official or court here in the UK. I find that strange.

I will also comment on the question of whoever comes back under this treaty: whoever comes back to the United Kingdom from Rwanda. There is a lack of clarity here, but I understand that Ministers in the other place commented that those who commit crime having been sent to Rwanda would be sent back to the United Kingdom—which again smacks of no little irony, because it would mean that criminals could come back to the United Kingdom but not recognised convention refugees under the scheme. That is a slightly odd view of deterrence, in my view, which we repeatedly hear is the Government's ambition here. What kind of deterrence is that? Some might even suggest that there is the potential perverse incentive to commit crime if you want to end up in the United Kingdom.

I am of course conscious of the Prime Minister's recent remarks in the special press conference that he held last week for the benefit of your Lordships. We are always available for anyone who wants to come and have a chat but, if they want to do it by press conference, so much the better. Much was said about "the will of the people", a phrase that has gained so much currency in the polarised and difficult recent years in our country. A lot is said about the will of the people as if it is something that a charismatic—or less charismatic—leader has a direct telephone line to. Perhaps it is not even a telephone any more; perhaps it is telepathic. I suggest that, in a constitutional democracy, as we have heard outlined, instead of there being this sort of telepathic connection between any individual leader and the will of the people, it is Parliament that reflects the will of the people to the best of its ability and represents people in this country while championing the rule of law.

Of course, as we have heard from my noble and learned friend, in the safety of Rwanda Bill, it is suggested that Parliament is now of the view that Rwanda is safe. So everything hinges on Parliament, with the courts having been ousted. It seems to me that, if Parliament is to step up to that awesome responsibility—it is even more awesome than usual—with the courts having been ousted from their usual fact-finding role in relation to the anxious scrutiny of individual refugees' cases and fundamental rights, it had better be pretty sure that Rwanda is safe. The noble Lord, Lord Howell, questioned the concept of safety—that is, what is and what is not a safe country—but I remind him that even the Government have used this formulation because Clause 1 clearly states that the Bill

"gives effect to the judgement of Parliament that the Republic of Rwanda is a safe country".

Difficult or otherwise, that concept is a recognised concept of international law.

This is the case not just in relation to the refugee convention. I remind noble Lords that many of us and many international jurists now believe that non-refoulement is so vital to the international rules-based order that it has become a principle of customary international law, binding even countries that do not recognise the convention. That is how important these concepts of safety and non-refoulement are. Like it or not, whether or not it is difficult to debate, safety is in the Bill and it is for Parliament to be very sure before deeming these new facts.

That brings me to another part of the Prime Minister's rhetoric. We had the sabre-rattling about the unelected House of Lords having to do the right thing but another part of his address was less strident, if I can put it like that. He said that

"we have addressed the Supreme Court's concerns".

That was the softer side—the good cop next to the bad cop. If Parliament is to address the Supreme Court's concerns, my noble and learned friend and his committee must be listened to because, with all due respect to our Commonwealth partner in the Republic of Rwanda, everything that they say is triggered not by what we say or deem with the flick of a pen but by the legitimate and totally noble aspiration that Rwanda will become safer—and even Britain too; perhaps we will all become safer. It is that greater safety in future that our own United Kingdom Supreme Court—not a foreign court, let alone an international one—called for and which my noble and learned friend and his committee are suggesting we should test. His comments on the contradiction between current safety and the Home Office's evidence to his committee were perhaps the most devastating part of his argument.

Before we hear all the lectures about unelected second Houses, et cetera, I think that your Lordships have a part to play on matters of the rule of law—especially in a country with an unwritten constitution and a Human Rights Act or modern Bill of Rights that is not entrenched and where, even the highest court in the land, our Supreme Court, does not have the strike-down powers that other democracies reserve for their constitutional or highest courts. In such a system, noble Lords are entitled to be a little more muscular than usual on matters such as this that were not in anyone's manifesto; that risk being contrary to the domestic rule of law, including by ousting the jurisdiction of the courts or changing the reality that was found by the Supreme Court on 15 November; that risk breaching international law, as found not by a foreign or even international court but by the highest

court in our land; and that risk breaching human rights that were baked in to the hard-won and precious Good Friday agreement—all this in what may be the last days of the Government, when the temptations to blow dog whistles and to be destructive to consensus and the rule of law are all too great.

For those reasons, I hope that your Lordships approve my noble and learned friend's Motions.

4.12 pm

Lord Purvis of Tweed (LD): My Lords, I am happy to follow the noble Baroness. I am grateful for the committee's work, especially since the Commons is not debating the treaty. These Benches agree with the conclusions of the unanimous cross-party report and will support the Motions. I am also grateful to the Minister for his comprehensive reply and fulsome response to a letter that I wrote to the Foreign Secretary in December.

Some outside the House may say that, over the coming weeks, we will be approaching our work in a constitutionally unusual way. The Government are insistent that we are constituted in the way that we are with the powers that we possess, but that we should not use them—in some form of appeal to the law to make us good at scrutiny, but not yet. We will do our job and we will scrutinise properly, and on the treaty too.

The treaty builds on the MoU, in certain areas with clarity, I accept, but in most other areas with assertion and optimism. Together with the Bill, the Government respond to the Supreme Court ruling not by addressing its substantive points but by setting them aside and presenting Parliament with alternative facts.

These Benches oppose the treaty and the Bill, which place the United Kingdom at material risk of breaching our international law commitments and undermining the rule of law by ousting the jurisdiction of the courts. They will lead to further substantial costs to the taxpayer, fail to provide safe and legal routes for refugees, and fail to include measures to tackle people-smuggling gangs.

The House will recall that, on 13 April 2022, at the start of all this, the Home Office Permanent Secretary said that there was insufficient evidence to back up the Government's assertion that the agreement with Rwanda would provide value for money, so he sought and received a ministerial direction. Some £120 million had been spent. It is utterly unacceptable that, after repeated questions on funding from me and others in this Chamber, in 2022 and 2023, only in December last year was it disclosed that a further £120 million was committed at that time—secretly by Ministers, with no disclosure.

When I visited the reception centre in Kigali in the summer of 2022, I was told that this was an annualised rolling contract, renewable in March each year. So can the Minister confirm that there will be another £120 million committed for next year, over and above the £50 million the Home Office has indicated for the coming year—and will this also be kept secret? Is this being scored against official development assistance? Why is it not being reported on a project basis in a transparent way?

Incredibly, the Home Office now says that part of the £290 million is a credit line to the Rwanda Government—not for the purpose of the treaty, but a credit line. For what, precisely, and to whom? Who are the beneficiaries?

I can inform the House today that, on top of the £290 million, the Government quietly issued a tender last March for a £78 million contract for:

"Collection, transportation, and escorting individuals overseas through an MEDP".

Given that the only partnership the UK is seeking to agree is with Rwanda, this is now £368 million willing to be committed. Can the Minister be clear what the projection costs are for 2025 and 2026, so that we have transparency.

These Benches want an immigration system that is efficient and fair, allows for regulated movement of people for our economy and takes into consideration need and capacity. We want a system that is not gamed, either from those within the UK or by organised crime abroad, but is one where we reject the pernicious and deliberate conflation of economic migration and those seeking asylum from political and personal persecution. That conflation meant that the previous Home Secretary and the Minister in this House repeated the untruth that

"there are 100 million people who could qualify for our protection, and they are coming here".

Well, there are not, and they are not—and the Lords Minister stopped repeating this trope only after I cited the condemnation of the UK Statistics Authority, which formally asked Ministers not to repeat it.

The Home Office is a serial offender. Last week, the head of the UK Statistics Authority wrote to my colleague Alistair Carmichael MP about the Prime Minister's wholly misleading statement on 2 January in which he said he had got rid of the backlog of asylum decisions by the end of 2023. It was misleading because the Home Office ignored 5,000 so-called "hard cases", as it defines them. In a withering reply, Sir Robert Chote said that it was

"not surprising that the Government's claim has been greeted with scepticism and that some people may feel misled".

Furthermore, it should be noted the Home Office went full Kafka last week in sending us supporting evidence for its Bill. That evidence included this treaty, which it negotiated itself. And the justification for the necessity of this treaty, the Government say, is their own Bill.

Part of the pack is an updated country note for Rwanda, which updates one published just last spring. The one with barely dry ink was slightly inconvenient as it said a little too much about Rwanda's human rights record and problems in processing asylum. Now, the language on human rights has been eased, massaged and sanitised. I emailed the independent inspectorate tasked with reviewing the country note and was told it had not yet concluded a review of the previous one to verify it. The Government, so eager to change the conclusions, did not even wait for the evidence from their own independent inspection body. All these aspects get to the central part of the issue and are why we must verify the treaty's assertions before they are brought into force.

[Lord Purvis of Tweed]

The Supreme Court's ruling was clear. In paragraph 104, it says:

"The matters which we have discussed are evidence of a culture within Rwanda of, at best, inadequate understanding of Rwanda's obligations under the Refugee Convention".

As the noble and learned Lord, Lord Goldsmith, said, the UNHCR position on Rwanda's insufficient processes, the UK MoU and now the treaty and Bill are also clear—and it is responsible for interpreting the convention. But the Government have sought to undermine the UNHCR; on 24 May last year, the Minister, the noble Lord, Lord Murray, who is in his place, told the House:

"The UNHCR is clearly a UN body; it is not charged with the interpretation of the refugee convention".—[*Official Report*, 24/5/23; col. 968.]

Paragraph 65 of the Supreme Court ruling says:

"The first relevant factor is the status and role of UNHCR. It is entrusted by the United Nations General Assembly with supervision of the interpretation and application of the Refugee Convention".

There can be no stronger rebuttal of the Government than that.

The Supreme Court also stated:

"It is also apparent from the evidence that significant changes need to be made to Rwanda's asylum procedures, as they operate in practice, before there can be confidence that it will deal with asylum seekers sent to it by the United Kingdom in accordance with the principle of non-refoulement. The necessary changes may not be straightforward, as they require an appreciation that the current approach is inadequate, a change of attitudes, and effective training and monitoring".

I asked the Government, with regard to their treaty commitment on refoulement, when the proposed mechanisms would be ready. The Minister replied to me, and in his response said:

"This mechanism is in development and will be in place once the partnership is operational".

"In development", and a process that may be extended with unlimited extensions. Does

"will be in place once … operational"

mean that they will need to be in place before it becomes operational, or that they will be put in place after the treaty is operational? It is unclear, and the Minister needs to be clear.

Equally opaque is the appeals process, which is fundamental to the court's ruling. This is covered in Annexe B in the treaty. Given that these need to be in place in advance of the agreement coming into force, when will they be operational? I asked for a planned date. The reply with regard to the judges appointed was:

"The precise number of judges (and precise mix of nationalities) is being considered by the UK and Rwandan Governments … The process for selecting the co-presidents is being developed by the UK and Rwandan Governments and we will set this out in due course".

We see "in due course" again, and "is being considered", and "is being developed". I asked the Government about the training of the judges, which the treaty says will have to be in place, and when that would be complete. Again, it is "being discussed".

Article 14 also commits to Rwandan security service officers, which they term "liaison officers", being part of the UK asylum process,

"including the screening of asylum seekers".

This is quite extraordinary, given that the UK has provided asylum to six Rwandans after the Government had stated that Rwanda itself was a safe country. And there is no treaty restriction on the limits of the access to the operational processes of the Rwandan security services in screening UK asylum applications. Given that I was monitored and spied on after meeting an opposition leader in Kigali, I say to the Minister with great seriousness that this section needs very careful consideration.

Finally, Article 19 covers the resettling of asylum seekers currently in Rwanda to the UK, which the noble Baroness referenced. The Minister replied to me, saying that the UK was now committed to receiving those asylum seekers from Rwanda who are the most vulnerable. If Rwanda cannot accommodate vulnerable asylum seekers in Rwanda, why are the Government proposing to send vulnerable asylum seekers to Rwanda? I also asked how many there were. The Government said:

"As the partnership is not yet operational, we have no figure or specific information to provide to you as to the number of non-Rwandan refugees who may be resettled in the UK or their circumstances. We expect this number to be very small".

The Minister's response to me sought to be reassuring. He said:

"This is not a 1:1 agreement".

I think most people will be reassured by that—but if it is not one for one, what is the figure and when will we know? Is it capped?

The Government cannot legislate new facts that are more politically palatable; they cannot mislead by deliberately misstating data; they cannot release new reports that sanitise ones that themselves have just been released; they cannot expect us to ratify a treaty when its essential elements remain unclear, with no details of timeframe or even of its commencement. They cannot do these things and expect us to turn away or to say, as some might, "Something must be done; this is something, so we must do this"—or, as the Foreign Secretary told me last week, on the lack of any of the promised new safe and legal routes, we just have to do it because we have to think out of the box. The Supreme Court was pretty clear in paragraph 104 of the ruling that when it comes to safety, thinking in the legal box is a practical necessity. The treaty does not in itself create a new reality, and therefore there are too many outstanding questions for us to assent to its ratification now.

4.25 pm

Lord Kerr of Kinlochard (CB): My Lords, it is a privilege to take part in this debate and I am very grateful to the Government for allowing us to have it within the CRaG period. It was also a privilege to be a member of the International Agreements Committee. Thanks to our excellent chairmanship and the wonderful work done by our staff, we were able to complete this report within the CRaG period despite the Christmas Recess.

I used to work in international relations and was until recently a trustee of the Refugee Council, so I cannot debate this treaty without recording my profound objection to an arrangement that is incompatible with

our responsibilities under the 1951 refugee convention, its 1967 protocol and, of course, the European Convention on Human Rights. But I acknowledge that that is more for next week's debate than today's. My concern is primarily with the policy and the Bill that we will be looking at next week, not the treaty, which is intended to salvage the policy from its Supreme Court shipwreck.

On the policy, I will make just one point. I simply remind the House yet again that there is no precedent for the way it dishonours our convention commitments. The Government keep referring to what the Australians did in 2012, but that was different: the asylum seekers they diverted to Papua New Guinea were not handed over to the Papua New Guinea authorities. Australian officials went and heard in Papua New Guinea their claims for admission to Australia. Like the arrangement the Italians have been considering with Albania, this was offshoring; what we are talking about is offloading. Those we offload to Rwanda are never to get a hearing for their claim to asylum in this country. We intend to wash our hands of them and declare them inadmissible: Rwanda's responsibility, not ours. This is unprecedented and unconscionable.

On the treaty itself, I have only three points to make. First, as a member of the International Agreements Committee, I of course support the report we unanimously agreed. It follows the scope and logic of the Supreme Court's reasoning. As the noble and learned Lord, Lord Goldsmith, explained, in considering whether Rwanda would be safe for those sent there, it focuses on the court's assessment of the risk of refoulement—enforced return to the country they first fled. I would have wished to draw the canvas a little broader, looking beyond the procedural reforms that Rwanda has apparently agreed to make and trying to judge how safe for refugees wider Rwandan society actually is. Without looking back to the genocide 30 years ago, when more than half a million in Rwanda lost their lives, I might have noted, as the Supreme Court did, that only three years ago our Government were criticising the Rwanda Government in the UN Human Rights Council for

"extrajudicial killings, deaths in custody, enforced disappearances and torture".

I might have asked whether it is Rwanda that has changed or whether we have just found it convenient to change our tune for domestic political reasons. I might have picked up the State Department's damning country report two years ago on Rwanda's human rights record. I would certainly have wished to note Rwanda's 100% rejection rate for asylum claims there by applicants from Afghanistan or Syria, according to UNHCR, and contrasted that with our 99% acceptance rate, according to the Home Office, for people from those two tragic countries who manage to lodge their claims here. I might have asked what it says about the safety of Rwanda that we are still accepting claims from Rwandan citizens for asylum in this country, as the noble Lord, Lord Purvis, pointed out. Allowing them refugee status here means that we have determined through our processes that they have a real and well-founded fear of persecution back home.

All these issues are relevant, although they are not in the IAC report, but I in no way resile from the report. We agreed it unanimously, and we all acknowledged the efforts the two Governments have made to address the issues raised by the Supreme Court. But—this is my second point—the committee was clear that resolving these issues will take time to assess whether the 10 steps that the Rwanda Government have agreed to take, listed in paragraph 45 of the report, have been taken, are working and are proving sufficient to set at rest the concerns raised by the Supreme Court. None of the 10 steps has yet been taken. There is no new Rwanda asylum law, first instance body or appeals court, no judges have been appointed and no training has been done. It will all take time.

I believe that if the new arrangements set out in the treaty and its annexes are implemented and bed down, the situation for asylum seekers in Rwanda will genuinely improve, but clearly the Government themselves are not confident that these improvements will be sufficient to set Supreme Court minds at rest. If they thought the treaty would crack the problem, why would they now be legislating to prohibit our domestic courts independently assessing whether it has cracked the problem? Why a belt, if the braces are not broken?

Thirdly, Article 10(3) of the treaty states that no one we have transported to Rwanda can be sent on to a third country, whether or not they have asked for asylum in Rwanda and whether or not asylum in Rwanda has been granted. The only place they can be sent to is back here, if we decide we want them back. On the face of it, that is a reassuring fail-safe if the new procedures prove inadequate to prevent removal to a third country. Actually, it is not—because, as the report points out at paragraph 37, Article 10(3) goes on to lay an obligation on us and Rwanda

"to agree an effective system"

to ensure that removals do not in practice occur and to check on where the refugee in question now is. Hang on, that is the clock striking 13 times, casting doubt on all that has happened before. It shows the Rwanda Government acknowledging in the treaty that, despite all the assurances in the treaty, it is possible that refugees will in practice be sent back to the countries from which they originally fled—and well might the Rwandans admit that possibility, because that is exactly what happened with their arrangement with Israel, causing the Israelis to break it off.

So we and they are to agree an effective system to ensure that that does not happen again; but we have not done so, and the task will not be easy given Rwandan geography and society. It is one of the unfulfilled promises listed in paragraph 45 of the report. In the absence of an effective system, up and running and proving effective, Article 10(3) cannot be even minimally reassuring to Parliament or, I would imagine, to the Supreme Court.

In conclusion, the considerations of international law and national reputation, which I mentioned at the outset, convince me that it would not be right to ratify this treaty at any time; and arguments from history suggest that it would be very reckless to do so any time soon. But these are my personal views. The IAC read its remit rather narrowly. What we did was consider whether the treaty can be said now, today, to meet the Supreme Court's concerns. Our unanimous answer—I repeat, our unanimous answer—based on the

[Lord Kerr of Kinlochard]
overwhelming weight of the evidence that we received, was no: not today, not yet. Our unanimous recommendation is to delay ratification until the outstanding tasks have been carried out and the new systems proven in practice. So I support both Motions in the name of the noble and learned Lord, Lord Goldsmith.

4.36 pm

Lord Sandhurst (Con): My Lords, this treaty with the Republic of Rwanda underlies the safety of Rwanda Bill. If were not ratified by Parliament, the Bill would lose its foundation stone; but today, as I hope Members understand, this House cannot by its own resolution block the ratification process. Only a resolution passed in the other place can do that.

I have read with care the committee's report. It sends an important message to the Government, but—and this is important—whatever it says about the arrangements in Rwanda going forward and its anxieties about whether they will be effective, it does not complain about the terms of the treaty. I stress that. The treaty, as this careful report notes, puts into legally binding form the arrangements previously set out in the 2022 memorandum of understanding, with enhancements, which, the report notes, if effective—I emphasise the word "effective"—will provide important safeguards for persons transferred to Rwanda. That is what the report says. Of course, we shall know whether that is so only if and when the Bill becomes law and the process begins.

To adopt what my noble friend Lord Howell has said, this report provides a useful agenda for the Government—and, indeed, for all of us when we debate the Bill. The report acknowledges that the treaty will improve the protections previously set out in that earlier memorandum. It identifies practical steps that need to be taken before the protections could be deemed operational, and such that they might make a difference to the assessment reached by the Supreme Court.

Like my noble friend Lord Howell, I hope that the Government will read this report with care and not just pay lip service to it. The report argues that evidence is also needed that the arrangements have been effective in practice. One can see that that evidence will be available only if the process is embarked upon and after it has been in practice; that is, if it has taken place.

The authors of the report, members of this distinguished committee, are doubtful that the treaty would change the position in Rwanda in the short to medium term. That will arise only if this treaty is in effect and the arrangements have been tested. Clearly, when we debate the Bill, we will have to see what reassurances we receive from the Government. On that basis, the authors recommend that the treaty not be ratified until Parliament is satisfied that the protections have been fully implemented.

It is worth looking again at Article 3(1) and (2) of the treaty:

"The Parties agree that the obligations in this Agreement shall be met in respect of all Relocated Individuals, regardless of their nationality, and without discrimination".

That is the core agreement. It continues:

"The Parties agree to take all steps that are necessary or appropriate to ensure that their obligations can both in practice be complied with and are in fact complied with".

That is the obligation on the Rwanda Government and on our Government. It continues:

"Those steps shall include continuing discussions, support"—

that is a matter that the committee was concerned about—

"and the fullest cooperation between the Parties with a view to maintaining and enhancing their practical ability to do so. Both Parties recognise the importance to that end of the monitoring arrangements set out in this Agreement, and the taking of all reasonable steps to ensure that that monitoring is as effective as possible".

The committee none the less recommends that the treaty is not ratified, as have several speakers today, until Parliament is satisfied that the protections provided have been fully implemented. However, if it is not ratified there will be no Bill. That will end the process. The time for advancing those arguments is when we debate the detail of the Bill and ask: are we confident that it is right to have a second go?

I suggest that the report does not identify anything objectionable or contrary to principle in the treaty itself. The report's concern is that the treaty obligations imposed may not be adhered to by the Republic of Rwanda when and if the Bill is passed and the migrants are sent to that country for processing. I remind this House that, as an earlier speaker said, the Supreme Court did not doubt the good faith of the Government of Rwanda. So the true question today is whether Parliament, when it debates the Bill, should have confidence that the aspirations on which it is founded are sound. Will the aspirations contained in the treaty be fulfilled? That is a judgment to be made then by Parliament and ultimately by Members of the other place as the elected representatives.

The second resolution therefore puts the cart before the horse, although obviously I have no problem with the first Motion. I suggest that the treaty itself is entirely reasonable. It contains clear obligations on both parties. The points made in the report can be given effect to either by amendment to the Bill or ultimately by not passing the Bill in its current form. I am not urging either of those courses at this stage, but that is what is open to Parliament.

It is in that debate that the proper forum will arise. First, Parliament is entitled to proceed on the basis that Rwanda now will act in accordance with its obligations under Article 10, which bind Rwanda in both international law and its own domestic law not to remove persons except to the United Kingdom. Secondly, if there is structural failure—even passing imperfections arise in practice—we can be confident that the matter will be taken up in Parliament and that Ministers, particularly in the other place, will be given a hard time. They will be pressured to act and there will be action. The Rwandan Government have made it clear that they see compliance with international law as paramount—not least, as we know, because they wish to replicate their United Kingdom deal with other countries.

In the Bill, as we have heard, Clause 2 will impose an obligation to treat the Republic of Rwanda as a safe country. That is something this House can debate when the Bill comes before it. It will have the committee's report. If this House is satisfied that the country is unsafe, no doubt it will say so. That may be because, for example, no judges have been appointed; it might be for any number of reasons, but we can address Clause 2 then. But that does not go to the validity or the value of this treaty.

Today, I respectfully submit to this House and to those who have drawn up this very careful report, is not the place to oppose ratification and certainly not for the reasons advanced. If the House divides, I shall of course support the first Motion to Take Note, but I shall vote against the second Motion.

4.45 pm

Lord Anderson of Ipswich (CB): My Lords, the creation of our International Agreements Committee is a rare constitutional highlight of the past five years. I congratulate it on the scrutiny that it provides in the context of a statutory framework that leaves much to be desired and on the decision that it took in May of last year to focus particularly on treaties which are novel or have significant implications for politics or public policy, human rights or expenditure. The UK-Rwanda treaty might be thought to qualify on all those grounds. We can be grateful for the committee's thorough and perceptive report, and for the opportunity to debate it at a stage when the debate can still be useful.

I also congratulate the British and Rwandan Governments on putting their MoU into the form of a treaty, as the committee recommended, and on starting to address some of the defects identified by the Supreme Court. However, and without doubting the good faith of either Government, it appears that as the Supreme Court anticipated, those defects will not be fully addressed in the short term. The UNHCR, from its position on the ground, spoke last week of the need for

"sustained, long term efforts, the results of which may only be assessed over time".

That chimes with my experience when reporting, some years ago, on the analogous policy of deportation with assurances. The object of the policy was to enable non-British terrorist suspects to be deported to their countries of origin, even when, without specific guarantees, those countries could not be considered safe. Guarantees were negotiated by way of treaty, MoU or exchange of letters with six countries in the Middle East and north Africa. I travelled to Jordan and Algeria in 2014 to see how they were being implemented on the ground. My conclusion was that, contrary to the views of some lawyers and UN rapporteurs, but consistent with the view of the European Court of Human Rights, such arrangements can, with the right partner, be delivered, at least in the national security context, both effectively and compatibly with international law. Indeed, the mutual legal assistance treaty with Jordan, negotiated by James Brokenshire and Theresa May, was successful in meeting the conditions laid down by the courts for securing the departure of the dangerous extremist Abu Qatada for trial in Jordan. However, to negotiate and, in particular, to implement such an arrangement, particularly a broad-ranging one, requires what my co-author Professor Clive Walker and I described as "the most laborious care". In the oral evidence that I was invited to give to the committee, I detailed some of the practical obstacles to independent monitoring, even in Jordan where there was a strong political will to make the arrangement work.

I also recall that when I visited Algeria in 2014, the British embassy did not know the whereabouts of any of the nine men whom we had deported there under that policy. Perhaps that is not so surprising, when even in this country it is possible to lose track of some 5,600 asylum claimants whose claims were withdrawn in the year to September 2023. But it is a concerning precedent when one is looking at the risks in Rwanda, including, of course, the risks of refoulement.

The committee has looked at the evidence before it including, heroically, the almost 600 pages of evidence published by the Government on 11 January. It is not satisfied; as the noble and learned Lord, Lord Goldsmith, has said, it has identified 10 further legal and practical steps that would be required to meet the concerns of the Supreme Court, which it does not anticipate will be met in the short to medium term. These include such vital elements as the new Rwandan asylum law and the implementation of arrangements for monitoring and judicial consideration. The noble Lords, Lord Purvis of Tweed and Lord Kerr, have added to the committee's concerns in their powerful speeches.

The committee proposes that ratification should be delayed until Parliament can be properly satisfied that the protections written into the treaty have been fully implemented in practice. The committee has little to say about the treaty's companion piece, the safety of Rwanda Bill. May I suggest two respects in which the Bill reinforces the committee's recommendations?

First, the Bill is due to enter into force on the same day as the Rwanda treaty, which will itself enter into force immediately on ratification by both parties. Planes could, in other words, be in the air the day after ratification. That does rather demonstrate the practical dangers of ratifying prematurely.

Secondly, as the noble Lord, Lord Kerr, has said, the existence and terms of the Bill confirm the general view that the treaty has not yet rendered Rwanda safe. If the treaty were watertight, it could be defended with confidence in the courts, as was the MLAT with Jordan. Yet the Bill goes to considerable lengths to avoid such scrutiny, challenging as it does so the rule of law, the separation of powers between the courts and Parliament, our domestic human rights settlement, our compliance with international law and the Civil Service Code. If the Government were prepared to wait until things are as they need to be on the ground, and if that wait were as short as they claim it would be, none of this damage to our constitutional fabric would be necessary.

In the end, perhaps, it is as simple as this. The Bill seeks to give the status of law to what it calls

"the judgement of Parliament that … Rwanda is"—

not will be or could in the longer term become—"a safe country". Our own specialist, cross-party committee, the only one in Parliament, has unanimously given us the clearest possible advice that we are in no position to make such a judgment so, for my part, I do not see

[Lord Anderson of Ipswich]
how in good conscience we could make it. For that reason, I support both Motions in the name of the noble and learned Lord, Lord Goldsmith, and I shall vote for the second one if, as I hope he will, he chooses to test the opinion of the House.

4.51 pm

The Lord Bishop of Gloucester: My Lords, I welcome the opportunity to speak today and thank the International Agreements Committee for its excellent report. I will just say that as Lord Bishops we take no position on this Bench based on tribal loyalty and we are not whipped. Instead, because of what our Christian faith teaches us about care for the stranger, we have spoken with one voice on these Benches.

I am focusing on the issues before us today; friends on this Bench will speak to wider points in the coming weeks, as the Bill is discussed. As has been said, this treaty is the central plank of the Government's case that Rwanda is a safe country for asylum seekers. As others have commented, it is remarkable for the Executive to request that parliamentarians declare another nation state safe, and safe ad infinitum, on the basis that one drafted international agreement answers all the concerns of the Supreme Court. If Parliament proceeds to, in effect, substitute its judgment for that of the Supreme Court, where does that leave the constitutional principle of the separation of functions and what precedent is this setting?

The question is not whether both parties are willing and capable of delivering on the treaty, but whether the provisions will become operational in reality. Both the committee and the High Court question Rwanda's ability to fulfil its commitments in the short term in light of the evidential deficiencies of the present asylum system in Rwanda, as has been mentioned. Furthermore, the UNHCR has not observed any systemic changes that will address the court's concern. Future assurances, however sincerely offered, are not on their own a strong enough basis to legislate a country as safe.

The role of government is indeed to create law, but it is not to create injustices. Therefore, if the Government are so confident that the treaty obligations placed on Rwanda will ensure that the Rwandan partnership is lawful, why not make this argument again before the judiciary? As the Government are not pursuing this course of action, the International Agreements Committee has recommended that the treaty not be ratified until Parliament is satisfied that the protection it provides has been fully implemented.

Given that the Home Secretary has stated that

"we will not operationalise this scheme until we are confident that the measures underpinning the treaty have been put in place; otherwise, the treaty is not credible",

do the Government concede that this is an eminently sensible proposal that should be given serious consideration? To take one example from the treaty, can the Minister reassure us that judges from a mix of nationalities will have been appointed to the new appeals body before any flights take off to Rwanda? In general, how long do the Government envisage that it will take for Rwanda to put in place the protections outlined in the treaty?

No one on these Benches is denying the complexity of the challenges that irregular migration presents globally and on our shores. The boats must be stopped. The traffickers must be stopped and held to account. Immigration must, of course, be controlled. However, this debate is focusing us on the issue of whether sending people to Rwanda is safe and humane. The Prime Minister has called on Peers to

"get on board and do the right thing",

but I fear that it cannot be right to assure ourselves that asylum seekers will be protected by a few sheets of paper.

4.55 pm

Lord Hodgson of Astley Abbotts (Con): My Lords, for those Members of your Lordships' House with whom I have debated immigration and migration over the years, it will come as no surprise that I support the Government's Rwanda policy. Further, while I thank the noble and learned Lord, Lord Goldsmith, for his very clear explanation, I have some concerns about the approach adopted by his committee, though as a non-lawyer I recognise his distinguished legal and political career. Last but not least, I thank those distinguished Members of your Lordships' House who serve on his International Agreements Committee, and on whose behalf he has tabled these two Motions.

Among all the aspects of this tricky, difficult and challenging area that divide us, there is one that unites us: we need to find, as soon as possible, ways to stop people risking their lives crossing the channel in small boats and simultaneously find ways to break up the business model of the people smugglers. As my noble friend Lord Howell pointed out, this is just the beginning of a much bigger problem, but it is nevertheless a problem. It is worth remembering that we will have before us next Monday a Bill designed to tackle the first issue. Members of your Lordships' House may not like the approach or may argue that it is defective, but it is a plan. It is inconceivable that the passage of the Safety of Rwanda (Asylum and Immigration) Bill would cause an increase in the number of people seeking to cross the channel.

While I absolutely respect the findings of the committee, any delays in implementing the provisions of the Bill—my noble friend Lord Sandhurst pointed out how interlinked this and the Bill are—will have real-life consequences away from the cool, calm deliberations of your Lordships' House, with the most likely winners being the people smugglers and the most likely losers being those desperate, unhappy people hoping to cross the channel. As we come to decide our voting preferences, we need to bear this carefully in mind.

The Government's policy statement on Rwanda, which is the subject of the report from the noble and learned Lord, Lord Goldsmith, is 33 pages long and impressive in its detail as to how the rights of people sent to Rwanda will be safeguarded. A number of noble Lords have pointed out the weaknesses in it, and I stand corrected by that. What is impressive about the report is not so much the detail it goes into but the number of third-party independent bodies that have rated Rwanda highly or reasonably highly. This includes the Ibrahim Index of African Governance, the World Justice Project rule of law index, the World Bank

Group and the World Economic Forum gender gap report—which, by the way, ranks Rwanda higher than the United Kingdom. I felt that it was slightly unreasonable not to have given some weight to those third-party witnesses in the findings of the report.

Much of the debate revolves around the rule of law, which I strongly support, but I will end by referring to a different set of laws: the laws of motion, and specifically Newton's third law of motion, which states that for every force in nature there is an equal and opposite reaction. It may not be attractive to say this, but in this country a large majority of the British people think that the provisions of our asylum system are being stretched to their utmost, and some would no doubt argue to well beyond that. As Newton's law predicts, the force of the stretching has led to a countervailing reaction, and we can see and read about the consequences of that almost every day. If we are to maintain confidence in our system, it is important to pass or not pass the Bill without delay and take the consequences at the next election. I thank the noble and learned Lord, Lord Goldsmith, and his committee for their report. It contains some important points, but I urge the House to consider carefully the political consequences of being unwise in the way we delay the Bill itself with this particular provision.

5 pm

Baroness Lister of Burtersett (Lab): My Lords, I refer to the register of interests for support from RAMP.

We are indebted to the International Agreements Committee for its carefully argued report which, as we have heard, makes a clear recommendation to your Lordships' House. Having read much of the evidence to the committee and other expert commentaries, including from the Law Society, I am satisfied that this recommendation is well based. The consensus among them is that, despite improvements in the treaty compared with the original memorandum of understanding, the treaty cannot of itself guarantee that the concerns raised by the Supreme Court will be met and that they are unlikely to be so in the short to medium term, as the committee concludes. The kind of improvements sought by the Supreme Court to make it safe will take time. To quote from the updated analysis provided by the UNHCR, referred to by my noble and learned friend:

"Even with the injection of additional resources, and sustained capacity development efforts, the transfer of an unspecified number of asylum-seekers from the UK to Rwanda will inevitably place additional pressure on a nascent and already overstretched system for receiving and adjudicating individual asylum claims".

This is a system that, according to the Government's own supporting evidence, has considered only 421 cases in the past five years, rejecting three-quarters of them despite many of the asylum seekers coming from countries such as Afghanistan and Syria that have high acceptance rates in the UK, as we have heard. The UNHCR states:

"As of January 2024, UNHCR has not observed changes in the practice of asylum adjudication that would overcome the concerns"

set out in its original analysis and evidence to the Supreme Court. It therefore continues to have concerns that asylum seekers transferred to Rwanda

"would not have access to fair and efficient procedures for the determination of refugee status".

Based on its own extensive experience of capacity building, which emphasises system thinking, it warns of the limitations of training without the

"necessary legal framework and implementation capacity".

Drawing on the evidence it received, the committee underlines the weaknesses of the commitments on training and monitoring, welcome as they might be. It reminds us of the Supreme Court's point that, however good the monitoring proves to be, it does not help those it identifies as having been turned down wrongly. To quote the Joint Council for the Welfare of Immigrants,

"it would be far too late for the individuals whose lives would already be irreparably and irreversibly harmed".

At the heart of the UNHCR's concerns is the belief that, despite all the treaty's claims, it, like the Bill,

"is not compatible with international refugee law".

The JCHR observes that:

"The Supreme Court decision relied on evidence that Rwanda had previously failed to comply with international human rights treaties. It is hard to see how turning an agreement into a treaty can answer serious underlying concerns about Rwanda's compliance with its international treaty obligations".

Those concerns are hardly assuaged by the recent revelation, already referred to, that six people from Rwanda have been granted asylum in the UK since the original agreement was signed in April 2022. According to the *i* newspaper, at least one of these decisions was based on sexual orientation. Given Rwanda's worrying record on LGBTQI+ people, outlined in the Public Law Project's evidence to the committee, there is very real concern, among groups such as Rainbow Migration and the British Red Cross VOICES Network, about the implications of the treaty and the Bill for LGBTQI+ people seeking asylum in the UK who could be sent to Rwanda.

The treaty is full of assurances about both countries' commitment to their international obligations with regard to refugees. Survivors of the Illegal Migration Act's proceedings might recall that our concerns—based on the UNHCR's unequivocal analysis that that and the earlier Nationality and Borders Bill did not comply with the refugee convention—were dismissed as simply one interpretation of that convention's requirements. So, in true humpty-dumpty fashion, there is nothing to stop the Government asserting that these obligations are met under this treaty and the accompanying Bill when the experts say they are not, because, for the Government, words mean what they say they mean.

Apparently, according to the Foreign Secretary, as we heard, this represents

"out-of-the-box thinking".—[*Official Report*, 16/1/24; col. 316.]

But legitimate asylum seekers, whom the Government wrongly call and treat as illegals, would be safer if thinking remained within the box of the official UN statement of these obligations. The committee is thus right to charge us with the need to consider carefully whether the treaty fundamentally changes the Supreme Court's assessment regarding Rwanda's international obligations. I believe all the evidence suggests that it does not.

[Baroness Lister of Burtersett]

One of the issues of substantive concern to the committee was the treatment of children. Needless to say, I have not seen any child rights impact assessment—can the Minister tell us whether there will be one before we consider the Bill itself? The committee's report notes:

"The Treaty envisages that unaccompanied children might be removed to Rwanda if their age is in dispute. If subsequently determined to be children they would be returned to the UK. This might result in children being placed in unsafe situations".

The potential unsafe situation raised in the ILPA/Justice evidence concerns sleeping arrangements. Can the Minister assure us that no age-disputed child would be required to share a sleeping area with adults?

The report cites witnesses' arguments that the treatment of age-disputed children would be contrary to our obligations under the UN Convention on the Rights of the Child to prioritise the best interests of children and the UN Committee on the Rights of the Child's recommendation to the UK to

"ensure that children and age-disputed children are not removed to a third country".

Instead, there is a very real possibility that they will be removed to Rwanda and, if subsequently found to be under 18, sent back to the UK in a cruel human pass the parcel, which is likely to be very distressing for children who almost certainly have gone through considerable trauma.

Last year, a Written Answer to me gave the assurance that, under the MEDP, established by the original memorandum of understanding,

"No one undergoing an age assessment, or legally challenging the outcome of an assessment, will be relocated until that process is fully concluded".

Can the Minister please explain why the treaty indicates otherwise? Given the chief inspector's description of the age-assessment process for those arriving by small boats as "perfunctory", and given plenty of other evidence, there is a very real danger of a significant number of unaccompanied children being earmarked for removal to Rwanda, despite the treaty's assurances.

As your Lordships know, there are very real concerns about the introduction of so-called scientific methods in the age assessment of children. I realise that even if age assessment is completed in the UK, unless there is a legal challenge, the assurance I was given last year would not ensure that no child was erroneously relocated—but it would at least provide some protection. Nor would it cover children in families for whom, according to Barnardo's,

"Forced removal has devastating impacts on mental and physical health and will blight the development and futures of these children".

Finally, I will say a word about deterrence, which is presented as the treaty's overarching objective in Article 2. In response to a recent Written Question asking what evidence there is of a deterrence effect, the Minister replied:

"We set out the evidence covering this in the published impact assessment for the Illegal Migration Act".

Veterans of the passage of that Act may remember that the impact assessment said that:

"The academic consensus is that there is little to no evidence suggesting changes in a destination country's policies have an impact on deterring people from … travelling without valid permission, whether in search of refuge or for other reasons".

Refugee Council research supports that conclusion. Moreover, it suggests that, rather than being deterred from travelling, asylum seekers will take even more dangerous journeys to reach the UK and, once here, will be more likely to go underground, as have nearly 6,000 asylum seekers already according to the Home Office. The expert organisations the Refugee Council contacted believe that this will increase rather than remove the power of traffickers and others out to exploit desperate asylum seekers. Journalists from the *Times* and the *i* who spoke to asylum seekers in Calais were told that they would not be deterred by the threat of removal to Rwanda.

The Refugee Council research also found a consensus among organisations that the scheme and the state of perpetual limbo it would create for so many would have a very detrimental impact on the mental health of those seeking asylum. This is also emphasised in briefings from the BMA, Médecins Sans Frontières and Doctors of the World. They cite existing evidence of the detrimental effect on mental health of the prospect of removal to Rwanda, where they fear the healthcare will be inadequate because of a critical shortage of skilled health workers. We are talking here about extremely vulnerable people who have already often suffered trauma and even torture.

The latest report of the independent monitoring board expressed concern about the "deep anxiety", "distress" and

"the increase in self-harm observed during the period when men were being detained for removal to Rwanda".

On this point, can the Minister explain why, according to the *i* newspaper, the first 47 asylum seekers selected for relocation to Rwanda more than 18 months ago are still being kept in limbo given that the rules state that applications deemed inadmissible should be considered if relocation is unlikely within a reasonable period of time?

In his oral evidence to the committee, the Home Secretary conceded that

"None of us has an interest in rushing the fence and getting it wrong",

and that

"If the elements of the treaty are not in place, obviously we will not be able to rely on the treaty for the purposes of asylum process".

While he expressed confidence that the elements of the treaty will be in place, his confidence is not shared by a wide range of experts nor by the International Agreements Committee. I therefore believe it would be irresponsible of us to call for the ratification of the treaty now, and I hope that your Lordships will support the second cross-party Motion in the name of my noble and learned friend Lord Goldsmith.

5.13 pm

Lord Hannay of Chiswick (CB): My Lords, the UK-Rwanda Agreement on an Asylum Partnership, which the House is debating today, will not, I suspect, rank high in the ratings of Britain's diplomatic history.

Why not? Because it is costly, with so far no evident benefit, and because it transgresses a whole range of our international commitments and obligations, including those in the refugee convention, the Convention on the Rights of the Child, the convention against torture and, potentially, the European Convention on Human Rights.

You cannot hope to be a credible champion of the rules-based international order—as the Government, rightly in my view, aspire to be—and, at the same time, pick and choose which of those rules you yourself will continue to honour. It upends our constitutional order separating the powers of the legislature, the Executive and the judiciary, by setting aside the Supreme Court's ruling that Rwanda is not a safe country to which to send refugees—and that when, as other speakers have said, it is reported that we have been admitting some Rwandan asylum seekers, presumably on the grounds that Rwanda is not a safe country for them.

Fortunately, we have at our disposal the excellent, concise and relevant report on the Rwanda agreement by this House's International Agreements Committee—in spite of the absurdly short time limit laid by the Government for the committee to do its work, which has inhibited its ability to gather evidence and to consider the Government's own tardy replies to its inquiries. Can the Minister tell us whether there is any other properly democratic country that provides as little time and as little scope for its apparently sovereign legislature to consider international treaties and agreements before they are ratified? The noble Lord, Lord Howell, made that point, and I strongly endorse it. If there is no such country that has as short a timescale, with as little scope, as we do, surely it is essential that the Government provide more time and scope in future?

The problems with this agreement do not stop there. I differ from the suggestion from a noble Lord who spoke previously that those who support the second Motion are putting the cart before the horse; I suggest that today's debate puts the cart quite firmly and squarely before the horse. This is the last pre-ratification parliamentary process on this agreement. Once it is over, there is nothing to stop the Government ratifying the next day, if that is what they decide to do.

Yet the obligations on both sides, which are set out in the agreement, require primary legislation—which is not yet complete. In the case of Rwanda, I gather that it has not yet even begun. For Rwanda, it requires putting in hand and carrying out a whole range of remedial training and institutional changes needed if the problems identified by our own Supreme Court, which declared Rwanda an unsafe country to which to send asylum seekers, are to be remedied.

These are extremely serious lacunas, without the filling of which there can be no certainty that Rwanda has indeed become a safe place to which asylum seekers can be sent. Indeed, until the Government are sure that these lacunas have been remedied, it must surely be doubtful whether it is even legal for our authorities to compel asylum seekers, however they may have arrived here, to go to Rwanda. Perhaps the Minister could comment on that point.

The committee's report sets out 10 steps which it believes will need to have been completed before the problems identified by the Supreme Court are remedied. Could the Minister be so kind as to tell the House whether the Government concur with that analysis and list? If so, what plan and timetable exist for them to be implemented? Do the Government accept that that process needs to have been, in the committee's words,

"put in place and bedded in"

before any process of ratification is completed?

The answers that the Minister gives to those questions will clearly affect the conclusion to be reached by this House at the end of the debate. In the committee's view, which I find compelling, there would then need to be a further debate before the UK proceeds to ratification. That must surely be the right way to proceed in the present circumstances and will, I hope, be the conclusion we reach today. If not, it will make a mockery of the sovereignty of Parliament, which the Government frequently call on us and the courts to recognise and respect.

5.19 pm

Lord Razzall (LD): My Lords, as a member of the relevant committee, about which many compliments have been paid, particularly to the chair and the staff, I rise to support the two Motions in the name of our chair, the noble and learned Lord, Lord Goldsmith. I first make a point that I am not sure anyone has made, which is the dilemma with which the Government are faced. If we go back to the beginning, the whole reason for the proposal to send people to Rwanda was that it was going to be such a hellhole that nobody would want to get on a boat if they thought they were going to go to Rwanda. The dilemma the Government now face is that, because of the Supreme Court, they have to demonstrate what a wonderful, safe place Rwanda is. I wonder whether this might just be a moment for them to reflect on the purpose of their policy.

Recent events go either way. First, as noble Lords indicated, six people from Rwanda have had to be granted asylum here. I do not know why; I do not know whether anybody knows why. If that is the case, it may somewhat help the deterrent argument: the hellhole argument. Conversely, RwandAir for the first time last week commenced non-stop flights between Kigali and Heathrow. Whether that is in preparation for taking people, who knows—and which way that goes on the argument of deterrence or safety, again I am not sure. But it does seem to me and to many of us that this a classic case of two and two adding up to five.

There are a couple of peculiarities in the Rwanda treaty that noble Lords have touched on. First, as the noble Lord, Lord Kerr, said, the rhetoric of the Government in defence of their policy and of the treaty has been that a number of other countries have done and are doing the same. Italy is cited vis-à-vis its current negotiations, and of course in the Tory party the highlight would be Mr Abbott winning the election in Australia all those years ago on the basis of processing migrants in Papua New Guinea—and I think also in Nauru. But, as the noble Lord, Lord Kerr, indicated, there was a fundamental difference, in that they were being processed by Australians who decided whether

[Lord Razzall]
they would be given asylum in Australia. That is not the case with this treaty. Anybody who is sent to Rwanda and is granted asylum there can only, as we know, be kept in Rwanda and certainly cannot come back to the UK, except in exceptional circumstances.

The second point, which I do not want to labour but which several noble Lords, going back to the noble Baroness, Lady Chakrabarti, have touched on, is that there seems to be a strange interplay in this treaty between the asylum rules and the refugee rules. I am not sure exactly how that plays out, but it is a complication.

The Government's policy says, and the evidence they gave to us is intended to show, that the new treaty contains significant new protections to meet the Supreme Court objections. A number of noble Lords have mentioned them, and the Government have listed the new protections: first, a new system for processing asylum claims, with new institutional structures and a provision for free legal advice; secondly, the establishment of a first-instance body to hear claims, as well as a new appeals body with judges from a mix of nationalities; thirdly, an independent monitoring committee that will be set up, bolstered by a support team; and, most particularly, the new domestic legislation that will be required in Rwanda to implement the new system.

As noble Lords and our report have indicated, a large number of actions are now required: a new asylum law, a process for making complaints to a monitoring committee, the recruitment of the monitoring committee support team independent of the establishment and the hiring of independent advisory experts, the establishment and appointment of co-presidents of the appeals body and other international judges, training for the new appointees and the recruitment of legal advisers and interpreters. All of this, as noble Lords have said and as our report indicates, takes time and, in the committee's view, should be established before ratification.

Noble Lords who are hesitant about voting for the second Motion in the name of the noble and learned Lord, Lord Goldsmith, should accept that this is not about the legislation, which has caused such rows in the Tory party; it is about the treaty. I remind noble Lords that none of the four Tory Members who have spoken—including the noble Lord, Lord Howell, who is in his place—have dissented from this recommendation. It is a unanimous recommendation. From publicity, we are all aware of how the Tory party in another place has been tearing itself apart over this issue, but it is the Bill, not the treaty, that it has been tearing itself apart over. Noble Lords really need to take that on board.

In any rational world, this would not happen and the recommendation of the noble and learned Lord, Lord Goldsmith, would be followed. I wonder whether it is only the absolute determination of the Government to start flights to Rwanda before an election that is stopping this. I should add that I do not think our recommendation implies criticism of Rwanda in any way; we all accept, I think, that it has acted in good faith. It is a perfectly respectable member of the Commonwealth that seriously wishes to implement the desired protections.

My noble friend Lord Purvis referred to the best part of £400 million that we have committed to this project. In Davos, President Kagame indicated that, if no migrants from the boats were sent there, we could have the money back. I suspect that we will be asking him for it.

5.27 pm

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the wonderfully clear and blunt speech of the noble Lord, Lord Razzall. I am acutely aware of the depth of knowledge already contributed in this debate, as well of the House's desire to get to the vote on the important issue before us, so I will aim not to detain the House for too long.

There are some points from the debate thus far that are worth stressing. As many speakers have noted, we are not here to debate the infamous Rwanda Bill; that pleasure is to come. It is no secret that the Green Party absolutely opposes the Rwanda Bill and will do everything it possibly can to stop it. As the noble Baroness, Lady Chakrabarti, noted, the will of the people is diverse, not singular. Many people are joining with us by signing the Green Party's petition against the Bill to express the concordance of their feelings with ours. However, that is not what we are talking about today. We are scrutinising the viability, practicality and deliverability of the safe and legal offloading—I borrow the term from the noble Lord, Lord Kerr of Kinlochard, as it sums up the position so well—to Rwanda of Britain's responsibility to provide care and refuge for some of the most vulnerable people on the planet.

One interesting measure worth considering is the economic one. Rwanda has an annual GDP of $1,000 per person. The UK has a figure approaching 50 times that, yet we are—with significant financial payments, admittedly—permanently transferring responsibility for these refugees to Rwanda. Is a country that was wracked by genocidal conflict only 20 years ago resourced, organised and structured well enough to cope? Can it live up to the promises made by its president? These are some of the questions that your Lordships' International Agreements Committee, cross-party that it is, says can be answered only after a period of time.

It is worth stressing again that the noble and learned Lord, Lord Goldsmith, who introduced our debate so clearly, was speaking not as a Labour Lord but as a representative of a highly respected committee of your Lordships' House. He acknowledged that this was an unprecedented Section 20 Motion, but can your Lordships think of a better word than "unprecedented" to describe the terms by which we now live? As the noble Baroness, Lady Chakrabarti, said, the Supreme Court made a judgment of fact that the Government, with the power of the Executive, are now seeking to overturn.

The UK has an unwritten—or, if your Lordships prefer, uncodified—constitution. In comparison to many other countries, which have human rights and rules of law written into their constitutions, we rely on the actions of the historic moment to maintain them. For those who speak in favour of our current constitutional arrangements, voting for both these Motions is a chance to prove that the current arrangements can defend basic rights, legal principles and government based on fact.

In the United States back in 2004, politics being "reality-based" was mocked by an official of the Bush Administration. This has often been repeated by that side of politics since, but many on my side of politics take it as a badge of honour. "Yes", I proudly claim, "I am reality based".

Paragraph 9 of the International Agreements Committee report notes:

"The Supreme Court … considered that on the facts Rwanda was not a safe third country".

As Professor Tom Hickman KC told the committee, as recorded in paragraph 16,

"the Rwandan government does not possess the practical ability to fulfil its assurances".

Your Lordships will make a judgment not on party politics but on whether the actions of the British state should be based on facts. Is this a reality-based House? The Green Party will support both these Motions and I urge every Member of your Lordships' House to do the same.

5.32 pm

Lord Alton of Liverpool (CB): My Lords, the whole House is greatly in the debt of the noble and learned Lord, Lord Goldsmith, for giving us the opportunity to debate the Rwanda agreement, to consider the nature of our international obligations and to make the judgment to which the noble Baroness, Lady Bennett, just referred on whether Rwanda is a safe place to which we can send asylum seekers.

Along with the noble Lord, Lord Dholakia, and the noble Baroness, Lady Lawrence—who are in their places—I serve as one of six Members of your Lordships' House on the 12-Member-strong Joint Committee on Human Rights, under the admirable chairmanship of the Member of Parliament for Edinburgh South West, Joanna Cherry. I note that another of our Members, the noble Baroness, Lady Kennedy of The Shaws, is also in your Lordships' Chamber.

We were in session last Wednesday taking evidence from the Refugee Council, Justice, the Immigration Law Practitioners' Association, Chatham House, Migration Watch, and Professors Sarah Singer and Tom Hickman KC. On Wednesday this week we will hear from, among others, Lord Sumption and the noble Lord, Lord Sandhurst KC, who spoke earlier in this debate.

It is the job of Parliament to hear different views and to assess the arguments carefully. Too often, as my noble friend Lord Hannay indicated, we put the cart before the horse: we do not do it, which is not good governance. Too often, we pass legislation in haste and repent at leisure. The treaty before us, the Bill that will come and that which we already considered in 2023—the Illegal Migration Act—are examples of that.

In the 5,000-word report that the JCHR produced on that Act, we said that

"this Bill breaches a number of the UK's international human rights obligations and risks breaching others".

We went on to say that

"this gives us significant cause for concern"

and that:

"The Government is rightly concerned about the loss of life in the Channel. So are we".

This echoes the point that the noble Lord, Lord Howell of Guildford, made trenchantly in his speech. The loss of life and the scale of the migration crisis are such that politicians of all persuasions must respond to the widespread concern and anger at the failure to tackle the crisis, both here and in other jurisdictions. It does the process no good when we are seen to stampede things through both Houses.

When the Joint Committee asked the then Home Secretary, Suella Braverman, to appear before us and justify the measures that were in the previous Bill, she declined. I do not believe that is how Parliament should be treated. It does nothing for public confidence in our processes.

The Government rightly insist that the criminal, mafia-like gangs who make their fortunes by preying on the desperation and misery of the vulnerable must be hunted down and jailed. I agree. I also commend the Government and agree with them that they have achieved a great deal in their bilateral agreement with Albania and the progress made towards a pan-European initiative at the European Political Community Summit of 47 European leaders in Granada last October. But is it really the case that the EPC will not meet again until June? Perhaps the Minister will tell us. This requires urgent international strategy and decisions. Our Joint Committee on Human Rights report is insistent that the global crisis of displacement—UNHCR puts the number at 110 million people—means that:

"Given the sheer scale of this global crisis, it cannot be solved by one country alone".

Let us recall that eight out of 10 refugees—many millions—end up in neighbouring countries, not in the United Kingdom, so there are plenty of other countries which need to join an international alliance and promote an international strategy.

Two years ago, on 6 January 2022, on behalf of my noble friends on the Cross Benches, I moved a Motion which noted

"that 82.4 million people are displaced worldwide, 42 per cent of whom are children, and 32 per cent of whom are refugees, and (2) the case for an urgent international response to address the root causes of mass displacement".

That 82 million was two years ago, the number is now 110 million, and it will go on rising. Unless we tackle the fundamental reasons for displacement, the tsunami of desperate people will continue to be washed up on Europe's shores and seabeds.

Nine months since I chaired an inquiry into the situation in Sudan, we have seen 7 million people in Sudan alone displaced. Half a million people have fled Darfur in recent weeks and are now in Chad. Add to that the numbers from Tigray and from Eritrea—a tiny country from which half a million people are displaced, having escaped the cruel conditions that prevail there. The JCHR was told last week:

"Unless there is a collective global effort to create stability through conflict resolution and the promotion of rights in those countries, the number of refugees from those specific countries is unlikely to decrease".

It was Winston Churchill who promoted so much that we now take for granted, including the European Convention on Human Rights. He rightly believed that such international architecture—based on the

[Lord Alton of Liverpool]
rule of law, democracy, human rights, security and economic recovery—represented our best hope for the future. That brings us directly to the Motion brought by the noble and learned Lord, and what Parliament is being asked to agree.

As we have been reminded, it was the unanimous decision of the Supreme Court in November, based on the identification of a number of concerns about Rwanda—including poor compliance with its international obligations, poor understanding of the refugee convention and a poor human rights record—that led to the International Agreements Committee producing the report that we have been considering. That report says that

"the Rwandan government does not possess the practical ability to fulfil its assurances to the UK government, at least in the short term. That is not something that can be fixed by entering a binding treaty alone".

To confirm that, last week the JCHR heard evidence of the inadequate in-country access to legal remedies in Rwanda, a lack of independence for the judiciary and legal representatives, and a bad track record in complying with other international agreements.

Finally, I turn to the central issue of safety. Once again, we have the Home Secretary unable to give a Section 19(1)(b) statement on the face of the Bill to affirm that the Bill coming before us next week is compliant with the convention, which I presume can mean only that the Government do not regard Rwanda to be a safe destination. Witnesses to the JCHR last week put it to us that if the Government were confident about the safety of refoulement, they would not be afraid of independent judicial oversight.

The question today is simply whether we can honestly say that Rwanda is a safe country, and it was put to the JCHR that this also engages the separation of powers between the judiciary and Parliament, a point made earlier by the noble and learned Lord, Lord Goldsmith. Professor Singer said:

"To contradict the Supreme Court in this way is, perhaps, not showing the respect to the court that should be owed as a constitutional principle. Furthermore, the legislation prohibits the UK courts from reopening and considering the question of whether Rwanda is safe".

The JCHR was left in no doubt that if this new Bill is rushed through, the courts will once again be asked to decide whether Rwanda is safe and whether circumstances have changed. Guess what—if the verdict is that Rwanda is still not safe, the law will have to be changed yet again. Meanwhile, the Government of Rwanda have themselves said they would not want, as the noble Lord, Lord Razzall, reminded us, to implement a scheme said to be contrary to international law.

In considering the issue of safety, the House will want to take into account the new analysis that the UNHCR published last week, in which it once again insisted that Rwanda is not a safe country, a point made by the noble Baroness, Lady Lister. That analysis includes the following:

"As of January 2024, UNHCR has not observed changes in the practice of asylum adjudication that would overcome the concerns set out in its 2022 analysis and in the detailed evidence presented to the Supreme Court".

At a minimum, the Government need to tell us what has changed on the ground in Rwanda since the Supreme Court decision. What evidence do they have, for instance, in regard to political oppression or LGBT people? What examination have the Government made of the reasons why Burundi has closed its borders with Rwanda, and of Rwanda's links with the M23 militias in the eastern DRC—what analysis has been made of that? What is the Government's response to the 2023 Human Rights Watch report stating that

"Commentators, journalists, opposition activists, and others speaking out on current affairs and criticizing public policies in Rwanda continued to face abusive prosecutions, enforced disappearances, and have at times died under unexplained circumstances".

Like others, I visited Rwanda, in my case in the aftermath of the genocide, and saw terrible mass graves. Huge strides have been made to recover from the deaths of between half a million and 800,000 people, as my noble friend Lord Kerr reminded us earlier, but it is deceptive to describe Rwanda as a safe country for refoulement.

It is passing strange that we have five alleged genocidaires living in the UK that we have not sent back to Rwanda, for fear that they would be at real risk of not receiving a fair trial if returned. The primary issue in those extradition proceedings was whether they were at real risk of a flagrant denial of justice if returned to Rwanda; they expressed fears that they would be tortured and executed. When the cases came back to the courts in 2015 and 2017, Lord Justice Irwin and Mr Justice Foskett said:

"Our concerns focus on the political pressures on the judicial system, the independence of the judges, the difficulties and fears of witnesses and particularly the capacity of defendants to allegations of genocide to obtain and present evidence and be adequately represented in their defence".

We should think very carefully before stampeding through treaties, agreements or, indeed, next week, new legislation. I do not believe that public concerns about migration will be assuaged by offloading our responsibility, as my noble friend Lord Kerr said. It would clearly allay many public concerns if we were more efficient in dealing with applications more swiftly and sorting out the genuine from the false, but instead of this we are told we must make a Faustian pact and trade our commitment to international law and the safety of asylum seekers in return for measures that even their supporters say will not work.

For all those reasons, I will vote for both Motions that the noble and learned Lord has placed before the House, and I hope that the rest of the House will too.

5.44 pm

Lord Balfe (Con): My Lords, I am reminded of a saying of John Major's: if you are in a hole, stop digging. I will be supporting the Government tonight. I am not sure that this is the solution to the problem that we have before us. There is a big contradiction: we hear about vulnerable immigrants in Calais, but we also hear about migrants who spent thousands of dollars to get there. The prospect of a trip to Rwanda is not going to put them off getting a boat across the channel, so let us regard that as a starter.

Let us look at what Rwanda is actually up to. It was very anxious to get into the Commonwealth—virtually the only Commonwealth country that we did not

manage to colonise, but we let it in. Now, I see the Rwanda business as being rather like putting old people into private equity homes. Rwanda has spotted that there might be an opportunity for making quite a bit of money out of the West—particularly the United Kingdom—and so it has signed up to this. We can well ask: is it a safe country? Is anywhere in Africa particularly safe? I cannot think of any country in Africa that I would wish to go and live in. Perhaps it is safe: we do not know. That, however, is not the point. The fact of the matter is that even if it is declared safe, we are going to get 200 to 300 people there out of thousands who are coming to Britain.

We need to look at this more widely, as one or two noble Lords have mentioned. We need to realise that the whole international migration system has got out of hand. It is not whether or not people are any more vulnerable, it is the fact that, with modern technology, they can look at their iPads and work out that this would be a much better place to live than where many of them are at the moment. That is why there are smuggling gangs: they are catering to the market. It is as simple as that. They set up in business, saying, "What shall I do? Shall I run a bike repair shop? Shall I sell chapatis on the corner of the street? Oh no, I think I could make a lot more if I got a smuggling operation together". That is what is happening. If we are going to cure it, we have to do it as a European entity.

I noticed today that Prime Minister Meloni of Italy has gone to see President Erdoğan in Turkey to talk about migration. But it is no good just one Prime Minister and one President talking about migration. This has to be a European step forward. We have to start off by rebuilding the countries of the Middle East that we smashed to pieces. We caused Libya to be a failed state; we were the people who went into Iraq in very dubious circumstances; we were the people who, I was assured by the last Foreign Secretary-but-eight, had to get rid of Bashar al-Assad, even though he was running a country that was certainly authoritarian but was pretty peaceful. What did we do? We bombed it to bits. So the first thing we have to do is get prosperity back and the second thing is to get agreements at a European level on a much wider basis. That is the solution.

I have read the report and I think it is very good. I am not going to vote for it, however, because I am going to support the Government in their attempts—which probably will not work—to deal with this problem. We have to decide whether we wish these efforts well or ill.

We seldom talk about the famed people of Britain, but I can tell you that in Cambridge, where I live, there is no big queue of people saying, "Can we have a few more boats? Can we have an asylum centre in Cambridge?" It is just not there. So we should come to terms with reality. These are my final words: the difference between this and another system is that in a democracy the people vote, and they are entitled to have their votes translated into action. There is absolutely no doubt in my mind that the people want illegal migration to stop. The job of the Government is to do that.

5.50 pm

Baroness O'Loan (CB): My Lords, I thank the noble and learned Lord, Lord Goldsmith, for tabling these two Motions to allow your Lordships' House to consider the Rwanda treaty before we have to consider the Rwanda Bill. As noble Lords have said, the treaty and the Bill are consequential on the Supreme Court judgment that Rwanda cannot be assumed to be a safe place. This is, as the noble and learned Lord, Lord Goldsmith, indicated, an exceptional report. Its findings are very grave indeed. Next week, we will be asked in the Rwanda Bill to accept that Rwanda is a safe place, despite the fact that the evidence does not exist, as my noble friend Lord Alton just graphically illustrated.

The Home Secretary says in the Bill that he is unable to make a statement that the Bill is compliant with the Human Rights Act. That in itself should cause your Lordships alarm. We have obligations under not only the Human Rights Act but international legal instruments, and this is not the first occasion on which this Government have produced legislation which is not compatible with our international and domestic legal obligations. I think of the legacy Act currently being challenged in the High Court in Northern Ireland. Actions such as the introduction of the Rwanda Bill, which relies on a treaty which the Government have only just signed and which provides for a very complex structure of mechanisms to make it work at all, which will require the identification of personnel, accommodation, IT systems, training, new asylum law and many other processes, none of which exist at present, do further grave damage to the United Kingdom's international reputation. What is so stark, on reading the report of the International Agreements Committee, is the manifest lack of ability, capacity and preparedness to make the provisions of the treaty operational in the near future, in addition to its other deficiencies.

That there is a problem of uncontrolled unlawful migration cannot be denied. However, the Government's response over past years has been generally to reduce the number of staff employed to deal with asylum matters and the general resources provided for these matters, and above all, the failure, as my noble friend Lord Alton said, to devise a workable, human rights-compliant strategy to resettle displaced people and, more importantly, to work internationally to create levels of peace and prosperity in the countries from which so many of these migrants come.

We granted more than 500,000 asylum applications this year, 70% of the total number of applications. In contrast, some 25,000 illegal immigrants arrived in small boats last year. In future, we are planning to send such people out to Rwanda before their asylum status has been determined if they enter through what are called

"dangerous, illegal and unnecessary methods".

Already this year, 614 people are reported to have arrived in 15 boats, which is about 40 people a boat. Their status is then to be determined in Rwanda and there is an agreement that they will not be deported by Rwanda unless the UK asks for them to be sent back to the UK. However, there is evidence that Rwanda has deported to Uganda people who arrived there

[Baroness O'Loan]
under comparable arrangements. Moreover, if they are not granted refugee status in Rwanda, their future will be very bleak indeed. It will not be possible under the proposed processes to track and monitor what happens to them. The proposals for tracking and monitoring are time-limited and are currently an aspiration rather than a reality.

In a very unstructured and knee-jerk way, we are attempting to limit the number of people coming to our shores. In so doing we have spent hundreds of millions of pounds. We have paid many millions to France—I think it will be half a billion pounds over the three years ending in 2026—yet those seeking to come unlawfully to the UK are still able to set off from France, with an average of 40 people in a standard inflatable. Many of those inflatables have come under significant pressure, and people have died as a consequence.

Getting 40 people into an inflatable and setting it on course for England cannot achieved speedily. It must be possible for the French to do more in return for the money that we have given them. Through the use of drones or helicopters, allowing for intervention on French soil, a positive and proactive French response in this context would undoubtedly have a deterrent effect.

Moreover, we are spending millions on policing the channel. We no longer have the coastal vessels necessary for these channel operations, because their replacement was delayed by the Government; so we are now hiring private vessels to do the work, at a cost of £36 million in a year. Work to replace these vessels will not start for another two years and is not expected to be completed before 2028, so we will spend another £200 million picking people out of the Channel. That is in addition to the money we are spending each day on accommodating people and providing the necessary resources for their processing and appeals, et cetera.

The solutions proposed in this treaty, even if they were acceptable in human rights terms—and there is no evidence that they are so acceptable—have yet to be realised in any degree. The committee has identified very significant matters that require to be addressed before the UK can have any confidence that the structures will actually work, that Rwanda will be a safe place for migrants to be processed, and that the UK can be satisfied that migrants will not simply be deported to third countries, in breach of the requirements of the treaty.

If the UK has such difficulty in providing accommodation, education, healthcare and all the other services that are necessary, can the Minister explain how the UK can expect that Rwanda will be able to do so? Most particularly, to echo the comments of the noble Baroness, Lady Lister, and the noble Lord, Lord Alton, how can he assure the House that children and vulnerable adults will be kept safe under these arrangements?

The committee has said:

"The Government has presented the Rwanda Treaty to Parliament as an answer to the Supreme Court judgment and has asked Parliament, on the basis of the Treaty, to declare that Rwanda is a safe country. While the Treaty might in time provide the basis for such an assessment if it is rigorously implemented, as things stand the arrangements it provides for are incomplete. A significant number of further legal and practical steps are required under the treaty".

The committee gives, as examples, the new asylum law that is required, as well as

"a system for ensuring that refoulement does not take place; … a process for submitting individual complaints to the Monitoring Committee"—

which is yet to get its support people—

"the appointment of independent experts to advise the asylum First Instance and Appeals Bodies; … the appointment of co-presidents of the Appeals Body; … the appointment of international judges; …training for international judges in Rwandan law and practice; … training for Rwandan officials dealing with asylum applicants; and … steps to ensure a sufficient number of trained legal advisers and interpreters are available".

Can the Minister tell the House the timetable for the creation and establishment of all these structures and when they will be delivered in a way that will enable the House to have confidence that people who are sent to Rwanda will be safe? Even after all that work has been done, there will have to be further work to ensure that what has been established actually works.

Your Lordships have heard repeatedly that there is no evidence that Rwanda is currently a safe place. The structures provided in this treaty are, quite simply, not operational at present, and not capable of being operational. For that reason, I will vote to support the Motion that the Government should not ratify the treaty until the protections that it provides have been fully implemented.

5.59 pm

Baroness Lawlor (Con): My Lords, I am grateful to the noble and learned Lord, Lord Goldsmith, and members of the International Agreements Committee for their report on the UK-Rwanda agreement. As other noble Lords have pointed out, it is a model of clarity, precision and informative analysis, as was the noble and learned Lord's elegant summary today.

The noble and learned Lord, Lord Goldsmith, and the noble Lord, Lord Kerr, both brought us through the steps proposed in the treaty and those that are still needed to make Rwanda a safe country. I will not go through all the steps to which they referred, but they concluded that those steps have not been put in place yet, as noble Lords across the House have pointed out, and we do not know whether they will be and how effectively that will be done.

The question that has been put is a fair one: are the guarantees proposed by the Government to be agreed in international law under the treaty, which involve legal and practical steps and reassurances on compliance, sufficient to allow Parliament to judge whether Rwanda is safe? Is saying that something is the case, or committing to measures that may make it so, proof that it is so? I also ask: will it reassure the courts? The committee does not think it should reassure Parliament, and nor in my view is it likely that the courts will judge it so.

On the face of it, the committee's report, arising as it does from the decision of the Supreme Court and dealing with the Government's response to that decision, is unanswerable. I sympathise with the courts that interpret the law and with the committee, which, following

the Supreme Court judgments, asks whether the treaty will do the job that the Government say it does—that is, to reassure Parliament that Rwanda is safe.

Whether the treaty ultimately succeeds and works will be for the courts to decide, but, if a successful challenge is brought against removal to Rwanda, that answer will be no, for, as long as the UK is bound by the current provisions of international laws relating to asylum and refugees, it will not be able to satisfy the obligations. No country can. Such international treaties protecting the human rights, asylum and refugee claims of people from jurisdictions other than our own seem to command priority over the concerns of people in this country. Moreover, ever more complex arrangements seem to be put in place to promote and safeguard such claims, often at the expense of those voters in this country.

We have been told, including by some noble Lords in this House—and here I refer to the excellent speech of the noble Lord, Lord Hannay—that, were we to deviate in any way from international law, this would cast doubt on Britain's standing among other countries party to the law. Well, I do not think we would be out of step with our neighbours. France, Italy and Germany face the same problem. Each of those neighbours is a G7 country and each has seen an explosion in the number of those arriving within their borders to seek asylum. They are generous to asylum seekers—as is Britain, and its people. But Germany, which has taken quite a number of asylum seekers, is, in the words of the left coalition, which I will not repeat in German, full up.

We are living in a make-believe world in which Parliament and the courts seem to be at loggerheads, in practice if not in principle. We claim the centrality of the separation of constitutional powers: many noble Lords have referred to that, and the committee's report refers to it in paragraph 13. But no longer can I see that the courts, in doing the work they do—which, given the law, they must do—can protect this country from what seems to many people to be arbitrary power. For, whether we like it or not, international laws made, changed, interpreted and imposed, even if under a treaty to which we are a signatory—the consequences of which the majority of people have continued to make clear democratically, through the ballot box and through opinion polling, they do not want—are arbitrary and should not be retained.

I suspect that many noble Lords will warn the Government against proceeding with the Rwanda Bill linked to this treaty. Some will support the second Motion from the noble and learned Lord, Lord Goldsmith. I will certainly support the first, but not the second. If it does the trick to reassure, first, Parliament and, ultimately, the courts, well and good: but, given the exceptional ability, ingenuity and inventiveness of those engaged in advising asylum claimants, it will not be long before a successful challenge is brought.

Can my noble friend the Minister ask the Government to prepare and publish the necessary measures to prepare for that eventuality and see off the challenge? For, whether we like it or not, and whether the Government like it or not, we are seeing a constitutional crisis in the making, in which the will of the people, through their MPs, to have a say in the laws under which they are governed, the kind of country they live in, the taxes they pay and the opportunities they have, is flouted because their Parliament is powerless. The constitutional protection of the courts—the traditional role of the courts to protect freedoms—appears to them to have been turned on its head. Given its international obligations, the UK cannot control who comes in and who goes out, for that depends not on Parliament nor the will of the people but on what seems to them to be distant law made for a far-off time and a different world.

6.07 pm

Baroness Hayter of Kentish Town (Lab): My Lords, this is a significant debate, which includes a very serious Motion—the first of its kind, as we have heard. It is absolutely right that it is in front of us today.

I am still on the International Agreements Committee and when I was chair, the agreement with Rwanda was merely a memorandum of understanding, not a treaty. We were rightly critical of that method, exactly because it bypassed the CRaG Act and therefore did not have to be approved, or indeed even debated, by Parliament. As we have heard, the 2010 Act specifically gives this House the right—I would say the duty—to recommend against the ratification of a treaty if it judges that that is appropriate, albeit that the actual decision quite rightly rests with the elected House. But it is part of our role to make recommendations both to the Government and the Commons. For the first time, the International Agreements Committee has concluded that the treaty should not be ratified until its various provisions and new bodies are demonstrably in place, the relevant lawyers and judges appointed, the committees ready to act and other requirements met.

I say to the noble Lord, Lord Sandhurst: yes, the wording in the treaty, its aspirations, may well be sufficient to satisfy the Supreme Court and its concerns, but we need to see those words become reality before the treaty is ratified.

As the noble Lord, Lord Anderson, said, ratification now, before implementation of the safeguards, could mean planes the next day—before the safeguards are in place and before the Supreme Court, if it were allowed to opine, which it will not be because of the clause, could say, "Yes, that is now a safe destination". Parliament needs to ratify, and agree to ratify, the treaty before it becomes operational—as must Rwanda itself. The treaty, as opposed to the Bill, deals with what Rwanda will do to answer the Supreme Court's concerns so that it can take responsibility for assessing asylum seekers and caring for them, before and after any decision is made.

There are many who have argued, and will argue, that under international law the UK should never hand over responsibility for those who seek asylum here because, as we have heard, it is not simply to process them but, if they are judged eligible, to award them asylum in Rwanda rather than in the UK. As the noble Lords, Lord Razzall and Lord Kerr, said, we are not offshoring consideration but offloading responsibility.

[Baroness Hayter of Kentish Town]

I am not going to enter the debate about whether the whole Rwanda process is right or wrong. Along with the committee's report and many noble Lords who have spoken, I will focus on whether the treaty answers the concerns raised by our own domestic court—our highest court in the land, the Supreme Court and not some foreign court, as others seem to think. It was the Supreme Court that judged that Rwanda was not a safe place to send asylum seekers and therefore that rendering refugees there would be unlawful. It questioned whether Rwanda's domestic procedures—its own rules, asylum processes and personnel—were up to handling migrants in accordance with our domestic law, as well as international law. As the right reverend Prelate the Bishop of Gloucester said, by this treaty and the Bill the Government are substituting their own opinion on a matter of fact for that of the highest court in our land. If I read her correctly, indeed, she is challenging the Government to go back and ask for the court's opinion.

As many others have said, there is no doubt that Rwanda wants to meet the expected standards, and in the treaty it has undertaken to provide the law, skills, training, monitoring and so forth that we would expect. I do not doubt its bona fides in this regard but, surely, our Government and Parliament need assurances that all those protections and provisions are actually in place before we ratify a treaty—a treaty by which people landing on our shores after difficult, trying and dangerous journeys, and, as my noble friend Lady Lister said, possible trauma in their home country, can be sent 4,000 miles away to a continent they may not know, and in the process lose all rights to claim asylum in the UK.

The International Agreements Committee has not said that the treaty should never be ratified. It has judged that the treaty should not be ratified

"until Parliament is satisfied that the protections it provides have been fully implemented"

by Rwanda and the safeguards, which many noble Lords have enumerated, are in place. We used the word "Parliament"; it is essential that the Commons should be able to decide whether the treaty should be ratified. Again, I agree with the noble Lord, Lord Sandhurst, that it is a matter for them. But for them to be able to take that decision, the Government have to provide time in the Commons for a debate and a vote. The Commons' own Home Affairs Committee has argued for that, so that the elected House can record its view on whether the treaty should be ratified at this point.

It seems particularly inappropriate, given that the 2010 Act specifically allows for a Commons vote, that the Government are not obliged to provide time for this in the Commons. Our usual channels are rather more facilitating. The Government will be entitled to ratify the treaty once it has been laid for 21 days on 31 January. I was not here in 2010, but some noble Lords here today were and I am certain that, when the 2010 Act was passed allowing for the House of Commons to take a view on ratification, it was never envisaged that that was a theoretical right, and it would depend on the Government giving time in the Commons for such a vote. It was in the wash-up, so I assume it was a bit of an oversight at that moment.

The 2010 Act is not fit for purpose. Today is the first test of one of its Sections, allowing us to at least give our opinions on the matter. It remains the case that the Commons can only defer, not decline, ratification. That would only be for 21 days; we are not talking about this being for months on end. As we have seen, both with Australia and possibly with this one, given that there is no requirement for the Government to make Commons time available for a debate and vote, they are effectively shutting off the one power given to the Commons in the Act.

Today, however, our decision is a simple one. We have been given the right to have this debate, and we have, through the Motion of my noble and learned friend Lord Goldsmith, the opportunity to give our view about whether it should be ratified at this stage before we know whether all the procedures are in place. I think that is a judgment for us, and that judgment should be: not now, not today. The ratification should not take place until we have assurances from the Government that what is written in the treaty is ready to work and that Rwanda is ready to receive whatever number of migrants are sent there. I hope the House will support both the Motions.

6.16 pm

Lord Carlile of Berriew (CB): My Lords, it is a pleasure to follow the noble Baroness, Lady Hayter. She spoke with calm authority, derived not least from being the former chair of the committee whose report we are considering, and her words should be hearkened to strongly.

It has been a long debate and I will not repeat—I promise—what everyone else has said. I commend the Government and the Government of Rwanda for going through the process of discussing and reaching a treaty. The problem about that achievement is that it is only the beginning of a process and not the process itself. Indeed, the noble and learned Lord, Lord Goldsmith, in his excellent opening, explained that. He explained the role of the committee and the point of the committee. To use a metaphor, if the treaty does not have safe foundations, the skyscraper that is built upon it will become catastrophic. If the foundations are not solid, we should not allow that catastrophe to occur. The committee has found that the foundations are not solid.

In reality, are there not three steps that have to be taken? First, there has to be a treaty. The treaty is considered by the committee chaired by the noble and learned Lord, Lord Goldsmith. Secondly, if it passes the test of the committee, then it is legitimate for there to be a parliamentary Bill, which goes through its normal steps in both Houses. Thirdly, there is to be an effective law if the Bill is passed, which falls within the standards of our jurisdiction—of fairness, administrative sense and justiciability—without court proceedings being excluded under what are entirely artificial, uncomfortable and unfamiliar processes. The three steps I have described are not, to coin a phrase, three steps to heaven; they are

three steps to law, and each one can only be mounted when the other one has successfully been trod upon.

It is noticeable that there have been seven speeches from the Cross Benches in this debate. As a former member of a political party—and I apologise for the umpteenth time to its members for being here, but they do not mind really—I can tell your Lordships that, unlike the political parties, there is absolutely no homogeneity about the Cross Benches; there is not that much homogeneity about some of the political parties either. You have heard seven speeches from the Cross Benches today, from noble Lords who have a wide range of experience and bring it to bear in the debate, that have all come broadly to the same conclusion. Some of that experience was spoken of by the noble Lord, Lord Anderson, who referred to one experience he had as Independent Reviewer of Terrorism Legislation.

I had another experience, which I think is instructive. In 2007, the then Government asked me to prepare on report on counterterrorism law in the United Kingdom. I did a great deal of research on black-letter counterterrorism law in other countries, and I went to one of them—a Commonwealth country—that had, and still has, excellent black-letter law, to deliver a seminar to judges who tried terrorism cases. At the beginning of the seminar, I asked, "How many of you have tried terrorism cases?", and they all put their hands up. I then asked, "How many of you have seen a conviction in a terrorism case?", and none of them put their hands up. That is a demonstration of how we can think we have achieved a solution through black-letter law in our system, but I am afraid that, in that country, there was a degree of manipulation and corruption of the judiciary that meant the right conclusions were never reached.

At the moment, we have not proved to the requisite standard—and I would suggest that should be beyond reasonable doubt—that Rwanda is a safe country for a law founded on this treaty. I will borrow a few words from the debate. The noble Lord, Lord Howell, who is a member of the committee and agreed with its conclusions, spoke of a dangerous and damaging part of a bigger picture; I agree with him. And if that picture still seems damaging and dangerous, we should not be allowing it to go to the House of Commons, or to any other part of this Parliament, without recording our disapproval. The noble Lord, Lord Purvis, in an excellent speech, spoke of manipulation of the evidence of scrutiny of compliance in Rwanda; he is absolutely right. He also spoke, as did others including my noble friend Lord Kerr, of cases in which people are given asylum in this country, in courts a few hundred yards from where we are today, because Rwanda is not a safe place for them to be sent. This is exactly what the Supreme Court concluded, and which has not been refuted by anything that has happened since, despite the efforts that have gone into this treaty.

I suggest that, before we could possibly reject the second Motion before your Lordships today, we need to hear the Minister provide—and I do not mind how long he takes—an answer to every one of the 10 points in paragraph 45 of the committee's report. It will not do to tell us that we will be written to after the event. The Government should have put in their refutation before we met, and that refutation is not in the Government's comments of 10 January—published though they are—because they predate the committee's report.

I have been offended by criticism, some of it aimed at me and others who spoke out on the Rwanda subject, that we are unelected nobodies who are simply put here to obey the rule of the democratically elected House. That is not our role. One of our roles is to protect democracy—sometimes from itself—to ensure that Members of the other place, and indeed Members of our own House, do not overstep the mark and that they do not put us in conflict with the hallowed principle of the separation of powers.

This is not a case of the courts taking on the Government; this is a situation in which the Government have chosen to take on the courts. At the end of the day, what are they actually achieving? We know that only a couple of hundred people at the most would be sent to Rwanda. The Government do not have an aircraft on which they could put them or a pilot who would be prepared to take people who were disturbing the flight on grounds of safety. The cost has now escalated—it goes up every time I hear someone speak. I think it reached £390 million during the speech by the noble Lord, Lord Purvis. This is not what we should be doing, and it is our job to say so, as Members of the House of Lords.

6.26 pm

Lord Wolfson of Tredegar (Con): My Lords, it is a particular pleasure to follow the noble Lord, Lord Carlile of Berriew, who I know will appreciate, although I think he and I will disagree on this topic, that I always listen to anything he says with real care, and often I learn from it. I am very grateful to the noble and learned Lord, Lord Goldsmith, and his illustrious committee for the report, which I have read and reread. I am also grateful to the powers that be for providing time for this debate, which the noble and learned Lord opened with his customary skill and persuasiveness. As judges who find themselves in a minority are wont to say, I have the misfortune to take a different view. So, although I will vote for the first Motion if there is a Division on it, I will vote against the second.

Let me clear one point out of the way first, although it is an important point, about the procedure that lies behind this debate. As my noble friend Lord Sandhurst explained, under the current legislation this House cannot block the treaty. That is as it should be: it would be a significant rewriting of the role of this House for it to block a treaty or to do any such thing. Under the relevant Act, the other place can delay a treaty again and again, but this House has no such power. I accept that there is a real debate to be had about the role that Parliament, and especially the other place, should have with regard to the review and ratification of treaties. This all used to be done under the prerogative, but times have moved on.

My friend—not in the parliamentary sense but in the actual real-world sense—Alexander Horne has co-authored a paper with Professor Hestermeyer on this topic, under the aegis of the Centre for Inclusive Trade Policy, and I am grateful to them for advance

[Lord Wolfson of Tredegar]
sight of it. I do not agree with all the paper's conclusions—Alex will, I hope, forgive me for saying that—but it is a valuable contribution to an important debate. As my noble friend Lord Howell of Guildford said, our procedures in this context are not replicated in many other countries and may well require review and perhaps updating. But that is not the issue today; the issue today is not our procedures for ratifying and discussing treaties but the treaty itself. As my noble friend Lord Sandhurst noted, the issue is the treaty, not the Bill, which we will debate at Second Reading next week.

I know that many noble Lords do not like the Bill—I look forward to some vigorous and perhaps lengthy debates on the Bill—but next week's Bill is not today's topic. We are looking at the treaty, not the Bill, although it is interesting that I have not so far—I think I am the last speaker from the Back Benches—heard a speech today that says, "I like and support the Government's policy in this area and I will vote for the Bill next week, but I just don't like this treaty or the way the Government have gone about it". For some reason, those opposing the treaty also oppose the policy underlying it and will also no doubt oppose the Bill next week.

I suggest that there is nothing objectionable about the treaty, what it does or what it says. It improves the protections as compared with the previous memorandum, not least by providing that persons can be removed from Rwanda to the UK, and only to the UK, thus directly addressing the risk of refoulement that lay at the heart of the Supreme Court's judgment.

The thrust of the argument of those in support of the second Motion is, "We can't be sure that the Rwandan Government will actually do what they say they will do". That is not the view I take, but it is a position that of course I understand, in which case I respectfully say: put some measures into the Bill to make sure that the Rwandan Government live up to their obligations; or, if noble Lords cannot be satisfied by way of such amendments, vote against the Bill. To pick up the metaphor of the noble Lord, Lord Carlile: if you do not like the foundations, do not build the skyscraper—but let us have the argument about the skyscraper, not the foundations.

Before I sit down, I will respond to an important point made by the noble Lord, Lord Purvis of Tweed, which deserves a proper response. He made the point that my noble friend Lord Murray of Blidworth was wrong when he informed the House, when he spoke from the Front Bench, that the view of the United Nations High Commission for Refugees as to the interpretation of the refugee convention was not binding. That was the point that the noble Lord made this afternoon; he has made it before as well. His contention was that it is binding. He also said that the Supreme Court has said that it is binding. He quoted from the decision of the Supreme Court—let me reply to it.

The statement he referred to in the decision of the Supreme Court was that the UNHCR is entrusted with the

"supervision of the interpretation and application of the Refugee Convention".

The Supreme Court did say that, but that shows that the UNHCR is not itself mandated with giving a binding interpretation of the convention. It does not have that right. Its role is to supervise the interpretation of the convention by the signatory states.

Indeed, the Supreme Court goes on to make that point in the rest of the paragraph from which he quotes, paragraph 64 of the judgment. The Supreme Court goes on to say, citing its own decision in the case of Al-Sirri in 2013, that the UNHCR's guidance—note that word, guidance—as to the interpretation of the convention

"should be accorded considerable weight".

So it should, but when judges say that something should be accorded considerable weight, they are necessarily saying that it is not binding. The UNHCR does not hold the pen on the interpretation of the convention. That was the point that my noble friend Lord Murray of Blidworth made, and indeed it is a point that I have made on previous occasions.

I am very happy to give way to the noble Lord.

Lord Purvis of Tweed (LD): I am grateful, since the noble Lord mentioned me, because I know interventions are unusual in this debate. I quoted the noble Lord, Lord Murray, word for word from *Hansard* when he said:

"The UNHCR is … a UN body; it is not charged with the interpretation of the … convention".—[*Official Report,* 24/5/23; col. 968.]

The Supreme Court disagreed very clearly. I did not insert the word "binding"; *Hansard* will show that. I quoted like for like, and I think the Supreme Court's position was perfectly clear that the noble Lord, Lord Murray, was wrong.

Lord Wolfson of Tredegar (Con): I know that this is a legalistic point, but that is the thing about the Supreme Court: it tends to make them. It went out of its way to say that the UNHCR is not interpreting the convention; it is supervising the interpretation of the convention by the signatory states. That may seem to be a subtle distinction, but it is critical, because it remains the right of the states themselves to interpret the convention. At least we have managed to have one intervention in this afternoon's debate. That exchange has shown that we can all look forward to some interesting and vigorous debates next week and thereafter—but that is not today's business.

I invite the House not to take a sideswipe at the policy—or, in advance, at the Bill—by way of the second Motion. Of course, we should support the first Motion, but I urge the House to vote against the second Motion.

6.35 pm

Baroness Kingsmill (Lab): My Lords, I am grateful for the indulgence of the House for allowing me a few minutes in the gap before the parties' Front-Benchers speak. I was very lucky and grateful to be a member of the International Agreements Committee, and I was very pleased to be under the chairmanship of the noble and learned Lord, Lord Goldsmith.

I will make some brief points. It is important to understand that Rwanda is a country with a tragic past—but it is trying its best to overcome that. It has made significant progress in that respect: it is a member of the Commonwealth and is committed to free and fair elections and to the rule of law. However, it is a very poor country, and it lacks the capacity to fulfil the demands made on it by this treaty. It simply cannot do so in the immediate or mid-term future; it does not have the capacity or money. It has the willingness to do it, and with the support of this country and perhaps others, it may get it done sooner or later. But right now, it simply does not have that capacity.

We must think about that, because we too do not have the capacity to deal properly with our immigration. There are significant shortages of judges, which the courts feel all the time. The waiting lists for dealing with such cases are growing by the day. The appeals process has well over 2,000 people waiting to have their appeals heard. We lack the capacity, so for us to think that we can impose this kind of behaviour on a developing country such as Rwanda is asking a great deal.

I will not detain the House any longer; I am only allowed two minutes, so I will give way to another member of my committee.

6.37 pm

Lord Fox (LD): My Lords, it is a great pleasure to speak in this debate, where we have heard many excellent, informed and expert views on this issue. As a member of the International Agreements Committee—as the noble Baroness, Lady Kingsmill, pointed out—I will try to move our focus back on to the report and the two Motions.

As the noble and learned Lord, Lord Goldsmith, and his predecessor as chair, the noble Baroness, Lady Hayter, set out, if we needed a demonstration of the shortcomings of the CRaG process, this is indeed it—albeit the first time it has ever reached your Lordships' House. As a member of the committee, I realise how little time CRaG gives us to scrutinise something as important as this treaty. Nevertheless, thanks to our colleagues, the committee and the tireless work of the clerks, advisers and administrative team, we produced this report, which I and all the other members of the committee wholeheartedly support.

I will address an element that came up from, I think, the noble Lord, Lord Sandhurst—although I may have inferred something that he did not mean. There seemed to be an inference that because we did not comment on something, we agreed with it—a sense of "silence is assent". I undertake that, as a committee, we adopted a very specific focus: we did not seek to determine the morality of the Rwanda deportation concept; we did not analyse the applicability and cost-effectiveness of the scheme; we did not examine whether the central deterrence theory has any validity; and we did not probe how, in conjunction with the Bill—I look at the noble Lord, Lord Wolfson, in saying this—it affects the constitution and our international reputation.

As your Lordships will have gleaned from the excellent speeches from my noble friends, we on these Benches believe that the Rwandan scheme is a politically partisan, immoral proposal that is neither cost-effective nor achievable. We think the deterrence theory is unproven and, in any case, too high a price for breaking the constitution and dragging our international reputation through the mud. But no, this report did not look in those directions. The committee took a simple approach of examining the journey from the memorandum of understanding to the treaty, via the Supreme Court judgment. It tested the claims made by the Government for the treaty. As the only parliamentary committee doing such scrutiny, I am delighted that the noble and learned Lord, Lord Goldsmith, has laid this Section 20 Motion. This is our only power under CRaG, and I am pleased that we are seeking to apply it.

In mid-November, the Supreme Court found that the Rwanda policy, as expressed through the MoU, was unlawful. As we have heard, the basis for the ruling was that Rwanda is not a safe country in this context. The Supreme Court was clear—so clear, in fact, that it revealed a range of institutional, legal and procedural measures that needed to be in place to render the country safe enough for the Rwanda policy to be lawful. As the Secretary of State, James Cleverly, says in the policy statement document, the Government produced a policy that

"carefully considers and responds to the Supreme Court's judgment",

adding that the policy statement

"should be read alongside the treaty".

During his evidence to the committee, the Home Secretary repeatedly took the line that because the words in the treaty meet the requirements of the Supreme Court, Rwanda will be a safe location to achieve the Government's ends. As he said,

> "Once the treaty has gone through the legitimate democratic process, in Westminster and Kigali, we can legitimately say that their"—

the courts'—

"concerns have been addressed".

As an aside, I would ask, as others have: if his confidence really was that strong, why is the Bill necessary? If, as he suggests, the Supreme Court's demands have been satisfied by the treaty, why turn the constitution on its head to keep judges away from making a ruling? But that is a debate for another day.

The committee's report does not question the integrity or the willingness of the Rwandans to deliver on this treaty. It does, however, review in detail what needs to be done in Rwanda—on the ground, not just on paper, but actually existing and operating. We can see from the evidence presented to the committee that much needs to be achieved to meet the terms of the treaty—much to be achieved, therefore, to meet the Supreme Court's criteria for a legally safe process.

While giving evidence to the committee, Secretary of State Cleverly was unable to put a timeframe on the achievement of those activities. He did not furnish a copy of the law that must be passed in Kigali. He was generally very light on detail, but he asserted that it could all happen quite quickly. In paragraph 45 of the report, the committee set out 10 paramount legal, practical steps that have to be implemented to properly meet the terms of the treaty. As your Lordships will have seen, this involves passing laws, setting up new

[Lord Fox]
processes and appointing and recruiting a wide range of people, as well as training them. None of this is trivial, or indeed routine.

Given the importance to the legality of the scheme of these 10 measures, James Cleverly was asked to confirm that the Government would not ratify this treaty until they were satisfied that the agreement had been fully implemented. Given what he had said moments before, his answer was quite curious and a little surprising. I make no apology for quoting the Secretary of State's words, because they perhaps demonstrate a little lucidity for a moment.

James Cleverly said:

"We have a process that we are running through. They"—

the Rwandans—

"have a process that they are running through. The point is that we will not operationalise this scheme until we are confident that the measures underpinning the treaty have been put in place; otherwise, the treaty is not credible".

I repeat his words for emphasis. He said that

"we will not operationalise this scheme until we are confident that the measures underpinning the treaty have been put in place".

Clearly, he has some doubts, but never mind. I suggest that there is very little difference between waiting for the conditions to be operationalised and meeting the conditions of this Motion. Both require evidence that the treaty's requirements are in place and operational on the ground; the difference is that this Motion expects Parliament to be involved in that process. We, as noble Lords, should always protect Parliament's role in making decisions such as this.

If the Secretary of State's confidence is demonstrated, it will not in fact take very long; he said that it might not take very long. If that is the case, we will not have to wait long for this process to be operationalised. I must say, as many of your Lordships have set out, there is a strong belief that the Home Secretary may have understated the scale of the challenge and underestimated the time it might take for all these things to happen. None of the evidence we received suggested that the 10 criteria set out in the report can be realised with any degree of speed.

Leaving aside the moral, financial and constitutional issues surrounding this treaty and its accompanying Bill, focusing instead on the necessarily narrow grounds adopted by our committee, there is more than enough reason to delay the ratification of the treaty until the conditions for its lawful operation are in place. We support the Motions in the name of the noble and learned Lord, Lord Goldsmith, and will take that support through the Lobby if he chooses, as I hope he will, to move them.

6.47 pm

Lord Coaker (Lab): My Lords, here we go again on Rwanda, with the treaty today and the Bill next week. Both are inextricably intertwined as the treaty is how Rwanda has been designated "safe". I start by thanking my noble and learned friend Lord Goldsmith and his committee for a truly outstanding report, which has enabled us to have the discussion and debate we have had today. Should my noble and learned friend press both of his Motions to a vote, we will support him in the Lobbies.

I want to pick up the important point made by the noble Lord, Lord Carlile, and my noble friend Lady Chakrabarti. What we have seen today is not the House of Lords seeking to block, to act in an anti-democratic way or to do anything other than its job, which is to say to the Government, "You should think again and reflect on what you are doing", where we believe that to be true. As a revising and advisory Chamber, that is absolutely what we should be doing; nobody, least of all the Prime Minister, should hold press conferences lecturing us about our role when all we seek to do is improve things and act in our proper constitutional role. The Prime Minister should remember that and be reminded of it.

What gives the strength to my noble and learned friend Lord Goldsmith's report? In his usual understated way, my noble and learned friend started by saying that he was not standing here as a Labour Lord. He is quite right to make that point. He chairs an important committee of your Lordships' House. The importance of what my noble and learned friend said is this: he stood here as the chair of a committee that has all-party support for the report that it has brought forward. It is not a Conservative, Labour, Cross-Bench or Liberal Democrat report; it is a report of your Lordships' House, which believes that it set out what it was important for the Government to do.

That is what gives the report its strength and power—the fact that a unity of purpose, from all sides of this Chamber, has come together not to block the treaty, as one or two have suggested, but to ask the Government to delay it. At the heart of the Motion that my noble and learned friend Lord Goldsmith has brought before us, as the report says, is the necessity for us to ensure that the treaty meets the issues that were highlighted by the Supreme Court. Of course, we all agree with and welcome that, and the treaty needs to be examined in that way.

The report clearly asks how we will know that these conditions are being met. That is the fundamental part of the debate before us. Is Rwanda safe now? This is the point that the noble Lord, Lord Anderson, made. We can argue around it all we want, but the fundamental question is: do we have a country that is safe with which we are establishing this treaty? The report says that we cannot be sure; we do not know. Why do we not know? The Government have not provided the committee or this House the evidence to ensure that we make a judgment on whether that is right.

In the excellent remarks of the noble Lord, Lord Fox, he put paragraph 45 of the report before us, which lists the 10 steps. The noble Lords, Lord Carlile and Lord Kerr, and others mentioned this. Your Lordships should answer this: we are being asked to say that Rwanda is safe and this is what the report says we need to know.

A "new asylum law" is needed in Rwanda. Has anybody seen it? Does anybody have any idea what it is, as the treaty is dependent on it? Can the Minister explain

"a system for ensuring that non-refoulement does not take place"?

What is

"a process for submitting individual complaints to the Monitoring Committee"?

The committee has no idea; it is asking for this. The

"recruitment of a Monitoring Committee support team"

has not yet been done. Has

"the appointment of independent experts to advise the asylum First Instance and Appeals Bodies"

been done? What about

"the appointment of international judges"?

We do not know how many we want or are needed, for a start, let alone whether they have been recruited. We also need

"training for international judges in Rwandan law and practice".

For each of these things, the Government have not provided evidence, to either the committee or your Lordships' House, to support what the committee says needs to be done. How can we determine whether Rwanda is safe, when the very things on which that depends have not been provided to us? That is what the committee is saying. If we want to do that, we surely need to know whether those conditions have been met. The Minister needs to answer this.

The Government have been assured that all is well, but my question to them is: is assurance really enough when it comes to an international treaty? The Rwandan Government say all is well, but the committee says that

"assurances in themselves are not proof of Rwanda's current ability to fulfil them".

I could not agree more and the Government need to answer why they think assurances are proof when the committee is saying that they are not.

If everything is okay with respect to Rwanda, can the Minister explain, as a number of noble Lords have laid out, why six people from that country have been given asylum since the original MoU was signed in the summer of 2022? Is Rwanda a safe country when we have had to give its people asylum, even though it is a small number?

I know that we are sometimes supposed to say that our obligations under international law and treaties do not matter. I, for one, say, as do many across this Chamber, that what the UNHCR says is important. What the UNHCR thinks about the Rwanda treaty and the law that may follow it—but we are debating the Rwanda treaty—is a really important test of whether we have got this right. What does it say? The UNHCR finds the UK-Rwanda Agreement and the safety of Rwanda Bill to be

"not compatible with international refugee law".

That is a troubling judgment, made on us by a significant body. People say it does not matter, but it does. I think it was the noble Lords, Lord Kerr and Lord Hannay, who talked about our global reputation. We are all proud of it, but things like this do not help. Across the world we are standing up for the role of international bodies and international law. What are we doing in Ukraine, the Middle East and other parts of the world if not standing up for international law and treaties? Yet, one of the most significant global bodies is questioning whether we have got this right.

I think it was my noble friend Baroness Hayter who mentioned that many times it is said, "Well, this is just your Lordships' House". It is worth remembering it was not only a committee of this House that pointed out that there should be a proper debate about the treaty. The House of Commons Home Affairs Select Committee said that there should be a debate and discussion. An all-party group said that such is the significance, importance and relevance of this to a Government policy that it should be discussed in Parliament. There is disquiet, upset and unease not just here but in the other place at the fact that the treaty may be ratified without the significant discussion that needs to take place.

My noble and learned friend Lord Goldsmith has done a real service to your Lordships' House in enabling us to have this discussion and at least ask the Government to think whether they have got this right, whether they want to ratify a treaty without the due consideration and proper process it deserves, and to answer the many real questions put to them today. It has enabled us not to block it, but simply to allow your Lordships to play your part by asking the Government to answer serious questions about the evidence they need to provide in their declaration that Rwanda is a safe country.

I hope that my noble and learned friend puts his second Motion to the vote, because we will support it and be proud to do so.

6.57 pm

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I am grateful for this debate and all the contributions that have been made.

The Rwanda partnership and the treaty underpinning it, providing its foundations, if you will, is critical to the Government's plan to establish an effective deterrent to dangerous crossings and to stop the boats. It is a topic that has been closely scrutinised in the weeks since the Supreme Court judgment, and I have little doubt that that will continue to be the case in the days and weeks ahead. That is not to say that this debate has any less merit. On the contrary, it has been instructive and insightful to have the committee's report brought to life.

I will address the various issues that noble Lords have raised today and respond to some of the conclusions in the committee's report and to the Motion moved by the noble and learned Lord, Lord Goldsmith, although I recognise that my time here is limited.

First, it is worth taking a moment to remind the House of what this policy is trying to achieve and its journey to this point. The UK has a track record of providing protection to those most in need of it through our safe and legal routes, with over half a million people coming to the UK in this way since 2015. We are rightly proud of that, but we also need to be clear that illegal migration diverts resources away from the effort to help the world's most desperate and vulnerable people through safe and legal routes.

In short, the Rwanda partnership was created to enhance the UK's efforts to tackle illegal migration, which is costly to the British taxpayer and imperils the lives of those making highly dangerous journeys. Our

[Lord Sharpe of Epsom]
innovative approach goes hand in hand with our existing wider work across Europe and elsewhere, which has seen many thousands of crossings prevented and the number of arrivals fall by more than a third.

The noble Lords, Lord Fox and Lord Razzall, and the noble Baroness, Lady Lister, asked about the deterrent effect. The partnership is just one tool in our toolbox to tackle illegal migration, but we are making progress with our mission. As I said, the number of arrivals were down by a third—the first year that numbers have dropped since this problem started—while crossings to other European countries are up by 80%.

But we must go further: to fully solve this problem, we need a strong deterrent. As our work with the Albanian Government shows, deterrence works, and I thank the noble Lord, Lord Alton, for acknowledging that. Only by removing the prospect that illegal migrants can settle in the UK can we control our borders and save lives at sea—by sending the clear message that if you try to come here illegally and have no right to stay here, you will be returned home or removed to a safe third country. This will break the business model of the trafficking and smuggling gangs by removing the ability to sell entry into the UK. Of course, the deterrent effect of the MEDP will be fully realised once it becomes operational.

We are also taking action to crack down on the mafia-like criminal gangs, as the noble Lord, Lord Alton, described them, which prey on those seeking to cross the channel. That work continues, particularly in collaboration with the French. But this is also a comprehensive strategy, and we have to build on the progress we have made, which is where the Rwanda partnership comes in.

Noble Lords are well aware of the journey this policy has taken through the courts. We know the underlying principle of the policy—to relocate eligible individuals from the UK to a safe third country to have their asylum claims determined there—to be lawful and compliant with the refugee convention; the Supreme Court did not disturb the lower courts' finding on that point. The IAC's inquiry focused on how the agreement we now have protects those relocated to Rwanda and whether it deals with the concerns raised by the Supreme Court.

It is not right to say we have made these changes "notwithstanding" the Supreme Court; we respect the court and the rule of law. It is because of the Supreme Court's judgment that we have made these changes. Having considered evidence submitted only up to summer 2022, the Supreme Court recognised changes that could be made to address its findings, improve the Rwandan asylum system and strengthen assurances. Significant and successful work has taken place with Rwanda since the time of that evidence to do just that.

The treaty does not override the court's judgment; rather, it responds to it. And these are not "alternative facts", as alleged by the noble Lord, Lord Purvis. It is perfectly constitutionally appropriate for Parliament to consider the protections we have secured and conclude that Rwanda will be safe for the purposes of asylum. Through the treaty, and associated work highlighted in the policy statement, we have addressed every point of the Supreme Court judgment.

I will highlight just some of the provisions of the treaty. There is a full package of support available for all those relocated, regardless of their eventual status. Everyone relocated will be accommodated and supported for five years, as long as they remain, so that they can study, undertake training and work. They will also have access to free healthcare for this time. Steps are being taken to further strengthen Rwanda's asylum system, and a new appeals body is being introduced. New legislation is being developed in Rwanda to reflect the necessary changes to strengthen the asylum system, to fulfil their obligations and ensure all those relocated are protected. The appeal body will be co-chaired by one Rwandan and one other Commonwealth judge, who will select a panel of judges from a mix of nationalities to hear these appeals against refusals of asylum or humanitarian protection claims. For at least the first 12 months, the appeal body shall receive and take into account advice from independent asylum and humanitarian protection law experts before determining the appeal, and this expert opinion will be published. The establishing of the new appeals process ensures that the final determination of an asylum claim will be objective and independent, and this level of transparency makes clear our and Rwanda's commitment to getting this right.

Crucially, there is absolutely no risk of refoulement for anyone relocated, regardless of status or circumstance, because the treaty is clear that under no circumstances will refoulement take place. The enhanced independent monitoring committee will have unfettered access to the entire system in order rigorously to assess both countries' adherence to these obligations under the treaty.

I was asked a number of questions about the monitoring committee, which I will address. Before I go back to those, I point out that, regarding the appeals body, I did not talk about the tracking mechanism. I will come back to that, because nobody will be relocated without the necessary mechanisms for their protection being in place, in terms of the independent monitoring committee.

We have addressed explicitly the risk of refoulement through the treaty, which contains an undertaking from the Government of Rwanda that they will not remove anybody who has transferred from the UK to Rwanda. The treaty also enhances the role of the independent monitoring committee, as I have just said. Article 15 makes specific provision that enhanced monitoring will take place for a minimum of three months from the date the individual is notified that they are being relocated. The monitoring committee will ensure that obligations under the treaty are adhered to in practice and will be able to take steps to prevent errors at an early stage through real-time monitoring. The monitoring committee will provide real-time comprehensive monitoring, with an initial period of enhanced monitoring over the end-to-end relocation and claims process to ensure compliance with treaty obligations.

The monitoring committee will have the power to set its own priority areas for monitoring. It will have unfettered access for the purposes of completing assessment reports. It can monitor the entire relocation process from the beginning, from the initial screening

to relocation and settlement in Rwanda. It will be responsible for developing a system to enable relocated individuals and legal representatives to lodge confidential complaints directly to the committee and will undertake real-time monitoring of the partnership for at least the first three months, but this can be extended. Then the monitoring committee will report on its findings to the joint committee and, following notification to the joint committee, it may publish reports as it sees fit.

These are significant protections, and they have been agreed in an internationally, legally binding treaty which the UK and Rwanda will abide by.

Lord Carlile of Berriew (CB): I am grateful to the Minister for giving way. He has been very helpful, as he usually is. He has been going through the 10 items in paragraph 45, but he has not given a timeline for any of them. Will he give us a timeline for when those 10 items will be completed and an undertaking that nobody will be taken to Rwanda until they have all been completed and implemented?

Lord Sharpe of Epsom (Con): If the noble Lord will indulge me, I have a long way to go and I hope to get to all of his questions.

To question the treaty's effect is to question both parties' commitment to the rule of law, so I am grateful to my noble friends Lord Howell, Lord Sandhurst and Lord Wolfson, who made some very good points on this. I was sorry, but not particularly surprised, to hear the noble Baroness, Lady Bennett, cast aspersions in the direction of Rwanda.

Again, I thank the IAC for its report, to which we will respond in writing as a priority; but I must be clear that the Government intend to see the conventional Constitutional Reform and Governance Act process through to the end, as normal. The Government recognise the intent behind the Motion, but we believe it is unnecessary and misguided. The Motion in question is completely unprecedented, as the noble and learned Lord, Lord Goldsmith, noted, and, with all due and sincere respect to the noble and learned Lord, a mischaracterisation of the process. It is unnecessary as it is completely usual for Parliament to complete its scrutiny of a treaty and for the CRaG process to end before a treaty has been implemented. In just one example of this, the free trade agreements that the UK signed with Australia and New Zealand in 2021 and 2022 were laid before Parliament for scrutiny, and in both cases legislative changes were required to implement the obligations in the agreements; those changes were introduced in parallel. The scrutiny debates happened and the CRaG process ended long before those treaties were implemented. The implementing primary and secondary legislation measures were put in place and the treaties were brought into force in early 2023.

It is for any Government to decide, ahead of ratification of any treaty, whether the implementation required for the UK to be legally compliant with its treaty obligations has been duly put in place. I do not believe that the two debates should be confused, as they have been. We urge noble Lords to support the Government in their plans for the treaty to be implemented and ratified by both countries in due course. We have been clear throughout the development of this partnership that Rwanda and the UK must place the utmost importance on the safety of all those who are relocated. The mechanisms in place will ensure that both parties adhere to the obligations under the internationally legally binding treaty. It is vital that we stop the boats as soon as possible. The British people clearly do not want to see any further delay.

It would be remiss of me not to mention at this point the Safety of Rwanda (Asylum and Immigration) Bill, which will reach this House next week and ties in closely with what I have just said. This Bill sits above existing statutory provisions to enable Parliament to conclude that Rwanda is a safe country. The supporting evidence pack, which was released on 11 January, and the supporting policy statement, first given on 12 December, go into great detail concerning the information that gives us the confidence to say that Rwanda is safe. I look forward to noble Lords' support for the Bill at Second Reading next week.

It is true that Parliament is being invited to conclude that Rwanda is safe based on this treaty and other matters, but that is not what is being debated today. We are debating whether there is anything in this treaty that means it should not be ratified, as my noble friend Lord Wolfson noted. The IAC has made some points about the treaty, but fundamentally it has not identified anything objectionable in the treaty itself. A debate on whether Parliament considers Rwanda safe is a debate that should and will happen in depth in the coming weeks as part of the scrutiny of the Bill. The IAC's report concludes that the treaty might in time provide the basis for such an assessment—that is, that Rwanda is safe—if it is rigorously implemented. The Government's position is that the treaty provides that basis, so we invite noble Lords to reject the Motion today and recognise that standard procedure should be followed. Once the treaty is ratified and the Bill passed, we can begin to operationalise the partnership.

I will now try to answer some of the more specific questions to do with the deterrence of the partnership. It was never about Rwanda or any other partner country being a hellhole, as described by the noble Lord, Lord Razzall, which I find quite offensive. It is about organised criminal gangs not being able to sell the UK as a destination. Only by removing the prospect that illegal migrants can settle in the UK can we control our borders and save lives at sea. By sending the clear message that if you try to come here illegally and have no right to stay here you will be returned home or removed to a safe third country we can break the business model of the trafficking and smuggling gangs.

The noble Lord, Lord Hannay, asked me about international comparisons as regards treaty scrutiny. The Government believe that 21 joint sitting days, which in parliamentary terms is likely to be a minimum of five weeks and often somewhat longer, is sufficient for Parliament to scrutinise a treaty. It is difficult to make comparisons between governmental systems, even with other parliamentary democracies, as each has evolved over time in line with its constitutional arrangements, which differ from one state to another. Each system reflects the constitutional make-up and

[Lord Sharpe of Epsom]
separation of powers in that country. When similar parliamentary democracies are compared with ours, it is clear that our practice is in many respects similar to systems such as those of Canada, Australia and New Zealand. We consider that in many respects our system is in fact stronger than theirs, not least due to the existence in the UK of a statutory framework for treaty scrutiny.

The noble Lord, Lord Kerr, referred to the Supreme Court and Israel and the various comments that have been made about its agreement with Rwanda. We do not agree that it sets a relevant precedent or implies that Rwanda will not adhere to its obligations under our treaty. The terms of the arrangements between Israel and Rwanda are not available for scrutiny, are not transparent and are not monitored in the way that ours are. The scheme referenced was voluntary and open-ended and did not openly commit to guaranteed acceptance or a custodial role on the part of Rwanda. So on the information known, it bears little resemblance to the UK-Rwanda treaty and the lessons there are not directly applicable.

The noble Baroness, Lady Lister, asked a number of questions about children. Article 3 states:

"The Agreement does not cover unaccompanied children and the United Kingdom confirms that it shall not seek to relocate unaccompanied individuals who are deemed to be under the age of 18".

The treaty does, however, provide for the relocation of children as part of a family. It should be noted that this does not constitute a policy change and is consistent with the principles of the extant memorandum of understanding. I urge those with family links in the UK to seek to come here via the existing safe and legal routes.

Baroness Lister of Burtersett (Lab): I am sorry to interrupt but I asked specifically about age-disputed children, where the protections seem to be less than they were under the original memorandum of understanding.

Lord Sharpe of Epsom (Con): I was just getting to that. As regards children where the age-assessment results are not conclusive, the Home Office will treat an individual claiming to be a child as an adult only after further inquiries by two officers, one of at least chief immigration officer grade or equivalent, have separately determined that the individual's physical appearance and demeanour very strongly suggest they are significantly over 18 years of age.

The lawfulness of this process was recently fully endorsed by the Supreme Court in the case of BF (Eritrea) from 2021. If doubt remains about whether the claimant is an adult or a child, they are treated as a child for immigration purposes until a further assessment of their age by a local authority or the National Age Assessment Board. This will usually entail a careful holistic age assessment, known as a Merton-compliant age assessment. Only once this assessment is completed could the individual then be treated as an adult if found to be so.

Under the Illegal Migration Act, those wishing to challenge a decision on age will be able to do so through judicial review, although these challenges are non-suspensive and can continue from outside the UK after an applicant has been removed. The treaty provides for the return of anyone who is removed as an adult and later determined to be a child, and appropriate temporary care of such an individual.

A number of noble Lords have referred to the UNHCR report. The first thing to state is that the Government are not abdicating responsibilities, as alluded to by the UNHCR, and as suggested by the noble Lord, Lord Alton, and the noble Baroness, Lady Hayter. This is a partnership with Rwanda, helping to make the immigration system fairer and ensuring that people are safe and enjoying new opportunities to flourish.

As this Government have made clear, tackling the issue of illegal migration requires bold and innovative solutions, and our partnership with Rwanda offers that. Rwanda is a safe country that cares deeply about refugees and currently hosts over 130,000 asylum seekers. Indeed, the UNHCR has signed an agreement with the Government of Rwanda and the African Union to continue the operations of the emergency transit mechanism centre in Rwanda. By temporarily accommodating some of the most vulnerable refugee populations, who have faced trauma, detentions and violence, Rwanda has showcased its willingness and ability to work collaboratively to provide solutions to refugee situations and crises. This agreement has also attracted EU funding, which will support the continued operation of the ETM until 2026.

The Home Office has granted refugee status to nationals from Rwanda, as noted by the noble Lords, Lord Coaker, Lord Kerr and Lord Hannay, and the noble Baroness, Lady Lister. How then can we say Rwanda is safe? People from many different nationalities apply for asylum in the UK. They include nationals from some of our closest European neighbours and other safe countries around the world.

Each case is considered on its individual merits by caseworkers who receive extensive training. All available evidence is carefully and sensitively considered in light of published country information. Asylum decision-makers carefully consider everyone's protection needs regardless of nationality by assessing all the evidence provided by the claimant, in light of the latest available country-of-origin information. Asylum claims made by persons from Rwanda will have an individual assessment made against the background of relevant case law, policy guidance and the latest available country-of-origin information. Paragraphs 339J and 339JA of the Immigration Rules require decision-makers to take into account all relevant country-of-origin information in making their decision.

The noble Lord, Lord Alton, and the noble Baroness, Lady Lawlor, asked about the Home Secretary and the signing of the Section 19(1)(b) human rights statement. This does not mean that the legislation is incompatible with the ECHR. It means that the Home Secretary cannot say that it is more likely to be compatible than not. That is the consequence of this being an ambitious and novel Bill, which is what is needed to fulfil our commitment to tackle the small boats. There is nothing improper or unprecedented about pursuing ambitious

and innovative ways of solving such endemic issues as migration. We believe that it is lawful and we are acting in compliance with our international obligations.

The Supreme Court's judgment was made on the basis of the facts in June 2022.

Baroness O'Loan (CB): Before the Minister sits down, could he explain to your Lordships why, if the Government believe this Bill is lawful, the Minister is unable to say that it is lawful?

Lord Sharpe of Epsom (Con): My Lords, I think I just did. I will go over it again. As I said, the Home Secretary, cannot say that it is more likely to be compatible than not. That is not the same as the question that the noble Baroness just asked me. This is the consequence of it being an ambitious and novel Bill. There is nothing improper or unprecedented about pursuing ambitious and innovative ways of solving such issues. We believe that it is lawful and we are acting in compliance with our international obligations.

The Supreme Court's judgment was made on the basis of the facts in June 2022 when the case was brought. It made clear that, while it had concerns about the arrangements in place in June 2022, changes to safeguard against risks "may be delivered in the future".

The UK's treaty with Rwanda responds comprehensively to the court's concerns. It provides a binding guarantee in international law against refoulement and provides guarantees about the treatment of relocated individuals in Rwanda. It reflects the work that we and the Rwandan Government have completed in the 18 months since June 2022 and, once ratified, it ensures that no one will be sent into a position where they would face a real risk of harm.

As the noble and learned Lord, Lord Goldsmith, noted, it is unprecedented for the House of Lords to place conditions on an international treaty in this way. Never in the history of the Constitutional Reform and Governance Act 2010 has either House forced a vote to try to delay the ratification of a treaty until its provisions have been implemented.

Lord Carlile of Berriew (CB): I am sorry to be naggy, but I think the Minister got close to promising me an answer to my simple question about when, in relation to paragraph 5. Can we have that answer before he sits down?

Lord Sharpe of Epsom (Con): The answer to the noble Lord, Lord Carlile, is when we have the treaty and the Bill, and the Rwandans have passed their laws. That is when.

As I was saying, this begs the question: is Labour using the House of Lords to try to frustrate our plan to stop the boats?

Noble Lords: Oh!

Lord Sharpe of Epsom (Con): Last week the Prime Minister urged the Opposition in the House of Lords to get on board and do the right thing to stop the boats. They have a choice tonight: push this amendment to try to obstruct an effective deterrent or back down and let the treaty pass, like every time this procedure has been used before.

I offer thanks again to all who have participated. We must stop the boats. We must put an end to this mass trafficking of people and save lives. That is the humane and fair thing to do, and it is why we remain absolutely committed to delivering this partnership without delay.

7.21 pm

Lord Goldsmith (Lab): My Lords, I very much resent that last piece from the Minister. I presented this on the basis that it was the view not of the Labour Party but of the committee as a whole. I have tried to be completely unpolitical in what I have said, and it is a great shame that the Minister should choose to make that particular observation towards the end of his speech.

I thank all noble Lords who have participated in this debate, with so many powerful and insightful thoughts from your Lordships. There is not time to comment on them all, but I will touch on two questions. One is the powers of this House and the second is the question before us.

As to the powers of this House, there was some suggestion—I am afraid to say that to some extent it seemed to come out in the speeches of the noble Lords, Lord Sandhurst and Lord Wolfson, both of whom know that I very much admire and respect them—that there is something improper in asking this House to do what I am asking it to do today. It is clear that we do not have the power to delay or block the treaty, but we can pass a resolution, if we so agree, that it should not be ratified at the moment. That is all I have asked, and I will ask for a vote on that later but this is not the moment for that. It is not right to say that that is improper; the statute itself provides in Section 20 that we can pass that resolution, so it is not satisfactory at all for anyone to suggest that doing that is inappropriate. The House has one power, and that is all we are asking it to do.

I come back to the question, because it is important; I dealt with it in my opening remarks. One finds out the question that we were dealing with by looking at the foreword by the Home Secretary to the policy paper that he put forward. I repeat: "This work"—the work is the treaty and associated things—

"will enable Parliament to conclude that the Supreme Court's judgment has been addressed and that Rwanda is safe for relocations under the Migration and Economic Development Partnership".

I say to the noble Lord, Lord Howell of Guildford, who knows I very much respect him and appreciate the work he has done on the committee, that that is what safety means: safety from relocations under that partnership. That is what it means, that is what we were looking at and that is where we were unable to reach a conclusion.

The noble Lord, Lord Fox, and my noble friend Lord Coaker were right: the question is not whether there is a willingness to do this or whether the policy is right but whether the instruments are in place at the moment to achieve that result. I will make one slight amendment to that: the procedures to make this

[LORD GOLDSMITH]
possible—the 10 points in paragraph 45—are not things that we thought up but are what the Government say are going to happen. All we are saying is that those things ought to be in place before the final statement is made by Parliament that the policy is safe. Once it is done, and once the Government ratify, that is the end. That is why it is important, in my submission, to follow what the committee decided unanimously—that the treaty should not be ratified until those things are in place.

Let me give one example. Emphasis was rightly placed on the principle of non-refoulement—the Minister referred to that. But he will recall, and the House will recall, that one of the ways in which that is supposed to be protected—it is set out in the treaty—is that an agreement will be reached between Rwanda and this country as to what the procedures are to effect it. It is not in place. As I said in my opening speech, we do not know when it will be in place, although we asked about it.

So I will now ask for the Question on the first Motion to be put and then we will come to the vote on the second Motion.

Motion agreed.

Asylum: UK-Rwanda Agreement

Motion to Resolve

7.25 pm

Moved by ***Lord Goldsmith***

That this House resolves, in accordance with section 20 of the Constitutional Reform and Governance Act 2010, that His Majesty's Government should not ratify the UK-Rwanda Agreement on an Asylum Partnership until the protections it provides have been fully implemented, since Parliament is being asked to make a judgement, based on the Agreement, about whether Rwanda is safe.

Relevant document: Special attention drawn by the International Agreements Committee, 4th Report.

Lord Goldsmith (Lab): My Lords, I have said everything that I want to say, and I wish to test the opinion of the House.

7.25 pm

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Motion agreed.

Childcare

Commons Urgent Question

7.38 pm

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I will now repeat the Answer given to an Urgent Question in another place.

"My Lords, this Government are rolling out the single largest expansion in childcare in England's history. By September 2025, we will be providing working parents with 30 hours of free childcare a week from when their child is nine months old, all the way until they start school. By 2027-28, this Government expect to spend in excess of £8 billion every year on free hours in early education—double the amount we are currently spending.

We are introducing this in phases. From April, eligible working parents can access the first 15 hours of free childcare each week for their two year-olds. In September, they will be able to access the first 15 hours each week for nine month-olds. A year later in September 2025, they will be able to access the full 30 hours for all eligible children aged nine months and upwards.

We want parents to be able to access the new offer as soon as they can. Delivering that ambition includes increasing childcare funding rates, with an additional £204 million in this financial year and an additional £400 million in the coming financial year. We are

[Baroness Barran]
providing grants to help new childminders enter the sector and making changes to the early years foundation stage that the sector has asked us to make to make it easier for them.

We hear every day from families how significant this policy will be for their finances. Once the rollout is completed, eligible families will save up to £6,500 per year. It will help parents to return to work or increase their hours, and tens of thousands of parents have already successfully applied for their codes, ready to take up their places in April. Parents should visit childcarechoices.gov.uk to see the full range of support they are entitled to.

Regarding tax-free childcare, we will be issuing letters with temporary codes to any parents whose tax-free childcare reconfirmation date falls on or after 15 February and before 1 April. That will ensure that any eligible parent who needs a code to confirm their funded childcare place with their provider will have one, and that no parent should worry that they will lose out.

I welcome this opportunity to correct some misleading stories about the childcare rollout, and to hear from the honourable Lady about whether she supports our childcare policies, and, if not, what her childcare policies would be. I am sure Members on her Benches would like to know as much as we would."

7.41 pm

Baroness Twycross (Lab): My Lords, the Prime Minister admitting that there were some practical issues with the Government's flagship childcare expansion might qualify for the understatement of the year so far. Can the Minister say how the Government intend to address the fact that that there are currently two children for every place, that there are 40,000 too few nursery workers to deliver the scheme and—despite her confidence—that just one in 10 eligible parents is able to access a code to sign up for the 15 funded hours for two year-olds come April, as Pregnant Then Screwed reported last week?

Baroness Barran (Con): I think the noble Baroness is aware of a number of the measures that we have announced. She raises the issue of too few providers, but she will be aware that last year the number of places rose by 1% and staff numbers rose by 4% to 347,300. We are launching a new recruitment campaign to boost interest in early years careers, and we have already made some changes that will boost capacity, including changing the staff to child ratio from 1:4 to 1:5, which we introduced in September, and changing the requirements on nursery practitioners at level 3, who no longer need to have a maths qualification to fulfil the role.

Lord Storey (LD): My Lords, according to Ofsted, the number of early years places fell by almost 18,000 in the 12 months to August 2023. The DfE's own figures show that there are now over 11,000 fewer childminders operating than five years ago. Meanwhile, the BBC estimates that the demand for places is likely to rise by more than 100,000 additional children before the full 30-hour expansion is in place in September 2025. How will the Minister ensure that there are enough providers and spaces for this funding expansion to have any positive effect?

Baroness Barran (Con): I addressed some of the noble Lord's points in my earlier Answer, but he is of course right that the number of childminders declined by 10% last year. However, he will be aware that childminders typically have much smaller numbers of children—hence my remarks about the additional number of places, which rose last year. The Government's additional actions are to increase the hourly rates paid to local authorities, which are increasing significantly, to £11.22 on average for children under two, but also with increases for other age groups.

Lord Young of Cookham (Con): My Lords, I very much welcome this generous entitlement of free childcare, but is my noble friend aware of reports of children with special educational needs being turned away by early years providers? Those children need the support more than any other children. So what steps can my noble friend take to ensure that they get the support they need?

Baroness Barran (Con): I thank my noble friend for his question. I too have seen those reports, although our understanding in the department is that the vast majority of providers behave extremely responsibly and provide places for children with special educational needs and disabilities. But, if my noble friend or anyone in the House has examples of where this is not the case, we would be very grateful to hear those. We are also increasing the rate of funding for the disability access fund, and the early years national funding formula contains an element that addresses the additional costs of working with children with special educational needs.

Lord Kennedy of Southwark (Lab Co-op): My Lords, in June last year, the Minister told the House that this investment
"will make sure that parents are able to access the high-quality, affordable childcare that they need".—[*Official Report*, 29/6/23; col. 898.]
But can she now tell the House when the Government will start listening to the sector? It is raising concerns, not least that providers of this childcare are not getting their rates confirmed. The risk is that they will not get them confirmed until 31 March, and they are supposed to deliver the service on 1 April. That is a bit of a challenge. How will we address that?

Baroness Barran (Con): The noble Lord raises an important point, and he will be aware that, at the end of November 2023, we published the local authority-level hourly funding rates. Of course, it is up to local authorities to parse that information and to decide the funding rates for their local providers. We are aware that some local authorities have not yet done that, and we are working closely with them and stressing to them exactly the points that the noble Lord made.

Baroness Bennett of Manor Castle (GP): My Lords, we have been talking in general terms and overall figures, but the BBC reported the words of Sarah McCormick, of Little Owl Childcare, which manages three centres in Staffordshire. She says simply that

they are full, with no space for more children and not enough staff to offer those places. That seems to reflect what the chief executive of the Early Years Alliance told the *Independent*; namely, that very many parents are turning up but being turned away and told there is a 12- to 18-month wait at least. That seems to be what the reports all say, so can the Minister comment on them? On one specific point, we are talking about something that is supposed to start in April, and one of the ways the Government say they will get the staff is through a new accelerated apprenticeship route, which will be introduced for staff. Given that this is starting in April, when is the apprenticeship route likely to begin?

Baroness Barran (Con): I hear the concerns of the noble Baroness about space and staff, although I would point out that we believe the growth in demand for places will be at its greatest towards the introduction in September 2025. So there is quite a lot of time for us to be working with the sector and building capacity. I absolutely reassure the noble Baroness that colleagues in the department and my honourable friend the Minister for Children and Families work very closely with those in the sector and listen carefully to their demands.

Lord Storey (LD): Does the Minister accept the comments made by the chief executive of the Early Years Alliance, which represents 14,000 nurseries, childminders and preschools, that it would be "financial suicide" for providers to offer places without knowing the funding level they will receive? He said:

"You cannot run a nursery if you know what your costs are but you have no idea what your revenue is likely to be".

Baroness Barran (Con): I addressed this in answer to the question from the noble Lord, Lord Kennedy. In November last year, we gave all local authorities their funding rates. It is for them then to communicate with local providers on what the specific rates and the range of rates will be in their area.

Lord Kennedy of Southwark (Lab Co-op): To pursue that point a bit further, the noble Baroness said she had given the rates to the local authorities, but some local authorities have not moved on that. What are we doing to ensure that local authorities very quickly get the rates out so that organisations know what rates to charge and parents can have some certainty? It is 22 January now; we are talking about 1 April. There is a bit of urgency here.

Baroness Barran (Con): I could not agree more, but I stress, again, that the vast majority of local authorities have informed their providers and we are working closely with the remaining ones to urge them to do so as quickly as possible.

Lord Young of Cookham (Con): My Lords, does this exchange not underline the need to increase capacity in the early years market? What steps is my noble friend taking to launch a recruitment campaign to encourage people to enter this sector?

Baroness Barran (Con): We will shortly be launching a new national campaign that will be broadcast across a number of different channels to try to boost interest in the early years sector. Having been in a nursery in a school this morning, I can say that it certainly looked to me like the most attractive job.

House adjourned at 7.52 pm.

Grand Committee

Monday 22 January 2024

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, I begin, as is normal, by advising the Grand Committee that if there is a Division in the Chamber while we are sitting, which is distinctly possible, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Digital Markets, Competition and Consumers Bill

Committee (1st Day)

3.45 pm

Clause 1 agreed.

Clause 2: Designation of undertaking

Amendment 1

Moved by ***Baroness Jones of Whitchurch***

1: Clause 2, page 2, line 25, after "Chapter" insert ", taking account of analysis undertaken by the CMA on similar issues that have been the subject of public consultation."

Member's explanatory statement

This amendment aims to ensure that the CMA are able to draw on previous analysis on issues relevant to the regulatory regime.

Baroness Jones of Whitchurch (Lab): My Lords, we have also added our names to Amendment 7. At the outset, I should say that we are in broad agreement with all the amendments in this group.

Before I explain the detail of our amendment, and without wishing to rerun the Second Reading debate, I would just like to say that we believe that the essence of the Bill is important and necessary. Our concerns, where we have them, are about some of the details in the Bill and we will give them proper challenge and scrutiny. However, it is not in the interests of consumers or businesses for the Bill to be unduly delayed and we hope to get it on the statute book in an improved form and in a timely manner.

Part 1 of necessity gives the CMA considerable new powers. We support the model that is being proposed, with priority being given to identifying the big tech players that have strategic market status. However, it is important that those new powers are carried out with clarity and with transparency and a number of our amendments in this and other groups address this issue. Our Amendment 1 is a simple but important amendment. It would enable the CMA to draw on its analysis and consultations that have taken place before the passing of the Bill.

Those of us who attended the briefings with the CMA last week will have heard the amount of detailed preparation that it has carried out in anticipation of the Bill being passed. We believe that it is important that it can draw on this wealth of knowledge without starting from scratch and having to do it all again. This will strengthen its effectiveness going forward, as it can reflect on the lessons learned and the outcomes of the various consultations that have already been undertaken.

When this issue came up in the Commons, the Minister, Paul Scully, said:

"I strongly support the point that the CMA should not have to repeat work that it has already done. It is for the DMU to decide what is and is not relevant analysis to its investigations, and it should be able to draw on insight from previous analysis or consultations when carrying out an SMS investigation where it is appropriate and lawful to do so. I am happy to confirm that the Bill does not prevent the DMU from doing that".—[*Official Report*, Commons, Digital Markets, Competition and Consumers Bill Committee, 20/6/23; col. 116.]

However, this is our concern. The Bill as it currently stands is silent on the issue. It does not make it clear either way and, specifically, it does not make it clear that this retrospection is within the powers of the CMA. We want to put this clarity in the Bill to avoid the potential for any legal challenges about the way the CMA is going about its investigation. Noble Lords will be familiar with this argument, as it will be a running theme during our scrutiny of the Bill. We want the rules to be watertight and we want to close any legal loopholes from those who stand to lose if the CMA rules against them. Therefore, we believe that this amendment is important in shoring up the CMA's powers to act and I beg to move.

Lord Clement-Jones (LD): My Lords, at the opening of this Committee stage, I want to repeat, rather in the same way as the noble Baroness, Lady, Jones, what I said on Second Reading: we broadly welcome this Bill. In fact, since the Furman report was set up five years ago, we have been rather impatient for competition law in the digital space to be reformed and for the DMU to be created.

At the outset, I also want to thank a number of organisations—largely because I cannot reference them every time I quote them—for their help in preparing for the digital markets aspects of the Bill: the Coalition for App Fairness, the Public Interest News Foundation, Which?, Preiskel & Co, Foxglove, the Open Markets Institute and the News Media Association. They have all inputted helpfully into the consideration of the Bill.

The ability to impose conduct requirements and pro-competition interventions on undertakings designated as having strategic market status is just about the most powerful feature of the Bill. One of the Bill's main strengths is its flexible approach, whereby once a platform is designated as having SMS, the CMA is able to tailor regulatory measures to its individual business model in the form of conduct requirements and pro-competition interventions, including through remedies not exhaustively defined in the Bill.

However, a forward-looking assessment of strategic market status makes the process vulnerable to being gamed by dominant platforms. The current five-year

[Lord Clement-Jones]
period does not account for dynamic digital markets that will not have evidence of the position in the market in five years' time. It enables challengers to rebut the enforcer's claim that they enjoy substantial and entrenched market power, even where their dominance has yet to be meaningfully threatened. Clause 5 of the Bill needs to be amended so that substantial and entrenched market power is based on past data rather than a forward-looking assessment. There should also be greater rights to consultation of businesses that are not of SMS under the Bill. As the noble Baroness, Lady Jones, said, this will be discussed later, under another group of amendments.

The provisions of Clause 5, as it is currently worded, risk causing problems for the CMA in practice. Part of the problem is the need for evidence to support a decision by the CMA of a market position over the entire five-year period. The five-year period requires current evidence of the position in the market in five years' time. In dynamic digital markets such as these, no such evidence is likely to exist today. The CMA needs evidence to underpin its administrative findings. Where no such evidence exists, it cannot designate an SMS firm.

The CMA will have evidence that exists up to the date of the decision—evidence of the current entrenched position, market shares, barriers to entry, intellectual property rights and so on. In that respect, we support the noble Baroness, Lady Jones, with her Amendment 1, because it should of course include earlier investigations by the CMA. All that evidence exists today in 2024, but what the position will be in 2028 will need to be found and it has to be credible evidence to support a CMA decision under Clause 5. Particularly in fast-moving technology markets, the prediction of future trends is not a simple matter, so lack of sufficient evidence of the entrenched nature of a player at year 5 or over the entire period would prevent a rational decision-maker from being able to make a decision that the player will have SMS over the five-year period, as demanded by the Bill. Every designation and subsequent requirement or investigation imposed on the designated undertaking risks being subject to challenge on the basis of insufficient evidence.

As the Open Markets Institute says,

"the inevitably speculative nature of a forward-looking assessment makes the process vulnerable to being gamed by dominant platforms. For example, such firms may use the emergence—and even hypothetical emergence—of potential challengers to rebut the enforcer's claim that they enjoy substantial and entrenched market power, even where their dominance has yet to be meaningfully threatened by those challengers".

It gives the example of the rise of TikTok, which Meta has used in arguments to push back against anti-trust scrutiny:

"Yet while experiencing rapid growth in terms of user numbers, TikTok has so far failed to seriously challenge the economic dominance of Meta in online advertising (the basis of Meta's market power), generating less"

than

"a tenth of the latter's global revenues. Dominant platforms will also use emerging technologies—such as generative AI—to claim that their dominance is transitory, claims that will be difficult for the CMA to rebut given future uncertainty".

Our Amendments 3, 4, 5 and 6—here I thank the noble Lord, Lord Vaux, for his support for them, and sympathise with him because I gather that his presence here today has been delayed by Storm Isha—suggest that the number of years should be removed and the provision clarified so that the assessment is made based on current evidence and facts. If the market position changes, the CMA has the power to revoke such designation in any event, on application from the SMS business, as provided for by Clause 16.

That is the argument for Amendments 3, 4, 5 and 6 in Clause 5. I look forward to hearing what the noble Viscount, Lord Colville, has to say on Amendment 7, which we very much support as well.

Viscount Colville of Culross (CB): My Lords, I have put down Amendment 7 to Clause 6 and, in later groups, amendments relating to Clauses 20 and 114. I will come to them later in Committee, but all of them have the aim of limiting the wide powers given to the Secretary of State in the Bill to intervene in the setting up of the processes for dealing with anti-competitive behaviour by the big tech companies. Amendment 7 would prevent the Secretary of State having broad powers in revising the criteria for establishing the designation of the SMS investigative process. My particular concern is about the power that the Minister might have to alter the criteria for the process in order to de-designate a company following heavy lobbying.

As this is my first intervention at this stage of the Bill, I join other noble Lords in saying that I too very much welcome it and the Government's approach to dealing with anti-competitive behaviour by the big tech companies. In fact, I welcome it so much that I want to ensure that it is implemented as quickly and effectively as possible, to safeguard our digital start-ups and smaller digital companies.

The independence of the CMA is central to the effectiveness of the processes set out in Part 1. However, the huge powers given to the Minister in these chapters should worry noble Lords. They are proposing great powers of oversight and direction for the Secretary of State. I fear that these will undermine the independence of the CMA and dilute its ability to take on the monopolistic behaviour of the big tech companies. I hope that these amendments will go some way to safeguard the independence of the regulator.

I support the collaborative approach set out in the SMS and conduct requirement processes; it seems to be preferable to the EU's Digital Markets Act, which is so much more broad-brush, with a much wider investigation into designated companies' business activities. The Bill sets out a greater focus on a company's particular activity and ensures that the CMA and the DMU work closely with stakeholders, including the tech companies which are going to be under investigation. However, despite this collaboration, it can only be expected that the companies involved in the process will want to give themselves the best possible chance of maintaining their monopolistic position. Clause 6 is central to the start of the process—after all, it sets out when a company can be considered to be under DMU oversight.

Designation as an SMS player means only that the company is subject to the jurisdiction or potential oversight of the DMU; it does not mean that it has done anything wrong. The deliberate aim of the Bill is to ensure that only large players are to be included in the SMS status. These criteria will not dictate how the investigation will go, so the criteria for designation as an SMS player does not need to be changed if the market changes. However, Clause 6(2) and (3) will give Ministers power to take criteria away from this section. This will mean that powerful tech players could fall outside the jurisdiction of the DMU and will not be open to SMS designation as a result. If the clause allowed only new criteria to be added, so that a wider scope of companies could be included, that would not be so bad. However, the ability to reduce the scope of the DMU's potential designation should alarm noble Lords. These subsections give the tech companies huge powers to lobby the Secretary of State to ensure that there is not the possibility to designate them. Effectively, this would be a de-designation of these companies, which would defeat the purpose of the CR process before it has even got off the ground.

I am also concerned that the Secretary of State's powers in this clause go against the law's need to be normative: as a basic principle, it must apply to all the companies, without discrimination. The DMCC Bill is a law that applies only to those who qualify, but it is, in principle, generally applicable. Chapter 2 of Part 1 sets out a set of criteria that apply to all companies, but only a few will satisfy the criteria. The criteria for being an SMS requires enduring market power and a collection of other criteria. It is likely, as a result, that these will cover Microsoft, Amazon, Apple, Google and Facebook; each has enduring market power and qualifies for designation under the criteria in Clause 6. However, if that law can be varied by a Secretary of State to take away criteria, as it currently can, then the law can be made to apply to only a few companies. At the extreme, it could be altered to apply to only one or two. I am advised by lawyers that this is likely to be discriminatory.

Imagine if the law were varied so it applied only to a business that provides both a digital platform and home deliveries. This would mean it would apply only to Amazon, and the company would go to town lobbying against the change in criteria as discriminatory. Noble Lords must continually remind themselves that the Bill is taking aim at the biggest, most powerful companies in the world. I ask them to consider just how far these companies would go to put pressure on politicians and Ministers to safeguard their position, and how effective that pressure can be in changing their minds.

4 pm

As part of my research for these amendments, I have spoken to people who have worked closely with American politicians and experienced first-hand the power of companies to lobby Congress and change the minds of politicians. There have been two big attempts in recent years to get competition law through the US Congress. The American Innovation and Choice Online Bill would have prevented the tech giants in the US using their platforms to disadvantage competitors. The Open App Markets Bill would have pushed back Apple and Google's dominant control over app stores. Both had massive support from the Senate Judiciary Committee, one of the most bipartisan institutions in American politics, which has the power to confirm Supreme Court justices. The Open App Markets Bill was voted through the Judiciary Committee with an unheard of 20:2 majority. The votes galvanised the tech companies to launch a lobbying campaign worth hundreds of millions of dollars against the Bills. This included adverts at airports on a Thursday afternoon, aimed at Members of Congress flying back to their constituencies. The lobbying was successful. Both Bills reached the Floor of the Senate but were not included in legalisation, when both majority and minority leaders of the Senate having agreed to drop them. Your Lordships might not be surprised to hear that the leadership of both sides in the Senate received massive campaign financing from both Apple and Google.

It must be the role of Parliament to ensure that this legislation does not give overmighty powers to Ministers and the Government over the SMS and conduct requirement processes. They would be susceptible to the massive lobbying that I have just described. I hope that noble Lords agree that the ability of companies to apply massive pressure on our own politicians should be thwarted wherever possible. These companies are in this position because of their massive power of persuasion. I am sure that many other noble Lords do not want the Part 1 processes to be undermined. If the Minister could come up with a suggestion for how to stop these criteria being taken out of the Bill at a future date, I would feel much happier and secure in the prospect of this Bill succeeding in its much-needed goals.

Baroness Harding of Winscombe (Con): My Lords, as we start this phase of the Bill, I declare my interests, in particular my husband's close involvement with the Bill in the other place as the Member of Parliament for Weston-super-Mare. We rarely get involved in the same issues at the same time, but in this case we are.

Like other noble Lords, I am keen to see this Bill reach the statute book, but also keen to ensure that we minimise the degree of legal ambiguity. I thank the many companies that have given us briefings in advance of Committee, but note how many of them have felt incredibly uncomfortable in doing so and have sworn us all to secrecy about having even been talking to us in private, for fear that their commercial relationships will be prejudiced. We must recognise the enormous commercial power that the companies that this Bill aims to regulate already exert. Making sure that the Bill is clear, and that we are not inadvertently creating legal loopholes, is probably the most important thing that we will do in this House as we give it the degree of scrutiny that we like to give here.

Loopholes do not need to be permanent. If you have already got large market power, loopholes just need to slow the process down. When I ran a challenger business competing against a very large incumbent in telecoms, BT, we used to say all the time that BT's regulatory strategy was to walk backwards slowly—I think that was even said in public, about 20 years ago. That was its strategy.

[Baroness Harding of Winscombe]

This is exactly what the big technology companies are doing worldwide. They know that regulation is coming to this sector but are walking backwards as slowly as they can. We see this very clearly with the EU's Digital Markets Act where, so far, every potential SMS-equivalent firm has challenged its designation through every stage of the courts that it can. We should go into this Committee with our eyes wide open that that is exactly what will happen with this legislation as well. Giving clarity wherever possible will therefore be essential.

With that in mind, I support Amendments 1, 3, 4, 5 and 6 in their endeavour to give clarity on two important issues: first, whether the CMA can use work that it has already done; and, secondly, that it is impossible to have clarity about what will happen in technology markets over the next five years. Does my noble friend the Minister agree that it is important that the Bill gives clarity on those two issues? If the amendments as currently drafted do not achieve that, what can we do to ensure that we do not look with horror in a few years' time when each SMS designation is in a JR, with technology companies challenging the CMA's ability to use historic work or its lack of crystal ball-gazing, which will inevitably have come about?

I also have considerable sympathy with Amendment 7 from the noble Viscount, Lord Colville. We will come to the question of the Secretary of State's powers in a number of parts of this Bill. In this case, I can see why we should be worried about the ability of individual companies—this is only from the media—with regulatory lobbying budgets of at least $1 billion to influence a single person because, however moral and upstanding they are, it is likely to be quite great. I have some sympathy with the amendment, but the requirement for a Secretary of State decision via the affirmative process is the strongest parliamentary scrutiny available to us. Does my noble friend acknowledge that this is a potential risk? If it is, what additional safeguards would he suggest if he does not like the removal of this power? I recognise that it is possible that we have not captured all the reasons why you might not want to designate a firm as having strategic market status.

We will come back to these issues again and again in our many days together in this Room, because this is really about giving clarity of intent. Will my noble friend confirm that he shares the intent of these amendments?

The Parliamentary Under-Secretary of State, Department for Science, Innovation and Technology (Viscount Camrose) (Con): My Lords, I am pleased to speak on this first day of Committee and thank all noble Lords for their continued and valued engagement on the DMCC Bill, which, as many noble Lords have observed, will drive innovation, grow the economy and deliver better outcomes for consumers. I am grateful for noble Lords' continued scrutiny and am confident that we will enjoy a productive debate.

I start by briefly speaking to government Amendments 11 and 12, which I hope noble Lords will support. They make the strategic market status notice provisions consistent by obliging the Competition and Markets Authority to provide reasons for its decision not to designate a firm following an initial SMS investigation.

I turn to Amendment 1, tabled by the noble Baroness, Lady Jones of Whitchurch. The amendment seeks to ensure that the CMA will be able to use, in its SMS investigations, previous analysis undertaken in related contexts. I agree entirely that the CMA should not have to repeat work that it has already done and should be able to draw on insights from previous analysis when carrying out an SMS investigation, when it is appropriate and lawful to do so.

I offer some reassurance to the noble Baroness that the Bill as drafted permits the CMA to rely on evidence that it has gathered in the past, so long as it is appropriate and lawful to do so. As she highlighted, a strength of the regime is the flexibility for the CMA to consider different harms in digital markets. I suspect that this is a theme that we will return to often in our deliberations, but being prescriptive about what information the CMA can rely on risks constraining the broad discretion that we have built into the legislation.

Amendments 3, 4, 5 and 6, tabled by the noble Lord, Lord Clement-Jones, would make it explicit that the CMA must consider currently available evidence of expected or foreseeable developments when assessing whether a firm holds substantial and entrenched market power in a digital activity. Amendment 3 would remove the duty for the CMA to consider such developments over a five-year period. The regime will apply regulation to firms for a five-year period; it is therefore appropriate that the CMA takes a forward look over that period to assess whether a firm's market power is substantial and entrenched, taking account of expected or foreseeable developments that might naturally reduce the firm's market power, if it were not designated.

Without an appropriate forward look, there is a risk that designation results in firms facing disproportionate or unnecessary regulation that harms innovation and consumers. However, the CMA will not be required to prove that a firm will definitely have substantial and entrenched market powers for the next five years—indeed, that would be impossible. The CMA will have to give reasons for its decisions to designate firms and support any determination with evidence. As a public body, it will also be subject to public law principles, which require it to act reasonably and take into account relevant considerations. Therefore, in our view, these amendments are not necessary.

Amendment 7, tabled by the noble Viscount, Lord Colville of Culross, seeks to remove the power for the Secretary of State to amend by regulations subject to the affirmative procedure the conditions to be met for the CMA to establish a position of strategic significance. I recognise, first, that Henry VIII powers should be used in legislation only when necessary. To the point raised by my noble friend Lady Harding, I also recognise the importance of limiting the scope for too much disputation around this and for too many appeals. In this case, however, the power helps to ensure that the regime can adapt to digital markets that evolve quickly and unpredictably.

Changes in digital markets can result from developments in technology, business models, or a combination of both. The rapid pace of evolution in digital markets, to which many have referred, means that the CMA's current understanding of power in these markets has changed over the past decade. The

concept of strategic significance may therefore also need to evolve in future, and the conditions to be updated quickly, so that the regime remains effective in addressing harms to competition and consumers effectively. The affirmative resolution procedure will give Parliament the opportunity to scrutinise potential changes. It will provide a parliamentary safeguard to ensure that the criteria are not watered down, and should address the noble Lord's concerns regarding lobbying. For these reasons, I believe that it is important to retain this power.

Lord Knight of Weymouth (Lab): To look at Clause 6 and the four conditions laid down there, they appear pretty generic, in terms of size; the number of undertakings; the position in respect of digital activity, which would allow an extension of market power; and the ability to influence the ways in which other undertakings conduct themselves. They are generic conditions, so can the Minister give us a bit more of a taste of the kind of thing that just might crop up? I know that he does not have a crystal ball, but could he tell us what might crop up that would require these Henry VIII powers to be used?

4.15 pm

Viscount Camrose (Con): I would struggle to name a particular one, but if we were to look back over the last five to 10 years we might reflect that there have been a number of developments in markets that have been largely unpredictable and that technology changes might drive further developments. The point is to create a balance between predictable and durable legislation and the ability to adapt to changes in business practice and technology as they emerge. As a thought experiment, if we were to flip it round and say, "No, we have to stick with only these four things for the duration of the eventual Act", many of us would be concerned about an ongoing inability to adapt to change in what is a fast-moving marketplace that is likely to see an accelerating pace of change, rather than anything else.

That said, I hope my words provide the noble Baroness and noble Lords with sufficient assurance not to press their amendments.

Lord Clement-Jones (LD): My Lords, the Minister rather glossed over the importance of Clause 5. In Clause 2(2), the SMS conditions are that

"the undertaking has—

(a) substantial and entrenched market power (see section 5), and

(b) a position of strategic significance".

The conditions in Clause 6 are rather formulaic, in the way that the noble Lord, Lord Knight, talked about, but the determination, examination and assessment in Clause 5 as to whether an undertaking has substantial and entrenched market power is really important. The Minister glossed over this and said that it is not necessary to have a determination based on current evidence and that this forward-looking element must be in there.

Can the Minister confirm that he has taken advice within the department from competition lawyers who deal with this kind of potential challenge on a daily basis? He seems extraordinarily complacent about the fact that big tech will look at that assessment and say, "The evidence is not there. It's all speculation for the next five years. You haven't based it on the actual conduct in our market currently, or indeed an adjacent market". No doubt we will come to that later in another group. This is absolutely at the core of the Bill, and all the advice that I get, whether from the Open Markets Institute or others, is that this is a real failing in the Bill that could open up a litigation problem for the CMA in due course.

Viscount Camrose (Con): I certainly do not intend to gloss over any of these issues. I can confirm that the department receives extensive advice on these matters, as have those working on the Bill, not only from competition lawyers but from other stakeholders in the market of all different sizes and types, and indeed from the CMA itself. To turn around the noble Lord's position, if we make a designation that is designed to last for five years, it is crucial that we take into account existing evidence and what is foreseeable today when determining whether to make that designation. Nobody is being asked to be overly speculative, but it is possible to identify existing trends and available information that can form part of the analysis, and use that to make the determination, particularly as the CMA will then have a duty to explain in detail the rationale behind its decision to designate a firm with SMS, or indeed not to do so.

Lord Lansley (Con): Apologies; I had not intended to intervene on this group, but I am confused and I wonder if my noble friend might be able to help me. We have the word "entrenched". Obviously, we are talking about "substantial and entrenched", but "substantial" is not really in debate since, if it has strategic significance, it is likely to be substantial; the issue is with "entrenched".

A theme that I might develop later on other aspects is to look at our legislation in the context of what has been done by the European Union in its Digital Markets Act. We are doing things differently—and better, I hope—but my point is that the European Union looks at the question of what it describes as an "entrenched and durable position". That seems to have two aspects to it: the first, "entrenched", is that it exists and has existed for some time; and the second, "durable", relates to it being foreseeable that it will continue to exist in future. We have lost the word "durable" and retained "entrenched", but we are applying it in relation only to what is foreseeable—forward-looking assessment. I am confused about why it is only a forward-looking assessment. The relevant regulation from the European Commission looks back three years to establish whether it is entrenched, and looks forward to see whether it is durable or whether there are foreseeable developments that would give rise to such an entrenched, significant market status. I am looking for both and, at the moment, I cannot see both; I see only the forward-looking part.

Viscount Camrose (Con): Indeed. I am afraid that the use of the word "durable" in this context is new to me. I will very happily take that forward and consider whether it might be a valuable addition to the guidance here. To focus on the outcomes that we want here, we

[Viscount Camrose]
want a reasonably derivable position that the existing entrenched power of the potentially SMS-designated firm is likely to last for the five-year period. We want to ensure that any evidence or analysis supporting that position is presented as part of the report that details why the decision is taken. I will take forward the use of the word "durable".

Lord Lansley (Con): Would it be fair to say that the contention in this legislation is that the determination that there is a position of strategic significance also satisfies the argument of whether such substantial market power exists? This further assessment is really about whether it is likely to be entrenched and durable over the five-year period, since the designation extends for five years. This is looking forward over those five years. I think it is perhaps not absolutely clear how these two clauses are intended to be considered together for this purpose.

Viscount Camrose (Con): I take note of my noble friend's point. There may be many areas on which all of us in this Committee end up disagreeing, but one that I doubt we will disagree on is the need for absolute clarity in all these measures. I am very happy to commit to taking that away and seeing whether there is an appropriate form of words that can deliver the clarity that noble Lords are seeking.

Baroness Jones of Whitchurch (Lab): My Lords, I thank all noble Lords who have spoken. I very much echo the thanks expressed by the noble Baroness, Lady Harding, to all the companies and business that have given evidence and come forward to speak to us. It is true that, for a number of them, they have taken risks to do that. It is a sad fact of life now that their very survival could be at stake if some of their concerns become public. That is why we are here today, I suppose. That is where the market has left us and there is a need to address that.

To pick up on the points made by the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Harding, about the CMA's assessment, I think that we have had a useful discussion with the Minister around all that. I certainly want to look at *Hansard* and at the reassurances that the Minister has tried to give on this. I very much take the point, incidentally—as mentioned by the noble Viscount, Lord Colville, in moving his amendment—that SMS status does not mean that they have done anything wrong, so I do not want to get too hung up about giving that status in the first instance. What is important is how we follow that up and look at their behaviour going forward. As the noble Lord, Lord Clement-Jones, spelled out, there is a danger that, if we are not careful, those who are given that category will game the system. That is what we are all anxious about.

I am not sure that the wording achieves what the Minister wants. I think that we are all genuinely clear on the outcomes that we want, as the Minister said, but the current wording does not achieve that. The five-year forward plan is playing into the hands of the wrong people, and we will not come out with the outcomes that we want if we stick with the current wording, so I very much welcome the chance to have further discussion about that.

Lord Tyrie (Non-Afl): Before the noble Baroness leaves that point, I strongly endorse what she says. I make the point that we are here debating a set of powers that we would, in most contexts, otherwise consider extremely draconian, because there has already been abuse and market power has already been exercised in ways that we all consider unacceptable. That is why we need clarity on this point. We do not need to look into the crystal ball—we can read the book.

Baroness Jones of Whitchurch (Lab): I thank the noble Lord very much for that insight. He is absolutely right, of course. We all understand his wealth of experience; it is very helpful to have his support on that issue.

I pick up on the amendment tabled by the noble Viscount, Lord Colville, to which the noble Lord, Lord Clement-Jones, and I have added our names. He rightly raised that the significant powers given to the Secretary of State to vary the conditions would lead to tech companies being considered to have strategic market status. As my noble friend Lord Knight said, the list in Clause 6 is quite generic. In a sense, that should be enough for us. None of the things in Clause 6 is time limited, so it should be enough for the CMA and the DMU to do their work.

There is concern, therefore, about how the Bill is currently worded, as it does not give any constraints to the Secretary of State to change the conditions, apart from the affirmative SI—and we can all rehearse the arguments about what that means for parliamentary accountability. The Minister might say that it is necessary to add new conditions if new anti-competitive practices come to light, but I feel that the current wording—and I think that the noble Viscount feels this, too—allows not just for new anti-competitive practices but for the current conditions to be watered down. That is our real concern. The noble Viscount gave an example about specifying particular forms of market practice, such as online sales and delivery, which would then apply to only one or two companies and not the ones that, as I think we all understand, should be in the frame. I was not absolutely convinced by what the Minister said on this issue. It is a bit of a running theme and, as several noble Lords said, we will come back to the issue of parliamentary scrutiny. Perhaps we can look at that in the round at a future point.

The Minister will be pleased to know that I support the government amendments. They make good sense and give clarification in the Bill, which we always like.

We continue to believe that Amendment 1 is necessary to enable the CMA to proceed with speed once the Bill is on the statute book. Nothing the Minister has said so far has persuaded me that the silence in the Bill on this issue is sufficiently reassuring. I hope that we can find a form of words—if not ours then a different form of words—that will allow the CMA to look backwards, giving it absolute reassurance that it can do so and that it will not have to repeat any of its activities. This is all about tightening up the

wording. We will reflect on what the Minister said, and I hope that we can talk about this some more. In the meantime, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 2 agreed.

Clause 3 agreed.

4.30 pm

Clause 4: Link to the United Kingdom

Amendment 2

Moved by ***Lord Clement-Jones***

2: Clause 4, page 3, line 19, at end insert—

"(d) the digital activity or the way in which the undertaking carries on the digital activity is likely to have a substantial impact on the creation, displacement, quality or conditions of work or work environments in the United Kingdom."

Member's explanatory statement

This amendment would ensure key definitions such as 'digital activity' take into account impacts on UK work and workers in determining whether there is a sufficient link to the UK.

Lord Clement-Jones (LD): My Lords, I was looking forward to hearing the noble Lord, Lord Knight, introduce these amendments but, owing to a glitch in timing when tabling the amendments, I am unfortunately in the hot seat this afternoon. As well as moving Amendment 2, I will speak to Amendments 18, 23, 56 and 61.

These amendments, developed by the Institute for the Future of Work, are aimed in particular at highlighting the direct and indirect impacts on job creation, displacement and conditions and on the work environment in the UK, which are important considerations that are relevant to competition and should be kept closely under review. I look forward to hearing what the noble Lord, Lord Knight, says, as co-chair of the All-Party Parliamentary Group on the Future of Work, which helped the Institute for the Future of Work to develop the amendments.

Digital markets and competition are shaping models for work, the distribution of work, access to work and the conditions and quality of work for several different reasons. Digital connected worker and labour platforms are used across the economy, not just for online or gig work. There is concentration in digital markets, with the emergence of a few dominant actors such as Amazon and Uber, which impacts the number and nature of local jobs created or lost. There are specific anti-competitive practices, such as wage and price fixing, which is currently subject to litigation in the US, and there are secondary and spillover impacts from all the above, including the driving of new models of business that may constrain wages, terms and work quality, directly or indirectly.

A good example is cloud-based connected worker platforms, which use behavioural and predictive algorithms to nudge and predict performance, match and allocate work and set standards. There is also increased market dominance in cloud computing, on which a growing number of UK businesses depend. For example, Amazon Web Services leads four companies in control of 67% of world cloud infrastructure and over 30% of the market.

Other examples are algorithmic hiring, job matching and task-allocation systems, which are trained on data that represents past practices and, as a result, can exclude or restrict groups from labour market opportunities. Social, environmental and well-being risks and impacts, including on work conditions and environments, are under increasing scrutiny from both the consumer and the corporate sustainability perspective—seen, for instance, in the World Economic Forum's *Global Risks Report 2024*, and the EU's new corporate sustainability due diligence directive, due to be formally approved this year, which obliges firms to integrate their human rights and environmental impact into their management systems.

This suggests that consumer interests can extend to local and supply-chain impacts, and informed decision-making will need better information on work impacts. For a start, key definitions such as "digital activity" in Clause 4 need to take into account impacts on UK work and workers in determining whether there is a sufficient link to the UK. Amendment 2 is designed to do this. Secondly, the CMA's power to impose conduct requirements in Chapter 3 of the Bill should make sure that a designated undertaking can be asked to carry out and share an assessment on work impacts. Similarly, the power in Chapter 4, Clause 46, to make pro-competition interventions, which hinges on having an adverse effect, should be amended to include certain adverse impacts on work. Amendments 18, 23 and 56 are designed to do this.

Thirdly, information and understanding about work impacts should be improved and monitored on an ongoing basis. For example, the CMA should also be able to require an organisation to undertake an assessment to ascertain impacts on work and workers as part of a new power to seek information in Clause 69. This would help investigations carried out to ascertain relevant impacts and decide whether to exercise powers and functions in the Bill.

Evidence is emerging of vertical price fixing at a platform level, which might directly impact the pay of UK workers, including payment of the minimum wage and, therefore, compliance with labour law, as well as customer costs. Such anti-competitive practices via digital platforms are not limited to wages, or gig, remote or office work. Ongoing research on the gigification of work includes connected worker platforms, which tend to be based on the cloud. This is indicative of tight and increasing control, and the retention of scale advantages as these platforms capture information from the workplace to set standards, penalise or incentivise certain types of behaviour, and even advise on business models, such as moving to more flexible and less secure contracts. At the more extreme end, wages are driven so low that workers have no choice but to engage in game-like compensation packages that offer premiums for completion of a high number of tasks in short or unsociable periods of time, engage in risk behaviours or limit mobility.

[Lord Clement-Jones]

The Institute for the Future of Work has developed a model which could serve as a basis for this assessment: the good work algorithmic impact assessment. The UK Information Commissioner's Office grants programme supports it and it is published on the DSIT website. The assessment covers the 10 dimensions of the *Good Work Charter*, which serves as a checklist of workplace impacts in the context of the digitisation of work: work that promotes dignity, autonomy and equality; work that has fair pay and conditions; work where people are properly supported to develop their talents and have a sense of community. The proposed good work AIA is designed to help employers and engineers to involve workers and their representatives in the design, development and deployment of algorithmic systems, with a procedure for ongoing monitoring.

In summary, these amendments would give the CMA an overarching duty to monitor and consider all these impacts as part of monitoring adverse effects on competition and/or a relevant public interest. We should incorporate this important aspect of digital competition into the Bill. I beg to move.

Lord Knight of Weymouth (Lab): My Lords, I congratulate the noble Lord, Lord Clement-Jones, on the way he occupied the hot seat and introduced his amendments. I had hoped to add my name to them but other things prevented me doing so. As he said, I co-chair the All-Party Group on the Future of Work with Matt Warman in the other place. I am grateful to the Institute for the Future of Work, and to Anna Thomas in particular for her help in putting these amendments together.

I start with a reflection on industrialisation, which in its own way created a massive explosion in economic activity and wealth, and the availability of goods and opportunities. There was innovation and it was good for consumers, but it also created considerable harms to the environment and to workers. The trade union movement grew up as a result of that.

In many ways, the technological revolution that we are going through, which this legislation seeks to address and, in part, regulate, is no different. As the Minister said a few moments ago, we see new opportunities with the digital tools and products that are being produced as part of this revolution, more jobs, more small and medium-sized enterprises able to grow, more innovation and more opportunities for consumers. These are all positive benefits that we should celebrate when we think about and support the Bill, as we do on all sides of the Committee.

However, the risks for workers, and the other social and environmental risks, are too often ignored. The risks to workers were totally ignored in the AI summit that was held by the Government last year. That is a mistake. During the Industrial Revolution, it took Parliament quite a while to get to the Factory Acts, and to the legislation needed to provide the protection for society and the environment. We might be making the same mistake again, at a time when people are being hired by algorithm and, as the noble Lord, Lord Clement-Jones, pointed out, managed by algorithm, particularly at the lower end of the labour market and in more insecure employment.

The Institute for the Future of Work's report, *The Amazonian Era*, focused on the logistics sector. If you were ever wondering why your Amazon delivery arrives with a knock on the door but there is nobody there when you open it to say hello and check that the parcel has been delivered, it is because the worker does not have time to stop and check that someone is alive on the other side of the door—they have to get on. They are being managed by machine to achieve a certain level of productivity. They are wearing personalised devices that monitor how long their loo breaks are if they are working in the big warehouses. There is a huge amount of technological, algorithmic management of workers that is dehumanising and something which we should all be concerned about.

In turn, having been hired and managed by algorithms, people may well be being fired by algorithm as well. We have seen examples—for example, Amazon resisting trade union recognition in a dispute with the GMB, as the trade union movement also tries to catch up with this and do something about it. Recently, we saw strikes in the creative sector, with writers and artists concerned about the impact on their work of algorithms being used to create and that deskilling them rapidly. I have been contacted by people in the education world who are exam markers—again, they are being managed algorithmically on the throughput of the exams that they have to mark, despite this being an intensive, knowledge-based, reflective activity of looking at people's scripts.

In this legislation we have a "user", "consumer", "worker" problem, in that all of them might be the same person. We are concerned here about users and consumers, but fail to recognise that the same person may also be a worker, now being sold, as part of an integrated service, with the technology, and at the wrong end of an information asymmetry. We have lots of data that is consumer-centric, and lots of understanding about the impacts on consumers, but very little data on the impact of their function as a worker.

In the United States, we have seen the Algorithmic Accountability Act. Last month, the Council of Europe published its recommendations on AI. Both are shifting the responsibility towards the companies, giving them a burden of proof to ensure that they are meeting reasonable standards around worker rights and conditions, environmental protection and so on. These amendments seek to do something similar. They want impacts on work, and on workers in particular, to be taken into account in SMS designation, competition decisions, position of conduct requirements and compliance reports. It may be that, if the Government had delivered on their promise of many years now to deliver an employment Bill, we could have dealt with some of these things in that way. But we do not have that opportunity and will not have it for some time.

As I have said, the collective bargaining option for workers is extremely limited; the digital economy has had very limited penetration of trade union membership. It is incumbent on your Lordships' House to use the opportunities of digital legislation to see whether we can do something to put in place a floor of minimum standards for the way in which vulnerable workers

across the economy, not just in specific digital companies, are subject to algorithmic decision-making that is to their disadvantage. We need to do something about it.

4.45 pm

Baroness Kidron (CB): My Lords, I too faced a glitch, having wanted to add my name to these amendments. Since we are at a new stage of the Bill, I declare my interests as set out in the register, particularly as an adviser to the Institute for Ethics in AI at Oxford and to the Digital Futures centre at the LSE and as chair of the 5Rights Foundation. I support the noble Lord, Lord Clement-Jones, who has, with this group of amendments, highlighted that job creation or displacement and the quality of work are all relevant considerations for the CMA. I think it is worth saying that, when we talk about the existential threat of AI, we always have three areas of concern. The first is the veracity and provenance of information; the second is losing control of automated weapons; and the third, importantly in this case, is the many millions of jobs that will be lost, leaving human beings without ways to earn money or, perhaps, a reason for being.

There are two prevailing views on this. One is that of Elon Musk, who, without telling us how we might put food on the table, pronounced to the Prime Minister

> "There will come a point where no job is needed – you can have a job if you want one for personal satisfaction but AI will do everything".

The other, more optimistic view is that boring or repetitive work will go, which is, in part, beautifully illustrated by David Runciman's recent book, *The Handover*, where he details the fate of sports officials. In 2021, Australian and US line judges were replaced by computers, while Wimbledon chose to keep them—largely for aesthetic reasons, because of the lovely Ralph Lauren white against the green grass. Meanwhile, Carl Frey and Michael Osborne, in their much-publicised 2017 study assessing the susceptibility of 702 different jobs to computerisation, suggested that sports officials had a 98% probability of being computerised.

In fact, since 2017, automation has come to all kinds of sports but, as Runciman says,

> "Cricket matches, which traditionally featured just two umpires, currently have three to manage the complex demands of the technology, plus a referee to monitor the players' behaviour".

Soccer has five, plus large teams of screen watchers needed to interpret—very often badly—replays provided by VAR. The NBA Replay Center in Secaucus employs 25 people in a NASA-like control room, along with a rota of regular match officials.

It would be a fool who would bet that Elon Musk is entirely wrong, but nor should we rely on the fact that all sectors will employ humans to watch over the machines, or even that human beings will find that being the supervisor of a machine, or simply making an aesthetic contribution rather than being a decision-maker, is a good result. It is more likely that the noble Lord, Lord Knight, is correct that the algorithm will indeed be supervising the human beings.

I believe that the noble Lord, Lord Clement-Jones, and his co-author, the noble Lord, Lord Knight, may well prove to be very prescient in introducing this group of amendments that thoughtfully suggest at every stage of the Bill that the CMA should take the future of work and the impact of work into account in coming to a decision. As the noble Lord made clear in setting out each amendment, digital work is no longer simply gig work and the concentration in digital markets of behemoth companies has had and will continue to have huge consequences for jobs across supply lines, as well as wages within markets and, most particularly, on terms of employment and access to work.

AI is, without question, the next disruptor. Those companies that own the technology will be dominant across multiple markets, if not every market, and for the CMA to have a mandate to consider the impact on the workforce is more than sensible, more than foresightful; it is in fact a new reality. I note that the Minister, in responding to the last group, mentioned the importance of foreseeable and existing trends: here we have one.

Viscount Camrose (Con): My Lords—

Lord Bassam of Brighton (Lab): My Lords, I am sure the noble Viscount has more important things to say than I have, but it falls to me to make a few comments from the Opposition Benches on this. While listening to my noble friend Lord Knight, I was reflecting that we might be the last profession ever to be dismissed or appointed by algorithm and wondering whether that is a good or a bad thing. I leave that for the Minister to ponder while I make my observations.

The noble Lord, Lord Clement-Jones, introduced these amendments with his customary skill and guile. No doubt, like the rest of us, he has been extremely well briefed by the Institute for the Future of Work; I pay tribute to my noble friend Lord Knight for his work in that regard. This group of amendments is extremely important. We know that, with algorithms, new digital technology and thinking, just as the history lesson from my noble friend showed, it is really important when technological revolutions happen that we grasp the moment to think about their wider social and economic impact—with this, in particular, the impact on the world of work.

On the face of it, these amendments would provide a valuable extension of the CMA's remit and role and could lead to protection of consumers and workers from the adverse impacts brought about by the activities of digital companies that operate in a dominant position in the marketplace. As the noble Lord, Lord Clement-Jones, said, the near-monopoly position of some companies means that wage and price fixing are a real concern. The ability of the CMA to monitor, comment and have an impact on conduct could have a wider and beneficial impact on ensuring that the market works not only well but fairly and with equity. It is the case that social, environmental and well-being risks and impacts, including work conditions and the environment are under increasing scrutiny from consumer and corporate sustainability perspectives.

The noble Lord, Lord Clement-Jones, referenced the World Economic Forum's *Global Risks Report* and the EU's new corporate sustainability due diligence directive 2023, to be introduced later this year. They exemplify the importance and salience of the issue. As he said, this all suggests that consumer interests can extend to local supply chains, so, as a consequence,

[Lord Bassam of Brighton]
informed decision-making will need to have better information on work impacts in the future. Consumers are, as has been said, both consumers and workers, and they are bound to take much greater interest in digital workplaces. From these Benches, we therefore support, in general terms, better monitoring, intervention and information sharing by the CMA; if these amendments achieve that objective, they are certainly worthy of our support. The Minister will have to persuade us otherwise, or explain that the CMA will have the scope to use its powers to satisfy the objectives behind the amendments in the name of the noble Lord, Lord Clement-Jones.

I was intrigued by the reference by the noble Baroness, Lady Kidron, to sports officials being put out of a job. I am a big football fan, as many colleagues will know. It just seems to me that VAR is a great example of how you can generate even more activity and interest by the digitisation of assessments and the use of algorithms to judge whether something is or is not offside. We are happy to support these amendments; we think they potentially touch on a vital aspect of the CMA's work and we look forward to what the Minister has to say about them.

Viscount Camrose (Con): My Lords, I apologise to the noble Lord, Lord Bassam, for jumping the gun before his interesting words. I reflect that the algorithm that puts exactly this combination of people in this Room would be fairly complex—but a good one.

I thank the noble Lord, Lord Clement-Jones, for using several amendments to raise the important issue of the impact of technologies, such as artificial intelligence, on workers and the nature of work. I also thank the noble Lords, Lord Knight and Lord Bassam, and the noble Baroness, Lady Kidron, for their contributions to what is an important part of our deliberations.

The Government of course recognise that new technologies can create challenges and risks, as well as opportunities and benefits. I agree with noble Lords that the impact of technology on work and workers deserves attention, and I will respond to each amendment in turn. However, I also hope that noble Lords agree that it is of paramount importance that this regime is effective and focused on promoting competition for the benefit of consumers, which is the CMA's area of expertise. I know that future amendments propose that the CMA's focus should go beyond that, so perhaps the bulk of that can be left for that debate.

The CMA has been considering future issues in the space of competition, and indeed recently published its first horizon-scanning report on 10 trends in digital markets and how they may develop over the next five years and beyond. However, the Government feel that wider issues around the impact of digital technologies on work and workers—those that do not impinge directly on competition for the benefit of consumers—are better dealt with elsewhere.

Amendment 2 would allow the CMA to establish that there is a link to the UK for the purposes of designating a firm with SMS when a digital activity is likely to have a substantial impact on work or work environments in the United Kingdom. The CMA's objective is, as I say, to promote competition for the benefit of consumers, and it is important that the digital markets regime is focused on competition.

The current criteria to establish a link to the UK ensure that the regime is targeted and proportionate, and draw on similar approaches in other legislation, including Chapter 1 of the Competition Act 1998. However, this amendment would allow the CMA to link a digital activity to the UK on the basis of impacts that are explicitly unrelated to competition. It would therefore detract from the aims of the regime, which are competition focused. It would also be inappropriate for the CMA to assess impacts unrelated to competition, which is its area of expertise and jurisdiction.

Amendments 18 and 23 would ensure that the CMA can require the SMS firm, through conduct requirements, to carry out and share an assessment on wider social impacts. I agree with noble Lords that it is of crucial importance that users are given the information necessary to make informed decisions about the services they use. The current objectives and list of permitted types of conduct requirements have been carefully drafted to ensure that the regime can protect consumers and businesses that rely on SMS firms via targeted and tailored rules. Conduct requirements can be imposed for the purposes of the trust and transparency objective, to ensure that those who use or seek to use the relevant digital activity have the information they need to understand the terms on which the activity is provided. This amendment would go beyond the scope and competition remit of the CMA, potentially creating new burdens and additional complexities, which could slow down effective enforcement.

Amendment 56 would expand the concept of an adverse effect on competition to include the displacement or alteration of work conditions or environments within the United Kingdom. Pro-competition interventions are designed specifically to address the root causes of the substantial and entrenched market power which gives rise to strategic market status. Where adverse working conditions intersect with or create a substantial negative impact on the competition within a particular market or industry, it may be relevant for the CMA to consider these. However, explicitly amending the definition of adverse effects on competition to include workplace conditions would skew the focus of the regulator away from competition and shift PCIs away from the established precedent of the markets' regime. During a PCI investigation, the CMA may identify actions that other regulators or public bodies would be better placed to act upon. This may include the DMU referring issues such as workplace conditions to a relevant regulator, better placed to deal with these key issues.

5 pm

Lord Knight of Weymouth (Lab): Which regulators is the Minister thinking of? I am interested in Clauses 107 and 108, which are about regulatory co-ordination and information sharing, and whether there is something we should do there with those regulators. If he could give us a hint as to which regulators he is thinking of, that would be really helpful.

Viscount Camrose (Con): I refer to the digital regulators themselves—the ICO or the FCA and Ofcom—or indeed regulators with oversight of employment law.

Amendment 61 would enable the CMA to require algorithmic impact assessments, to assess the impact of algorithms on society and the environment, including working conditions, if it considered such information relevant to its digital markets functions. I agree wholeheartedly with the noble Lord about the importance of understanding the impact of algorithmic systems on society, the environment and working conditions in the UK.

Lord Bassam of Brighton (Lab): Is the Minister saying that it is up to the CMA to decide whether it is a relevant consideration?

Viscount Camrose (Con): Yes, I think that I am saying that. The CMA, over the course of its investigations, can come across information beyond its own competitive remit but relevant for other regulators, and then could and should choose to advise those other regulators of a possible path for action.

Lord Knight of Weymouth (Lab): In that sense, could the CMA ask for an impact assessment on the algorithmic harm that might be carried out? Would that be in the power and remit of the CMA?

Viscount Camrose (Con): The CMA does have power and remit to request an algorithmic impact assessment. I will take advice on this, because I believe that the algorithmic assessment that it undertakes must be in the direction of understanding anti-competitive behaviours, rather than a broader purpose. I will happily take advice on that.

As the Bill stands, the CMA will already have sufficient investigatory powers to understand the impact of complex algorithms on competition and consumers. The suggested expansion of this power would fall outside the role and remit of the CMA. Moreover, the CMA would not have appropriate tools to address such issues, if it did identify them. The Government will continue to actively look at whether new regulatory approaches are needed in response to developments in AI, and will provide an update on their approach through the forthcoming AI regulation White Paper response.

I thank the noble Lord once again for raising these important issues and hope that he feels able to withdraw the amendment.

Lord Clement-Jones (LD): I thank the Minister for his considered reply, and thank all those who have taken part in this extremely important and interesting debate, particularly the amplification by a number of noble Lords of some of the issues.

I was very much taken by what the noble Lord, Lord Knight, had to say about the risks for workers—hired, managed, fired. He used the word "dehumanising", which was very powerful. The noble Baroness, Lady Kidron, referred back to some of the really interesting papers about automation from Osborne and Frey and others over the years, telling us that it is not just Elon Musk but, perhaps I might say, other more serious people who are warning us about the dangers of automation.

At the end of the day, I think the question is how relevant this is to competition. Those of us putting forward and supporting these amendments believe that monopoly, concentration and the power of big tech have the ability to determine working conditions. The Minister talks about this detracting from the CMA's duties, saying that it is beyond its competition remit and so on. We think it is mainstream; we do not think that it is just an add-on to the CMA's duties. There is a very strong argument for a wider focus by the CMA.

It feels rather like the Minister is passing the parcel to another regulator. It was instructive that we had to scrabble around at the back end of Clause 107 to see what other regulator might be available to deal with this, but there is nobody to pass this parcel to: this is a direct consequence of concentration and monopoly power. We should include these considerations in what the CMA does. It should have the power to insist on an algorithmic impact assessment.

I think the noble Baroness, Lady Kidron, used the word prescient. We need to be prescient and think forward to the future and the power of the algorithm, artificial intelligence and big tech. Our working population are extremely vulnerable in these circumstances. I do not get the feeling that the Government are really taking their duties to protect them seriously. I am sure that we will have further debates on this. In the meantime, I beg leave to withdraw Amendment 2.

Amendment 2 withdrawn.

Clause 4 agreed.

Clause 5: Substantial and entrenched market power

Amendments 3 to 6 not moved.

Clause 5 agreed.

Clause 6: Position of strategic significance

Amendment 7 not moved.

Clause 6 agreed.

Clauses 7 to 10 agreed.

Clause 11: Procedure relating to SMS investigations

Amendment 8

Moved by ***Baroness Jones of Whitchurch***

8: Clause 11, page 6, line 36, at end insert ", and

(c) give a copy of the statement to those undertakings that have not been designated as having SMS that are most directly affected."

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Baroness Jones of Whitchurch (Lab): My Lords, in moving Amendment 8, I will also speak to my Amendments 9, 10, 13, 35, 37, 42, 45, 46, 57 and 58. I thank my noble friend Lady Ritchie, the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Harding, for adding their names. The noble Lords, Lord Clement-Jones and Lord Tyrie, have some other amendments in this group to which I will respond at the end of this debate. However, I can confirm that we support the thrust of the noble Lords' amendments and look forward to hearing their more detailed arguments in due course.

As I made clear at the outset, our concerns with this Bill are mainly about the detail, in particular the changes made by the Government at the very last minute on Report in the Commons. We support the model that is being proposed, although we share some of the concerns that will come up in this debate and in later ones about the extent of the widespread powers that have been given to the CMA and the DMU in respect of the big tech players, in particular their application to those being given strategic market status. The corollary to the decision to introduce this new approach is that the new power should be set out clearly in statute, which is the point that we have made, and that when it is used the DMU will need to be open and transparent to all those who have a legitimate interest.

There must be no question that the smaller challenger firms which—for various understandable reasons—may not be fully informed about discussions and negotiations between the DMU and potential SMS firms need to be able to access information about the regulatory framework and potential changes to it on an equal basis as the firms being considered for SMS status. How else will we achieve the balance that we are all aiming for in this Bill? Our amendments in this and other groups address this issue.

When this came up in the Commons, Minister Saqib Bhatti said:

"the Government agree that it is important that the DMU's regulatory decisions are transparent and that the right information is available to the public". —[*Official Report*, Commons, 20/11/23; col. 74.]

We agree with that. With respect, however, the DMU publishing summaries of decisions reached completely misses the point we are trying to make. The DMU must ensure that it has all the information it needs, including all the information held by challenger firms, before it makes decisions about SMS status and related matters. Challenger firms may have a different view of what SMS means to their businesses and consumers and it is unlikely that they will have perfect information about the DMU's thinking. They will, however, certainly want to be engaged in the issues if they are made aware of them at the right time.

Many of us attended a helpful meeting with the CMA last week, where this issue was raised. It became clear that it already has good relations with a number of the bigger challenger firms. However, given that it is investigating anti-competitive behaviour, it is also clear that there will be many smaller start-up companies that will never be given a chance to get established because of the behaviour of the big players. We have a real concern about how we can make their voices heard too. We run the danger that the DMU will contact only the people it already knows about and will not hear from those who are perhaps most squeezed out of the process being investigated.

Our suggestion is that the DMU should have a statutory duty to send decision notices to third parties that it assesses are likely to be most affected by such a decision. To us, this does not seem to be unduly burdensome to the DMU. One could argue that a failure to know which challenger firms are likely to be affected could be very injurious to consumers and the economy at large. In the Commons, the Minister said he thought there would be "limited benefits" to introducing this requirement. I do not think the Government have made the case on this point and I hope they will think again. I also hope that they and the Minister will listen carefully to the points made in this debate.

In the last few weeks, we have met and received submissions from many challenger firms concerned about the Government's position on the issue. They support the Bill but worry about the imbalance, as they fear it will have a deleterious effect on the regime. They have all made it clear that they support our amendments. I hope the Minister will be able to agree with our arguments. We think there is a strong case for involving the challenger firms at an earlier stage and giving them far more information. I would like to hear how and when the Government intend to do that. I beg to move.

Lord Tyrie (Non-Afl): I declare a number of general interests with respect to this Bill. I am on the advisory board of BSV, a consumer class action being taken against crypto exchanges; I act as a consultant to DLA Piper; I have also had contact with many companies, several platforms and their advisors and many consumer groups about the Bill. As a former chairman of the CMA, I had a significant hand in constructing large parts of it. It is important that others bear in mind that anything I say on this is from the perspective of having been there for enough time to have taken too many of its ideas to heart. In fact, I have been lobbied in all directions on this Bill and for so long that I am losing count of which direction the lobbies all come from.

5.15 pm

My initial amendment to the Bill is very modest. Clause 15 as currently drafted requires the CMA only to provide a firm with a summary of its supporting evidence prior to taking a decision to designate a firm. It is not required to supply all the evidence. The main reason for that is that the CMA may have received commercially confidential information from third parties, whose interests could be prejudiced if that information were available to the designated firm. There is merit in protecting the CMA's sources, as it clearly wants to do. The problem is that the SMS-designated firm will have to trust that the CMA has done a good and thorough job of the summary.

My amendment is very simple. It will enable a firm to require the CMA to appoint an independent reviewer of the evidence. I am happy for the independent reviewer to be appointed by the CMA itself. This will give the CMA a strong incentive to carry out a full,

fair and robust process. In practice, it means that there is a risk to the CMA that it will have its homework marked by an independent reviewer. By doing so, it will provide some comfort to a firm that it is obtaining all the information that can reasonably be made available given the confidentiality constraint that I referred to earlier.

Therefore, my amendment's main effect will be that the CMA will summarise the documents accurately. It certainly will not want to be challenged by an independent reviewer and found wanting, and it does not want to be caught playing fast and loose with it. However, the fact of that is likely to decrease the risk that a review would be needed in the first place. The CMA will want to do a good job and the firm will know that that is the case. There is a second benefit, which is that it is a simple trust-building measure to introduce an independent reviewer. It will build confidence in the SMS designation system itself with firms and in the digital marketplace. There will be considerable benefits from building trust, for domestic and inward investment.

I have noticed over many years here and in the other place that whenever amendments like this are tabled, everybody looks for a precedent. Well, there are no exact precedents here and the reason is obvious: the new digital framework and the SMS designation framework are unprecedented. However, there are a large number of long-standing analogous arrangements designed to ensure that a second pair of eyes can look at all or part of decision-making by powerful regulators. I will mention four that have some relevance.

First, there is the panel review system in phase 2 of merger control, in the Enterprise Act 2002. Of course, the panel is primarily looking at the substance of the issue but it also ensures fair process by looking at what documentation is made available. Internally, the CMA has a procedural officer, an independent legal professional who can review complaints, as the name suggests. I am in a sense suggesting some slight extension of that role to cover CMA activities with respect to designation.

Ofgem has an enforcement decision panel, and the FCA is obliged to involve a fresh decision-maker before providing a decision for a statutory notice. The FCA parallel is particularly relevant because designation has some of the characteristics of the licensing system in the financial sector. We have not called it licensing but it has some of those characteristics and is a major change to the way in which we have tried to regulate businesses in the UK in the past. I strongly support it—naturally, since I was so closely involved in thinking through parts of it. However, I recognise that we are in uncharted territory in many ways and we need to provide balance—a point I will expand on in a moment.

I said I would provide four examples but I have provided only three. The European competition policy regime uses a hearing officer, who performs exactly—or very nearly—this function: to check that procedure has been properly followed by the competition commission.

The noble Baroness, Lady Harding, raised one drawback: a firm may decide to try to gain time—to walk slowly backwards, as she put it. As a consumer, I have had personal experience of BT walking backwards slowly; it was a terrible experience. I will not ask all those who have had similar experience to put up their hands up, as I am sure it is against parliamentary procedure, but I cannot help feeling that quite a few hands might go up. However, firms are unlikely to be able to use this tool extensively, partly because designation itself becomes such a powerful weapon in the hands of the CMA. Firms know that, once they have been designated, they are going to have to collaborate with the CMA. Trench warfare they are likely to lose, so they will not want to put the CMA's back up unless they have some reason for thinking that the papers in front of them fall short of what is required. In any case, I am suggesting a three-month limit to the conduct of the review. That could be expedited down to one month, but it is up to the Government to think this through. I hope that they will do some thinking on it. I have also suggested in Amendment 13A a duty of expedition for this specific function.

It has been put to me by various parties that there is a case for some kind of independent review mechanism of this type for all major decisions of the CMA that involve conduct requirements or other pro-competition interventions by the CMA in the digital field, but I am not arguing for that. In any case, it could gradually take us back to a full-merits review by the back door, with which I would disagree. I hope the Government will look carefully at what I propose.

I end with a point that might be slightly counterintuitive but which I would like colleagues to bear in mind in looking at the Bill from all its angles. Of course, only the Minister can provide balance, and it is important to bear in mind that, looking at it from the point of view of the CMA and officials, they know that they have vastly superior technical expertise than a Minister can bring to this subject and, therefore, it is relatively straightforward for them to take a road that might lead them towards a comfort zone. We need to bear in mind that the CMA itself is a vested interest in framing this legislation. It is packed with high-quality economists and lawyers, many of whom I worked with, but it is a vested interest, and it has an interest in developing the Bill in a way which will expedite business as it sees fit, which may not always coincide with what a wider interest would perceive it to be. We can and should put checks into that risk, and I propose one such check here. Complete dependence of firms on CMA summaries is probably a small bridge too far, but it is a bridge that we need not cross.

Baroness Harding of Winscombe (Con): My Lords, I support Amendments 8, 9, 10, 13, 35, 37, 42, 44, 45, 46, 57 and 58 in the name of the noble Baroness, Lady Jones of Whitchurch, to which I have added my name. I list them all because the very fact that there are so many amendments to make what is actually quite a simple point shows the scale of the inequality of arms between the potential strategic market status firms and the firms that are detrimentally affected by them.

From looking at the detail it is clear that there are opportunities in the Bill for an SMS firm to comment at the outset and throughout an SMS designation investigation, at the drafting of a conduct requirement, in a conduct investigation and in a PCI investigation. Those affected can comment only at the latter public

[Baroness Harding of Winscombe]
consultation stage. There is a real risk that the CMA will take decisions without the involvement, insight and information of non-SMS firms.

Like other noble Lords, I attended the very helpful briefing with the Minister and the CMA last week. When challenged on this, the CMA representatives told us that they agreed that there was an inequality of arms, that it was really important to do everything possible to balance it, and that they, with the best intent, intended to do that. They also acknowledged some commercial issues, where there may well be information that the SMS firms share that they should not share with commercial counterparties. Essentially, the CMA leadership—I say this without any judgment on them—told us to rely on the "good chap" theory of government and to trust their best intentions. That is really quite dangerous, given the sheer gulf in that inequality of arms.

So we might not have got the right wording in this long list of amendments, but this is a really important principle. I have deep respect for all the officials in the CMA, as my noble friend Lord Tyrie has just said, but this is a very hard balancing act that we will be asking them to undertake. Having played this game on the other side, I say that we should have no illusions: all companies spend a lot of time trying to influence the regulator that regulates them. If we do not ensure that there is an equality of arms in that process, we will be setting the CMA up to fail.

Lord Vaizey of Didcot (Con): My Lords, I support these amendments as well. This is a terrifying prospect; I hate taking part in Bill Committees, because it is so hard to navigate where the amendments are, but I feel more courage following my noble friend Lord Tyrie, with his practical suggestions, and my noble friend Lady Harding, with her overview and common-sense approach to these amendments. In effect, she said exactly what I want to say. Trying to amend different clauses to get the effect we want is a slightly artificial process. As we know, these amendments in Committee are, in effect, devices to get across the fundamental point.

Some kind words were used about potential SMS companies and the platforms, but we all know that what we are debating is an attempt to bring about equality in the arms race when it comes to levelling the playing field as far as competition is concerned. When my noble friend Lady Harding spoke to earlier amendments, she talked about companies being afraid to put their names to concerns. That really shone a spotlight on the situation that currently prevails, which is, in effect, a duopoly of two platforms that can decide whether start-ups and apps live or die—or, indeed, how much profit they potentially make.

I support the principle of these amendments. How one gets from A to B is potentially a very difficult route, but I hope that the Minister will say in his reply that he understands the mood of the Committee. Can we find a way to extricate ourselves from the current process whereby, understandably, the SMS company is presented with the case against it and goes off to answer it? To a certain extent, it is kept within a relatively closed circle, in a very legalistic way, when the accused is in the dock. Can one broaden that out to allow the challenger companies that may have prompted the investigation to know exactly what the CMA thinks are substantial points that it wants to take forward, which could potentially be points that they wish to take action on? That might also encourage other challenger companies that may not be aware of the investigation or, indeed, the details of the investigation to come through with their own material evidence.

5.30 pm

As my noble friend Lady Harding pointed out, at every stage of the investigation, the SMS companies will have an opportunity to respond, and the challenger companies will not have the same opportunity to put their case to the CMA. It is absolutely the case—and to a certain extent I may here be slightly parting company with my noble friend Lord Tyrie—that the SMS companies will not play ball with the CMA in any shape or form. One difficulty or risk in amending this Bill in any shape or form is the opportunity that it will give to litigate on definitions in the Bill, even before a case is potentially brought, which I gather is what is happening in Brussels already with the DMA. You can be sure as eggs is eggs that every dot and comma of this Bill, when it becomes an Act, will be litigated, and every dot and comma of any case brought by the CMA against an SMS company will be litigated.

I simply make the point to the Minister that, if the Government have the opportunity to think between Committee and Report how they might find a way to level the playing field and amend the legislation accordingly, it would be welcomed across all sides of the House.

Baroness Kidron (CB): My Lords, I do not actually have much to add to the excellent case that has already been made, but I, too, was at the meeting that the noble Baroness, Lady Jones of Whitchurch, mentioned, and noticed the CMA's existing relationships.

Quite a lot has been said already, on the first group and just now, about lobbying—not lobbying only in a nasty sense but perhaps about the development of relationships that are simply human. I want to make it very clear that those words do not apply to the CMA specifically—but I have worked with many regulators, both here and abroad, and it starts with a feeling that the regulated, not the regulator, holds the information. It goes on to a feeling that the regulated, not the regulator, has the profound understanding of the limits of what is possible. It then progresses to a working relationship in which the regulator, with its limited resources, starts to weigh up what it can win, rather than what it should demand. That results in communities that have actually won legal protections remaining unprotected. It is a sort of triangulation of purpose, in which the regulator's primary relationship ends up being geared towards government and industry, rather than towards the community that it is constituted to serve.

In that picture, I feel that the amendments in the name of the noble Baroness, Lady Jones of Whitchurch, make it clear, individually and collectively, that at every stage maximum transparency must be observed, and that the incumbents should be prevented from

holding all the cards—including by hiding information from the regulator or from other stakeholders who might benefit from it.

I suggest that the amendments do not solve the problem of lobbying or obfuscation, but they incentivise providing information and they give challengers a little bit more of a chance. I am sure we are going to say again and again in Committee that information is power. It is innovation power, political power and market power. I feel passionately that these are technical, housekeeping amendments rather than ones that require any change of government policy.

Lord Clement-Jones (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Kidron, whose speech segues straight into my Amendments 14 and 63. This is all about the asymmetry of information. On the one hand, the amendments from the noble Baroness, Lady Jones, which I strongly support and have signed, are about giving information to challengers, whereas my amendments are about extracting information from SMS undertakings.

Failure to respond to a request for information allows SMS players to benefit from the information asymmetry that exists in all technology markets. Frankly, incumbents know much more about how things work than the regulators. They can delay, obfuscate, claim compliance while not fully complying and so on. By contrast, if they cannot proceed unless they have supplied full information, their incentives are changed. They have an incentive to fully inform, if they get a benefit from doing so. That is why merger control works so well and quickly, as the merger is suspended pending provision of full information and competition authority oversight. We saw that with the Activision Blizzard case, where I was extremely supportive of what the CMA did—in many ways, it played a blinder, as was subsequently shown.

We on these Benches consider that a duty to fully inform is needed in the Bill, which is the reason for our Amendments 14 and 63. They insert a new clause in Chapter 2, which provides for a duty to disclose to the CMA

"a relevant digital activity that may give rise to actual or likely detrimental impact on competition in advance of such digital activity's implementation or effect"

and a related duty in Chapter 6 ensuring that that undertaking

"has an overriding duty to ensure that all information provided to the CMA is full, accurate and complete".

Under Amendment 14, any SMS undertaking wishing to rely on it must be required to both fully inform and pre-notify the CMA of any conduct that risks breaching one of the Bill's objectives in Clause 19. This is similar to the tried-and-tested pre-notification process for mergers and avoids the reality that the SMS player may otherwise simply implement changes and ignore the CMA's requests. A narrow pre-notification system such as this avoids the risks.

We fully support and have signed the amendments tabled by the noble Baroness, Lady Jones. As techUK says, one of the benefits that wider market participants see from the UK's pro-competition regime is that the CMA will initiate and design remedies based on the evidence it gathers from SMS firms in the wider market. This is one of the main advantages of the UK's pro-competition regime over the EU DMA. To achieve this, we need to make consultation rights equal for all parties. Under the Bill currently, firms with SMS status, as the noble Baroness, Lady Harding, said, will have far greater consultation rights than those that are detrimentally affected by their anti-competitive behaviour. As she and the noble Lord, Lord Vaizey, said, there are opportunities for SMS firms to comment at the outset but none for challenger firms, which can comment only at a later public consultation stage.

It is very important that there are clear consultation and evidence-gathering requirements for the CMA, which must ensure that it works fairly with SMS firms, challengers, smaller firms and consumers throughout the process, ensuring that the design of conduct requirements applies to SMS firms and pro-competition interventions consider evidence from all sides, allowing interventions to be targeted and capable of delivering effective outcomes. This kind of engagement will be vital to ensuring that the regime can meet its objectives.

We do not believe that addressing this risk requires removing the flexibility given by the Bill. Instead, we believe that it is essential that third parties are given a high degree of transparency and input on deliberation between the CMA and SMS firms. The CMA must also—and I think this touches on something referred to by the noble Baroness, Lady Jones—allow evidence to be submitted in confidence, as well as engage in wider public consultations where appropriate. We very strongly support the amendments.

On the amendments from the noble Lord, Lord Tyrie, it is a bit of a curate's egg. I support Amendments 12A and 12B because I can see the sense in them. I do not see that we need to have another way of marking the CMA's homework, however. I am a great believer that we need greater oversight, and we have amendments later in the Bill for proposals to increase parliamentary oversight of what the CMA is doing. However, marking the CMA's homework at that stage is only going to be an impediment. It will be for the benefit of the SMS undertakings and not necessarily for those who wish to challenge the power of those undertakings. I am only 50% with the noble Lord, rather than the whole hog.

Viscount Camrose (Con): I thank both noble Lords for speaking and for their thoughtful contributions. I will start by considering the amendments tabled by the noble Baroness, Lady Jones of Whitchurch, relating to information and transparency.

It is important to state from the outset that the Government agree it is vital that the Digital Markets Unit's decisions are transparent and that the right information is available publicly. Currently, the DMU would be required to publish the key information related to its investigations in the summaries of its decisions. The amendments in this group, beginning with Amendment 8 and ending with Amendment 58, tabled by the noble Baroness, would create a new requirement for the DMU to send decision notices to firms that it assesses to be the most affected by decisions.

We agree it is vital that the DMU's decisions are transparent, and the appropriate information is accessible publicly. That is why the DMU is required to consult

[Viscount Camrose]
publicly before it imposes obligations such as conduct requirements or pro-competition orders. This gives third parties the opportunity to make representations on the design of interventions. While the precise nature of the consultation process is at the DMU's discretion, we are aware of the imbalances in resources between different firms, as noble Lords have raised.

In its recently published overview, the CMA highlighted that engaging with a wide range of stakeholders will be a core principle of their approach. We therefore expect the DMU to put appropriate mechanisms in place for third parties to feed in. The consultation requirements are minimum requirements. As the CMA set out earlier this month, the DMU will undertake fair, inclusive and transparent engagement with third parties when designing its interventions. The participative approach will ensure that obligations are effective and appropriate, while minimising undue burdens and avoiding unintended consequences for both SMS firms and third parties.

However, requiring the DMU to identify appropriate third parties and send notices for each decision would introduce a significant burden on the DMU for minimal benefit. I think this will be a theme as we go through Committee: the burdens created by some of the proposed amendments are greater than they initially seem. For example, it could mean sending notices to potentially thousands of interested third parties in the case of app developers in the activity of app stores. Given this and the fact that the CMA will publish key information related to its decisions, we feel the burden would outweigh the benefit.

Amendment 14, tabled by the noble Lord, Lord Clement-Jones, would require SMS firms to inform the CMA before launching a digital activity that may give rise to competition issues. The Government agree that it is important that the CMA has access to information on potential competition issues in digital markets as they emerge. However, the CMA already has robust information-gathering powers under Part 1, supported by appropriate penalties for non-compliance. This amendment would create new burdens on the CMA, which could potentially be inundated with information. As a result, rather than focusing on priorities, the regulator would have to expend resources sifting the information provided. Further, it could introduce undue burdens on SMS firms looking to introduce innovative new products and services in areas that have healthy competition. It is important that obligations within the regime do not dissuade firms from developing innovations that are beneficial to consumers. I hope that sets out the position to the noble Lord.

5.45 pm

Lord Vaizey of Didcot (Con): I am interested in my noble friend's point about the idea that allowing challenger firms to put in evidence to the CMA would overwhelm it with too much information that it could not cope with. Two points spring to mind. First, when you bring a case against an SMS the workload is unbelievable anyway—it is enormous—and these cases go on for years, so it strikes me that additional information from challenger firms would not unduly add to the CMA's burden. Secondly, if my noble friend will forgive me, it seems a relatively casual phrase. I do not know whether there has been any analysis of the kind of information the CMA would expect to receive, but surely information that it received from challenger firms would simply allow it to present a much more robust case, rather than it being overwhelmed by paperwork.

Lord Clement-Jones (LD): My Lords, so that the Minister does not have to stand up a second time, I will just add the other side of the coin to the question from the noble Lord, Lord Vaizey. The Minister seems very concerned about the workload within an SMS, but they are an SMS for a reason.

Viscount Camrose (Con): I thank noble Lords for raising those points. My response to them both is that the key is that we are trying to set a balance between the workloads—the work that has to be performed by the regulator—and the benefit of that work for competition. We can certainly come up with examples. I shared the example of how many app developers there are and how many of them would have to exchange information with the regulator, but perhaps it would be more helpful to the Committee if I committed to giving a slightly deeper analysis of what the CMA estimates would be the time consumed on such activities and why we are concerned that it would have the potential to detract from the core basis of its mission.

Baroness Harding of Winscombe (Con): The challenger app developers are, in essence, the customers here, so I am quite worried that I think I am hearing that the regulator cannot cope with customer feedback, whereas that is probably the most important feedback in its process. We are looking for a way of enshrining that in the legislation that does not create some overwhelming burden. To say that customers will overwhelm the regulator with feedback is back to front: they are the people that the competition regulator should most want to hear from.

Viscount Camrose (Con): In that example, I would cast the app developers as participants in the ecosystem and the customers as the users of the app, but that is perhaps an ontological problem. Perhaps the most straightforward thing, to satisfy the Committee's concerns that we are not idly throwing out the possibility of an overworked regulator, would be to provide the Committee with a greater analysis of why we believe we have to be careful with what information we ask them to exchange with interested parties to avoid the situation in which the paperwork exceeds the value work.

Lord Clement-Jones (LD): My Lords, would the Minister also agree to add the whole question about the overworked SMS in his response?

Viscount Camrose (Con): Yes. The point is that we are very happy for these firms to keep delivering innovative new products in competitive markets; we are less happy about them spending their time frustrating the will of the regulator. It is more difficult for me to comment on SMS workloads but I am very happy to comment on the regulators' workloads.

Lord Clement-Jones (LD): My Lords, the foundation of the Minister's argument is SMS workload. The issue is exactly the point that the noble Baroness, Lady Kidron, made about information being power. The SMS companies will know what they are developing. They have huge teams of developers and marketeers, and they have huge amounts of information. This is a question of the CMA trying to keep abreast of what is happening in markets which are dominated by SMS companies, so it is important that there is a proactive duty on the SMS undertaking to give information to the CMA. Maybe the Minister could, as part of this letter, explain how many people there are whose job it is to gather information from the SMS companies—maybe that is the right way around—so we can judge whether it is right to require an SMS proactively to deliver information to the CMA.

Viscount Camrose (Con): Indeed. I am happy to include such analysis in my letter. However, I observe that were I to put myself in the SMS's shoes and I had a desire to frustrate the will of the regulator, my approach would be to provide far more information than was necessary and create a significant burden on the regulator to sift that information. Any such request or any such standing order about the information coming from the SMS to the regulator must itself be quite carefully balanced.

Lord Clement-Jones (LD): My Lords, all the SMS has to do is put it through one of its large language models, and hey presto.

Baroness Kidron (CB): I am losing track of the conversation because I thought we were asking for more information for the challenger companies. rather than this debate between the SMS and the regulator. Both of them are, I hope, well resourced, but the challenger companies have somehow been left out of this equation and I feel that we are trying to get them into the equation in an appropriate way.

Lord Clement-Jones (LD): That is not incompatible. These are two sides of the same coin, which is why they are in this group. I suppose we could have degrouped it.

Viscount Camrose (Con): Indeed, and I apologise for getting slightly sidetracked on the issue. I think the outcomes we want are that challenger tech firms should be duly informed about the information they need, whether to rebut claims set out by an SMS or to understand the implications and contribute to the process of determining what interventions the regulator should need to make. In the Bill, we are trying to develop the machinery that balances both sides of that equation most effectively, and I remain concerned that we need to manage the workload requirements of the regulator so that it is optimally focused on delivering the right outcomes based on the right information.

Baroness Jones of Whitchurch (Lab): My Lords, I thank all noble Lords who have spoken. We have had an excellent debate. I very much respect the experience of the noble Lord, Lord Tyrie, on this issue. I agree that there is a challenge for us in building trust in the new regime. It is a leap in the dark and, undoubtedly, we are giving the CMA/DMU considerable new powers, so it must prove its worth and prove that our faith in it is justified. I agree that there is a danger of getting that balance wrong. During the passage of the Bill, we will look at other ways of getting parliamentary and other oversight of its activities, to ensure that we get the balance in check.

I also agree that it is important that we maintain commercial confidentiality. This is an issue about sharing information, which we were just talking about. However much information is shared, we must ensure that those who are sharing it—sometimes it is very much core to their business model—respect it and do not put it in the public domain. All that must underpin our debate.

I agreed with the noble Lord, Lord Clement-Jones, that the proposals from the noble Lord, Lord Tyrie, were a curate's egg; I was not sure either about the independent case reviewer. I worry that it would be another loophole, or hurdle, that would allow the lawyers a field day. The noble Lord, Lord Tyrie, put it there with the very best intentions, and I am happy that we talk about it, but I am not sure about it. It worries me that we are being too prescriptive by setting it out in so much detail in the Bill, but let us get that right because there will, I hope, be other opportunities to debate this.

I thank the noble Baronesses, Lady Harding and Lady Kidron, and the noble Lord, Lord Vaizey, for their support on my amendments. The noble Baroness, Lady Harding, said it very well: the amendments illustrate the inequality of arms between the SMS and the challenger firm. There will be a wealth of evidence that the CMA needs to consider. That will be a whole lot of major anti-competitive practices, a lot of which it already knows about, but there will also be some of the more minor inconveniences that are put upon some of the challenger firms. We have met with a lot of the stakeholders; sometimes what is so annoying is the irritating, almost vindictive little actions, because you have the temerity to put your hand up and say that you do not agree with the major companies. We must ensure that we capture all of that in the round, and that it is not just the major known knowns that the CMA considers.

The noble Baroness, Lady Kidron, made the point very well: there is a danger that, based on what it knows, the CMA will make assumptions about what it can win, rather than getting under the skin of what is really going on and what is right for the consumer in all this. To get under the skin, the CMA will need a lot of information, so we must ensure that it gets the right information, at the right time, from the right people. The noble Baroness and the noble Lord, Lord Clement-Jones, made the point that, as it is set out at the moment, the incumbents have all the cards. We need transparency of information to rebalance the scales in all this.

I have listened carefully to the Minister's response. He said that the DMU is required to consult publicly before decisions are implemented, but that is probably too late to influence the outcome. By the time that it is consulting publicly, it has already made its mind up. I am not sure that that is the right point at which that

[Baroness Jones of Whitchurch]
major flow of new information needs to take place. The Minister argued that the burden of sending notices to thousands of parties, et cetera, would outweigh the benefit. That is exactly the information that it needs, and the noble Baroness, Lady Harding, made that point. If we have to bite that bullet, let us bite that bullet. If that is what it takes to rebalance the scales then we need to do that.

I fully admit that we might not have got the wording right to achieve that, but I think the principle is right and I am prepared to dig in on that principle. I hope we can have a further discussion on it. I think we know what we want to do. Nobody wants the SMS companies to flood the CMA with so much information that everybody drowns. We have to get it right so that it gets the right information. I do not think we have the balance right at this time, but let us talk about it some more. In the meantime, I beg leave to withdraw my amendment.

Amendment 8 withdrawn.

6 pm

Clause 11 agreed.

Clause 12: Closing an initial SMS investigation without a decision

Amendment 9 not moved.

Clause 12 agreed.

Clause 13 agreed.

Clause 14: Outcome of SMS investigations

Amendment 10 not moved.

Clause 14 agreed.

Clause 15: Notice requirements: decisions to designate

Amendments 11 and 12

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

11: Clause 15, page 8, line 12, at end insert—

"(A1) Where the CMA decides as a result of an initial SMS investigation not to designate the undertaking to which the investigation relates as having SMS in respect of a digital activity to which the investigation relates, the SMS decision notice must include the CMA's reasons for its decision."

Member's explanatory statement

This amendment provides that the CMA must give reasons when it decides not to designate an undertaking following an initial SMS investigation.

12: Clause 15, page 8, line 13, leave out "This section applies" and insert "Subsections (2) to (5) apply"

Member's explanatory statement

This amendment is consequential on my first amendment to Clause 15.

Amendments 11 and 12 agreed.

Amendments 12A to 13 not moved.

Clause 15, as amended, agreed.

Amendment 13A not moved.

Clauses 16 to 18 agreed.

Amendment 14 not moved.

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): Before I call Amendment 15, I should tell your Lordships that if Amendment 15 is agreed to, I cannot call Amendments 16 to 18 for reasons of pre-emption.

Clause 19: Power to impose conduct requirements

Amendment 15

Moved by ***Lord Holmes of Richmond***

15: Clause 19, page 11, line 1, leave out subsections (5) to (8)

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to take part in this first day of Committee on the Bill. As it is my first time speaking in Committee, I declare my technology interests as set out in the register, not least as an adviser to Boston Limited. In moving Amendment 15, I will also speak to Amendment 24, and I am very interested in the other amendments in this group.

Much of the discussions so far rest on the most important point of all when it comes to legislating. It reminds me of many of the discussions that we had in this very Room last year on the Financial Services and Markets Bill, as it was then, about accountability, the role of the Secretary of State and the role of the regulators. Much of this Bill as drafted, if not a pendulum, simultaneously swings significant powers to the regulator, and indeed to the Secretary of State. But the question that needs continually to come up in our deliberations in Committee and beyond is where Parliament is in this process. We hear every day how the physical building itself is crumbling, in need of desperate repair and in need of a decant, but, when it comes to this Bill, Parliament has already disappeared.

There is a massive need for accountability in many of the Bill's clauses. Clause 19 is just one example, which is why my Amendment 15 seeks to take out a chunk of it to help in this process. Later in Committee, we will hear other amendments on parliamentary accountability. It is not only essential but, as has already been mentioned, goes to the heart of a trend that is happening across legislation, in different spheres, where huge powers are being given to our economic regulators without the right level of accountability.

What we saw as one of the major outputs of FSMA 2023, as it now is, was a new parliamentary committee: the financial services and markets committee. In many ways, you can see this as a process that may happen repetitively, but positively so, across a number of areas if this approach to legislation is perpetuated across those areas when it comes to competition. I look forward to my noble friend the Minister's response to my Amendment 15 on that issue.

I move on to Amendment 24, which concerns a very different but critical area. It seeks to amend Clause 20, which makes brief mention of the accessibility of the information pertaining to these digital activities but is silent on the accessibility of the digital activities themselves. Does my noble friend the Minister agree

that we need more on the face of the Bill when it comes to accessibility? With more services—critical parts of our lives—moving on to these digital platforms, it is essential that they are accessible to all users.

I use the term "user" deliberately because, as we have heard in previous debates, there is a great need for clarity around this legislation. "User" is used—indeed, peppered—throughout the legislation. This is right in that "user" is a term of art that would be understood across the country; however, it does not appear in the title of the Bill, which is at least interesting. We must ensure that all users or consumers are able to access all these digital platforms and services fully. Let us take banking as an example. It is far more difficult to get face-to-face banking services and access to cash, so much more is moved online. However, if those services are not accessible, what use are they to people who have been physically excluded and are now being financially and digitally excluded in the digital space?

When it comes to sporting events, mention has been made of sport in our debates on earlier amendments. I think everyone in the Committee would agree that VAR has not demonstrated technology at its brightest and best in the sporting context. I wonder whether, if we completely turned referees into bots, there would be questions about the visual acuity of the bot on the decisions that it similarly made when it went against our team. If we are to have so many ticketing services for sporting, musical and cultural events available largely, if not exclusively, online—and if, at the front end of that process, there is the all-too-familiar CAPTCHA, which we must go through to prove that we are not yet a bot—what will happen if that is not accessible? We will not get tickets.

I put it to my noble friend the Minister that there needs to be more in Clause 20 and other parts of the Bill around the accessibility of those digital services, activities and platforms. If we could fully embrace the concept of "inclusive by design", this would evaporate as an issue. I beg to move.

Lord Clement-Jones (LD): My Lords, this is quite a group of amendments. Clearly, it will take a bit of time to work our way through all of them. It is a pleasure to follow the noble Lord, Lord Holmes, who is so knowledgeable about digital aspects—I thought that he would slip stuff about the digital aspects of sport into his introduction.

I am in curate's egg country, as far as the two amendments in the name of the noble Lord are concerned. I am not quite sure about Amendment 15, but I look forward to the Minister's response. I think Amendment 24 is absolutely spot on and really important. I hope that the noble Lord succeeds in putting it into the Bill, eventually.

I will start by speaking to Amendments 21, 28 and 55 on interoperability, Amendment 30 on copyright and Amendment 20 in the name of the noble Lord, Lord Lansley. I will refer to Amendment 32 in the name of the noble Viscount, Lord Colville, but I will not speak on it for too long, because I do not want to steal his thunder. If possible, I will also speak to the amendments in the names of the noble Baroness, Lady Jones, and the noble Lord, Lord Vaizey, on leveraging. They are crucial if the Bill is to be truly effective.

Interoperability is the means by which websites interoperate, as part of the fundamental web architecture. Current problems arise when SMS players make browser changers and interfere with open web data, such as header bidding, which is used for interoperability among websites. Quality of service and experience can be misused for the benefit of the platforms; they can degrade the interoperability of different systems or make video or audio quality either higher or lower for the benefit of their own apps and products.

At Second Reading, my noble friend Lord Fox reminded us that Professor Furman, in evidence in Committee in the Commons, said that intervention on interoperability is a vital remedy. My noble friend went on to say that interfering with interoperability in all its forms should be policed by the CMA, which should be

"proactive with respect to promoting international standards and aiming to create that interoperability: for a start, by focusing on open access and operational transparency, working for standards that allow unrestricted participation and favouring the technologies and protocols that prevent a single person or group amending or reversing transactions executed and recorded".—[*Official Report*, 5/12/23; col. 1396.]

At my noble friend's request, the Minister, the noble Viscount, Lord Camrose, followed up with a letter on the subject on 7 December. He said:

"Standards are crucial to building the UK's economic prosperity, safeguarding the UK's national security, and protecting the UK's norms and values. The Government strongly supports a multi-stakeholder approach to the development of technical standards, and it will be important that the CMA engages with this process where appropriate. The UK's Plan for Digital Regulation, published in 2021, confirms the importance of considering standards as a complement or alternative to traditional regulation".

It is good to see the Minister's approach, but it is clear that there should be a stronger and more explicit reference to the promotion of interoperability in digital markets. The Bill introduces an interoperability requirement under Clause 20(3)(e) but, as it stands, this is very vague. Interoperability should be defined and the purpose of the requirement should be outlined; namely, to promote competition and innovation, so that content creators can provide their services across the world without interference and avoid platform dependency.

I move to Amendment 30. Breach of copyright online is a widespread problem. The noble Baroness, Lady Kidron, referred to the whole IP issue, which is increasing in the digital world, but the current conduct requirements are not wide enough. There should be a simple obligation on those using others' copyright to request the use of that material. As the NMA says, the opacity of large language models is a major stumbling block when it comes to enforcing rights and ensuring consumer safety. AI developers should be compelled to make information about systems more readily available and accessible. Generative outputs should include clear and prominent attributions, which flag the original sources of the output. This is notable in the EU's proposed AI Act.

This would allow citizens to understand whether the outputs are based on reliable information, apart from anything else.

If publishers are not fairly compensated for the use of the content by generative AI systems in particular—I look towards the noble Lord, Lord Black, at this

[Lord Clement-Jones]
point—and lose audiences to them, it will harm publisher sustainability and see less money invested in quality journalism. In turn, less trusted content will be available to train and update AI systems, harming innovation and increasing the chance that these systems produce unreliable results.

6.15 pm

The NMA has pointed out that this represents an immediate threat to our democracy, and I agree. News media publishers such as the *Guardian* have found that ChatGPT has fabricated articles purporting to be published by trusted journalists. Experts have warned that this year's UK general election—unless we go for the full marathon to 2025—could be susceptible to manipulation by personalised disinformation produced on an industrial scale. We all know how many elections are taking place across the world; I think there will be some 2 billion people voting this year.

Proof of infringement is hard, as the evidence of what has happened is either held by the infringer or transitory, or both. Making those who want to use copyright ask permission first makes enforcement simpler; if no request has been made for use, it would be a first step in establishing breach, if only of the obligation to ask permission. This would protect UK SMEs of many types; copyright is vital for technology and software developers, publishers, media and multimedia content suppliers. It would be very odd for the UK not to act to help protect copyright law, which is the basis and future of the digital economy. On that basis, too, I very much support and have signed Amendment 20 from the noble Lord, Lord Lansley, which imposes an interoperability requirement, which he will speak to later.

I strongly support Amendment 32 from the noble Viscount, Lord Colville, but I will not speak to that; I look forward to hearing what he has to say. I also very much support the noble Baroness, Lady Jones, and the noble Lord, Lord Vaizey, in their amendments; I will not go into great detail, but the leveraging principle is a really important aspect of the Bill. It is critical to the success of the pro-competition regime; without it, the CMA could find itself unable to address harmful conduct, because it technically occurs outside the SMS designated activity, even if it is closely related to the SMS firm's activity. I very much look forward to their introduction to their amendments.

Finally, regarding Amendment 19 in my name, transparency will be essential if this legislation is to fulfil the goals set out by the Bill. As it stands, it is not clear whether and how far relevant data will be shared with the regulator, third parties and the public. Shrouding all commercial agreements struck under the shadow of the new regulatory framework in secrecy will leave small, resource-strapped independent publishers at a disadvantage compared with their large, corporate counterparts.

We have heard about the asymmetry potentially within this Bill if we do not get the information sharing right. This would create yet another competitive imbalance in the legislation that is designed to remedy an anti-competitive market. The provisions in this legislation must be available to the smallest player in the market as well as the largest. Amendment 19 would not compromise confidentiality of individual transactions or reveal identifying information about any SMS firms or third parties, because of the requirement that the CMA anonymise and aggregate any data it publishes. The amendment would also allow policymakers, academics, civil society and journalists to monitor the effectiveness of the new regime.

Lord Lansley (Con): My Lords, this is a substantial group of amendments. I have two amendments in the group to which I wish to speak: Amendments 20 and 29. I am grateful to the noble Lord, Lord Clement-Jones, for signing them. I will also discuss a number of other amendments later.

We are dealing with the structure of Clauses 19 and 20. Clause 19 has a set of objectives that conduct requirements are intended to achieve. My noble friend Lord Holmes of Richmond's Amendment 15 effectively asks us to examine what the purpose of the objectives are. It is quite an interesting question. The objectives are not translated directly into the conduct requirements; the conduct requirements are intended to achieve the objectives. Setting out the broad range of objectives might be regarded as a way of enabling the Competition and Markets Authority to have a broader scope when setting its conduct requirements. Equally, there is a risk that if the scope of the conduct requirements is not specified in Clause 20 and they rely on Clause 19 and the broad-ranging objectives, they will be opened up to challenge as to the meaning of them. We need to be careful.

I come at this from the standpoint that the Digital Markets Act in the European Union does not set objectives in quite that way. It sets not broad objectives but a large number of detailed obligations on what it calls gatekeepers—effectively the same as our designated undertakings for these purposes. We are going down the different route of setting broad objectives and a broader description of conduct requirements. The Competition and Markets Authority will then go on to specify in detail what those conduct requirements look like in relation to any particular designated undertaking to achieve the objectives. That is a better way of doing things.

My two amendments—I will comment on one or two other amendments to the same effect—are asking whether Clause 20 gives the Competition and Markets Authority the necessary scope of powers to achieve what it wants to achieve by setting conduct requirements. Clause 20 is divided into two parts: the things that are positively required to be done by designated undertakings and the things that designated undertakings should be prevented doing. It is important to have those two bits in mind.

I have to confess that I have used the mechanism of looking at our own legislation through the scope of other legislation before, and Amendment 20 to Clause 20 is no different. I looked at the Digital Markets Act and it sets out a lot of detailed obligations. I then asked myself: to what extent do I feel comfortable that what is in Clause 20 gives the CMA the power to do this thing if it wishes to do it?

People are not likely to argue about the fact that data itself is central to this process. When it sets obligations for gatekeepers, Article 5 of the Digital Markets Act starts with a set of obligations related to the ways in which the personal data of users of services can be taken and used. Article 6 talks about the circumstances in which data may be portable and the portability of data between and among gatekeepers and users. Article 6(11) sets out the circumstances under which gatekeepers may or may not access third-party data provided to them as a consequence of users of their undertakings. Article 7 consists entirely of obligations on gatekeepers in relation to the interoperability of number-independent interpersonal communication services.

These are all detailed obligations relating to data access. Whose data can they access and how can they use it? How can they port data between different users and themselves? They are also about the interoperability between and among the users of their services.

I have looked at Clause 20, and the noble Lord, Lord Clement-Jones, was right: there is a provision which restricts interoperability. It is in that bit which prevents undertakings doing things that they should not do. It says that they should not restrict interoperability, but there is no corresponding positive conduct requirement which says that they should be promoting interoperability. This is where the noble Lord and I are coming from, in relation to our Amendments 20 and 21, if I remember correctly.

The point is to secure data access, interoperability and data portability. My amendment is designed to put into that first, positive set of conduct requirements that those should all be things where the CMA has the ability to make what are, effectively, positive conduct requirements upon undertakings to ensure that they enable the market to function more competitively and more efficiently. That is Amendment 20.

Why do I not rely in Amendment 20 or Amendment 21 on the other reference to data, which is in Clause 20(3)(g)? That provision means that requirements may be

"for the purpose of preventing a designated undertaking from … using data unfairly".

This is very dangerous. We have reached the point where data is a central issue, yet Clause 20 hardly specifies the various ways in which data should be at the core of these conduct requirements. The only reference that we are really relying on for many of these issues is that it should not be used "unfairly". That is not enough. I am not taking that out, but let us leave in "using data unfairly" and add to it.

Where we add to it is not least in Amendment 29, which, after saying that they should not use data unfairly, would insert

"or using data that is not publicly available which is generated or provided by users of the relevant digital activity in the context of their use of the relevant digital activity".

I use that language because it is a shorter version of what is in Article 6.2 of the EU regulations, which says that a gatekeeper should not use

"in competition with business users, any data that is not publicly available that is generated or provided by those business users in the context of their use of the relevant core platform services".

It seemed to me that there was a particular extension of this question of the unfair use of data, which is where they take data from their platform users and use it for themselves. That is what we are trying to restrict and, broadly speaking, what the Digital Markets Act tries to restrict. These two amendments, from my point of view, are about putting data firmly into the conduct requirements, specifying how data is important and where positive requirements may be put, and being specific about the unfair use of data, when data that other users put on the platform is taken for their own use.

On other amendments, briefly, Amendments 22 and 32 would give the CMA the power to vary the scope of conduct requirements in future, rather than relying on the Secretary of State to do so—but of course with parliamentary approval. There is an argument which says, "At least we have an opportunity to examine any change in the scope of conduct requirements if we leave that in", so I am afraid I do not support that.

The noble Lord, Lord Clement-Jones, made an interesting set of points about copyright. That is very important and it is quite hard to see where it lies in here, unless it were under trade on fair and reasonable terms. However, it will require the CMA to look and ask, "Do fair and reasonable terms lead us to set conduct requirements for designated undertakings relating to, for example, copyright terms?". It might perhaps be worth us exploring whether it should.

There are one or two other things. I support Amendment 34, which raises a valuable question about taking account of the impact of conduct requirements before making pro-competitive interventions. Otherwise, I just make the general point that I hope, through Amendments 20 and 29, we might put the importance of data firmly into the structure of conduct requirements for designated undertakings.

6.30 pm

Viscount Colville of Culross (CB): My Lords, I tabled Amendment 32 in my name, and I thank the noble Baroness, Lady Jones, and the noble Lord, Lord Clement-Jones, for adding their names. I also thank the organisations that helped me work on these amendments. Amendment 32 to Clause 20 would stop the Secretary of State from revising the criteria for the conduct requirement process. These criteria are already very broad, but subsections (4) and (5) give the Minister huge scope to alter the types of behaviour expected from the SMS as part of the CR process.

Amendment 22, in my name and that of the noble Lord, Lord Clement-Jones, aims to respond to government concerns about removing Clause 20(4) and (5), which are that it will prevent the Minister future-proofing the CR criteria by allowing the CMA leeway to alter criteria in Clause 19, which will open the way for the imposition of conduct requirements.

I also support attempts to encourage interoperability between user and digital activity in any way possible, so I support Amendment 20, in the name of the noble Lord, Lord Lansley, and Amendment 21, in the name of the noble Lord, Lord Clement-Jones.

On my Amendment 32 in Clause 20, the conduct requirements for the process will be hard-fought by the tech companies. The collaborative nature of the

[Viscount Colville of Culross]
Bill will mean that the SMS will be very involved in setting up the regime, but it will also be following every possible avenue to ensure that the requirements are not burdensome to its businesses. However, subsection (4) gives the Secretary of State broad and unlimited time to be subject to lobbying and to change the nature of the contact requirements.

I have already given an example in my speech on Amendment 7 to show the lengths to which tech companies will go to affect the decisions of politicians in establishing an SMS designation. This amendment will have a similar effect of thwarting their attempts to interfere in the CR process. Over the last decade, a number of cases have been brought against the big tech companies by the EU anti-competitive regimes. As part of that process to rectify the anti-competitive behaviour, the regulators have laid out behaviour for the companies under investigation. These are sets of rules aimed to force the companies to change their conduct and reduce their dominance in the market.

The process is very complicated, and small tweaks can make the difference between success and failure of the rules and their ability to control anti-competitive behaviour. Implementation takes time. Consultation on the rules between the DMU, the SMS and other stakeholders can mean it takes up to six months to put into action, then it takes another several months before the market study on how the new conduct regime criteria are working can be assessed. In the meantime, the SMS continues to make huge profits, while the smaller competitors continue to suffer the loss of market activity.

My concern about the clause is that, even if the CMA comes across a new type of harm and can see clearly what remedy would apply, it cannot create its own remedy under the clause. This is most unusual for a regulatory body. Usually, the breach of law is investigated, and the remedy tailored by that body to proportionately fit the harm identified. The regulator is usually granted the power to craft the remedy itself.

The Government are keen to build a system which is speedy and effective, and so there is the list of tools that can be used as remedies in Clause 20, which is useful, but, instead of a speedy, sensible mechanism which would be in the hands of the expert regulator of digital markets, an additional step has been put in place. That additional step—going back to the Secretary of State to create regulations—is a slower and more complicated way to craft this remedy. The DMU must be left to use its professional expertise to set these rules.

At a later stage, we will be talking about the suggestion of the noble Baroness, Lady Stowell, to have some parliamentary committee involvement. I wonder why on earth we cannot have parliamentary committee involvement when looking at these particular Secretary of State powers and the way that the DMU would use them.

To deal with the concerns that the Minister might have about the lack of future-proofing, I also tabled Amendment 22. Its aim is to respond to claims by the Government that the removal of Secretary of State powers in Clause 20 will stop the future-proofing. Noble Lords know that, in the fast-changing digital world, even the most comprehensive list of criteria might not include all possible eventualities; my amendment deals with those concerns. It stems from the powers of the CMA to look at the objectives of the conduct requirements in Clause 19(5), which are comprehensive: they cover "fair dealing", "open choices" and "trust and transparency". Only conduct requirements of the permitted type in Clause 19(5) can be imposed under Clause 20 on the CR regime.

Clause 20 is currently a permitted list for the regime; in future, the CMA may want to change the criteria needed to achieve the objectives of Clause 19(5) as markets inevitably change. I suggest to noble Lords that Amendment 22 will achieve that. I have argued that the fear of the Secretary of State succumbing to the lobbying powers of the big tech companies is something to worry about. This small amendment will solve that problem and give flexibility to the CR process, without the danger of political interference.

Baroness Stowell of Beeston (Con): My Lords, as this is the first time I have spoken in Committee, I declare that I chair the Communications and Digital Select Committee—but I am speaking in a personal capacity. This is quite an eclectic group of topics; it makes me wonder what will be in the group labelled "miscellaneous".

I will talk about the leveraging principle, but before doing so, I acknowledge what has already been said about parliamentary accountability and the fact that I have an amendment in a later group. To pick up a point that the noble Viscount, Lord Colville, just made about his amendment to Clause 20, if we were to have a new Select Committee, there is no reason why, in the course of its business, it would not look at regulations being brought forward. I would expect there to be that sort of role for a Select Committee, but it would not replace the role of the Secretary of State in this context. We will come back to that when we get to the specific amendment.

The amendment on copyright is very interesting to me, not least because the Communications and Digital Committee is currently carrying out an inquiry on large language models. We are in the final stages of that inquiry and will publish our report very soon. We will have, I hope, some interesting things to say about copyright at that time.

I turn to my point on the leveraging principle; in particular, I will pick up on Amendments 26 and 27 in the name of the noble Baroness, Lady Jones. When the Communications and Digital Committee carried out our scrutiny of the Bill and held hearings in the summer, we looked at the leveraging principle and concluded that what was in the Bill was adequate; we did not propose any further changes being necessary. Noble Lords may remember that, at Second Reading, I raised concerns about how the Government had diluted various bits of the Bill that we, as a committee, had said, "Do not do that". As I understand it, they have not diluted the leveraging principle. However, I am a great believer in judging people by their actions rather than by what they say. Over the last few weeks, I have been very interested in the various representations that have been made to me and others from the

different challenger firms and industry bodies in this area. I see and am sympathetic to their concerns on this topic.

Only today, I was interested to read the Bloomberg daily newsletter on tech matters, which refers to the recent case in the US in which Apple has been forced to make some changes to its 30% fee policy. It has already started introducing things that make that almost meaningless to those who might benefit from it. The newsletter explains what people have to do to use a different payment system from Apple's and avoid the 30% fee. It says:

"In order for developers to include a website link in their apps to an outside payment system, they'll first need to submit a request form to Apple. If approved, the link can only be displayed once within the app. It must look like a text URL—meaning it can't be a candy-colored button that says 'Use PayPal'—and the text itself must match one of seven templates".

It continues:

"When clicked, the link will surface a warning from Apple about the risks of transacting with third-party websites, with 'continue' or 'cancel' buttons. The website has to open in the device browser, rather than from a pop-up within the app, where, depending on the type of service, a user can sign in or register for a new account";

in other words, you will not bother by the time you have got through all that.

That was a long-winded way to say that I am minded to support what the noble Baroness, Lady Jones, is seeking to do with the leveraging principle here. A safeguard is necessary, but, as I said at the beginning, I am speaking in my own personal capacity.

Lord Vaizey of Didcot (Con): My Lords, I will slip in here quickly, since I have Amendment 25 in this group. I follow my noble friend Lady Stowell in supporting tightening up the leveraging principle as much as possible. We would have a lot more fun in this Committee if we stopped referring to the leveraging principle and started referring to the whack-a-mole principle, which is the same thing. From now on, that is what I will do.

As my noble friend said, it is absolutely critical to the success of the pro-competition regime. We all know how it works and may have used it in our own commercial lives. After years of litigation, you concede a point to the competition authority and reduce the headline prices you are charging for the app to appear on your platform, and then you slip in a new way of charging, as was so ably set out by my noble friend Lady Stowell. You find a different way to charge in order to generate exactly the same revenue.

I tabled Amendment 25 simply to strengthen the anti-whack-a-mole conduct requirement so that designated undertakings cannot shift their anti-competitive behaviour to non-designated activities, even if their ability to do so is directly linked to their strategic market status in a designated activity. Without this change, there is a danger in the current drafting of the CMA having to constantly designate new activities and play catch-up with the SMSs—or it may not be able to combat anti-competitive behaviour in any way at all.

The key point here is that Clause 20 allows the CMA to intervene only when an SMS firm's conduct

"is likely to materially increase the undertaking's market power".

It is too narrow, and it gives these SMS firms broad opportunities to avoid compliance. For example, if Apple News was not designated, as things currently stand, Apple could impose unfair terms on news publishers via contracts, circumventing the terms where it holds the market power, where the action has been taken which would be in the App Store. To appear in Apple News, you would go one step behind, in terms of the contracts with the news publishers, and therefore avoid any remedy.

My amendment seeks simply to close potential loopholes. As I said, my noble friend Lady Stowell has ably set out what the whack-a-mole principle is all about: generating exactly the same revenues but being very creative in how you do so as you play this game with the competition regulator.

6.45 pm

Lord Black of Brentwood (Con): My Lords, I support Amendment 25; but for the glitch that others have experienced, I would have put my name to it. I shall also speak to Amendments 26 and 27. As this is the first time I have spoken in Committee, I must declare my interest as deputy chairman of the Telegraph Media Group and note my other interests.

In short order, the noble Lord, Lord Clement-Jones, got it right: in many ways, these anti-leveraging provisions, the whack-a-mole provisions, go to the heart of the Bill, because if we do not get this right then it will fail. As my noble friend Lord Vaizey said, at the moment Clause 20 is far too narrow and will give the SMS firms remarkable opportunities to avoid any form of compliance. In fact, it runs a coach and horses through the Bill, which is why we need to rectify it. The example of Apple that he gave could be replicated across all sorts of SMS platforms, which is why we absolutely need to close the loophole. My noble friend's amendment is probably the cleanest and easiest way to do that, but I would also support Amendments 26 and 27, tabled by the noble Baroness, Lady Jones, which would effectively address the same concerns. I look forward to hearing from the Minister on these points, which are crucial to the future of the Bill.

Lord Vaizey of Didcot (Con): On a point of order, I am incredibly embarrassed that I fail to declare my interests each time I speak because I am so nervous in this Committee. I declare my interests, particularly as a presenter of Times Radio, which links me to News UK, and as an adviser to a mobile games company, Pixel United.

Baroness Harding of Winscombe (Con): My Lords, I shall also discuss the leveraging or whack-a-mole provisions. Perhaps Conservative Peers today are London buses: this is the fourth London bus to make the same point. I too would have added my name to my noble friend Lord Vaizey's amendment had I been organised enough.

I shall make a couple of points. The noble Lord, Lord Tyrie, said earlier that we are all here on the Bill because harm has already been done. If noble Lords will forgive me, I will tell a little story. In 2012, I went on a customer trip to Mountain View, Google's headquarters in California, as the chief executive of TalkTalk. We were in the early days of digital advertising

[Baroness Harding of Winscombe]
and TalkTalk was one of its biggest customers. A whole group of customers went on what people now call a digital safari to visit California and see these tech companies in action.

I will never forget that the sales director left us for a bit for a demo from some engineers from head office in Mountain View, from Google, who demoed a new functionality they were working on to enable you to easily access price comparisons for flights. It was an interesting demo because some of the other big customers of Google search at the time were independent flight search websites, whose chief executives had been flown out by Google to see all the new innovation. The blood drained from their faces as this very well-meaning engineer described and demoed the new functionality and explained how, because Google controlled the page, it would be able to promote its flight search functionality to the top of the page and demote the companies represented in the room. When the sales director returned, it was, shall we say, quite interesting,

I tell that tale because there are many examples of these platforms leveraging the power of their platform to enter adjacent markets. As my noble friend has said, that gets to the core of the Bill and how important it is that the CMA is able to impose conduct requirements without needing to go through the whole SMS designation process all over again.

I know that the tech firms' counterargument to this is that it is important that they have the freedom to innovate, and that for a number of them this would somehow create "a regulatory requirement to seek permission to innovate". I want to counter that: we want all companies in this space to have the freedom to innovate, but they should not have the freedom to prioritise their innovation on their monopoly platform over other people's innovation. That is why we have to get a definition of the leveraging principle, or the whack-a-mole principle, right. As with almost all the amendments we have discussed today, I am not particularly wedded to the specific wording, but I do not think that the Bill as it is currently drafted captures this clearly enough, and Amendments 25, 26, and 27 get us much closer to where we need to be.

I, too, add my voice in support my noble friend Lord Lansley's amendments. I must apologise for not having studied them properly in advance of today, but my noble friend introduced them so eloquently that it is very clear that we need to put data clearly in the Bill.

Finally, as a member of my noble friend's Communications and Digital Committee, I, too, listened very carefully to the comments made by the noble Lord, Lord Clement-Jones, about copyright. I feel this is a very big issue. Whether this is the right place to address it, I do not know, but I am sure he is right that we need to address it somehow.

Baroness Kidron (CB): My Lords, I am sorry to break the Conservative bus pattern but I, too, will speak to Amendments 26 and 27, to which I have added my name, and to Amendment 30. Before I do, I was very taken by the amendments spoken to by the noble Lord, Lord Lansley, and I support them. I feel somewhat sheepish that I had not seen the relationship between data and the Bill, having spent most of the past few months with my head in the data Bill. That connection is hugely important, and I am very grateful to the noble Lord for making such a clear case. In supporting Amendments 26 and 27, I recognise the value of Amendment 25, tabled by the noble Lord, Lord Vaizey, and put on record my support for the noble Lord, Lord Holmes, on Amendment 24. So much has been said that we have managed to change the name of the leveraging principle to the whack-a-mole principle and everything that has been said has been said very well.

The only point I want to make on these two amendments, apart from to echo the profound importance that other noble Lords have already spoken of, is that the ingenuity of the sector has always struck me as being equally divided between its incredible creativity in creating new products and things for us to do and services that it can provide, and an equal ingenuity in avoiding regulation of all kinds in all parts of the world. Without having not only the designated activity but the activities the sector controls that are adjacent to the activity, we do not have the core purpose of the Bill. At one point I thought it might help the Minister to see that the argument he made in relation to Clause 6(2) and (3), which was in defence of some flexibility for the Secretary of State, might equally be made on behalf of the regulator in this case.

Turning briefly to Amendment 30 in the name of the noble Lord, Lord Clement-Jones, I first have to make a slightly unusual declaration in that my husband was one of the Hollywood writers who went on strike and won a historic settlement to be a human being in charge of their AI rather than at the behest of the AI. Not only in the creative industries but in academia, I have seen first-hand the impact of scraping information. Not only is the life's work of an academic taken without permission, but then regurgitating it as an inaccurate mere guess undermines the very purpose of academic distinctions. There is clearly a copyright issue that requires an ability both to opt out and correct, and to share in the upside, as the noble Lord pointed out.

I suggest that the LLMs and general AI firms have taken the axiom "it's better to ask forgiveness than permission" to unbelievable new heights. Our role during the passage of this Bill may be to turn that around and say that it is better to ask permission than forgiveness.

Baroness Jones of Whitchurch (Lab): My Lords, we have had a wonderfully eclectic debate. I am sorry if we gave some of the amendments more attention than others, because we have a number of very important issues here. Even in my response I may not be giving some colleagues due deference for their hard work and the good arguments they have put forward.

As noble Lords have commented, Amendments 26, 27 and 34 are in my name. As we have discussed, Amendments 26 and 27 would ensure that the CMA can tackle anti-competitive conduct in non-designated activity, provided that this conduct is related to designated activity. This would ensure, for example, that a designated company facing conduct requirements could not simply shift the resources of its business into another similar business venture, which would have a similar outcome of anti-competitive behaviour.

I am very grateful to the noble Baroness, Lady Stowell, for her support. The example she gave of Apple resonates with all of us and has obviously been in the news. It was one of the behaviours I described as rather vindictive in the last debate. I am not sure how much extra money Apple is going to make from it, but it is a question of rubbing someone's nose in it because you do not like the decision that has been made. I feel that we need to address this issue.

The noble Lord, Lord Vaizey, in his Amendment 25, made a very similar point about the leveraging principle. We have all signed up to "the whack-a-mole principle"; I think we will call it that from now on. As the noble Baroness, Lady Harding, made clear, this is about addressing the leveraging of SMS markets to enter adjoining markets. She gave the example of travel price comparison. I feel that is a lazy innovation; if you get so big, you stop innovating—you copy the competing firms and taking their best ideas without innovating any more. It is in all our interests to get a grip on this, so that these companies that have great resources and great capacity for innovation innovate in a creative way rather than just copying other people's ideas.

Amendment 34, which is also in our names, would enable the CMA to keep conduct requirements under review and take account of whether those requirements are having their intended effects or if further steps of pro-competition intervention is necessary. It would provide a clearer link between the measures available to the CMA. As the noble Lord, Lord Clement-Jones, and others have said, it underpins the importance of interoperability in CMA decisions. We believe that the amendments help to clarify and reinforce the powers available to the CMA.

I listened carefully to the noble Lord, Lord Holmes, who, as ever, provided enormous insight into the tech world and the consequences of the legislation. We share his objective of getting the powers of the CMA in the right balance. His amendment challenges the Government to explain why the CMA can only impose a conduct requirement to achieve the fair dealing, open choice or trust and transparency objectives—which seems to be overly restrictive and open to legal challenge. We look forward to hearing the Minister's explanation of why those restrictions were felt necessary. The noble Lord, Lord Holmes, also raised an important point in his Amendment 24, which we have not given sufficient weight to, about the need for those conduct requirements to deliver proper accessibility in line with previous legislation. We absolutely support him in that quest.

The amendments from the noble Lords, Lord Clement-Jones and Lord Lansley, raise important points about transparency and improved data. They stress the importance of portability and interoperability and put data firmly into the conduct requirements. We support those arguments and look forward to the Minister's response to what we feel are common-sense proposals.

7 pm

Amendment 30 from the noble Lord, Lord Clement-Jones, raises the issue of copyright material. He is tugging at all our hearts on this crucial issue. We know all the arguments about it. Is this the right amendment in the right place? I do not know, but if we can all get behind a similar amendment that begins to take on that issue, we would all be on the same page with him. I hope that, before the Bill leaves this House, we can agree a form of words that will deliver that long-overdue copyright protection that we all seek.

Finally, I have added my name to Amendment 32 in the name of the noble Viscount, Lord Colville, which is similar in intent to previous amendments we have debated about the right of the Secretary of State to modify the permitted types of conduct requirement that the CMA can lay down. I share his suspicion that these Henry VIII powers risk not being used for any benign purpose but instead to weaken the legislation in the face of concerted lobbying by those who have most to lose.

We look forward to the Minister's response and hope we will hear from him that he has some sympathy with the points that have been raised today and that we can work with him to improve the Bill on these issues.

Viscount Camrose (Con): I start by thanking all noble Lords who spoke so compellingly. It was a great pleasure to listen. I must say my head is slightly spinning, it is such an eclectic group of amendments, but I will do my best to respond properly to all the points raised.

I start with the discussion on the imposition and use of conduct requirements by the regulator. I thank my noble friend Lord Holmes of Richmond for tabling Amendment 15, which would remove the conduct requirement objectives—fair dealing, open choices and trust and transparency—and instead allow the CMA to impose conduct requirements for any purpose, so long as they fall within the list of permitted types. I intend to cover only the impacts of this amendment on the conduct requirement objectives, not its impacts on the proportionality requirement, as we shall be turning to that in detail later. Both the objectives and the permitted types of conduct requirement reflect extensive and expert evidence and analysis on types of harms in digital markets. These have been set out in legislation to provide clarity up front about the types of rules that designated firms could be subject to. It is right that the powers given to the CMA have clear and defined limits, and the objectives provide an appropriate framework for them to operate within. The Government feel that this clarity of objective is essential to the success of the regime, ensuring that it remains targeted and proportionate.

Amendment 19, tabled by the noble Lord, Lord Clement-Jones, would allow the CMA to gather and publish information relating to commercial deals. I sympathise with the sentiment behind his amendment and believe this regime will provide a crucial means to address the imbalance that exists between the most powerful tech firms and other parties. The CMA will already, as part of investigatory requirements, conduct requirements and the final offer mechanism process, be able to gather relevant information about payment terms and deals, and require SMS firms to share information with third parties. The CMA will also, where appropriate, be able to publish aggregated and

[Viscount Camrose]
anonymised information. As such, we do not believe that this amendment provides the CMA with any necessary additional powers.

Amendment 30 proposes that conduct requirements on unfair use of data be amended to allow the CMA to also prevent SMS firms using copyright material without permission. I absolutely agree, needless to say, with the sentiment that properly functioning, competitive markets that respect intellectual property rights have a vital role to play in stimulating growth and encouraging innovation.

I assure the noble Lord, Lord Clement-Jones, that the CMA is well equipped to address competition issues in a range of contexts, including where these issues intersect with intellectual property rights. When making interventions, the CMA will consider a range of factors, which can include the fairness of terms in issues related to copyright, where they are relevant, on a case-by-case basis. Existing permitted types of conduct requirements already allow the CMA to set requirements for unfair and unreasonable terms, which can include payment terms.

Lord Clement-Jones (LD): I am sorry to interrupt the Minister but that is very general. We have heard around the Room that people are really concerned. As we go forward, so many areas of intellectual property—the ingestion of copyright material, the issues with synthesisation of performances—are being affected by artificial intelligence. The kind of language the Minister is using sounds far too generic. It needs to be much more focused if we are to be convinced that the CMA really has a role in all of this. He is the Minister for both AI and IP, so he is right at the apex of this issue; maybe he is right on the point of the whole thing. He has the ability in his ministerial role to start trying to resolve some of these issues. We have the IPO coming up with a code of conduct—

Lord Vaizey of Didcot (Con): We have a vote soon.

Lord Clement-Jones (LD): This is a long intervention, I agree. I would just ask the Minister to focus on the fact that this is not just any old fairness of terms but something that should be explicitly stated in the Bill.

Viscount Camrose (Con): There is a much broader set of work looking at issues of copyright, intellectual property and artificial intelligence together—a hugely complex piece of work with many stakeholders pulling in a range of different directions. The goal of this Bill is to address that in so far as it affects competitive markets. We may debate this, but the design of the Bill is such that, in so far as competition is affected by the misuse of intellectual property or intellectual property infringements, the CMA is empowered to intervene to drive greater competition or address issues that limit competition. It is targeted only at addressing competitive issues but, in so far as they affect competitive issues, it is empowered to address IP infringement issues, as set out here.

Existing permitted types of conduct requirements already allow the CMA to set requirements for unfair and unreasonable terms, which can include payment terms. The Government are committed to our world-leading IP regime. Copyright legislation already provides a robust framework for rights holders to enforce against copyright infringement. We will take a balanced approach to the use of AI across the press sector and departments across government are working together closely to consider the impact of AI, ensuring that AI innovators and our world-leading creators can continue to flourish.

I turn to Amendments 26, 27 and 25. I thank noble Lords for their thoughtful and considered contributions on these amendments. Amendments 26 and 27 are intended to expand the ability of the CMA to intervene outside the designated digital activity. Amendment 25 also seeks to expand this power specifically in relation to self-preferencing behaviour that takes place outside the designated activity. We agree with noble Lords that it is crucial that the CMA can deal with anti-competitive behaviour outside the designated activity where appropriate. My noble friend Lord Offord and I have had a number of representations giving further examples of this kind of behaviour and we are committed to finding the right means of addressing it.

Our current drafting has sought to balance the need for proportionate intervention with clear regulatory perimeters. The regime is designed to address the issues that result from strategic market status and is therefore designed to address competition issues specifically in activities where competition concerns have already been identified. This recognises that SMS firms are likely to be active in a wide range of activities and will face healthy competition from other firms in many of them.

I assure noble Lords that the power to prevent self-preferencing is already sufficiently broad. It can apply where an SMS firm is using its power in the designated activity inappropriately to treat its own products more favourably, but without a need for those products to be linked to the designated activity. In addition, the existing power outlined in Clause 20(3)(c) to intervene in non-designated activities, which noble Lords are referring to as the whack-a-mole principle, has been carefully calibrated. It is available only where the conduct has a material impact on the strategic market status in respect of the designated activity.

The same conduct in respect of a different activity may not have the same impact on the market. It will not always be anti-competitive and may instead form a part of normal business practice in a more contestable market. The DMU will therefore take a targeted, evidence-based approach when considering intervention. The DMU can intervene via conduct requirements outside the designated activity to prevent leveraging into the designated activity or via PCIs to address an adverse effect on competition in a designated activity. Therefore, the Government's view is that broadening the CMA's powers would risk over-intervention, creating uncertainty for businesses and risks to innovation and investment.

Baroness Jones of Whitchurch (Lab): Before the Minister moves on, do I understand from the beginning of that contribution that he is still looking at the wording—in other words, that he not wedded to the wording and is there some scope for either the amendment

from the noble Lord, Lord Vaizey, or our amendment, or to work with him to see if we can achieve what we are trying to achieve through this or other means?

Viscount Camrose (Con): Throughout this group, I am convinced that we are trying to achieve the same thing. I remain concerned that we have to design safeguards against regulatory overreach to enter into markets that are currently healthy, but beyond that I am very happy to explore the right form of wording or design that achieves the end that all sides are keen to establish.

Amendment 24 is intended to clarify the meaning of information being accessible. I thank my noble friend Lord Holmes for the amendment, and for the rigour and passion he demonstrated when making his points. I agree that the question of online accessibility is of great importance. All kinds of technology should be for everyone. I can provide assurance that the CMA can already consider the concept of accessibility in the broadest sense, and in a way that includes—but is not limited to—compatibility with assistive technology. I agree that it is crucial that all members of our society have the right to accessible information. The Bill as drafted provides for this and can encompass, for example, a requirement to have terms and conditions that are easily accessible on a website, in easy-to-understand language, and compatible with assistive technology.

Amendments 32 and 22 would remove the power that enables the Secretary of State to update the list of permitted types of conduct requirement and replace it with an additional open-ended type of conduct requirement. I thank noble Lords for their amendments and agree that digital markets are fast-moving and unpredictable. Future innovations are hard to foresee and will likely give rise to a range of new behaviours and ensuing harms. Although the Government have endeavoured to make the list of permitted types of conduct requirements fully comprehensive, it could become out of date in the future. The noble Viscount's proposal to add an open-ended type of conduct requirement would, we feel, grant too wide a power to the CMA and undermine the safeguards we have set by creating a clear framework for the CMA to operate within.

It is right that both government and Parliament have appropriate oversight and scrutiny over the significant powers being granted to the CMA. Therefore, the delegated power to allow the Secretary of State, subject to parliamentary scrutiny, to update the legislation provides the most appropriate way to future-proof the regime, ensuring that it can intervene effectively and promptly on the right issues. In addition, I note that the Delegated Powers and Regulatory Reform Committee has not queried the need for this power.

7.15 pm

I turn to a series of amendments on data and interoperability. I very much thank noble Lords for their contributions on these important issues, which are vital in promoting competition in digital markets. Amendments 20, 21, 28, 29 and 55 all seek to strengthen the provisions relating to data access, portability and interoperability. I agree with the noble Lords that these topics represent key issues in digital markets. The most powerful tech firms hold the largest amounts of data, which can help entrench their market position. Closed ecosystems and a lack of interoperability can reinforce these strategic positions and make it hard for new competitors and innovators to enter the market.

Both conduct requirements and PCIs can be used to promote interoperability and data access and to facilitate data portability for the purposes of addressing competition issues. These issues are already provided for in the Bill. We consider that "interoperability" is a commonly understood technical term, so we have not defined it in the Bill. In fact, defining it could actually risk narrowing it. These robust and comprehensive powers relating to interoperability and data access will enable swift and comprehensive action.

My noble friend Lord Lansley talks about the two types of conduct requirement. To be clear, subsection (2) refers to the requirements for the purpose of "obliging" conduct, and subsection (3) refers to the requirements for the purpose of "preventing" conduct. The specific conduct requirements imposed by the CMA may be framed as either obligations or restrictions, regardless of whether they fall within types of requirements under subsections (2) or (3). This means that the CMA can already promote interoperability in the way that my noble friend rightly wants. PCIs could also include remedies, such as mandated interoperability, data sharing and consumer choice screens.

Lord Clement-Jones (LD): My Lords, we are getting on in the Committee, but I was really interested in the Minister's interpretation point, because quite a lot hangs on that. The noble Lord, Lord Lansley, illustrated extremely well the difference between promoting and not restricting, so to speak—that is a crucial distinction. The Minister prayed in aid Clause 20(2) versus (3), but could he write on that in due course?

Viscount Camrose (Con): I am very happy to do so. As I say, anything that ensures the clarity of the Bill is valuable and important.

On the reference to international technical standards, these can be an important tool in supporting good regulatory outcomes, and we expect the CMA to pay due regard to these, along with other relevant considerations.

Finally, Amendment 34 would place a duty on the DMU to consider opening a PCI investigation when reviewing the effectiveness of, and an SMS firm's compliance with, conduct requirements. Conduct requirements are tailored rules to manage the effects of an SMS firm's market power and prevent harms before they occur. PCIs will tackle the sources of SMS firms' market power, which can arise from both structural features of a market and SMS firms' conduct. These are different but complementary tools, and the CMA will need to carefully decide when it is appropriate to use each tool, depending on the specific competition issue at hand. This amendment risks narrowing and reframing PCIs as a tool of last resort for non-compliance with conduct requirements.

I hope noble Lords feel assured that the issues they have raised have been carefully considered and reflected throughout the Bill, and I hope that the noble Lord will be able to withdraw his amendment.

Lord Holmes of Richmond (Con): I thought I would wait, just in case the noble Lord, Lord Clement-Jones, wanted to come in before the Minister sat down.

It has been an excellent debate, covering a wide range of connected issues, and I thank all noble Lords who have spoken and the Minister for his response. All the issues are connected by so many of the fundamentals that underpin not just this Bill, but the entirety of this digital project that we are all on: accessibility, interoperability, inclusion and intellectual property. I do not think we should ever stop mentioning copyright and intellectual property in these discussions; it is absolutely critical and is being decimated in so many ways right this very day.

Data, as was so eloquently set out by my noble friend Lord Lansley, is part of the critical underpinning. What is any of this without data? I certainly think that what we do not want to do with the Bill, as the Minister set out, is to come up with a definition of interoperability that is not interoperable—that would be an unfortunate slip of the pen. All these issues need to be at the forefront of all our deliberations; it unites all the amendments in this group and should unite all of our thoughts. They are the key threads that will not only make a success of this Bill but make a success of everything that we are trying to achieve with this digital project.

I know we are going to return to a number of these issues as we progress through Committee and into Report, but at this point—beating the Division Bell, still—I beg to withdraw my amendment.

Amendment 15 withdrawn.

Committee adjourned at 7.22 pm.